INTERNET

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SITTING DAYS—2012

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RADIO BROADCASTS

Broadcasts of proceedings of the Parliament can be heard on ABC NewsRadio in the capital cities on:

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For information regarding frequencies in other locations please visit
http://www.abc.net.au/newsradio/listen/frequencies.htm
Governor-General
Her Excellency Ms Quentin Bryce, Companion of the Order of Australia, Commander of the Royal Victorian Order

Senate Office holders

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

Senate Party Leaders and Whips

Leader of the Australian Labor Party—Senator Hon. Christopher Vaughan Evans
Deputy Leader of the Australian Labor Party—Senator Hon. Stephen Michael Conroy
Leader of the Liberal Party of Australia—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC
Leader of The Nationals—Senator Barnaby Thomas Gerard Joyce
Deputy Leader of The Nationals—Senator Fiona Nash
Leader of the Australian Greens—Senator Christine Anne Milne
Chief Government Whip—Senator Anne McEwen
Deputy Government Whips—Senators Carol Louise Brown and Helen Beatrice Polley
Chief Opposition Whip—Senator Helen Kroger
Deputy Opposition Whips—Senators David Christopher Bushby and Christopher John Back
The Nationals Whip—Senator John Reginald Williams
Australian Greens Whip—Senator Rachel Mary Siewert
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

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

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

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

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

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

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

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing
Clerk of the House of Representatives—B Wright
Secretary, Department of Parliamentary Services—C Mills
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<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon Julia Gillard MP</td>
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<td><strong>Minister Assisting the Prime Minister on Digital Productivity</strong></td>
<td>Senator the Hon Stephen Conroy</td>
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<tr>
<td><strong>Minister Assisting the Prime Minister on Asian Century Policy</strong></td>
<td>The Hon Dr Craig Emerson MP</td>
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<td><strong>Minister for Social Inclusion</strong></td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td><strong>Minister Assisting the Prime Minister on Mental Health Reform</strong></td>
<td>The Hon Mark Butler MP</td>
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<tr>
<td><strong>Minister for the Public Service and Integrity</strong></td>
<td>The Hon Gary Gray AO MP</td>
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<tr>
<td><strong>Minister Assisting the Prime Minister on the Centenary of ANZAC</strong></td>
<td>The Hon Warren Snowdon MP</td>
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<tr>
<td><strong>Cabinet Secretary</strong></td>
<td>The Hon Mark Dreyfus QC MP</td>
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<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>Senator the Hon Jan McLucas</td>
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<td><strong>Treasurer</strong></td>
<td>The Hon Wayne Swan MP</td>
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<tr>
<td>(Deputy Prime Minister)</td>
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<tr>
<td><strong>Minister for Financial Services and Superannuation</strong></td>
<td>The Hon Bill Shorten MP</td>
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<tr>
<td><strong>Assistant Treasurer</strong></td>
<td>The Hon David Bradbury MP</td>
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<tr>
<td><strong>Parliamentary Secretary to the Treasurer</strong></td>
<td>The Hon Bernie Ripoll MP</td>
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<td>Senator the Hon Chris Evans</td>
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<td>(Leader of the Government in the Senate)</td>
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<tr>
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<tr>
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Wednesday, 28 November 2012

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

BILLS

Fair Work Amendment Bill 2012
In Committee

Debate resumed.

The CHAIRMAN (09:31): The committee is considering the Fair Work Amendment Bill 2012.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (09:31): This is the continuation of the committee stage of the Fair Work Amendment Bill, and last night I was asking whether the government could provide us with an estimate of the costs associated with the proposed name change. The Senate committee inquiring into this was told a week ago the question would be taken on notice. We were told last night the question would be taken on notice, and I am wondering if the government now might actually have a defined figure to provide to us, rather than the rubbery explanation we have continually been provided.

Further, I asked the parliamentary secretary if the appointment of two new vice-presidents is going to cost Fair Work Australia $1.5 million or thereabouts per annum; if the name change is going to incur a cost; and, if all those costs are going to be absorbed by Fair Work Australia, what areas of Fair Work Australia's current activities will be curtailed for the extravagance of appointing these two new positions and for the this non-name change?

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:33): I can apprise Senator Abetz that since 10 o'clock last night there has been no change in the advice government has from Fair Work Australia with respect to their internal processes that I described during the committee stage last night, looking at the detail of the cost involved to change the name. So I cannot advise him further on any defined figure; only the information I gave him last night about the process under which Fair Work Australia is determining such matter. As Senator Abetz full knows, Fair Work Australia are an independent statutory body. They will go through their process and, at such time as we have advice for the Senator, we will inform him.

I will clarify also a component of the advice I gave last night: the absorption of the cost for the name change was the information I gave; it did not pertain to the issues around the appointment.

Senator Abetz is also asking with respect to what areas of current activities might be curtailed. Again, that is a matter for Fair Work Australia. I will seek to ascertain whether there is further advice on that matter.

I am also in the hands of the Senate as to whether, at this point in time, we want to move to the matters that Senator Cormann raised last night or whether Senator Abetz would like to remain on the areas that, prior to that, he was canvassing yesterday.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (09:34): The last point of the parliamentary secretary is a fair question. I do not know how many other senators have general questions, though I still have a few. After that I would suggest we start moving through the amendments formally. I would then, according to the sheet, move the vice-presidential amendments and then Senator Cormann will
come back into the chamber and canvass opposition amendments to superannuation. Given Senator Cormann's absence at the moment, if the parliamentary secretary could oblige by responding when Senator Cormann returns to the chamber I think that would be the most beneficial for both the parliamentary secretary and, if I might say so, especially for the opposition.

In relation to the issues I raised, I do note the parliamentary secretary's comment that the position has not changed since 10 o'clock last night. But the regrettable thing is that the position has not changed since the matter was before the Senate committee a week ago. The government makes money available to Fair Work Australia to undertake all sorts of issues and activities. We have been told in recent times now that Fair Work Australia from its budget will simply absorb the costs of a new registered organisations regime with new forensic accountants, new forensic lawyers, beefed up—all to be absorbed by Fair Work Australia without an extra allocation of money. We are similarly told that Fair Work Australia is simply going to appoint two new vice-presidents at a cost of at least $1.5 million per annum, simply to be absorbed. Fair Work Australia is now going to have a name change and the cost of that simply to be absorbed.

How much more is the government going to demand from Fair Work Australia and why was Fair Work Australia given such a big budget if it can afford all these extra changes without any curtailment of its existing activities? Clearly something must be giving within the Fair Work regime for all these extra financial burdens to be placed upon it without any extra money being made available. The Australian people are entitled to an answer, and to simply hide behind the fact that it is an independent statutory authority is not good enough because it is the government that makes the money available.

This independent statutory authority operates under legislation that this government introduced, and the people of Australia are entitled to know where the money is coming from and what areas of Fair Work Australia's activities will be curtailed to fund all these new activities without supplementation to Fair Work Australia's budget.

The CHAIRMAN: Senator Collins, do you want me to seek from the Greens an answer to your question about the general questions, whether the Greens have an indication as to whether they have many questions in this segment or they are happy to move through the amendments? Senator Wright.

Senator WRIGHT (South Australia) (09:38): The Greens do not have any further questions in relation to the general issues. We are happy to move through the amendments.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:38): With respect to Senator Cormann's questions, I am happy to defer them even if it is necessary to do so during the discussion of the amendments themselves. So if it suits Senator Cormann to simply come and move his amendments I am happy to deal with the issues that he raised last night at that stage.

With respect to the issues that Senator Abetz raised, I described last night that Fair Work Australia has a process to work through to determine the costs involved with the change of name. It is not that there is no understanding of cost but rather that Fair Work Australia have advised government of their process and we are waiting for an outcome of that process. We are quite happy to inform the Senate and indeed Senator
Abetz of the outcome of that process once it becomes known.

I can clarify further the point I made in response last night to a question on the name change. I indicated that the costs were to be absorbed by Fair Work Australia. I differentiated just a moment ago between that and the costs associated with the new appointments.

However, no differentiation is warranted: it is indeed the case that Fair Work Australia will absorb the full cost involved in the changes that have been sought. However, the precise details—and I think I mentioned this last night—in relation to the costs associated with the new appointments are still subject to the Remuneration Tribunal.

But we can be quite clear that the government is confident that Fair Work Australia will continue to fulfil its functions under the Fair Work Act diligently and well. Senator Abetz would be aware that over time, since the establishment of Fair Work Australia, there have been differential arrangements in relation to the costs of the agency, some of those associated with dealing with the new act and the new arrangements that were first implemented and with changes that have occurred subsequently. What the government has done on this occasion is respond to requests from Fair Work Australia to set up new administrative arrangements. We rely on Fair Work Australia to advise us on what administrative arrangements it needs, and any further costs that may need to be considered would be a matter of the usual budgetary arrangements. We are confident that Fair Work Australia will absorb the cost in relation to these measures that they have sought, without any loss of function in other areas.

On the cost of the vice-presidents, I have already mentioned this is a matter for the Remuneration Tribunal and any costs beyond those that have been estimated in a broad sense would be subject to normal budgetary processes.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (09:41): So what we have is a situation where we do not actually know the cost of these two new appointments; the cost is going to be subject to whatever the Remuneration Tribunal might determine. But, irrespective of what the cost is, the government is saying it will be absorbed by Fair Work Australia. We do not know what the cost of the name change is going to be, but it is going to be sorted out by Fair Work Australia simply absorbing the costs.

We cannot be told where the money is going to come from within Fair Work Australia because Fair Work Australia is still working through it. What that tells us clearly is that this has been rushed. Fair Work Australia itself still has no idea where the money is going to come from within its internal budgets. This is indicative, yet again, of the shambolic and rushed nature of this legislation, because Fair Work Australia itself has not been given the time to work out where the money is going to come from. The parliamentary secretary has been kind to tell the Senate that, when the process is known and the outcome of the process is known, she is willing to tell the Senate. But what we know is that we will not know the answer before the vote. So here we have the parliamentary secretary, and I am sure the Greens will oblige her, asking the parliament to vote for legislation when we do not know where the money is coming from and how the arrangements are going to be made internally.

It is this sort of shambolic management—just a snapshot—of Fair Work Australia which provides us with a window into the
total management of the Australian economy by this government. They have no idea where the money is coming from and they make changes with no idea how much it is going to cost. We are still waiting on Fair Work Australia, we are still waiting on the Remuneration Tribunal—and so the uncertainty goes on. But we need to vote on this today, irrespective of what the actual outcome or consequences might be!

I am a relatively hopeful individual, and a person who has a positive outlook, but I must say I doubt that the Senate is going to get any further answers in relation to these matters, so allow me to move on and test the parliamentary secretary. Every piece of workplace relations legislation that this government has introduced thus far has been rushed through the House of Representatives only to find itself in an embarrassing position in this place requiring further amendments. Can the parliamentary secretary guarantee us that the government is absolutely and utterly confident that this legislation does not need any further government amendments?

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (09:44): Perhaps I will close off on the last set of questions from Senator Abetz by making the point that Fair Work Australia has sought to make administrative changes for quite sensible reasons, and the government has responded to those requests.

Fair Work Australia understand that they need to absorb the costs of those arrangements and, other than the issues that the opposition is now raising, I am not aware of any concerns about them needing to do so. Senator Abetz may want to wait until the next round of estimates and explore this issue further, but there has been no evidence before me that there is an issue for Fair Work Australia in absorbing the costs associated with the changes that they themselves have sought.

With respect to every piece of workplace relations legislation, Senator Abetz wants to test me within the recent period of workplace relations. He knows as well as I do that workplace relations law is a constantly evolving issue. I think back to the various waves of workplace relations law, and were I to ask a similar question during a period of the Howard government it would possibly have had a response which was even more so. But I take the Senate back to the context of my summing-up speech, where I indicated and, indeed, Senator Cash highlighted—and I think that even Senator Abetz has used this language too, but I might be wrong there—that this is the first tranche of amendments, the matters that are generally agreed in response to the review of the Fair Work panel.

The first tranche are those matters which we think have general agreement and which can be moved forward fairly speedily. That said, the government has indicated that we have an open mind to further amendments that may be required in response to the other recommendations of the review panel. Some of those recommendations may cross some of the amendments that we are dealing with here so, no, Senator Abetz, I would not be in a position to say that there will not be a requirement for further amendments in the matters that we are dealing with now.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (09:47): Of course, it is very obvious that Fair Work Australia accepts that it has to absorb the costs. What else can it do? What else can it do in the face of the government changing legislation and foisting these things on Fair Work Australia without giving it extra
money? The parliamentary secretary says, 'Oh, they realise that they have to absorb it.' Everybody knows that they have to absorb it, but that is not, with respect, a justification for what has occurred, especially in circumstances where we do not know where those cost-cutting measures will occur within Fair Work Australia. I have a funny feeling that those cuts may well occur in the area of monitoring registered organisations, and that in the event that we have another Craig Thomson-Health Services Union debacle we will once again see Fair Work Australia underresourced and incapable of dealing with the issues as it should have done. But let us move on.

I seek leave of the Senate to move opposition amendments (2), (3) and (5) on sheet 7305 together.

Leave granted.

Senator ABETZ: I move:

(2) Schedule 2, item 43, page 22 (line 10), omit "Vice President or".

(3) Schedule 8, item 1, page 43 (line 7), omit paragraph 606(2)(c).

(5) Schedule 8, item 16, page 49 (line 7), omit "a Vice President."

The opposition also opposes schedules 8 and 11 in the following terms:

(6) Schedule 8, items 17 to 56, page 49 (line 9) to page 53 (line 16), TO BE OPPOSED.

(14) Schedule 11, item 21, page 184 (lines 13 to 16), TO BE OPPOSED.

I thank the Senate. This raft of opposition amendments deals with the creation of two new vice-presidential positions on the body known as Fair Work Australia. These two new positions were not canvassed in the Fair Work Act review panel's report. In the 250 submissions made to the review there was no such suggestion. As a result, not surprisingly, the review panel saw no need to make such a recommendation. It is therefore appropriate to ask from whence did this recommendation come. We now know that this recommendation came as a result of one ex-trade union boss talking to another ex-trade union boss—the former Assistant Secretary of the ACTU, who just happens to be the president of Fair Work Australia, talking to Mr Shorten, the former AWU boss, who now happens to be the Minister for Employment and Workplace Relations—and it was determined that it would be a good idea to have these two new vice-presidential positions.

This is a very important issue. The reason it is important has been highlighted by no lesser authority than the Law Council of Australia. The Law Council of Australia have set out, in a very articulate manner, a very well-reasoned manner and a very robust manner, how these two new appointments will be a diminution of judicial independence within Australia. It is a bad precedent, and they have said so. The government's response is like Ms Gillard's response in relation to the AWU scandal—basically a lot of words without any meaning and without any proper defence of the matters put to them.

This bill creates two additional vice-presidential positions and they will be the second and third highest positions within Fair Work Australia. The minister has completely failed to explain why these positions are required, let alone justified, apart from the department's submission that the president of Fair Work Australia—a former assistant ACTU secretary—sought the additional roles. These two positions would slot in as the second and third most senior officers of the tribunal.

Since the announcement of these two additional positions, there has been widespread community concern, including from within Fair Work Australia itself.
Clearly, with this new appointment in Fair Work Australia of a new president, there is a power struggle occurring within Fair Work Australia. And what better way for the government to get complete domination than simply creating two new positions and appointing two new people into them? The Australian Financial Review recently reported:

In an email obtained by the Weekend Financial Review, Senior deputy president Les Kaufman wrote to Fair Work president Iain Ross on Wednesday questioning the need for two positions, which reintroduces a level of seniority at the tribunal that was removed under the Fair Work Act in 2009.

Mr Kaufman, the senior deputy president, said the appointments would 'further erode the standing' of the tribunal and 'gives rise to the perception it is being stacked'. It is no longer a perception that it is being stacked; it is absolutely proven that it has been stacked. But allow me to continue to quote. The article went on to report that senior deputy president Les Kaufman said in his letter:

Although I have no direct interest in the creation of the two new vice-president positions because, as you know my commission expires on December 1—

so only a few more days to go, and nothing in it for this senior deputy president, Mr Kaufman; he is just expressing his concern. He goes on to say:

... I wish to express my dismay at what appears to be a retrograde step.

You might think senior vice-president Les Kaufman was having a whack on the way out and might be a lone voice, but it is not so. The article goes on to say:

Deputy presidents Graeme Watson and Peter Richards have also written to Justice Ross over concerns the federal government will use the opportunity to install government-friendly appointees.

Here we have a senior deputy president and two deputy presidents writing to the president of Fair Work Australia and disagreeing with his suggestion—which he seems to have cobbled together with the minister—to create these two new positions.

Many submissions to the Senate committee in relation to this expressed deep reservations about the inclusion of these two positions. Some of the comments included:

From our perspective the need for the creation of these additional positions and the requirement that they be statutory positions is unclear. Neither the Fair Work Act Review Panel nor submissions to the review have identified the absence of these statutory positions as inhibiting the performance of Fair Work Australia.

Possibly, we might get an explanation from the government as to how the lack of these positions is inhibiting the performance of Fair Work Australia. Clearly, three deputy presidents of Fair Work Australia do not think it is. They have very real concerns and, of course, we know about the Law Council's concerns. Another submission said:

This was not recommended by the Panel. It is unclear why these amendments are necessary or required and are opposed without amendments.

Another comment from the submission reads:

It is unclear why the existing Vice Presidents would not be suitable for re-appointment to the new statutory Vice Presidential roles.

To this end, there was wide stakeholder support for the appointment of the two members of Fair Work Australia to the new positions titled as vice-president. Steve Knott of AMMA told the committee: 'The legislation previously recognised the two existing vice presidents, Vice President Lawler and Vice President Watson, but the current legislation does not.' Clearly what we have, with the move to the Fair Work Act, is the government deliberately cutting these two people out of vice-presidential positions.
to move them to the side. The government is now moving to create two new positions and, as a result, is sidelining these two vice-presidential office holders of Fair Work Australia.

The proposal to have the legislation recognise these two roles once again, and put two new people into them, is unacceptable. It is real pea-and-thimble trick. For those with long memories in industrial relations, we will go back to the eighties when there was new legislation and everybody got appointed except one member of the tribunal—a fellow by the name of Justice Staples. I think this gives the opportunity—and again, we have commented on this publicly—to really damage the independence, or the perceived independence and impartiality, of the tribunal. We have senior appointments made to the tribunal through the political cycle. There are people who are appointed by one side who may not be appointed by another side, but that is the way it goes over the fullness of time in the political cycle.

The coalition is deeply concerned that the appointment of pro-Labor vice-presidents would bring into question the tribunal’s integrity, which has already suffered considerable damage courtesy of the Health Services Union scandal. But, if I may say so, the most significant submission comes from the Law Council of Australia, which said in part:

Members of FWA are appointed to a quasi-judicial position. The status of FWA depends upon the independence and impartiality of its Members being maintained and being seen to be maintained.

As a general principle, once a person has been appointed to sit on a Court or independent Tribunal with designated powers and privileges, any change that would have the effect of removing or reducing that particular person’s powers or privileges while not affecting the powers and privileges of other Members of that Tribunal, has a tendency to undermine the independence of the Court or Tribunal.

…… …

Should the Government appoint the two individuals currently designated Vice President to the two statutory Vice President positions, then their status will not be reduced. However, if the two Deputy Presidents designated Vice Presidents are not so appointed, the effect of the Bill will be to reduce their status. Henceforth responsibilities that would have been capable of being delegated or given to them by nature of their senior status would instead be given to the new statutory Vice Presidents.

This would have the tendency to reduce the independence of the Tribunal in that it will reduce the role and privileges associated with particular individuals.

So says the Law Council of Australia.

The government’s argument in response to that to date has been shallow, has been hollow and has been completely absent of any rationale, any robust rejoinder. The only rationale is that this is a government that thinks it might be in its death throes and wants to future-proof Fair Work Australia from any future appointments by another government and therefore has rushed through this legislation, created two new positions and further stacked Fair Work Australia.

I remind the parliamentary secretary of Mr Rudd’s promise before the 2007 election:

I give you this as an absolute guarantee here on your program. I will not be prime minister of this country and appoint some endless tribe of trade union officials to staff or ex trade union officials to staff the key positions in this body. That's not my intention. That's not the way in which it's going to work.

Well, we now know that that is exactly the way it has worked under both the Rudd and Gillard governments. It is like their carbon tax promise: hollow, shallow, with no intention of delivering on it—simply words before the election to get them over the line and then do the exact opposite afterwards.
I ask of the parliamentary secretary: what are the entitlements of the two new vice-presidents? We do not know that as yet, I understand, because the Remuneration Tribunal still has to make the determination. This is very unhelpful in circumstances where we are supposed to vote on this without knowing what their entitlements will be. The Greens might like being treated as mushrooms, but we, the coalition, do not.

The other answer that I have is about the current people on Fair Work Australia who have judges pension entitlements. If they apply for one of these two new positions on Fair Work Australia, would they lose their judicial pension entitlements? It is understood that the new appointments will not have these judicial pension entitlements so, apart from their remuneration, there is also the question of what their pension entitlements might be.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (10:03): I might commence by dealing in general with the government's response to these opposition amendments and then I will move to answer the questions that Senator Abetz asked at the conclusion, as well as perhaps addressing a few of the other observations he made in that process which do not stand up to any serious scrutiny. I know that Senator Abetz thinks that he has got case closed on balance and appointments to this tribunal but I would suggest that he is making quite a few cheap political points that would not stand up to any serious scrutiny.

The government does not support the opposition's proposed amendments. The two new vice-president roles to be created within the tribunal were recommended by the President of Fair Work Australia, Justice Ross. In establishing Fair Work Australia, the government took the decision to abolish the formal statutory positions of vice-president and senior vice-president, as Senator Abetz has indicated. Vice-presidents and senior deputy vice-presidents became deputy presidents within the Fair Work Australia structure. Let us remove that illusion around the seniority issue that Senator Abetz has raised.

In the transition arrangements in moving from the Australian Industrial Relations Commission to Fair Work Australia former senior deputy presidents and vice-presidents were entitled to retain their former entitlements and titles. Indeed, this gives me the opportunity to reflect on Senator Abetz's visit to the 1980s around appointments and remind those listening and the Senate that in the transition from the Australian Industrial Relations Commission to Fair Work Australia all positions were maintained—complete balance, complete reflection of the existing arrangements. Those arrangements had principally been established under the Howard government with a track record I do not intend spending some detail visiting; I think it is pretty much a matter of record.

Justice Ross recommended to the government providing for two senior positions within the tribunal to ensure senior legal specialists with high-level expertise were attracted to Fair Work Australia, and, I stress, to assist him in the administration and management of the tribunal. Senator Abetz likes to highlight some of the issues facing Fair Work Australia. He likes to highlight the need for independence and the need for administrative and management improvements. This is indeed the solution that Justice Ross has raised in relation to some of those issues. So it surprises me now that the opposition seek to oppose the president of Fair Work Australia in dealing with some of the internal management issues.
that the opposition themselves have canvassed.

Fair Work Australia deals with important and complex matters of industrial law and should be resourced accordingly. In addition to matters of industrial law, Fair Work is undertaking a broad range of functions, including the new Road Safety Remuneration Tribunal jurisdiction, a major projects panel and a new comprehensive stakeholder engagement model. Creating these positions will assist Fair Work Australia to deal with such matters. The criteria for appointment as vice-presidents will be set out in the Fair Work Act and are reflected in the bill. This reflects the approach taken in respect of other members of Fair Work Australia and previous iterations of legislation.

The process for selecting the two new vice-presidents will be open and transparent. The government has committed to a merit-based selection process for these appointments. The positions will be advertised publicly and anyone will be able to apply for the positions. An advisory panel consisting of senior officers of the Department of Education, Employment and Workplace Relations and the APSC will recommend a short list of applicants and the incumbent minister will then seek cabinet's endorsement of the appointments, as is the usual practice. The endorsed candidates will then be recommended to the Governor-General and to the Executive Council.

I dealt with Senator Abetz's brief visit to the 1980s on the issue of appointments and highlighted probably the most recent principal example of how the Prime Minister has met the commitment she made in relation to balance within Fair Work Australia, to be the Fair Work Commission. But I think I need to address in a little more detail Senator Abetz's claim that there is a perception that Fair Work Australia is, in his words, being stacked. Whilst he relates to some internal memos or communications from some existing commissioners, the public record on recent appointments highlights that there is a general satisfaction with the balance that has been established within Fair Work Australia. I have in front of me three press releases. The first one relates to ACCI: 'Employers welcome Fair Work appointments'. Another is dated February this year: 'Employers commend Shorten on Geoff Bull's appointment to Fair Work Australia'. A further newspaper article in the Australian in February this year: 'All sides approve of Fair Work appointees'. So I do not think that the case is quite as established as Senator Abetz seems to think it is. I do add some further context, since Senator Abetz referred to the Prime Minister's remarks. She referred to ministerial advisers. If I recall correctly, there was a chief of staff of Minister Reith who was appointed to the Australian Industrial Relations Commission as registrar.

The government has gone nowhere near the excesses of the Howard government in the balance that it has introduced into Fair Work Australia and the Fair Work system. We have maintained appointments that were made under the Howard government. The appointments made to the Fair Work Ombudsman and the commission have been balanced and fair.

The ongoing problem that I might highlight to Senator Abetz—as a challenge more than anything else—is finding high-calibre women candidates to appoint, particularly on the employer side. He might like to assist the minister and me in encouraging more candidates to seek appointment to the tribunal. This is a challenge that we have raised with employer organisations, and we hope that over time there will be some improvements in that respect.
Senator Abetz asked and then answered his own question on entitlements, and we will be waiting for the Remuneration Tribunal to establish some detail there, but he did seek an assurance on judges’ pension entitlements with respect to existing office holders, and I am advised that if existing office holders who carry such entitlements are appointed to the positions the government will, through regulation, ensure that those arrangements are preserved.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (10:11): So when did the government decide to make sure that those things would be preserved by regulation? Undoubtedly, that is something that should have been in the legislation itself, but it will seek to cover a deficiency via regulation. Just in case anybody who is listening thought that there was a substantial argument made out by the parliamentary secretary that that which I had asserted does not stand up to scrutiny about the stacking of Fair Work Australia, let me just ask them—in particular the parliamentary secretary—that, out of the 17 appointments made thus far, who can tell us how many were ex-trade-union bosses, given the promise that it would not be an endless tribe of ex-trade-union officials? Would you think one or two, possibly? Three or four? Five or six? All right, let’s go halfway at eight out of the 17. Nah—you got it wrong; it is 12 out of the 17—over two-thirds. But that is not an endless tribe of ex-trade-union officials according to the parliamentary secretary. Heaven help us if two-thirds plus is not an endless tribe. What it means is that a 100 per cent stacking and packing of Fair Work Australia also would not be an endless tribe to Fair Work Australia appointments.

Need I remind the parliamentary secretary of the appointment of the very first manager of Fair Work Australia—an ex-trade-union official. What was that person’s role? The oversight of the Health Services Union inquiry and the inquiry into Craig Thomson. And just when the heat was getting on, just when we as a coalition were seeking to have questions asked of him at a Senate estimates hearing, what does the government do? It miraculously appoints him to the commission of Fair Work Australia to put him out of reach of senators’ questions as to the absolutely disgraceful handling of the Craig Thomson and the Health Services Union matter. So this manager, who oversaw this absolute disregard for process and this disgraceful delay in the Craig Thomson-Health Services Union matter, is not chided but rewarded by this government and elevated to the bench of Fair Work Australia. If that is not enough, there is a vacancy created in the managerial role of Fair Work Australia. I wonder what sort of person we might appoint to that vacancy. Guess what! Another ex-trade-union official. But it is not an endless tribe, you understand; it is not an endless tribe of ex-trade-union officials being appointed!

Well, chances are that I misinterpreted what Mr Rudd meant when he said there would not be an endless tribe of ex-trade-union officials being appointed. I actually took him at face value. Clearly, I was wrong, as the Australian people were wrong in relation to the no carbon tax promise made at the last election.

We have been told that these appointments are open, transparent and merit based, as undoubtedly was the appointment of that greatly successful manager of Fair Work Australia who oversaw the Health Services Union debacle—open and merit based. What a fantastic job! They did a great job looking into the Craig Thomson Health Services Union for—how many years was it?—three years or whatever it was. Great! And merit demanded that this sort of
performance saw this person put onto the bench of Fair Work Australia.

What about the trade union official who was in diabolical trouble with his own trade union, the Electrical Trades Union, which was suing him, if I recall, for about $1 million? They were wanting back pay for the moneys he had received while sitting on one of those industry super funds as a board member, milking out money. There will be more talk about the industry super funds and the default funds under the modern award system later on today. But guess what happened to this person? The day before his announcement to Fair Work Australia was made public—it was just serendipitous; it was just coincidental—the case with the union miraculously settled. Oh please! Merit based? Open? Transparent? I could go on with a list. I think the government knows it cannot claim honesty in relation to that assertion.

Coming back to the issue that Justice Ross says is required, namely, a 'high level of expertise', I think the term was, I am sorry but, with great respect, is the government asserting that that high level of expertise does not currently exist on the bench of Fair Work Australia? I can tell you, there are many people who would clearly fit into that category who would be, I am sure, more than willing to assist the president if he were willing to use their expertise, their experience and their reputation to assist him in the management and running of Fair Work Australia. I say to the government again that no genuine argument has been made out for this enhanced stacking and packing measure of Fair Work Australia.

I finally make a comment in relation to female appointments. It is amazing. The second-last time around, when I pursued the so-called merit based appointments to Fair Work Australia, it was astounding how the selection process showed a complete dearth of quality private sector people worthy of the short list. But, oh, the ex-trade union officials made the short list. They were in there, right through. They made the short list as high-quality individuals. All I would ask you to do, Parliamentary Secretary, if you do want to look for female candidates for appointment to workplace relations tribunals, is look no further than the new LNP government in Queensland, which have appointed for their industrial commission a very distinguished lady, Minna Knight. But people like that, I am sure, simply would not make the short list or would—

Senator Jacinta Collins interjecting—

Senator ABETZ: I am not going to indicate whether or not, because there are privacy considerations involved. But it is interesting that, when you have an LNP government elected, all of a sudden it finds meritorious female candidates to appoint to its industrial tribunals, yet this government, with all its quotas and other things, seems to have great difficulty.

I will leave my contribution to this amendment at that. I commend the amendment to the Senate. I believe it is worthy. I simply say to the Greens: even if you want to discount every single word I have said in this debate, as is usually your wont, please do so—please be my guest—but you cannot discount—

Senator Polley: Yes.

Senator ABETZ: Senator Polley smiles and says, 'Yes.' But, even if you discard every single word I have said, how on earth do you discard the words of three deputy presidents of Fair Work Australia and how do you discard the very wise counsel of the Law Council of Australia? The parliamentary secretary and the government can play politics with my words, but they cannot play politics with the considered
views of three deputy presidents of Fair Work Australia or the Law Council of Australia. That is what makes the coalition so confident that it is right on the fundamental matter of principle that these amendments should be carried—namely, that these two new positions should not be established. Given that the government cannot respond in any coherent way to reject the views of these three deputy presidents and the Law Council of Australia, we can be left with no other conclusion than that this is a deliberate attempt to stack and pack Fair Work Australia, as the government feels it might be in the death throes.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (10:21): Unfortunately, I have been provoked to traverse some territory I was hoping not to occupy Senate time with, but I think the responses of my colleagues and others to at least three references of 'stacking and packing' warrant some consideration. Those listening and other senators need to understand that Senator Abetz's view about what constitutes a union official is a particularly interesting one. Anyone who has ever, at any stage of their professional career, been associated with a trade union would fit his category. So just imagine, across the Australian workforce, people across a broad range of professions and experience—for instance, mine, professional social work. Because I was involved with a union—because I joined a union at the age of about 16—I would fit his category. It is just ludicrous. He counts, for instance, Justice Ross as one of these 'stacks'. He may not particularly like that particular appointment, but it is not really a fair characterisation of the balance and composition of Fair Work Australia, and I do not think that Senator Abetz does the tribunal justice with this approach.

In relation to the Law Council's submission, we need to remind the chamber that what the government is doing is re-establishing an arrangement of seniority that had been in place for many years. The Law Council is concerned about relative positions of some of the existing office holders. Unfortunately, change involves affecting relative positions of existing office holders. That is a necessary consequence of change.

The other three considered views that Senator Abetz highlights relate, if I have got this correct, to at least one and perhaps three leaked emails, possibly taken out of context. I am not sure about how those deputy presidents feel about the opposition bandying around leaked emails, or what their motives may or may not have been in commenting, or how that material came into the public realm. It may have been reported by the Australian Financial Review, but I remind senators and those listening that that is the context of the reporting of those views, not necessarily in their full context. These were private communications between them and the President of Fair Work Australia and certainly cannot be taken as representative of the view of Fair Work Australia commissioners and deputy presidents.

What we do know, as a matter of fact, is that the President of Fair Work Australia sought to have the government re-establish seniority arrangements that had previously been in place to assist him in the administration and management of an agency which we all know has reviewed its internal processes so that it can deal with some of the issues and problems associated, as Senator Abetz highlighted, with resourcing and work in certain areas.

This is what the government is doing to try to assist Fair Work Australia overcome some
of the difficulties that have arisen in recent times.

The TEMPORARY CHAIRMAN (Senator Fawcett): The question is that opposition amendments (2), (3) and (5) on sheet 7305 be agreed to.

The committee divided. [10:29]

(The Chairman—Senator Parry)

Ayes.....................33
Noes......................37
Majority...............4

AYES

Back, CJ
Birmingham, SJ
Boyce, SK
Bushby, DC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Heffernan, W
Johnston, D
Macdonald, ID
Mason, B
Nash, F
Payne, MA
Ruston, A
Scullion, NG
Smith, D
Xenophon, N

Bernardi, C
Bosswell, RLD
Brandis, GH
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Humphries, G
Kroger, H
Madigan, JJ
McKenzie, B
Parry, S
Ronaldson, M
Ryan, SM
Simondos, A
Williams, JR (teller)

NOES

Bilyk, CL
Brown, CL
Carr, RJ
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
McEwen, A
Milne, C
Polley, H (teller)
Rhiannon, L
Singh, LM
Sterle, G
Thorpe, LE
Whish-Wilson, PS

Bishop, TM
Cameron, DN
Carr, RJ
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
McLucas, J
Moore, CM
Pratt, LC
Siewert, R
Stephens, U
Thistlethwaite, M
Urqhart, AE

PAIRS

Abetz, E
Cash, MC
Joyce, B
Lundy, KA
Wong, P
Evans, C

Question negatived.

The CHAIRMAN (10:31): I will now put the second part of the opposition amendments. The question is that items 17 to 56 in schedule 8 and item 21 in schedule 11 stand as printed.

Question agreed to.

Senator CORMANN (Western Australia) (10:32): Before I move the opposition's next amendments, I advise that I placed on record a series of concise questions last night, and I would be interested in the government's answers.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (10:32): For Senator Cormann's benefit, as he may not have been listening at the stage when Senator Abetz and I discussed how to deal with the issues that he raised last night, I advise that we agreed—I think as a courtesy to Senator Cormann—to delay responding to Senator Cormann's questions until Senator Cormann was in the chamber. So I am happy to cover those issues now.

As I highlighted with respect to their amendments generally, the government does not support the opposition's proposed amendments. Our reforms to the default fund selection process will ensure that default superannuation contributions in modern awards will be directed to funds that meet the best interests of employees covered by
modern awards. We are enabling superannuation funds to apply for default fund status on an equal footing. This will increase competition in the default fund market, which will drive product and service improvements for the benefit of both members and employers.

Our reforms largely reflect the approach recommended by the Productivity Commission. I think this is a critical point, picking up some of the issues that Senator Cormann raised last night. I should highlight that we are proud of our superannuation reforms and further refinements are simply that—refinements responding to the recommendation of the Productivity Commission.

The opposition's approach, on the other hand, is for employers to be able to select from any available MySuper product. This approach was comprehensively rejected by the Productivity Commission. On the opposition's approach, the Productivity Commission noted it:

… does not have an explicit focus on the best interests of employees. It assumes that their best interests will be reflected in the decisions made by employers …

This is one of the critical reasons around why industry superannuation was established in the first instance. We know from the history of superannuation that you cannot have a system based on relying on the best interests of employees being reflected in the decisions made by employers.

The commission went on to note that most employers, particularly small- and medium-sized employers:

… do not necessarily have the incentive, interest or expertise to make a decision that is aligned with the best interests of employees …

The government's approach will ensure that the best interests of employees covered by a specific award are protected by ensuring those employees are placed in the most appropriate MySuper products. The opposition's approach was strongly opposed by unions, industry superannuation funds and employers, including the Ai Group. The government is looking after the best interests of employees whose super is directed to the default fund. The opposition are only looking after their own cheap political interests.

In respect of how these changes will improve the existing approach, our reforms ensure that default superannuation contributions in modern awards will be directed to funds that meet the best interests covered by the relevant award. For the super funds, our reforms enable them to apply for default fund status on an equal footing. All funds with a generic MySuper product will be able to apply to the Fair Work commission for selection as a default fund on an equal basis, which will bring greater contestability to the system. We are increasing competition in the default fund market, which will drive product and service improvements to the benefit of both fund members and employers while ensuring that the default superannuation system operates in the best interests of employees and at the same time responding to the clear recommendations of the Productivity Commission.

**Senator CORMANN** (Western Australia) (10:36): I have a few observations in relation to that. That was an extraordinary contribution by the government. Just to explain this: so the government is saying that an amendment which would provide that all MySuper default products—products which are in the process of being legislated by this government—which have in them all of the consumer protection mechanisms that this government judges are necessary, that giving the option for any such products to compete with each other, can somehow be contrary to the best interests of employees? If that is
what the government is saying, then it should withdraw its MySuper bills immediately. What it is saying is that even though a super product can qualify for registration as a MySuper default product, consistent with its legislative requirements, that is not in itself a guarantee that that product is an appropriate default fund product. Quite frankly, if that is the government's position, then this whole process—going through three different bills in order to legislate the features of a super product that have to be there in order to ensure that those Australians who are not making active choices about their superannuation are properly protected and have a product that properly caters for their needs—is a complete waste of time.

Given the government is currently legislating to ensure that those Australians who do not make active choices in relation to their superannuation arrangements end up in a default product that has been designed by this Labor government—which is called the MySuper product—if the government is now saying that those products are inadequate and are not in the best interests of employees across Australia, then why bother with that at all? You are completely wasting your time.

The other thing the minister said is that the Productivity Commission recommended against us. That is only a half-truth. The Productivity Commission recommended genuine competition until Minister Shorten bullied them into changing their minds.

**Senator Jacinta Collins:** Please!

**Senator CORMANN:** That is exactly what happened. I refer you back to the draft report, the interim report and the interim recommendations that were put out by the Productivity Commission.

They were very clear in recommending strong and appropriate moves to a more open, transparent and competitive process. Minister Shorten took the unprecedented step for him to respond to a review before it had actually finally reported. That is never what Minister Shorten does. That is completely inconsistent with his usual modus operandi. Everybody that has anything to do with Minister Shorten knows that that is not normally how he does business. It was a very unique approach. Normally, for any report that comes back to him he has a follow-up consultative review and discussion—a review into the review type process. Quite frankly, in a general sense, Minister Shorten struggles with making decisions. But on this one there was a very clear driver: Minister Shorten wanted to protect the vested commercial interests of his friends in the union movement, who clearly have an interest through union-dominated industry funds to preserve the current situation for as long as possible, which gives them an unfair competitive advantage.

The minister talks about the fact that the Australian Industry Group is also supportive of the government's approach through this legislation—prescribing further government intervention through Fair Work Australia, despite the fact that the Fair Work Australia process as deployed over the last four or so years has been widely discredited. There is such a thing in Australia, still, sadly, called the industrial relations club. There are some cosy arrangements at times between organisational stakeholder interests that are separate from the actual best interests of individual Australians. That is what is happening there. They want to have this cosy arrangement through which, behind closed doors and through a non-transparent, non-competitive process, they can make deals. That is not in the public interest.

What is in the public interest is to have the greatest variety and number of suppliers from across the board—industry funds, retail funds, you name it—competing with each other and keeping each other on their toes in
terms of fund performance, investment performance, fees and quality of service. Across all these aspects of the superannuation value proposition it is important to have appropriate competitive tensions to ensure that people can make informed decisions about what is in the best interests of employers and employees in a particular set of circumstances.

The minister in her answer today effectively told us that the MySuper default fund product is not worth the paper the legislation is written on, because, in her words, 'Letting employers direct Australians who do not make active choices in relation to superannuation into MySuper default fund products is contrary to the employee's best interests', unless Fair Work Australia can do another job on top of it—

Senator Jacinta Collins: I quoted the Productivity Commission.

Senator CORMANN: That is exactly what you said, Minister. Either the government trusts its own legislation in terms of defining in legislation what a default fund product should look like—either the government agrees that it has come up with the right consumer protection features in their MySuper legislation, and then as soon as a product complies with the conditions of registration as a MySuper product then any of them should be adequate and appropriate and in the best interests of employees that are not making active choices in relation to their superannuation—or do you think that what you have done is inadequate? If so, you should go back to the drawing board. But to somehow say, 'We're going to let all of you register but even though all of you comply with our conditions of registration we are going to determine through a secretive process who is going to be allowed to compete and who is not allowed to compete,' is just completely inappropriate. It seeks to enshrine yet again an anti-competitive arrangement that, quite frankly, has been widely discredited for some time.

With those few words, I will talk through all of the amendments before moving them in turn because, procedurally, I will not be able to move them all together. Essentially, the objective of the amendments that I am about to move is to ensure that there can be proper and genuine competition between the great diversity of MySuper products which will be available from 1 July 2013, and that all Australians in default super can have the benefits of genuine competition between any MySuper product which complies with the government's requirements for registration as a MySuper product and not just with those select few which have been identified through a discredited process through Fair Work Australia.

Amendments (1) and (2) remove commencement dates for schedules that the coalition is opposing. Amendment (3) provides that the changes in the amendments will not commence until after the commencement of relevant schedules in the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012—currently a bill before the parliament—that is, to link this amendment with what I have just talked about in terms of the availability of the government's own legislated MySuper default fund products.

Amendment (4) removes schedule 1. Schedule 1 at present amends the Fair Work Act to introduce a process under which the Fair Work Commission will review default fund terms in modern awards every four years. This will no longer be necessary if all MySuper products can be selected under any modern award as we believe should be the case.
Amendment (5) removes schedule 2, which currently institutes the expert panel as part of the Minimum Wage Panel in Fair Work Australia. Again, this is an unnecessary layer of bureaucracy. Consumer protection requirements have already been built into MySuper products—or so we have been led to believe by the government, which is clearly completely internally inconsistent with the way it has approached this.

Amendment (6) makes the substantive change to allow for any MySuper product to be available under all modern awards. Amendment (7) makes a minor consequential change to schedule 11.

Let me also point out that we are moving these amendments today to give the Senate the opportunity to do the right thing, to give the Senate the opportunity to help ensure that Australians who are not making active choices in relation to their superannuation arrangements can nevertheless benefit from the highest possible fund performance, the lowest possible fees and the best possible service and, because of competitive tensions that are engendered through genuine competition, this will lead to a maximisation of their retirement savings. That is the reason we are moving these amendments.

If these amendments are unsuccessful today, this will form part of the coalition policy going into the next election. Given that this government has been so belligerent in refusing to do the right thing in this area by continuing to protect the vested commercial interests of their friends in the union movement rather than do the right thing in the public interest, if this does not get fixed between now and the next election a future coalition government will fix it. With those few words I seek leave to move opposition amendments (4), (5) and (7) on sheet 7304 together.

Leave granted.

Senator CORMANN: I move:

(4) Schedule 1, page 5 (line 1) to page 16 (line 4),
(5) Schedule 2, page 17 (line 1) to page 25 (line 13),
(7) Schedule 11, item 1, page 179 (line 19) to page 180 (line 10), Part 2 TO BE OPPOSED.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (10:48): Just a very brief response to those comments: Senator Cormann has obviously failed to convince the Productivity Commission, which comprehensively rejected the approach that he is now proposing. Suggestions that they were bullied or that it was in an earlier interim report that was open for consultations simply seek to conceal that fact, and for those reasons we will be opposing these amendments.

The CHAIRMAN: The question is that schedule 1, schedule 2 and part 2 in item 1 of schedule 11 stand as printed.

The committee divided. [10:53]

The Chairman—Senator Parry
Ayes ......................37
Noes ......................30
Majority..............7

AYES
Bilyk, CL
Brown, CL
Carr, KJ
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
McEwen, A
Milne, C
Polley, H (teller)
Rhiannon, L
Singh, LM

Bishop, TM
Cameron, DN
Carr, RJ
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ladlam, S
Marshall, GM
McLucas, J
Moore, CM
Pratt, LC
Siewert, R
Stephens, U

CHAMBER
Consistent with the comments I made previously in this debate, for the reasons that I have previously outlined, I seek leave to move opposition amendments (6) and (3) on sheet 7304 and to take them together.

Leave granted.

Senator CORMANN: I move:

(6) Page 26 (before line 1), before Schedule 3, insert:

Schedule 2A—Superannuation contributions

Fair Work Act 2009

1 Section 149A (heading)

Repeal the heading, substitute:

149A Superannuation contributions

2 Before subsection 149A(1)

Insert:

(1A) A modern award must include a term that permits an employer covered by the award to make contributions, for the benefit of an employee covered by the award who is a default fund employee, to any superannuation fund that offers a MySuper product.

Note: An employer may make contributions under this term even if the superannuation fund to which the contributions are made is not specified in the modern award.

3 Subsection 155A(1) (note)

Omit "section 149A", substitute "subsection 149A(1)".

(3) Clause 2, page 2 (before table item 4), insert:

3A. Schedule 2A

The later of:

(a) the day this Act receives the Royal Assent; and
(b) immediately after the commencement of item 1 of Schedule 4 to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012.

However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.

The CHAIRMAN: The question is that opposition amendments (6) and (3) on sheet 7304 be agreed to.

The committee divided [10:57]

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

AYES)

Abetz, E Back, CJ
Bernardi, C Boswell, RLD
Boyce, SK Bushby, DC
Colbeck, R Cormann, M
Edwards, S Eggleston, A
Fawcett, DJ Fierravanti-Wells, C
Fifield, MP Heffernan, W
Johnston, D Joyce, B

PAIRS

Evans, C Scullion, NG
Lundy, KA Cash, MC
Wong, P Humphries, G
Senator MILNE (Tasmania—Leader of the Australian Greens) (10:59): I move Australian Greens amendment (1) on sheet 7309:

(1) Schedule 5, page 34 (after line 9), at the end of the Schedule, add:

**Part 3**—Protection for whistleblowers

**Fair Work Act 2009**

**4 Section 12**

Insert:

*public interest disclosure*: see subsection 351A(2).

5 After section 351

Insert:

**351A Public interest disclosures**

(1) A person (the first person) must not take adverse action against, threaten or harass another person because the first person believes that the other person made, or was going to make, a public interest disclosure.

Note: This section is a civil remedy provision (See Part 4-1).

(2) A public interest disclosure means a disclosure covered by subsection (3) if it is made in the circumstances covered by subsection (4), but does not include a disclosure of information by a person if the person knows that the information, or part of the information, is false or misleading.

(3) This subsection covers disclosures by a person about any of the following kinds of conduct that the person reasonably believes an employer, employee or an independent contractor has engaged in, or intends to engage in:

(a) an act or omission that would constitute a crime against the laws of the Commonwealth, a State or a Territory;

(b) a misappropriation of money or property belonging to another;

(c) a misuse or concealment of information that relates to, or has been obtained because of, a person's employment, where the misuse or concealment is made for personal benefit or is detrimental to the public interest;

(d) an act or omission that presents a significant risk to:

(i) a person's safety; or

(ii) public health; or

(iii) the environment;

(e) an act or omission that has, or is likely to cause, an unjust or unacceptable impact on a person.

(4) A disclosure by a person is made in the circumstances covered by this subsection if:
(a) either:

(i) the person has made the disclosure to his or her employer and the employer has failed to properly respond in a reasonable time; or

(ii) it is not appropriate for the person to make the disclosure to his or her employer; and

(b) it is reasonably necessary for the person to make the disclosure to a person other than his or her employer.

(5) No action or proceeding, whether criminal or civil, lies against a person for or in relation to a public interest disclosure made by the person in accordance with this section.

6 Subsection 539(2) (column 1 of item 11 of the table)

After "351(1)". insert "351A(1)".

I rise today to move this amendment for the Australian Greens on whistleblowing or public interest disclosure. This is something the Australian Greens feel very strongly about. We note that the government made all sorts of promises about dealing with comprehensive whistleblower legislation, but we are yet to see it.

This is a really important amendment as we know that whistleblowers in Australia are afraid to come forward in many cases because they suffer vilification and frequently they lose their jobs or do not get promotion. So we are in a situation where, instead of transparency and openness and reporting of problems, we have covering up. This amendment will enshrine whistleblowing as a workplace right under Fair Work Australia. The act applies to 80 per cent of the Australian workforce, including the federal government sector, many state agencies and large swathes of the private sector. If claims are made that it covers small business, we can say that the overwhelming majority who are doing nothing wrong have nothing to fear.

Essentially, this amendment will enshrine whistleblowing as a protected right through the existing mechanism in the act called 'adverse action'. What that does is prevent an employer, fellow employee or contractor from taking an adverse action against someone after they have made a public interest disclosure. This could include firing them, demoting them, reducing their pay, cancelling supply orders et cetera. If an adverse action is taken they will be able to claim compensation under the act.

The example that I can give is one that has just been reported in the last couple of weeks—that is, with Mr Twiggy Forrest's Fortescue Metal Group. They commissioned an archaeologist firm to inspect the cultural artefacts and connections of the traditional owners in the Pilbara. When Fortescue did not like the results, they ordered that sections be taken out and they withheld payments until they did. This scourge affects environmental assessments and native title applications too. One firm wrote to the Western Australian department after the requested changes were made and the other refused to make the changes and had to forgo $70,000. In the private sector, whistleblowing protections should extend to contractual right to payment as well as subsequent adverse treatment against contractors if they make a protected disclosure.

Another example is the HIH collapse. This could have been avoided if these proposals were in place at the time. The external actuaries and auditors of HIH relied so heavily on their business that they did nothing when the HIH board refused to heed the recommendations and deferred to the board's authority in fear of upsetting the business relationship and regular work. So there was no incentive or protection for people to blow the whistle on what was clearly going on in that particular company. It is important that we move to recognise whistleblowing as a workplace right.
In addition to adverse action, the amendment also incorporates threats and harassment to stop workplace bullying, which commonly follows disclosure of the information. As we heard recently when a former policeman came forward in relation to what has led to a royal commission into sexual abuse, he knew that his career would be over in terms of the bullying that would go on as he revealed the extent to which moves had been suppressed within the police force formerly.

To qualify for the protections of Fair Work, the whistleblower must first raise the issue with the employer and then, if there is no adequate response to the disclosure within a reasonable time, they may make a disclosure that is reasonably necessary to another person. If it is not appropriate for the person to inform their employer for a justifiable reason, they can immediately inform a third party and still be covered by the scheme. If the above procedure is followed, they would be immune from civil and criminal action arising from the disclosure. It is really important that we take this on board and work now to make sure that we give whistleblowers this workplace right and protect them from any adverse consequences that might occur when they are clearly acting in the public interest. It needs to be not only in the public sector but it also needs to cover the private sector.

The classes of disclosable conduct are listed in the subclause, and there is a catch-all in (e) that says they include ‘illegal acts, misappropriating money or property, misuse or concealment of information and risks to public health, a person's safety, and the environment'. In other words, they are disclosable conduct that would be protected by making whistleblowing a fairly extensive workplace right. But a person who discloses information, or even a part of it, with knowledge that it is false or misleading will not be covered by the provisions, so it is not just a carte blanche and it is not trying to encourage vexatious individuals or people making up things or presenting false information. It is actually saying that the provision for whistleblowers covers you providing the information you are giving is truthful and in accordance with what you are claiming. It will cover people in the public and private sectors.

Given the enormous wealth that is being made around the country, particularly in the resources sector, and the decision by the Commonwealth to devolve responsibility to the states for environmental protection and environmental assessment, it is critical that we get coverage for whistleblowers in legislation. I am hoping that there will be support in the Senate for acting on what people say they want—that is, actually protecting whistleblowers in the public interest and making whistleblowing a workplace right.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:07): While the government recognises the importance of providing strong protections to workers who act in the public interest, it will not support these amendments. The government notes that the Fair Work Act currently provides some protection from adverse action where a person has or exercises a workplace right. A workplace right relevantly includes where a person is able to make a complaint or inquiry to a person or body having a capacity under a workplace law to seek compliance with the law or a workplace instrument, or if the person is an employee in relation to their employment.

The government proposes that the need for any amendment to the Fair Work Act
should be carefully considered following the release of the government’s response to the report of the inquiry into whistleblower protections within the Australian Public Service, which is scheduled for early in the parliamentary new year. For example, the proposed amendments are broad and seek to provide protections to a broad range of disclosures without any appropriate framework for who such disclosures should be made to. Nor do they provide potential disclosers with the certainty of whether their actions are legal or not, with the courts having to make decisions about whether the public disclosure was reasonable or not. The government considers this issue is too important to rush ahead of proper consultation and response to the report, and also highlights that these amendments relate mostly to the first tranche of recommendations from the Fair Work Act review panel. It is in this context that we believe these matters should be dealt with elsewhere.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (11:09): Just very briefly, on this occasion I adopt the words of the minister in relation to this—especially her last words—that one of the reasons we should not be considering this is that we should not rush ahead without proper consultation. I think that has been a continuing theme of the coalition and the opposition in relation to this legislation—which, it will be recalled—was introduced into the House of Representatives one day, voted upon on the next day, and then it was exempted from the cut-off in the Senate. It was rushed through here, rushed through a committee, and we have said that proper consultation does need to take place. Clearly what the Australian Greens are doing this morning is to introduce a completely new issue—which they are entitled to do, but it is a completely new issue—in relation to the Fair Work Act regime which has not had consultations with the various stakeholders.

The coalition’s amendments specifically deal with matters that have actually been canvassed in the bill and have actually had some exposure, albeit extremely limited. Having said that, the coalition will be opposing the Greens amendments.

Senator MILNE (Tasmania—Leader of the Australian Greens) (11:11): It is always interesting that when it comes to protecting whistleblowers there are always years and years more consultation that has to happen. Meanwhile, people who have blown the whistle suffer, lose their jobs, lose their promotions and frequently end up being smeared and vilified in the process, and we have years and years more consultation. How many more years do we need before we protect whistleblowers?

I remind the Senate: we have just been going through the Reserve Bank of Australia note bribery scandal. That would not have happened without three very brave whistleblowers who came forward and basically said, ‘Enough is enough,’ and got that scandal exposed. At the rate the government and the coalition want to move, it would have been, ‘No, we have to have many more years of consultation before we work out how we would actually protect those whistleblowers’—not to mention someone like Dave Reid, for example, who came out and made his claim against ANSTO. He was smeared, he suffered character attacks, and of course he was eventually vindicated after he exposed the poor safety controls at the Lucas Heights nuclear reactor. We could go on and name many, many whistleblowers around Australia who have acted in the public interest, who have exposed appalling scandals. The RBA note bribery scandal is a case in point. If we want people to come out and tell the truth, as
we had with the Wheat Board, as we have had with the RBA note inquiry and so on, you have to protect them. We have to encourage a culture of people coming forward in the public interest. But all we seem to do is have governments and oppositions, when they change sides, suddenly change perspective on what sort of protections they are prepared to give people who will come forward in the public interest. In the private sector, of course, there is virtually no protection for people at all.

It may interest both the government and the coalition to know that in the United States they have come forward with legislation which actually allows whistleblowers to get some of the benefit if they are saving money, if they are reporting maladministration or fraud. They actually get a percentage of that. That is not something the Greens are proposing, but it is certainly a way for people to have an incentive to watch what corporations and government agencies are doing in terms of reporting when money is being misappropriated, or fraud is occurring or whatever the allegation might be.

I would just stand here and strongly say that you cannot keep putting this off. You cannot keep saying, ‘We are going to the election promising all this protection for whistleblowers’, and yet the reality is that it is delay, delay, delay, weak action and ultimately we end up with nobody having the courage to come forward. It has been significantly undermined by the move to contracts in the senior echelons of the Public Service. People now are in the position of knowing that their contract may not be renewed.

There are all kinds of problems associated with why we end up not having people coming forward and telling the truth about what is going on in their companies and in the public sector. Senator Collins was talking about an agency. We have talked about having a national integrity commission that would work with the Ombudsman to make sure that when complaints are made if it is maladministration it would go to the Ombudsman and if it is fraud it would go to the Integrity Commission. We have proposed a structure and we have a bill in this parliament to have a national corruption capacity. For the life of me I cannot understand why neither the government nor the coalition is prepared to back a national integrity commission and serious legislation that deals with whistleblowers. I ask them to reconsider and to it least give in-principle support to whistleblowing as a workplace right.

The TEMPORARY CHAIRMAN (Senator Bernardi): The question is that Australian Greens amendment (1) on sheet 7309 be agreed to.

The committee divided. [11:20]

(The Temporary Chairman—Senator Bernardi)

Ayes ...................... 11
Noes ...................... 32
Majority .................. 21

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

Abetz, E
Bernardi, C
Bishop, TM
Cameron, DN
Collins, JMA
Edwards, S
Fawcett, DJ
Fierravanti-Wells, C
Furner, ML

Back, CJ (teller)
Bilyk, CL
Brown, CL
Colbeck, R
Crossin, P
Farrell, D
Feeney, D
Fifield, MP
Gallacher, AM
Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (11:21): by leave—I move opposition amendments (7) to (11) and (13) on sheet 7305 together:

(7) Schedule 8, item 57, page 54 (line 6), omit "paragraph 581A(1)(a)", substitute "subsection 581A(1)".

(8) Schedule 8, item 62, page 55 (lines 22 to 30), omit subsection 581A(1), substitute:

(1) Without limiting section 581 (which deals with the functions of the President), the President may, in accordance with subsection (2) of this section, deal with a complaint about the performance by another FWC Member of his or her duties.

(9) Schedule 8, item 62, page 56 (line 2), omit "paragraph (1)(a)", substitute "subsection (1)".

(10) Schedule 8, item 62, page 56 (line 27), omit "paragraph (1)(a)", substitute "subsection (1)".

(11) Schedule 8, item 62, page 56 (line 35), omit "paragraph (1)(a)", substitute "subsection (1)".

(13) Schedule 8, item 64, page 57 (line 31), omit "paragraph 581A(1)(a), subsections 581A(2)", substitute "subsections 581A(1)".

The opposition also opposes Schedule 8 in the following terms:

(4) Schedule 8, item 5, page 44 (lines 15 and 16), TO BE OPPOSED.

(12) Schedule 8, item 63, page 57 (lines 20 to 23), TO BE OPPOSED.

The coalition strongly believes in a strong and independent commission, and it is vital that the Australian people have confidence in Fair Work Australia. These amendments will ensure that the president's powers are not so broad as would provide him with an open remit to penalise people as he sees fit. I do not believe that is necessarily good within any workplace, let alone a workplace such as Fair Work Australia. Regrettably, we do know that there is some disharmony, to put it mildly, at the top of Fair Work Australia. That disharmony received public attention when the President of Fair Work Australia made some observations—I will once again use diplomatic language—about Vice President Graeme Watson's speech in recent times.

Mr Ross told us at Senate estimates that he had 'expressed concern' to the vice president following his speech, in which he expressed concern about the operation of the Fair Work Act and its review.

In July of this year Mr Ross then released a code of conduct which some people interpreted as a thin-veiled attack on Mr Watson. The Australian Financial Review said this code of conduct:

… reads disturbingly like an effort to enforce group-think on his subordinate commissioners.

Under the section headed 'Participation in the public debate', Mr Ross's code directs members to avoid involvement in political controversy when engaging in public debate and carefully consider how they express their views, as they may lead to the perception of bias. The quote goes on:

Other members may hold different views on contentious issues, and may wish to respond accordingly, possibly giving rise to a public conflict between members, which may bring the tribunal into disrepute or could diminish the authority of the tribunal.

Despite all of this, Mr Ross has provided separate advice that:

The President speaks on behalf of the tribunal and its members.

In other words, it is Mr Ross's view that will prevail and no other commissioner will be
entitled to express his or her view that may not necessarily 100 per cent align with the president's view. I am not sure that that is healthy for any tribunal or indeed any court. The fact that they should resist involvement in public controversy is, of course, accepted wisdom. But if the president can do so, one wonders why deputy presidents and others cannot do so. What is difficult to swallow by some is that on the very day that Mr Ross appeared at Senate estimates, saying that it was inappropriate for Fair Work Australia tribunal members to 'enter the public debate about such issues', he appeared on the ABC 7.30 program to answer questions about Fair Work Australia's involvement in the investigation into Craig Thomson, despite saying that he had no responsibility for it.

The coalition does have some concerns in relation to what the government is proposing. I understand that the normal practice for tribunals is as is currently in the legislation. Without going into too much detail, what the government is seeking to do is to delete provisions of the existing Fair Work Act and give the president, quite frankly, unprecedented powers. At the moment a Fair Work Commissioner must, under section 640, disclose a potential conflict to the president. I should be starting at 643—Termination for appointment for bankruptcy et cetera. Section 643 reads as follows:

The Governor-General must terminate the appointment of an FWA member if—then we go down to (c):

(c) the FWA member fails without reasonable excuse to comply with section 640.

Now allow me to go back to section 640 where the member, therefore, without reasonable excuse, does not disclose a potential conflict of interest to the president. If that conflict of interest is disclosed to the president then the commissioner can only deal with it with the president's approval, but the president must give a direction to the Fair Work member not to deal or to no longer deal with a matter if, and then those circumstances are set out. The government is basically seeking to delete a number of those aspects and simply replace it with the suggestion that the Fair Work Commission member must disclose the potential conflict to (a) a person who has made or will make a submission, and to the president, and that there are then no follow-on consequences.

We believe that if a Fair Work commissioner fails to disclose and behave as is currently required under section 643 then termination should take place. There is, of course, the get out, where that failure is without reasonable excuse; so there is that protection for an FWA member. But if they are without reasonable excuse and behaving in a particular manner then the Governor-General must terminate their appointment.

The government is now proposing that the president, basically in his full discretion, will be able to deal with that particular matter. It seems to the coalition that it is unhealthy that so much power should reside with the president of Fair Work Australia. I have also indicated in my other comments that we believe that the powers of the president will be too great, and that it will not be conducive to a healthy, robust Fair Work Australia, where different commissioners might actually be able to hold some differing views and give expression to their differing views—of course, within the bounds of appropriate expression.

I might say that we have that from High Court judges, who from time to time give speeches. I can think of speeches by Justice Kirby where the chances are I would not agree with much at all, yet with former Justice Ian Callinan giving speeches the chances are that I would have agreed with most of what he said. These people sat on the
High Court together and the High Court did not fall into disrepute because of it. They were entitled to express differing views. Just imagine if today a High Court judge could not give a speech without Chief Justice French giving his imprimatur. I think that would diminish the High Court and, whilst Fair Work Australia is in no way to be equated with the High Court, being only a quasi-judicial body, it is nevertheless a similar principle that should apply, that there should be that freedom and that we should not have such an oppressive regime being foisted on Fair Work Australia commissioners.

I commend the amendments to the Senate.

**Senator JACINTA COLLINS**
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:32): The government opposes the opposition amendments in this area regarding the powers of the president. The bill sets out clearly in law a complaints-handling process for members of the Fair Work Commission, including the president. The government considers an effective complaints mechanism is an important element of ensuring and maintaining public confidence in the tribunal.

The government's proposed section 581A provides a framework for the president to deal with complaints against members. The provisions proposed by the government are modelled on similar provisions recently passed by the Senate to deal with complaints made against members of the federal judiciary. Paragraph (1)(b) of new section 581A simply makes it clear that the president, as part of the complaints-handling process, has a responsibility to manage issues that could impact on public confidence in the tribunal. Any steps taken by the president during an inquiry into a complaint must be temporary measures taken until the conclusion of the inquiry and determination of the complaint.

The government supports the president having the discretion to effectively manage the affairs of Fair Work Australia as the head of the tribunal, with responsibility for ensuring that it performs its functions and operations effectively and in a manner worthy of public confidence.

The coalition have indicated that they will oppose the government's proposal to omit section 643C from the Fair Work Act. The proposed omission of the section relates to the amendments that the government has put forward in this bill to streamline and clarify the operation of provisions dealing with conflicts of interest. While a failure to comply with section 640, which deals with conflicts of interest, will no longer be a ground for termination of the appointment of a Fair Work Commission member under the bill, the member still retains the obligation to disclose any potential conflict to the parties and to the president under that section. A failure to disclose the conflict may lead to a complaint being made against the member, which would be dealt with in accordance with the new complaints-handling process set out in the bill.

The government considers that the framework it has proposed will bring greater certainty and transparency to handling complaints against Fair Work members, whether a complaint deals with a conflict of interest or some other matter. The important issue here is to have a mechanism or a process that works within the tribunal. That is why we maintain these proposals as they stand.

**The TEMPORARY CHAIRMAN**
(Senator Bernardi): We have several
questions here. The first is that item 5 in schedule 8 stand as printed.

Question agreed to.

The TEMPORARY CHAIRMAN: The question now is that opposition amendments (7) to (11) and (13) on sheet 7305 be agreed to.

Question negatived.

The TEMPORARY CHAIRMAN: Finally, the question is that item 63 in schedule 8 stand as printed.

Question agreed to.

Senator WRIGHT (South Australia) (11:36): by leave—I move Greens amendments (1) and (2) on sheet 7318:

(1) Clause 2, page 2 (after table item 4), insert:

4A. Schedule 8A  The day after this Act receives the Royal Assent.

(2) Page 60 (after line 14), after Schedule 8,

insert:

Schedule 8A—Better work/life balance

Fair Work Act 2009

1 Paragraph 5(8)(a)

Omit "or an equal remuneration order (see Part 2 7)" , substitute "an equal remuneration order (see Part 2 7) or a flexible working arrangements order (see Part 2 7A)".

2 Section 12

Insert:

flexible working arrangements order: see subsection 306F(1).

3 Subparagraph 43(2)(a)(ii)

Omit "and", substitute "or".

4 At the end of paragraph 43(2)(a)

Add:

(iii) a flexible working arrangements order (see Part 2 7A); and

5 Subsection 44(2)

Omit "65(5) or".

6 Subsection 44(2) (note 1)

Repeal the note, substitute:

Note 1: Subsection 76(4) states that an employer may refuse an application to extend unpaid parental leave only on reasonable business grounds.

7 Subsection 44(2) (note 2)

Omit "65(5) or".

8 Division 4 of Part 2 2

Repeal the Division.

9 Section 146 (note)

Omit "65(5) or".

10 After paragraph 172(1)(c)

Insert:

(ca) matters pertaining to flexible working arrangements;

11 Subsection 186(6) (notes 1 and 2)

Omit "65(5) or".

12 After Part 2 7

Insert:

Part 2 7A—Flexible working arrangements

Division 1—Introduction

306A Guide to this Part

This Part provides processes for changing working arrangements.

Division 1 deals with preliminary matters.

Division 2 deals with requests for flexible working arrangements, including flexible working arrangements for employees who are carers.

Division 3 provides for the making of flexible working arrangements orders by FWA to ensure that employers comply with this Part.

306B Meanings of employee and employer

In this Part, employee means a national system employee, and employer means a national system employer.

306C State and Territory laws that are not excluded

(1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to flexible working arrangements, to the extent that those entitlements are more beneficial to employees than the entitlements under this Part.
(2) However, a law of a State or Territory has no effect in relation to an employee to the extent that it provides an employee entitlement in relation to flexible working arrangements that is inconsistent with a term of an enterprise agreement that applies to the employee.

Division 2—Requests for flexible working arrangements

306D Requests for flexible working arrangements

Employee or organisation may request change

(1) An employee, or an employee organisation that is entitled to represent the employee, may request the employer to change the employee's working arrangements.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

(2) Neither the employee, nor the organisation, is entitled to make the request unless:

(a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or

(b) for a casual employee—the employee:

(i) is a long term casual employee of the employer immediately before making the request; and

(ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Formal requirements

(3) The request must:

(a) be in writing; and

(b) set out details of the change sought and of the reasons for the change.

Responding to the request

(4) The employer must give the employee, or the employee organisation (as the case requires), a written response to the request within 21 days, stating whether the employer grants or refuses the request.

(5) The employer may refuse the request only on reasonable business grounds.

(6) If the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal.

306E Requests for flexible working arrangements—carers

Request for change for employee who is a carer

(1) An employee who has responsibility for the care of another person, or an employee organisation that is entitled to represent the employee, may request the employer to change the employee's working arrangements to assist the employee to care for the other person.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

(2) Neither the employee, nor the organisation, is entitled to make the request unless:

(a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or

(b) for a casual employee—the employee:

(i) is a long term casual employee of the employer immediately before making the request; and

(ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Formal requirements

(3) The request must:

(a) be in writing; and

(b) set out details of the change sought and of the reasons for the change.

Responding to the request

(4) The employer must give the employee, or the employee organisation (as the case requires), a written response to the request within 21 days, stating whether the employer grants or refuses the request.
(5) The employer may refuse the request only on serious countervailing business grounds.

(6) If the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal.

Division 3—Flexible working arrangements orders

306F FWA may make flexible working arrangements order

Power to make flexible working arrangements order

(1) FWA may make any order (the flexible working arrangements order) it considers appropriate to ensure that an employer complies with section 306D or 306E.

Who may apply for flexible working arrangements order

(2) FWA may make a flexible working arrangements order only on application by any of the following:

(a) an employee or organisation whose request under subsection 306D(1) or 306E(1) for a change in working arrangements has been refused;

(b) an employee organisation that is entitled to represent an employee covered by paragraph (a);

(c) the Age Discrimination Commissioner, the Disability Discrimination Commissioner or the Sex Discrimination Commissioner.

306G Implementation of flexible working arrangements in stages

A flexible working arrangements order may implement changed working arrangements in such stages (as provided in the order) as FWA thinks appropriate.

306H Contravening a working arrangements order

An employer must not contravene a term of a flexible working arrangements order.

Note: This section is a civil remedy provision (see Part 4 1).

306I Inconsistency with modern awards and enterprise agreements

(1) A term of a modern award has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of a flexible working arrangements order that applies to the employee.

(2) A term of a flexible working arrangements order has no effect in relation to an employee to the extent that it is inconsistent with a term of an enterprise agreement that applies to the employee.

13 Subsection 539(2) (after table item 9)

Insert:

Part 2-7A—Flexible working arrangements

9A 306H (a) a person to whom a flexible working arrangements order relates;

(b) an organisation entitled to represent a person to whom a flexible working arrangements order relates;

(c) the Federal Court;

(d) the Federal Magistrates Court;

(e) an eligible State or Territory court.

14 Subsection 545(1) (note 4)

Omit "65(5).".

15 After paragraph 557(2)(f)

Insert:

(fa) section 306H (which deals with contraventions of flexible working arrangements orders);

16 After paragraph 576(1)(f)

Insert:

(fa) flexible working arrangements (Part 2 7A);

17 Paragraph 653(1)(c)

Repeal the paragraph, substitute:

(c) conduct research into the operation of the provisions of the National Employment Standards relating to requests for extensions of unpaid parental leave under subsection 76(1); and
(ca) conduct research into the operation of Part 2.7A in relation to requests for changed working arrangements; and

18 After paragraph 675(2)(e)
Insert:
   (ea) a flexible working arrangements order;

19 At the end of subsection 716(1)
Add:
   ; (g) a term of a flexible working arrangements order.

20 Subsection 739(2)
Omit “65(5) or”.

21 Subsection 739(2) (note)
Omit “65(5) or”.

22 Subsection 740(2)
Omit “65(5) or”.

23 Subsection 740(2) (note)
Omit “65(5) or”.

These are the better work-life balance amendments that mirror the Fair Work Amendment (Better Work/Life Balance) Bill 2012 introduced by my colleague Adam Bandt in the other place.

The TEMPORARY CHAIRMAN (Senator Bernardi): The question is that the amendments be agreed to.

The committee divided. [11:41]

(The Temporary Chairman—Senator Bernardi)

Ayes......................10
Noes.......................25
Majority...............15

AYES

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

NOES

Bernardi, C
Brown, CL
Colbeck, R
Crossin, P
Furner, ML
Madigan, JJ
McKenzie, B
Moore, CM
Polley, H
Ruston, A
Smith, D
Urquhart, AE

Question negatived.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (11:43): by leave—I move opposition amendments (15) and (1) on sheet 7305:

(1) Clause 2, page 3 (at the end of the table), add:
12. Schedule 12 Immediately after the commencement of the provision(s) covered by table item 4.

(15) Page 191 (after line 8), at the end of the Bill, add:
Schedule 12—Australian Workplace Relations Commission

Part 1—Amendments
Fair Work Act 2009

1 The whole of the Act
Omit "Fair Work Commission" (wherever occurring), substitute "Australian Workplace Relations Commission".

2 The whole of the Act
Omit "FWC" (wherever occurring), substitute "AWRC".

3 The whole of the Act
Omit "FWC's" (wherever occurring), substitute "AWRC's".

The committee divided. [11:46]

(The Temporary Chairman—Senator Bernardi)

Ayes......................10
Noes.......................25
Majority...............15

AYES

Abetz, E
Hanson-Young, SC
Back, CJ (teller)
Brown, CL
Colbeck, R
Crossin, P
Furner, ML
Madigan, JJ
McKenzie, B
Moore, CM
Polley, H
Ruston, A
Smith, D
Urquhart, AE

NOES

Bernardi, C
Brown, CL
Colbeck, R
Crossin, P
Furner, ML
Madigan, JJ
McKenzie, B
Moore, CM
Polley, H
Ruston, A
Smith, D
Urquhart, AE
Part 2—Transitional and consequential provisions

4 Regulations may deal with transitional etc. matters
(1) The Governor General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by this Schedule.
(2) Despite subsection 12(2) of the Legislative Instruments Act 2003, regulations made under this item may be expressed to take effect from a date before the regulations are registered under that Act.
(3) In this item:

amendments made by this Schedule includes amendments made by regulations under item 5 of this Schedule.

5 Regulations may make consequential amendments of Acts
(1) The Governor General may make regulations amending Acts (including the Fair Work Act 2009) being amendments that are consequential on, or that otherwise relate to, the amendments made by this Schedule.
(2) Despite subsection 12(2) of the Legislative Instruments Act 2003, regulations made under this item may be expressed to take effect from a date before the regulations are registered under that Act.
(3) Amendments of an Act made by regulations for the purposes of this item can be incorporated into a reprint or compilation of the Act as provided by the Acts Publication Act 1905.

For all this government's rhetoric about consultation and listening to people, we have another good example of where the rhetoric does not actually match the action. The government set up the Fair Work Review Panel, stacked as it was, skewed terms of reference as they were, and the panel strongly recommended that the name Fair Work Australia should be changed.

What is the government's recommendation here: that the offending part of the title is not 'Fair Work' but 'Australia'. They want to delete the word 'Australia' and insert 'Commission' in direct rejection of the review panel's recommendation that it is 'Fair Work' that is the tarnished name. 'Fair Work' is the sullied name; 'Fair Work' is the name that has fallen into disrepute. Why? Because of this government. This government has tried to make Fair Work Australia into a political vehicle. We know that Fair Work Australia's reputation is diminished and tarnished because of the Health Services Union inquiry and the inquiry into Mr Craig Thomson. I do not need to canvass that scandal any further other than to say that after three long years Fair Work Australia finally came to the conclusion that I think that every other Australian had come to about 2½ years earlier that Mr Thomson was a bad egg, that he had misspent members' moneys. It took Fair Work Australia three long years to come to that conclusion.

It is no wonder that the review panel into the Fair Work Act came to the conclusion that the name should be changed with the deletion of the words 'Fair Work'. Let me remind senators of the actual recommendation. It says:

The panel recommends that the Fair Work Act be amended to change the name of Fair Work Australia to a title which more aptly denotes its functions. It is recommended that the new title contain the word "Commission"—

and the government has done that—

and that it no longer contain the words "Fair Work".

Was this a bolt out of the blue? No, it was not. The President of Fair Work Australia, Mr Ross, no less, when I asked him at a Senate estimates in May about these matters in relation to the name change, said:

I have put forward two suggestions. Frankly, I do not mind as long as it is not the same as the name of the act. The two names I have put forward are: the Australian Workplace Commission or the Australian Workplace Relations Commission. The key point is not really
what the name is. It is that it be separate from the
name given to the act and that there be a clear
distinction between the administrative functions
of the organisation and the adjudicative functions.
So you have got the Fair Work Act Review
Panel making this recommendation and you
have got the President of Fair Work
Australia making that recommendation.
Guess who else makes that recommendation?
It is not often that we in the coalition would
rely on these people as our allies, but listen
to this: the Maritime Workers Union said:
The MUA welcomes a return to the inclusion
of "Commission" in the name of the Tribunal.
However, the MUA supports calls for further
amendment of the name to its natural form,
"Australian Industrial Relations Commission".
The Commission has been and remains a
cornerstone of a functioning Australian
democracy and is renowned for its fair and
efficient management of industrial relations
following federation with the enactment of the
Conciliation and Arbitration Act 1904.
As such, the Commission deserves a name that
is recognised throughout Australia and should
revert to its longstanding and accepted form.
So we can go from the extreme and the
ridiculous with the MUA, who actually
support this, right through to the Australian
Metals and Mining Association who
submitted:
Enacting a name change from Fair Work
Australia to the Fair Work Commission will do
little to rectify the branding challenges—
Isn't that a polite way of putting it? Some of
us might say the 'trashed reputation', but very
diplomatic language was used here. The
submission continues:
the tribunal has experienced in the wake of the
Health Services Union investigation or to clear up
the confusion between the judicial and
administrative arms of the Fair Work
infrastructure. A more objective name for the
tribunal such as the Australian Workplace
Relations Commission (AWRC) if far more
appropriate.
In its response to the Fair Work review, the
ACTU said that they strongly supported the
recommendation as it was.
So I ask the question: who is standing in
the way of the name change? We have got
the ACTU, we have got the Maritime
Workers Union of Australia, we have got
employer group after employer group—from
the big ACCIs and AiG through to the
Master Builders, the Housing Industry
Association, the Independent Contractors
Association, the Council of Small Business
of Australia, and we have even got the Law
Council of Australia—all supporting this.
Who has submitted or argued that the
name should be 'Fair Work Commission'—
nobody other than Ms Gillard, who created
Fair Work Australia and the legislation. Her
vanity is what stands in the way of this very
sensible, practical recommendation. Indeed,
Labor senators in considering this
legislation—and rushed as the committee
process was; a matter that I had previously
canvassed—said this in paragraph 2.40:
A number of submitters saw merit in
resurrecting the title 'Australian Industrial
Relations Commission', on the basis that the
name is well known and accepted in the
community.
Even they were mugged by the
overwhelming number of submissions in
relation to this.
So, for good judicial and administrative
purposes the President of Fair Work
Australia has recommended this change. The
Fair Work Review Panel, stacked and packed
as it was by Labor for a certain outcome with
skewed terms of reference, were also
mugged by all the submissions that this name
change should occur.
Indeed, the Orwellian name of Fair Work
Australia, or now Fair Work Commission,
has all the hallmarks of the sort of Orwellian
naming that this government loves, but it has
fallen into disrepute. The name 'Fair Work' is now a trashed commodity within the Australian community and within the workplace relations space. Everybody knows it, from the Maritime Union of Australia right through to the ACTU, all the employer groups, the panel and President of Fair Work Australia and even Labor senators on the committee; but who does not get it? The Prime Minister, in her vanity. Indeed, that is what some of the submitters have suggested. The feedback they have got is that this very sensible change was stopped at the very highest levels of the government.

I am not going to spend any more of this chamber's time on this, but it is yet again another window for the Australian people to see how this government operates. Let us start with consultation—'We will take into account community concerns. We are going to have a thorough, robust panel looking at this.' They made a recommendation that was supported by everybody—it was unanimous. Yet the government will not do it. Why? Because of the vanity of the Prime Minister.

It is a matter of great concern when the proper judicial and administrative functioning of such an important tribunal cannot be rehabilitated with a name change simply because of the vanity of the Prime Minister. She created Fair Work Australia. She appointed the initial personnel to Fair Work Australia. Of course, Fair Work Australia is now a trashed brand. That is recognised across the political divide, across the employer-employee divide and within Fair Work Australia.

Whilst we would argue that a name change is only a small change and there may need to be some cultural change attached to it, this government cannot even bring itself to a name change. If it cannot bring itself to such a basic change as that has been so overwhelmingly recommended and so overwhelmingly endorsed, it stands to reason that the Australian people will come to the conclusion that this government will set its own course irrespective of the national interest and irrespective of the interests of having good functioning tribunals in this nation because the overriding factor will be the vanity of the Prime Minister. I commend the amendments to the chamber.

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (11:55): For the reasons that have already been well canvassed at least three or four times in this debate, the government will be opposing these amendments. Let me conclude with one reflection. The only completely trashed name in this debate is WorkChoices.

The TEMPORARY CHAIRMAN (Senator Bernardi): The question is that opposition amendments (15) and (1) on sheet 7305, moved by Senator Abetz, be agreed to.

The committee divided. [12:00]

(The Chairman—Senator Parry)

Ayes ......................32
Noes ......................37
Majority ................. 5

AYES

Abetz, E
Bernardi, C
Boswell, RLD
Bushby, DC
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Johnston, D
Kroger, H
McKenzie, B
Parry, S
Ronaldson, M
Ryan, SM
Sinodinos, A
Williams, JR

Back, CJ (teller)
Birmingham, SJ
Boyce, SK
Cash, MC
Cormann, M
Eggleston, A
Fierravanti-Wells, C
Heffernan, W
Joyce, B
Madinan, JJ
Nash, F
Payne, MA
Ruston, A
Scullion, NG
Smith, D
Xenophon, N
Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (12:03): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Wheat Export Marketing Amendment Bill 2012

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.
management and handling of the agriculture portfolio, I think, as the coalition believes, we have reason to be very concerned.

Look at what this government did to exporters wanting to get their products into the market. We say we are going to be the food bowl of Asia, yet they made the cost of export more expensive by removing assistance to the export sector, by taking away the 40 per cent rebate for export fees and certification fees and charges and imposing an extra $40 million a year on industry. Had it not been for the opposition, a package would not have been put in place to lighten that load and force the government into a transitional process.

The government boasts about its $127 million package to assist exporters through the reform of the export fees and charges process. But it was because the opposition held out and because the then crossbenchers, Family First and Senator Xenophon, held out with us that we were able to force the government into putting a reasonable package on the table. The government might boast about it, but the reason it is there is that this coalition stood up for the agriculture sector. In the circumstance of the export fees and charges, the Greens were prepared to flip out for $20 million, but the package that we got was $127 million. We have a record of support for the agriculture sector and we are proud of it.

That is what sits at the genesis of this piece of legislation. We are concerned that a number of things have not yet been sorted out in relation to the export of wheat that need to be sorted out. It has been through an extensive process. It has been through Senate inquiries. In fact, a couple of Senate inquiries have looked at issues around exports, access to the belts and to the export facilities, at issues around quality, which I think are quite legitimately a major concern for our export industry in Australia, and at access to information around volumes, materials and wheat in storage. I think it is important that that sort of market information is available. We do not actually have in place the systems to achieve that, so the opposition are saying, 'Let's put those systems in place before we take away what is left of our regulatory process.' We are not opposed to removing the regulatory process, but we are saying, 'Let's have the mechanisms in place to make sure that the information that should be available is readily available to industry so that there is capacity for fair competition in the marketplace.'

This argument is not about the single desk. I need to make clear that that discussion is done and dusted and over. But the opposition remain concerned that there be fair competition in the marketplace. We are aware that this piece of legislation will now pass because the government has the support of the Greens and that the Greens have some amendments they will bring to this debate during the committee stage—we are also aware of some commitments that the government has made to the Greens in relation to those. We will obviously have that conversation during the committee stage.

It is important to note that the government has an abysmal record in relation to its dealings in agriculture, which is clearly visible to the agriculture sector and to the community. It is important that the government are properly held to account, so we want to make sure that they can be held to any commitments they make. We also want to make sure that all of the mechanisms that need to be put in place are there to ensure there is fair competition in the marketplace and that good data about supplies and stocks held is available, and not just to those who hold those stocks. That is an important piece of this overall puzzle.
Those are the issues that we are concerned about and that need to be sorted out as part of the development of this piece of legislation. So we will be looking very closely at the amendments that will be brought through the chamber by the Greens and by Senator Xenophon. We will be looking very closely at the commitments that have been made in relation to those. We want to make sure that commitments that are made are kept. I think it is important that we do that as part of this overall process so that we maintain our well-earned and hard-fought reputation as a quality, reliable wheat supplier into global export markets. That is absolutely fundamental for us.

In recent visits to some of those markets, I have seen the value that is placed on the quality and safety of product that comes out of Australia. It is part of our reputation. It is a hard-earned reputation and, unless it is properly managed and protected, it will not be that an individual supplier has caused a problem but that there is a problem with Australian wheat. That is an issue that we in the coalition want to ensure is properly managed. So there needs to be a proper process for establishing and certifying wheat standards. There needs to be a mechanism to ensure that market information is freely available. Those are the things that the coalition want to see put in place as part of this process, and we will work with the chamber through both the debate and the committee process of this piece of legislation to ensure that those things are achieved. We trust that those commitments can be made and can be achieved through the chamber, and we are in a position to be able to support those.

Senator SIEWERT (Western Australia—Australian Greens Whip) (12:13): Firstly, I want to indicate that, with the amendments that we have circulated—and I will be seeking leave to table some additional correspondence—we will be supporting the Wheat Export Marketing Amendment Bill 2012. I have given this bill very serious thought and consideration. I want to acknowledge the process that has brought us to this point. I participated in the Senate inquiry and have consulted extensively with the industry, and at this point I would like to acknowledge all the people and the organisations that have very constructively engaged with me, with the Senate committee and with the process in general in this debate.

This bill has been on the Notice Paper for a significant period of time and yet up until very recently we have continued to seek assurances and amendments to ensure that we do find a way forward that meets the interests and needs of growers around Australia. As we have said previously in this place during the iterative debates on deregulation of the wheat market: the Greens are cautiously supportive. I can remember standing in this chamber last time saying, 'We are cautiously supportive', and that we were supporting the bill to move from the single desk to the process that we are using at the moment. We have always stated that we would watch this process carefully and continue to be engaged, which is what we have done.

This bill has clearly been a source of significant tension for all the people involved in this debate. Unfortunately, I suspect it has been sport for some, which I do not think shines a good light on such a serious issue for the sector. As a Western Australian, I am deeply aware of how this bill has brought out quite a serious tension between the east and the west on many substantive points. It is a tension that has been there all along, but this has highlighted it. Western Australians export nearly their entire crop. Western Australians have a different set-up and so it plays out very differently for them compared
to growers in the east. However, that is not to diminish the very valid concerns of the growers in the east. We have seen growers in the west very strongly supporting this bill—I can show you any number of emails and letters I have had on it—and growers in the east expressing some very serious concerns, which we have taken very seriously.

As I have articulated, we will be supporting this bill with amendments. I really want to take some time to go through the issues that we have considered and why we have come to the conclusions that we have. The reason I made that point about the difference between growers in the west and the east is there are very significant differences of opinion, which I am sure the coalition will acknowledge, in the sector. We have tried to reach some sort of way forward for all those involved. If we just did not support this bill it would mean disadvantaging a significant number of growers in the west, and if we just support it without amendments it would mean disadvantaging some growers in east—and we would also miss the very important opportunity to start dealing with some of the ongoing issues that are still to be resolved.

As I said at the outset, we have consulted very long and very hard on these amendments and on this bill. With this bill, and in moving the Greens amendments that I understand have the support of government—I know that the coalition has been seriously considering them—hopefully we will reach a point where we can move on and finally resolve some of these ongoing issues. It is precisely because the Greens are concerned that the industry is not ready to absolutely, fully deregulate—and there are some ongoing issues which I will articulate in a minute—that we have seriously considered and questioned the effectiveness of a voluntary industry code. We do not believe we are ready for that yet. That is why, and I will discuss it a bit later, we are moving amendments to require that the access code be mandatory. That is why we oppose the bill in its original form and also why we contributed to the dissenting comments through the committee inquiry process.

There are still a number of long-term, ongoing issues which have been identified, particularly through the committee inquiry process, that this bill does not address. If it had gone through without addressing those, then those issues potentially would never be addressed. It would also bring up issues around the effectiveness and efficiency of the market and a failure in the market process, but we would not get an opportunity to address these issues again.

There has been, as I said, a very wide-ranging community debate on these issues and they have long been recognised. It is because of the lack of progress in addressing these issues that the Greens also sought to look at a mechanism to address these particular issues. These issues were articulated in the dissenting report, which goes to issues around access to stocks information—still an unresolved issue—and the quality of our wheat. People raised suggestions around what Canada and America do, where they have a board that looks at issues around the quality of the wheat exported—long, ongoing issues. There are also the issues that have subsequently been raised, or touched on, around failures and monopolies in the market and, as I said, the access code. We sought to look at a way to deal with those issues and it was suggested in the committee report—particularly the dissenting report—that WEA would be a body that is already in place that could take on these functions.

When we wrote the dissenting report, we thought at first that the WEA would be a
body that could do that. However, we have subsequently conducted more consultation and we do not believe that mechanism is necessarily the right mechanism; we do not believe it is flexible enough. There is general agreement that the current undertakings and work of WEA has done that job and people do not seem to have any concerns around moving on from that particular role; but we have continued to identify these ongoing issues.

What was foremost in our minds was dealing with issues of not entrenching monopolies and not having faith in a voluntary code. I will come back to that in a second. We were also very strongly concerned about the ongoing issues around wheat quality and access to stocks information. The inquiry into the bill demonstrated that there are still significant concerns, particularly from growers, that relate to timely access to wheat data and stocks information, port access arrangements and cargo integrity which have not satisfactorily been addressed by the legislation as it stands without amendments. Submitters such as Grain Producers Australia and ASX reiterated concerns they first raised during the 2008 inquiry, in particular pointing to the fact that individual growers are unable to access market information, thereby allowing integrated grain handling companies a significant advantage over other participants in the supply chain.

Furthermore, the committee inquiry demonstrated that the voluntary code had the potential to be a toothless tiger as there was nothing to force bulk handlers, other than some complicated things they were trying to work out through existing processes, which the Greens had absolutely no confidence would deliver appropriate outcomes and therefore raised our serious concerns. It is evident from the inquiry and from conversations with stakeholders across Australia that maintaining the status quo would only defer the necessary changes, with significant cost to growers in the form of a 22c per tonne wheat export charge, which would continue if we did not deal with some form of regulatory approach. We came to the conclusion that WEMA was not the best organisation to deal with issues such as wheat quality assurances and stocks information and there could potentially be other bodies that would be more appropriate to look at that—for example, Wheat Quality Australia—and at other mechanisms to deal with wheat stocks information.

Again, there is not common agreement among the growers around access to stocks information. There is regarding some elements of stocks information. But, for example, in regard to up-country stocks information, I have had numerous organisations telling me they do not want to do it, they do want to do it and they want access to certain information. In other words, while there is agreement that stocks information needs to be addressed, there is not an agreement yet about how much. That is why we have been trying to come up with a mechanism to resolve these issues.

Since the report was delivered in October there have been some significant opportunities to take a constructive approach. Rather than simply just saying, 'No,' we believe these issues need to be addressed. As I have said, in my home state of Western Australia there is very, very strong support for these issues being addressed. However, there are growers, in the eastern states in particular—and still some in my home state of Western Australia—who have these ongoing concerns. So we know there are issues that need to be addressed. We have chosen to try to find a path for a way forward that would put in place mechanisms to address access
issues and then those ongoing issues I have articulated.

I would like to very quickly take the opportunity to explain our thinking behind the amendments and also table some correspondence between the Minister for Agriculture, Fisheries and Forestry and me that will explain in a bit more detail some of the nuancing behind some of the amendments. Those have been circulated to the whips, as I understand it. I seek leave to table those three letters now.

Leave granted.

Senator SIEWERT: One is the original letter from the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig, when we first announced that we would be making some amendments, which articulates the sorts of things the industry task force would establish—which one of our amendments addresses. There is a letter from me to the minister articulating some concerns and seeking reassurances around the amendments, and a letter back from the minister explaining and giving commitments around some of this detail. They have been circulated to the whips. I will now table those letters.

Our amendments firstly go to making the access code mandatory. I know that Senator Xenophon has circulated amendments about requiring a review of the process for the access code. Under ACCC rules—the mandatory code—there is a review after five years. We think this process, because it is new, is too long. The minister has agreed to put in place a review after two years. While this process of the bill being debated has been going on over the last couple of months, a committee has been set up to discuss the voluntary code. That committee, I understand, had made some significant progress and they had reached agreement about level of access to stocks information at port by grade. We have had assurances from the minister in that correspondence that in fact that process will still be included in the mandatory code, because there was some concern expressed by growers that discussions for the access code were going backwards. But the minister has now made a commitment that that information will be included via either that mechanism or another mechanism that is workable.

The other amendment that we are circulating and will be moving shortly is to establish a national wheat industry advisory task force. This task force will be tasked to look at these ongoing issues that are yet to be resolved, such as the issues around continuing stocks information access, quality issues, and also around failures in the market. We have also in that correspondence sought commitments from the government about independence. I will seek in this debate further commitments from the government around the independence of this committee. We have sought assurances about the selection process and the terms of reference. We have specifically not included that in the bill because we wanted a mechanism that was flexible enough that, if other issues came up, they could be referred to the task force. In the correspondence you also see that the minister has undertaken to have a regular reporting mechanism so that the considerations of this task force are transparent and accountable.

We have a strong belief that we need to get some experts around the table that can actually sit down, look at these issues and come up with a way forward. We have an industry divided over many of these issues. If we can get a task force of experts looking at these issues, providing advice and finding ways forward, I think we will be significantly helping the wheat industry in this country. That is the approach we have
We understand that there are concerns about the further deregulation process. We do not think that we were fully ready for it. We understand there are concerns about potential failures in the market and the efficiency and effectiveness of the market mechanism, and we do believe that that needs to be addressed. We have very strongly heard the concerns from the growers around the need for a mandatory code for access. We have strongly heard about the need for a commitment, and we have a commitment from the government that that access code will in fact include stock by port zone by grade weekly during harvest and monthly thereafter.

These are very important issues to the sector. We know that because we have talked to them. We do not believe it is an option to do nothing here. We do not believe it is an option to sit on our hands for two years under the current process. We have genuinely sat down and talked to people to see how we can balance the needs of all in the sector and the industry, and we desperately hope that the task force mechanism will find us a way forward, where all the industry can engage and try to move forward, so that we have these ongoing issues resolved—because they do need to be resolved, we absolutely agree. We absolutely agree that there is the potential for monopolies to have undue influence, and we are concerned about denying access or making port access difficult. We are concerned that they have an unfair advantage in access to information. We are concerned about the reputation of our industry and the issues around wheat quality. We are not convinced that the old WEMA was the body to do that with. We are convinced that we need to look at it, find a way forward and find a mechanism once that task force has looked at and researched the issues to recommend mechanisms for the way forward. That information will be publicly available, it will be reported, it will be transparent and it will be able to engage with the broader community.

I would urge the opposition to very seriously consider our amendments. I understand to a certain extent where they are coming from, because there is strong concern in the eastern states, but the eastern states are not the growers in Western Australia. We are trying to find a way forward that meets the needs of the growers in my home state as well as meeting the ongoing concerns for the industry in the east, which has different circumstances. I very clearly acknowledge that it has different circumstances in the eastern states from what we have in Western Australia, which means that those needs need to be accommodated. We think we have found a way forward. It certainly is better than doing nothing, because these issues cannot sit on the table any longer; they need to be addressed. I commend our amendments to the chamber, and I am happy to discuss them further during the committee stage.

**Senator EDWARDS** (South Australia) (12:32): I rise today to speak on the Wheat Export Marketing Amendment Bill 2012, and I commend Senator Siewert's involvement in this process. I must say that I concur with her comments about the collegial work that has been done in the interests of trying to get a reasonable result between us, right up to the point where we came into the chamber today.

I have taken particular interest in the progress of this bill and the profound impacts that it could have on the grain industry across Australia. My interest is twofold. As a South Australian I know just how important this industry is. South Australia is a major exporter of grain—the second largest...
exporting state after Western Australia—and accounts for approximately 30 per cent of Australia’s grain exports. We export, on average, 4.3 million tonnes, with a value this year of around $1.3 billion. Secondly, as a member of the Senate Rural and Regional Affairs and Transport Committee, I have fully participated in two recent inquiries—the first into operational issues in export grain networks and the second into the bill before us today.

Deregulation has been good for the wheat industry. On that I think we all agree. Wheat Exports Australia has done a good job in monitoring the transition to deregulation. It issued licences that allowed growers to export directly to markets abroad. In 2008-09, 14.5 million tonnes of wheat was exported, and three years later it rose to 18.7 million tonnes. Wheat Exports Australia has helped to facilitate this.

While I will outline a need for some retained oversight, I am not advocating the preservation of Wheat Exports Australia in its current form, nor am I advocating that there needs to be regulation forever. What I am advocating is that, for the next period of deregulation, we need some light-touch regulation and oversight in place so that growers are not disadvantaged. In doing this, we can have the most open, fair and competitive grains market possible.

I say this in the context of a maturing wheat market but one which I believe requires a bit more settling before we throw the gates wide open to the forces of the global commodity market without our domestic operating environment being functional and fair. The majority of wheat growers still want to pay for ongoing oversight. Let me make it clear to anyone who is listening outside this chamber that wheat growers have always paid 100 per cent for their oversight since deregulation began, after the abolition of the single desk, in 2008. Wheat Exports Australia has always been funded 100 per cent by growers.

I now turn the chamber’s attention to what it is the wheat industry needs during the next phase of deregulation. The industry still needs national oversight on information, transport and the quality of wheat exported from Australia. This bill does not tell us who is going to ensure grain quality standards for wheat. Wheat needs to have its quality certified as accurately as practicable to facilitate trade and certainty for buyers. Buyers need the best possible information about the quality, type and standard of wheat that they are purchasing. They also need certainty that the wheat they order is the wheat they receive. The industry needs oversight of shipping slot allocations and auctions to ensure equitable and fair access for all. The industry needs timely and accurate grain stocks information to facilitate an open, well-informed, competitive market.

During the first inquiry we heard evidence from the Australian Securities Exchange: ASX believes the current grain stock reporting framework is inadequate and, if not revised, will result in a sub-optimal outcome for Australia’s grain industry. An opportunity to truly maximise the benefits available from the deregulation process will be lost.

That is from the ASX’s representative at that inquiry. This bill in its original form offered none of these things. The bill only contemplates dealing with one aspect of the industry—marketing—without consideration of grain classification, access to storage facilities or access to efficient transport infrastructure. All of these elements need to be considered as part of the deregulation. It just throws growers to the wolves in its current form. The subsequent amendments proposed by the Greens that Senator Siewert refers to now go some way to addressing
these issues by including a mandatory code of conduct.

The United States is often held up as the bastion of free trade and open markets, but even they have the Federal Grain Inspection Service, which is responsible for grain classification and inspection of grain-handling facilities. In Canada, the Canadian Grain Commission regulates grain handling through grain quality and quantity assurance programs and carries out scientific research on grain quality and grain safety to support the grain-grading system.

I would also like to address the attacks that the coalition have sustained over not supporting this bill and the apparent hypocrisy of being the party of free enterprise but not supporting further deregulation at this time. We do support the full deregulation of the wheat market. We are the party of individual freedom and free enterprise and we still believe that an efficient private sector, rather than government, unlocks opportunity and generates incentive. Our opposition to this bill is not inconsistent with our core values. You cannot have a competitive market if it is an evolving monopoly.

The wheat industry is dominated by a few large players who, without appropriate oversight, may act in a way that disadvantages growers so that in the long term we may not have a viable wheat industry. Now that is market failure. We see it in other sectors. Some would argue we see it in the retail sector now. There is no value in market failure. We can have further deregulation when the industry is ready. We have come a long way since the abolition of the single desk in 2008 but to completely abandon oversight now, at some arbitrary date that was set five years ago, would be like removing the training wheels from your child's bike for the first time without equipping them with a helmet.

When deregulation began in 2008 the government promised to do a few things. They promised to ensure effective competition, establish a market regulator with some teeth and provide fair and reasonable port access for other exporters to prevent the development of three regional monopolies. What we've seen during this first period of deregulation is a partial transition to that goal. The growers of Australia have said to me that Wheat Exports Australia has served its purpose and we need to move on, but we need some form of oversight in the short term to ensure the momentum is not lost or indeed that we go down a low road. And, while some will run around claiming we need to deregulate for deregulation's sake, how many markets are truly free markets? Most markets like banking and communications contain some kind of oversight, while bodies like ASIC and the ACCC work to ensure that markets are as open and fair as they can be. Why should one of this country's largest industries and biggest agricultural exports be any different?

We have heard a lot about Western Australian representative organisations that support this bill and further deregulation now. Let's just make sure we all understand the unique position Western Australian grain farmers are in. CBH receives and stores more than 90 per cent of grain produced in Western Australia. It is a co-operative which includes roughly 4,500 growers, so the growers own CBH. It has facilities able to store 20 million tonnes of grain and, as well, port capacity of more than three million tonnes. This is quite different from the markets in South Australia and the eastern states, where the storage, transport and port facilities are owned by a small handful of large multinationals whose sole interest,
quite rightly, is to provide a return to their shareholders. A quick glance at the history of the grains industry in those states shows that they too started off with grower co-operatives which were eventually corporatised and sold off. You would have to be off with the fairies not to think that, at some point, the growers in Western Australia would not do or contemplate the same—particularly when some estimates put CBH's worth at $7.93 billion. In fact, in early November, when Archer Daniels Midland Co. initially looked at purchasing GrainCorp, Corporate Agriculture Australia managing director Gordon Verrall came out and said that the interest might spark Western Australian growers to sell up. Mr Verrall said:

Once farmers in Western Australia understand just how much their co-operative is worth, it will definitely put pressure on CBH to reassess the corporatisation process. That'll become more apparent in the next few years, driven by those exiting the industry and those undergoing succession issues, who would appreciate a cash lump sum.

That is the growers taking the cash off the table.

CBH director Vernon Dempster reportedly told an industry conference that the foreign takeover of GrainCorp would have serious implications for grain growers on the eastern seaboard. He went on to add that ADM's loyalties would never be aligned to Australia. He is reported to have said:

Their loyalties are going to be to their shareholders. The worry would be whether ADM are going to be more hungry and more exploitative than the current owners, and there would be a suspicion that perhaps they would be.

So clearly some sandgropers are cognisant of the implications for growers in a completely deregulated market with no oversight. It is only a matter of time before growers in Western Australia are grappling with the same issues as growers in South Australia and the eastern states—unless, of course, we do something about it now. During a hearing into this bill I asked GrainCorp about voluntary codes of conduct and whether they knew of any successful voluntary codes of conduct in the agriculture sector. I got the following response: 'No, not that we're aware of.' This view was later confirmed by the ACCC at the same hearing. The voluntary code of conduct was only looking at those things which are relevant to the operation of port terminal facilities. Under the terms of reference of that voluntary code of conduct, development committee up-country stock information is not directly relevant to the operation of the port facility and therefore would not come out. This code would be voluntary. After 2014, a party may simply opt out and not be bound by either access undertakings or the code—that is, if they actually get anybody to sign up to it. My experience with these voluntary codes of conduct is that it takes a long time, if ever, for parties to actually put their signature on the bottom line.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator McKenzie) (12:45): Order! It being 12.45 pm, I call on matters of public interest.

Workplace Relations

Senator CAMERON (New South Wales) (12:45): I rise on a matter of public interest—that is, the report of the International Trade Union Congress on violations of trade union rights. Trade unionists around the world face huge challenges. Here, in Australia, they face the challenge of well-organised and well-resourced business groups doing their best to defeat collective bargaining and representative rights. They face unfounded
accusations from ignorant and self-serving business leaders and those opposite who say that unions are to blame for the recent decline in Australia's productivity growth. The argument is: just get rid of those nasty unions and everything will be okay.

Senator Edwards: Hear, hear!

Senator CAMERON: I hear 'Hear, hear' from the opposite group. It is just unbelievable that you would even say that in jest, that you would argue to get rid of the Australian trade union movement—but it does not surprise me from those who support Work Choices. Around the world, trade unionists face the relentless drumbeat of calls from business interests, their cheer squad—

Senator Edwards interjecting—

Senator CAMERON: as you happen to be, and the Tory press for stripping away workplace rights—like the fundamental right of an unfairly sacked worker to challenge their dismissal. I cannot understand why you would say that, if you were unfairly sacked, that should be a right and proper thing to do anywhere in the world.

As I have said before in this place, there are challenges that the Australian labour movement will meet head-on, but they are nowhere near as challenging as the threats, violence and murder that are visited on trade unionists in countries less fortunate than ours. I raised this issue as a matter of public interest in this place in 2009 and again in 2010. Each year, the International Trade Union Confederation releases a report on the violations of trade union rights worldwide. I am pleased to note that a distinguished Australian trade unionist, the former ACTU President and a friend of mine, Sharan Burrow, is currently the General Secretary of the ITUC and is carrying on the fight she waged against the injustices of Work Choices on the global stage.

In its recent report, the ITUC catalogues the violations that occurred during 2011. As the 2010 report noted:
The crisis in employment, set off by the global economic crisis, continues in every region and those who make policy have largely failed to make the changes needed to create and sustain employment. Governments have simply swallowed free market corporate rhetoric at the expense not only of working families but also of the stability and future of their own national economies. Big banks, big finance and big business have been allowed to dominate government policy while unemployment, poverty and insecurity continue to grow.

You have only got to look at Australia—at the behaviour of the Queensland coalition government, the New South Wales coalition government, the Victorian coalition government and the Western Australian coalition government—to understand what challenges Australian workers would face if we were ever to be in the unfortunate position of having a coalition government led by the Leader of the Opposition, Tony Abbott.

The very inequality which was a driving force in tipping the world into economic crisis is still growing and the violation of basic international labour standards is itself the primary cause of this inequality. These global forces continue unabated. Trade unions in many countries face repression by governments and employers. The introduction of the 2011 ITUC report notes:
The world economic crisis continued to impact unfairly on workers, as many governments persisted in favouring austerity measures over stimulating growth and employment. Unemployment rose to record levels in 2011, with over 205 million people out of work.

In Europe, trade unions felt the impact of the Eurozone crisis, with Portugal, Hungary and Romania all facing further restricting workers' rights as part of their austerity measures.
The most dramatic changes were in Greece however where unemployment rose to 21%, wages and living standards fell sharply and collective bargaining rights were severely curtailed.

There were 76 people killed in 2011 because of their involvement in legitimate trade union activities and many more were subjected to death threats. There were 56 trade unionists murdered in Latin America, including 29 in Columbia and 10 in Guatemala. The ITUC report also documents thousands of arbitrary arrests and dismissals of trade unionists around the world. Many more cases go unreported. This is due to the climate of anti-union fear and intimidation which many workers have to face in their union activities. Sadly, Latin America once again holds the shameful distinction of being a killing field for trade unionists. Killings were also recorded in Bangladesh, the Philippines, South Africa and Indonesia. A one-year-old child died in Zimbabwe after spending a night on the roadside, in the rain, because her family was among farm workers summarily evicted for daring to organise. In Fiji the military junta launched an aggressive campaign to dismantle the trade union movement and Felix Anthony, the leader of the Fiji Trades Union Congress, was arrested, threatened, insulted and beaten. The ILO Commission of Inquiry on Zimbabwe has confirmed that the Zimbabwean government was responsible for systemic violations of trade union rights. In Djibouti, the ILO expressed its deep concern at the government's complete lack of will to settle several cases of trade union rights violations.

Complete bans on trade unionism remain in place in several countries including Laos, Saudi Arabia and the United Arab Emirates. Some of the world's most wealthy economies also figure in the report including the USA where attacks on organising and collective rights bargaining, already identified in 2009 and previous years, actually intensified in 2010 and 2011. Much of this is by state governments under the influence of the Tea Party. Canada's Conservative Party government has weakened freedom of association and collective-bargaining rights, while in New Zealand amendments to the Employment Relations Act reduced worker rights.

When I spoke previously about the violence committed against trade unions in Colombia, I said that Colombia remains the most dangerous place in the world to be an active trade unionist. Sadly, this is still the case. The murder of trade unionists in Colombia continues unchecked. The murderers continue to enjoy immunity from prosecution despite expressions of concern by government officials. The Vice-President of the republic, speaking on behalf of the government, has recognised the scale of the violence—something previous governments have never done. While some efforts have been made to investigate these crimes in Colombia, in the majority of cases the state clearly lacks the capacity to protect trade union rights.

Over 2,800 union members have been murdered in Colombia since 1986. Aside from those murdered, hundreds of trade unionists received death threats, many were forcibly displaced, dozens were arbitrarily detained, a few 'disappeared' and many more were harassed. Over the past 24 years, a Colombian trade unionist has been murdered every three days. Colombia accounts for more than half of all the trade unionists murdered worldwide: 294 out of a total of 580 since 2006. Despite the establishment in 2007 of special courts and investigative units focussed on cases of violence against trade unionists, they have done little to quell the violence or bring the perpetrators to justice. In cases of murder, only four per cent of perpetrators have been brought to justice.
The rest have committed their crimes with impunity. For other forms of violence against trade unionists, 99.8 per cent of perpetrators have been able to commit their crimes with impunity.

I must say I have grave concerns that my government is talking about making a free trade agreement with Colombia. I have been a long-time critic of free trade agreements. I think they are over-egged in terms of the benefits that workers are supposed to achieve from them, and the problems that they create are diminished in the political discourse. But I have to say I would find it absolutely amazing if any government would sign off on a free trade agreement with Colombia while it remains the most dangerous place for trade union activity in the world.

The second most dangerous country to be a trade unionist is Guatemala. In 2011, 10 trade unionists were murdered in addition to the 10 murdered in 2010, 16 trade unionists were assassinated in 2009 and nine in 2008. Other forms of violence have escalated: 76 violent, non-deadly acts were committed against unionists in 2009—a near five-fold increase from the 16 committed in 2008. The Guatemalan government claims that unionists are killed as a result of the general upsurge of violence sweeping the country and not for their work protecting labour rights. The facts indicate very strongly otherwise.

According to a 2010 report from the Guatemalan Labor, Indigenous and Campesino Movement, 75 per cent of union leaders were threatened prior to their assassinations and 98 per cent were assassinated within a few weeks of advocating for worker rights. Nevertheless, the murderers continue to enjoy blanket impunity. Companies, the courts and the Guatemalan government continue to deny the connection. In nearly a quarter of the recorded cases of murder, there is evidence of ties between the suspected perpetrators and the Guatemalan security forces or municipal government bodies. The Ministry of Labour and Social Welfare, far from fostering labour rights, is the obedient servant of the national and transnational employers. When there are decisions by the labour court in favour of workers, they are not applied. The Special Prosecutor for Crimes against Journalists and Trade Unionists has repeatedly refused to investigate crimes against trade unionists, determining without investigation that the individual or family was attacked and/or assassinated for non-union activity.

Violence has increased significantly since the implementation of the Central America Free Trade Agreement in 2006. No trade unionists were murdered in 2006. Four were murdered in 2007, nine in 2008 and 16 in 2009. In April 2008, the AFL-CIO and six Guatemalan unions filed a CAFTA complaint with the US Office of Trade, citing labour law violations and violations against trade unionists. After three years of informal and formal consultations that yielded little progress on workers’ rights, the US government in August 2011 announced that it would take Guatemala to arbitration. So far the complaint is unresolved and the killings continue.

I want to pay my respects to the courageous trade union members around the world who stand up for their members, stand up for democracy and stand up for the rights of trade unionism. We must remedy these attacks against trade unionists, and I say again that providing free trade agreements to countries like Guatemala or Colombia is not in the national interest. I call on Minister Emerson to ensure that we never do a free trade agreement with Colombia while it is a killing field for trade unionists.
Anzac Centenary

Senator RONALDSON (Victoria) (13:00): The centenary of Anzac provides our nation with a once-in-a-generation opportunity to ensure that all Australians, particularly young Australians, understand the sacrifices that have been made by so many to protect the values and ideals that we as a nation must never take for granted. Delivered well, it will engage all Australians and leave a legacy for future generations, who will understand the sacrifices made by those who have served this country and the unique nature of military service. Today I present this shadow ministerial statement on the back of deep community concern about the federal Labor government's state of preparations for the centenary of Anzac.

I should point out that the coalition has offered, and continues to offer, the government full bipartisan support for the centenary of Anzac. This shadow ministerial statement is driven by a strong desire to ensure these commemorations leave a legacy that is one the nation can be proud of.

I fully support the veteran and wider community's insistence that there are both immediate and long-term outcomes for the nation from the organisation of a successful period of commemoration, along with their view that the federal government has a pivotal role to play in ensuring its success.

The release of a shadow ministerial statement of this type is unusual. However, Labor's lack of leadership, direction and perceived lack of interest in the centenary of Anzac is causing the veteran and ex-service community, the wider community and the coalition a great deal of concern.

I have called on numerous occasions for Minister Snowdon to make a ministerial statement, to date to no avail. It is my hope that this statement will force the Prime Minister and her minister to acknowledge that planning time is ticking by for communities large and small across the country wishing to commemorate the centenary of Anzac.

The Gillard Labor government's track record in this area is at risk of mirroring their general administrative incompetence in other areas. Two of the original 20 members of the Anzac Centenary Advisory Board, hand-picked by the government, have resigned, including former Labor veterans' affairs minister, Con Sciacca. Labor has also omitted a formal role for the Australian War Memorial on the board. Bizarrely, the director of our nation's principle place of commemoration, reflection and remembrance only participates in discussions as a 'guest'.

More than 1,100 community ideas for the commemorative period, submitted to the first national commission on the Anzac centenary, remain unanswered. On top of this, there is simply no guidance from Canberra for local communities in relation to funding for commemorative events. There are, for instance, no guidelines for members of parliament regarding the criteria for expenditure of the anticipated $50,000 per electorate community-based commemorative fund. Local government and a plethora of community groups around the country are looking for guidance, as are MPs on all sides of politics—guidance which, at this stage, is sadly lacking.

There is a similar silence in relation to the proposed $4.7 million Arts and Culture fund and the $3.4 million online portal and on just what the additional $14.4 million for overseas commemorations will be spent on. The government's $5.8 million grant to the Albany Anzac Centre, to ensure its construction, was insufficient, requiring a $2.2 million bailout from the WA Liberal government. The government has so far
spent over $600,000 on consultants' reports asking why we commemorate the centenary of ANZAC, yet to date it continues to refuse to release all these reports publicly.

Further, the government has announced a $400,000 national Gallipoli 2015 dawn service ballot consultation roadshow, but Labor has not announced what they expect the process to achieve. The first of these 39 PR-driven forums was held in Sydney. The public was given just five days warning, resulting in 15 attendees, including three paid DVA staff and two paid consultants. This cost $15,700. Despite spending enormous amounts of money on consultants and an unwieldy board structure, the government is yet to allocate one dollar to a community-based commemorative event. Is it any wonder the community is concerned?

In Senate estimates it emerged that Labor proposes to establish a trust fund, presided over by four trustees who have admitted to having no fund management experience, and which will hold up to $150 million in corporate donations to fund additional unfunded and unspecified projects for the centenary of ANZAC. The funds will be raised by highly-respected businessman Lindsay Fox, who will be seeking donations despite the fund not having specific deductible gift recipient status.

Instead, the government proposes to use a convoluted and, quite frankly, bizarre system using 51 existing DGR status criteria for tax deductibility of donations rather than provide DGR status to the proposed ANZAC fund in its own right. So well advanced were the proposals for this fund that the department had already drafted advice to the minister in late October, presumably seeking permission to formally constitute the proposed fund. This advice was despite the department's own secretary, one of the proposed funds' nominated trustees, saying:

If I could make my position quite clear, and I suspect I would speak for my three colleagues: if ultimately one of the responsibilities of the trustees is to determine the investment strategy for these funds, I would not accept the role.

If this is the secretary's view, how has this proposal become as advanced as it apparently is?

To think that this proposal was being prepared in the absence of any knowledge about the fund by the minister or his office is simply ludicrous. However, if they did not know then that of itself represents a serious case of ministerial incompetence and a gross dereliction of duty.

I turn now to arrangements at Gallipoli in 2015 and, particularly, to prebooked tours for the centenary commemoration period. There have been widespread media reports indicating that more than 5,000 Australians have already booked and paid for tours to Gallipoli in 2015. However, the department admitted that they have not asked travel providers how many places they have already sold for tours in 2015, nor have they confirmed what, if any, availability there is for accommodation on the Gallipoli peninsula during the centenary period.

While these questions and the requirement to have them addressed some time ago remains, the first formal comment from the minister was the day after the Gallipoli ballot was announced. The proverbial horse had well and truly bolted by then. Whilst on the one hand saying that Australians who prebooked tours should 'immediately' contact their tour operator to confirm any guarantee about attendance at the dawn service, the minister then said that, after the ballot, successful ticket holders 'will still need a tour operator to take them to Gallipoli in 2015'. But if tour groups and motel rooms on the peninsula are apparently already booked, how will Australians successful in securing tickets through the ballot get to ANZAC Cove,
and where will they stay? We know that ticketing for 2015 will not be confirmed until probably April 2014. But the beds are allegedly already booked, the tours are full and the expectation of participants set in stone. The minister's deafening silence in relation to this matter must not continue.

It is clear that leadership on the centenary of Anzac from this government and the minister is lacking. While I do not accept the view of some that Minister Snowdon appears totally disinterested, I do strongly urge him to take the ministerial ownership that is required and take control of a situation that is short on time and long on expectation. Local communities will look to local veterans to actively participate in the centenary of Anzac commemorations. But these same veterans, many of whom are leaders in their local communities, are themselves looking to the federal government to show leadership and financial support. Labor's present approach is putting this at risk.

It was former Labor veterans' affairs minister Con Sciacca who wrote the book about how to conduct a commemoration and how to leave a legacy for future generations. This makes his resignation from the Anzac Centenary Advisory Board so troubling; he is a great loss. It is not too much to say that Sciacca's Australia Remembers 1945-1995 program rekindled community engagement in the dawn service and reignited overwhelming community interest and participation in Anzac Day and Remembrance Day. It would be short-sighted to think that the only way to leave a legacy from the centenary of Anzac would be to construct a building such as the previously mooted 'peace and harmony' centre in Canberra, a project which the coalition and the veteran community strongly oppose.

The Australia Remembers legacy lives on with the men, women and children who attend dawn services across Australia every Anzac Day. It therefore makes sense that the most enduring legacy we can leave after the centenary of Anzac is a renewed understanding by current and future generations of Australians about the uniqueness of military service, the reasons we fought, where we fought and, indeed, what we fought for. It is also about understanding how a young nation was defined by the events at Anzac Cove on that cold April morning.

Con Sciacca did this in 1995 without a big board and big bureaucracy. He took a hands-on approach. He had volunteer state-based chairs and he worked closely with parliamentary colleagues of all political persuasions to deliver grassroots commemoration driven by the community. The genius of Sciacca's program was that it was funded by Canberra but very much driven locally. If we could do that in 1995, why can't we do it again between 2014 and 2018?

Journalist Patrick Carlyon was, I suspect, far too close to the truth when he wrote: Veterans' Affairs Minister Warren Snowdon has adopted a literal approach to the Gallipoli story. He has conjured a shambles. This government's apparent agenda for the centenary of Anzac appears to be an excessive outsourcing of decisions and responsibility to a paid board whose reported activities to date give the impression that its size is making it incapable of actually making those decisions.

The minister's refusal to make a statement to parliament outlining the government's agenda, the decisions which have been taken or the considerations, if any, which are limiting the options available to the government on the commemoration is
concerning. If we are to make this commemoration a success through community engagement and if we are to leave a lasting legacy for future generations then it is incumbent upon the government to be open, honest and upfront about what we should expect.

Today I give a commitment that the coalition will take the hands-on approach necessary to ensure the success of the centenary of Anzac. We will work with local communities and local members of parliament on all sides to ensure that community-based commemoration lies at the heart of the Anzac centenary commemorative agenda. We will work to lessen the bureaucracy and make sure that red and green tape do not get in the way.

Our vision for the centenary's legacy is an unequivocal understanding of what the Anzac tradition symbolises—in the past, for the present and for the future. By 2018 we hope that all Australians not only better understand the uniqueness of military service but also the obligation we have to those who serve and have served our nation, along with their families. A nation which demands the right to be protected has the responsibility to care for those who defend it. Similarly, a nation which breaks the covenant between the nation served and those who serve it is a far poorer nation.

Society's challenge, one which we must all accept, is to ensure that today's children understand the reasons why they must fulfil this time-honoured obligation to care for ex-service people and their families. Today's school children will be carrying, for their lifetime, the responsibility to care for the men and women serving today and particularly for the children of the 39 service personnel killed in action in Afghanistan. Renewing our commitment to the covenant and to our understanding of what we fought for and the timelessness of these values is a legacy worthy of no less that our total commitment. Labor's ongoing failure to articulate this vision leaves them open to the perception that the centenary of Anzac is a lower priority than it should be. I hope this is not so—it simply must not be so.

In concluding this formal shadow ministerial statement on the centenary of Anzac, I call on Minister Snowdon to use tomorrow's final sitting day for the House of Representatives for 2012 to make a ministerial statement of his own, outlining what the government actually proposes for the centenary of Anzac and how it will engage local communities in this, our most significant period of national commemoration.

**Australian Peacekeepers**

**Senator WRIGHT** (South Australia) (13:14): Today I want to pay tribute to the important work of Australia's peacekeepers, some of whom join us in the gallery today. What is it that they do for us in our name? Let us start by going back in time to Rwanda.

It is 1994 and a genocide has taken place over 100 days. During that short time 800,000 Tutsi and Hutu have died in a bloodletting of unimaginable horror. After the genocide has finished, members of the Australian Defence Force have come to Rwanda in August as peacekeepers serving as part of the UN Assistance Mission for Rwanda, UNAMIR. These Australians have come as a medical contingent, later known as AUSMED, to provide medical aid to the United Nations troops and the local population, and as an infantry company for security.

Some months later, in April 1995, some of these Australians are present at Kibeho refugee camp where 80,000 to 100,000 people are sheltering. As tensions rise
between the Tutsi government forces and the predominantly Hutu refugees, these Australians witnessed a series of horrifying events. A thousand people are herded like animals into a small area and subjected to cruelty and indignity. Refugees fleeing from the camp are fired upon by the Rwandan Patriotic Front using automatic rifles, rocket-propelled grenades and machine guns. More than 2,000 Rwandans are killed, many being women and children.

As distressing as these events are, the UN mandate and rules of engagement for peacekeepers require them to exercise restraint. They are not permitted to intervene, rendering them powerless to take action to prevent the deaths they must stand by and watch. In Kibeho, it has been said that 'they were armed to the teeth and ready for combat, but their arms were tied behind their back'. But under fire and under threat from the Rwandan Patriotic Front, they do set up a casualty evacuation station and provide medical treatment for the wounded civilians. Army doctor Captain Carol Vaughan-Evans was posted with a small group of doctors there. One witness recalled:

Carol Vaughan-Evans heroically stitched up [the] wounded, with bullets flying all around them—there was no safe position, they just worked in the open.

I have been told that it is the very nature of peacekeeping, the very restraint that peacekeepers are required to show, which makes their job particularly hard. The Kibeho massacre was a horrific and disturbing event for all those members of the Australian contingent. Many were later diagnosed with post-traumatic stress disorder and it is not hard to imagine that the frustration and guilt that comes with witnessing the killing of civilians without being able to intervene may have contributed to this condition.

This is one example of the many arenas in which Australian peacekeepers have operated since the Second World War in arduous and dangerous situations all over the world. The first deployment was back in 1947 when four Australians went to Indonesia as part of the UN Good Offices Commission to assist with the transition from Dutch colonial rule. Since then, more than 66,000 Australians have been involved in over 60 United Nations and multinational peacemaking and peacekeeping operations overseas, proudly representing Australia in supporting global peace and security. These postings have included the Iran-Iraq border in the lead up to the first Gulf War, from 1988 to 1991, Western Sahara between 1991 and 1994, Papua New Guinea at the height of the civil war in Bougainville between 1997 and 2003, and Kosovo in 1999, among many others.

So who are these peacekeepers and peacemakers? Peacekeepers and peacemakers may be regular members of the Australian Defence Force, members of the military reserve forces or members of the Australian Federal Police. All three services have made a fine contribution. In some cases they may volunteer to serve as peacekeepers, but in others they will be deployed as part of their work or service.

Since 1947, there are 48 Australians who have died on peacekeeping missions but who, unlike other members of the Australian Defence Force who die on active service, are not entitled to have their names recognised on the Roll of Honour at the Australian War Memorial. When it comes to peacekeeping, operations and missions are classified by the Department of Defence in one of three ways: warlike, non-warlike and peacetime. Currently, the Council of the Australian War Memorial interprets the Australian War Memorial Act as allowing only those who die in peacekeeping operations which are
classified by the Department of Defence as 'warlike' to be eligible for the Roll of Honour. In the case of these 48 Australians, their service has not been classified as occurring in a warlike operation. Classifications of missions as warlike have been rare since 1947, and to a lay observer the bar is set exceptionally high. Even the Rwanda operation, in all its awfulness, was not originally classified as warlike. It took a sustained 10-year campaign by the Australian Peacekeepers and Peacemakers Veterans' Association—the APPVA—and other veterans' organisations, before it was ultimately reclassified as warlike. It is this distinction which often appears arbitrary, based on the circumstances in which people are operating rather than the way in which they died or the very fact that they died while selflessly serving Australia in situations of danger and risk, which is unfair and illogical.

This is a matter of huge concern for peacekeepers and their families. They have a fundamental sense that their service is not properly acknowledged or valued by Australians and when they die their deaths are somehow less important or meaningful. I have been privileged to speak to family members of some of the 48 peacekeepers who have died and have come to an understanding of why this is so important to them. Through their words I hope I can convey the nature of the challenging but rewarding work our peacekeepers do on our behalf and make the case for the acknowledgement they deserve.

Avril Clark's son, Private Jamie Clark, died while serving in the Solomon Islands in 2005. Jamie was drawn to the Army from a young age. By his 21st birthday he had already served as a peacekeeper in East Timor and was then proud to be deployed to the Solomon Islands as part of the Australian-led Regional Assistance Mission to the Solomon Islands, known as RAMSI, which commenced in 2003 and continues today. Jamie's deployment came after the fatal shooting of an AFP officer and was to provide additional security for the Australian Federal Police officers working there, so the very reason for his deployment highlights the inherent danger of this operation.

An incident from Jamie's service in the Solomon Islands demonstrates the important, challenging and nuanced work peacekeepers do. He accompanied Australian Federal Police officers to the arrest of a local criminal. They were confronted by the suspect's wife at the front of the house. She was brandishing a machete and threatening the police while holding a child on her hip. It was an extremely dangerous situation. Although Jamie had only recently arrived in the Solomon Islands, he had picked up some of the local Pidgin language and, standing by her side, managed to explain to her his concerns for her and her child's safety. Finally, he was able to convince her to put down the machete, the police arrested her husband and the situation was resolved peacefully.

Jamie died on 10 March 2005 while his patrol was searching for hidden weapons at Mount Austin near Honiara. While assisting a colleague with a camera, he moved backwards and the ground collapsed under his feet. He fell approximately 30 metres into a cave. His body could not be recovered until the next day, using a hoist and helicopter, but one of his mates stayed with him all night to look after him even though he knew Jamie had died. As Jamie's mother, Avril, points out, 'That was his role as a mate, a soldier and a member of the peacekeeping team.'

Peter Pridue lost his son, Beau, just over a year ago. Beau joined the Army Reserve to do a trade course and went into armament fitting—stripping down rifles and
maintaining armaments and equipment in good working order. He was asked to go to East Timor and loved the work there, rebuilding infrastructure in that traumatised country and helping the local people. As his service was coming to an end, he was planning to have a month's holiday and then go on to serve in the Solomons. But Beau died in September last year when he was thrown from a truck which hit loose gravel and then ran over him. Although Beau died while serving Australia, he is not entitled to have his name on the Roll of Honour. Beau's father still calls him his young bloke and says simply: 'If they are wearing the Australian armed forces badge on their shoulder and the Australian uniform and they are killed overseas or at home, they should be recognised. Otherwise it feels as if his life doesn't mean anything.'

This sense of being less valued lies at the heart of the campaign the APPVA has been running since 1999 to have the 48 Australian Defence Force members who have died in 'humanitarian, post-Armistice and peacekeeping (non-warlike) operations' recognised on the Roll of Honour at the Australian War Memorial. In response, in 2007 the Australian War Memorial Council introduced a Remembrance Book, which is kept in an unmarked and locked glass cabinet. The sign above it points to the Commemorative Roll only and highlights the sacrifices of other allied forces, the Red Cross and war correspondents—and they are all important—but does not refer to peacekeepers. It is a hard book to find. This distresses Sarah McCarthy. Her father, Captain Peter McCarthy, died in 1988. He was proud to be serving in Lebanon with the United Nations on behalf of Australia. One winter day he drove up a hill with a fellow Canadian peacekeeper to look over the surrounding countryside and on the way down their jeep hit a landmine. At the time he died, Sarah was a little girl. Her favourite photograph of her father shows him wearing his Australian uniform and his United Nations blue peacekeeping beret.

Sarah and her mother, Sue, cannot understand why his name cannot be recorded on the Roll of Honour like the Australian soldier, also in the Australian Defence Force, who died in similar circumstances, driving over a landmine in Afghanistan. Sarah does not accept that there should be a distinction, that her father should not be treated equally with his peers just because, as she sees it, he was wearing a blue hat when he died.

Arguably the most important physical representation of Australia's recognition of this service is the Australian War Memorial and in particular the memorial's remarkable Roll of Honour. The roll displays the names of fallen Australian service men and women. It is a place where Australians and overseas visitors can go to reflect on their service and sacrifice. On Remembrance Day and throughout the year, family members can place a red poppy next to the name of their loved one in an important symbol of thanks and remembrance. For Sarah and the families and friends of those who have died in the cause of peace on Australia's behalf, the Remembrance Book is just not good enough. Sarah wants to be able to put a poppy next to her father's name on the Roll of Honour, proudly remembering him and his service to Australia, just as it is possible for the children of his peers to do.

It is time that we all far better understand and respect the varied, important and often courageous work of Australian peacekeepers. Clearly, many Australians already agree, with 19,829 people having now signed the Change.org petition started by Avril Clark calling on the council of the Australian War Memorial to change their procedures and recognise the 48 Australians who have died.
on peacekeeping missions by placing their names on the Roll of Honour. In January the Australian War Memorial Council will be reconsidering this issue. Given the enormous contribution that Australian peacekeepers have made to international peace and security and the risks and sacrifices they undergo in the service of their country, that is only fair and just. They deserve equal recognition on the Roll of Honour at the Australian War Memorial. I urge Australians who share this belief to make their views known to the council.


Workplace Relations

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (13:29): For more than a year, and increasingly over recent weeks, there has been growing concern over the scandal involving the Australian Workers' Union Workplace Reform Association—described by Ms Julia Gillard as 'a slush fund'—the use of the association to defraud AWU members and donors to the fund, and the role of Ms Gillard in the creation and operation of the fund. The Prime Minister's response to the scandal has used every tool in the political spin-master's kit. First she sought to discredit and professionally damage the journalists who broke the story. Then she ridiculed it. Pre-emptive press conferences were used as a device to avoid answering specific and detailed questions on the floor of the parliament. But, as new and more damaging facts have emerged on an almost daily basis, the Prime Minister's attempts to portray the story as insubstantial and fanciful—to laugh it off and deride her accusers—have come to seem increasingly desperate and improbable.

The allegations against her are serious, they are made by experienced and credible people and they cannot be ignored. They come from both of the national newspapers, the Australian and the Australian Financial Review, as well as the other Fairfax titles, the television networks, including the national broadcaster—somewhat late to the party, it must be said, but nevertheless now pursuing the issue with vigour—and, now, virtually the whole of the Australian media. The journalists who have led the investigation include Hedley Thomas, one of Australia's most awarded investigative journalists, with five Walkley Awards to his name; Leigh Sales of ABC's 7.30; Mark Baker of the Age and Laura Tingle of the Australian Financial Review—hardly right-wing 'nut jobs'. The reality is that the Prime Minister faces
serious and specific allegations of improper conduct, and possible illegality, which go to her personal integrity and fitness for office. Her tactic of ridiculing her accusers and avoiding the issue only reinforces the growing public perception that she has something to hide.

Amid all the complexities of the various legal transactions and money flows, the central facts of the case are essentially quite simple. In 1992, the AWU Workplace Reform Association was established as a vehicle for fraud. In the course of the next few years, the substantial sums of money paid into the bank account operated by the Association—both by innocent members of the AWU and commercial donors like Thiess, wishing to support its ostensibly honest objectives—were diverted to the personal use and benefit of two AWU officials in particular, Mr Bruce Wilson, then the Victorian State Secretary of the AWU, and Mr Ralph Blewitt, who has been described as his 'close associate'. Among other things, $100,000 of those funds—effectively, stolen money—were used towards the purchase of a house at 85 Kerr Street, Fitzroy for the benefit of Bruce Wilson. In an interview on 7.30 last night, Wilson confirmed the use of moneys from the fund for that acquisition. For reasons which have never been explained, the property was purchased in the name of Ralph Blewitt under a power of attorney given to Wilson. The solicitor who drew the power of attorney was Ms Gillard. Ms Gillard was also involved in the conveyance of the property, and indeed attended the auction in February 1993.

The Association was a sham from the start. It was set up on the advice of Ms Gillard, then a partner of the law firm Slater & Gordon, and she acted professionally in its establishment. The AWU was a client of Ms Gillard's firm. At the time, Wilson was in a personal relationship with Ms Gillard. This fact itself raises issues of potential conflict of interest. It also demonstrates the implausibility of Ms Gillard's attempts to characterise her involvement as an arm's length professional transaction of whose nature and context she was unaware.

It is important to understand Ms Gillard's knowledge of the nature and purpose of the AWU Workplace Reform Association, for that is a central issue in the case. This is how Ms Gillard described the Association in her exit interview from Slater & Gordon on 11 September 1995:

It's common practice, indeed every union has what it refers to as a re-election fund, slush fund, whatever, which is the funds that the leadership team, into which the leadership team puts money so that they can finance their next election campaign. … they can cost $10,000, $20,000— they're not cheap. So the usual mechanism people use to amass that amount of money is that they require the officials who ran on their ticket to enter payroll deduction schemes where money each week or fortnight goes from their pay into a bank account which is used for re-election purposes from time to time. They also have different fundraisers, dinners and raffles and so on, to amass the necessary amount of money to mount their re-election campaign.

She went on to say:

The thinking behind the forming of incorporated associations is that it had been our experience that if you did it in a less formal way, you just had someone, say Fred Bloggs, say, oh look, I'll just open a bank account and everybody can put the money into there, the problem developed that when the leadership team fractured, as relatively commonly happens, you got into a very difficult dispute about who was the owner of the moneys in the bank account, so it was better to have an incorporated association, a legal entity, into which people could participate as members, that was the holder of the account.

So there is no doubt, no doubt whatsoever, that, at the time she was involved in setting up the slush fund, Ms Gillard knew what its
purpose was—indeed, the choice of an incorporated association as the entity to hold the funds for union election purposes was Ms Gillard's 'brainchild', her 'thinking', as she said.

However, the objects of the Association, set out in rule 3 of the rules, do not disclose that the purpose of the Association was to be a holding entity for trade union election campaign funds. A variety of vaguely-expressed, rather innocuous objects are recited, declaring the Association to be for the advancement of workers' wellbeing and like purposes, not to finance the election of the ticket of a faction of officials within the union. On a fair reading of the objects clause, the conclusion seems inescapable that the provision is written to conceal, not to explain, its purpose. The concealment of the true purpose of the Association is even more plain from an advertisement placed in the *West Australian* newspaper, which describes the purposes of the Association as follows:

> The Association is formed for the purpose of propagating and encouraging workplace reform for workers performing construction and maintenance work.

It is important to set out subclause 2 of the objects clause, which provides:

> The property and income of the Association must be applied solely in accordance with the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to members, except in good faith in the promotion of those objects.

But that was not to be.

If it was Ms Gillard's 'thinking' and Wilson's and Blewitt's intention to set up the Association as a device for deceiving contributing members and external donors into believing that their donations would be used consistently with the objects of the Association or, indeed, for a purpose associated with the broader objectives of the AWU, itself, but in fact the money was to be used for their own private purposes—namely, their election campaigns—then, at that stage, there was a conspiracy to defraud the donors, and all persons who assisted in or facilitated the setting up of the organisation, with that awareness, were parties to the conspiracy to defraud.

In the extract from her exit interview which I have quoted, Ms Gillard in effect admitted that, at the time, she knew that the funds would be used not for the purposes indicated by the name and objects of the Association but for the private purposes of Wilson and Blewitt. In other words, she knew the Association she acted in setting up was to be used to deceive companies into donating money for a purpose alien to that which they thought their donations would be used for and members into contributing for a purpose alien to what they thought their contribution would be for. If that was the case, she was a party to a conspiracy to defraud.

One of the external donors, Thiess, actually says it was misled, and made a complaint to the police dated 22 August 1996. In the event that the Thiess funds were misapplied, there was a crime committed when they were paid—namely, the crime of obtaining money by false pretences. Furthermore, it was necessary, in order to obtain the registration of the Association, for Ms Gillard, as the solicitor responsible, to certify to the Western Australian Corporate Affairs Commission that the Association was being incorporated for a bona fide purpose consistent with the incorporating documents lodged. She did so. In doing so, she made a knowingly false declaration which appears to be in breach of section 170 of the Western Australian criminal code.

Furthermore, the certification provision, section 5 of the Western Australian Associations Incorporation Act, also requires
the applicant to verify that the Association has more than five members. Ms Gillard did so. However, the Association, as Ms Gillard well knew, only had two members—Wilson and Blewitt. While there might be room for argument about the vagueness of the objects, there is no vagary about this: Ms Gillard falsely certified the Association to be compliant in respect of its number of members. She knew it was not and, once again, appears to have breached section 170 of the Western Australian Criminal Code. As well, since one of Slater & Gordon's principal clients was the AWU, Ms Gillard must be taken to have been aware of the rules of that union. She must therefore have been aware of the fact that the establishment of such an Association would have required a resolution of the executive of the union. No such resolution was ever passed. Ms Gillard either knew that or neglected to inform herself of it. The certification to the Western Australian Corporate Affairs Commission of compliance seems also to have been false in that respect.

One thing which makes this matter particularly suspicious is that no file was created. Thus, Ms Gillard's work was effectively concealed from her firm, an issue about which she was challenged in her exit interview, and which ultimately meant that she had put Slater & Gordon into a position of conflict between two clients—the Association and the Australian Workers Union itself, which resulted ultimately in the loss to that firm of the AWU, one of its biggest and most lucrative clients—no doubt one of the reasons for Ms Gillard's hasty exit from the firm. The AWU work went to the rival Labor-associated law firm Maurice Blackburn and, by a remarkable coincidence, the solicitor who took it over is none other than the person who serves as Attorney-General in Ms Gillard's government, Ms Nicola Roxon. To add further intrigue to the affair, the file containing the original documents, which would reveal in more detail Ms Gillard's knowledge and involvement in this matter, has mysteriously and inexplicably disappeared from the archives of the Western Australian Corporate Affairs Commission and cannot be located.

I do not have time today to explore the subsequent use of the Workplace Reform Association to defraud its members, in particular by the acquisition of the Kerr Street property and the cash payments transacted through the fund. I will deal with those matters on a subsequent occasion. But it is already clear that, from its inception, Ms Julia Gillard's involvement in this matter has been characterised by concealment, deception, professional misconduct and, it would appear, several breaches of the criminal law.

Georgia

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (13:43): I rise today to report on a visit undertaken by me and Senator Mark Furner to Georgia on 1 October this year as part of the international contingent of election observers. It was a rushed trip without much notice, as I do not think too many people were keen to go. We had the invitation just a week before, and I am certainly glad that I took part in what I consider to be a very important observation in Georgia.

It is important to bear in mind the brief history of this country before its independence and democratic elections. It is not a big country—only 69,700 square kilometres—and is bounded on four sides by Russia, Turkey, Armenia and Azerbaijan. It is a country that was part of the Soviet republic and was one of the first to take steps towards independence. That fight for its own identity really began on 9 April 1989 when Soviet soldiers brutally crushed a peaceful
rally in the capital, Tbilisi, and 21 people were killed.

Elections in October 1990 put an end to Soviet Georgia and, six months later, a referendum on the restoration of the country's independence was overwhelmingly approved. The first presidential election was held in May 1991, but the President only lasted until January the following year when he and his supporters were expelled from the country. Georgia was then run by a military council until the Constitution was adopted in 1995 and presidential and parliamentary elections were held. Georgia elects a president as head of state for a five-year term and 150 members who are elected for four-year terms. Seventy-seven of the seats are elected through proportional representation and 73 are in single-seat constituencies.

And so it was to this tiny country that Senator Furner and I travelled to observe these democratic elections, which were the seventh legislative elections held since independence. On election day, 1 October, we started at polling booth 19 in the capital, Tbilisi. We noticed how long the queues were and the reason was that, in fact, there were only three voting stations in the polling booth.

The situation was similar at polling booth 14 in Tbilisi. We asked why there was such a hold-up and we were told that if you do not vote on that day, you do not vote. There is no pre-poll voting, no postal voting and no absentee voting. The only exception is for the defence personnel serving in Afghanistan, who could make a pre-poll vote.

Senator Furner and I travelled to another polling booth in the city and to two around Gori, which is 60 kilometres west of the capital—the birthplace of one well-known Mr Stalin. Although there was not the same congestion it was obvious that people were very patient, waiting in line.

One of the big problems for the Central Election Commission in Georgia is the uneven distribution of electors in the 84 electoral districts, although there were 71 election precincts for last month's elections. There are 3.6 million people eligible to vote but, in the 84 election districts, numbers range from 154,000 in election districts 6 and 10 to just less than 6,000 in election districts 29 and 46. So basically one member of parliament may have up to 154,000 constituents in their seat while others may have just 6,000 constituents. Of course, we in Australia are used to having electorates of a similar size, population-wise, with about a 10 per cent tolerance—excluding Tasmania and some of their lower house seats.

One thing that did impress us was the need for voters to provide photographic identification when entering a polling booth. Maybe that is something we need to look at in Australia. If we had computers established and linked right around Australia then, when you showed your identification and voted, you would be marked off as having voted. There would certainly be no opportunity for fraudulent voting here in Australia.

Senator Furner and I have made three recommendations to the Central Election Commission in Georgia. The first recommendation is that there be more polling booths at polling stations to ease the congestion. They work on about 1,500 voters in one polling station but, when you go in to vote, there are just three little cubicles. So people are lined up.

It is a voluntary system of voting. Some people are of the view: 'If we have to line up for hours, then next time I'm not going to vote.' I think it is a hindrance just making people wait in line, whereas in Australia when you walk into a polling booth there
might be 10, 15, 20 cubicles where you can vote.

The second recommendation is that the commission investigate pre-poll, postal and absentee voting to ensure everyone gets a chance to cast a vote. If you are not in your electorate on the day between 8 am and 8 pm you cannot vote, unless you are in the armed services in Afghanistan. So if you are sick or you have to go away to the country for some reason or you are in hospital and cannot get out there, you cannot vote. That is why we are suggesting pre-poll postal voting and, if you are away in the country, absentee voting such as we can do in Australia.

Overall, the Georgian election was conducted in a mood of goodwill and it is good to see a country that was once under the iron fist now celebrating democracy. I believe that it is the first time in 100 years Georgia has changed government without a revolution.

Since returning, Senator Furner and I have met with the Georgian ambassador. Just this week the Australian Georgian Parliamentary Friendship Group was formed with Senator Furner as chair and me as deputy chair. We would like to thank the Australian parliament; the government of Georgia; the Central Election Commission of Georgia; Mr Giorgi Kiknadze, the Georgian parliament's protocol officer; and a special thank you to Ms Sarah Kelly, Second Secretary of the Australian Embassy based in Ankara. Sarah did a wonderful job of organising our meetings, our travel and our appointments. She was so helpful. That was the first time I had ever been in that neck of the woods—that part of the world—and observed one of these elections. We will forward to the Georgian ambassador here in Canberra what we recommend. Hopefully, they may consider taking up those recommendations.

What a great country Georgia is, with a lot of potential. They do have to learn how to grow food better. They have good farming country—black basalt soil, alluvial flats and, it would appear, a good supply of water. Yet they import 80 per cent of their food. We in this parliamentary group can work on this to help them later on.

I was amazed that, during the Second World War, Georgia had a population of just 2½ million people—300,000 were killed. That was 12 per cent of the population, including men, women and children. It was a huge contribution to a terrible war. I believe this country needs support politically and economically—anything we can do for them. I thank you, once again, Madam Deputy President, for the opportunity to be part of this observation, where some 1,400 observers from around the world went to see and help in the conduct of this election. I, and also on behalf of Senator Furner, seek leave to table our report, which I understand has been circulated previously to all the parties and crossbenches.

Leave granted.

Sitting suspended from 13:51 to 14:00

DISTINGUISHED VISITORS

The PRESIDENT (14:00): Order!

Before I call Senator Abetz, I draw to the attention of honourable senators the presence in the gallery of the Australian Political Exchange Council 21st delegation from the People's Republic of China. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators: Hear, hear!

QUESTIONS WITHOUT NOTICE

Middle East

Senator ABETZ. (Tasmania—Leader of the Opposition in the Senate) (14:00): My question is to the Minister for Foreign Affairs, Senator Carr. I refer the minister to
his remarks on Sky Agenda yesterday: 'There is a feeling in the Labor Party that you go for abstention. You even go for a yes vote.' Minister, what are the arguments in favour of a yes vote on Palestine being granted UN observer status as opposed to abstention? At any stage during discussions on this issue of our vote on Palestine being granted UN observer status, was the effect on Labor's vote in Western Sydney raised?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:01): The draft resolution 'Question of Palestine' is scheduled to be voted on in the UN General Assembly this Thursday, 29 November. If passed, the draft resolution will accord non-member observer state status in the UN to the Palestinians. It does not confer statehood.

The decision by the government to abstain on this question accords with our strong support for legitimate Palestinian aspirations towards statehood but reflects our view that the only way to a two-state solution in the Middle East, with a strong Palestinian state side by side with an Israel with absolute security, is through an outcome negotiated by the two sides, the two sides thus having a commitment to the success of the outcome. You cannot get that through a resolution of the General Assembly, but to have voted no would have sent a message that Australia does not believe in something we do believe in—namely, statehood for Palestinians.

Before I continue, let me just set the last question to rest. That is that there was some discussion of the political impact of this decision here. I say this candidly to the Senate: I do not believe that a decision on this has a political impact, because the vast bulk of Australians want a two-state solution. That is the common-sense, mainstream position adhered to by the Australian people: that there should be a Palestinian state side by side with a secure Israel. That is the view that the majority of Australians hold.

Senator Cormann: Why did you roll the Prime Minister?

Senator BOB CARR: You will have to speak up; I cannot hear these little piping voices. (Time expired)

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:03): Mr President, I ask a supplementary question. Does the minister maintain that the US understands that opinion in the Labor Party is trending towards a yes vote on this vital issue and that the government's shift on this long-held bipartisan plank of Australian foreign policy will have no impact on Australia’s relationship with the United States?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:03): Isn't it delightful to have a question as predictable as that? The answer is simply yes. When I phoned Mr Bleich, the US ambassador, yesterday, he was entirely relaxed about the Australian decision. Moreover, he made a public comment today that I am astonished Senator Abetz is not aware of. Such is their preparation for question time that he asked me the view of the United States when their view has been on the public record all morning. Senator Abetz, tactics, tactics, tactics! You will have to work harder. Last week we were of the view that Senator Brandis had fouled up the management of question time, but you have come back, when we have all wished you well, even more inept than your deputy.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:05): Mr President, I ask a further supplementary question. Personal abuse will get him nowhere, and unlike the minister the US does—

Honourable senators interjecting—

CHAMBER
The PRESIDENT: Order! Just wait a minute. When the shouting stops on both sides, we will continue. Wait a minute, Senator Bob Carr. I will give you the call when there is order.

Senator Bob Carr: Mr President, on a point of order: I take offence that those mild-mannered comments of mine represent a test of my capacity, well established over many years, for personal abuse.

The PRESIDENT: There is no point of order.

Honourable senators interjecting—

The PRESIDENT: Order! We are not debating this.

Senator ABETZ: And this man represents Australia overseas! What a pathetic creature! My question is this: I refer the minister to his own statement on ABC News 24 last night on—

Honourable senators interjecting—

The PRESIDENT: Wait a minute, Senator Abetz. Just resume your seat. Just wait a minute. Senator Abetz is entitled to be heard in silence.

Senator ABETZ: I ask that the clock be reset. I refer the minister to his statement on ABC—

Honourable senators interjecting—

The PRESIDENT: Order! Resume your seat. I need to hear the question. The clock is a guide to me. I will allow the question.

Senator ABETZ: I refer the minister to his statement on ABC News 24 last night on the government's decision to abstain from the vote on Palestine's bid for UN observer status—namely, 'I was, with abstention, willing to be persuaded to vote yes.' Minister, did you threaten to vote against the Prime Minister in caucus on this issue? Aren't your honeyed words about the Prime Minister shaping the final decision on this issue simply designed to paper over her humiliation?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:07): The answer to that question is no. The government's position—

Honourable senators interjecting—

The PRESIDENT: Senator Bob Carr, just resume your seat. Just as Senator Abetz was entitled to be heard in silence before, Senator Bob Carr is entitled. I will give you the call when there is silence.

Honourable senators interjecting—

The PRESIDENT: This behaviour does you no good at all.

Senator BOB CARR: The answer is no, of course, but I do like his language. I like the fact that he has returned to Shakespearean language: 'My honeyed words.' I like that deft Shakespearean touch; I take it as a compliment. As for the question of abstention, which is the government's position on this, let me remind the House that on countless occasions the previous, coalition government opted to abstain, which is a valid option in the General Assembly of the UN. In 2001, the coalition government abstained on a vote concerning the status of Jerusalem. In 2003, the coalition government abstained on a resolution concerning—

(Time expired)

Economy

Senator THORP (Tasmania) (14:09): My question is to Senator Wong, the Minister representing the Treasurer. Has the minister seen any recent international reports on the performance of the Australian economy? How does this compare with the performance of other major advanced economies?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:09): I thank Senator Thorp for her
question. The OECD Economic Outlook, released last night, again confirms the resilience of this Australian economy in the face of challenging global conditions, and it confirms, unlike most other OECD economies, our fundamentals remain strong: we have solid growth, low unemployment, contained inflation and lower interest rates than ever occurred under the opposition. We also understand that not everyone is doing it easy, that many families are finding things hard, and reports like this do demonstrate why all Australians can be proud of what this country has achieved.

The OECD expects—

*Opposition senators interjecting—*

**Senator WONG:** I know you might laugh at more jobs and economic growth, Senator, but I suspect the people who elect you here might actually care about jobs and growth—the Australian economy to outperform every single major advanced economy over the next two years. In 2013 alone, Australia's growth is expected to be more than double the average for OECD economies. I know this is not news that those opposite want to hear, but the OECD report does remind us of the importance of continued reform and an economic plan for the future. Mr Abbott has cottoned onto this after months and months of nothing but negativity, smear and fear. He has suddenly worked out that he needs to look like he has got a plan for the future, so he stapled a few of his speeches together and launched them at the party room. This is nothing more than a desperate stunt to try and pretend that he has actually got a few policy ideas. (*Time expired*)

**Senator THORP** (Tasmania) (14:13): Mr President, I ask a second supplementary question. How does the government's plan for the future of Australian education support the performance of the Australian economy?

**Senator WONG** (South Australia—Minister for Finance and Deregulation) (14:13): Labor people understand the
importance of education. We understand its importance to preserving the Australian ideal of a fair go. We understand its importance to the ongoing strength of the Australian economy because we understand fundamentally this: that to win the economic race we have to win the education race. We know that the Australian economy has completed over two decades of economic growth. We know that the OECD report confirms the resilience of the Australian economy in the context and in the face of global headwinds. But we also know that we must look to the future and keep working to ensure that our economy remains strong. That is why today we saw the Prime Minister introducing the Australian education bill, incorporating our national plan for school improvement, because we understand that a world-leading education system is central to the ongoing strength and resilience of our economy. In contrast, what do we have from those opposite? Just more negativity. (Time expired)

Middle East

Senator Joyce (Queensland—Leader of The Nationals in the Senate) (14:15): My question is to the Minister for Foreign Affairs, Senator Carr. I remind the minister that Australia has had a policy since 1948 through the governments of Chifley, Menzies, Holt, McEwen, Gorton, McMahon, Whitlam, Fraser, Hawke, Keating and Rudd to support the secure borders of an Israeli state.

Senator Chris Evans: What happened to John Howard? You've forgotten him already?

Senator Joyce: Do you categorically and unambiguously support the—

Senator Cameron: Johnny who?

The President: Order on my right! Just wait, Senator Joyce. When there is silence, we will proceed. Senator Joyce, continue.

Senator Joyce: Do you, Minister, categorically and unambiguously support the secure borders of Israel?

Senator Bob Carr (New South Wales—Minister for Foreign Affairs) (14:15): The short answer is yes. That has been the position of this government from 2007, from its election: Israel guaranteed within secure borders. We would not contemplate any other policy. It is consistent with the views of federal Labor governments. It is consistent with the views of foreign ministers and Prime Ministers of Labor governments. It has never been in doubt; it has never been in question.

Moreover, I suspect, unlike the senator who asked me the question, I have argued this case with advocates of the Palestinian cause. I have said to them that Israel can never be bombed towards a two-party state. Unlike you—you would not have engaged in this sort of debate—I have debated this issue for decades, Senator. I have said to Palestinian delegations: you will not achieve peace or advance peace by firing missiles onto Israel. I have said that, until there is an unequivocal commitment to Israel within secure boundaries, the preconditions for a peace between the parties in the Middle East is not met. I do not say that when I am speaking only in the Senate, only in the Australian parliament. I have said it elsewhere. I have said it when I have been honoured to confer a peace prize on Hanan Ashrawi, an honourable spokesperson for the Palestinian cause. I said in that speech in the New South Wales parliament: Israel will not be bombed towards peace negotiations—as simple as that. I have said it when I have met a Palestinian delegation that came to see me after the Parramatta Community Cabinet meeting. I said to these young students—two
very bright young girls—we believe in a Palestinian state, but Palestinians will only advance that goal by giving Israel the security guarantees it legitimately wants. I said that is the Australian position. We will not retreat from that position. I said to a group of Palestinians on another occasion, when I was Premier of New South Wales, that Israel responded by building a security barrier because bombs were going off in bus depots and cafeterias. Any government, I said, would do the same.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:18): Mr President, I ask a supplementary question. Minister, you might state that Israel will not be held to ransom, but the Prime Minister certainly was by Senator Cameron. If it remains the government's policy to support secure borders of Israel, why is the Australian government not voting against the United Nations granting Palestine observer status when its territory is currently controlled by groups that have at times denied Israel's right to exist and have allowed the firing of over 2,200 rockets into Israel over the past year?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:18): I would like to help the honourable senator find his way through these issues. I suspect that, given the expertise on this matter that resides in the Senate chamber on both sides of the house, you have probably been left behind by a debate far more intense and far more sophisticated than your comments suggest. The fact is that this motion does not confer statehood on the Palestinian territories; it does not do that. It gives a non-state status to the Palestinian delegation, which is somewhat higher than what it enjoys at the present time—a non-state status. When the vote takes place later this week, you will see that conservative governments from around the world will cast either a yes vote or an abstention. You will find that to be the case. To accuse the British government— (Time expired)

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:20): Mr President, I ask a further supplementary question. A non-state status—that is oxymoronic. I refer the minister to comments made by the head of the Palestinian National Authority, Mahmoud Abbas.

Government senators interjecting—

The PRESIDENT: Order! Senator Joyce, resume your seat. When there is silence we will proceed. Order on my right!

Senator JOYCE: I refer the minister to the comments made by the head of the Palestinian National Authority, Mahmoud Abbas, who in 2010 stated: 'I turned to the Arab states and I said, "If you want war, and if all of you will fight Israel, we are in favour."' What reassurances has the government received from the Palestinian Authority that there is no longer favour of a pan-Arab invasion of Israel and that it recognises Israel's right to exist?

The PRESIDENT: Order! That was a very long question. It would assist when people are asking questions if they did not preface them with a comment or a remark so that they may well fit the question into the allotted time.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:21): Any reasonable observer of the proceedings this afternoon in the Senate could well ask: is that the view of the coalition? Is the view that there should be no engagement with the Palestinians, even the Palestinian Authority, now the view of the coalition in Australia? Is the view they have taken that the Palestinian Authority—not Hamas, not Gaza, but Ramallah—should be...
dismissed? That way lies no prospect of a two-state solution.

He is bewildered by the notion of observer status. The resolution before the Senate would lift the status of the Palestinian delegation from 'other entity' to 'observer status'.

Senator Joyce: Mr President, I have a point of order on relevance. The question asked, 'Do you concur with the views of Mahmoud Abbas that they destroy the State of Israel?'

The PRESIDENT: Order! There is no point of order. The minister has 17 seconds remaining.

Senator BOB CARR: What does the senator want? The fact is that this government's position—restated last week, restated at every opportunity since 2007 and restated by the Prime Minister in question time in another place—has been that it remains a supporter of a two-state solution with a secure Israel—(Time expired)

Climate Change

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:23): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Minister Ludwig. In light of the terrifying scientific evidence presented to the United Nations climate talks overnight of rapidly-increasing methane emissions from warming permafrost and approaching irreversible tipping points, if we stay on current track of at least three to four degrees, can the minister confirm that in Durban last year the government accepted that the global warming potential of methane is 25 times that of carbon dioxide, up from 21 times, and that the government agreed to adjust our national greenhouse emission accounts accordingly?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:23): I thank Senator Milne for her continued interest in climate change, unlike those opposite. The science of climate change is robust and continues to be robust, despite challenges from a very small number of scientists and public commentators including those opposite on occasion. The science clearly demonstrates that the climate is warming and will continue to do so as a result of greenhouse gas emissions from human activities. The Intergovernmental Panel on Climate Change special report on extremes has found that climate change can result in unprecedented extreme weather and climate events.

The Australian government has established the Climate Commission to provide the public with reliable independent information about climate change. There is unequivocal evidence that the earth is warming. If you look at the global statistics, mean atmospheric temperature has increased by around 0.74 degrees Celsius over the last 100 years. A recent report by the United States National Oceanic and Atmospheric Administration has found that 2011 was among the 15 warmest years since records began in the late 1800s. In Australia each decade has been warmer than the previous decade since the 1950s. Through the process characterised by rigorous oversight, transparency and expert participation, the IPCC finds that warming is very likely due to human activities. Of course, these findings are supported by respected international institutions around the globe: the World Meteorological Organisation, and Australia’s CSIRO and Bureau of Meteorology. Australia faces potential significant environmental and economic costs from climate change impacts including on coastal
communities, infrastructure, water, security, health and energy supplies. *(Time expired)*

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (14:25): Mr President, I have a supplementary question. I did ask about the global warming potential of the increased level of methane and the methane impacts. In spite of accepting the science on that, why has the government decided not to require methane emitters like coal seam gas to pay the additional liability from 21 up to 25 until 2017? Now that they have done that, what is the financial value of this new fossil fuel subsidy to the coal seam gas industry?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:26): Dealing with the broad view of Australia's objectives, I had not quite finished the first part. I will come to the second part shortly. Australia's objectives ahead of the Doha round on 26 November to 7 December are: to finalise the second commitment period of the Kyoto protocol and conclude the ad hoc working group on the Kyoto protocol; to recognise the achievements of the AWG-LCA and move to implemented outcomes as it closes; to enhance further work to cut emissions before 2020, beginning with securing new commitments to cut emissions by countries that have not yet done so; and to continue the open-minded thinking of the new agreement.

The PRESIDENT: Senator Ludwig, you need to come to the question.

**Senator LUDWIG:** So in respect of the agreement that we have reached for cutting emissions, this government stands by the agreement that it has put in place to cut emissions. *(Time expired)*

**Senator MILNE** (Tasmania—Leader of the Australian Greens) (14:27): Mr President, I have a second supplementary question. Can I ask the minister to take on notice what he clearly does not know and that is: why have you given the coal seam gas industry till 2017 to pay the additional liability? What is the value of the additional liability in dollar terms? What is the estimated volume of methane emissions from coal seam gas and is the government's failure to have an independent assessment of methane leakage a deliberate strategy to shield the industry from its actual financial liability?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:28): I do not accept the premise of the question by Senator Milne. What this government is doing is ensuring that we are driving for a low-carbon future; we are looking at how we can continue a clean energy future. I can take those parts of the question on notice to ensure that Senator Milne is provided with a comprehensive answer in relation to this issue but what the government is doing is acting on climate change. We are ensuring that emitters do have energy security and that industries can continue to operate in commercial environments. What we have done is ensure that the emissions-trading scheme after the fixed price on carbon will ensure that we drive for a clean energy future and that we then pursue a low-carbon emission future.

**Defence Equipment**

**Senator NASH** (New South Wales—Deputy Leader of The Nationals in the Senate) (14:29): My question is to the Minister representing the Minister for Trade and Competitiveness and the Minister for Defence, Senator Bob Carr. I refer the minister to my unanswered questions of 1 November regarding the government's
cancellation of its long-intended purchase of South Korea's LAND 17 self-propelled howitzer.

In particular, I refer to the minister's assurance about his 'cordial' conversation with Korean foreign minister Kim when I asked whether the government's decision would have diplomatic, trade or commercial fallout for Australia, given the Korean government's closeness to its defence industry. Are free trade agreement negotiations with South Korea now stalled because the capricious cancellation of this purchase prompted Korea to increase its insistence on the inclusion in the FTA of investor-state dispute resolution clauses to mitigate against exactly this sort of sovereign risk? Will the minister answer the parts of my question that he took notice on 1 November?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:30): I am very grateful for the question because I did deceive the house when I gave that answer about the impact of this cancellation. I referred to one conversation I had with foreign minister Kim of South Korea. I mentioned that in that cordial conversation, held only days before I answered the question in the Senate, he had not raised the question of this contract. It was not as full and, I confess, as honest an answer as I might have given. I neglected—

Senator Abetz interjecting—

Senator BOB CARR: Was that an interjection? I neglected to draw the attention of the Senate to no fewer than four other conversations with the foreign minister of South Korea where the matter had not been raised with him. One of them was when he came here to Canberra, three or four months ago I would say, for bilateral discussions. The matter did not figure in those discussions.

Senator Nash: Mr President, I rise on a point of order, on relevance. I asked the minister about the investor-state dispute resolution clauses, which he is yet to refer to in his answer. I ask you to draw the minister's attention to the question and have him respond appropriately.

The PRESIDENT: The question was broader than that, and the minister is responding to the question. The minister still has 32 seconds remaining to address the question.

Senator BOB CARR: The point about investor-state dispute resolution is that it is only one of several issues to be resolved. Other outstanding issues include, for example, the terms of access for Australian agricultural product. Should that be disregarded? Should we not persist in talking about terms of access for agricultural products? Is that the view of the National Party, that this should not be a concern of the Australian government? On the contrary; it is the view of the Australian trade minister that that should be pursued. (Time expired)

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (14:32): Mr President, I ask a supplementary question. Given the government's dishonourable cancellation of the LAND 17 self-propelled howitzer project, is it no surprise that the Koreans are insisting on the inclusion of the investor-state dispute resolution clauses in the free trade agreement to protect their industries from the sovereign risk of dealing with the Australian government? Is this derailment of
the free trade agreement negotiations now jeopardising Australia's $770 million beef export market to Korea?

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence we will proceed. I remind honourable senators that talk across the chamber is disorderly. Senator Nash is waiting to have the foreign minister answer the question.

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:34): The Liberal Party would like it said that they take the case for Australian business. But, in fact, Australian business should be given the final word on this very matter. The trade minister has received a letter from the Australian Industry Group commending the position he is taking on ISDS. It was received on 14 November and is in strong support of the Australian government's position on ISDS.

Senator Nash (New South Wales—Deputy Leader of The Nationals in the Senate) (14:35): Mr President, I ask a further supplementary question. Does the minister agree that the fact that the disgraced member for Dobell, Craig Thomson, is secretary of the Australia-Republic of Korea Parliamentary Friendship Group simply adds insult to injury as far as Korea is concerned? Does the minister think it appropriate that a visiting South Korean parliamentary delegation, already concerned about Australia's sovereign risk, be entertained by Mr Thomson as the Gillard government-supported secretary of this group?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:35): When all allowances are made that this is the end of the parliamentary session, it has been an exhausting week, the questions have been used and misused and it has been a tactical disaster for those opposite for two or three sitting weeks—a tactical disaster—and that we know that oppositions get to the bottom of the barrel towards the last sitting days, I cannot help the honourable senator. I have no idea whether Mr Craig Thomson is chairman of that group. He could be—

Honourable senators interjecting—

The PRESIDENT: Order! Senator Bob Carr, resume your seat. Senator Macdonald?

Senator Ian Macdonald: Mr President, I rise on a point of order on relevance. We have had this minister for 30 seconds, half the allotted time, giving a critique on the questioner and going nowhere near answering. Mr President, you have to stop these people treating question time as a joke.

Senator Jacinta Collins: Mr President, I am responding to the point of order, Senator Abetz.

Senator Abetz: What's your point of order?

Senator Jacinta Collins: I am responding to the point of order, Senator Abetz.
The PRESIDENT: Order on both sides! Senator Collins, continue with your point of order.

Senator Jacinta Collins: Thank you, Mr President. The minister was quite reasonably responding to the nature of what was an absolutely ridiculous question talking about parliamentary friendship associations in relation to South Korea, and any suggested role of Mr Thomson is absolutely ludicrous. Unfortunately, Senator Macdonald shows again, as have other senators in the last couple of days in this end of session, that they simply cannot hear what is occurring in the chamber.

The PRESIDENT: This is debating the issue now.

Senator Jacinta Collins: The minister was answering the question.

The PRESIDENT: Order! The minister was answering the question and the minister still has 31 seconds remaining to address the question, if he so chooses.

Senator BOB CARR: Mr President, let me confess that I was under the impression that the member was president of another friendship group, and that is the North Korean friendship society, spending his time going to folk dancing festivals in Pyongyang and tours of gulags in that benighted country. I do not know—how would I know?—who is chair of the North Korean friendship group.

An honourable senator: She told you!

Senator BOB CARR: Well, I cannot take her at her word. As far as I am concerned, it could be a fiercely contested position. (Time expired)

Automotive Industry

Senator GALLACHER (South Australia) (14:39): My question is to the Minister representing the Minister for Industry and Innovation, Senator Lundy. What is the minister's reaction to comments by the managing-director of General Motors Holden on the uncertainty facing the auto industry due to the opposition's lack of a policy?

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:39): I thank Senator Gallacher for his question. Mr Devereux is obviously expressing the problem I described in the Senate on Monday. The opposition's formally stated policy of slashing $1.5 billion in support for the auto sector is creating great uncertainty right across the industry. On top of that, we know that there is considerable conflict within the opposition as we have seen a variety of messages from Liberal Party representatives. For example, in September Ms Mirabella stated that the coalition did not support Ford and Holden payments and earlier this year Mr Abbott, the Leader of the Opposition, made it clear that all funding for the automotive sector will cease in 2015 in line with the Howard government's plans. He said:

…the quantum of support for the car industry should be that committed by the Howard government and that remains our policy.

No wonder the car industry is at a loss to know what the opposition's policy is. The coalition's policy for the car industry is that of a job wrecker. It would jeopardise around a quarter of a million jobs in the automotive sector. It is the height of hypocrisy for Mr Hockey and Ms Mirabella to lament recent job losses at Ford while at the same time advocating a policy that would destroy the industry.

The relentless negativity of the opposition has manifested itself in this job-wrecking stance, even when confronted with the facts of the matter and the job losses. This is a great example because it exposes the shallow spin by the opposition, as we heard reported
in the press this morning, where they dream up a policy in the party room about jobs, but when the rubber hits the road they are going to wreck the automotive sector because they are going to cut the funding. If they were serious about policy they would support our $5.4 billion new car plan. (Time expired)

Senator GALLACHER (South Australia) (14:41): Mr President, I have a supplementary question. Can the minister advise the Senate what the government is doing for the car industry?

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence on both sides we will proceed. I remind senators that debating across the chamber at this stage is disorderly.

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (14:42): I am happy to remind the negligent opposition what a responsible government looks like. Labor knows a modern economy needs a strong and viable manufacturing sector. We know the industry is facing difficult times.

Honourable senators interjecting—

The PRESIDENT: Order! Senators Ryan and Wong, it does not help me to hear the answer when you are continually interjecting across the chamber. Order on both sides!

Senator LUNDY: I am trying to answer a very serious question but given the puerile nature of interjections from the opposition it makes it very difficult. As I was saying, there are one million Australians whose jobs are at stake and the opposition is putting those jobs at risk by failing to support a bipartisan approach to our new car plan for the Australian automotive sector. As recently as September, the coalition said they did not support the Gillard government's assistance to Ford and Holden. Now they say they might, but they will not commit. They could...
commit today if they really wanted to. *(Time expired)*

**National Disability Insurance Scheme**

*Senator FIFIELD* (Victoria—Manager of Opposition Business in the Senate) *(14:45)*: My question is to the Minister for Finance and Deregulation, Senator Wong, and I preface my question by acknowledging that the National Disability Awards will be held in Canberra tonight and that the International Day of People with Disability will be observed on Monday. Minister, given the draft National Disability Insurance Scheme legislation was publicly released on Monday by the government with the intention of introduction to the House tomorrow, will the government also announce this week the funding required to deliver a full National Disability Insurance Scheme?

*Honourable senators interjecting*—

*The PRESIDENT*: Order! When there is silence, we will proceed. The debate that is going across the chamber is just slowing the rate at which question time will proceed. Order!

*Senator Wong* (South Australia—Minister for Finance and Deregulation) *(14:47)*: I thank the senator for his question and his ongoing interest in the National Disability Insurance Scheme, and I wish him well in his work inside his party room to get the opposition to take a more mature and bipartisan approach to this issue rather than playing politics with it.

*Senator Abetz*: You are the ones who suggested the committee!

*Senator Wong*: I will take the interjection from Senator Abetz.

*The PRESIDENT*: Order! Senator Wong, ignore the interjections and address the question.

**Senator WONG**: Senator Abetz is insisting on interjecting that his gold standard for bipartisanship is a committee and that what people with a disability in this country need is a committee that makes Senator Abetz feel good because he can say he is talking about it.

*Honourable senators interjecting*—

*Senator Fifield*: Mr President, I rise on a point of order. Senator Wong is misleading the Senate. The opposition does not have a policy for a committee, full stop. The policy is for a committee to oversight the implementation of an NDIS on a bipartisan basis.

*Honourable senators interjecting*—

*The PRESIDENT*: That is not a point of order. Order! If you wish to debate the issue, the time to debate it is after three o’clock. Order on both sides!

*Senator Wong*: This is a Labor government that is getting on with the job of building a National Disability Insurance Scheme. We understand how long people with a disability in Australia have been waiting for change and we understand the importance of delivering this for them. That is why this government, in a budget where we saw more revenue downgrades and more savings, delivered $1 billion in new funding for the first stage of a disability scheme. This is why the government has established the transition agency and agreed launch sites in New South Wales, Victoria, South Australia, Tasmania and the ACT. That is also why this government is introducing the legislation to which the senator referred in the question.

We have made clear our commitment to this issue. I note that those opposite, despite the fact that they said it is not real unless we can show costings now, are nevertheless going out and campaigning on a National Disability Insurance Scheme, notwithstanding they have never shown how
they can get anywhere near their $70 billion of savings or cuts that they need nor how they would fund the National Disability Insurance Scheme. We have said very clearly that we understand the importance of this policy. We understand the importance of ensuring that it is fiscally sustainable and we will have more to say about this before the next budget. *(Time expired)*

**Senator FIFIELD** (Victoria—Manager of Opposition Business in the Senate) *(14:50)*: Mr President, I ask another supplementary question. I am glad that the minister mentioned launch sites, because many people with disability have asked me to inquire of the minister in the absence of funding certainty from the government, what guarantee is there that the NDIS launch sites will not become isolated pockets of opportunity.

**Senator WONG** (South Australia—Minister for Finance and Deregulation) *(14:50)*: As I was saying, the government has already said that we will have more to say about the plans for a National Disability Insurance Scheme next year. I would anticipate, as we have also said, that you should have regard to the sorts of savings decisions we have already made to see the approach that we would take to funding a whole range of priorities. Let us recall that this government has: delivered: an increase in the age pension, delivered the first statutory Paid Parental Leave scheme, increased child care, doubled school funding and increased funding to universities and research and infrastructure. We have done so by ensuring that we made savings in the budget—many of which have been opposed by those opposite—and we will continue the same responsible approach to funding priorities that we have demonstrated to date.

**Senator FIFIELD** (Victoria—Manager of Opposition Business in the Senate) *(14:51)*: Minister, won't the NDIS legislation be seen as a hollow gesture if the government does not provide the necessary funding certainty in the same week that the NDIS legislation is introduced into the parliament?

**Senator WONG** (South Australia—Minister for Finance and Deregulation) *(14:52)*: Do I glean from that that the opposition now will take the NDIS off all of their campaign literature, because they are refusing to say anything about how they would fund it or any of their policies? The hypocrisy of this! It is not hollow. We on this side—and I will give the senator the benefit of the doubt because I think he is one on that side—care deeply about this issue. We are the party that built Medicare twice because those opposite and their predecessors tore it down.

**Senator Fifield**: Mr President, I rise on a point of order on relevance. The question was very specifically in relation to whether the government would announce the provision of funds for the NDIS in the same week that the legislation is introduced into the parliament. It is a straightforward question. People with disability want to know whether in addition to the legislation they are going to get the money to back it up and deliver an NDIS.

**Senator Jacinta Collins**: Mr President, I rise on the point of order: with respect, Senator Fifield, that was not the question. The nature of the question was how we could be taken seriously if we did not do it in the same week. Of course, it is relevant for Senator Wong to highlight how inconsistent any such suggestion is. It is relevant for her to highlight the countless opposition policies—indeed, those being canvassed by Mr Abbott this week—for which there is no funding commitment.
The PRESIDENT: There is no point of order. Senator Wong, continue. You have 30 seconds remaining.

Senator WONG: I remind those opposite, if they want to talk about commitment to this issue, that whilst they were in government, funding for disabilities went backwards. In fact, it grew at less than inflation. So for the opposition to come in here and run the sort of partisan gamesmanship that we have seen on this issue really demonstrates their lack of commitment to this issue. (Time expired)

Cooperatives

Senator MADIGAN (Victoria) (14:54): My question is to the Minister for Finance and Deregulation, Senator Wong. Given that the UN-declared International Year of Co-operatives is coming to an end, given that the sector has invested in and supported an entirely industry-funded national campaign to raise the level of awareness of the role of cooperative and mutual businesses in the national economy, with no federal financial contribution, and given the proposed new national regulations designed to reduce red tape, cut costs and improve cooperatives' ability to compete with other businesses: with the release by the New South Wales state government of the draft cooperatives national regulations for public and industry comment, can the government give a commitment to support the full national implementation of coherent laws to ensure Australia's estimated 1,600 cooperative businesses can take advantage of the approved and practical operational laws that govern their formation and business activities?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:55): There were a number of aspects to that question. I will seek to deal with them. If there are any further aspects I can deal with, I will obviously seek to refer them to the relevant minister. First, I want to be very clear that the government recognises the important and valuable role that cooperatives play in the Australian economy. I think on the last occasion on which the senator asked a question in this area I did respond in a similar vein and spoke about some of the policies and approaches that the government has put in place.

Whilst I acknowledge Senator Madigan's very strong commitment to and interest in this sector, I do take issue with the suggestion that the government has not provided any financial contribution during the International Year of Co-operatives. I think I have previously indicated—perhaps in the context of a different answer—that the sector's major conference was supported by the government through Regional Development Australia - Mid North Coast.

The primary aspect of the question really deals with the full national implementation of coherent laws. In the context of this area or many other areas where one would like more harmonised national laws, they are always easier to discuss in the abstract than to deliver in reality because they generally require agreement from other levels of government. Notwithstanding the public policy merit of a harmonised position, that is not always forthcoming. I encourage the senator to consider what role might be played in terms of other levels of government and discussions with those. In addition, the senator might be aware that as part of last year's budget the government announced its regulator for the not-for-profit sector, which the Senate has already dealt with. (Time expired)

Senator MADIGAN (Victoria) (14:57): Mr President, I ask a supplementary question. Given that Australia's cooperatives have laboured under a legislative regime of
state-based cooperative law that has restricted their ability to compete on an equal and fair footing with other corporate forms of business, what plans does the government have to encourage and support the development of cooperatives, including funding for small- and medium-enterprise development intermediary services, with the skills and resources to advise on cooperative business formations and assist the aim of growing the number of cooperative businesses operating in the national economy?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:58): I think the senator did refer to the legislative regime of state-based cooperative law. Again I make the point that the not-for-profit commission bill—the ACNC Bill—which was passed, does establish a regulatory framework that could be extended to all NFPN entities, including cooperatives, in the future. Initially it does only relate to tax-endorsed charities.

We are also progressing, through the COAG Legislative and Governance Forum on Consumer Affairs, cooperatives national law, which I think is the sort of harmonised approach that the senator referred to. That is subject to an agreement with the states and territories, as he flagged. One sector in which the government has ensured a range of policies to facilitate cooperatives is the banking sector, where the government's package has sought to facilitate the competitive power of Australia's credit unions—(Time expired)

Senator MADIGAN (Victoria) (14:59): Mr President, I ask a further supplementary question. Given that a national-level representative body for member-owned and cooperatively-owned businesses will be launched in March 2013 as a legacy initiative of the International Year of Co-operatives campaign, does the government plan to consult more widely with Australia's cooperative and member-owned business sector on issues of policy, legislation and regulation? Will the government commit to amend the current rules that prevent cooperative businesses accessing the services provided by government-funded business enterprises like Enterprise Connect?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:59): I think there are three aspects to that question. The first is the launch of a national-level representative body for cooperatives. Whilst that is an issue for the industry, as a matter of principle I think a body which enables more focused lobbying and more focused communication with government is obviously going to be of merit for the sector. The government will always consult with Australia's cooperative and member-owned business sector on relevant issues of policy and regulation and having a national body does enable that consultation to be more effective. In relation to Enterprise Connect, I am advised that some cooperatives have been accepted under that program on an exceptions basis. Cooperatives are also able to participate in Enterprise Connect's workshop, industry intelligence and network activities. Each round of these is themed to provide SMEs with targeted information—(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

Middle East

National Disability Insurance Scheme

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (15:01): I move:
That the Senate take note of the answers given by the Minister for Foreign Affairs (Senator Bob Carr) and the Minister for Finance and Deregulation (Senator Wong) to questions without notice asked by senators today.

It is a little disappointing that today, the day of the National Disability Awards and only a few days away from the International Day of People with Disability, the government has continued to answer what are legitimate questions about the funding of the National Disability Insurance Scheme and the NDIS legislation with partisan and dismissive diatribes. I would have hoped that if there were one area of policy where questions could be asked and answered in a civil way it would be the area of disability policy. I must take issue with the continued contention of those opposite that the opposition does not really support a national disability insurance scheme. The opposition does support a national disability insurance scheme. Also, I must take issue with the contention which we heard—repeated by Senator Wong and through Senator Evans's interjections—that the opposition only has a policy for a committee. What the opposition wants to see is a mechanism that can lock in the support of all parties in this parliament for an NDIS. What the opposition wants is a mechanism that can oversee the implementation of the NDIS over the several parliaments that full implementation will take. That is the purpose of the parliamentary committee that the opposition has proposed, to be chaired by both sides of politics, to oversee the implementation. That is the essence of our proposition. It is completely different from the characterisation that the government has given it.

The questions that I asked Senator Wong were pretty straightforward. They were about whether it was the intention of the government to announce this week funding to enable the implementation of a full NDIS.

The reason why I asked if that announcement will take place this week is that the government are introducing tomorrow, in the other place, the legislation to give effect to the national disability insurance transition agency. It is not just me and it is not just members of the opposition who are asking the question as to when the government will announce funding certainty for the NDIS; it is also Australians with disability, it is also their families and it is also their carers. It is not a partisan question to ask the government of the day if they are going to provide funding certainty for an organisation which will be given effect to by legislation to be introduced tomorrow. That is not a partisan question. That is a legitimate question, and the fact that the government continue to hurl partisan abuse across the chamber every time we ask simple legitimate questions in a sober and reasonable fashion does not reflect on the opposition. It reflects on the government that the most simple questions and the most basic questions about the NDIS and NDIS funding cannot be asked without receiving partisan diatribes in return. Every time I ask questions on the NDIS I make sure I circulate the Hansards to people with disability, their families and their carers, so they see what the true attitude of this government is when it comes to bipartisanship and the NDIS. The government pay lip service to bipartisanship when it comes to the NDIS, but every time the hand of bipartisanship is extended, it is rejected by the government. The ultimate proof of that was when I moved a motion in this chamber to establish a non-partisan parliamentary oversight committee for the implementation of the NDIS and the Labor Party and the Greens combined together to vote it down.

Senator McLucas: Because it was a bad idea.
Senator FIFIELD: Let the record show that Senator Jan McLucas said that a bipartisan committee binding on all parties to oversee the implementation of the NDIS ‘was a bad idea’. Let the Hansard record show that Senator McLucas is against bipartisan oversight of the implementation of the NDIS. But I can tell you, Mr Deputy President, that is what Australians with disability want. They want bipartisanship, they want parliamentary oversight and they want certainty. (Time expired)

Senator MOORE (Queensland) (15:06): I agree with Senator Fifield on one thing, and that is that today is a good day, because we are going to have the disability awards this evening. I know the one thing that will actually engage all people in this chamber is the recognition and celebration of the people who will be acknowledged this evening. So I think that, in a true bipartisan way, I can start off with that.

I was a little worried, though, when Senator Fifield said he was able to actually show that in this chamber all the questions asked by the opposition are sober and reasonable and that the only place where there is any objection or abuse is on this side of the chamber. I would think that any sober and reasonable evaluation of the Hansard would point out that—and we have had this conversation, Mr Deputy President—in many ways there could be a consideration of behaviour and how we interact across the whole place.

I am interested that we are taking note of the answers given to questions asked of both Senator Wong and Senator Bob Carr, because they are very important issues, but it is difficult in five minutes to respond effectively to both. In terms of the National Disability Insurance Scheme, we are very keen to have that legislation in this place and to have the opportunity of a fulsome committee process around that, which I would expect, where all the questions that so many people have about the future of this wonderful scheme will be addressed.

We know, from the first round of the budget, that the trial process has been guaranteed. That has been out there publicly in terms of looking at the trial sites, which required massive discussion and consultation with user groups, with people across the country and, on the financial side, most clearly with the states, which seems to be forgotten in the way we look at finances around the national disability scheme. We have been very open about the need for this discussion through the COAG process. The services that people with disabilities clearly need—there is no debate about the fact that these services are required—require the financial, social and policy engagement of all levels of government in this country because, currently, the scheme engages both the federal and state systems. That is one aspect of pulling together the scheme for the future.

The implications of the full funding of the NDIS in the future will be a matter for the upcoming budget. There is no doubt about that and no-one is unaware of that process. In terms of what we will do when looking at the legislation when it comes before this place and through the committee process, which I expect will occur, if and when the Senate agrees to that, we will be able to identify exactly what the needs will be in the future and work with that.

I fully expect that there will be bipartisanship because I have this need for optimism, because I have this need to see a massive acceptance of the need to better improve services and to provide respect for people with disabilities in our country. The development of a committee, which was asked for by the opposition, was not considered to be the best way to do that at
this stage. That was explained. I understand that people from the opposition who put that forward will be disappointed that it was not the chosen direction of the government. But saying that that means that there will not be full opportunity for bipartisan engagement is just not true. I am also interested in whether we could be given any information about where we have previously had this kind of committee in terms of development of policy. That would be useful.

I also want to make a couple of quick comments about the answers given by Senator Bob Carr on what happened with the UN vote. It was incredibly important for the government to have a united voice on this process. It is not the way it has been portrayed by people in this area and by the great investigations and references in the media. It is not the case that the Prime Minister was pushed into a position. When you have policy, what happens is that you debate it within the caucus, you debate it within the cabinet and then you come up with a position. It is clear that there is great support for our country to be involved in an effective process around the development of policy in this incredibly important area. We have seen the most wonderful development: a peace settlement has been put in place now, tenuous and vulnerable as it is, by people internationally saying, 'These two important groups, Israel and Palestine, need to work together to develop their future.' We all have a role in that. We must have that. What we have asked is that in this important UN vote we acknowledge that there should be a process to allow Palestine to have a greater say. (Time expired)

Senator SINODINOS (New South Wales) (15:11): Today the opposition again extended the hand of bipartisanship on both issues, Israel and the National Disability Insurance Scheme, raised by this motion and, again, that hand was turned away arrogantly, dismissively.

Senator Carol Brown: Seriously?

Senator SINODINOS: Seriously. The politics of this is very straightforward if we talk first about the National Disability Insurance Scheme. How do you lock in your opposition to a process? You lock them in by having them be part of the process. The opposition was offering to be locked in with the government in a bipartisan committee that would oversee this. Everybody would be on the same page, speaking the same language and on the same wavelength. The government has nothing to lose from offering the hand of bipartisanship, nothing at all. Politics 101 teaches you that when you offer the hand of bipartisanship, it is almost always to the benefit of the government of the day; yet this government is so incompetent it cannot even see what is in its own interest.

So why do we offer the hand of bipartisanship? Because Tony Abbott took a leadership position on the National Disability Insurance Scheme and the government was forced to respond, as it did in the budget context. But it was dragged, kicking and screaming. It offered $1 billion over the forward estimates, not the $3.9 billion requested, evaluated and recommended by the Productivity Commission. We now wait for the budget to see what funding is put in for the out years, because the sacred promise that Julia Gillard has made to all of those disabled people out there is that the money will be there, that there will be a ramp up of $7 billion or $8 billion on top of what we do already by 2017 or 2018. Those people are waiting. They take it seriously. It is not just a political headline to them. So why treat them with such contempt? Why raise their expectations only to dash them?
In relation to Israel, I will say only this: the events of the last 24 hours confirm that the judgement of Julia Gillard has once again been trashed by her own colleagues. The Prime Minister took a principled view on this, to give her her due. She, as Prime Minister, made a judgement and, as the principal foreign policy spokesman of the government—the person who recently has been doing most on the foreign affairs trail, if you like, representing the government abroad—she took a view, and her colleagues rounded on her. Senator Bob Carr, the Minister for Foreign Affairs, led the charge against the Prime Minister.

I do not ascribe leadership aspirations to Senator Carr but his behaviour was not that of a foreign minister, loyal to the Prime Minister, backing up her judgement. He took on her judgement. They have been emboldened within the Labor Party by the events of the last 48 hours, in which the Prime Minister's judgement has been rendered under such a cloud by the events in Melbourne of almost two decades ago which have, once again, reminded people that Julia Gillard's judgement cannot be trusted.

But on the issue of Israel there is a bond of bipartisanship between the Prime Minister and the opposition. The only people not in the cart are the Labor Party. The excuse that was given was that it might upset people in Western Sydney—that is, it is about votes. It is about Chris Bowen's seat of McMahon and about Tony Burke's seat of Watson. We were told that it might offend some of our trading partners in the Asia-Pacific and that it might offend people in the live sheep trade or the live cattle trade. Well, we offended them when we unilaterally revoked the trade, when we took away the capacity for Australians to trade with the region. That is what we should have dealt with. You do not trade your foreign policy for your trade policy. You take a principled view.

What are we getting in return from the Palestinians, who will be the beneficiaries of our abstention? Have they given any further commitments on going to the peace table? At least Britain is trying to get something out of the Palestinians in terms of if they get observer status at the United Nations they will not join the International Criminal Court and then try to take Israel to that court to charge them with crimes against humanity. At least the Brits are trying to get something in return. By the government's action we have given our vote—in effect, our consent—to what Hamas has done.

The DEPUTY PRESIDENT: Thank you, Senator Sinodinos. Before I call the next speaker, it was my error for not bringing you to order earlier in your debate. I let it go and it complicated matters. Please refer to members of the other house and, in particular, office bearers, by their correct title, not just by their names alone. I remind all senators of that for the continuation of this debate.

Senator Sinodinos: Thank you, Deputy President; I stand admonished.

Senator STEPHENS (New South Wales) (15:17): I too rise to make a contribution to this debate and to take note of the answers given by Senator Bob Carr and Senator Wong to questions today. If I could follow on from where Senator Sinodinos left off, I do not think that there is one Australian who is not concerned about what is happening between Hamas and Israel. No-one could have turned on the television during those six days of horrible violence between those parties and not wanted some kind of a resolution.

A ceasefire was announced. I think that the conditions of the ceasefire are a credit to all those who were involved in the negotiations. But, as Senator Sinodinos has so rightly asked, we certainly need both sides
to adhere to the conditions of that ceasefire and we need both parties to resume negotiations towards what we all believe is the right thing, which is a two-state solution.

But a question from Senator Barnaby Joyce in question time today was what really flummoxed me— to be asking the foreign minister about the importance of abstaining in this vote, as it comes up, for non-state status for Palestine. His rant actually became part of the question and, in a sense, it was oxymoronic. It defies belief that people would want to stand up and debate an issue like this while being so absolutely ignorant of the facts and having no understanding of what it is all about. Of course, abstaining is a political statement.

The notion that, because we have a seat on the Security Council, it means that abstaining is actually supporting Hamas's position is a nonsense. First of all, the vote does not count as a veto, which is what some people would like us to believe is the case, so our position on the Security Council is totally irrelevant; and that means that in this case an abstention from the vote is not a wasted vote at all. It is a very important political statement and it reflects our unanimous position, over many, many years and many governments, that a two-state solution must be negotiated through a sensible outcome. Israel cannot, as Minister Bob Carr said and as Israel has argued, be bombed towards peace negotiations. It is such a nonsense.

Someone, in the interaction in question time, suggested that Senator Joyce needed to study UN resolution 101 to understand the issue. We have an unequivocal commitment on all sides of politics here to what is a very important position of a two-state solution, and statehood for Palestine can only be negotiated through a resolution that is negotiated between the two sides. So, as I say, abstaining is a valid option.

The conditions of the ceasefire agreement are actually quite important, not only for those who are concerned about Palestine and for the staged departure of some 60,000 Israeli troops who are deployed along the Gaza border, but there is also the need for a very serious commitment to not re-arming Hamas. Dealing with the whole tunnel industry that has become part and parcel of the Gaza Strip is a very significant issue and, unless those conditions can be agreed to, it will be very difficult for Israel to make any kind of agreement with a moderate Palestine authority. We are all very conscious that this is not a partisan issue; it is one that we all seek a resolution to. I would hope that the coalition's position on this is not to undermine a peace process and a two-state solution.

**Senator SMITH** (Western Australia) (15:22): I rise to take note of answers given by Senator Bob Carr and Senator Wong to questions asked by Senator Abetz and Senator Fifield. I am sure all senators in this place will extend, in anticipation of tonight's National Disability Awards, our appreciation for the success and courage shown by many disabled people and the organisations that represent them. And, of course, in anticipation of next week's International Day for People with Disability, I am sure the Senate again wants to note its endorsement of the great work that many people do to support people with disabilities in our community.

I want to touch briefly, in the short time available to me, on comments in the debate about the importance of adopting a bipartisan approach to the issue of disabilities in our country. No-one doubts that this is an issue critical to the generosity of our country going forward. To reflect on the contribution of Senator Fifield, I think his defence of adopting a bipartisan approach is an appropriate one, and it is disappointing that
the government and others in this place did not endorse it at the time of its debate. As Senator Fifield said, a bipartisan joint select committee approach does allow this parliament a mechanism to lock in support from all parties for this important policy issue going forward. In addition to that, of course, it does provide a very effective parliamentary oversight mechanism to ensure that the implementation of a national approach to disability services is well constructed and well implemented over many years and many parliaments.

Senator Fifield and coalition senators believe that this approach is sound and forward thinking. It was somewhat surprising to hear the contribution of other senators in this place—some Labor senators—who suggested that a bipartisan approach was a bad idea. It is a great shame, but the reality is that over time this government is increasingly being characterised by inflexibility—inflexibility in a whole range of issues, not least the ability to develop and implement a bipartisan approach to what is an important national social policy; that is, the creation of a National Disability Insurance Scheme.

In the contribution of Senator Moore she was quite right to talk about the necessary engagement of all levels of government across Australia when we move toward the implementation of a National Disability Insurance Scheme. Reports today in the *West Australian* newspaper and in the *Australian Financial Review* point very, very squarely to the fact that the government is being inflexible in its approach to a National Disability Insurance Scheme. Let me quote from an *Australian Financial Review* article headed 'WA rejects disability scheme bill':

> The West Australian government says it doesn't support federal legislation to introduce the national disability insurance scheme, describing the bill as too prescriptive and likely to set the state back 30 years to a time when people with disabilities had little control over their support services.

That article goes on to highlight the government's inflexibility. It says of the final version of the draft legislation:

> … the state's Disability Services Minister, Helen Morton, said the final version failed to address WA's concerns and limited its role in decision-making.

The article goes on to say that the Western Australian government thinks that this Labor government might be more about promoting its own self-interest and that it should be about promoting personalised services, encouraging choice and control, rather than a constant prescriptive and inflexible approach to disability services as proposed by the government draft legislation.

In addition to that the *West Australian* says that the Western Australia state government:

> … remained unhappy that the Commonwealth was insisting on sidelining the States in regards to the issue of control.

The scheme in Western Australia remained deadlock after the state rejected the Commonwealth's latest offer of a fifty-fifty funding split with Canberra because—

> not because of the funding split but because—

Canberra wanted to maintain its control over the particular pilot program.

It is very, very disappointing that this government is again characterised by inflexibility in its approach to disability services. But I am an optimist and I am very, very confident that, when the government's legislation reaches the Senate and the Senate decides to embark upon a consultation process across Australian cities and other locations, the bipartisan spirit of this Senate will come to the fore and that we will be able to work towards developing a truly effective National Disability Insurance Scheme.
The DEPUTY PRESIDENT: The question is that the motion moved by Senator Fifield be agreed to.
Question agreed to.

Climate Change

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:27): I move:

That the Senate take note of the answer given by the Minister for Agriculture, Fisheries and Forestry (Senator Ludwig) to a question without notice asked by Senator Milne today relating to climate change.

What a shemozzle of an answer I got from a minister who had no idea what I was talking about—absolutely zilch idea. He was not across his portfolio. He did not even seem to understand the report I was talking about was the report to the United Nations climate talks in Doha overnight in relation to the terrifying scientific evidence being presented as a result of warming permafrost, the deterioration of organic matter and billions of tonnes of methane going to atmosphere—and of course recognising that we are approaching an irreversible tipping point. That should be terrifying everybody in this chamber. We should be recognising Australia is nowhere near where it needs to be in terms of its target to reduce greenhouse gas emissions.

Having said that, Australia agreed last year in Durban at the climate talks that we would recognise that the global warming potential of methane is greater than people thought previously. Previously it was 21 times that of carbon dioxide. In Durban it was agreed that it actually has 25 times the global warming potential of CO₂. Countries like Australia agreed to adjust their national accounts accordingly. As a result, Australia had to increase the amount of methane going to atmosphere in our national accounts because of that increase in global warming potential. The issue is that the government, having decided to recognise that, decided not to require that methane emitters like coal seam gas actually pay the additional liability until 2017.

Why not? This is a new subsidy to coal seam gas—a new subsidy to the fossil fuel industry to say, ‘Yes, we acknowledge our national accounts have to recognise our increased liability because of the increased global warming potential of methane, but we’re not going to require coal seam gas to pay until 2017.’ So the question is: what is the total volume of methane emissions from coal seam gas in Australia? What is it now; what is the forecast level from the approved projects; what is, therefore, the dollar value of the liability that is being deferred to the coal seam gas companies till 2017; who is going to pay accordingly; and what is this level of subsidy that the government has now decided to give to coal seam gas?

But that made me realise that there is this question: is it true that one of the reasons why the government has implemented no field studies to do on-the-ground measurement of the amount of methane pouring out of coal seam gas around Australia is that the government is trying to shield the coal seam gas industry from the cost of the fugitive emissions and the analysis that will show that all its claims about being cleaner than coal are probably wrong? That is the key element to this question, and the minister was a disgrace in not being able to even put his mind vaguely to any of the questions he was asked. I think it is about time the Australian community got an explanation from the government as to how it is that they are using American data generated by the petroleum and gas industry in the US. They are just trying to translate that to Australian conditions when the scientists will tell you that that cannot, and will not, give you anything like an accurate answer. Then we have the University of
Queensland doing studies showing massive amounts of fugitive emissions coming from coal seam gas operations. We have Minister Ferguson attacking the university, saying it is not peer reviewed, when the nonsense coming out of the gas and petroleum industry in the US is hardly peer reviewed in the context of Australia.

So we need to know the extent of the fossil fuel subsidy that the government has just decided to give the coal seam gas industry in Australia out to 2017, the volume of methane emissions, the impact on our national accounts and when we are going to get field studies in place and funded. The technology now exists to measure fugitive emissions from coal seam gas accurately. The fact that it is not happening leads me to believe that the government is in so much of a rush for gas that it is completely failing to take into account how fast global warming is coming upon us in terms of increased numbers. We are now on track for three to four degrees at least. It is an unlivable planet we are talking about, yet this parliament is obsessed with the AWU. We have a climate emergency on our hands.

Question agreed to.

NOTICES

Presentation

Senator Di Natale to move:

That the following matter be referred to the Finance and Public Administration References Committee for inquiry and report by 21 March 2013:

Progress in the implementation of the recommendations of the 1999 Joint Expert Technical Advisory Committee on Antibiotic Resistance, including:

(a) examination of steps taken, their timeliness and effectiveness;
(b) where and why failures have occurred;
(c) implications of antimicrobial resistance on public health and the environment;

(d) implications for ensuring transparency, accountability and effectiveness in future management of antimicrobial resistance; and

(e) any other related matter.

Senator Singh to move:

That the Senate—

(a) formally marks National Asbestos Awareness Week, which in 2012 is being held between 26 November and 30 November;
(b) acknowledges the ongoing and devastating legacy of asbestos on the Australian community and that Australia has one of the highest rates of asbestos-related diseases in the world;
(c) recognises the ongoing efforts of the many asbestos support and advocacy groups and unions which support those living with an asbestos-related disease and advocate on behalf of victims;
(d) extends its sympathies to those who have been affected by an asbestos-related disease;
(e) acknowledges Australia's ongoing work with like-minded countries to achieve listing of chrysotile asbestos under the rules of the Rotterdam Convention; and
(f) commends the Government on its efforts to eradicate asbestos from workplaces, homes and the community through its response to the Asbestos Management Review and the establishment of the Office of Asbestos Safety.

Senator Madigan to move:

That the following bill be introduced: A Bill for an Act to limit imports from countries that are signatories to a Free Trade Agreement with Australia but which do not provide their employees with basic workers' rights, and for related purposes. Fair Trade (Workers' Rights) Bill 2013.

Senator Madigan to move:

That the following bill be introduced: A Bill for an Act to enable the citizens of Australia to initiate the holding of a referendum in relation to altering the Constitution, and for related purposes. Citizen Initiated Referendum Bill 2013.
**Senator Madigan** to move:

That the following bill be introduced: A Bill for an Act to enable the citizens of Australia to initiate the holding of a plebiscite in relation to the introduction of legislation into the Federal Parliament, and for related purposes. *Citizen Initiated Legislation (Plebiscite) Bill 2013.*

**Senator Rhiannon** to move:

That the Senate—

(a) notes:

(i) with deep concern the human rights situation in Iran, including the use of the death penalty, the intimidation and arbitrary arrest of human rights and political activists, and the treatment of minorities,

(ii) with particular concern the situation of Ms Nasrin Sotoudeh, the Iranian human rights lawyer who has campaigned for 'freedom, social security, the rule of law and justice', and who has been imprisoned since 4 September 2010,

(iii) Ms Sotoudeh's health has deteriorated as a result of being on a hunger strike for more than 40 days, and

(iv) 30,000 people have supported a campaign run by Amnesty International to demand the unconditional release of Ms Sotoudeh; and

(b) supports the Australian Government raising concerns about Ms Sotoudeh's human rights, including her imprisonment, with the Government of Iran, and continuing to urge Iran to abide by its international human rights obligations and to protect the human rights of all its citizens.

**Senators Xenophon, Di Natale, Fierravanti-Wells and Madigan** to move:

That the Senate—

(a) notes the concerns of key stakeholders in relation to the price reduction of chemotherapy drug Docetaxel and its potential broader impact on the treatment of cancer patients;

(b) calls on the Government to:

(i) negotiate with relevant bodies regarding the cost of dispensing chemotherapy drugs, and

(ii) ensure that the result of these negotiations will allow pharmacists to continue dispensing the drug, and other chemotherapy drugs, without disrupting patients;

(c) welcomes the policy of price disclosure of items on the Pharmaceutical Benefits Scheme; and

(d) calls on the Government to ensure that further disruption to patients does not occur.

**Senator Wright** to move:

That the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 21 March 2013:

The impact of recent proposed federal court fee increases on access to justice in Australia, with particular reference to:

(a) the impact of federal court fee increases on low-income and ordinary Australians and operators of small business;

(b) whether recent and proposed fee increases are reasonable, based on evidence and consistent with other justice policy matters;

(c) how increases in court fees, and other reform to the courts and justice system, can act as a barrier to accessing justice;

(d) the extent to which court fee increases may impact on services provided by legal assistance services, i.e. legal aid commissions, ATSILS, FVPLS and CLCs; and

(e) other relevant matters.

**Senator Collins** to move:

That, on Thursday, 29 November 2012:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7 pm to adjournment;

(b) divisions may take place after 4.30 pm;

(c) any proposal pursuant to standing order 75 shall not be proceeded with;

(d) consideration of general business and committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) shall not be proceeded with;

(e) the routine of business from not later than 12.45 pm to 2 pm and from not later than 3.45 pm shall be government business only;
(f) the question for the adjournment of the Senate shall not be proposed until a motion for the adjournment is moved by a minister;

(g) the following government business orders of the day shall have precedence over all government business, be called on in the following order and be considered under a limitation of time, and that the time allotted be as follows:

<table>
<thead>
<tr>
<th>Business Order</th>
<th>Time and Stages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wheat Export Marketing Amendment Bill 2012</td>
<td>Commencing immediately to 3.45 pm—second reading from 3.45 pm to 4.15 pm—all remaining stages</td>
</tr>
<tr>
<td>Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012</td>
<td>Commencing immediately after the preceding item to 5.30 pm—all remaining stages</td>
</tr>
<tr>
<td>National Gambling Reform Bill 2012 and related bills</td>
<td>Commencing from not later than 6 pm to 8 pm—second reading from 8 pm to 9 pm—all remaining stages</td>
</tr>
<tr>
<td>Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012</td>
<td>Commencing immediately after the preceding item to 9.45 pm—all remaining stages</td>
</tr>
</tbody>
</table>

(h) Paragraph (g) of this order shall operate as a limitation of debate under standing order 142.

Intention to withdraw: Senator Xenophon, pursuant to standing order 78, gave notice of his intention, at the giving of notices on the next day of sitting, to withdraw business of the Senate notice of motion no. 1 standing in his name for 29 November 2012 for the disallowance of item [1] of Schedule 1 to the National Health (Weighted average disclosed price – interim supplementary disclosure cycle) Amendment Determination 2012 (No. 2) [PB98 of 2012], made under subsection 99ADB(4) of the National Health Act 1953.

Postponement

The following items of business were postponed:

<table>
<thead>
<tr>
<th>Business Notice</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate notice of motion no. 2 standing in the name of Senator Ludlam for today, proposing a reference to the Rural and Regional Affairs and Transport References Committee, postponed till 29 November 2012.</td>
<td></td>
</tr>
<tr>
<td>General business notice of motion no. 1072 standing in the name of Senator Fierravanti-Wells for today, relating to Christian Assyrians in Iraq, postponed till 29 November 2012.</td>
<td></td>
</tr>
</tbody>
</table>

BUSINESS

Leave of Absence

Senator McEwen (South Australia—Government Whip in the Senate) (15:33): by leave—I move:

That leave of absence be granted to Senator Farrell for 29 November 2012, for personal reasons.

Question agreed to.

BILLS

Parliamentary Service Amendment Bill 2012

First Reading

The PRESIDENT (15:34): I move:

That the following bill be introduced:

A Bill for an Act to amend the Parliamentary Service Act 1999, and for related purposes.

Question agreed to.

The PRESIDENT: I present the bill and move:

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

Opposition senators interjecting—

Senator Jacinta Collins: Are you sure you don't have a conflict of interest?

The PRESIDENT: I am getting too much help from the sides here!

Bill read a first time.
Second Reading

The PRESIDENT (15:35): I table the explanatory memorandum to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Bill amends the Parliamentary Service Act 1999 (the Act) and runs in parallel with, but is distinct from, the Public Service Amendment Bill 2012 that has passed the House of Representatives.

The Act established for the first time a separate Parliamentary Service, independent of the Executive Government of the day. That legislation complemented widespread changes to the Australian Public Service which were introduced in the Public Service Act 1999 (the APS Act).

The Public Service Amendment Bill 2012 amends the Public Service Act 1999 to ensure the Australian Public Service is able to continue serving the Australian Government, the Parliament and the Australian public to a high standard. It implements recommendations of the report, Ahead of the Game: Blueprint for the Reform of Australian Government Administration, which require legislative change.

This Parliamentary Service Amendment Bill contains various amendments to the Act, most of which reflect changes to the Public Service Act 1999 in the Public Service Amendment Bill.

Changes to Act, arising from the Public Service Amendment Bill

1. Values and Employment Principles

The current set of 15 Parliamentary Service Values in section 10 of the Act will be amended to include a shorter set of five Parliamentary Service Values and a set of Parliamentary Service Employment Principles comprising items from the current Values that reflect organisational aspirations. There will also be a statement about the role of the Parliamentary Service.

It is worth noting that the Public Service Amendment Bill does not include an equivalent of this role statement. This statement in this Parliamentary Service Amendment Bill confirms the independence of the Parliamentary Service from the Executive Government.

Section 11 of the Act will be amended so that the Parliamentary Service Commissioner may advise the Presiding Officers in relation to any of the Values, and the Bill moves the power for the Presiding Officers to make determinations about the Values to proposed section 11A.

The Bill will enable the Commissioner to give advice (but not directions) to the Presiding Officers about employment matters and the Employment Principles.

Proposed section 11C in the Bill will enable the Presiding Officers to make determinations on employment matters and the Employment Principles. Additionally, section 12 of the Act will be amended to require a Secretary to promote the new Employment Principles (in addition to the Parliamentary Service Values).

2. Code of Conduct

The Bill provides, through amendment of section 13 of the Act, that the first four elements of the Parliamentary Service Code of Conduct will apply where there is a connection with the employee's employment and, for example, will cover behaviour in circumstances such as training away from Canberra.

Subsection 13(11) of the Act will be amended to require employees to behave in a way that upholds the integrity and good reputation of their departments (as well as the Parliamentary Service, to which the current provision only applies), and the proposed Parliamentary Service Employment Principles as well as the Parliamentary Service Values.

Amendments to section 14 of the Act will provide for the Determinations to set out how the Code of Conduct is to be applied to statutory office holders such as the Parliamentary Librarian.

A number of amendments to section 15 will allow action to be taken in relation to Parliamentary Service employees who may have knowingly provided false or misleading
information, wilfully failed to disclose relevant information, or otherwise failed to behave honestly and with integrity in connection with their engagement as a Parliamentary Service employee.

The amendments will also enable the procedures for determining whether a Parliamentary Service employee has breached the Code of Conduct to provide separately for different categories of employee, including employees convicted of a criminal offence.

The Bill explicitly provides that a determination of a breach of the Parliamentary Service Code of Conduct may be made after an employee has separated from the Parliamentary Service.

These amendments will require Secretaries to establish procedures for the above and for determining sanctions. Importantly, the procedures must have due regard for procedural fairness. The Presiding Officers' determinations may prescribe limitations on the power of a Secretary to determine sanctions.

Section 20 of the Act will be amended to clarify that Secretaries are not subject to general directions in relation to investigations into Code of Conduct breaches or whistleblower reports (as is already the case in relation to other staffing powers of Secretaries); and state that directions issued under section 20 are legislative instruments (noting, however, that the disallowance and setting provisions of the Legislative Instruments Act 2003 do not apply to these instruments).

A new section 48A will enhance the Parliamentary Service Merit Protection Commissioner's functions (the MPC) to allow the MPC to determine, when requested to do so by the relevant Secretary, whether there has been a breach of the Code of Conduct. The consent of the employee concerned is required before the MPC may commence his or her inquiry. The Merit Protection Commissioner would have the discretion to decline such a request and would be required to establish appropriate procedures, which may entail different provisions for different classes of employee, (including employees who have been convicted of criminal offences).

As an important safeguard, the note to proposed section 48A confirms that the MPC's findings under proposed section 48A, are reviewable under the Administrative Decisions (Judicial Review) Act 1977.

3. Whistleblower reports

The bill amends section 16 of the Act to require Secretaries to establish procedures for a Parliamentary Service employee to make a whistleblower report, and to establish procedures for dealing with whistleblower reports.

It also enables the Parliamentary Service Commissioner to inquire into whistleblowers' complaints after notifying the Presiding Officers of a proposed investigation.

Finally, an amendment to subsection 48(2) will extend the MPC's inquiry powers to whistleblowing inquiries.

4. Review of Actions

Subsection 33(4) (d) of the Act will be amended to clarify that reviews of action will be able to be conducted by the MPC personally. This will be in addition to the current arrangements which provide that the MPC must nominate another person or establish a three-member committee to conduct a review.

5. Senior Executive Service (SES)

The role of the SES in subsection 35(2) will be amended to capture better their whole of Parliamentary Service responsibilities. Section 36 which deals with the Commissioner's guidelines on SES matters will be repealed and a new section 11B inserted into the Act to provide that the Commissioner may give advice to the Presiding Officers about employment matters, including those relating to the SES.

Section 37 of the Act, which deals with an incentive for SES retirement, will be clarified so that the retirement of an SES employee under that section is valid even though the employee has not attained the minimum retirement age specified in the Act. Terminology will also be changed to ensure consistency with superannuation legislation.

6. Secretaries

The description of the roles and responsibilities of Secretaries will be expanded by
amending section 57 to better capture the service and performance expected of them.

7. Confidentiality of Information

The provisions for the use, and confidentiality, of information in the province of the Commissioner and MPC are to be expanded and included in the Act, instead of the Determinations where they are currently located. Section 68 of the Act dealing with the release of personal information will be repealed as it will be covered in these new provisions.

There will also be a new provision to provide protections for a Secretary or Parliamentary Service employee who provides information to the Commissioner or the MPC in the course of the exercise their review or inquiry functions.

8. Immunity from suit

Provisions for immunity from civil proceedings for both the Commissioner and MPC will be moved from the current location of the Determinations to the Act.

9. Legislative instruments

Several provisions are to be amended to reflect the provision and requirements of the Legislative Instruments Act 2003. For instance, the requirement to gazette Classification Rules is replaced; the Rules are to be prescribed to be legislative instruments and a note mentions that the disallowance and sunsetting provisions of the Legislative Instruments Act do not apply.

10. Miscellaneous amendments

There will also be a range of miscellaneous amendments related to the reduction of classification of employees, the terminology of the provisions for the appointment of departmental secretaries, and empowering the Parliamentary Service and Merit Protection Commissioners to engage consultants.

Subsection 66(4) of the Act will be amended to provide that the amount of payments the Presiding Officers may authorise, in relation to matters arising from Commonwealth employment, is the same as the amount prescribed by the Public Service Regulations.

And section 71 of the Act will be amended to increase the maximum number of penalty units for offences against the Presiding Officers' determinations to be consistent with provisions in the Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers, published by the Attorney-General's Department.

Amendments not directly related to Public Service Act changes

Other changes are proposed which are not directly related to the Public Service Act changes. These include enabling the Parliamentary Service Commissioner and Merit Protection Commissioner to delegate their powers and functions, enabling the determinations to vary the scope and application of the Values and Employment Principles (eg, to vary the application of merit to enable the direct engagement of people with disabilities in specified circumstances), and revising provisions dealing with acting arrangements for statutory office-holder positions to align them with the Acts Interpretation Act 1901.

Summary

This Bill ensures that the Parliamentary Service will continue to provide professional support of the highest calibre to all parliamentarians, independent of the executive government of the day.

In a number of sections, provisions have been strengthened and clarified to ensure that this continues. A number of items have been clarified and, where appropriate, brought into line with the revised Public Service Bill.

All parliamentarians depend on a professional, non-partisan parliamentary service. After more than a decade since the Parliamentary Service was first created, this bill will ensure that the service can continue to provide a high level of support and advice which will ultimately benefit the wider Australian community.

I commend the Bill to the Senate.

Debate adjourned.
COMMITTEES

Education, Employment and Workplace Relations References Committee Reference

Senator WATERS (Queensland) (15:36):

I move:—

(a) the Senate notes, with concern, the recent and growing job losses in state governments around Australia, as well as the difficulties many state public sector employees face in bargaining over wages and conditions; and

(b) the following matter be referred to the Education, Employment and Workplace Relations References Committee for inquiry and report by 17 June 2013:

The conditions of employment of state public sector employees and the adequacy of protection of their rights at work as compared with other employees, including:

(i) whether:

(A) the current state government industrial relations legislation provides state public sector workers with less protection and entitlements than workers to whom the Fair Work Act 2009 (the Act) applies,

(B) the removal of components of the long held principles relating to termination, change and redundancy from state legislation is a breach of obligations under the International Labour Organization (ILO) conventions ratified by Australia,

(C) the rendering unenforceable of elements of existing collective agreements relating to employment security is a breach of the obligations under the ILO conventions ratified by Australia relating to collective bargaining,

(D) the current state government industrial relations frameworks provide protection to workers as required under the ILO conventions ratified by Australia,

(E) state public sector workers face particular difficulties in bargaining under state or federal legislation, and

(F) the Act provides the same protections to state public sector workers as it does to other workers to the extent possible, within the scope of the Commonwealth's legislative powers; and

(ii) noting the scope of states' referrals of power to support the Act, what legislative or regulatory options are available to the Commonwealth to ensure that all Australian workers, including those in state public sectors, have adequate and equal protection of their rights at work.

Question agreed to.

Senator CASH (Western Australia) (15:36): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator CASH: The coalition finds this motion extraordinary on a number of accounts. Not all states have opted to refer their industrial relations arrangements to the Commonwealth, and for some states there was only a partial referral. In Queensland, New South Wales, Tasmania, South Australia and Western Australia, public sector employees are not covered by the Fair Work Act because successive Labor governments did not refer powers to the Commonwealth in respect of public sector employees and local government employees. Clearly, if federal Labor were to support this motion, it would be casting a vote of no confidence in former state Labor governments of New South Wales and Queensland. The then Labor state governments made the decision not to refer powers for public sector employees in those states, and therefore the issues raised in this reference are matters for state governments. The coalition will not support this reference, which seeks to undermine the principles of federalism.

The PRESIDENT: The question is that the motion by Senator Waters be agreed to.
The Senate divided. [15:42]
(The President—Senator Hogg)

Ayes.................... 37
Noes.................... 30
Majority.............. 7

AYES
Bilyk, CL
Brown, CL
Carr, KJ
Collins, JMA
Crossin, P
Farrell, D
Feeney, D
Gallacher, AM
Hogg, JJ
Ludwig, JW
Milne, C
Polley, H (teller)
Rhiannon, L
Singh, LM
Sterle, G
Thorp, LE
Waters, LJ
Wright, PL

NOES
Abetz, E
Bernardi, C
Boyce, SK
Bushby, DC
Cormann, M
Eggleston, A
Ferravanti-Wells, C
Heffernan, W
Joyce, B
Madigan, JJ
McKenzie, B
Parry, S
Ruston, A
Sinodinos, A
Williams, JR (teller)

PAIRS
Evans, C
Lundy, KA
Wong, P

Scullion, NG
Cash, MC
Humphries, G

Environment and Communications
References Committee
Reference

Senator MILNE (Tasmania—Leader of
the Australian Greens) (15:44): I move:

That the following matters be referred to the
Environment and Communications References
Committee for inquiry and report by 20 March
2013:

(a) recent trends on the frequency of extreme
weather events, including but not limited to
drought, bushfires, heatwaves, floods and storm
surges;

(b) based on global warming scenarios outlined
by the Intergovernmental Panel on Climate
Change and the Commonwealth Scientific and
Industrial Research Organisation of 1 to 5 degrees
by 2070:

(i) projections on the frequency of extreme
weather events, including but not
limited to

(ii) the costs of extreme weather events and
impacts on natural ecosystems, social and
economic infrastructure and human health, and

(iii) the availability and affordability of private
insurance, impacts on availability and
affordability under different global warming
scenarios, and regional social and economic
impacts;

(c) an assessment of the preparedness of key
sectors for extreme weather events, including
major infrastructure (electricity, water, transport,
telecommunications), health, construction and
property, and agriculture and forestry;

(d) an assessment of the preparedness and the
adequacy of resources in the emergency services
sector to prevent and respond to extreme weather
events;

(e) the current roles and effectiveness of the
division of responsibilities between different
levels of government (federal, state and local) to
manage extreme weather events;

(f) progress in developing effective national
coordination of climate change response and risk
management, including legislative and regulatory

Question agreed to.
reform, standards and codes, taxation arrangements and economic instruments;
(g) any gaps in Australia's Climate Change Adaptation Framework and the steps required for effective national coordination of climate change response and risk management; and
(h) any related matter.

The DEPUTY PRESIDENT: The question is that the motion moved by Senator Milne be agreed to.

The Senate divided. [15:46]
(The Deputy President—Senator Parry)
Ayes....................9
Noes....................51
Majority...............42

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

NOES
Back, CJ
Bernardi, C
Bilyk, CL
Bishop, TM
Brandis, GH
Brown, CL
Bushby, DC
Cameron, DN
Carr, KJ
Cash, MC
Colbeck, R
Collins, JMA
Conroy, SM
Crossin, P
Edwards, S
Eggleston, A
Farrell, D
Fawcett, DJ
Feeney, D
Fifield, MP
Furner, ML
Gallacher, AM
Humphries, G
Johnston, D
Joyce, B
Kroger, H (teller)
Ludwig, JW
Lundy, KA
Madigan, JJ
Marshall, GM
Mason, B
McEwen, A
McKenzie, B
McLucas, J
Moore, CM
Nash, F
Parry, S
Payne, MA
Polley, H
Pratt, LC
Ronaldson, M
Ruston, A
Ryan, SM
Singh, LM
Sinodinos, A
Smith, D
Stephens, U
Sterle, G

Thorp, LE
Urquhart, AE
Williams, JR

Question negatived.

MOTIONS
Uranium Mining
Senator LUDLAM (Western Australia) (15:49): I move:
That the Senate—
(a) notes:
(i) demonstrations will be held in Adelaide, Perth and Darwin to mark the Toro Energy Limited annual general meeting on Wednesday, 28 November 2012,
(ii) the Toro Energy Ltd uranium project near Wiluna, Western Australia is located within a lake bed that floods periodically, and
(iii) the project poses potential risk to cause extinction of flora species and the extinction of or adverse impacts to stygofauna; and
(b) calls on the Government to:
(i) insist that the proponent and the Western Australian Government provide further information, baseline surveys and studies under section 133 of the Environment Protection and Biodiversity Conservation Act 1999, particularly regarding impacts to tecticornia, stygofauna, radiological modelling on the risks of contamination of aquatic ecosystems and water supply for the full life of the mine,
(ii) prevent the extinction of any species or sub-species occurring,
(iii) demand adequate assessment of the potential for contamination of Lake Way from seepage from the proposed tailings storage facility, and
(iv) act to ensure the comprehensive protection of the local environment and of future generations of Australian taxpayers by requiring the highest operational standards and comprehensive and costed closure and rehabilitation.
I seek leave to make a brief statement.
The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator LUDLAM: I thank the Senate. This motion relates to the annual general meeting of a small Adelaide based company called Toro that proposes to open Western Australia's first commercial uranium mine. Senators will be aware that no uranium mine has ever gone into production in Western Australia, and on this side of the chamber we plan on keeping it that way.

This project has been waved through by the state EPA and it is now on Minister Tony Burke's desk. I want to put it, in the strongest terms possible, to Minister Burke to exercise his full obligations under the EPBC Act and to be well aware that Toro is telling investors at various briefings around the place and probably also at the AGM that the federal approvals will be in by the end of this year, no worries; it's all in the bag; no problem; it's going to be a pushover. Minister Burke needs to take this proposal very, very seriously—to stop the clock and make sure that it is not waved through. I want to pay tribute to the campaigners around the country who are demonstrating today against this proposal.

The DEPUTY PRESIDENT: The question is that the motion moved by Senator Ludlam be agreed to.

Question negatived.

Asylum Seekers

Senator HANSON-YOUNG (South Australia) (15:51): I move:

That the Senate calls on the Government to give asylum seekers and refugees the legal right to work.

The DEPUTY PRESIDENT: The question is that the motion moved by Senator Hanson-Young be agreed to.

The Senate divided. [15:53]

(The Deputy President—Senator Parry)

Ayes .......................9
Noes .......................46
Majority ....................37

AYES

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

NOES

Back, CJ
Bilyk, CL
Boyce, SK
Bushby, DC
Carr, KJ
Colbeck, R
Conroy, SM
Edwards, S
Farrell, D
Feeney, D
Furner, ML
Humphries, G
Ludwig, JW
Madigan, JJ
Mason, B
McKenzie, B
Moore, CM
Parry, S
Pratt, LC
Ryan, SM
Smith, D
Sterle, G
Urquhart, AE

Question negatived.

COMMITTEES

Environment and Communications

References Committee

Reference

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and
Workplace Relations) (15:56): I seek leave to make a brief statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator JACINTA COLLINS: Thank you, Mr Deputy President. It seems that with respect to an earlier vote, which was business of the Senate notice of motion No. 3, the government's position was incorrectly reflected to the chamber and I seek to have that vote recommitted.

Leave granted.


The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: I simply say it could happen to anyone.

The DEPUTY PRESIDENT: I put the question that motion No. 3 moved by Senator Milne be agreed to.

Question agreed to.

Community Affairs References Committee Reference

Senator DI NATALE (Victoria) (15:57): I seek leave to amend business notice of motion No. 4 standing in my name for today, proposing a reference to the Community Affairs References Committee on air quality, before asking that it be taken as a formal motion.

Leave granted.

Senator DI NATALE: I move the motion as amended:

That, noting that work is currently underway towards the development of Australia's National Plan for Clean Air through the Council of Australian Governments, the following matter be referred to the Community Affairs References Committee for inquiry and report by 16 May 2013:

The impacts on health of air quality in Australia, including:

(a) particulate matter, its sources and effects;
(b) those populations most at risk and the causes that put those populations at risk;
(c) the standards, monitoring and regulation of air quality at all levels of government; and
(d) any other related matters.

Question agreed to.

BILLS

Biosecurity Bill 2012
Inspector-General of Biosecurity Bill 2012

First Reading

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:58): I move:

That the following bills be introduced:

A Bill for an Act relating to diseases and pests that may cause harm to human, animal or plant health or the environment, and for related purposes.

A Bill for an Act to provide for the appointment of an Inspector-General of Biosecurity, and for related purposes.

Question agreed to.

Senator JACINTA COLLINS: I present the bills and move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and
I table the explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

*The speeches read as follows—*

**BIOSECURITY BILL 2012**

**Second reading speech**

Australia's unique pest and disease status helps to protect our environment, human health, the wellbeing of our domestic animals and our way of life.

Each and every day, Australian Government biosecurity officers facilitate the movement into and out of Australia of tonnes of goods, thousands of passengers, and many more thousands of parcels and mail items.

Yet the Quarantine Act 1908, from which those officers draw their powers, was designed to suit a vastly different time and operating environment.

It was a time when every point of entry into the new Dominion of Australia was a seaport. A time when the threat of diseases such as smallpox, plague, cholera and leprosy were at the forefront of policy makers' minds and those of the community.

The capacity for people and goods to move freely is an essential part of our modern way of life; but presents different biosecurity risks than were ever canvassed in 1908.

People and cargo move from one side of the world to another within 24 hours, transported in air and sea craft that were unimaginable in 1908.

Australia's biosecurity system needs to be underpinned by a modern and effective regulatory framework to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

**Quarantine Act**

The century old Quarantine Act has been amended no less than 50 times. Overall, Parliament has helped ensure the legislation underpinning the biosecurity system has kept pace with a changing world.

But while the legislation has served us well, it has become cumbersome to administer and difficult to interpret.

We see this through:

- complex and difficult to administer co-regulatory provisions
- considerable gaps in the process for managing biosecurity risks at first ports of entry; and
- multiple and overlapping powers to manage goods of biosecurity risk.

A new regulatory framework is now needed. New legislation is needed to provide for a safe and seamless transition of people and goods across Australia's borders.

It also needs to be more responsive to the threat of communicable diseases; while avoiding unnecessary burden on international passengers and trade.

**Beale review**

Prior to 2008, a spate of serious biosecurity events occurred, including:

- the outbreak of foot and mouth disease in the United Kingdom
- bovine spongiform encephalopathy (or "mad cow disease") in Europe, Japan and North America
- the emergence of the H5N1 strain of avian influenza
incursions of several exotic pests and diseases in Australia such as the European house borer, sugar cane smut, citrus canker and khapra beetle, and of course the well remembered 2007 outbreak of equine influenza in Australia which the Government of the day said would never happen.

Against this context, the Government commissioned a review of Australia’s quarantine and biosecurity system, forming an independent panel of experts chaired by Mr Roger Beale AO. The panel's report—One biosecurity: a working partnership (also known as the Beale review)—and the Australian Government's response was released on 18 December 2008.

The panel made 84 recommendations to enhance Australia's biosecurity system; focussing on a partnership approach to managing biosecurity risks and biosecurity decision-making based on risk and evidence.

The Beale review recommended a new Biosecurity Act be developed to replace the Quarantine Act, drawing on a broader set of the Commonwealth's Constitutional powers and providing for modern and effective management of biosecurity risks. This Bill addresses this recommendation and will enact 15 related legislative recommendations of the Beale review.

**Biosecurity Bill**

The Biosecurity Bill 2012 will provide us with a modern framework that allows the Australian Government to make biosecurity risk management decisions that are based on science and evidence. It will allow us to protect our unique biosecurity status, our citizens and our industries from pest and disease threats; as we have been since 1908.

Five broad principles underpin the Biosecurity Bill. These are:
- managing biosecurity risk
- improving productivity
- strengthening partnerships
- sound administration; and
- increasing transparency.

Managing biosecurity risks Identifying, assessing and managing risk is at the foundation of our biosecurity system. The appropriate management of risk is strongly supported by this new legislation.

In 2002, the Primary Industries Ministerial Council agreed that the policy framework surrounding ALOP, including its expression as "very low, but not zero", and the practical guidelines for risk analysis which illustrate the concept by way of a risk estimation matrix, adequately met Australia's needs.

This conservative level of protection acknowledges that we have a lot to protect; but that zero risk is not achievable.

Zero risk would mean no tourists, no immigration, no imports and as a result, no exports. Zero risk is not feasible.

To provide certainty to administrators, our trading partners and the community, the Biosecurity Bill expresses Australia's Appropriate Level of Protection.

The Bill includes mechanisms to more clearly identify risks across the biosecurity continuum—offshore, at the border and onshore—and will manage these risks using a broad range of Commonwealth powers.

In relation to risks posed to human health, the Quarantine Act was enacted before the considerations of individual rights and personal freedoms we have today. Within the Bill, the process for managing the threat of a serious communicable disease to human health will be better aligned with modern science relating to treatment and management of such diseases. It will also provide for consideration of personal freedoms and rights to review in human health biosecurity decision-making.

**Improving Productivity**

The Bill will help to ensure the regulatory framework is simple, clear and that regulatory burden is commensurate with the level of risk posed by the importer and/or their goods.

Making the regulatory framework easier to engage with will not only help to improve productivity at our ports, it will encourage compliance and therefore drive better biosecurity outcomes.
The Bill will facilitate modernising overly complex regulatory provisions and administrative practices under the Quarantine Act. Areas of improvement include:

- the management options that may be covered by an approved arrangement will be expanded, processes simplified and clarified
- the Bill provides that goods become automatically subject to biosecurity control on entering Australian territory; and
- the Biosecurity Bill will now cover the field for goods imported into Australia, where additional measures to those established by the Commonwealth will not be able to be applied by states or territories; providing certainty to international trading partners, importers and industry.

These reforms continue to demonstrate the Government's commitment to reducing red-tape whilst ensuring the integrity of Australia's biosecurity system is upheld.

Strengthening partnerships

A central tenet of the Beale review was the need to strengthen the partnership approach to reflect the shared responsibility for biosecurity with stakeholders.

Ultimately, business and industries will be able to take a greater role in managing biosecurity risks—where it is appropriate to do so—with support and regulatory oversight from the Australian Government. In doing so, there will be a more appropriate level or intensity of intervention from the government.

Such arrangements and partnerships enabled by the new Biosecurity Bill will strengthen the relationship between stakeholders and the government.

The Intergovernmental Agreement on Biosecurity demonstrates the desired outcome of a partnership approach to biosecurity. The agreement signed by the Prime Minister in January 2012, between the Commonwealth and all state and territory governments—except Tasmania—is another key achievement envisaged by Beale.

The Biosecurity Bill continues this intent through providing expanded onshore powers for the Commonwealth to cooperatively manage and address pest and disease incursions. Provisions such as the ability to issue biosecurity control orders and the establishment of biosecurity zones enhance the powers available to the Commonwealth to address biosecurity risks within or across jurisdictions, in a consistent way. Particularly where state and territory government regulations are not harmonised or are absent.

Sound administration

As a regulator, there is a requirement and expectation that sound administrative procedures are upheld. This is essential to ensure that stakeholders:

- are aware of their responsibilities in managing biosecurity risks
- understand the legislative requirements they need to meet; and
- recognise the potential consequences if they are non compliant.

The Biosecurity Bill will also provide the Director of Biosecurity with general administration of the legislation. The Director can offer practical guidance in situations where there are multiple ways to interpret the law or if there is ambiguity. This will help build the community's confidence in the fair administration of the biosecurity system.

The new legislation further provides a modern and graduated compliance regime. This will allow for a proportionate response to a non-compliance incident. The Bill maintains the existence of an infringement notice scheme for high volume, low complexity offences; for example for passengers in airports.

However, it also introduces an enforceable undertaking scheme and a civil penalty regime as an alternative to criminal penalties. The introduction of a civil penalty regime alternative—in addition to existing criminal offences—provides the greatest opportunity to take compliance action in a graduated and appropriate way, reflecting the significance of the non-compliance and the level of risk posed.

Increased Transparency

A key principle from the Beale review and of government policy is to increase the transparency
of the biosecurity system for clients and stakeholders, including trading partners, in the assessment and management of biosecurity risks.

Ensuring that processes and decisions are transparent, open and reviewable where appropriate, provides assurance to clients and stakeholders and demonstrates the integrity of the system; building community confidence.

The Biosecurity Bill will better articulate the role of the Director of Biosecurity and the Minister to improve confidence in scientific and operational decision making processes.

The Bill establishes a process for Biosecurity Import Risk Analyses. The Director will be required to take into account Australia’s Appropriate Level of Protection in conducting risk assessments for the importation of goods.

Science based biosecurity decision making has been the policy of successive Australian Governments.

This continues to demonstrate the focus on biosecurity risk management and supporting scientific and operational decision making, whilst providing appropriate oversight and review mechanisms; in conjunction with the proposed Inspector-General of Biosecurity Bill 2012.

Conclusion

This Bill is several years in the making. Consultation draft chapters of the Bill have been released progressively since early July 2012 and the Government is grateful for the feedback that has been provided.

After engaging with industry, state and territory governments, environment groups, health professionals, the general public and our trading partners—the Biosecurity Bill 2012 represents a comprehensive modernisation of Australia’s biosecurity legislation.

The Bill directly addresses the Australian Government's commitment to reform of Australia's biosecurity system. It reaffirms our commitment to the Beale review recommendations to develop new biosecurity legislation.

Australia's biosecurity system is world-class.

The Australian Government employs and works with some of Australia’s most knowledgeable and experienced plant scientists, veterinarians and medical and clinical experts.

These people are available to our biosecurity officers to provide current advice and guidance on the risks posed by the movement of people, aircraft, vessels and goods.

This Bill will ensure Australia’s biosecurity system can continue to respond to future changes that this changing world presents and the challenges and opportunities that come with those changes.

INSPECTOR-GENERAL OF BIOSECURITY BILL 2012

Second reading speech

Australia's biosecurity system

Australia’s biosecurity system ensures good biosecurity outcomes are realised through Australia’s activities as an exporter and importer of goods.

Australia’s economy and environment benefit significantly from a strong biosecurity system. Australia has enjoyed a high degree of protection from biosecurity risks based on natural advantages of relative geographical isolation, the absence of shared land borders and a border-focused system of biosecurity.

These advantages have meant that the environment has been free of many pests and diseases common elsewhere and has positioned Australia well to prevent their entry into the ecosystem. The freedom of the agricultural, fisheries and forestry sectors from the most destructive pests and diseases confers a higher degree of quality on Australia’s exports.

Australia’s biosecurity system has become increasingly complex. With increasing biosecurity risk there is a need to ensure consistent, systematic processes for oversight and continual improvement. The demonstration of integrity in the biosecurity system and review of the quality of processes is vital.

Our system put to the test

In the years preceding 2008, a spate of biosecurity events occurred. This included:
the outbreak of foot and mouth disease in the United Kingdom
bovine spongiform encephalopathy—or "mad cow disease"—in Europe, Japan and North America
the emergence of the H5N1 strain of avian influenza; and
more significantly, Australia's biosecurity system was put to the test in 2007 with the outbreak of equine influenza in Australia.

Against this backdrop:

- complexity is constantly increasing in biosecurity risk management as new and different products arrive from a wider variety of countries
- clients and stakeholders are continually seeking greater levels of assurance on the effectiveness of Australia's biosecurity system
- there is a growing demand from international trading partners to access Australian markets
- Australian businesses are seeking access to a greater number of overseas markets
- Australian consumers are demanding access to a greater variety of goods; and
- tighter timelines in logistics chains is increasing the pressure on border agencies to process goods more rapidly.

Reviews of Australia's biosecurity system
Australia's biosecurity system has been subject to review several times. Recommendations made for improvements to the way it operates started with the Nairn Review in 1995.

In response to the August 2007 outbreak of Equine Influenza in Australia, the 2008 Equine Influenza Inquiry was conducted by the Honourable Ian Callinan AC.

A key recommendation of the inquiry was the establishment of the Inspector-General of Horse Importation. The inquiry reported that regular checking and reporting on the compliance of biosecurity measures needed to be conducted by an individual external to the biosecurity system.

At the time, this was seen by Callinan as critical in the need for independence, detachment and the restoration of industry and public confidence.

This was reaffirmed in the 2008 independent review of Australia's quarantine and biosecurity arrangements—One biosecurity: a working partnership—also known as the Beale review.

The Australian Government commissioned an independent panel of experts chaired by Mr Roger Beale AO to conduct a comprehensive review of Australia's quarantine and biosecurity systems. The Beale review found that Australia's biosecurity system operated well, but could be improved.

It proposed significant reforms to strengthen the system by revising legislative arrangements and improving governance arrangements, transparency, timeliness and operations across the biosecurity continuum. In total, the panel made 84 recommendations.

The Panel considered that independent audit and review provided invaluable assistance in verifying the performance of individual programs and provided an objective overview of the system. It saw the creation of a position to conduct independent audit function, to assess activities along the biosecurity continuum, as critical.

Recommendation 20 of the Beale review sought that a statutory office of the Inspector-General of Biosecurity be established that will audit and report on the performance of the biosecurity system. This Bill directly addresses this recommendation.

This Bill will also enact two related legislative recommendations of the Beale review:

**Inspector-General of Biosecurity Bill**

The Inspector-General of Biosecurity Bill 2012 establishes the statutory office of the Inspector-General of Biosecurity. It defines its role, functions and powers.

The Inspector-General will report directly to the Agriculture Minister. The office is independent from the regulator and the Director of Biosecurity.

The Inspector-General of Biosecurity will undertake independent audit and review functions focused on biosecurity systems and processes.
The office ensures that biosecurity processes are transparent and accountable.

In addition, the statutory position will perform an important role ensuring the integrity and transparency of the Biosecurity Import Risk Analysis process. Stakeholders will have the opportunity to appeal where they believe there was a significant deviation from the Biosecurity Import Risk Analysis process that adversely affects their interests.

Not only will the Inspector-General ensure transparency and integrity in the biosecurity system more broadly, the Bill also establishes a number of powers to ensure transparency in the way the role is carried out.

Conclusion

The Inspector-General of Biosecurity Bill 2012 is an important legislative reform. Such a position has been recommended in numerous reviews and inquiries over the last 17 years.

The Bill directly addresses the Australian Government's commitment to reform of Australia's biosecurity system. It reaffirms our commitment to the Beale review recommendations to implement a statutory position of the Inspector General of Biosecurity.

It introduces provisions that enhance the transparency of Australia's biosecurity system. It ensures independent review of the system's processes and activities to provide a high level of assurance to clients and stakeholders.

By having a dedicated office to review the performance of functions and the exercise of powers by the Director of Biosecurity, all Australians can expect an efficient, modern and robust biosecurity framework.

That is what this Bill provides.

Along with the proposed Biosecurity Bill 2012, the two Bills provide a strong and sound new biosecurity regulatory framework. This provides the Australian Government modern and comprehensive legislation to continue to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health, the environment and the economy.

Australia's biosecurity system is world-class. This new Bill is about modernising our independent review and verification mechanisms of the system and creating a responsive and flexible operating environment to ensure that world-class standing into the future.

**The DEPUTY PRESIDENT:** In accordance with standing order 111, further consideration of these bills is now adjourned till 5 February 2013.

**MOTIONS**

**African Anti-homosexuality Legislation**

**Senator HANSON-YOUNG** (South Australia) (16:00): I seek leave to amend general business notice of motion No. 1041, standing in my name for today, relating to anti-homosexuality legislation in Africa. I have circulated the amendments to the chamber. I also note that I have added Senator Pratt's name as a co-mover of this motion.

Leave granted.

**Senator HANSON-YOUNG:** I move the motion as amended:

That the Senate—

(a) notes with grave concern:

(i) the Anti-Homosexuality Bill in Uganda, re-tabled in 2012, which would increase the penalties imposed in Uganda for homosexuality, and

(ii) the Same Sex Marriage (Prohibition) Law in Nigeria, passed by Nigeria's Parliament but not yet signed into law, which prohibits same-sex marriage and civil union by imposing penalties, including imprisonment of 14 years, and prohibits the activities of gay couples and organisations by imposing penalties, including imprisonment of 10 years; and

(b) supports the Australian Government continuing to urge the governments of Uganda and Nigeria to uphold the human rights of lesbian, gay and transgender people in accordance with their commitments under international law.

Question agreed to.
**COMMITTEES**

Foreign Affairs, Defence and Trade Joint Committee Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (16:01): At the request of Senator Stephens, I move:

That the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Thursday, 29 November 2012, from 9.30 am, to take evidence for the committee's inquiry into Australia's trade and investment relationship with Japan and the Republic of Korea.

Question agreed to.

Rural and Regional Affairs and Transport Legislation Committee Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (16:01): At the request of Senator Sterle, I move:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to meet during the sitting of the Senate on Thursday, 29 November 2012, from 4 pm, for a private briefing.

Question agreed to.

**NOTICES**

Postponement

Senator RHIANNON (New South Wales) (16:01): by leave—I move:

That notice of motion No. 1069, standing in my name, be postponed until 29 November.

Question agreed to.

**MOTIONS**

Australian Peacekeepers

Senator WRIGHT (South Australia) (16:02): I move:

That the Senate—

(i) Australian peacekeepers make a significant contribution to international peace and security,

(ii) 48 Australians have died on peacekeeping missions overseas, and

(iii) over 19 000 individuals have signed a community petition calling for the 48 Australian peacekeepers who have died in the service of their country to receive equal recognition and be placed on the Roll of Honour at the Australian War Memorial; and

(b) calls on the Government to ask the Council of the Australian War Memorial to consider the community support for including peacekeepers on the Roll of Honour at the Australian War Memorial and make a decision on this matter at its first meeting in 2013.

Question agreed to.

**COMMITTEES**

Scrutiny of Bills Committee Report


Ordered that the report be printed.

Finance and Public Administration Legislation Committee Report

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (16:03): I present the final report of the Finance and Public Administration Legislation Committee on the performance of the Department of Parliamentary Services, together with the *Hansard* records of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator POLLEY: I move:

That the Senate take note of the report.
Today I table the report of the Finance and Public Administration Committee on the performance of the Department of Parliamentary Services. The report is a culmination of an inquiry that has taken the committee well over a year to complete. The committee's inquiry commenced as a result of evidence provided in relation to the sale of two billiard tables in 2010 by the Department of Parliamentary Services. This matter was examined in the committee's interim report and exposed poor asset management practices and the provision of misleading information to the committee during estimates hearings.

The committee's final report covers employment issues in the Department of Parliamentary Services, asset and project management issues, security and information technology issues, the DPS budget, performance reporting and accountability of the DPS to the parliament. The committee has also made a range of recommendations relating to these matters.

Most importantly, the committee has recommended that changes to the standing orders be made so that the Senate Appropriations and Staffing Committee and the House Appropriations and Administration Committee, acting as a joint committee in relation to the DPS, can consider the administration and funding of DPS. The committee considers that the implementation of this recommendation will improve accountability and oversight of the department. The committee also considers that the DPS should improve the standard of its performance reporting through its annual report and, in particular, its reporting on the condition of the building and the impact of budget constraints on matters such as maintenance. The committee believes that this should be done through improvements to the DPS annual report and biennial reporting on the building itself.

The inquiry undertaken by the committee has been difficult. The committee received information on individual cases concerning bullying and harassment. The committee has not adjudicated on these cases but has used them to build a picture of the employment environment in the DPS. The committee has also used information from staff surveys and a Comcare order to aid its deliberations on employment issues.

During the committee's inquiry, there were some major developments within the DPS. As a result of the review of assets disposal practices following the sale of the billiard tables, the Department of Parliamentary Services has implemented more rigorous disposal policies for assets which may have a heritage value. A survey of items which may have heritage or cultural significance to Parliament House has been undertaken and new items have been identified. This will improve asset management of these items.

A new secretary of the DPS, Ms Carol Mills, has been appointed. Ms Mills has commenced a restructure of the department in order to improve the delivery of services. The Department of Parliamentary Services is also developing a conservation management plan and a strategic asset management plan for Parliament House. The committee welcomes these developments and will continue to monitor the changes at future estimates hearings. In addition, the review of information and communication technology initiated by the Presiding Officers has reported major changes to the provision of ICT services to the parliament are underway, including the creation of the new position of chief information officer.

Finally, while the report focuses on the problems and deficiencies in the DPS, the committee would like to reiterate that the vast majority of Department of
Parliamentary Services employees undertake their duties with professionalism, dedication to the support of the parliament and commitment to preserving Parliament House and its contents for the next 175 years and beyond.

I would also like to place on record and reiterate that this was a very difficult inquiry, but one that I feel very satisfied with. I am sure that I speak for the whole committee in the final report, so I urge people to read it. I would particularly like to thank the secretariat and the team for their hard work and their commitment to ensuring that we have produced the most complete and highly professional report possible. I also thank the committee members who participated and the many witnesses and all the submissions provided. I place on the record our appreciation for the effort that went in.

Senator FAULKNER (New South Wales) (16:08): I appreciate this opportunity to speak very briefly on the final report of the Senate Finance and Public Administration Legislation Committee inquiry into the performance of the Department of Parliamentary Services. In the very limited time available to me this afternoon, I want to stress the significance of this inquiry and the importance of its recommendations. I believe that this was an essential inquiry for the Senate committee system to undertake. By just simply holding this inquiry and listening to and treating seriously the concerns of so many DPS employees and others who have a very genuine interest in this building, much has already been achieved.

While I do not have time to speak in detail about the myriad complex issues canvassed in this report, suffice to say significant change in DPS, which I have previously accurately described as the worst administered government department I have seen in the time I have served in the parliament, is long overdue. I am delighted that the committee, its inquiry process and this report have been the catalyst for change in DPS. There is much to do, but we are starting to right the wrongs.

I also want to acknowledge the courage of those who have given evidence or submissions, including a significant number of confidential submissions. They have been absolutely critical in exposing the toxic culture that was allowed to develop in the Department of Parliamentary Services. The finance and public administration committee's secretariat has produced two outstanding reports—the one tabled today on behalf of the committee by Senator Polley and the interim report into the performance of DPS which preceded it. I too thank all those involved for their efforts. I know that they have made a real difference. I think responsibility now rests with the government—but not only the government, all of us who serve in the parliament—to ensure that the recommendations in this report are accepted and the positive changes we have seen in DPS in recent times continue into the future. I commend the report to the Senate.

Question agreed to.

Economics References Committee Report

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (16:12): I present a report of the Economics References Committee on the post-GFC banking sector together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be adopted.

Senator BUSHBY: This report builds on the Senate Economics References Committee's work over recent years on the
effects that the global financial crisis has had on Australia's financial sector. In particular it follows on from the major inquiry into banking competition that the committee completed in May last year. Most of the recommendations made in that report have yet to be implemented, despite their impact in terms of increasing competition in the banking sector being just as strong now as when the report was delivered.

This year's inquiry focused on a number of additional important consequences of the GFC. One issue examined was how Australian banks' costs of funds had changed, an argument regularly put forward by the sector as to why loan rates diverge from movements in the Reserve Bank's official cash rate. It is evident that funding costs have remained elevated since the crisis as risk has been more appropriately priced and banks seek to secure more stable sources of funds. Expected falls in costs as funds sourced at high cost during the crisis are refunded do not appear to be happening due to ongoing economic uncertainties globally and the funding mix shift towards deposits and longer-term wholesale funding which retain a need to pay a premium. Despite this conclusion, this is a subject that warrants close ongoing scrutiny, given the implications for millions of Australians.

Another important topic covered was Basel III, the internationally agreed package of reforms that aim to improve banking regulation and supervision in a post-global financial crisis environment. Basel III is unlikely to be well known or even widely understood outside of banking and financial circles. But the changes that it introduces are important and warrant a public discussion. My concern with these changes has always been that they will introduce answers with consequent costs for Australians to problems that we in Australia have never experienced.

While the committee accepts that Australia cannot deviate too much from what the rest of the world is doing and that the Australian Prudential Regulation Authority has done an effective job at minimising unnecessary impacts on Australia, we are moving more quickly than many other jurisdictions to implement Basel III. The need for this haste is at first glance questionable. Nonetheless, the committee also accepts that the objectives of Basel III are appropriate, given international events in the financial sectors, and that, despite increasing costs to banks and hence consumers, Australian banks are well placed to meet the new requirements.

The implementation of Basel III will help ensure that Australia's banks remain safe and that risk is being prudently managed. Whether the best balance has been achieved between solvency/stability of the system and the desirability of a competitive and lean banking sector delivering credit to Australians at the best prices, I guess time will tell. There do, however, appear to be some commercial implications flowing from the accelerated implementation in Australia, and recommendations have been included in the committee's report regarding added transparency to address this issue, at least in part.

The issues raised during the course of this inquiry also lead to the conclusion that there is a need to further consider the current state of Australia's financial system as a whole as well as the direction it is headed in the longer term. Accordingly, the main recommendation of the committee is that an independent root and branch inquiry into Australia's financial system is needed. The last such inquiry was the 1997 Wallis inquiry. The nature and regulation of the financial system has changed significantly since that time. Australia's banking sector is in transition following the GFC and as a
result of impacts of the development of new technologies and products.

While this transition is underway, a clear opportunity to conduct an independent inquiry is available and is needed. Although Australia avoided the worst of the GFC, this should not be allowed to result in complacency about the structure and performance of our financial system. The roles that financial institutions perform are far too important to the health of the broader economy for the sector not to be reviewed at regular intervals. To ensure that the system that we have, even if it has served us well under stress, is the most appropriate and best system as we move forward.

There are a number of critical questions that need to be considered and addressed. The sustainability and implications of the funding mix used by Australian banks is a key issue. Related to this are evident questions about the interaction of the banking and superannuation sectors. Australia's pool of superannuation savings totals $1.4 trillion and is expected to reach $3 trillion by 2020. Yet Australian banks have to borrow significant sums from offshore. An inquiry could consider whether this is optimal and, if it is not, explore ways to reach a better outcome.

The explicit and implicit government support for financial institutions should also be considered, as should means to encourage greater competition, greater choice and better outcomes for consumers. Essentially, a comprehensive debate needs to be had about what the financial system over the next 15 years should look like and what changes are needed to help it achieve that outcome.

I turn now to another distinct issue that featured prominently throughout this inquiry; certainly, it was the most controversial issue. At the height of the GFC, the Commonwealth Bank acquired Bankwest. The committee received sad and distressing submissions from many former small business and property developer customers of Bankwest who ultimately had their loans terminated after the takeover. Besides losing their business, many also lost their home and were made bankrupt, and now rely on family, friends and government assistance.

In examining these cases, it is evident that there are a number of similarities in what occurred in the lead-up to the funds being terminated. The borrower's businesses were revalued and assessed to be worth significantly less than what they had been when the loan was entered or upon revaluation prior to the GFC. High rates of penalty interest were imposed in many cases, overwhelming the borrower.

In the opinion of many borrowers, Bankwest was unwilling to work through the issues and receivers were instead appointed. Separate issues about the conduct of receivers were also received. Of course, there are two sides to every story. The sectors and regions involved were generally experiencing tougher times, and the aftermath of the GFC cannot be dismissed. Banks also are not charities. They have responsibilities to their depositors and shareholders, and should direct credit to where it will be the most effective. Nonetheless, the committee sympathises with the experiences of many borrowers who faced and continue to face difficult and sometimes impossible battles to have their cases reviewed or to seek a fair assessment of their argument against decisions of the bank or of the receiver. There is no doubt that, collectively, the individual cases raised before the committee pose serious questions about the power imbalance between borrowers and lenders in circumstances where factors sometimes outside the control of the borrower trigger technical or more serious defaults under loan agreements.
A Senate committee is not a court, and this point was emphasised by the committee throughout the hearings and in the report. Individual disputes will need to be considered through appropriate processes. What the committee has done, however, is develop a number of proposals to help ensure that future dealings between small businesses and banks are more equitable and that maybe the process for individual dispute resolution might better enable aggrieved borrowers to have their arguments fairly and more cost-effectively heard.

The committee has for sometime believed that an industry code of conduct that specifically deals with small business lending needs to be developed. The Bankwest cases further reinforce the need for action to be taken on this front. The committee has also identified ways to improve the ability of small businesses to have their disputes with banks and receivers externally reviewed.

The experiences of these Bankwest customers should lead to some straightforward but fundamental changes to how banks deal with small businesses. The sector has both the obligation and the opportunity to demonstrate that it takes concerns about small business financial issues seriously and that it is willing to develop a solution. Personally, I am not a fan of government regulation of legitimate private sector activity except where it is absolutely necessary. So I stress to the banks and to the financial sector that failure by the sector to embrace the committee's recommendations to voluntarily move to a small business code of conduct addressing these types of issues will only strengthen the public case for intervention through greater government regulation in this area.

I would like to thank all of the individuals and organisations who assisted the committee during this inquiry. I also thank my colleagues on the committee for their work over the past year and for their contributions to the report. Finally, I would like to pass on my sincere thanks to the secretariat: Tim Bryant, particularly Colby Hannan, and also Kate Campbell for all their hard work and understanding. I commend this report to the Senate.

Senator WILLIAMS (New South Wales— Nationals Whip in the Senate) (16:21): I would like to add some comments to what my colleague Senator Bushby has just contributed.

I have made some additional comments and recommendations to this inquiry. Senator Bushby emphasised that we are not a court, and how true that is. Some of the evidence that came forward was very concerning. People were distressed. They are under enormous financial pressure and, hopefully, this inquiry and the recommendations will bring this to the attention of both sides in this whole financial game, whether it be the banks or the lenders.

I have concerns about section 420A of the Corporations Act. There was a property owned by a Mr Jim Neale in Sydney. It was valued at $4 million. It was sold for, I believe, $645,000 and after the sale was valued at $3.58 million. Section 420A says that those receivers in place of controlling those assets must sell at the best possible market price. I asked ASIC at Senate estimates if they have ever charged anyone under section 420A, and they are coming back to me on that. I think section 420A is a toothless tiger and it needs addressing so that when assets are cashed up the best possible price is achieved for those people who are being sold up.

I have huge concerns about Bankwest and when the Commonwealth Bank took over Bankwest. There were lots of arguments
saying that Bankwest had a clawback system. It was in their interests to impair loans so that HBOS, Halifax Bank of Scotland that fell over in the UK, would have to reimburse the Commonwealth Bank for the price they paid for Bankwest, whereas Commonwealth Bank and Bankwest said this was not the case. I suggest that ASIC look at the whole transaction and see that the Corporations Law has been abided by all the way.

There is a lot of pressure to lend. No doubt a lot of bank managers and loan officers are under a lot of pressure to meet targets. This is concerning, and evidence from the Finance Sector Union is saying that when a loans officer has a target set to lend so much money a month, even if they go on holidays or are sick, they still must meet those targets. That can be very difficult at this time with the lack of business confidence that, sadly, we are seeing in many places in Australia now. We know that there is a lot of debt. There must be a limit to it, and so a lot of those workers are under enormous pressure.

One concern I have is the penalty interest rates when someone defaults on their loan. One customer at Bankwest was paying around eight per cent. When they defaulted, their interest rate went to 18 per cent. That is a huge increase. It appears to me that when you are down, they put the boot in. The point I am making is: if someone owes the bank a million dollars and their assets are $1.2 million, they put them on penalty rates of 18, 20 or 25 per cent. Nothing is regulated in that respect, then they sell the asset for a million dollars. If it takes 12 months to clear the decks, then their debt may have gone up another $200,000 or $300,000, and that is tax deductible to the bank. In that situation, banks can dictate their tax deductions. What other business can do that in Australia? This is something I think needs addressing: if you are paying eight per cent and you default, there should be a maximum of no more than an increase of 50 per cent on eight per cent—in other words, 12 per cent. We see interest rates go so high when people least of all in their business life do not need to have the boot stuck into them.

Low doc loans are very concerning. I tabled a statutory declaration to the committee this week where the loan application form had been falsified by the bank manager. Figures put in were not true. Assets and investments were simply not true, and it is clear that through the work of Ms Denise Brailey that they have been fudging the books, the applications—this is to get the loans over the line, to meet those targets the loans officers have to meet. I raised this with ASIC in Senate estimates. They said that is fraud. I asked ASIC to work with Denise Brailey, whose organisation is the Banking and Financial Consumers Support Association, to look at those and, if necessary, make a recommendation to the Director of Public Prosecutions.

We had one case of GST where the receiver had sold the asset for $9 million, and the receiver was paid $9.9 million. It attracted GST. That money went to the bank, but the bank did not want to hand that $900,000 back to go to the Australian Taxation Office. That is a very serious issue, and information I have received from phone calls and others are saying that this is not uncommon. The Australian Taxation Office should look at this very issue.

I will just raise this point in closing: Under the GST Act, liquidators, receivers, managers and administrators are all collectively referred to as "representatives of incapacitated entities." Such representatives are personally liable for any GST payable on taxable supplies that are made by a company post appointment. The ATO ranks as an unsecured creditor in respect of pre-appointment liabilities. This means
that the ATO is at risk that it will not recover pre-appointment GST liabilities in full. However, if a representative is personally liable for the GST liability that arises post appointment, the ATO is likely to recover its GST liability on post appointment supplies in full.

This situation needs to be clearly spelt out to the insolvency practitioners industry.

I fully support a full and thorough inquiry into the finance industry in Australia. It has been a long time since the Wallis inquiry. There are many issues I could talk about, be it support from the government to non-ADIs, which would obviously reduce competition. We know the costs of the banks have risen. There is no question about that; hence, their movements are not in parallel all the time with the Reserve Bank cash rate movements.

In closing, I would like to thank Senator Bushby for his chairing of the committee and his interest and input; to the staff, as he has mentioned; and to the other senators who were involved. To those who gave us evidence and submissions: many of you have had an extremely tough time. I hope you get over those tough times and your future is brighter financially and you can cope with the mess you have been in. There have been some terrible situations: Paul French at Cobar with his hotel—sold up for about the price of the poker machines. When I phoned the bloke, he was off to the Royal Prince Alfred Hospital to have his three-monthly check that his leukaemia is still in remission. Tough times for many—and I thank those people involved. The senators and the staff are doing a wonderful job.

**Senator EGGLESTON** (Western Australia) (16:29): I want to make a few additional remarks to those of senators of Bushby and Williams in regard to this report. The inquiry was essentially in two parts. The first examined the impact of the global financial crisis on the Australian banking sector, and in that we were reminded of just how resilient the Australian economy was. Senator Bushby has very largely dealt with that section of the inquiry. The second aspect of the inquiry, which interested me, as it did Senator Williams, was that the committee heard often startling and alarming evidence about the conduct of some players in Australia's financial sector around the time of the crisis and following it in dealing with mortgage holders. In submission after submission and testimony after testimony the committee received firsthand accounts of what can at best be described as unprofessional conduct and at worst criminal behaviour worthy of serious investigation by Commonwealth authorities. This was particularly with reference to the takeover of Bankwest and the use of so-called low doc loans.

The committee heard countless claims of how loan documents were altered and falsified; of foreclosure on multimillion dollar properties, as Senator Williams has referred to, literally overnight; of contradictory information and at times blatant lies, at other times a lack of action by the very authorities that were charged with protecting consumers and preventing misconduct. Low documentation or low doc loan facilities have clearly been misused and it would seem at times perhaps criminal activity in the form of fraud has occurred with the use of these facilities. I have to say that while there is no doubt that low doc loans fill an important role in accessing a proportion of consumers who would otherwise struggle to secure a loan, it was equally clear during the inquiry that the opportunity for abuse of this facility has been seized upon by some very unscrupulous operators. It is abundantly clear to me that everyday Australians have been wronged by organisations and people whose modus operandi raises questions about their ethics, and the question, as I said, of criminal
behaviour arose on more than one occasion when documents were changed after they had been signed by the individuals.

Of the final 20 recommendations which were made, the most important was the recommendation for a widespread and independent root and branch inquiry into Australia's financial system. That has been referred to by Senator Bushby and I agree that it is very important and timely that such an inquiry is proceeded with.

In closing, I would like to thank those individuals who made submissions and appeared before the committee giving firsthand accounts of their experiences. I make particular mention of Ms Denise Brailey and Mr Geoff Shannon, who have proven to be competent advocates for those who have been wronged. Their selfless commitment is most commendable in the face of what too often was a David and Goliath battle.

Question agreed to.

Finance and Public Administration References Committee

Report

Senator RYAN (Victoria) (16:33): I present the report of the Finance and Public Administration References Committee on Medicare funding for hyperbaric oxygen treatment, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator RYAN: I move:

That the Senate take note of the report.

Earlier this month a change to the Medicare Benefits Schedule came into effect that removed Medicare funding for hyperbaric oxygen treatment of non-diabetic ulcers. That may sound obscure to people listening today. In fact it is only for a few hundred people annually in Australia. But if you are one of the people who suffers from non-diabetic ulceration, this treatment has been shown to be of particular benefit for when months and months of very expensive nursing care have failed. No-one disagrees with the concept that we should seek value for money for the money we spend on health care.

No-one seeks to challenge the cost-effectiveness analyses that underlie the assessment of new medical procedures and particularly the assessment of new medications. But in this case the process has broken down. We were presented with submission after submission, many confidential, many from providers of the services and of course from the Medical Services Advisory Committee and the Department of Health, but also, importantly, from the architect of Medicare, Professor John Deeble.

Hyperbaric treatment for various conditions has been on the Medicare Benefits Schedule since its inception in 1984. Medicare funding for hyperbaric oxygen treatment for non-diabetic ulcers is a more recent innovation. It has been effectively on probationary funding for well over a decade now. The reason it was put in in such a fashion was that there was not much evidence for this particular procedure upon it being added to the Medicare Benefits Schedule. But before anyone jumps to the conclusion about how services are funded on the Medicare Benefits Schedule, let me remind them that the overwhelming majority of medical procedures in this country have never had a cost-effectiveness treatment. We do this for new procedures now and we do this for new medications now, but there are many procedures and many treatments for conditions that are on the Medicare Benefits Schedule for which no cost-effectiveness analysis has been undertaken.
They were attempting to collect the evidence for this particular procedure to show whether or not it did in fact save the Commonwealth money, whether it was cost-effective and how effective it was in clinical use for people with these chronic ulcers which often lead to amputations because there is simply no way to treat them. Can I also say that ulcers that are being treated in this fashion are immensely painful for sufferers. Can you imagine having a wound that needs daily or every second daily treatment, an open wound on your leg or foot for months, in some cases years, on end. It has a massive impact not only on quality of life but on your ability to participate in the economy as well.

The troubling aspect of this was that a couple of things occurred at the Senate committee hearing. In particular we seemed to manage to resolve a conflict between the proponents of this treatment and the department of health about how they had measured whether or not it was effective. A system that requires a Senate committee hearing to get the two people to actually agree on how we got to this point means that this process has not worked effectively.

There was debate over whether or not the Medical Services Advisory Committee was considering this as first-line or second-line treatment. The proponents of this care thought they had been assessed as first line, and from reading the documents it seemed that was possible. But when we read the documents in more detail and we had the benefit of an explanation, it became clear that it was appropriately assessed as a second-line treatment. But the proponents of this treatment had never benefited from that interaction with the Department of Health and Ageing or the Medical Services Advisory Committee. They had never had the opportunity to put the questions and have them answered in the way that our committee did. That is a breakdown in the system.

This committee report points out and our second recommendation is that consideration should be given to an independent review mechanism for MSAC decisions in the same way it is now undertaken for PBAC decisions for pharmaceutical benefits. I want to clarify that that review does not overturn a PBAC decision. We are not advocating an appeal mechanism for MSAC decisions; we are simply saying that the review mechanism for the PBAC, which allows an independent person to come in, look at the evidence and send a report back to the originating committee for reconsideration, is a good idea. It probably would have prevented this issue coming before the Senate.

There was some concern about the evidence used in order to make the judgement that this was not cost effective. I want to say two things here. We are in the middle of the design of a trial as well as the collection of data for a trial that will assess whether or not this treatment is cost effective and whether it should stay on the Medicare Benefits Schedule. No witness who came before us said that that assessment should not be undertaken. It seems perverse that we would take this off the Medicare Benefits Schedule pending the collection of that data, even though we know that taking it off the Medicare Benefits Schedule will actually prevent the collection of that data. If this regulation is not reconsidered by the government, we will not be able to see whether or not this particular treatment is effective, because people will not be able to access the treatment supported by Medicare. That is, to me, a circular argument.

I would also note that the data used to assert that this was not cost effective was remarkably small. It was a randomly
controlled trial in the 1990s. Though it did meet the standards set by MSAC, it was of only 16 people. In the complex world of health economics, in order to understand whether or not a treatment is cost effective and clinically effective, a trial of only 16 people does not really give you the data you need. In this case, the Medical Services Advisory Committee did not take into account other data.

I am not a clinician, nor am I a medical expert, but, if we have a service that has been on the Medicare Benefits Schedule for a couple of decades, if we have the data being collected, if the proponents of the service, the patients, and the department of health are having disagreements about when it should have been collected and we are only dealing with a tiny population in another couple of years, it seems to me perverse to try to take a stand on principle and take it off the Medicare Benefits Schedule now. And the reason for that goes to an old saying in health economics, which is that the absence of evidence is not evidence of absence.

I say that because in health economics—which is a bit of a dark art; it is a very complex area dealing with a lot of uncertain information—just because we do not have any evidence to prove something is effective does not mean that we can assert that it is not effective. In the world of assessing new medical treatments and new pharmaceutical benefits, this is a critical thing to keep in mind. If we assert, mistakenly, that we do not have the evidence to prove it is cost effective and therefore we will deny treatment, we could be denying to people for years a treatment that we find out three or four years later is very clinically effective and cost effective. In this case it may also prevent us determining whether it is cost effective, because we will not be able to collect the data. I say again that the overwhelming majority of money we spend through the Medicare Benefits Schedule has never been assessed on a cost-effectiveness basis.

These points were made by Professor John Deeble, the architect of Medicare—a man I think every Australian actually owes something to, not just for their health care but also for saving them tens of billions of dollars over the years. I had the privilege of spending some time with him and having a conversation with him. I would suggest that the report is short, but his submission is even shorter—and I would suggest that people who are interested in this would actually benefit from reading his submission, which is on the committee's website.

I finish by saying that we are simply recommending that the government reinstate this treatment to allow the collection of the data so that in about two years time a true assessment can be made on a trial of more than 16 people and so that, in the meantime, people who are desperate for pain relief and some hope that their condition can be treated—absent an extraordinary intervention like an amputation—can continue to be given that hope.

I would like to thank the committee secretariat who, as always, assisted dramatically. We as senators have the privilege of getting across topics in a very short time and delving into them more deeply than in the other place. We do that with the assistance of an extraordinary secretariat—Christine McDonald and John, who have helped us immensely.

I hope the government takes this report in the way it is intended. We would not want to establish a precedent whereby things can be taken off the Medicare Benefits Schedule just because we do not have the data. I fear that would lead to a lot more popular and a lot more significant treatments being removed that have never been given that
assessment. It is not grounds enough to deny people treatments which have, in some cases, been there for decades. That was a point made by Professor John Deeble, and it one the majority of the committee sticks with.

**Senator POLLEY** (Tasmania—Deputy Government Whip in the Senate) (16:43): I rise to make some comments in relation to the government senators on this reference committee inquiring into Medicare funding for hyperbaric oxygen treatment and to put in perspective the contribution Senator Ryan made here in the chamber this afternoon. I want to make sure that those people who are listening to this debate understand that this is not something that has happened overnight. The funding for this treatment has gone on for over a decade and on three occasions the proponents have failed to meet the criteria for ongoing funding by Medicare.

It was identified over a decade ago, as I said, that a more substantial randomised control trial was needed. But such a trial has not provided the Medical Services Advisory Committee—MSAC—that evidence to date. There is currently a trial being undertaken, and when the trial has been completed the applicants can again seek funding.

In 2011 MSAC assessment of the hyperbaric oxygen treatment for non-diabetic wounds was also scrutinised by the National Health and Medical Research Council, as well as this inquiry. But, again, I can put on the record that government senators support the government's decision to withdraw the Medicare funding for non-diabetic wounds.

Yes, it is easy to come into the chamber, and always easy to play politics because we all have concerns for the health and welfare of our fellow Australians. I think that over 10 years it actually would include the former government, which did nothing to address this issue. So now they come into the chamber and try to paint a picture of how terrible it is that this government, through Medicare, is going to take that funding away. The trial is underway, and when that evidence is provided the applicants can then apply for Medicare funding. That is the way that it should be.

I, too, would like to place on record my appreciation—as all senators have when trying to get their heads around an issue like this—for the support we had from the secretariat. I place my thanks to them on the record and also to those witnesses, not only for the written submissions but also, particularly, to all of those who came and gave evidence.

I would just like to encourage those in the chamber and those who are interested in this issue to read the report that was signed by the Greens, by the Liberals and by Senator
Xenophon, who I am sure is anxiously awaiting the opportunity to make his contribution. But the government senators could not support those recommendations. We support the decision. We are reliant upon MSAC to be the advisory body for the government of the day, irrespective of its political persuasion. We take their advice, and so therefore I urge you to read the dissenting report that has been signed by Senator McEwen and me.

Senator XENOPHON (South Australia) (16:48): Any suggestion that this is about playing politics in relation to hyperbaric treatment must be strenuously challenged. I have great regard at a personal level for Senator Polley, but the government’s approach on this is fundamentally wrong. If anyone is going to be accused of playing politics, accuse me, because I actually put up this resolution, which was co-sponsored by every other non-government side of this chamber—the Australian Greens, the coalition and the DLP. So let us put this in perspective: this is not about politics. This is about a wide range of political views coming together to say that there is something fundamentally wrong with the way the government has withdrawn Medicare funding for those seeking hyperbaric treatment for non-diabetic ulcerative conditions.

It is very clear that a mistake has been made here by the government by withdrawing Medicare funding. It is a penny-pinching, cost-saving exercise that will have significant implications for patients around the country who need this form of treatment that in some cases can be life saving and can actually mean the difference between people requiring an amputation or not. That is what is at stake here, and I am afraid that the government has made a fundamental mistake in the way that they have dealt with this. They should have intervened and they failed to intervene.

If we look at what the Australian Healthcare and Hospitals Association has said, they make it very clear that there has been a flawed clinical pathway followed in the analysis of outcomes and costs, and that the hyperbaric oxygen treatment was proposed as a second-line treatment in the applicants' submission, yet it was analysed as if it were a first-line treatment. There are also fundamental issues here in terms of a denial of natural justice in relation to this withdrawal of Medicare funding. Also, the study that the government relied on—and I will be corrected if I am wrong—was in the order of 16 to 18 patients and undertaken in Scandinavia. One of the authors of the report said, 'I have been misquoted,' effectively. So the logic is fundamentally flawed in what the government has done.

I agree wholeheartedly with the comments of the chair of the committee, Senator Ryan, because I think we did hear some valuable evidence. I think that the devastating blow for this decision made by MSAC and the government's position has been given by Dr Deeble, the architect of Medicare, and a man to whom I think every Australian taxpayer owes a debt of gratitude. He designed a very good healthcare system and has saved literally hundreds of billions of dollars for Australian taxpayers over the years because of the architecture and the design of the Medicare system.

Dr Deeble has made it absolutely clear that the government has made a mistake here. This is a man who has been trusted by both coalition and ALP governments over many years in terms of good public policy in health care. In his quite devastating critique of the MSAC decision and, by extension, the government's maintaining of that position, he has made it absolutely clear that a mistake
has been made. So I would genuinely and sincerely urge the Minister for Health, Minister Plibersek, to reconsider the decision that has been made because it will have on patients across the country could potentially be devastating. This is a line of treatment for people with a non-diabetic ulcerative condition. On average, people only get this treatment after 19.9 months of other treatments not working. It is not a first line of treatment: that is one of the fundamental mistakes that MSAC made in this assessment.

I would urge anyone who is interested in good public health policy to fundamentally reject what MSAC has done and to urge the government to reconsider its position. The consequences of this decision will be that there will be people who will ultimately require more expensive treatment because their conditions will not clear up, whereas with hyperbaric treatment there is a good chance that in many cases their conditions will clear up. There will be people who will require amputations because this treatment is being denied to them. I am very grateful to Dr Williamson from the Royal Adelaide Hospital's hyperbaric treatment unit who wrote to me and approached me about this issue. I am grateful for the good work that he does and that other hyperbaric units do across Australia. The public system does terrific work and there are private hyperbaric units as well.

Fundamentally, a mistake has been made. That mistake has been confirmed by no less than the architect of Medicare, Dr John Deeble, and that mistake must be rectified. The government's approach on this is wrong. I would respectfully urge them to reconsider their approach, and the sooner they do the better off hundreds of patients around the country will be, because otherwise they will be denied a treatment that is often the last resort to solve a chronic health condition that in some cases can, tragically, lead to amputations.

Question agreed to.

The ACTING DEPUTY PRESIDENT (Senator Marshall): Before I call Senator McKenzie, I indicate that the time for debate in this period for the tabling and consideration of committee reports will end at three minutes past five and then I will need to deal with each of the outstanding reports by resolution only.

Treaties Committee Report

Senator McKENZIE (Victoria) (16:54): I present the 131st report of the Joint Standing Committee on Treaties, on treaties tabled in 21 August, 11 and 18 September 2012, and I move:

That the Senate take note of the report.

The Joint Standing Committee on Treaties' Report 131 contains the committee's views on a series of treaties which were tabled on 21 August, 11 and 18 September 2012. Probably the most significant of the treaties examined by the committee in this report is the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP).

ReCAAP represents a regional response to the incidents of piracy in the Malacca and Singapore straits. The treaty became binding on the initial signatories in 2006 and currently has 18 signatories. Piracy in these waters is a significant concern for Australian businesses that export and import by ship. The Minister for Defence, the Hon. Stephen Smith, recently estimated that approximately $130 billion worth of Australian trade passes through these straits each year.

There are a number of ways in which ReCAAP assists authorities local to the Malacca and Singapore straits to combat piracy and armed robbery. ReCAAP
provides the legal basis for the previously mentioned ReCAAP Information Sharing Centre, which:

- ensures the expeditious transfer of information on incidents of piracy and armed robbery against ships to ReCAAP signatories;
- collects, collates and analyses information transmitted by the signatories concerning piracy and armed robbery against ships;
- provides alerts, wherever possible, of imminent threats of piracy or armed robbery against ships; and
- prepares statistics and reports on the basis of information received.

ReCAAP also compels signatories to share whatever information they have about piracy and armed robbery at sea, and compels signatories to assist in either preventing or detecting, arresting or seizing persons, vessels or aircraft involved in piracy or armed robbery at sea.

Australia will benefit from the increased access to information on emerging regional threats related to piracy and armed robbery at sea. We will also become a more visible participant in the task of combatting piracy and armed robbery. Australia will also benefit from access to a regional maritime security network comprising national authorities that are responsible for managing the threat of piracy and armed robbery in our immediate region.


The first of these treaties provides for bilateral extradition arrangements between Australia and Vietnam. Australia does not currently have bilateral arrangements with Vietnam to facilitate extradition, which means that we can only consider extradition requests from Vietnam under multilateral conventions to which we are both parties, such as the UN Convention Against Corruption or the UN Convention Against Transnational Organized Crime.

The treaty will make it significantly easier for Australia to cooperate with Vietnam to request or grant extradition for offences punishable under the laws of both countries. Importantly, the obligation to extradite is qualified by a number of internationally accepted grounds for refusal. A person may not be extradited in relation to a crime punishable by the death penalty, unless a guarantee is given that such penalty will not be applied. The parties to the agreement must refuse an extradition request where there are grounds for believing that the extradited person would be subject to torture, or that the request has been made for the purpose of punishing a person on the basis of their race, ethnic origin, gender, language, religion, nationality, political opinion or other status.

The treaty is consistent with other Australian bilateral extradition treaties and adds to Australia's existing network of 38 other bilateral extradition treaties. On this basis, the committee supports the Treaty between Australia and the Socialist Republic of Vietnam on Extradition.

In addition, and in line with the views expressed by the committee on previously examined extradition treaties, the committee has recommended that new and revised extradition agreements should explicitly provide a requirement that the requesting country provide annual information.
concerning the trial status and health of extradited persons and the conditions of the detention facilities in which they are held.

The Partial Revision of the 2008 Radio Regulations updates the international arrangements for the management of the radiofrequency spectrum to ensure sufficient spectrum is allocated for, amongst other things: digital maritime communications technologies; unmanned aircraft systems; oceanographic radar to measure coastal sea surface conditions; and Earth observation systems that provide critical data relating to weather and climate forecasts. The treaty also improves the international coordination of satellite networks. The committee supports this treaty.

The Agreement between the Government of Australia and the Kingdom of Spain for the Mutual Protection of Classified Information of Defence Interest sets out security procedures and practices for the exchange and protection of classified information between Australia and Spain and for visits to either party that requires access to such information or restricted areas or facilities where classified information is held. The committee also supports this treaty. On behalf of the committee, I commend the report to the Senate.

Question agreed to.

Senator STEPHENS (New South Wales) (17:01): I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

In this seventh report of the Parliamentary Joint Committee on Human Rights for 2012 the committee has considered 17 bills introduced during the period 29 October to 1 November 2012 and 145 legislative instruments registered between 17 October and 16 November 2012.

The committee has decided that six bills do not appear to raise human rights concerns and has commented on or sought further information in relation to the remaining 11 bills. The committee has sought further information in relation to two legislative instruments and has decided to include three instruments that relate to the Stronger Futures in the Northern Territory Act 2012 in its detailed examination of that package of related legislation.

The committee has identified 37 instruments that do not appear to raise any human rights concerns but are accompanied by statements of compatibility that fall short of the committee’s expectations. The committee will send advisory letters to the relevant Ministers in relation to these.

I take this opportunity to report to the House on the committee’s work to date.

In my first statement on behalf of the committee in June this year, I provided an early indication of how the committee was approaching its work. I said at the time that I would make a statement to the House at the end of the year to provide greater clarity around the committee’s approach and working practices.

This committee has been charged with assisting the parliament to consider human rights in a more systematic, rigorous and consistent way.

It does this by examining legislation against the seven key international human rights instruments specified in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.
This is an evolutionary process for the committee, the parliament and for those who develop policy and draft legislation. We are all coming to grips with the meaning and scope of Australia's human rights obligations and how to apply these obligations in our work in a far more rigorous way that we may have done in the past.

Things have moved on since I made the first statement to the House. The committee still finds the enormity of its workload daunting. Equally daunting is the realisation that to be of real assistance to the parliament the committee must distil human rights principles in a way that is both legally sound and easily understood by lawyers and non-lawyers alike. It is essential that we place this analysis before the parliament in the shortest possible timeframe.

THE COMMITTEE'S WORK PRACTICES

The difference now is that the committee has established a regular scrutiny and reporting cycle. The committee meets each sitting Tuesday to consider all bills and legislative instruments that have come before the parliament since the committee's last meeting. The committee categorises legislation into three groups:

- legislation that does not appear to require further consideration;
- legislation that requires clarification; and
- legislation that requires detailed examination.

This is set out in the committee's report that is tabled each sitting Wednesday in both the House and the Senate.

Where the committee examines specific legislation in detail, it may hold public hearings and will publish its conclusions in a stand-alone report. The committee's examination of the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, reflected in its Fourth Report of 2012, is an example of this.

Since June 2012, the committee has considered 87 bills and 566 legislative instruments. 57 bills and 12 instruments have drawn comment from the committee and the committee has sent advisory letters in relation to a further 183 bills and instruments.

The committee has established a practice of considering related legislation as a package where it considers that the significance and complexity of the engagement of rights warrants this.

The committee is currently examining the Stronger Futures in the Northern Territory Act 2012 and the Migration Legislation (Regional Processing and Other Measures) Act 2012 and related bills and instruments in this way. The committee aims to complete its detailed examination of the Stronger Futures legislation early in the new year. The committee will shortly convene public hearings to assist in its examination of the Migration Legislation Regional Processing package. The committee aims to complete this work early in 2013.

There are two key benefits to this approach. Firstly, it enables the committee to assess human rights compatibility on the basis of an understanding of the complete legislative package.

Second, it enables the committee to contribute to a broader understanding of thematic human rights issues while still maintaining a practical focus.

THE ROLE OF LEGAL ADVICE

The committee has ensured that it has access to specialist human rights law advice. The recent appointment of Professor Andrew Byrnes as external legal adviser will bolster the expertise available to the committee through its secretariat. Professor Byrnes is a professor of international law at the University of NSW and brings with him significant human rights law experience.

The committee has a clearer understanding of how its role sits alongside the legal advice it receives and now has a degree of experience in considering questions of human rights compatibility.

There is clearly a need for the committee's deliberations to be underpinned by appropriate legal advice to assist with the accurate identification of the rights engaged by legislation and the appropriate interpretation of Australia's human rights obligations as expressed in the seven human rights covenants.

However, the question of compatibility invariably turns on the extent to which a proposed limitation on rights is justifiable: that is whether it addresses some compelling social purpose and
whether the limitation is rationally connected to this objective. In other words, a limitation should be reasonable, necessary and proportionate. These are assessments that all parliamentarians are well equipped to make.

STATEMENTS OF COMPATIBILITY

The starting point of the committee's consideration of most bills and legislative instruments is the statement of compatibility and the committee has very clear expectations of these statements, as set out in its first Practice Note. The committee approaches its consideration of statements of compatibility in the same way that it hopes Ministers, Members and Senators approach the drafting of them.

It prefers them to read as succinct stand-alone documents capable of informing debate within the parliament. The committee looks to see if the statement of compatibility contains an assessment of the extent to which the legislation engages human rights. Where limitations on rights are proposed, the committee looks for clear and adequate justification for each limitation and the extent to which there is a rational connection between the limitation and a legitimate policy objective. The committee then considers whether and how the limitation is proportionate to that objective.

While statements of compatibility provide a starting point for the committee's work, the committee does not accept statements at face value. The committee looks beyond the stated intention of the legislation to consider the likely effect of the legislation. The committee seeks to understand whether decisions to limit rights are evidence based. Where the committee considers that further information is required to assist its consideration of the legislation it will write to the proponent of the legislation seeking this.

For the most part, responses to the committee's requests have been timely and comprehensive. However, the committee is still awaiting some responses. Some of these date from the committee's first report in August. The committee has tabled a list of these outstanding responses in its Seventh Report and hopes that these will soon be forthcoming. I find it disappointing that some Ministers, with the resources of a department to assist them, have not responded to the committee's requests in a more timely way. I would like to emphasise that the committee expects a response, even where the legislation has already been passed.

The fact that legislation predates the requirement for a statement of compatibility, or is exempt from that requirement, does not prevent the committee from considering its human rights compatibility. In such circumstances the committee will write to the proponent of the legislation and invite them to provide information regarding the human rights compatibility of the legislation.

Best practice suggests that statements of compatibility should accompany all bills and instruments, whether they fall within the requirement or not.

This requirement to produce a statement of compatibility is having tangible results. It is clear that government agencies and Ministers are gradually getting better at thinking about human rights impacts as part of the legislative process.

The committee hopes that by increasing awareness of human rights impacts we will reach a point where consideration of human rights will be a natural part of all policy and legislative processes.

Ideally, the committee will be able to rely on the justification and analysis provided in the statement of compatibility without seeking further information.

However, the committee accepts that this is an evolutionary process and is committed to working with Ministers and their departments to achieve this.

TRAINING AND RESOURCES

I acknowledge the work undertaken by the Attorney-General's Department and the Australian Human Rights Commission in providing support and training to the public service as it comes to terms with these requirements.

When it launched Australia's Human Rights Framework, the Government made a significant commitment to developing an education and training program for the Commonwealth public sector. Since then, over 700 public service officers have received face-to-face training on
what human rights are, their basis in international law, and how they can inform the work of the public service.

I recently attended a meeting of the APS Human Rights Network for the launch of an e-learning module entitled 'Human rights are in our hands' and a pocket book entitled 'Human rights at your fingertips'. The e-learning tool provides information about the international human rights system. It is a step-by-step guide to the human rights principles that should be considered in the development of policy and legislation and in the drafting of statements of compatibility. The pocket book will ensure that public sector officers have easy access to Australia's human rights obligations.

These are excellent resource materials. To complement them, the committee proposes to publish further practice notes of its own. The committee intends to review the work it has undertaken in 2012 and publish an annual report early in 2013. As well as setting out the approach the committee has taken to the consideration of specific human rights in the seven reports tabled this year, this review will form the basis for future practice notes.

WORKING WITH OTHER COMMITTEES

The consideration of the human rights implications of legislation is not solely the responsibility of the PJCHR. The committee appreciates that its work intersects with the work of other parliamentary committees.

In 2013 the committee will focus on working more effectively with these committees, particularly where they have been charged with examining particular bills and instruments. The committee aims to ensure that it draws the attention of these committees to its reports where they are relevant to particular inquiries.

For its part, the committee pays close attention to other committee inquiries so that it can draw on relevant evidence and findings to inform its own work.

This is important for two reasons:

- Firstly, it makes effective use of resources both within and outside the parliament.
- Secondly, determining the human rights implications of legislation is frequently complex and contentious. It makes sense to examine legislation from a variety of angles and shed as much light as possible on how legislation works and how it relates to Australia's human rights obligations in practical terms.

The committee will continue to work at establishing clear and regular communication with parliamentary committees to assist in the examination of human rights issues.

It is equally important for the committee to work effectively alongside the two Senate scrutiny committees. While each has its own specific focus in the scrutiny of legislation, the work of the Scrutiny of Bills, Regulations and Ordinances and Human Rights committees is complementary.

The three committees have established a practice of writing to each other to draw attention to comments on particular bills and instruments. On an informal level, the three secretariats work closely together within a Legislative Scrutiny Unit. I hope that we can continue to build on this dialogue in 2013. To this end, the Deputy Chair and I will meet with the two Senate scrutiny committees this week.

In conclusion I would like to acknowledge the committee's debt to all those who have provided advice and sign posts throughout our journey. This includes all those who have briefed the committee and those who have written to offer their assistance or draw attention to specific issues.

I said in June that the committee was not setting out into uncharted territory. It follows a number of similar committees, including the groundbreaking Joint Committee on Human Rights in the United Kingdom.

The advice and good will extended to the committee by so many has enabled it to learn from the experience of these committees and begin to formulate its own, distinctly Australian, approach to its task.

On this occasion, on behalf of the committee, I iterate the committee's gratitude to the members of the committee secretariat. Their diligence,
devotion and enthusiasm for their task is greatly appreciated and admired.

Finally, I would like to thank my colleagues on the committee. Their preparedness to approach this awesome task with commitment and zeal, and as parliamentarians rather than politicians, has enabled the committee to make sure strides in this initial period and augurs well for the next phase of our journey.

**Law Enforcement Committee Report**

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (17:02): On behalf of my colleague Senator Nash I represent the report of the Parliamentary Joint Committee on Law Enforcement on the Regulatory Powers (Standard Provisions) Bill 2012 together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.

**Community Affairs Legislation Committee**

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (17:02): I move:

That the recommendations of the report be adopted.

Question agreed to.

**Environment and Communications Legislation Committee**

**Foreign Affairs, Defence and Trade Joint Committee**

**Public Accounts and Audit Committee**

**Public Works Committee**

**Legal and Constitutional Affairs Legislation Committee**

**Reporting Date**

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (17:03): I move:


Question agreed to.

**Documentary Activity in Parliament House and its Precincts**

The ACTING DEPUTY PRESIDENT (Senator Marshall) (17:04): On behalf of the President and for the information of senators I present the Rules for Media Related Activity in Parliament House and its Precincts which the Speaker and the President have agreed to.

These rules are the result of a year-long consultation process by the Joint Committee on the Broadcasting of Parliamentary Proceedings with representatives of the Federal Parliamentary Press Gallery, senators, members, and parliamentary
officials. Through written submissions and roundtable discussions, each of these stakeholders has had an opportunity to make their views known. The rules will replace the Guidelines for Filming and Photography and General Media Rules in Parliament House and its Precincts.

The rules are underpinned by four guiding principles, namely: the openness and accessibility of parliament; the facilitation of fair and accurate reporting by the media of parliamentary proceedings; respect for the privacy of members, senators, other building occupants and visitors to Parliament House; and non-interference with the operations of parliament or the ability of members, senators and other building occupants to fulfil their duties.

The rules will clarify for the media, senators and members and their staff, where media activity is permitted, permitted with approval or not permitted in the building and precincts. The rules have, as an appendix, a set of maps which clearly demarcate these areas.

The rules also allow images and footage of chamber proceedings to be broadcast if used fairly and accurately. However, broadcast or publication of images that have been digitally manipulated is not acceptable.

It will be a condition of access for building occupants that the rules are complied with. Where breaches occur, a graduated range of sanctions may be applied. Administration of the rules will be delegated to the Usher of the Black Rod and the Serjeant-at-Arms.

The Clerks are preparing advice on proposed amendments to the resolutions relating to broadcasting in both the Senate and the House. The changes will take into account technological changes in broadcasting, including the introduction of ParlView. The Speaker and the President will seek advice from senators and members on the resolutions before they are introduced.

The rules will be available on the Australian Parliament House website. They come into effect on 5 February 2013, that is, from the first sitting week of next year. This should give us all time to become more familiar with their operation. I thank the Senate.

**Responses to Senate Resolutions**

**Tabling**

The ACTING DEPUTY PRESIDENT (Senator Marshall): I present the following responses to resolutions of the Senate:

- Office of the Premier of Victoria—World Mental Health Day (agreed to 10 October 2012)
- Minister for Health (Ms Plibersek)—World Health Sight Day (agreed to 11 October 2012)

**World Sight Day**

Senator SIEWERT (Western Australia—Australian Greens Whip) (17:08): I seek leave to move a motion in relation to the response by the Minister for Health to the Senate resolution on World Sight Day.

Leave granted.

Senator SIEWERT: I move:

That the Senate take note of the document.

I am pleased to see this timely response by the Minister for Health to the Senate resolution on World Sight Day 2012, which was on 11 October this year. The theme of the day this year was 75 per cent. That is because they wanted to highlight the fact that approximately 75 per cent of blindness and vision loss that occurs is actually preventable and treatable. The idea of the day this year was to raise awareness of that and to encourage people to get eye health checks.

Vision loss costs $16.6 billion. That is a lot of money lost in terms of productivity.
and lost to this country. If we spent $35 million on eye health promotion, it would be a pretty good investment. In relation to eye health promotion and helping people deal with that 75 per cent of blindness and vision loss that is preventable or treatable, the Minister for Health has said that 'increasing early detection of treatable eye conditions to preserve vision is a key action area under the National Framework for Action to Promote Eye Health and Prevent Avoidable Blindness and Vision Loss'. She also said that the government 'supports activities aimed at raising awareness about eye health and vision care to prevent avoidable blindness in the community'.

It is my understanding that Vision 2020 Australia were not necessarily critical of the current approaches but they feel more needs to be done because there is such potential in our community to avoid that 75 per cent of vision loss. Let us look at some at-risk communities. I cannot talk about eye health without also focusing on Aboriginals and Torres Strait Islanders because we know there are still vision issues as well as hearing issues in Aboriginal and Torres Strait Islander communities. Giving additional expenditure now for health promotion that is focused specifically on eye health would significantly reduce blindness and vision loss due to poor eye health.

I am pleased to see that the government has responded to this. I acknowledge the work that has been done, but I am encouraging them to go further. As I said, an investment of $35 million in funding eye health promotion seems to me to be a very good investment in dealing with that 75 per cent of preventable blindness or vision impairment. Also if you look at the cost of vision loss—$16.6 billion—it seems like a pretty minimal investment and, overwhelmingly, it would improve people's lives significantly if they did not have to suffer either blindness or vision impairment.

I am pleased the government have tabled this response. I congratulate them on the speed of the response and encourage them to consider that very small investment of $35 million in eye health promotion.

Question agreed to.

AUDITOR-GENERAL'S REPORTS

Report No. 11 of 2012-13


COMMITTEES

Government Response to Report

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Science and Research and Leader of the Government in the Senate) (17:12): I present the government response to the President's report of 28 June 2012 on government responses outstanding to parliamentary committee reports. I seek leave to have the document incorporated in Hansard.

Leave granted.

The document read as follows—

A CERTAIN MARITIME INCIDENT (Senate Select)

Report on a Certain Maritime Incident

The government response is being considered.
AGRICULTURAL AND RELATED INDUSTRIES (Senate Select)

Pricing and supply arrangements in the Australian and global fertiliser market—Final report

The government response is being considered and will be tabled in due course.

AUSTRALIA'S IMMIGRATION DETENTION NETWORK (Joint Select)

Final report

The government response is being considered and will be tabled in due course.

COMMUNITY AFFAIRS LEGISLATION


The government response was given during the debate on the bill.


The Government responded to the recommendations of the Committee through amendments to the Bills and in Parliamentary debate. The Bills were subsequently passed and came into effect on 29 June 2012.

Social Security and Other Legislation Amendment (Income Support and Other Measures) Bill 2012 [Provisions]

The government response is being considered.

COMMUNITY AFFAIRS REFERENCES

The social and economic impact of rural wind farms

The government response was tabled on 13 September 2012.

Disability and ageing: Lifelong planning for a better future

The government response was presented out of sitting on 5 November 2012 and tabled on 19 November 2012.

The effectiveness of special arrangements for the supply of Pharmaceutical Benefits Scheme (PBS) medicines to remote area Aboriginal Health Services

The government response is being considered and will be tabled in due course.

Inquiry into Commonwealth funding and administration of mental health services

The government response was tabled on 20 September 2012.

The regulatory standards for the approval of medical devices in Australia

The government response was tabled on 13 September 2012.

Commonwealth contribution to former forced adoption policies and practices

The government response is being considered and will be tabled in due course.

The role of the Therapeutic Goods Administration regarding medical devices, particularly Poly Implant Prothese (PIP) breast implants

The government response is being considered and will be tabled in due course.

CORPORATIONS AND FINANCIAL SERVICES (Joint Statutory)

Inquiry into aspects of agribusiness managed investment schemes

The government response is being considered and will be tabled in due course.

Statutory oversight of the Australian Securities and Investments Commission

The government response is being considered.

Access for small and medium business to finance

The government response is being considered and will be tabled in due course.

Statutory oversight of the Australian Securities and Investments Commission

The government response is being considered and will be tabled in due course.
Statutory oversight of the Australian Securities and Investments Commission

There are no recommendations in the report requiring a Government response.

Inquiry into Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011

The government response is being considered.


The government response is being considered.

Report on the 2010-11 annual reports of bodies established under the ASIC Act

The government response is being considered.

Inquiry into the collapse of Trio Capital

The government response is being considered.

Inquiry into the Superannuation Legislation Amendment (Stronger Super) Bill 2012 and the Superannuation Supervisory Levy Imposition Amendment Bill 2012

The government response is being considered.

ECONOMICS LEGISLATION

Food Standards Amendment (Truth in Labelling Laws) Bill 2009

The government response is being considered.

Annual reports (No. 2 of 2010)

The government response is being considered and will be tabled in due course.

Customs Amendment (Anti-Dumping) Bill 2011

The Australian Government will not be tabling a response to this report. The policy, Streamlining Australia’s anti-dumping and countervailing system for Australia, was announced in June 2011.

The policy is being implemented through four tranches of legislation and through administrative changes. The first tranche of legislation, the Customs Amendment (Anti-Dumping Improvement) Act 2011 took effect in October 2011. The second, third and fourth tranches are currently before the Senate.

Annual reports (No. 2 of 2011)

The government response is being considered and will be tabled in due course.

Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 [Provisions]

The government response is being considered.


The government response is being considered.

Annual reports (No. 1 of 2012)

The government response is being considered.

Corporations Amendment (Phoenixing and Other Measures) Bill 2012

The government response is being considered.

Coastal Trading (Revitalising Australian Shipping) Bill 2012 [Provisions] and related bills

The government response is being considered.

ECONOMICS REFERENCES

Consenting adults deficits and household debt—links between Australia’s current account deficit, the demand for imported goods and household debt

The government response is being considered and will be tabled in due course.

Access of small business to finance

The government response is being considered and will be tabled in due course.

Competition within the Australian banking sector

The government response is being considered and will be tabled in due course.
The asset insurance arrangements of Australian state governments
The government response was presented out of sitting on 19 July 2012 and tabled on 14 August 2012.

Investing for good: the development of a capital market for the not-for-profit sector in Australia
The government response was presented out of sitting on 19 July 2012 and tabled on 14 August 2012.

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION
Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Bill 2011 [Provisions]—Education Services for Overseas Students (TPS Levies) Bill 2011 [Provisions]—Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Bill 2011 [Provisions]
Recommendations from the Standing Committees in both the House and the Senate were incorporated into the final Bill which was enacted in March 2012 and took effect on 1 July 2012.

Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill 2011 [Provisions]
The government response is being considered.

EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS REFERENCES
 Provision of childcare
The government response is being considered and will be tabled in due course.

Higher education and skill training to support agriculture and agribusiness in Australia
The government response is being considered.

ELECTORAL MATTERS (Joint Standing)
Implications of the Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009 (NSW) for the conduct of Commonwealth elections
The government response is being considered and will be tabled in due course.

The 2010 Federal Election: Report on the conduct of the election and related matters
The government response is being considered and will be tabled in due course.

Report on the funding of political parties and election campaigns
The government response is being considered and will be tabled in due course.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION
The government response was given during the debate on the bill.

Environment Protection and Biodiversity Conservation Amendment (Emergency Listings) Bill 2011
The government response is being considered.

ENVIRONMENT AND COMMUNICATIONS REFERENCES
 Sustainable management by the Commonwealth of water resources
The government response is being considered and will be tabled in due course.

The adequacy of protections for the privacy of Australians online
The government response is being considered and will be tabled in due course.

The koala – saving our national icon
The government response is being considered and will be tabled in due course.

Recent ABC programming decisions
The government response was presented out of sitting on 16 October 2012 and tabled on 29 October 2012.

The capacity of communication networks and emergency warning systems to deal with emergencies and natural disasters
The government response was tabled on 22 November 2012.

ENVIRONMENT, COMMUNICATIONS AND THE ARTS REFERENCES
The impacts of mining in the Murray-Darling Basin
The government response is being considered and will be tabled in due course.

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES
About time! Women in sport and recreation in Australia
The government response was tabled on 31 October 2012.

ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS STANDING
Conserving Australia—Australia’s national parks, conservation reserves and marine protected areas
The government response is being considered and will be tabled in due course.

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
Plebiscite for an Australian Republic Bill 2008
The government response is being considered.
Annual reports (No. 1 of 2012)
The government response is being considered.

The performance of the Department of Parliamentary Services – Interim report
The government response is being considered and will be tabled in due course.

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
Staff employed under Members of Parliament (Staff) Act 1984
The government response is being considered.
The Government’s administration of the Pharmaceutical Benefits Scheme

The government response was presented out of sitting on 26 July 2012 and tabled on 14 August 2012.

FINANCE AND PUBLIC ADMINISTRATION STANDING.
Annual reports (No. 2 of 2008)
The government response is being considered.

FOREIGN AFFAIRS, DEFENCE AND TRADE (Joint Standing)
Inquiry into Australia’s trade and investment relations with Asia, the Pacific and Latin America
The government response is being considered and will be tabled in due course.

FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION
Autonomous Sanctions Bill 2010 [Provisions]
The government response is being considered and will be tabled in due course.

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES
The Torres Strait: Bridge and border
The government response was presented out of sitting on 9 August 2012 and tabled on 14 August 2012.

Held hostage: Government’s response to kidnapping of Australian citizens overseas
The government response was presented out of sitting on 26 September 2012 and tabled on 9 October 2012.

Procurement procedures for Defence capital projects—Preliminary report
There are no recommendations in the report requiring a Government response.

LAW ENFORCEMENT (Joint Statutory)
Inquiry into Commonwealth unexplained wealth legislation and arrangements
The government response is being considered and will be tabled in due course.
Examination of the 2010-11 annual reports of the Australian Crime Commission and the Australian Federal Police
The government response was tabled in both Houses on 1 November 2012.
Combating the Financing of People Smuggling and Other Measures Bill 2011 [Provisions]
The government response was tabled on the 16 August 2012.

Deterring People Smuggling Bill 2011
The government response was presented out of sitting on 15 October 2012 and tabled on 29 October 2012.

Crimes Amendment (Fairness for Minors) Bill 2011
The government response is being considered.

Migration Amendment (Removal of Mandatory Minimum Penalties) Bill 2012
The government response is being considered.

Assisting Victims of Overseas Terrorism Bill 2012 – Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2011 [Provisions]
The government response was given during the debate on the bill.

Migration Legislation Amendment (Student Visas) Bill 2012 [Provisions]
The government response was given during the debate on the bill.

The road to a republic
The government response is being considered.

Donor conception practices in Australia
The government response was presented out of sitting on 9 August 2012 and tabled on 14 August 2012.

Review of the National Classification Scheme: achieving the right balance
The government response was tabled on the 16 August 2012.

Prospective marriage visa program
The government response is being considered and will be tabled in due course.

The government response was presented out of sitting on 24 October 2012 and tabled on 29 October 2012.

Immigration detention in Australia – A new beginning – Criteria for release from detention – First report of the inquiry into immigration detention
The government response is being considered.

Immigration detention in Australia – Community-based alternatives to detention – Second report of the inquiry into immigration detention
The government response is being considered.

Immigration detention in Australia – Facilities, services and transparency – Third report of the inquiry into immigration detention
The government response is being considered.

Enabling Australia – Inquiry into the migration treatment of disability
The government response was tabled in both Houses on the 1 November 2012.

Review of the rollout of the National Broadband Network – Third report
The government response was tabled in both Houses on 9 October 2012.

Another fork in the road to national broadband – Second interim report
The government response is being considered and will be tabled in due course.

Third report
The government response is being considered and will be tabled in due course.

Fourth interim report
The government response is being considered and will be tabled in due course.

Final report

The government response is being considered and will be tabled in due course.

NATIONAL CAPITAL AND EXTERNAL TERRITORIES (Joint, Standing)

Etched in stone? Inquiry into the administration of the National Memorials Ordinance 1928

The government response is being considered and will be tabled in due course.

PUBLIC ACCOUNTS AND AUDIT (Joint Statutory)


The government response is being considered.


The government response is being considered.


The government response is being considered.

Report 424: Eighth biannual hearing with the Commissioner of Taxation

The government response was given by Executive Minute.

Report 426: Ninth biannual hearing with the Commissioner of Taxation

The government response was given by Executive Minute and by a formal response. The formal response was presented out of sitting on 27 July 2012 and tabled in both Houses on 14 August 2012.

Report 427: Inquiry into national funding agreements

The government response was tabled in the House of Representatives on the 15 August 2012 and on the 16 August 2012 in the Senate.

Report 428: Review of Auditor-General's reports Nos 16 to 46 (2010-11)

The government response was given by Executive Minute.


The government response was given by Executive Minute.

Report 430: Review of Auditor-General's reports Nos 47 (2010-11) to 9 (2011-12) and reports Nos 10 to 23 (2011-12)

The government response is being considered.

PUBLIC WORKS (Joint Standing)

Public works on Christmas Island

The government response is being considered.


The expediency motion for the approval of works has been agreed by the Parliament.

REGIONAL AND REMOTE INDIGENOUS COMMUNITIES (Senate Select)

Final report 2010

The government response is being considered and will be tabled in due course.

RURAL AFFAIRS AND TRANSPORT REFERENCES


The government response was presented out of sitting on 10 July 2012 and tabled on 14 August 2012.

The government response is being considered and will be tabled in due course.

Biosecurity and quarantine arrangements – The management of the removal of the fee rebate for AQIS export certification functions – Interim report

The government response was presented out of sitting on 27 July 2012 and tabled on 14 August 2012.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Air Navigation and Civil Aviation Amendment (Aircraft Crew) Bill 2011 – Qantas Sale Amendment (Still Call Australia Home) Bill 2011

The government response is being considered.

Aviation Transport Security Amendment (Screening) Bill 2012 [Provisions]

The government response is being considered.


The government response is being considered.

RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES

Implications for the long-term sustainable management of the Murray-Darling Basin system – Final report

The government response is being considered and will be tabled in due course.

The possible impacts and consequences for public health, trade and agriculture of the Government's decision to relax import restrictions on beef – First report

The government response is being considered and will be tabled in due course.

The possible impacts and consequences for public health, trade and agriculture of the Government's decision to relax import restrictions on beef – Final report

The government response is being considered and will be tabled in due course.

Australia's biosecurity and quarantine arrangements – Final report

The government response was presented out of sitting on 27 July 2012 and tabled on 14 August 2012.

Operational issues in export grain networks

The government response is being considered and will be tabled in due course.

SCRUTINY OF NEW TAXES (Senate Select)

The carbon tax: Economic pain for no environmental gain – Interim report

The government response was presented out of sitting on 15 November 2012 and tabled on 19 November 2012.

The carbon tax: Secrecy and spin cannot hide carbon tax flaws – Final report

The government response was presented out of sitting on 15 November 2012 and tabled on 19 November 2012.

TREATIES (Joint Standing)

Report 100 – Treaties tabled on 25 June 2008 (2)

The government response was presented out of sitting on 9 August 2012 and tabled on 14 August 2012.

Report 125 – Treaties tabled on 7 and 28 February 2012

The government response was tabled in both Houses on 1 November 2012.


The government response was tabled in both Houses on 27 November 2012.

Treaties Committee

Government Response to Report


Leave granted.
The document read as follows—


National Interest Analysis

Recommendation 1
That National Interest Analyses of treaties clearly intended to have an economic impact include an assessment of the economic benefits and costs of the treaty, or, if no assessment of the economic benefit of a treaty has been undertaken, a statement to that effect, along with an explanation as to why it was not necessary or unable to be undertaken.

Agreed. The National Interest Analysis process already includes a requirement for a Regulatory Impact Statement (RIS). This RIS process requires an impact analysis to be conducted in relation to the costs and benefits to business, the not-for-profit sector and the community arising from any necessary regulatory change as the result of treaty commitments, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements. The impact analysis takes the form of an assessment of the costs and benefits of the proposed changes and an assessment of the net impact on the community as a whole.

Recommendation 2
That the Australian Government commissions an independent and transparent assessment of the economic and social benefits and costs of the Anti-Counterfeiting Trade Agreement.

Agreed. While ratification of the Anti-Counterfeiting Trade Agreement (ACTA) does not necessitate any changes to Australian laws and regulations, in view of the concerns raised by the Committee the Government has commissioned an analysis of the economic and social benefits and costs to Australian business, the not-for-profit sector and the community that would result from the ratification of ACTA. This analysis is expected to be completed by the end of 2012.

Copyright

Recommendation 3
That, in circumstances where a treaty includes the introduction of new criminal penalties, the treaty's National Interest Analysis justify the new penalties.

Agreed. National Interest Analyses already typically explain the introduction of new criminal penalties that would be necessary as a result of ratification of a treaty. This issue does not arise in relation to the ratification of ACTA because ACTA does not require any new criminal penalties to be introduced in Australia.

Recommendation 4
That the Australian Government publishes the individual protections that will be read into the Anti-Counterfeiting Trade Agreement (ACTA) from the Trade-Related Aspects of Intellectual Property Rights Agreement and how the protections will apply in relation to the enforcement provisions contained in ACTA.

Agreed. Article 1 of ACTA specifically notes that:

Nothing in this Agreement shall derogate from any obligation of a Party with respect to any other Party under existing agreements, including the TRIPS Agreement.

The Government confirms, and hereby publishes the fact that all obligations set out in the Trade-Related Aspects of Intellectual Property Rights Agreement (including the individual protections raised by the Committee) would continue to apply in relation to the enforcement provisions contained in ACTA.

Recommendation 5
That the Australian Government clarify and publish the meaning of "aiding and abetting" as it applies to the Anti-Counterfeiting Trade Agreement.

Agreed. The Government's position, which is hereby published, is as follows: the term "aiding and abetting" is not defined within ACTA and as such is to be given a meaning in accordance with customary rules of interpretation of public international law, including Articles 31 and 32 of the Vienna Convention on the Law of Treaties. Furthermore, Australia is free to determine how it
implements Article 23.4 of ACTA within its own legal system and practice. Australian Commonwealth criminal law on aiding and abetting requires intention to aid and abet and provides defences against liability.

**Recommendation 6**

That the Australian Government clarify and publish the meaning of "commercial scale" as it applies to the Anti-Counterfeiting Trade Agreement.

**Agreed.** The Government's position, which is hereby published, is as follows: article 23 of ACTA sets out a definition as to what constitutes commercial scale. Article 23 states that

> For the purposes of this Section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage.

The meaning of commercial scale provided in the Copyright Act 1968 (Cth) is consistent with the definition of commercial scale set out in Article 23 of ACTA. Accordingly, the Government confirms that no changes to Australian copyright enforcement settings are required by ACTA.

**Intellectual Property**

**Recommendation 7**

In the event that the Australian Government ratifies the Anti-Counterfeiting Trade Agreement (ACTA), the Government prepares legislation to:

- Exclude patents from the application of the civil enforcement and border measures parts of ACTA;

**Agreed in part.** Australian law complies with Section 2 of Chapter II of ACTA and the Australian Government has no intention to amend the relevant Australian legislation. The Australian Government confirms that the ratification of ACTA would have no impact on Australian law, including the Patents Act 1990 (Cth).

However, as indicated by the footnote to the civil enforcement section of ACTA, a party may exclude patents from the application of that section. In view of concerns raised by the Committee, the Government will lodge a declaration, with any instrument of ratification of ACTA, stating Australia's intention to exclude patents from the scope of Section 2.

Patents are explicitly excluded from the border measure section of ACTA (Section 3 of Chapter II) by the footnote, which provides that: 't[he parties agree that patents…do not fall within the scope of this section'.

Customs officials in Australia do not have the power to seize goods suspected of infringing patents at the border without a court order. Legislative change would be required to introduce such powers.

Ensure that products produced in Australia as a result of the invalidation of a patent or part of a patent in Australia are not subject to the counterfeiting prohibition in ACTA; and

**Agreed in principle.** The counterfeiting prohibition in ACTA applies only to 'wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale' (Article 23.1) (emphasis added). Producing a product in Australia (including a generic medicine) following the invalidation of a patent or part of a patent would not constitute wilful trademark counterfeiting unless a counterfeit trademark was applied to the product.

In view of the concerns raised by the Committee, the Government confirms that there are no criminal provisions for patent infringement under either ACTA or Australian patent law, therefore legislative change is not required.

- Ensure that the expression 'counterfeit' in ACTA is not applied to generic medicines entered or eligible for entry on the Australian Register of Therapeutic Goods.

**Agreed in principle.** The Therapeutic Goods Act 1989 (Cth) includes a definition of counterfeit (s.42E(3)) which states that goods are considered counterfeit if the label or presentation, advertising or documents relating to the goods contain a false representation about various matters including the name, identity, formulation, composition, presence of an ingredient, sponsor, source, manufacturer or place of manufacture. This applies to both branded (originator) and generic medicines without discrimination. In relation to therapeutic goods, the ratification of ACTA would not require changes to either the definition of counterfeiting, or the application of border measures in Australia. On this basis, the
Government can confirm there would be no impact resulting from the ratification of ACTA on generic medicines included, or eligible for inclusion, in the Australian Register of Therapeutic Goods and therefore no legislation is required.

Conclusion

Recommendation 8

That the Anti-Counterfeiting Trade Agreement not be ratified until the:

- Joint Standing Committee on Treaties has received and considered the independent and transparent assessment of the economic and social benefits and costs of the Agreement referred to in Recommendation 2;
- Australian Law Reform Commission has reported on its Inquiry into Copyright and the Digital Economy; and the Australian Government has issued notices of clarification in relation to the terms of the Agreement as recommended in the other recommendations of this report.

Agreed in part. The Government intends to consider ratification of ACTA following the receipt of the analysis recommended at Recommendation 2, but would also consider any further, timely, recommendations of JSCOT as part of that consideration.

ACTA allows considerable flexibility in its implementation. Australia would retain considerable flexibility to modify its laws on copyright while still meeting its obligations under ACTA.

The Government has responded to recommendations for clarification on the application of the terms of the Agreement.

Recommendation 9

In considering its recommendation to ratify the Anti-Counterfeiting Trade Agreement (ACTA), a future Joint Standing Committee on Treaties have regard to events related to ACTA in other relevant jurisdictions including the European Union and the United States of America.

Agreed in part. In considering whether to ratify ACTA, the Government will make its decision based on an assessment of Australian national interests. This assessment would include, among other factors, consideration of events related to ACTA in the European Union, the United States and other relevant jurisdictions.

Senator LUDLAM (Western Australia) (17:13): by leave—I rise to make some brief remarks about the government’s response to the 126th report of the Joint Standing Committee on Treaties and move:

The Senate take note of the document.

Senators might be forgiven for not knowing that this report was focused on the ACTA treaty, the Anti-Counterfeiting Trade Agreement. It is one that has been widely discredited so this response by the Australian government to the Treaties Committee’s discussion of ACTA is greatly appreciated. This has been described as an extremely lonely bandwagon in that the Australian government has piled onto a bandwagon that nobody else is on. So I have been waiting with some interest to see what the government would make of the Treaties Committee’s highly critical report into ACTA. Generally the Treaties Committee, one that I have really enjoyed serving on for the past 4½ years, is pretty diligent in its work but it is rare to see language as strong as this deployed in effective condemnation of an agreement—and this was a unanimous report on ACTA.

The first European Parliament’s rapporteur, Kader Arif, resigned in protest when the EU signed ACTA. The European Parliament’s chief investigator into ACTA recommended against it and then the European Parliament voted against it. JSCOT produced a very a strongly worded document with a large number of conditions attached to the treaty being ratified by the Australian government. Effectively it was a red light that said not to ratify this thing until you have satisfied these various conditions and until you are in possession of some very specific kinds of information which have not
been provided. Yesterday we got a really weak response. The Treaties Committee found and exposed very deep flaws in the national interest analysis and exposed a failure to assess the costs and benefits. We were told it was fine and the national interest analysis already included a requirement for a regulatory impact statement. What the government response reveals to me is that the government has barely even read the Treaties Committee report. While at first blush it looks as though the Australian government has agreed with a great deal of what the Treaties Committee found, when you go into some of the summary text and some of the exposition as to what the government thinks it is agreeing with, it is fairly apparent that the Treaties Committee's report was either not read or if it was read it certainly was not understood.

For example, the response reveals that the government is still not considering the issues raised in the inquiry about the costs. Trade treaties such as this are sold to the Australian public and particular industry sectors as being all benefit with no costs, so we wanted a proper cost-benefit analysis conducted. There are administrative costs, for example, of participating in yet another forum on IP and coordinating that with all the others, including—and here's an acronym sandwich—WIPO, the TRIPS Council, the WCU, the WHO and our trade agreements such as AUSFTA, the unloved free trade agreement and I remind senators of what the Productivity Commission said about these bureaucratic costs. There are real costs of locking us in to a given model in an area that is changing as rapidly as IP. The government have indicated that they are getting some independent analysis, and this is one sound instance where they have listened to the recommendations of the Treaties Committee. I commend the government for that and I thank the minister's office for responding very rapidly to our calls yesterday to find out who is doing the analysis and when it is likely to be produced. I do thank the minister for providing us with the information. It is PricewaterhouseCoopers that they have had working on this for at least two months—and they will table it some time towards the end of the year, says the government's response. I hope that is not on Christmas Eve, along with all the other stuff that tends to get tipped into the public domain while nobody is watching. I think this one is going to be particularly interesting.

I remind PwC and the government that if the review were truly independent we would actually expect them to—and hope that they would—get in touch with stakeholders and experts, starting, for example, with the people who provided evidence to the Treaties Committee. So I look forward to seeing who PwC actually did consult with, to find out who they spoke to, and what kind of modelling they had done and, in particular, what their inputs were when assessing the cost of these agreements. It will not be good enough if they just wave their hands, as the government seems to have done, and say there are never any costs with these kinds of things.

In the absence of some calculation of the costs of the present system, let alone its benefits, there is no real basis for asserting that the system that we have at the moment strikes an appropriate balance of interests or that it should be internationalised. The government has provided some very brief clarifications to some quite complex problems and its response to recommendation 4 is fine but it does not explain why the Trade Related Aspects of Intellectual Property Rights provisions are not in ACTA. The clarification of the term 'aiding and abetting' in recommendation 5 is not helpful. These are clarifications that do not actually clarify. We need examples of the
kinds of things that they envisage would be included. So reference to intention is useful, but how do we know whether the intention is an intention to do the act that aids/abets or an intention to participate in IP infringement? These are serious grey areas that the Treaties Committee, acting in good faith, asked the government to clarify. Unfortunately, in the course of clarification the government has done no such thing.

The government responds to recommendation 6, which asks for a clarification about what actually constitutes commercial scale by quoting the treaty back at us. Well, we already have the treaty language. I do not understand how can our laws cover indirect commercial advantage, for example. It is still entirely unclear. Section 132AC talks about substantial prejudicial impact and commercial scale—and the latter remains undefined. Section 132AD talks about 'profit or commercial advantage' without any further definition or clarification. As we know, article 23.1 of ACTA provides a broad definition of 'commercial scale', including at least those carried out as commercial activities 'for direct or indirect commercial or economic advantage'. This definition applies to single acts, and hence operates effectively to remove any requirement of commercial scale in determining that an act is criminal. Under the ACTA definition, for example, forwarding a single email without permission of the copyright owner—the author of the email—in a business context could therefore be construed as being a criminal act. That is the sort of grey area that we are talking about here. It is hard to imagine many businesses that do not engage inadvertently in some criminal copyright infringement on this kind of standard given the broad prevalence of copying—of newspaper articles, of journal articles and of pictures to put in PowerPoint presentations or brochures or whatnot. If that is to be construed as commercial scale—and on a strict reading it could be—we would appreciate clarification from DFAT as to how the definition of 'commercial scale' under ACTA is in line with existing law, given a number of academic submissions to this inquiry disputed that. References to provisions, subsections, explanatory memorandums, anything at all specific would really be helpful.

Overall this response reads as though the government have not changed their views at all. They have simply disregarded the findings of the JSCOT inquiry and are assuming that these issues can be sorted out with the kind of glib and rather dismissive response that we have here. I am alarmed because we have been here before. In 2004, a Senate inquiry found the IP standards adopted under the Australia-US Free Trade Agreement were at a net cost to Australia. We are a net IP importer, not exporter, so the standards that we adopted actually cost Australia. Needless to say, the Senate inquiry strongly condemned the process of negotiations whereby we handed off the advantages we had as to these issues. In 2010, Australia concluded ACTA, reinforcing the same problematic standards that we had an issue with in 2006, and negotiating it in much the same way, marred by allegations of secrecy and lack of protection of the public interest. In 2012, another parliamentary committee has found issue with ACTA, just as with the free trade agreement in 2006—and yet again DFAT has not bothered to address whether our negotiating stance is actually appropriate.

Here we are in 2012, and Australia is negotiating another trade agreement with an IP chapter, the Trans-Pacific Partnership Agreement, and again DFAT's negotiating position is to encourage the adoption of standards 'consistent with Australia's own'. We know that the ACTA text is on the table.
We know two previous parliamentary committees, and a host of academics, economists and NGOs have issues with those standards. So what independent economic analysis determined that these standards were appropriate? Will the next parliamentary committee find the same issues in the TPP as they have in the free trade agreement and ACTA, and at what point will DFAT actually start listening? There is no real evidence presented in the government's response to the treaty's report that the government is listening just yet.

Question agreed to.

Rural and Regional Affairs and Transport References Committee Report

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (17:22): On behalf of the chair, Senator Heffernan, I present an interim report of the Rural and Regional Affairs and Transport References Committee on the Foreign Investment Review Board national interest test.

Ordered that the report be printed.

DELEGATION REPORTS

Parliamentary Delegation to the Inter-Parliamentary Union Assembly in Bern and Bilateral Visits to Germany and Austria

Senator STEPHENS (New South Wales) (17:23): I present the 125th Inter-Parliamentary Union Assembly report of the Australian parliamentary delegation which participated in the 125th Inter-Parliamentary Union Assembly in Bern, Switzerland, and also undertook bilateral visits to Germany and Austria in October 2011. As the report attests, this was another successful and hardworking parliamentary delegation.

At the IPU Assembly, the delegation was an active participant in the proceedings. This report outlines the various presentations and meetings that featured in the delegation's program. Australia's delegations to assemblies of the IPU have established a reputation for making a significant contribution to the Inter-Parliamentary Union through their hard work, often behind the scenes, to facilitate dialogues and broker agreements across a wide range of global issues. The high regard in which Australia is held within the IPU is reflected in the election of Australian representatives to key positions on drafting committees at the assembly in Bern. I was appointed chair of the drafting committee for the emergency resolution on the plight of people of famine-stricken Somalia and relief efforts by IPU member parliaments. Mr Dick Adams was appointed chair of the drafting committee of the Standing Committee on Sustainable Development, Finance and Trade. Both resolutions were adopted unanimously by the assembly. Mr Dick Adams, Mr Patrick Secker, Senator Sue Boyce and I were active representatives of the delegation in the work of the standing committees.

The assembly continued its examination of nuclear nonproliferation and disarmament through a series of panel discussions. Australia's leadership in this area was reflected in the former Speaker, Mr Harry Jenkins MP, who was appointment as chair of a panel session of the Committee on United Nations Affairs on Nuclear Weapons: The Road to Zero. These discussions drew
together a number of prominent experts, including Mr Gareth Evans, Co-Chair of the International Commission on Nuclear Non-Proliferation and Disarmament and former Minister for Foreign Affairs.

The delegation was honoured to meet with United Nations Secretary-General, Mr Ban Ki-moon. The Secretary-General commended Australia for its support of preventative diplomacy efforts in the Pacific and for the important leadership role Australia continues to play in the region. He also expressed his gratitude to Australia for logistical support during his historic visit to attend the 42nd Pacific Islands Forum in Auckland.

The delegation's visits to Austria and Germany provided excellent opportunities to explore issues around sustainable energy production, nuclear nonproliferation, education and the eurozone crisis. I found the series of meetings on Germany's dynamic approach to renewable energy policy particularly interesting. Many of the issues we discussed around market and system acceptance, land use and the debate around food versus fuel are very familiar to Australian parliamentarians. It was also of benefit to be able to explore the successes and lessons learned from alternate models for encouraging and supporting diversity and innovation across all sectors of the renewable energy industry.

It was also hugely beneficial for the delegation to be able to receive comprehensive briefings from the International Atomic Energy Agency, the Comprehensive Nuclear Test-Ban Organization and the United Nations Office on Drugs and Crime and to discover how highly valued Australia's contribution to the work of these important organisations is. The delegation came away with a clear impression of the importance of continuing to support and strengthen the capacity of such agencies to undertake their roles.

Parliamentary delegations are an important part of building interparliamentary relationships. The delegation was grateful for the opportunity to meet with parliamentary counterparts in the German and Austrian parliaments and to continue the already well-established parliamentary dialogue between our parliaments. The discussions we had were frank and good humoured and provided honest insights into a number of significant issues of common interest.

At the Austrian Parliament, Ms Barbara Prammer, President of the Austrian National Council, generously made time available on the eve of celebrations to mark Austria's National Day. In Germany, Mr Jurgen Herrmann and his colleagues on the Germany-Australia-New Zealand Parliamentary Friendship group were equally generous with their time. The delegation was therefore very saddened to learn of the sudden death of Mr Herrmann in August this year. He was a good friend to Australia with a firm commitment to fostering interparliamentary relations.

I would like to commend the many people who contributed to the success of the delegation's visits. It is important to acknowledge that goes on in facilitating the visits of delegations. I would like to thank the Department of Foreign Affairs and Trade for their high level of assistance to the delegation. They provided both advance briefing material and on-the-ground support at the IPU Assembly in Bern and throughout Germany and Austria. Australia's ambassadors to Germany and Austria, Mr Peter Tesch and Mr Michael Potts, and their staff put together outstanding programs and provided practical support to the delegation. I make special mention of Mr Phillip Anderson, the delegation's foreign affairs
adviser at the IPU Assembly in Bern, for his advice and professional support throughout the assembly.

I would also like to thank staff of the Parliamentary Library, the parliament's International and Community Relations Office and the Department of the Senate, who provided briefings, advice and assistance with the arrangements for the delegation.

In closing, may I congratulate my fellow delegates for their hard work and good humour throughout this highly successful series of visits. I particularly thank Ms Jeanette Radcliffe, the delegation secretary, for her support. I commend the report to the Senate.

Question agreed to.

Parliamentary Delegation to the People's Republic of China and the Republic of Indonesia

Senator COLBECK (Tasmania) (17:30): by leave—I present the report of the Australian parliamentary delegation to the People's Republic of China and to the Republic of Indonesia, which took place from 26 August to 7 September 2012. I seek leave to move a motion in relation to the report.

Leave granted.

Senator COLBECK: I move:

That the Senate take note of the document.

I acknowledge, as did the previous speaker in relation to the previous document before the Senate, the work of those who helped prepare for this delegation and also acknowledge my colleagues from both the House and this chamber on the delegation: the delegation leader, the Hon. Alan Griffin; Senator Stephens; and Mr Rowan Ramsey. I also acknowledge the work of the delegation secretary, Mr Peter Stephens, who looked after us on the tour and who has done a great job in having a report—

Senator Chris Evans interjecting—

Senator COLBECK: it was not a bad group—prepared for us to present so quickly after the delegation. It was a significant opportunity to be in China, particularly at about the time of the 40th anniversary of Australia and China relations, which was made quite a bit of during our time in China. It was certainly very much appreciated by our hosts. There was significant discussion not only about the strength of the relationship that has developed over the last 40 years between Australia and China but also about the growth of the Chinese economy and the Chinese community over that period and their development both as an economy and as a nation.

I want to talk about a couple of the elements of the delegation in each of the two countries, particularly the bilateral parliamentary exchange at which we discussed a number of issues. I would like to acknowledge the work that was done both here in preparation for the delegation and also to acknowledge the acceptance of the Chinese side in accepting these particular issues. We obviously talked about bilateral relations, parliamentary exchanges and international and regional cooperation, economic and social development, agricultural cooperation, and investment and trade. We also talked about something that Mr Ramsay and I have a particular interest in: new energy technologies and reducing carbon emissions, food security and the ageing population.

One issue that came up as part of our discussion on agriculture and food security was the reality, as our host put to us, that China has insufficient land and water in respect of its primary production and it needs to deal with this matter. As China says, it has
to pay greater attention to environmental protection. These are matters that Australia can work very closely with China on as part of our bilateral relationship. We see the relationship as being about what we can send to them and what we can expect them to buy from us, but there is an enormous amount in respect of services and knowledge that we can exchange with China as part of our relationship. We should be working hard to achieve that.

That bears out in our knowledge and understanding of systems that we are developing in dealing with our ageing society. When you go to China you will see that the numbers are starting to get to a stage where they are significant, almost beyond imagination. China is a nation with 100 million people over 65 years of age—that is, 8.8 per cent of the population. That is set to increase to 20 per cent by 2024 and to 34.5 per cent by 2042.

Members of the National People's Congress suggested that this is an area of social policy where Australia and China could work much more closely together, looking at models for aged care and home-based care, and at social services for the elderly. There are a number of different areas where there is enormous opportunity for our two countries to work very closely together.

As Senator Stephens said in her contribution on the previous report, these delegations give us huge opportunities to see what is happening and to actually experience conditions in those particular countries. There is an old saying: a picture paints a thousand words.

We visited a number of Australian companies that are operating in China. That provided some real insight into the business conditions of operating a business there. We visited Lynch Flowers down in Kunming—and I have visited their Sydney plant since—to see the opportunities they have and the challenges that they face in developing their business in China, and the export-import relationship that exists was quite breathtaking.

We also met with a number of businesses which are operating in Chengdu, in the Sichuan province—Bluescope Steel, Rheem, Circorp, Goodman and Swann Global. To get an understanding of the business issues that they are facing, as they grow and develop their businesses in China, and some of the logistical issues that they have and also the opportunities that exist are really something worth seeing.

There is also the work that has been done with the ANZ Bank, with their back office operations centre. To hear of the number of graduates are coming through in areas that are of interest to them and comparing that to the graduation rates in Australia was also something that was extremely worthwhile.

We had the opportunity in Indonesia to meet with the Australia-Indonesia Friendship Group and have some very frank conversations with them. We also met with their commission 4, which is their agriculture, farming, forestry, fisheries and food agency—again to get a sense of their views around issues of food security, agriculture, growth and the relationship. It was again a very, very valuable experience I think for all of the members of the delegation.

We went out to have a look at some of the forestry issues that are being dealt with in Indonesia at CIFOR, the Centre for International Forestry Research at Bogor. We had a look at the broader issues, the way that those are being developed in that environment. It is an organisation being led by an Australian which is doing a really good job in the work that they are developing in assisting nations with the
development of their forest industries—which are very, very important for their economies, I might add—to ensure that there are good management processes and procedures and good infrastructure around the management of their forest industries.

There was also an opportunity, which I think struck all the members of the delegation, up at Pedang to see some of our aid money at work, particularly in the development of some disaster relief work and reconstruction. There was a water program connecting water to local residents who were basically using well water within their houses. The water table was very high but the water was not all that good. The way that the cost to provide water had been subsidised and the impact that it had on the locals' lives was very, very gratifying to see.

We also met a local health clinic. I was a little overwhelmed by the strength of the expression of gratitude towards members of the delegation for the funding that we had put into that particular centre. It was quite confronting to see that the funding that had been provided by Australia was to reconstruct this health centre. The difference that it had made to this community was quite profound. That impact was felt by all of the members.

Can I again thank those that assisted with the preparation of the delegations—our ambassadors in Beijing, Francis Adamson, and, in Jakarta, Mr Greg Moriarty. I also thank my colleagues for the collegiality of the delegation.

Question agreed to.

Parliamentary Delegation to the Solomon Islands and Samoa

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (17:41): by leave—I present the report of the Australian parliamentary delegation to the Solomon Islands and Samoa, which took place from 31 July to 11 September 2011. I seek leave to move a motion in relation to the report.

Leave granted.

Senator POLLEY: I move:

That the Senate take note of the document.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

DOCUMENTS

Tabling

The Clerk: Documents are tabled pursuant to statute. Details will be recorded in the Journals of the Senate and on the Dynamic Red. A document relating to the Northern Territory emergency response is tabled pursuant to the order of the Senate of 1 November 2012.

Details of the documents appear at the end of today's Hansard.

COMMITTEES

Constitutional Recognition of Local Government Committee

Membership

The ACTING DEPUTY PRESIDENT (Senator Boyce) (17:42): The President has received a letter from a party leader seeking to appoint members to a committee.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:42): by leave—I move:

That Senators Bushby and Fawcett be appointed to the Joint Select Committee on Constitutional Recognition of Local Government.

Question agreed to.

BILLS

Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012

First Reading

Bill received from the House of Representatives.
Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:43): I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:43): I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Schedules 1, 2 and 3 of the bill amend the Banking Act 1959, the First Home Saver Accounts Act 2008 and the Life Insurance Act 1995. The changes reduce from seven years to three the period of inactivity before bank accounts and life insurance moneys are treated as unclaimed. Currently, authorised deposit taking institutions are required to transfer accounts to the Australian Securities and Investments Commission where there has not been a deposit or a withdrawal, other than bank fees, for seven years. There is a similar requirement for life insurers except that the seven-year period is from when an amount becomes payable, such as when a policy matures. To help reunite people with their unclaimed money, details of all unclaimed bank accounts and life insurance amounts are published on the ASIC website. People can reclaim these bank accounts and life insurance amounts at any time. However, currently no form of interest is paid when they are reclaimed. Under the amendments the inactive period will be shortened to three years and interest will be paid at a rate equivalent to consumer price index inflation from 1 July 2013. This will ensure that bank accounts and life insurance amounts reclaimed from ASIC maintain their real value—a very important amendment and a very good one for consumers.

Schedule 4 of this bill amends the Superannuation (Unclaimed Money and Lost Members) Act 1999 to change the circumstances in which small lost accounts and accounts of unidentifiable members are required to be transferred to the Commissioner of Taxation and to provide for the payment of CPI interest on unclaimed superannuation money. The first change relates to small lost accounts. The account balance threshold below which lost accounts are required to be transferred to the Australian Taxation Office will be increased from $200 to $2,000 where the account has been inactive for a period of five years or the member is uncontactable. The second change relates to the tiny proportion of superannuation accounts where the member is unidentifiable. These are accounts where the superannuation provider is satisfied that it will never be possible for the provider to pay an amount to the member—for example, where they are missing both the member's name and tax file number. The period of inactivity before which the accounts of unidentifiable members are required to be transferred to the ATO will also be reduced from five years to 12 months. These amounts represent only a tiny proportion of superannuation—in fact, less than 0.1 per cent.

Individuals can reclaim at any time superannuation accounts transferred to the ATO. However, no form of interest is currently paid when they are reclaimed. Under the new arrangements interest will accrue and be payable from 1 July 2013 on all superannuation accounts reclaimed from the ATO, further boosting an individual's retirement savings—again, a win for consumers. The ATO has a number of strategies in place to help reunite members with lost superannuation accounts to help reduce the number of inactive and unnecessary accounts. ATO programs like SuperSeeker have helped to reunite about 1.9 million lost and unclaimed superannuation accounts worth $3.2 billion—that is $3.2 billion going back to ordinary people for their retirement savings. This was done with their owners during the 12 months to 30 June this year. This was the first time the amount of lost and unclaimed super has declined, after reaching a peak of almost $21 billion at 30 June 2011. By transferring more small lost accounts to the ATO and paying CPI...
interest, these accounts will not only be properly protected from being eroded from fees and charges but will also maintain their real value over time.

The Treasury estimates that, under the current rules, a 20-year-old with $1,000 in superannuation can unknowingly have their super savings eroded to just $418 after five years by a range of fees and deductions. Fees and insurance charges typically exceed average investment earnings, even for accounts with $2,000. For example, a 30-year-old with $2,000 can unknowingly have their super savings eroded to just $1,250 over the same five-year period. However, as a result of the new arrangements a 20-year-old with $1,000 currently inactive in super is expected to be able to claim $1,131 from the ATO after five years—a boost to their superannuation savings of around $700 compared with the current arrangements. This is a massive win for consumers and a proper way to deal with people's retirement savings. A 30-year-old with $2,000 is expected to be able to claim $2,263 from the ATO after five years—a boost to their superannuation savings of around $1,000 compared with the current arrangements.

These are good and sensible changes that help reunite consumers with their lost bank accounts and superannuation accounts. This also maintains the value of those accounts into the future. The new arrangements will also help reduce the number of superannuation accounts that have unidentifiable members by reducing the period of time for which a superannuation fund can hold the account of an unidentifiable member. This will encourage funds to collect sufficient information to identify members during the period when contributions are being made.

Schedule 5 of this bill amends the Corporations Act 2001 and the Australian Securities and Investments Commission Act 2001 to streamline the processes around the administration and distribution of unclaimed moneys and properties under the Corporations Act.

Currently unclaimed property, including unclaimed money, is handled by the regulator, by ASIC, on behalf of the Commonwealth and deposited into the Companies and Unclaimed Monies Special Account on receipt, CUMSA. Under the amendments, unclaimed property will be recognised directly in the Commonwealth consolidated revenue fund upon receipt by ASIC. Owners of unclaimed property will be able to lodge claims for unclaimed property at any time, the same as with any accounts—so nothing there changes. In addition, owners of unclaimed property will for the first time be paid an interest component equal to CPI inflation for amounts reclaimed after 1 July 2013.

I can inform the House that the Ministerial Council for Corporations has been advised of these changes to the corporations legislation in accordance with the Corporations Agreement 2002. Full details of the measures in this bill are contained in the explanatory memorandum. These are good, sensible changes. I commend the bill to the Senate.

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

Leave granted; debate adjourned.

Ordered that the resumption of the debate be made an order of the day for a later hour.

Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012

Customs Tariff Amendment (Malaysia-Australia Free Trade Agreement Implementation) Bill 2012

First Reading

Bills received from the House of Representatives.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:44): 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 FEENEY (Victoria—Parliamentary Secretary for Defence) (17:45): 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 (MALAYSIA-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION AND OTHER MEASURES) BILL 2012

On 23 May this year the Minister for Trade and his Malaysian counterpart Mustapa Mohamed signed the Malaysia-Australia Free Trade Agreement.

I rise to introduce the Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012.

This legislation implements Australia's obligations under Chapter 3 of the Malaysia-Australia Free Trade Agreement.

Both countries have committed to the Treaty coming into force on January 1, and passage of this amendment and the subsequent amendment to the Customs Tariff Act will enable this to happen.

Chapter 3 sets out the rules of origin criteria and related documentary requirements for determining the eligibility of goods to obtain preferential tariff entry into Australia under the Agreement.

Goods imported into Australia that meet the rules of origin, implemented through this bill, will be entitled to claim preferential tariff treatment in accordance with the Agreement.

The amendments also include the requirements for Australian exporters and producers who wish to export Australian goods to Malaysia under the Agreement and obtain preferential treatment in respect of the goods in Malaysia.

The complementary Customs Tariff Amendment (Malaysia-Australia Free Trade Agreement Implementation) Bill 2012, will amend the Customs Tariff Act 1995 to set out Australia's tariff commitments under the Agreement.

Speaker,

This Government has a strong history of supporting free trade. Free trade is good for our economy, good for manufacturers, for importers and exporters and for our region.

These amendments come to the Parliament at an opportune time with the Government's recent release of the Asian Century White Paper.

The White Paper is ambitious – it makes clear the importance of building our ties with Asia.

Implementation of the Malaysia Australia Free Trade Agreement (MAFTA) is an important step in this regard.

Malaysia is an important market for Australia. At present Malaysia is Australia's 10th largest trading partner, with two-way trade worth $16 billion in 2011.

This agreement will guarantee tariff-free entry for 97.6 per cent of recent goods exports from Australia once it enters into force, which will rise to 99 per cent by 2017.

Malaysian exporters will enjoy duty-free entry to the Australian market.

The agreement will also help diversify the trading relationship by opening Malaysia's services sector to Australian companies.

Malaysia has committed to allowing majority Australian ownership of service providers in a range of industries, including for specified services in the telecommunications, insurance, education, tourism, research and development, accountancy and mining-related sectors.

Australia will also provide a three-year package of up to 21 short and long-term scholarships, fellowships, awards and exchanges to support Malaysia's economic reform efforts.

I commend the bill to the Senate.

CUSTOMS TARIFF AMENDMENT (MALAYSIA-AUSTRALIA FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2012

The Customs Tariff Amendment (Malaysia-Australia Free Trade Agreement Implementation)
Bill 2012 is the second bill relating to the implementation of Malaysia-Australia Free Trade Agreement.

It complements the amendments contained in the Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012.

Like the Customs Amendment, this bill is quite technical. It contains amendments to the Customs Tariff Act 1995 to implement part of the Agreement by:

- providing duty-free access for goods that are Malaysian originating goods;
- amending Schedule 4 to the Customs Tariff Act to maintain customs duty rates for certain Malaysian originating goods in accordance with the applicable concessional item; and
- creating a new Schedule 9 to the Custom Tariff to specify excise equivalent duties on certain alcohol, tobacco, and petroleum products.

It is imperative that we pass these amendments this year to ensure that the agreement can come into force on 1 January 2013.

I commend the amendments to the Senate.

Debate adjourned.

Health and Other Legislation Amendment Bill 2012

Migration Amendment (Reform of Employer Sanctions) Bill 2012

First Reading

Bills received from the House of Representatives.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:45): 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 be now read a first time.

Question agreed to.

Bills read a first time.

Second Reading

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:46): 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—

HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2012

I am very pleased today to be introducing the Health and Other Legislation Amendment Bill 2012.

Amendments to the Food Standards Australia New Zealand Act 1991

This bill seeks to make minor amendments to the Food Standards Australia New Zealand Act 1991 to correct typographical issues and obsolete references.

The amendments are minor and will improve the readability of the Act. They do not change the intent of the Act or alter any of the regulations.

Amendments to the Health Insurance Act 1973

Prior to 1 July 2011, only trainee surgeons - with the Royal Australian College of Surgeons - could conduct a procedure under the direct supervision of a specialist in a private setting and have that service attract a Medicare rebate for the supervising surgeon.

The procedure was considered to have been performed by the supervising surgeon who retained the right to any bulk-billed Medicare benefit in relation to the procedure. This arrangement meant that trainee surgeons had greater access to clinical training opportunities.

A change to the regulations on 1 July 2011 made it possible for trainees of other approved professional medical colleges - not just surgeons - to also provide certain procedures under the direct supervision of a specialist.

Trainees in orthopaedic surgery, ophthalmology, obstetrics and gynaecology,
internal medicine and anaesthetics are among those who can now provide certain procedures in a private setting under direct supervision and have those procedures attract a Medicare rebate for the supervisor.

This further expands the country's training capacity for specialists with no additional cost to Government.

The change has been a successful one, and is expected to continue to help alleviate some of the training capacity issues for trainee specialists which are being faced by health systems. The Government considers that it is appropriate that the policy should be recognised at the level of primary legislation.

**Amendments to the Human Services (Medicare) Act 1973**

Under the National Health Reform Agreement, signed by the Commonwealth and all states and territories in August 2011, the Commonwealth committed to establishing new primary health care organisations, known as Medicare Locals, to drive improvements in Australia's primary health care system.

All 61 Medicare Locals are now established.

The amendments will enable Medicare Locals and other bodies seeking to use the term 'medicare' to apply for an authorisation to use the term without breaching the Act.

**Amendment of the Industrial Chemicals (Notification and Assessment) Act 1989**

The Industrial Chemicals (Notification and Assessment) Act 1989 (the ICNA Act) establishes a system of notification and assessment of industrial chemicals to protect health, safety and the environment, to provide for registration of certain persons proposing to introduce industrial chemicals, and to enable making of national standards for cosmetics. The Department of Health and Ageing, through the National Industrial Chemicals Notification and Assessment Scheme, administers the ICNA Act.

This proposed minor amendment corrects a description of how chemicals are transhipped. It allows industry to decide on what is the most efficient short term storage option while maintaining health and safety. It does not place any restriction on competition and does not place any additional requirements on business.

Under the ICNA Act, certain new industrial chemicals that represent a low risk are exempt from the notification and assessment provisions, in keeping with the best practice principle that the regulatory impost to industry should be in accordance with the risk posed. One such exemption relates to chemicals kept under the control of Customs during transhipment, where those chemicals are exported within 30 days of import.

The current ICNA Act includes an inaccurate description of how chemicals are kept under the control of Customs during transhipment, and the amendment will correct this problem without affecting the intent of the exemption provision.

There is broad stakeholder support across industry and the community for the proposed amendment, which has been developed in response to industry concerns and in consultation with industry, government and the community.

**MIGRATION AMENDMENT (REFORM OF EMPLOYER SANCTIONS) BILL 2012**

The purpose of this Bill is to deal with the problem of non-citizens working without permission in Australia, through the creation of effective laws to sanction persons who allow to work, or refer to a third person for work, those unlawful non-citizens and lawful non-citizens who do not have that permission.

This Bill implements the key recommendations of the Howells 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007.

Sanctions for employers of illegal workers have been mooted since a government-commissioned review of illegal work in Australia drew attention to the problem in 1999.

In 2007, the previous government introduced criminal sanctions to deal with employers and labour suppliers who knowingly or recklessly engage or refer for work unlawful non-citizens and lawful non-citizens who do not have permission to work in Australia. Administrative warning notices and an education campaign were also implemented.
A review of those measures, conducted by barrister Mr Stephen Howells in 2010, found that those criminal sanctions have been wholly ineffective as a deterrent to illegal work hire practices. Those measures have not provided a practical mechanism to instil in businesses the need, motivation and wherewithal to comply.

The Howells review recommended implementation of the scheme, with modification, originally recommended in 1999 – that is, graduated tiers of education, warnings, infringement notices, non-fault civil penalties and criminal offences.

The recommended scheme is designed to encourage voluntary compliance by businesses (through education and deterrence) and where this does not occur, provide effective sanctions.

The problem of illegal work remains. Recent estimates put the number of unlawful non-citizens and lawful non-citizen workers without the required permission to work in Australia at around 100,000. This is despite the fact that the Department of Immigration and Citizenship continues to have considerable success in locating illegal workers.

The continuing practice of allowing or referring unlawful non-citizens to work or lawful non-citizens without the required permission to work, must be tackled for a number of reasons.

Whilst the number of workers involved may be relatively small compared to the overall Australian labour force, it remains a serious issue as it undermines the integrity of Australia’s migration program and has, in the worst instances, resulted in the exploitation of vulnerable people.

It can place Australian businesses engaging non-citizen workers without permission to work at a competitive advantage, thereby penalising those employers who do the right thing.

In a competitive labour market, its effect is to reduce taxation revenue as well as work opportunities for Australians and those non-citizens with permission to work.

There has been extensive stakeholder consultation on this problem, with industry, unions and the community, over the course of the past 13 years. More recently, the government has consulted on the recommendations of the Howells review, which informed our decision to implement the Howells recommendations announced in December 2011.

We also consulted on an exposure draft of this Bill in August 2012.

There has been a lot of talk on the best way to effectively address the problem of illegal work. This Bill deals with the practical actions that are necessary to create real, effective tools to deal with this problem.

This Bill fills in the missing pieces in the graduated sanctions recommended by Mr Howells. The Bill creates non-fault civil penalty provisions for allowing to work, or referring to a third person for work, unlawful non-citizens and non-citizens who do not have permission to work in Australia. It creates capacity to issue an infringement notice as an alternative to court proceedings under the civil penalty provisions. Note it will not be necessary to prove fault in an application for a civil penalty order.

The measures in this Bill supplement a refocussed, revamped employer education and awareness strategy; and the existing Illegal Worker Warning Notice scheme currently administered by the Department.

Thus a tiered enforcement model is created by first informing and educating businesses on the requirement that only non-citizens with a visa permitting work are entitled to work.

Then, where Departmental officers identify a business or employer who is not complying with the legislation, they will usually issue an Illegal Worker Warning Notice.

Subsequently infringement notices may be issued where repeated non-compliance with the legislation is detected.

Finally, proceedings for a civil penalty order or prosecutions for criminal offences may be pursued where persistent non-compliance occurs and/or where serious breaches of the legislation are detected.

Having regard to the concerns of business, Mr Howells recommended creation of statutory defences where a business took reasonable steps at reasonable times to check that a worker or a prospective worker has permission to work. The Bill gives effect to this by establishing that a
reasonable step can involve checking a computer system, as prescribed by Regulations, or other steps such as viewing original documentation which evidences that the non-citizen holds a visa and has permission to work (such as a visa label in the non-citizen's passport).

The government intends to prescribe the Visa Entitlement Verification Online system, known as 'VEVO', as a computer system in the Migration Regulations for this purpose. VEVO is designed for individuals and business to check whether a non-citizen holds a visa and the conditions (if any) that attach to that visa. VEVO is administered by the Department of Immigration and Citizenship and is available for use online, 24 hours a day, seven days a week.

The Bill implements another recommendation of Mr Howells which recognises that an employer or a referer may not and should not be expected to know whether a non-citizen worker is also working elsewhere. Therefore, the Bill restricts potential sanctions to circumstances where a non-citizen is working or is referred for work in breach of a work-related visa condition solely because of doing the work for that employer.

The Bill also encompasses measures intended to address the myriad non-conventional work arrangements that may exist where unscrupulous businesses seek to avoid their legal obligations. These include sham contracting, informal labour hire and use of illegal workers by various entities within a conglomerate where employers seek to misrepresent employment relationships to avoid paying legal minimum rates of pay, tax and entitlements.

By amending the definition of 'allows to work', the Bill addresses those more complex business relationships which disguise illegal work hire practices. The expanded definition of 'allows to work' will broaden those relationships to include a person who participates in any arrangement, or a series of arrangements, for the performance of work by the worker for themselves, or another participant in the arrangement or any such arrangement.

The Bill also extends civil and criminal liability for the employer sanctions provisions to a variety of entities such as individuals, bodies corporate (including executive officers in certain circumstances) partners in a partnership and members of an unincorporated association's committee of management. While this affords additional protection to vulnerable workers, it provides the necessary safeguards to ensure that only those involved in a contravention of a work-related offence or a work-related civil penalty provision will be penalised.

Finally, as Mr Howells recommended, the Bill will provide authority for authorised Departmental officers to gather evidence of suspected breaches of the employer sanctions provisions. These new investigation powers will allow authorised officers to obtain a search warrant from a magistrate or judge where the magistrate or judge is satisfied that there are reasonable grounds for suspecting that there is, or may be, evidential material on the premises.

The warrant will empower the authorised officer to enter and search premises, ask questions, require the production of documents, and seize material relevant to a work-related offence or the contravention of a work-related provision.

Only persons clearly linked to a suspected breach of the employer sanctions provisions will be directly affected by the exercise of a search warrant.

It is expected that Departmental officers would seek to use this power in the more serious cases where it is likely that an application for a civil penalty order would be made or criminal prosecution would be pursued.

In the majority of cases, evidence would be obtained by the less intrusive notice to produce power. This power enables the Secretary to require, in writing, that a person give information or produce documents if the Secretary has reason to believe that the person has information or a document that is relevant to a possible work-related offence or a possible contravention of a work-related provision.

Essentially, the reforms contained in this Bill are critical to establishing an effective regime which will actively discourage illegal work hire practices and effectively sanction employers and labour suppliers that persist in non-compliant behaviour.
This Bill gives effect to legislative measures that are only one part of the overall strategy to deal with illegal work. There is, and will continue to be, an information and education campaign to assist businesses to understand how they can comply with their obligations under the legislation. Illegal Worker Warning Notices will continue to be utilised to provide formal warning to businesses before infringement notices are given, applications for civil penalty orders are sought or prosecution proceedings are initiated.

This Bill addresses the government's long-held concern about the serious matter of illegal work in Australia and demonstrates the government's determination to tackle the difficult issues associated with this practice.

Ordered that further consideration of the second reading of these bills be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

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

**Fair Work Amendment (Transfer of Business) Bill 2012**

**Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012**

**Migration Legislation Amendment (Student Visas) Bill 2012**

**Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012**

Returned from the House of Representatives

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the bills.

**COMMITTEES**

**Constitutional Recognition of Local Government Committee**

**Public Works Committee**

Membership

Messages received from the House of Representatives notifying the Senate of the appointment of members to the Joint Select Committee on Constitutional Recognition of Local Government and the appointment of Ms Livermore to the Parliamentary Standing Committee on Public Works in place of Mr Georganas.

**Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples Committee**

Appointment

The ACTING DEPUTY PRESIDENT (Senator Boyce) (17:48): The President has received a message from the House of Representatives transmitting for concurrence a resolution proposing the formation of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples. Copies of the message have been circulated in the chamber.

The House of Representatives message read as follows—

Message no. 558, dated 27 November 2012—

Proposed Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples, and transmitting for the concurrent of the Senate the following resolution:

That:

(1) a Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples be appointed to inquire into and report on steps that can be taken to progress towards a successful referendum on Indigenous constitutional recognition, and in conducting the inquiry, the Committee will:
(a) consider the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 with a view to securing strong multi-partisan Parliamentary support for the passage of the Bill through Parliament, reporting by 30 January 2013;

(b) thereafter, work to build a secure strong multi-partisan Parliamentary consensus around the timing, specific content and wording of referendum proposals for Indigenous constitutional recognition;

(c) consider:

(i) the creation of an advisory group whose membership includes representatives of Aboriginal and Torres Strait Islander people to guide the work of the Committee;

(ii) the recommendations of the Expert Panel on Constitutional Recognition of Indigenous Australians on the process for the referendum; and

(iii) develop mechanisms to build further engagement and support for the constitutional recognition of Aboriginal and Torres Strait Islander peoples across all sectors of the community, including Aboriginal and Torres Strait Islander peoples; and

(d) take the following matters into account:

(i) the report and extensive work of the Expert Panel on Constitutional Recognition of Indigenous Australians, including its recommendations and forms of recognition, namely that:

---section 25 be repealed
---section 51 (xxvi) be repealed
---a new ‘section 51A’ be inserted, along the following lines:

**Section 51A Recognition of Aboriginal and Torres Strait Islander peoples**

Recognising that the continent and its islands now known as Australia were first occupied by Aboriginal and Torres Strait Islander peoples;

**Acknowledging** the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters;

**Respecting** the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples;

**Acknowledging** the need to secure the advancement of Aboriginal and Torres Strait Islander peoples;

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to Aboriginal and Torres Strait Islander peoples;

The Panel further recommends that the repeal of section 51 (xxvi) and the insertion of the new ‘section 51 A’ be proposed together.

--a new ‘section 116A’ be inserted, along the following lines:

**Section 116A Prohibition of racial discrimination**

(1) The Commonwealth, a State or a Territory shall not discriminate on the grounds of race, colour or ethnic or national origin.

(2) Subsection (1) does not preclude the making of laws or measures for the purpose of overcoming disadvantage, ameliorating the effects of past discrimination, or protecting the cultures, languages or heritage of any group.

---a new ‘section 127A’ be inserted, along the following lines:

**Section 127A Recognition of languages**

(1) The national language of the Commonwealth of Australia is English.

(2) The Aboriginal and Torres Strait Islander languages are the original Australian languages, a part of our national heritage.

(ii) some of the recommendations of the Expert Panel on Constitutional Recognition of Aboriginal and Torres Strait Islander peoples are not included in the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 because
they can only be implemented through a change to the Australian Constitution;

(iii) the fact that those recommendations are excluded from the Bill does not preclude those recommendations being considered by the Committee as referendum proposals for constitutional recognition of Aboriginal and Torres Strait Islander peoples;

(iv) research and findings from work currently being undertaken by Reconciliation Australia on raising awareness and support for constitutional recognition of Aboriginal and Torres Strait Islander peoples;

(v) advice from the legal workshops being led by Reconciliation Australia and the need to seek constitutional legal advice regarding the content of any referendum proposals;

(vi) the preparedness of State and Territory governments to support a referendum on the constitutional recognition of Aboriginal and Torres Strait Islander peoples; and

(vii) other matters that the Committee considers may be relevant;

(2) the Committee consist of eight members, one Member of the House of Representatives to be nominated by the Government Whip or Whips, one Member of the House of Representatives to be nominated by the Opposition Whip or Whips, one non-aligned Member and two Senators to be nominated by the Leader of the Government in the Senate, two Senators to be nominated by the Leader of the Opposition in the Senate, and one Senator to be nominated by any minority group or Independent Senator;

(3) every nomination of a member of the Committee be notified in writing to the President of the Senate and the Speaker of the House of Representatives respectively;

(4) the members of the Committee hold office as a joint select committee until the House of Representatives is dissolved or expires by effluxion of time, whichever is the earlier;

(5) the sunset date of the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012, once passed, will provide the impetus for a future Parliament to reconstitute a like Committee to continue the work towards a successful referendum;

(6) the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 also includes a proposed legislative review, commencing one year after the commencement of the Act and concluding six months prior to the sunset date;

(7) the Committee elect a:

(a) Government member as its chair; and

(b) member as its deputy chair who shall act as chair of the Committee at any time when the chair is not present at a meeting of the Committee, and at any time when the chair and deputy chair are not present at a meeting of the Committee the members present shall elect another member to act as chair at that meeting;

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

(9) three members of the Committee constitute a quorum of the Committee provided that in a deliberative meeting the quorum shall include one Government member of either House and one non-Government member of either House;

(10) the Committee:

(a) have power to appoint subcommittees consisting of three or more of its members and to refer to any subcommittee any matter which the Committee is empowered to examine; and

(b) appoint the chair of each subcommittee who shall have a casting vote only and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting;

(11) two members of a subcommittee constitute the quorum of that subcommittee, provided that in a deliberative meeting the quorum shall include one Government member of either House and one non-Government member of either House;

(12) members of the Committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum;

(13) the Committee or any subcommittee:

(a) have power to call for witnesses to attend and for documents to be produced;
(b) may conduct proceedings at any place it sees fit; and
(c) have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives;

(14) the Committee will report:
(a) on the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012, no later than 30 January 2013; and
(b) as needed in order to progress constitutional recognition of Aboriginal and Torres Strait Islander peoples;

(15) the provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:48): I seek leave to have the message considered immediately.

Leave granted.

Senator FEENEY: I move:

That the Senate concurs with the resolution of the House of Representatives contained in message no. 558 relating to the appointment of the Joint Select Committee on Constitutional Recognition of Aboriginal and Torres Strait Islander Peoples.

Question agreed to.

REGULATIONS AND DETERMINATIONS

Murray-Darling Basin Plan Disallowance

Senator HANSON-YOUNG (South Australia) (17:49): I move:


I rise today to speak in favour of this motion. It is with a heavy heart that I do, because I would have preferred that we could be celebrating the passage of a plan that would have set the river up for a living future—set the river up over the next 20 years to be a system that is healthy and can sustain itself and, of course, the communities and the ecosystems that rely on it. Unfortunately, the plan as tabled by the minister earlier this week does not do this. I know the minister talks about the fact that it does, but when you look at these things the devil is always in the detail, and the devil in the detail in this plan is that we do not have the water being returned that the best available science says we need if we are to set the river up and give it a fighting chance. This plan is meant to be the blueprint for how the river system will be managed for the next 20 years, yet this plan does not even include the impacts of climate change or how to deal with the system in an increasingly drying environment.

We know that the coalition and the government have agreed to endorse this plan and pass it through this place today. This plan has had the support of the coalition to pass through this place, because it is not a plan that will save the river; it is a plan that appeases those who did not want to give back as much water as they have greedily taking. It is not a plan that is set up to support the long-term interests of the environment. It is a plan not based on the best available science. It tries to balance interests rather than the long-term health and resilience of the basin overall.

This process has been all political, not scientific; and, unfortunately, that is backed up by the very fact that the Murray-Darling Basin Authority has not even done the modelling for its long-term forecast of the impact that this plan is going to have. The modelling that has been done has been limited and has no comparison. There is no modelling of the impact of the massive increase in groundwater extraction, which is allowed for under this plan. I know the coalition have now decided they do not like figures; that was Tony Burke, the minister, 12 months ago. The coalition have now
adopted this and do not want to talk about
the figures. Unfortunately, the figures do not
add up to the rhetoric of the outcomes that
this plan is meant to achieve.

The whole point of this plan is to set the
river up for a healthy future, to get back the
water that has been overallocated for
generations. I stand here as a representative
of my home state of South Australia. We
know that, when there is less water in the
system, when the drought years come, it is
South Australia at the end of the system that
always cops it the hardest. That is because
we are at the end of the river. When there is
less runoff, when there is less water in the
system, the upstream states continue to take,
take, take and leave basically nothing for
South Australia down the end. That means,
of course, that our precious environment—
our Coorong, the Storm Boy
country, our
Lower Lakes—and the irrigators in the
Riverland have to scrape by with the little
amount of water that is left.

Let's not forget that South Australia takes
only seven per cent of the overall water
within the basin. When the drought is on, it
is even less. During the millennium drought,
which South Australians remember
wholeheartedly and which was not that long
ago, we were not even getting that seven per
cent flowing across the border. We had far
less than that.

As I have said, this plan as tabled today
and debated this afternoon is, unfortunately,
not the plan that will save the Murray-
Darling Basin system. It will not give river
communities, particularly in South Australia,
security into the future, because it is not
based on what we need to do in order to save
the system. A friend of mine put it to me like
this: if you have any infection and you are
seriously sick and you are prescribed by the
doctor a course of antibiotics yet are only
given a few of those antibiotic tablets and
not the whole packet, you are not going to
knock that bug off. Everyone knows you
need to take the entire course to get your
health back on track. That is how antibiotics
work. In this instance we have the minister
and many others acknowledging that this
system is not healthy and that we have to
build resilience back into the system because
it has been so crippled after decades of
overallocation. We really need to realign
what the environment is entitled to to keep
itself going, to give itself some resilience, to
keep the ecosystems alive, particularly in
those harsher and drier years. And yet we are
not giving the river and the environment the
opportunity to do that, because we are not
prepared to give it its full course of
antibiotics. We are not allowing it even the
best fighting chance to get its health back on
track.

The best available science says we need
4,000 gigalitres. We have not been given that
under this plan. We then saw modelling
released by the Murray-Darling Basin
Authority and backed up by Minister Burke.
He flew with the Prime Minister all the way
down to the Murray mouth in South
Australia and said, 'Hey presto, we know
now that 3,200 gigalitres will be somewhat
what the river needs if we are even to try to
give it a sense of being able to get healthy
again and to keep it healthy.' The Greens
would have been more than happy and
supportive of working with the government
to guarantee that minimum amount of 3,200
gigalitres, which would have kept our river
red gums alive; which would have flushed
out that two million tonnes of salt each year
to keep the water healthy and to ensure t
that the water quality is good enough for
domestic use, for stock use, for Adelaide to
keep drinking from; which would have
ensured that we could protect the iconic
Coorong and Lower Lakes. But this is where
the devil is in the detail. This plan does not
even give us that minimum amount of 3,200 gigalitres, and that is of course why people like Senator Barnaby Joyce, who is sitting in here this afternoon, are I am sure going to stand up and tell people all about how they got a good deal for their constituents and the irrigators upstream—because they have. This plan is for the irrigators. This plan is not about protecting the environment. There are no guarantees in this plan for the water the river needs, particularly to keep South Australia going when the dry years hit. That is not the water that is guaranteed under this plan. When you add in the massive extractions of groundwater—1,700 gigalitres—that has a big impact on how much water is genuinely being returned to the river system.

The coalition do not want to talk about figures. Barnaby Joyce does not want to talk about figures.

**The ACTING DEPUTY PRESIDENT (Senator Boyce):** Please refer to members by their correct titles.

**Senator HANSON-YOUNG:** I apologise. The coalition senators in this place do not want to focus on the figures, and neither does the minister. It is because they do not add up. This plan is a plan to deliver less water for the environment than science says is needed. It is delivering less water for the environment than even the environment minister says is needed if we are to give the river any chance of survival.

We know that $11 billion is going to be spent on this plan, and that is why we must get it right. The motion today is about sending the plan back to the minister and saying, ‘We need to get this right because, if we're going to spend $11 billion dollars, we'd better make sure it will return the amount of water to the river that will give the environment a fighting chance, that will ensure we can maintain our majestic river red gums, that will ensure we can give Adelaide healthy drinking water, that will ensure our Coorong can survive the next drought.’ $11 billion—what an opportunity to implement true reform. What a fantastic challenge that we all have in this place to make sure that we can overcome the mistakes of generations past when the river was compromised over and over again for vested interests. This plan was an opportunity to get this right, but unfortunately what is before us today is not that. It is a plan that cuts the environment short and appeases those who are upstream and who never wanted this process in the first place. Senator Barnaby Joyce is going to stand up here at any moment and say: 'This is the best deal irrigators were ever going to get.' It is a bonanza for upstream irrigators because they are about to pocket $11 billion and they do not even have to give back to the river or to South Australia the water that the river really needs. The $11 billion should be setting us up for a healthy future.

The plan is a blueprint for how this system will be managed over the next 20 years, and what is on the table today locks in failure. It spends $11 billion of taxpayers' money and locks in failure. It will cost $11 billion and only achieve 57 per cent of the key targets that the plan says and the Water Act requires the plan to achieve. This is $11 billion, yet we are only going to get half of what we are meant to. We know what that means for South Australia: it means big losses in years to come because this plan does not even take into consideration climate change. It does not take into consideration the long-term effects of increased groundwater extraction. It is not a plan that has been written for the drought years—and the minister has said this himself. This plan is based on average flows. We know that when there are less than average flows things really start to bite for the environment; it is when things really start to
bite for my home state of South Australia, which is located at the bottom of the system.

The Greens have moved a motion to send this plan back to the minister so that we can get it right. The minister said himself that we need 3,200 gigalitres, yet that is not what is in this plan. So let us put that in. Let us make sure that we have a minimum of 3,200 gigalitres. If that is what science says is needed, if that is what the minister believes is needed and if that is what Jay Weatherill, the Premier of South Australia, says is needed, let us do it. The Greens would be more than willing and happy to deliver a minimum of 3,200 gigalitres, because that is what the minister says is required. But, unfortunately, that is not what is in this plan. This plan has 2,750 gigalitres. It fails half of the key environmental targets that it needs to keep the river system alive. On the table today is $11 billion, only half the job done and locked in failure for the next 20 years.

Unfortunately, it seems as though we lost the courage to manage this process when the sky opened, the rains started coming and the millennium drought broke two years ago. Two years ago, people were crying out for proper reform. Let us never go back to a situation where there were kilometres and kilometres of dry river bed, where the water was so high in saline content that it was too salty to even irrigate pasture, let alone to feed stock or to use in the houses of those communities who rely on it. Two years ago, before the millennium drought broke, people wanted urgent action and proper national reform, and they wanted a system that was fair—a system that would manage the water in the basin fairly. That courage seems to be all but forgotten today, because what we have in front of us is not a courageous plan. It is an appeasement on the part of the Labor Party to those upstream and to the coalition to allow them to continue their business as usual. There is talk of an extra 450 gigalitres that maybe some day, if they could—ooh, let's see—be added on by 2024. There are no guarantees about that. It is not in the plan; it is not locked in. The legislation before the other place does not say that it has to be delivered, even though $1.7 billion will be spent long before any water is seen.

The courage to actually do the right thing by the environment and to stop compromising the very real needs of the river have been all but forgotten by this minister, who is desperate to cut a deal with the coalition and to appease those upstream. Let us not forget that Senator Barnaby Joyce, at the height of the millennium drought, said to South Australians when they could not even drink the water in the Murray because it was so salty, when they could not even get their pumps and their pipes past the kilometres and kilometres of mud: 'Chin up. Move upstream if you don't like it.' That is what Barnaby Joyce thinks about South Australia's predicament when there is less water in the system. That is what Senator Barnaby Joyce thinks about South Australia's opportunity for a fair go when it comes to sharing the waters of the rivers.

The Greens will continue to work to get locked in that minimum of 3,200 gigalitres. I stand here today urging the government to do the right thing, to find the courage to fix this. You do not have to cuddle up to Tony Abbott and Senator Joyce just to get this passed.

The ACTING DEPUTY PRESIDENT: I am sorry, but once again, Senator Hanson-Young, please use the correct titles of the members. You mentioned the Leader of the Opposition and did not use his honorific.

Senator HANSON-YOUNG: I guess it depends on your definition.

The ACTING DEPUTY PRESIDENT: Senator Hanson-Young, you refer to
members of the House of Representatives as Mr or Ms et cetera.

**Senator HANSON-YOUNG:** The government do not have to be cuddling up to Mr Abbott and Senator Joyce just to appease the upstream states. If they are truly into reforming the system—saving our river and doing what is right by the environment, setting us up for a future we can rely on for the next 20 years—then they should be putting in place a plan that will save the river for the future, based on the best available science, backed up by the modelling, including the realistic impacts of climate change, not carrying on with the Nationals’ approach of head in the sand and ignore, ignore, ignore, that everything will be all right, somebody else will look after it. That is the response of the Nationals to anything in relation to the environment in years to come. It is unfortunate because they are cutting their own communities short by doing it.

What an opportunity to get reform right is $11 billion to ensure that we start rebalancing and paying back to the river the water that has been ripped away from it for so long. As I said at the outset, I stand here with a heavy heart that we have not been able to convince the government to do the right thing by the river, the right thing for South Australia and to stand by their commitment to proper reform. What is in this plan is a dud. It does not protect the river system for the future, it does not set us up for resilience and it is going to waste $11 billion in the meantime. It needs to go back and it needs to be fixed. The Greens will continue to fight for that to happen.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (18:10): The government does not support this disallowance motion and expresses its deep disappointment that the Greens are engaging in a deliberate strategy to delay the achievement of what is a significant environmental reform for this critical riparian system.

On Monday the Water Act Basin Plan 2012 was tabled in the Senate. This instrument brings into effect the Murray-Darling Basin Plan announced by Minister Burke last week. The plan brings to an end 100 years of disagreement. The plan restores our rivers to health, supports strong regional communities and sustains food production. The plan implements the Murray-Darling Basin Authority's recommendation to return 2,750 gigalitres of surface water to the environment. The Murray-Darling Basin Authority has consulted widely in the development of the plan. The government is acutely aware of the range of views expressed in those consultations. As was said in the Senate last week, the foundation for this reform is unequivocally and unapologetically to restore the river system to health. The plan takes the pathway that is most sensitive to basin communities.

The biggest risk to this historic plan is the disallowance of the plan in either chamber of the parliament. All Australians concerned about the health of this great river system and the wellbeing of basin communities need to promote to their representatives the importance of supporting this plan. The river system cannot survive any further delay. As senators know, the plan is already law unless of course the disallowance motion is successful here and now. Senators need to be aware that, if this plan is disallowed, the future of the Murray-Darling Basin will continue to stagnate and deteriorate. Redrafting the plan would take years. The processes under the Water Act 2007 would require a new public comment period, two rounds of ministerial consultation and the authority’s consideration of the minister's suggestions. Even if the plan was not
changed, it could not be reintroduced as a disallowable instrument for another six months.

The Murray-Darling Basin is too important to be used as a platform for political posturing. The Greens party does not have a commitment to sustainability. It is a party that is only committed to conservation at any price. The Greens judge success on what they stop, not on what they protect. They had a chance to support an emissions-trading scheme to address climate change three years ago but urged against it. They just want coalmining to stop. The question is: what will the Greens allow? They do not consider the economic or social implications at all. They do not take a triple bottom line approach. They just have a single bottom line. If there is an environmental impact, it is bad. To paraphrase former Prime Minister Gough Whitlam, they represent the impotence of purity.

The Murray-Darling Basin Plan has been crafted by expert advice and years of consultation. The Greens party need to comprehend that they live in a pluralistic democracy. If you have the option where everyone’s interests can be considered and not just simply your own, that is in fact a virtuous thing.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (18:13): Isn’t it amazing the sort of empathy you get from someone whose office is at level 7, 147 Pirie Street, when they want to talk about the basin. If you have so much empathy for the basin, Senator Hanson-Young, here is my suggestion: get your office and move there. Show a real desire to actually put your actions and your reality on the same page, because you have not done it. And that is what is so frustrating: when we are in the basin and we have the profits, you ride in from somewhere else to shut down our communities.

At level 7, 147 Pirie Street you cannot see Dirranbandi—

The ACTING DEPUTY PRESIDENT (Senator Boyce): Order! Senator Joyce, you should address your remarks through the chair, not to individual senators.

Senator JOYCE: Certainly, Madam Acting Deputy President. At level 7, 147 Pirie Street, it is rather hard to understand what happens at Dirranbandi when the town shuts down. It is rather difficult to understand how you go to the people of Collarenebri and leave them in destitution. It is rather difficult to understand and comprehend what happens at Coleambally.

No, at level 7, 147 Pirie Street, you can say some wonderful things and make some marvellous gestures—the faux empathy, the grimace and the emotive pause—but they are not fair dinkum. It just goes to show you how absolutely lacking real empathy is, because people who believe in things actually go and place themselves exactly where those things are.

I have lived, and have always lived, in the basin—we live with the people. There is this assertion that it is all about—as Senator Hanson-Young said before—multibillion-dollar irrigators. I will tell you about the houses where some of these multibillion-dollar irrigators live. If you go to the town of Dirranbandi you can pick up a house for 50 grand, hardly the sort of opulence that I think you could understand at level 7, 147 Pirie Street.

We have heard that, of course, it is about the community. What community? If you are going to look after the community come and live in the communities. Come and think that there is more to this: it is about, and has always been about, a triple bottom line—an environmental outcome, which the coalition
put the money on the table for. But there is also the social outcome and there is also the economic outcome, and that goes beyond, as has rightly been said, just a play by the Greens to divide and destroy, and to talk in these riddles that they never, ever have to deliver on. They never, ever have to live with the consequences of their decisions.

We have worked with the government because we understand exactly how incredibly important this is. It would have been absolutely incredibly easy to mount a demonstration—gosh knows, I have done them before—up and down through the basin. It would have been easy. The trouble is that it would also have been pyrrhic because it will not actually have brought a result.

And I apologise for wanting to look after people. I apologise for wanting to put people on the same level as frogs and newts and swamps. I apologise that when you walk into a town people actually talk about their futures. I am sorry that I do not have the Green ethos where we can just flush them all down the toilet. I am sorry that I do not have that! I have never actually managed to be able to do that.

And the talk in all those metaphors—'greedily taking'! Who is 'greedily taking'? The paper shop in Moree? Are they 'greedy takers'? Or maybe it is the person who is a teacher in Goondiwindi? Are they another 'greedy taker'? Or maybe it is the person who is trying to start a motel in Forbes—are they another 'greedy taker'? Is that who these people are? The 2.2 million people who live in the basin, are they just all greedy? They are all greedy because they want a future!

We talk about wanting to be the food bowl of South-East Asia. Well, the first thing we actually have to be is the food bowl of Australia. That is a good start. But there is this sort of nihilist philosophy that the Greens revel in; this nihilist idealism where success is destruction, where success is Smithton in Northern Tasmania, with 30 per cent unemployment. And the Greens are cock-a-hoop—they have kicked a goal. They have kicked a goal when people are poor and they can revel in the benefaction of the welfare state. They are from a community that is completely removed from the disaster that they cast on the people around them. And that is supposed to be some sort of beneficial outcome.

The coalition has worked with the Labor Party. We have worked not just at a federal level but at a state level over a long period of time, and we have tried our very best. To be honest, we have stayed out of the media, we have trusted one another and we have worked for an outcome because we know that the ramifications for the people who we represent of not coming to that outcome would be disastrous. They would then be at the behest of the whims of the Greens, represented by Senator Sarah Hanson-Young, who said at the start that she wanted 7,600 gigalitres to be taken from the basin. That was her kick-off point—7,600 gigalitres—which would absolutely and utterly send people up and down the river destitute, and their final cause—the issue du jour—to return us all to eating beetles and nuts on the forest floor would be one step closer.

I can assure you that there are people who are not happy with this plan in towns. I can assure you that we are quelling resentments as they ring up our offices, saying, ‘We feel uncertain. We are unsure. We are taking you, the Australian government and the responsible parties’—who actually have to live by the decision and even though they have had their differences—‘in this chamber on trust’. We are responsible for it. They are taking us on this incredible thing called trust. They are trusting us not to be perverse in the
outcomes that we bring into their lives. Gosh knows, that is what we hope to do.

The reality is that whether it is the coalition or the Labor Party we have to live with the decisions as well. It actually has to go beyond the spruiking; you actually have to pay for them. You have to live with them, you have to deliver them and you have to go back to the people and be responsible for them. It is all very well to be the marginal party with the nihilist ideals that appeases a constituency with the sweat, the blood and the reality that someone else has to live with.

They want 3,200. By the end of this, through the course of state actions and the Living Murray agreement, there will be more than 3,200. There will be 3,700. There has already been 950 delivered. We have got 2,750 here. We will have 3,700 gigalitres that, over the course of a range of programs, will have been delivered back to the river. There is still the capacity for a five per cent movement of total extractions, a capacity of 710, that is still there. We are still in the process, within that upside, of allowing extra money to go towards 450 gigs of that five per cent limit. There has been an immense amount of movement.

All that this is really about is that the Greens have said, 'The Labor Party are there and the coalition are there, so we'll sit over here and throw rocks.' That is their process. Senator Hanson-Young has had a range of numbers. She started with 7,600, then it was 4,000, now it is 3,200—and then she accuses us about numbers. We have got a number: 2,750. It is there—2,750, with the potential of five per cent up or five per cent down, and with 450 gigs going towards the upside to actually finance it.

The other issue that has to be dealt with from the person from level 7, 147 Pirie Street, Adelaide—Senator Sarah Hanson-Young—is about when the drought was on. The millennium drought did not just happen in Adelaide or the Lower Lakes, it happened across the whole basin. The reason there was no water at the lower end of the system is because there was no water at the upper end of the system. I can prove that because people in my area went broke—that is, the banks came in and kicked them off their place. I am not going to name those people here but I could go through quite a list of them. They went through humiliation for trying to do something for this nation. They did what this nation asked of them: they went west, they scratched out a living in the dirt, they borrowed in some instances tens of millions of dollars, it did not rain because the drought happened and they went broke. They are now live with the humiliation of not having a house, of living with sons and daughters. What does Senator Sarah Hanson-Young call them? Greedy. They are greedy people. Greedy for trying to do the right thing by our country; terrible, shocking people trying to feed people, trying to clothe people, going without, going through the privations of trying to start a business. And what do they get accosted with? They are greedy. A nation of people who—if that is what they call them—are greedy like that, who make the sacrifice for our nation, will make our nation a great place and will actually build our nation.

It is such an absolute insult from someone who, good luck to them, lives with the benefaction of the taxpayers' dollar in the job we have here, in an office in the middle of a town, where the closest they will ever get to the basin on a day-to-day basis is when they turn on the tap—possibly. That is about as close as they get. For them it is a philosophy, it is an ideal, it is over the hill—but it makes sense when you get down to the manic monkey cafe to bang on about this. If you can just create a bit of resentment, create a bit of hate, create a bit of division and then
build on that, you can be the real destroyer, the total nihilist for which, if our nation followed that path, it would be completely and utterly led to a social and economic oblivion.

We are working to try to come to a resolution because it is the responsible thing to do. And it is an absurdity to think that there has not been a movement that hurts us in what we do. I will explain to you some of the hurt that we have had so far. When they purchased the water from Twynam's, from John Kahlbetzer, they basically made the town of Collarenebri defunct. It has no water licence. There is no reason for there to be a cotton gin anymore. What do we say to those people? What is Senator Sarah Hanson-Young's message to those people? What is it? Can they move down to level 7, 147 Pirie Street and get a job? Maybe we can send the whole town down there.

We have got to realise that when the drought was on it was not just a drought for one corner of the basin, it was a drought for the whole basin. It was privation for the whole basin. I know that because I live there. My office is there. My office is on the river. My business is on the river. My property is in the basin. Our family are not irrigators. In fact, we are below irrigators, but we acknowledge that that is part of the economy because above us is a town called Cunnamulla and they have got a little bit of irrigation. Good luck to the people of Cunnamulla—they have a bit of irrigation so the standard of living has slowly advanced.

This is what terrible people we are in my own town of St George. In the town of St George, with about 4,000 people, agricultural output on a yearly basis is between three-quarters of a billion and a billion dollars every year that they put towards our nation—these terrible greedy people. Year in, year out, they are putting it towards our nation. It is actually how we make money. These people make money and then they pay taxes, and they go without and they live out in the sticks, and with their taxes they pay for a whole range of things that this nation needs. One is level 7, 147 Pirie Street—that is one of the things they pay for. What they get for that is the prophet from over the horizon preaching to them about how evil they are, how greedy they are.

The approach of the Greens, after the nihilist destruction, is now to destroy the plan. It is their form of 'burn the plan'. It is their little day of destroying things: come out, wreck the joint. I suppose then we can all cop it. As they say, we will 'just have to cop it'. And we have ridiculous things like the metaphor they draw: 'We have to take our full course of antibiotics.' As prescribed by who? As prescribed for what purpose?

Senator Hanson-Young: Science.

Senator JOYCE: The full course of antibiotics from these people? Not one of them is prepared to live in the area they are talking about. What total and utter hypocrites. With their ideas, not only would we have social and economic destruction but also in some areas a complete compromise of the economic infrastructure—of bridges, of roads, of easements. In some areas it is not even possible to move the water that they require. It just does not have that capacity because of natural choke points, or choke points put in by man such as those other terrible things of civilisation, bridges—we cannot have bridges anymore.

And what is the final goal? What do they want? Why don't we just remove every piece of infrastructure? This is the peculiar thing: the water that is going to provide the environmental outcome in many instances is going to come from man-made structures and, if those man-made structures were not
there, wouldn't it be hard to deliver the water? If we deliver water in a drought, the water will probably come from man-made structures—those evil man-made structures. They will be delivering the water in order to deliver an environmental outcome. Surely a purist could not possibly take water from those man-made structures that are actually going to have the capacity to deliver an outcome that sustains the environment!

People who live in the basin, and that goes beyond people who are irrigators—the townspeople, the people who live in the weatherboard and iron, the brick and tile, who put their rubbish out on a Monday or Tuesday night, who live in streets like mine—are put at risk because of a nihilist philosophy that wants no more than to destroy things, and then has the hide, basically, to not have to live with their decisions. They foist on other people their philosophy and outcomes. They are not prepared to pay the price, but they are prepared to take the cheque. They are prepared to live by the benefaction of a taxpayer's dollar whilst they destroy the economy that actually provides it.

It would be interesting to know exactly what their purpose is. Maybe the real frustration about this is that through the Christmas period—because this issue after many years of work is coming to a conclusion—one of those final things that the Greens are out there to destroy will not be there. They will have to find some other thing to destroy. They have destroyed the timber industry, they have destroyed the fishing industry, and they want to destroy the irrigation industry. They want to destroy our capacity to feed ourselves, and with their ideas surrounding the excesses of the carbon tax, maybe they just want to destroy the economy, full stop. They are running out of things to destroy. What other things can they get rid of? What is the next stage of nihilism for them? When will we hear that they are actually trying to create something that is a reasonable expression of something with a sustainable economic base? Do we just have to put up with the position that every time Senator Sarah Hanson-Young turns up it is about something that people in the Murray-Darling Basin live in fear and trepidation of? They know that the only utterances that will come from the Australian Greens are ones that are going to make their lives—the lives of people whose socio-economic condition is vastly inferior to that of so many people in capital cities—more difficult, and that the delivery of the Greens will take them from poor to destitute.

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:33): I rise tonight to support my colleague's move to try to secure an improvement in the Murray-Darling Basin Plan. People listening might be excused for thinking, after the contribution we have just heard from Senator Joyce, that the Senate was engaged in street theatre. I think that people in the National Party would be quite disappointed to think that in an opportunity to debate the merits or otherwise of the Murray-Darling Basin Plan, all we had was a rant and an attack and no real engagement with the merits or otherwise of the plan.

Contrary to the view that somehow the Greens do not have to live with the decisions that we make, it is in fact because we have to live with the decisions that this parliament makes that we think very carefully about the positions we take and the consequences of those decisions for everyone who comes after us, and not just this generation but future generations.

I go to the first point: why are we having a Murray-Darling Basin Plan? It is an attempt to save the river. Australians love the Murray-Darling. They love the river system...
and they have been distraught in recent years to see that the mouth of the Murray is not open and that there are high levels of salinity in the Lower Lakes. Right down the river system communities have been under enormous pressure as a result of the river failing. It has been failing because of the drought, and the drought occurred in part because of climate change.

And we now have a Leader of the National Party who is refusing to acknowledge that climate change is real and urgent. We are seeing reports coming out daily that it is far worse than anyone anticipated and now we have a Murray-Darling Basin Plan which fails to take account in any shape or form of the climate predictions that we are going to live with in Australia. How can you save a river system if you do not anticipate the changes in the climate and the impacts of those changes on the river system? How can you genuinely say that you are interested in the livelihood or wellbeing of people who live in a river basin if you are not taking into account the health of the river that will sustain them into the future? That is the point here.

The figure of 7,600 gigalitres came from the Murray-Darling Basin Authority and from the Wentworth Group. Both of them came out and said that if you want to restore the river to its optimum level of health, that is the amount of water that needs to be in the river system. It was not some extreme group of people who said that; it was the Murray-Darling Basin Authority and the Wentworth Group. They actually take a science based approach. That is something the National Party does not take. Senator Joyce has made it quite clear that he does not believe in climate change and he does not believe in carbon pricing to reduce emissions. He obviously does not think it is appropriate that the Murray-Darling Basin Plan anticipates the needs of the river in a climate scenario. The amount of water that this plan has in it—2,750 gigalitres—is actually only for so-called average years. It does not take into account the needs of the river system in anything other than average years. I suggest that there is no such thing as average years any more in a world that is rapidly responding and having to adapt to the climate crisis.

Senator Feeney would suggest that the Greens are politically posturing. His extraordinary example of that is that the Greens voted against the Carbon Pollution Reduction Scheme. Indeed, we did. We did it because we knew we would have to live with the consequences. If it had gone through and Senator Feeney had his wish, Australia would now have a five per cent reduction target and the carbon price in Australia would be $1.25, the equivalent of one euro, with no institutional capacity to change the target. What a complete nonsense that would be. We would have no Clean Energy Finance Corporation, no Renewable Energy Agency, no Biodiversity Fund, no Carbon Farming Initiative and so on and so forth. I think Senator Feeney should reflect on the fact that all he is doing is highlighting the complete embarrassment that this country would have had for carbon pricing if the stupidity that was engaged in at that time had been allowed to stand. Equally, in relation to living with the decisions you make—and I draw this to the attention of both Senators Feeney and Joyce—there are the decisions you made on asylum seekers as well. You raced in here and lectured the Greens about standing here saying, 'We can't compromise on fundamentals. We actually have to look at what might really save lives.' Now we are living with the consequences of that stupidity.

I come back to the Murray-Darling Basin Plan in terms of living with the consequences. What is the point of spending
$11 billion if you fail to save the river; if you fail to put enough water back into the river to maintain the ecosystem? Four thousand gigalitres has been mentioned because that is what the Wentworth Group said was the absolute minimum that would be needed to give the river system a chance. The Greens asked the minister to model that 4,000 gigalitres, and that ought to have been done in the interests of science, but the minister did not do it. Now we have 2,750 gigalitres and a promise of 450 gigalitres. Much has been said about 3,200 gigalitres. It is a wish and a promise at this stage. There is no promise that there will be a minimum of 3,200 gigalitres. In fact, that could well end up being a maximum that is never achieved.

This is not evidence based policy. This is policy where you have brought in a political fix. The reason I say that is that the Murray-Darling Basin Plan does not come into effect until 2019. The money flows but the water does not get restored to the river system until 2019, by which time Minister Burke, Senator Joyce and Senator Feeney will be long gone from here and will not be living with the consequences of their actions. The money will be spent but I can assure you that the senators who are here in 2019 will not be living with the consequences of their actions. The money will be spent but I can assure you that the senators who are here in 2019 will be trying to fix the plan that has failed because the consequences of climate change will be something they are living with. You can rest assured that there will not be average years between now and 2019. There will be another drought—there always is in Australia—and it will be more extreme than previous droughts because of the intensity factor of climate change.

Senators will be in here saying: 'How is it possible that $11 billion was spent but the river was not saved?' The excuse will be then, as it always is: 'If only we had known in 2012 what we know now, we would never have agreed to a plan that did not provide for restoring the river.' Every single one of us here knows right now that this is inadequate in terms of the science. It is not science and evidence based policy; it is a policy which says that this is the political fix that will deliver the money in the short term and by the time the river actually gets to have the water everyone will be long gone and it will be revisited.

Minister Burke knows as well as I do that the 450 extra gigalitres will not be there until 2024. Senator Feeney was saying: 'We cannot delay this any longer. Who would want to delay the water coming into the system?' Well it is not coming into the system until 2019 initially and the extra 450 gigalitres, if indeed that 450 gigalitres gets into the system, will not be until 2024. So, yes, we do have time to get this right. We should be getting it right now. I really think it shows that neither the coalition nor the government believes that climate change is real or urgent if they can all laud a plan which delivers to the river far less than the scientists say is the minimum that is necessary and you are prepared to tick off on a plan which does not anticipate or take into account climate ramifications in Australia.

You think you are doing the people who live in the river system a favour by ticking off such a plan, but you are not. All you are doing is condemning them to an extremely uncertain future because, as much as they would like to think if we spend this $11 billion now their future is assured, it is not assured, because you cannot have an economy without a healthy environment to underpin it.

Without the environment there is no economy, and it is no more so than with a river system. That is why we need to get this right from the start. That is why we need an absolute minimum of what the science says is necessary to give the river a fighting chance—and with the river having a fighting
chance come the communities who live along that river system. That is why we need to stop this in its tracks and improve the plan so that we get an evidence based outcome, rather than have the government and the coalition browning down the plan and abandoning the science in favour of a political fix.

Senator XENOPHON (South Australia) (18:45): I am not lauding the Basin Plan 2012 as I have reservations about it but the alternative concerns me. I want to make it clear that I do not consider for one moment that the Greens are engaging in an act of political posturing in relation to this. I have worked closely with my colleague Senator Hanson-Young from the Australian Greens to seek the best outcome for the environment and to seek the best outcome for South Australia, which has the unenviable position of being at the bottom of the river system. So, while I understand the intent of this motion, I am concerned that it is a risky path to take.

I understand that this plan is far from perfect. I understand that this plan has many flaws in it. There has finally been a rigorous process with a number of inquiries—Senate inquiries and House of Representatives inquiries—and there has been the whole process around the guide to the Basin Plan, which was a bit of a farce. Finally, when the draft plan was released, there was a more thorough process of consultation. So as imperfect as this plan is, my concern is simply this: what happens if this plan is disallowed and if the version that comes back is worse than the one that we have now? What happens if we have a change of policy or if we have a change of government and whichever government is in power wants to start the process from square one? We could well be in our next drought by then. There is a real concern amongst the communities I speak to—amongst those who have a genuine concern for ensuring the production capacity of land for our food security and those who have a genuine concern for the environment—that we could potentially be in a worse position.

I believe the Basin Plan will make a difference to the environment in terms of what the government is proposing with the Water Amendment (Water for the Environment Special Account) Bill 2012, and I note recent comments of the environment minister, the Hon. Tony Burke, where he has said that we need to address the issue of a flaw in that bill which referred to up to another 440 gigalitres being put into the environment to make it much clearer that that is the mandated amount that we need to go for. So that gives me some comfort.

I understand the concerns of the Wentworth Group of Concerned Scientists. They have added to this debate invaluably. People such as Peter Cosier, Tim Stubbs and others in that group have the highest integrity and I 'get' their concerns and I have pursued their concerns in relation to the issue of the interaction between groundwater and surface water. I am pleased that there has been some attempt by the Murray-Darling Basin Authority to respond to questions that I put to them on notice just last Friday at a Senate committee hearing.

But ultimately this is about certainty. This is about communities wanting to be able to move forward in a constructive way to deal with these matters. If this plan is not adequate in years to come, then we need to tackle that but right now with the alternative I believe the risks are too high. We need a plan for this river system and I believe disallowing the plan carries with it a real risk for little guaranteed benefit, which is why I will have difficulty in supporting this motion, but I do not under any circumstances criticise the Australian Greens for bringing
this motion. They have that right and they have reason to be concerned, but to me it is a question of risk. It is a question of the risk of not supporting this plan, as imperfect as it is. I believe it ought to be continually monitored. We ought to hold the government and the opposition to account in terms of the promises made. There is nothing to stop a further motion being moved in the new year, because of the way that the time limits for disallowance motions operate, by either Senator Hanson-Young or indeed another senator for a disallowance of this plan to debate this issue again. But right now on the evidence available I reluctantly cannot support this motion because I believe the risk is too great.

Senator JACINTA COLLINS
(Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (18:49): I move:

That the question be now put.

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

The Senate divided [18:58]
(The President—Senator Hogg)

Ayes................... 9
Noes ................... 44
Majority............. 35

AYES

Bilyk, CL
Brown, CL
Carr, KJ
Collins, JMA
Di Natale, R
Feeney, D
Gallacher, AM
Hogg, JJ
Lundy, KA
McEwen, A (teller)
Moore, CM
Pratt, LC
Siewert, R
Stephens, U
Thistlethwaite, M

AYES

Urquhart, AE
Whish-Wilson, PS

AYES

Waters, LJ
Wright, PL

NOES

Back, CJ (teller)
Birmingham, SJ
Brandis, GH
Cash, MC
Cormann, M
Eggleston, A
Ferraravanti-Wells, C
Joyce, B
Macdonald, ID
Mason, B
Parry, S
Ronaldson, M
Ryan, SM
Sinodinos, A
Williams, JR

NOES

Bernardi, C
Boyce, SK
Bushby, DC
Colbeck, R
Edwards, S
Fawcett, DJ
Fifield, MP
Kroger, H
Madigan, JJ
McKenzie, B
Payne, MA
Ruston, A
Scullion, NG
Smith, D
Xenophon, N

PAIRS

Conroy, SM
Evans, C
Farrell, D
Ludwig, JW
McLucas, J
Wong, P

PAIRS

Abetz, E
Heffernan, W
Humphries, G
Nash, F
Johnston, D
Boswell, RLD

Question agreed to
The PRESIDENT: The question now is that the motion moved by Senator Hanson-Young be agreed to.

The Senate divided [18:58]
(The President—Senator Hogg)

Ayes ................. 9
Noes ................. 44
Majority ............. 35

AYES

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

AYES

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

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (19:00): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator JOYCE: Isn't it the absolute height of hypocrisy: after the Greens sought to destroy the Murray-Darling Basin Plan with a disallowance motion, they then seek to destroy the vote with a guillotine. And it is a guillotine on their own motion. They are guillotining their own motion. It is the essence of why they cannot be responsible in any way, shape or form for the livelihoods of the people living in the basin.

They are all theatre, they do not care, they are all about destruction and they are total and utter nihilists, whose only desire is for the theatrical and for a response to the theatrical. And the outcome of the theatrical is the destruction of the livelihoods of the people who live in the basin. It is a clear sign to all those who are listening to this debate that this is why you cannot trust them and this is why we had to do a deal with the Labor Party, because God help us if we ever had to deal with the Greens.

Senator BIRMINGHAM (South Australia) (19:02): I seek leave to speak on the division just taken, until 7.20 pm.

Leave granted.

Senator BIRMINGHAM: Thank you, Mr President. I thank the Senate and I thank the government for their facilitation, whilst in no way of approving of the gag that was just applied by the government and the Greens to this debate.

I come to the issue. I rise to support reform. I rise to support action. I want to support change. I want to support something that will deliver an improved management system of the Murray-Darling Basin. That is why I opposed this disallowance motion. That is why I opposed the wrecking of the plan by the Australian Greens. That is why I opposed the fact that the Greens have simply
voted to stop action, to stop reform, to block any type of change.

I said in my maiden speech that I was a great fan of former President Theodore Roosevelt. President Roosevelt was in fact one of the first great environmentalists—someone who started the process of establishing national parks and implementing environmental reforms. I want to quote Roosevelt:

Nothing in the world is worth having or worth doing unless it means effort, pain, difficulty …

Perhaps nothing relates more to effort, pain or difficulty in a policy sense than achieving Murray-Darling reform. There have been 120 years worth of arguments and bickering—120 years since the states first gathered to establish Federation and this place and, in so doing, the arguments were had over who should manage the Murray-Darling Basin.

Sadly, the wrong decision was made then. Today, it has been righted slightly because today we are a step closer to now having a national management plan for the Murray-Darling Basin. We have seen, unfortunately, in the last 120 years, especially in the last 40 to 50 years, serious mismanagement of the water resources of the Murray-Darling.

What is the source of the problem? Who is the source of the problem? The source of the problem, very clearly, has been state governments. Labor state governments, Liberal state governments and National Party state governments all share the blame. They all saw the extraction of water from the Murray rise at a dramatic rate, especially in the period since the 1960s and, in rising at that dramatic rate, it reached levels that came to be accepted as being overallocated. It was too much for the system to withstand. There was too much extraction of water from the system; therefore, there was a need for reform.

But let us be very clear: state governments were to blame here—not farmers, not irrigators and certainly not irrigation communities. They simply took advantage of the opportunities afforded to them by their state governments, to take a water licence and undertake business, grow food, grow fibre, make produce and help the economy of this country. That is why, in fixing the problem that has been created, we must do it in a way most sympathetic to those farmers, those irrigators and those communities. They did not create the problem; their state governments did.

When we got to the last great drought that began at the turn of this century, it was evident that the Murray-Darling system was under more stress than ever before. It was clear it had been overallocated and it was obvious that action was demanded and warranted. That is why the Howard government, having tried in 2004 through the National Water Initiative to initiate reform and yet seen the state governments drag their heels yet again—fight and bicker yet again—in 2007 said: ‘Enough is enough. We must have national management of the Murray-Darling.’ They put $10 billion on the table. We put $10 billion on the table—I say ‘we’ because I am proud to have been a member, albeit briefly, through that important period when that solution was actually implemented—when the Water Act was passed through this parliament and when the funds were budgeted and set aside for the recovery of the water to restore some sustainability.

The solution of the Howard government was to establish an independent authority under the Water Act—the Murray-Darling Basin Authority. We hear a lot sometimes about the fact that this authority has not done its job. People attack it from all sides. People suggest it has no credibility and has compromised the outcome. Let us remember
the people sitting around that authority table, the six members of the authority, do genuinely constitute an independent authority. I want to thank them for the work that they have done in preparing this Basin Plan—for the difficult task they have undertaken. They have not always got it right. They have not always engaged as they should have with the communities. But around that table there is an environmental scientist—you would not think that listening to the Greens, but there is—and around the table there is an agricultural scientist. Yes, there are economists and former public servants. But around that table are credible people trying to fix a very difficult problem.

The other aspect of the solution in terms of establishing the authority was to task it to come up with what has been coined as a triple-bottom-line approach—one that said we must optimise the economic, social and environmental outcomes that we seek through this process. That has been a very, very difficult thing for them to achieve, because it involves trade-offs, it involves compromise and it has been seen to be a painful process.

During the debate many analogies have been thrown around for this process. If I can add one more, it has certainly been like root canal treatment without the anaesthetic. It has been painful for all participants. It has taken far too long, since 2007. We have seen delays, we have seen problems and we have seen mistakes. And, yes, it is a process that has been made that much harder due to the incompetence of the government at various times—the incompetence that has seen the government undertake buybacks at the expense of delivering on infrastructure projects and in doing so lose the confidence of so many of those people in the upstream communities who were and are being asked to make the sacrifices of their water back to the environment. There has been, of course, mismanagement of expectations—both upstream and downstream—of just what would be achieved and how much could actually be returned.

Nonetheless, after all of the arguments, after all of the rallies, after all of the shouting, after all of the delays that we have seen throughout this process, we now finally have a final Basin Plan. Not much has been said in this debate about what it is—what the actual solution is and what it might achieve. Again, you would be forgiven, when you listen in particular to the Greens, for believing that not much is achieved through this Basin Plan. Let us put that in some perspective. Firstly, 2,750 gigalitres of water will be returned to the environment. What does that mean, though? Well, that is 2,750 gigalitres from a 2009 baseline of 13,623 gigalitres. That is a 20 per cent reduction in water use across the Murray-Darling Basin. That is an enormous step. That is a huge change. We should not downplay the significance of the amount of water that is being recovered for the environment through this process. There is, of course, the aspiration—and I will not go into the detail of that now—to get another 450 gigalitres, taking it to 3,200 gigalitres, a 23½ per cent reduction, getting close to the point where one in every four litres of water that had been available for extraction from the basin before 2009 will no longer be. We should not in any way underestimate the extent of that change. In terms of that 40-year period of enormous growth in extractions and allocations of water, it knocks out about half of that growth. That is why this is such a difficult adjustment for the communities of the basin. That is why this is so challenging for those communities being asked to give up the water.

Let me deal with another misconception—that is, that there is no modelling behind this or it makes no difference. I will invite any
senator, anybody listening, anybody who reads this, to go and look at the MDBA website. Go and look at the hundreds and hundreds and hundreds of reports that sit behind this plan. Look at the modelling that has been released. Yes, the modelling that has been released and has been undertaken. And also look at the difference that it makes, because it makes a real difference environmentally. Look at some of the targets that have been set for the bottom end of the system which have attracted the greatest attention, and there are some good examples here. The maximum period in number of days where salinity in the Coorong southern lagoon is greater than 130 grams per litre: under the baseline model, that maximum period is 323 days; with the recovery of this water it returns to the without-development figure of zero days. The maximum salinity in grams per litre in the Coorong northern lagoon over the model period: without development it would be 49 grams per litre; at the baseline at the 2009 extraction levels, it is 148 grams per litre; with the return of the 2,750 gigalitres it falls back to 56 grams per litre—getting very close the without-development scenario again. Then there are water flows out of the barrages right at the end of the system—the proportion of three-year rolling average barrage flows greater than 2,000 gigalitres per year.

Without development, that is achieved 100 per cent of the time. Under the baseline model, it is achieved only 79 per cent of the time. With this Basin Plan, it will be achieved 98 per cent of the time. One could reasonably ask of the Greens sometimes what more they want. This is achieving some very significant environmental improvements—some huge steps forward in terms of the environmental outcomes—and they, just like the scale of change being achieved, should not in any way be underestimated.

However, the task of saying how much water should be returned is only one half of the equation. The other half of the equation is to address how the water is returned. With that, the coalition still has some grave reservations about the capacity and commitment of this government to do it in the most socially and economically sustainable ways for the communities who are being asked to return this water to environmental flows. The government has released a very worthy document, the Environmental Water Recovery Strategy for the Murray-Darling Basin. What it seeks to do—what it indicates will happen—is worthwhile and will manage to ensure that the economic fabric of our river communities is preserved. If it is implemented as the government has indicated could be achieved, it should ensure that our river communities maintain their productive capacity and have a strong, viable and robust future. But my concern about this document is that in large part it is indicative.

The commitment of the coalition is that we will apply the strategy outlined here. That is why in the other place we have moved amendments to make aspects of this strategy, including a cap on buybacks, law. That is a commitment we will stand by, because we believe you must deliver on the infrastructure parts of the deal. You must get the win-win projects off the ground where you can make our farmers and our river systems more efficient and return water to the environment from those efficiencies but leave their productive capacity intact so that they can continue to grow the food and the exports that we want for this country into the future. So this must be done in the most sympathetic way possible because, as I said before, it is not the fault of the farmers or of the irrigation communities that we have seen the problems that have necessitated this action. They instead deserve our support and
our assistance to ensure their future is as sound as that of the river system we are trying to protect.

I want to pay tribute to some of my colleagues who have worked with me through this process—in particular to Senator Joyce. We have been in some ways described as the yin and the yang of the coalition on water. Senator Joyce is from St George and, yes, I am from Adelaide—opposite ends of the system and opposite concerns in many ways. But I think we have managed to come together to a common understanding of the need to get the environmental outcomes and the need to ensure the protection of the river communities. Many other colleagues have engaged along the way—House of Representatives colleagues as well. If I start to name some, I will end up missing some, so I will not name any, but I do acknowledge the work of my South Australian colleagues in fighting for this reform but also the work of those upstream colleagues who have equally fought for a fair outcome for their communities and who have got the commitment of the coalition to make sure that that happens.

I am pleased the disallowance motion was just defeated. It was critically important that that happen to allow for reform to occur. To borrow from Voltaire, we should not allow the perfect to be the enemy of the good. In this instance, the plan is not perfect—of course it will have problems—but equally there are many review processes built into this. Some may say there are too many review processes built into this, but I have faith that those processes and the independent authority seeking to deliver and implement this plan will address problems as we proceed through it. This plan does represent, if not perfection, at least a very good step forward that, if implemented correctly, will leave us in a situation where we have a healthier Murray-Darling system and a better environmental outcome and still enjoy robust river communities producing the food and produce this country wants for the future. I welcome this reform. It is 120 years overdue, but better late than never.

**ADJOURNMENT**

The **PRESIDENT** (19:19): Order! I propose the question:

That the Senate do now adjourn.

_Gietzelt, Mr Ray, AO_

**Senator FAULKNER** (New South Wales) (19:20): Tonight I want to recognise the life and contribution of the late Ray Gietzelt. Ray was a reformer and moderniser. For 30 years he fought to open up his union and the Labor Party to the voices of their members. He understood that people's commitment to any organisation is influenced by their ability to determine its direction.

Ray Gietzelt was born on 29 September 1922. His parents owned a tyre business in the Sydney suburb of Newtown. Initially the business prospered, but it faltered during the Great Depression when many of their clients were unable to honour their debts. For a time the family struggled and, as with so many of his generation, this experience shaped his politics. In 1940, Ray Gietzelt joined the New South Wales branch of the Federated Miscellaneous Workers Union, or FMWU. He did so despite the fact that he was working for his father's business at the time. He joined because, in his words, 'It was the logical and principled thing to do.'

His early employment was interrupted by the outbreak of war in the Pacific. Incensed by the Japanese bombing of Pearl Harbor, Ray enlisted in the Army aged 19. He served with the 9th Field Company of the Royal Australian Engineers in Papua New Guinea from 1942 to 1945.
At war's end he rejoined the FMWU but was underwhelmed by the organisation's leaders, who he thought 'worked actively to prevent rank-and-file members from voicing their opinion on wages and conditions of employment'. And so Ray Gietzelt helped found the Protest Committee along with other members such as Jack Dwyer, Harold Facer and Mary Rohan. The committee was dedicated to democratising the elected offices and decision-making processes of the FMWU. In response the right-wing leadership tried to stymie reform by abusing the union's antiquated rules. This included attempts to have Ray's and other reformers' memberships cancelled.

After a period of petitioning rank and file members, a special meeting of the FMWU was held on 7 December 1953 at which members voted for the replacement of the existing leadership. The dispute was finally resolved in favour of the Protest Committee after a hearing before the Conciliation and Arbitration Court. Not for the last time Ray Gietzelt and his allies were represented by Lionel Murphy. The losing side was represented by John Kerr.

In 1955 Ray Gietzelt was elected General Secretary of the FMWU. With what he described as a mixture of 'self- and collective discipline', Ray expanded the union's membership and democratised its processes. He inherited 22,000 members but retired leading a union of more than 122,000 workers—122,000 cleaners, night watchmen, manufacturing workers and many others. It was a group so diverse 'miscellaneous' was part of the union's name and 'missos' their moniker!

Ray Gietzelt's methods were always true to his principles. He was once horrified to find out that some of his own officials were threatening employers with legal action if they did not sign up their employees. In his memoirs, *Worth Fighting For*, he argued: 'Such practices harm the union movement—workers need to be persuaded that joining the union is the right thing to do, not compelled. They will join a union if the union has democratic structures in which their views can be heard and their rights asserted if they are protected in exercising their rights, if they are given proper service by their officials and if they see the results of their collective action.'

But Ray's influence extended beyond the labour movement. He was a confidant and friend to three great Labor figures: Lionel Murphy, Neville Wran and Bob Hawke. He supported Murphy's preselection as New South Wales Labor senator. He helped garner support for Neville Wran's switch from the upper to lower house in New South Wales. He supported the Wran challenge for the parliamentary leadership in New South Wales. And he was instrumental in Bob Hawke's election to the presidency of the Australian Council of Trade Unions. But Ray Gietzelt was much more than a patron within the ALP. In July 1970 he helped initiate federal intervention into the New South Wales Branch of the Australian Labor Party. Intervention led to some democratisation of the branch, including the introduction of proportional representation.

In 1985 Ray was awarded an Order of Australia. In 1986, along with Neville Wran and Gough Whitlam, he helped establish the Lionel Murphy Foundation. To this day the foundation provides postgraduate scholarships to students of law or science. In 2003 Ray Gietzelt was awarded a life membership of the ALP. It was said on his retirement that under his leadership the FMWU never 'broke its word with any employer, industrial tribunal or kindred organisation'. Those who knew him best spoke of his decency and fairness with allies and adversaries.
Of course, many in this building, including some in the chamber, would know of Ray's brother, Arthur Gietzelt, who served in this chamber from 1971 to 1989. I must say that Arthur spoke eloquently and warmly at his brother's funeral. It was a fine speech from Arthur Gietzelt—perhaps the best speech I have ever heard Arthur give.

On a personal note, I would like to take this opportunity to acknowledge the personal support I received from Ray over many, many years. In some tough times in the Labor Party in New South Wales I can say that that meant a great deal to me.

Ray Gietzelt died on 12 October 2012. He was 90 years of age. His loss is felt by many. My sincere condolences go to his wife, Vi; daughters, Suzanne and Joanne; other members of his family; and friends.

Rural and Regional Family Support Services

Senator SMITH (Western Australia) (19:29): I rise tonight to draw to the attention of the Senate a matter that is of ongoing concern to regional communities in Western Australia. I refer to the funding arrangements for the Rural And Regional Family Support Services, which until 30 June this year had been providing critical community services by ensuring counsellors, psychologists and community welfare workers were on the ground in regional areas to provide support to farming families dealing with mental health issues and relationship problems. These services were part of the pilot of drought reform measures in Western Australia jointly funded by the Western Australian state and the federal governments and ceased on 30 June this year.

The RRFSS program provided funding for outreach counselling services in and around the regional community of Esperance in Western Australia to vulnerable and disadvantaged families. Now, that is important, because as one official from the Department of Families, Housing, Community Services and Indigenous Affairs said to me in reply to a question I asked during Senate estimates last month, these are people who 'tend not to actively approach services and there needs to be quite a deliberate effort to go out and reach those clients'. That is coming from officials in the Minister Macklin's own department. It backs up the view contained in a review of phase 1 of the pilot program, which was handed to the government in September 2011. That review stated the permanent presence of social support services delivered via outreach to people in rural communities was a worthy feature of the program. However, on 30 June this year, the pilot program came to an end and those outreach services ceased. That is five months ago—and still no announcement has been forthcoming from this government about the pathway in terms of future provision of these services. So, services that this government's own department described as 'worthy' are now not being provided.

The government has claimed that community need in Esperance can be met through existing services. With respect, I am not convinced by that. It stands to reason that if there was a 'pilot' program, it presumably would be piloting different services to the ones previously available. There would be little point in having a pilot program that merely replicates existing services. The government's own figures on the DAFF website state that under phase 1 of the pilot program, just over 2,200 clients received these services, and just over 3,200 received them under phase 2 of the program. These figures demonstrate a significant need for these services.

What particularly concerns me is that I am being told, as recently as earlier this month, by experts who are on the ground in the
Esperance region that people who were receiving assistance pre-30 June under the RRFSS funded services are now slipping through the cracks. I am advised that the capacity of current programs could deal with some of the demand for the services; however, it cannot deal with all of it, and that the outreach element of the service will be lost. This means that, at a time when this area is still struggling with the significant ongoing impacts of drought, those most vulnerable have been abandoned by this government.

Since this issue was first raised with me back in July this year, I attempted to obtain from the government information regarding the existing services that the government assures me can meet the demands of this community. I have been pursuing this matter over several months, through Senate estimates and in personal representations I have made to Minister Macklin's office. I have, in fact, now written to Minister Macklin about this very issue on four occasions—on 16 July, on 15 August, again on 31 August and finally on 13 November. I also met with the minister's Chief of Staff in the minister's office in Parliament House, here in Canberra, on 22 August to discuss the issues. At that meeting, the minister's office undertook to provide me with additional information on the services available. Regrettably, no additional information from the minister or the minister's office has been forthcoming since that time, nor have I received a single reply to any of the four letters I have sent to the minister on this subject. This is not an issue the government can afford to ignore.

Esperance sits in a part of Western Australia that this year recorded its third driest July on record, and the region suffers from high rates of suicide. We know that difficult weather conditions are a significant cause of stress for those living in farming communities. It stands to reason, then, that a region suffering from abnormally dry conditions and that already has a high suicide rate is the sort of place that we should be looking to provide with additional counselling services, rather than reducing them. We have now moved into the harvest period, which can be an additionally difficult and stressful time for farming families. Yet, the net effect of the federal government's actions has been to reduce the range of counselling services available in the Esperance region.

It is of tremendous concern to me that more than four months after I made the first of my representations to the minister about this issue, her office has still not been able to provide me or the local community information about the types of services available. It is all the more puzzling because, as I have outlined, the minister's department has adopted the view that there was no need to continue supporting the services of the RRFSS that the federal government funded under the pilot program. Now, to reach that conclusion, the department presumably had to make an assessment about the range of services that were available in the Esperance region—and thus must know what they are. The fact that the government is either unable or unwilling to make that information available is of deep concern to me.

Just yesterday, we had the release of Australia's first Report Card on Mental Health, released by the Chairman of the National Mental Health Commission, Professor Allan Fels. Amongst other things, the commission found that Australia's mental health services are in an 'appalling' state and called on the Prime Minister to 'give mental health a seat at the top table'. Tellingly, the commission found that, although Australia is doing well on policy development in this area, it is failing badly in terms of service delivery. In regional areas, it is delivery that
matters. The report card notes on page 67 that rates of suicide are higher in rural and remote locations. It is also worth noting that Western Australia had the third highest suicide rate in Australia between 2006-10, and it is the only state where the suicide rate has increased over the last five years. All levels of government can do better, particularly in terms of the practical delivery of mental health services. No reasonable person would deny that. By all accounts and indeed by the department's own admission, the pilot program under the RRFSS was providing valuable outreach services that targeted 'at risk' people in regional communities.

I urge the minister, as a matter of priority, to examine the services being provided in the Esperance region and, in particular, to make a special funding allocation to allow this vital outreach and counselling work to continue in this vulnerable part of Western Australia.

**Australian Republican Movement**

**Senator SINGH (Tasmania) (19:36):** I want to take this opportunity to speak about recent events in the ongoing movement towards an Australian republic. On Sunday, 18 November, I was fortunate to attend the launch of the Our Identity campaign being run by the Australian Republican Movement. The launch was held at the remarkable Museum of Old and New Art, MONA, which is transforming the way Tasmania is perceived. We heard from speakers like comedian Julian Morrow, journalist Lisa Pryor, former Premier Geoff Gallop and retired Major General and immediate past chairperson of the ARM, Mike Keating.

It was an incredible night of Australian culture, produce and humour and each of the speeches and statements conveyed a belief in an Australia that has grown into a confident, socially coherent multicultural nation with a world of opportunity at our doorstep.

There is no doubt that under the leadership of David Morris and his team of state and territory convenors the Our Identity campaign will cause a stir. Our Identity will succeed because it resonates with the Australia of 2012. Australians are now not only willing to talk about our country, our people and our future, they are eager to do so. Our Identity recognises that, well over a century since we forged a single nation from shared interests and a common purpose across this great land, the cultural cringe has disappeared. Since that time of 1901 when the colonies joined we have grown into something much greater than the sum of our parts and become something much more than a distant outpost of a remote empire.

At the same time the balance of the world has shifted. With the rapid rise of Asian economies and culture we are now firmly in the Asian century. With so much change Australia has the chance to position itself for decades ahead. We have the opportunity to define our direction. When our nation was born in 1901 it was by democratic means. Our Federation was inspired by the American union, yet nobody asked the American people to vote on the Declaration of Independence. Despite all the similarities between Australia and the US, there were fundamental differences in the formation of our two nations. America rejected a monarch they saw as a tyrant, dissolving their link with the Crown altogether, but America held onto the rights of Englishmen, continuing to exalt the tradition of liberty found in Mill, Hobbes and Locke. More than that, the new republic turned British values into American values, inspired by the glorious revolution rather than eternally limited by it.

While some of Australia's institutions changed quickly after Federation, many did
not. Without an institutional catalyst, our culture did not experience the change of other new nations like the United States or India. Inertia ensured that we were still more loyal subjects than citizens of a newly independent state. We continued to defer to Britain and our policies continued to reflect British priorities.

Slowly, some of the artefacts of colonial Australia did fade away. The despicable White Australia policy finally ended in 1973, ending racial discrimination in our migration system. *God Save the Queen* gave way to our own national anthem in 1974 and in 1994 the Crown was finally removed from the Pledge of Commitment.

The more than 80 per cent of new Australian citizens who are not British no longer swear their allegiance to a monarch who has never had an impact on their lives. These migrants have come not for an empire upon which the sun never sets, but for a sunburnt country. The heritage our new citizens honour is the heritage of Australia. We do not need to pretend that British history is our history. Our country has its own history.

That history began 50,000 years ago, when Aboriginal Australians founded nations across some of the most difficult landscapes in the world and forged connections to country that are as certain as they are profound. Those connections were ruptured by colonialism, but contemporary Australia is a place in which country can coexist with other deep spiritual beliefs.

As Sir Henry Parkes led the Federation movement, so we need leadership to light the republican movement. Deakin inherited a polity deeply entrenched in the British monarchy. He led the regulation of working conditions, just as Fisher later enshrined the minimum wage. That kind of leadership helped begin the definition of Australia, leaving behind the British class system and creating a nation based on egalitarianism and the fair go. But it took a brave Prime Minister to push forward on an Australian republic. That leader was Paul Keating, who in 1993 politely but definitively told the Queen her service to Australia was no longer required. His vision was for Australia to define itself according to the values and make-up of its people. Like many Australians of mixed heritage, I identify with the aspiration of Australians being represented by one of their own.

As the only Western country in the region, we have an extraordinary opportunity to harness the rise of Asia. Yet there is a mentality that, when we punch out at the end of our time working in or visiting China, we come safely home to the West. For example, only 20 per cent of Australians currently working in China can speak the language. We can no longer afford to think of ourselves as simply visitors to this region. We must learn the history, customs and language of our own region, as Prime Minister Julia Gillard recently outlined in the response to the *Australia in the Asian Century White Paper*.

The economies of the Asian tigers speak for themselves. The Association of South-East Asian Nations is now one-third larger than Australia in market exchange rate terms. China and India's amazing economic growth has tripled their share of the global economy in the last 20 years. In the next 20 years, their share of the global economy will grow from a fifth to a third.

Australia is no longer the Antipodes. It is from this region that the agenda for the future will be set, and it is from this country that we must announce our readiness to be involved in this region. We need to look to the future in reference to who we are: a multicultural society comprised of...
Indigenous Australia and people from all over the world, an economy with the advantage of adjacency and a polity with robust, distinctly Australian institutions and attitudes.

Fortunately, unlike conservative nations of the Commonwealth like Canada, the forces that would actively resist a republic do not have the authority of this government. We have a Prime Minister who believes in Australian republicanism. We have the energy and enthusiasm of young people and community activists for whom an Australian republic is the next logical step. Yet despite our support, despite the opportunities before us, the movement has too often hesitated. Perhaps chastened by the referendum in 1999 set up to fail, we equivocate, deferring to the macabre idea that we should wait until Queen Elizabeth passes on.

We need to ensure the idea of an Australian republic occupies a central place in our national debate once again. That is what the new Our Identity campaign is about; taking the idea of our own Australia to our schools, our workplaces and our kitchen tables.

I was pleased to be joined at the Australian Republican Movement dinner by friends and allies from all sides of politics and from all ages and background. I acknowledge that an Australian future means a future for all who love this country, not just those with one opinion or one single belief. But I also acknowledge the terrific Labor representation at the ARM dinner, building on the success of the Australian Labor Party's new Policy Action Caucus dedicated to supporting the movement for a republic. Labor for an Australian Republic, driven in large part by the efforts of grassroots convenor, Daniel White, is reinvigorating the movement inside the ALP just as the ARM is doing right across the community.

Parkes had to fight the 'no' campaign against federation. Now, we must rise to fight the 'no' campaign against an Australian republic with vigour, fortitude and a belief in the nation we want to define for the future; a nation with our own head of state that is truly Australian.

**Economy**

**Senator HUMPHRIES** (Australian Capital Territory) (19:45): Before I make my own intended remarks tonight, I will just say that in hearing Senator Singh's very thoughtful speech that I do have to say my recollection of Australian history is that it was in fact either the Gorton or McMahon governments which ended the White Australia policy prior to 1972. And it was the Fraser government which replaced God Save the Queen with Advance Australia Fair. I am open to be corrected on those matters, but I am fairly certain that the research might indicate that that is the case.

**Senator Bob Carr:** I have to interject on behalf of Harold Holt.

**Senator HUMPHRIES:** Harold Holt was it?

**Senator Bob Carr:** Yes, Harold Holt.

**Senator HUMPHRIES:** I think you are right. I rarely agree with you, Senator Carr, but I think you are right on this occasion.

**Senator Bob Carr:** Harold Holt, the Liberal Prime Minister, deserves the credit for ending White Australia.

**Senator HUMPHRIES:** Indeed.

**Senator Bob Carr:** Whitlam expanded it.

**Senator HUMPHRIES:** Yes, I think we are in rare agreement!

**The PRESIDENT:** I am very impressed!

**Senator HUMPHRIES:** Please delete that from the *Hansard*—I do not wish that to be recorded!
Senator Bob Carr: I am more an historian than a politician!

Senator HUMPHRIES: Tonight I am concerned about aspects of the federal government’s budget, particularly the MYEFO statement released last month. I read the statement by Minister Wong, the Minister for Finance, that described the nature of the savings that the federal government was making in MYEFO. A note of concern struck me. The minister declared proudly on 22 October:

An additional $16.4 billion in savings has been identified in this MYEFO, adding to more than $130 billion in savings identified in the past five Budgets.

She said:

… the Government has again made responsible savings and prioritised important social reforms in line with Labor values of fairness, equality and opportunity and to protect low and middle-income earners and the most vulnerable in our community.

She went on to say that these savings would:

… ensure the budget is sustainable into the future.

I wondered about what she was cutting that was going to make the budgets more sustainable. I had a close look at what was in this MYEFO, and what I saw made me see once again that this government has descended into blatant, unadulterated spin.

The things that the government has cut in the MYEFO, and this is much the case for both the last budget and previous budgets, are nothing to do with sustainability or improving the quality of life of Australians or helping low- to middle-income families.

Let me give you some examples. In this MYEFO, the government is pausing a grants program—grants to community organisations, sporting groups, heritage organisations and so forth—‘pausing’ grants to those communities. There is a saving of $157½ million by virtue of the government pausing grants.

Now, what does ‘pausing’ mean? What are they pausing exactly? They are cutting—cutting—$157½ million in this financial year, the year that they are striving for their illusory wafer-thin budget surplus, and they are restoring some of that money—some of it only—in subsequent financial years. The net effect, however, is that the government will be cutting grants to community organisations by $90 million over the next four years. The minister is planning to reduce grants by a huge amount, and if by ‘pausing’ the grants they are going to restore that funding at some point in the future beyond the forward estimates then that is not indicated in the budget papers.

The question needs to be asked: why is this described as ‘pausing’ and not simply ‘cutting’? There is no guarantee of a budget surplus in the future and, coupled with a highly uncertain global financial outlook, these adjustments in the MYEFO are already putting unnecessary burdens on future budgets. So in what sense is this pausing of grants, and in what sense is it a sustainable strategy for the future? In fact, this government is simply cutting money to community organisations. What makes that sustainable? What makes that responsible budget management?

The government is also doing other things. It is cutting the baby bonus for second and subsequent children from $5,000 to $3,000 a child. The cut, if implemented, will severely affect at least 87,000 Australian families. The Minister for Families, Community Services and Indigenous Affairs, Jenny Macklin, claimed when this was first proposed last month that items such as cots, prams and baby capsules were reusable for younger siblings—and of course that is largely true. However, the claim does not
take into consideration the fact that no Australian family is able to raise a child, even in its very earliest years of life, for anything like $5,000, much less $3,000. This is another testament to Labor's conventional practice of robbing Australian families to pay for its inability to manage the economy. There is nothing sustainable and nothing responsible about making these cuts. It is simply an exercise in not meeting your obligations as a government in order to find the money to deal with your short term political expediency of balancing your budget.

Export market development grants are being cut. They are being 'targeted', according to MYEFO, but we know what that actually means—they are being cut. It is $100 million in cuts to a program which provides for the capacity of Australian exporters to open up markets overseas through reimbursements of things like promotion fees under certain conditions. What is it about cutting grants to exporters that is sustainable in this budget? Is it something that the government can keep doing endlessly into the future? No, it is not. The government are simply cutting this program because it is an easy target and it helps them meet their budget objectives.

The sorts of things I have quoted tonight are not random selections that are not characteristic of what is being achieved in this MYEFO. In fact, they are central to what is happening in this document. It is all about not paying your creditors. It is about not making essential payments that strengthen the quality of Australian life and Australians' standard of living. It is all about making short-term decisions in order to achieve this short-term objective. And the idea that this somehow reshapes the way in which governments will spend their money in the future is laughably ridiculous.

Well, what should the government do? How should it make the necessary savings in expenditure that, of course, it should make in order to achieve a balanced budget? I would suggest that the member for Mayo in the other place, in releasing a document yesterday describing Labor's waste across government, has hit the nail on the head with a whole range of issues which this government has scandalously wasted taxpayers' money on. There is $70 million advertising the carbon tax, including $100,000 building three fake kitchens as part of their propaganda campaign to advertise their message, despite the fact that a real kitchen would probably cost only about $15,000 to build. There is spending $60,000 to design a 'national carbon offset standard' logo to help with the failing campaign on the carbon tax—a campaign which, despite the extraordinary amounts of money being spent on it, has still left something like 60 per cent of Australians wanting the carbon tax repealed at the earliest possible opportunity. There is $1.4 million for taxpayer funded, origami style, cardboard cut-outs of trucks to send a message about how to understand how the NBN works. I think it succeeds: it perfectly well explains what a massive waste of money the NBN is if you need to spend $1.4 million on cardboard cut-outs of trucks. Then there is a grant of $150,000 to a company to produce television programs for toddlers and $200,000 to Green Cross Australia to produce primary school advertising for 'show and tell' on the carbon tax. Is nothing sacred to this government?

What we have here is a government which is making every attempt to cut whatever it can in a desperate effort to produce even the most slender of budget surpluses this year, and there is nothing sustainable about the way it is going about doing that. These cuts are basically robbing from the future to pay for today. It will be very obvious that these
cuts simply weaken the quality of Australian life and undermine the position of people particularly on low and middle incomes. For that reason, this government needs to drastically and urgently reconsider its priorities and focus on the kinds of real surpluses, the sustainable surpluses, which were produced year in, year out by the former Howard government.

**Senate adjourned at 19:56**  
**DOCUMENTS**  
**Tabling**

The following documents were tabled by the Clerk:

- Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.


- **Australian Crime Commission Act**—Select Legislative Instrument 2012 No. 269—Australian Crime Commission Amendment Regulation 2012 (No. 2) [F2012L02243].

- **Australian Prudential Regulation Authority Act**—Australian Prudential Regulation Authority (Confidentiality) Determination No. 25 of 2012—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 [F2012L02264].

- **Aviation Transport Security Act**—Select Legislative Instrument 2012 No. 257—Aviation Transport Security Amendment Regulation 2012 (No. 5) [F2012L02247].

- **Broadcasting Services Act**—Television Licence Area Plan (Broken Hill) Variation 2012 [F2012L02259].

- **Civil Aviation Act**—Civil Aviation Safety Regulations—Instruments Nos CASA—EX168/12—Exemption – from standard take-off and landing minima – AirBridgeCargo Airlines Ltd [F2012L02265].

- **Climate Change Authority Act**—Land Sector Carbon and Biodiversity Board Specification [F2012L02262].

- **Corporations Act**—ASIC Market Integrity Rules (ASX Market) Amendment 2012 (No. 3) [F2012L02248].


- **Fisheries Management Act**—Heard Island and McDonald Islands Fishery Management Plan 2002—Heard Island and McDonald Islands Fishery Total Allowable Catch Determination 2012 [F2012L02257].

- **Food Standards Australia New Zealand Act**—Food Standards (Application A1068 – Hydrogen Peroxide as a Processing Aid) Variation [F2012L02254].

- **Fuel Quality Standards Act**—Select Legislative Instrument 2012 No. 259—Fuel Quality Standards Amendment Regulation 2012 (No. 1) [F2012L02266].
Health Insurance Act—Select Legislative Instrument 2012 No. 254—Health Insurance (Pathology Services Table) Amendment Regulation 2012 (No. 3) [F2012L02242].


Ozone Protection and Synthetic Greenhouse Gas Management Act—Select Legislative Instruments 2012 Nos—

260—Ozone Protection and Synthetic Greenhouse Gas Management Regulation 2012 (No. 3) [F2012L02267].

261—Ozone Protection and Synthetic Greenhouse Gas Management Amendment Regulation 2012 (No. 4) [F2012L02270].

Private Health Insurance Act—Private Health Insurance (Complying Product) Amendment Rules 2012 (No. 9) [F2012L02269].

Product Stewardship Act—

Product Stewardship (Voluntary Arrangements) Instrument 2012 [F2012L02258].


Sydney Airport Curfew Act—Dispensation Report 07/12.

Governor-General’s Proclamations—

Australian Citizenship Amendment (Defence Families) Act 2012—Schedule 1—1 January 2013 [F2012L02249].


Customs Tariff Amendment (Schedule 4) Act 2012—Schedules 1 and 2—1 March 2013 [F2012L02253].

Tabling

The following government documents were tabled:


Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 July to 30 September 2012.


Migration Act 1958—Section 486O—Assessment of detention arrangements—Personal identifiers 750/12, 783/12, 792 to 793/12, 813/12, 823/12, 825/12, 836/12, 854 to 855/12, 858/12, 864/12, 900/12, 967/12, 972/12, 984 to 985/12, 989 to 1011/12, 1013 to 1019/12, 1021 to 1025/12, 1028 to 1040/12, 1042 to 1043/12, 1050 to 1052/12 and 1056/12—

Commonwealth Ombudsman's reports.

Government response to Ombudsman's reports, dated 22 November 2012.


QUESTIONS ON NOTICE

The following answers to questions were circulated:

The Lodge and Kirribilli House: Costings
(Question No. 2138)

Senator Abetz: asked the Minister representing the Prime Minister in the Senate, upon notice, on 5 September 2012:

With reference to The Lodge and Kirribilli House, detailed separately, can the following information be provided for each quarter in the 2010-11 and 2011-12 financial years:

(a) the electricity costs at each location;
(b) a breakdown of any expenses in relation to the accommodation, grooming or care for any resident pets;
(c) the cost of food and beverage supplies; and
(d) the cost of catering.

Senator Chris Evans: The Prime Minister has provided the following answer to the honourable senator's question:

(a), (c) and (d) For 2010-11: See Program 1.2 in the 2011-12 Portfolio Budget Statement for the Department of Prime Minister and Cabinet for details of the costs of supporting the Prime Minister's official residences.
For 2011-12: See Program 1.2 in the 2012-13 Portfolio Budget Statement for the Department of Prime Minister and Cabinet for details of the costs of supporting the Prime Minister's official residences.

(b) 2010-11: Nil
2011-12: Nil

Financial Management and Accountability
(Question No. 2367)

Senator Ryan asked the Minister representing the Minister for the Public Service and Integrity in the Senate, upon notice, on 9 October 2012:

For each department and agency under the Financial Management and Accountability Act 1997 and each Commonwealth authority under the Commonwealth Authorities and Companies Act 1997 within the Ministers portfolio: For each of the following items: (a) licences; (b) registrations; (c) fee for services; and (d) permits (and all other permission structures):

(1) How many are administered to the non-government sector.
(2) What are the associated fees with each item, and which sectors of the community are required to hold each.
(3) How often does each item require renewal.
(4) What fees have been paid for each item for the following financial years (or since the item was introduced since 2007-08): (a) 2007-08; (b) 2008-09; (c) 2009-10; (d) 2010-11; (e) 2011-12; and (f) 2012-13.
(5) How much total revenue is collected annually from each of the listed items.

Senator Chris Evans: The Minister for the Public Service and Integrity has provided the following answer to the honourable senator's question:
The Minister for the Public Service and Integrity is in the Prime Minister and Cabinet Portfolio. Please refer to the Prime Minister's response to Senate Question Number 2330.