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SITTING DAYS—2011

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RADIO BROADCASTS

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- PERTH 585AM
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FORTY-THIRD PARLIAMENT
FIRST SESSION—THIRD PERIOD

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

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

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

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

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

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

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<tr>
<td>Prime Minister</td>
<td>Hon. Julia Gillard MP</td>
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<tr>
<td>Deputy Prime Minister, Treasurer</td>
<td>Hon. Wayne Swan MP</td>
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<tr>
<td>Minister for Regional Australia, Regional Development and Local Government</td>
<td>Hon. Simon Crean MP</td>
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<tr>
<td>Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate</td>
<td>Senator Hon. Chris Evans</td>
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<td>Minister for School Education, Early Childhood and Youth</td>
<td>Hon. Peter Garrett AM, MP</td>
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<td>Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate</td>
<td>Senator Hon. Stephen Conroy</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Hon. Kevin Rudd MP</td>
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<td>Minister for Trade</td>
<td>Hon. Dr Craig Emerson MP</td>
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<td>Minister for Defence and Deputy Leader of the House</td>
<td>Hon. Stephen Smith MP</td>
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<td>Minister for Infrastructure and Transport and Leader of the House</td>
<td>Hon. Anthony Albanese MP</td>
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<td>Minister for Health and Ageing</td>
<td>Hon. Nicola Roxon MP</td>
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<td>Minister for Families, Housing, Community Services and Indigenous Affairs</td>
<td>Hon. Jenny Macklin MP</td>
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<td>Minister for Sustainability, Environment, Water, Population and Communities</td>
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<td>Attorney-General and Vice President of the Executive Council</td>
<td>Hon. Robert McClelland MP</td>
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<td>Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate</td>
<td>Senator Hon. Joe Ludwig</td>
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<td>Minister for Resources and Energy and Minister for Tourism</td>
<td>Hon. Martin Ferguson AM, MP</td>
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<tr>
<td>Minister for Climate Change and Energy Efficiency</td>
<td>Hon. Greg Combet AM, MP</td>
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*The above ministers constitute the cabinet*
GILLARD MINISTRY—continued

Minister for the Arts
Minister for Social Inclusion
Minister for Privacy and Freedom of Information
Minister for Sport
Special Minister of State for the Public Service and Integrity
Assistant Treasurer and Minister for Financial Services and Superannuation
Minister for Employment Participation and Childcare
Minister for Indigenous Employment and Economic Development
Minister for Veterans' Affairs and Minister for Defence Science and Personnel
Minister for Defence Materiel
Minister for Indigenous Health
Minister for Mental Health and Ageing
Minister for the Status of Women
Minister for Social Housing and Homelessness
Special Minister of State
Minister for Small Business
Minister for Home Affairs and Minister for Justice
Minister for Human Services
Cabinet Secretary
Parliamentary Secretary to the Prime Minister
Parliamentary Secretary to the Treasurer
Parliamentary Secretary for School Education and Workplace Relations
Minister Assisting the Prime Minister on Digital Productivity
Parliamentary Secretary for Trade
Parliamentary Secretary for Pacific Island Affairs
Parliamentary Secretary for Defence
Parliamentary Secretary for Immigration and Multicultural Affairs
Parliamentary Secretary for Infrastructure and Transport and Parliamentary Secretary for Health and Ageing
Parliamentary Secretary for Disabilities and Carers
Parliamentary Secretary for Community Services
Parliamentary Secretary for Sustainability and Urban Water
Minister Assisting on Deregulation and Public Sector Superannuation
Minister Assisting the Attorney-General on Queensland Floods Recovery
Parliamentary Secretary for Agriculture, Fisheries and Forestry
Minister Assisting the Minister for Tourism
Parliamentary Secretary for Climate Change and Energy Efficiency

Hon. Simon Crean MP
Hon. Tanya Plibersek MP
Hon. Brendan O'Connor MP
Senator Hon. Mark Arbib
Hon. Gary Gray AO, MP
Hon. Bill Shorten MP
Hon. Kate Ellis MP
Senator Hon. Mark Arbib
Hon. Warren Snowdon MP
Hon. Warren Snowdon MP
Hon. Mark Butler MP
Hon. Kate Ellis MP
Hon. Gary Gray AO, MP
Senator Hon. Nick Sherry
Senator Hon. Mark Arbib
Hon. Brendan O'Connor MP
Hon. Tanya Plibersek MP
Hon. Mark Dreyfus QC, MP
Senator Hon. Kate Lundy
Hon. David Bradbury MP
Senator Hon. Jacinta Collins
Senator Hon. Stephen Conroy
Hon. Justine Elliot MP
Hon. Richard Marles MP
Senator Hon. David Feeney
Senator Hon. Kate Lundy
Hon. Catherine King MP
Senator Hon. Jan McLucas
Hon. Julie Collins MP
Senator Hon. Don Farrell
Senator Hon. Nick Sherry
Senator Hon. Joe Ludwig
Hon. Dr Mike Kelly AM, MP
Senator Hon. Nick Sherry
Hon. Mark Dreyfus QC, MP
SHADOW MINISTRY

Leader of the Opposition
Deputy Leader of the Opposition and Shadow Minister for Foreign Affairs and Shadow Minister for Trade
Leader of the Nationals and Shadow Minister for Infrastructure and Transport
Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations
Deputy Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations
Shadow Treasurer
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House
Shadow Minister for Indigenous Affairs and Deputy Leader of the Nationals
Shadow Minister for Regional Development, Local Government and Water and Leader of the Nationals in the Senate
Shadow Minister for Finance, Deregulation and Debt Reduction and Chairman, Coalition Policy Development Committee
Shadow Minister for Energy and Resources
Shadow Minister for Defence
Shadow Minister for Communications and Broadband
Shadow Minister for Health and Ageing
Shadow Minister for Families, Housing and Human Services
Shadow Minister for Climate Action, Environment and Heritage
Shadow Minister for Productivity and Population and Shadow Minister for Immigration and Citizenship
Shadow Minister for Innovation, Industry and Science
Shadow Minister for Agriculture and Food Security
Shadow Minister for Small Business, Competition Policy and Consumer Affairs

Hon. Tony Abbott MP
Hon. Julie Bishop MP
Hon. Warren Truss MP
Senator Hon. Eric Abetz
Senator Hon. George Brandis SC
Hon. Joe Hockey MP
Hon. Christopher Pyne MP
Senator Hon. Nigel Scullion
Senator Barnaby Joyce
Hon. Andrew Robb AO, MP
Hon. Ian Macfarlane MP
Senator Hon. David Johnston
Hon. Malcolm Turnbull MP
Hon. Peter Dutton MP
Hon. Kevin Andrews MP
Hon. Greg Hunt MP
Mr Scott Morrison MP
Mrs Sophie Mirabella MP
Hon. John Cobb MP
Hon. Bruce Billson MP

[The above constitute the shadow cabinet]
SHADOW MINISTRY—continued

Shadow Minister for Employment Participation
Hon. Sussan Ley MP

Shadow Minister for Justice, Customs and Border Protection
Mr Michael Keenan MP

Shadow Assistant Treasurer and Shadow Minister for Financial Services and Superannuation
Senator Mathias Cormann

Shadow Minister for Childcare and Early Childhood Learning
Hon. Sussan Ley MP

Shadow Minister for Universities and Research
Senator Hon. Brett Mason

Shadow Minister for Youth and Sport and Deputy Manager of Opposition Business in the House
Mr Luke Hartsuyker MP

Shadow Minister for Indigenous Development and Employment
Senator Marise Payne

Shadow Minister for Regional Development
Hon. Bob Baldwin MP

Shadow Special Minister of State
Hon. Bronwyn Bishop MP

Shadow Minister for COAG
Senator Marise Payne

Shadow Minister for Tourism
Hon. Bob Baldwin MP

Shadow Minister for Defence Science, Technology and Personnel
Mr Stuart Robert MP

Shadow Minister for Veterans' Affairs and Shadow Minister Assisting the Leader of the Opposition on the Centenary of ANZAC
Senator Hon. Michael Ronaldson

Shadow Minister for Regional Communications
Mr Luke Hartsuyker MP

Shadow Minister for Ageing and Shadow Minister for Mental Health
Senator Concetta Fierravanti-Wells

Shadow Minister for Seniors
Hon. Bronwyn Bishop MP

Shadow Minister for Disabilities, Carers and the Voluntary Sector and Manager of Opposition Business in the Senate
Senator Mitch Fifield

Shadow Minister for Housing
Senator Marise Payne

Chairman, Scrutiny of Government Waste Committee
Mr Jamie Briggs MP

Shadow Cabinet Secretary
Hon. Philip Ruddock MP

Shadow Parliamentary Secretary Assisting the Leader of the Opposition
Senator Cory Bernardi

Shadow Parliamentary Secretary for International Development Assistance
Hon. Teresa Gambaro MP

Shadow Parliamentary Secretary for Roads and Regional Transport
Mr Darren Chester MP

Shadow Parliamentary Secretary to the Shadow Attorney-General
Senator Gary Humphries

Shadow Parliamentary Secretary for Tax Reform and Deputy Chairman, Coalition Policy Development Committee
Hon. Tony Smith MP

Shadow Parliamentary Secretary for Regional Education
Senator Fiona Nash

Shadow Parliamentary Secretary for Northern and Remote Australia
Senator Hon. Ian Macdonald

Shadow Parliamentary Secretary for Local Government
Mr Don Randall MP

Shadow Parliamentary Secretary for the Murray-Darling Basin
Senator Simon Birmingham

Shadow Parliamentary Secretary for Defence Materiel
Senator Gary Humphries

Shadow Parliamentary Secretary for the Defence Force and Defence Support
Senator Hon. Ian Macdonald
**SHADOW MINISTRY—continued**

| Shadow Parliamentary Secretary for Primary Healthcare | Dr Andrew Southcott MP |
| Shadow Parliamentary Secretary for Regional Health Services and Indigenous Health | Mr Andrew Laming MP |
| Shadow Parliamentary Secretary for Supporting Families | Senator Cory Bernardi |
| Shadow Parliamentary Secretary for the Status of Women | Senator Michaelia Cash |
| Shadow Parliamentary Secretary for Environment | Senator Simon Birmingham |
| Shadow Parliamentary Secretary for Citizenship and Settlement | Hon. Teresa Gambaro MP |
| Shadow Parliamentary Secretary for Immigration | Senator Michaelia Cash |
| Shadow Parliamentary Secretary for Innovation, Industry, and Science | Senator Hon. Richard Colbeck |
| Shadow Parliamentary Secretary for Fisheries and Forestry | Senator Hon. Richard Colbeck |
| Shadow Parliamentary Secretary for Small Business and Fair Competition | Senator Scott Ryan |
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PARLIAMENTARY REPRESENTATION

Senators Sworn

Her Excellency Ms Quentin Bryce, Companion in the Order of Australia, Governor-General of the Commonwealth of Australia, entered the chamber and, taking her seat on the dais, said:

Honourable senators:

I am present to administer to senators elected to serve in the Senate from 1 July 2011 the oath or affirmation of allegiance, as required by section 42 of the Constitution.

Governor-General: Will honourable senators please come to the table as their names are called by the Clerk to make and subscribe the oath or affirmation of allegiance.

The Clerk: I lay on the table the certificates of election of senators elected to serve in the Senate from 1 July 2011.

The abovementioned senators made and subscribed the oath or affirmation of allegiance.

Her Excellency the Governor-General retired—

PARLIAMENTARY OFFICE HOLDERS

President

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (10:17): Clerk, I remind the Senate that the time has come when it is necessary for the Senate to choose one of its members to be President. I propose to the Senate for its President, Senator Hogg, and move:

That Senator Hogg do take the chair of this Senate as President.

The Clerk: Are there any further nominations?

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10:17): Of course there are. I propose—

Honourable senators interjecting—

Senator BOB BROWN: I remind members opposite of their obligations at this time under the standing orders while the Clerk is presiding for this purpose. I propose to the Senate for its President, Senator Ludlam, and move:

That Senator Ludlam do take the chair of this Senate as President.

The Clerk: Does any senator wish to address the nominations?

Senator Hogg: Honourable senators, I submit myself to the will of the Senate.

Senator Ludlam: Honourable senators, I submit myself to the will of the Senate.

The Clerk: There being two nominations, I invite the two candidates to address the Senate.

Senator Hogg: Honourable senators, I submit myself to the will of the Senate.
Senator BOB BROWN: The standing orders advise that the Senate vote for the best person as its presiding officer. This is an extraordinarily important position under the Senate rules. My position is that Senator Ludlam is the person best placed—

Honourable senators interjecting—

Senator BOB BROWN: I would remind senators opposite that there are standing orders which require—

Opposition senators interjecting—

Senator BOB BROWN: Bad behaviour at the start by the coalition will be noted. I note that Senator Ludlam has been an acting presiding officer in this chamber for the last three years and has done an impeccable job. He is a person of great integrity. He is forthright. He would be an unbiased, deliberative and fair presiding officer.

I also want to say—over the already notable poor behaviour we are hearing from the minority on the coalition side—that it will be very clear that there will need to be—

The Clerk: Order, Senators, please.

Senator BOB BROWN: The Clerk has called for order, and I would ask you to respect her in doing that. I would note that there will be contentious periods in the coming Senate, and Senator Ludlam would be very well placed to ensure that the standing orders are upheld and that the constitutional responsibilities here are upheld. I note that there is a subtext here, and that is that there is a cosy arrangement between the government and the opposition—

Honourable senators interjecting—

Senator BOB BROWN: We will see it played out. There is a cosy arrangement to have the government appoint the presiding officer and the opposition to appoint the deputy officer. I would ask all senators to consider that that is not what the standing orders imply, that is not in the spirit of the standing orders. It is up to every member in this place to vote for the best candidate. Clearly Senator Ludlam is the best choice for presiding officer of this great chamber over the coming three years.

The Clerk: Does any other senator wish to address the nominations?

There being two nominations, in accordance with the standing orders a ballot will be held. Before proceeding to ballot, the bells will be rung for four minutes.

The bells having been rung—

The Clerk: The Senate will now proceed to ballot. Ballot papers will be distributed to honourable senators, who are requested to write upon the paper the name of the candidate for whom they wish to vote. The candidates are Senator Hogg and Senator Ludlam. I invite Senator McEwen and Senator Siewert to act as scrutineers.

A ballot having been taken—

The Clerk: The result of the ballot is as follows: Senator Hogg, 62 votes; and Senator Ludlam, 9 votes. Senator Hogg is therefore elected President of the Senate in accordance with the standing orders.

Senator Hogg having been conducted to the dais—

The PRESIDENT (10:37): Firstly, I wish to thank honourable senators for their confidence in re-electing me as the President of the Senate. It is truly an honour indeed once again to serve this parliament in this honourable office. I wish to thank my party, in particular, the Leader of the Government in the Senate, Senator Evans, for their support in nominating me for this position. I thank those people who have supported me over a long period of time both inside and outside of this parliament to enable me to assume an office such as this. I wish to thank my staff, both in Canberra and in Brisbane,
because without my staff I would indeed be nothing. Last but not least, I want to thank my wife Sue—my wife of 33 years and three days—who has been a tower of strength to me. As we all know, in politics the hard part is for our wives, our partners, our spouses. Sue, I love you for all that you have done for me and I thank you very much.

Before we suspend, there is one other thing I should do at the outset, and that is to congratulate the Clerk and the officers of the Black Rod on the transition that has taken place from when the Senate last sat until now. The effort has been exemplary indeed and the transition has been as smooth as we could reasonably hope it to be. So I want to put on the record for all time that they have done a marvellous job in settling in all of the new senators. Last but now least, I congratulate all those senators who have assumed their seat in this chamber for the first time. Well done. We look forward to having some robust debates over the next period of time. Thank you.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (10:39): Mr President, I would like to formally congratulate you on your election to this very important office on behalf of the government and all Labor senators. Your role is a very important one and one that the Senate takes very seriously. I think the support you have received today reflects the fact that you are recognised for your fairness, your impartiality and your capacity to work with all senators for the benefit of the Senate and the Australian people. Congratulations on your re-election.

I will keep my remarks short because the Governor-General is awaiting us but I also want to place on the record that, while we did not support Senator Ludlam, I do appreciate the contribution he has made, particularly when in the chair, and his light touch and patience are appreciated by all senators. But the government maintains its commitment that the President ought be nominated by the government and we will be continuing that approach with the election of the Deputy President. The government will support the nomination of the opposition. Despite a difficult period when these things were called into question some years ago—and I will not go over the history of that—we think that the process of having the Senate President as a representative from the government and the Deputy President being the nominee of the opposition has served the Senate well and has provided for stability and the good functioning of the Senate. This has obviously been assisted by the fact that we have had quality people nominated on all occasions, and I am sure that will continue this time. Mr President, on behalf of all Labor senators, congratulations on your election and we look forward to working with you in this new parliament.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (10:41): Mr President, on behalf of the coalition, I extend our sincerest congratulations to you on your re-election. In anticipation of the Labor Party delivering on the promise that was just made in relation to the Deputy President, I announce that there will not be a National Party nomination for the deputy presidency.

Mr President, whilst we mutually test each other's patience from time to time, you do know that you have enjoyed our support in the past and you know that you enjoyed our support today in the ballot, and I assure you that you will continue to enjoy our support in the future. We wish you well.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (10:41): Mr President, I add a word of con-
gratulations for you winning the ballot and resuming your seat as presiding officer of this chamber, and I can assure you that the Greens will be respecting that and assisting you in the good governance of the Senate. I also honour and thank Senator Ludlam for offering as an alternative. He no doubt will continue to serve this Senate in a wider capacity, if not in the chair.

I will say that it is notable that the National Party will not be, as I just heard from the Leader of the Opposition in the Senate, putting forward a candidate and that we now have the Greens in the position of being the third party in this chamber. And we do intend to take a vigorous role in offering alternatives to an arrangement like we have just seen, which is going to be the pattern of this Senate, where on many, many issues the two peak parties will be getting together to use their numbers against the innovation of this very progressive and growing force in politics here on the crossbench, the Australian Greens.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (10:43): It is great to see you re-elected as President, Senator Hogg. You did an admirable job before and you are widely held with respect across the chamber—or it seems that most of us thought you did a very good job. I wish you very well in your deliberations in the coming period. We have already had Senator Brown say that we are part of a minority, which means that he must be part of a majority—so he is obviously part of the government, which is clear to see. We hope that we will be able to make sure that you can keep up your exemplary record of never throwing any of us out of the chamber—mind you, there is always an opportunity for you to break from tradition.

The National Party is quite happy to work in an effective coalition. We feel that that has been the most effective form of government in postwar Australia. As such, we will not be playing any sort of charade by putting up a candidate for deputy. We have obviously had discussions with regard to who it will be, and we are very comfortable with the job that they will do.

Senator XENOPHON (South Australia) (10:44): Mr President, I echo the remarks of my colleagues in congratulating you on your re-election as President. Senator Ludlam was a worthy opponent but I think it is appropriate that you be re-elected. I hope in the next three years whenever I approach you in the chair you will not say, ‘What mischief have you caused now?’—that there will not be a continuation of that. I look forward to working with you as President for the next three years.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (10:45): I wish to inform honourable senators that the Governor-General will be pleased to receive Mr President and such honourable senators as desire to accompany him in the Member's Hall immediately.

Sitting suspended from 10:45 to 12:00

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

The PRESIDENT: I have to report that, accompanied by honourable senators, this morning I presented myself to the Governor-General as the choice of the Senate as President. The Governor-General congratulated me upon my appointment.

Deputy President and Chairman of Committees

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and
Leader of the Government in the Senate) (12:01): Mr President, I remind the Senate that it should now choose one of its members to be Deputy President and Chair of Committees.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (12:01): Mr President, I propose to the Senate for its Deputy President and Chair of Committees Senator Stephen Parry, and I move:

That Senator Parry be appointed Deputy President and Chairman of Committees.

The PRESIDENT: Are there any further nominations?

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12:01): Mr President, I propose to the Senate for its Deputy President and Chair of Committees Senator Scott Ludlam, and I move:

That Senator Ludlam be appointed Deputy President and Chairman of Committees.

The PRESIDENT: Are there any further nominations? There being no further nominations, I invite the two candidates to address the Senate.

Senator Parry: Mr President, I submit myself to the will of the Senate.

Senator Ludlam: Mr President, I submit myself to the will of the Senate

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12:02): I thank Senator Ludlam for presenting himself. I congratulate Senator Parry as well. I submit that Senator Ludlam would be a better choice for the position of Deputy President and Chair of Committees.

I do object to the arrangement where we are now going to see the Labor Party support the coalition's nominee en bloc and, as we saw with the vote for you as President, the coalition's voting with the Labor Party en bloc. One of these days we will get to the more sensible arrangement of not only nominating but choosing senators on the basis of merit rather than on the basis of this cosy arrangement. It is significant that this arrangement is here at the outset. There has been talk about the balance of power. The Greens will use that responsibly and for a stable procedure of governance in this parliament and in this place on behalf of the Australian people. That said, it is very clear here that, in the majority of the workings of this Senate, we will see the government and opposition come together to pass legislation and the precedent is being set here today.

The PRESIDENT: There being two nominations, in accordance with the standing orders, a ballot will be held. Before proceeding to ballot, the bells will be rung for four minutes—ring the bells.

The bells having been run—.

The PRESIDENT: The Senate will now proceed to ballot. Ballot papers will be distributed to honourable senators, who are requested to write upon the paper the name of the candidate for whom they wish to vote. The candidates are Senator Stephen Parry and Senator Scott Ludlam. I invite Senator Adams and Senator Siewert to act as scrutineers.

A ballot having been taken—

The PRESIDENT: Order! The result of the ballot is as follows: Senator Ludlam, nine votes; Senator Parry, 61 votes. I declare Senator Parry elected Deputy President and Chair of Committees in accordance with the standing orders. Let me be the first to congratulate you, Senator Parry, on your election. I look forward to serving with you for a long period, in the same way that I served with other Deputy Presidents and served as Deputy President with Presidents, and to having a good working relationship to ensure that we make this chamber a place
where people as senators can work and operate.

The DEPUTY PRESIDENT: Thank you very much, Mr President, for those kind words. I thank all senators for their support. I intend to discharge those duties to the best of my ability and in the fairest manner possible. I look forward to serving as Deputy President.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (12:21): On behalf of the government and all Labor senators I congratulate Senator Parry on his election to the important role of Deputy President and Chair of Committees. I think it is a waste of a good whip, myself! But congratulations to Senator Parry. I know he will be conscientious and effective in the role and will learn the skills of Deputy President, which involve impartiality and balance—things which one does not have to display as a whip! I know Senator Parry has the capacity to do that, and I hope he does forge a strong partnership with President Hogg—though perhaps not as strong as the former President and Deputy President did; they were a very effective team, and a little too close for comfort on occasions! But we do look forward to that strong working relationship. Again, congratulations.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (12:22): On behalf of the Opposition I congratulate Senator Parry on his election to the important role of Deputy President. We are confident that he will be able to undertake the role with dignity and purpose. I am sure that his former career as a policeman will assist him in enforcing the rules—and, just in case he does not succeed, his former role as an undertaker may come in even more helpful! We wish Senator Parry well. He has the full support of the coalition as he takes on this new role.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12:22): Mr President, I too congratulate our new Deputy President and Chairman of Committees and wish him well. I know that he, like you, will be behind the implementation of good governance in the Senate. I note that the vote just revealed to us does not include the full complement of people in here. I would be interested to know where those spare ones went to.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (12:23): On behalf of the National Party I congratulate Senator Stephen Parry on being elected as the Deputy President of the Senate. Stephen has had some major successes. The best one, of course, was when he got us back our superannuation. Stephen, we are still waiting for that, mate! I am sure he will hold the office with the dignity it deserves. He acknowledges that the office is a great honour that the nation has bestowed upon him. I also give my condolences to the Greens for not quite making it there—apparently the other votes were all for Sarah Hanson-Young!

Senator XENOPHON (South Australia) (12:24): I echo the remarks of my colleagues in congratulating Senator Parry on his new role. I think Senator Ludlam was a worthy adversary. I will miss Senator Parry as whip—but I am sure the feeling is not mutual! I wish him well in his new role.

PARTY OFFICE HOLDERS

Australian Greens

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (12:24): I seek leave to table a list of the new portfolio arrangements for the nine Greens senators and the honourable member for Melbourne
in the House of Representatives, Adam Bandt, and to make a short statement relating to ministerial and portfolio arrangements and party office holders.

Leave granted.

Senator BOB BROWN: I notify the Senate that Senator Milne will continue as Deputy Leader of the Australian Greens, Senator Siewert as whip, Senator Hanson-Young as chair of the Australian Greens party room and I as Leader of the Australian Greens.

National Party

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (12:25): by leave—I inform the Senate that the National Party will be electing its office bearers at three o'clock this afternoon. I hope to be able to inform you that everything will remain as it is; otherwise, someone will be informing you that it will not. I congratulate Senator Bob Brown and Senator Christine Milne. I know that in the past you have had ballots on that deputy leader position, and I am sure that, with the open and transparent relationship that the Greens have, we will be able to find out if there are any further ballots with regard to prospective contenders for that position. But we congratulate you both—for the time being!

PERSONAL EXPLANATIONS

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (12:26): I seek leave to make a personal explanation for the purpose of correcting the record.

Leave granted

Senator LUDWIG: This is the first opportunity I have had to correct the record since it was drawn to my attention. I seek to clarify the record with regard to correspondence between me and the live export industry in relation to animal welfare matters. On 30 November 2010 I met with representatives of the industry to discuss animal welfare issues in the live export trade. Following on from this meeting I wrote to the industry on 17 January. This letter was addressed to the Australian Livestock Exporters Council and also sent to LiveCorp. In that letter I made it clear that I was seeking industry support and advice on systems to improve animal welfare outcomes achieved in the live trade generally and in particular during the Eid festival. On 24 January I received a response from the Australian Livestock Exporters Council which was copied to LiveCorp. This letter made it clear that, after my involvement, the Australian Livestock Exporters Council, LiveCorp and Meat and Livestock Australia were taking steps to deliver better animal welfare outcomes through the trade.

On 21 March I again wrote to the Australian Livestock Exporters Council reiterating my support for the industry and again asking for proposals to improve animal welfare outcomes across the trade. On 22 March I received a response from the Australian Livestock Exporters Council. That response again made it very clear that, as a result of my engagement with the issues, the industry—the Australian Livestock Exporters Council, LiveCorp and Meat and Livestock Australia—had commenced a process to deliver better animal welfare outcomes.

I table a copy of those letters. Any suggestion that Meat and Livestock Australia were not aware of any of my concerns about these issues is not correct.
PARTY OFFICE HOLDERS

Liberal Party

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (12:28): I seek leave to make a very brief statement about coalition arrangements.

Leave granted.

Senator ABETZ: I omitted to inform the Senate that, consequential to the election of Senator Parry as Deputy President, Senator Judith Adams is now the acting whip for the coalition pending some ballots within our party room shortly.

BUSINESS

Rearrangement

Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (12:28): I move:

That the order of consideration of government business orders of the day for the remainder of today be as shown in the list circulated in the chamber.

No. 3—Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011

No. 1—National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011

No. 2—Military Justice (Interim Measures) Amendment Bill 2011

No. 4—Intelligence Services Legislation Amendment Bill 2011

No. 5—Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011

No. 13—Mutual Assistance in Criminal Matters Amendment (Registration of Foreign Proceeds of Crime Orders) Amendment Bill 2011

No. 14—Aviation Transport Security Amendment (Air Cargo) Bill 2011

No. 12—Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010.

Question agreed to.

BILLS

Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator BILYK (Tasmania) (12:29): I rise to speak on the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011. Since 2008 the Australian government has introduced a range of new measures to ensure the financial viability of childcare providers, including strengthening approvals processes and requiring additional notification of closures of centres. This bill makes a number of administrative amendments to allow the government to strengthen debt recovery provisions, compliance and administration of the childcare benefit.

The legislative changes in this bill which amend the Family Assistance Administration Act and other acts of parliament will improve accountability within the childcare sector. As someone who has worked for over a decade in the childcare sector, I understand how important this is to care and learning outcomes for children. During the collapse of ABC Learning in 2008, the childcare centre in Margate—a town, close to my electorate office, where I spent much of my childhood—was facing the threat of closure. I was really impressed by the fighting spirit of that community as they vowed to do all they could to keep that service open.

The receivers of ABC Learning chose not to close the Margate childcare centre immediately but could only guarantee that it
would stay open till June 2009. The childcare centre was bought by Tasmanian group Stepping Stones, which subsidises the running costs of many of its regional childcare centres through its city based services. Hundreds of other centres were saved because the Australian government provided $34 million in assistance to keep them open. The government’s decisive action meant that 90 per cent of these centres continue to operate for Australian families today and, indeed, the Margate childcare centre is still working to this day. Being 20 minutes south of Hobart, that is very important for people in the region. One of my staff members utilises that centre for her children and I know how important it is for her.

Affordable, accessible child care is vital to parents and caregivers in small towns like Margate. However, what I think this story also highlights is the importance of integrity in the childcare market because we all know the dramatic effect that early childhood education has on the future of our children. This bill will improve the accountability of the childcare market and protect the market from unscrupulous operators. For instance, it will allow the Australian government to offset and recover payments owed by one service from other services operated by the same operator. This will ensure that operators that run up debts to the Commonwealth in one service can be held accountable for their actions. If an operator exits the market after accumulating debts to the Commonwealth, they will be stopped from re-entering the market under a restructured company with similar but not identical directors.

The bill will also allow payments made to childcare services to be offset against subsequent payments. In other words, where the recalculation of a childcare benefit fee results in a reduction of the amount payable but the higher amount has already been paid, the debt owing to the Commonwealth can be recovered from future payments.

If a service notifies the department of an intention to cease operation, the secretary will have the discretion to cease making enrolment advance payments to the service. The powers of the secretary to refuse approval of a childcare service will be clarified and broadened. The secretary will be allowed to refuse any applicant that does not meet the conditions for approval. This will provide stronger powers to ensure that applicants are fit and proper people to operate childcare services and will improve the standard of the childcare industry. The bill will also ensure that the conditions for initial approval and continued approval are aligned.

The bill will clarify the provisions concerning eligibility for childcare benefit if a child is absent from a childcare service. The minister will be authorised to specify, by legislative instrument, the circumstances under which the service will be taken to have permanently ceased providing care to a child who is absent. Also, the bill will amend protected information provisions to allow the Commonwealth to share information about childcare services with state and territory regulatory authorities. The sharing of information between authorities supports the National Quality Framework agreed to by COAG.

The Australian government has invested $273.7 million in the National Quality Framework. The framework will improve educator to child ratios so that each child gets more individual time and attention. It will also introduce educator qualification requirements so educators are better able to lead activities that inspire children and help them learn and develop. Early childhood learning is vital to a child's development and
these two initiatives under the framework will ensure that children attending child care will get a quality learning experience. The National Quality Framework will also include a new ratings system so parents will know the quality of care on offer and can make informed choices. This is very important because not all forms of child care suit all parents. There need to be different types of services available so that parents can choose one that best suits them and their child's needs.

Finally, the framework will reduce the regulatory burden. Services will only have to deal with one regulator. This is particularly important in reducing the overheads of operators, especially those operating in more than one state or territory. The information-sharing provisions will also benefit services as they will not have to provide the same information to more than one body. Reducing the regulatory burden on childcare operators will allow them the opportunity to focus more resources on care itself, and this is obviously a great outcome for our children.

I am a member of the Senate Education, Employment and Workplace Relations Reference Committee and was on the committee at the time of the inquiry into the provision of child care. It was a most interesting inquiry to be involved in. We heard evidence from a large number of people, including childcare providers and parents, and visited a number of childcare services to see the effects of the collapse of the ABC Learning centres. As we know, that left many thousands of families stranded, as they were not sure whether they had care or not, so the Labor government jumped in and put that money in to make sure that child care was not compromised. I am not sure that other parties, if they had been in government, would have done it that way. I know that, having worked in the industry for over a decade and still having many contacts within the industry, it was greatly appreciated that we did it that way.

I was on the Senate Education, Employment and Workplace Relations Reference Committee in November 2009 when it handed down its report from the inquiry into the provision of child care. The committee's recommendation 8 was for:

… the establishment of a new statutory body, widely representative of the sector, for the purposes of advising the Minister on childcare policy and its implementation, with powers to oversee a uniform regulatory regime operating across states and territories.

The national quality framework is broadly in line with that recommendation.

I am sure you would agree that quality, affordable and accessible child care is important for parents and other caregivers, but it is especially important for the children. We know from years of international research that the first five years of a child's life shapes their future. I am sure everybody in this place has heard the old adage: give me a child until they are five and I will give you the adult for life. Their health, learning and social development are so important in those first critical years and we want to make sure that their future is bright. That is why the Australian government is committed to improving access to quality, affordable child care.

Overall, we are investing $20 billion in funding for early childhood education and child care over the next four years—almost $12.8 billion more than was provided in the last four years of the former coalition government. We are investing $16.4 billion to help hundreds of thousands of Australian families annually with the cost of child care, and that includes $9.2 billion to help reduce the cost of child care through the childcare benefit. It also includes $7.2 billion to assist working families with the cost of child care.
through the childcare rebate. We raised the childcare rebate to 50 per cent of parents' out-of-pocket expenses and increased the maximum for each child in care to $7,500 per year. This compares to the previous government, where the rebate was at 30 per cent and the maximum was only $4,354. That has made a huge difference to a number of working families. A number of working families have told me that it has made a huge difference to them and that it has allowed one parent to be a bit more flexible in their work arrangements, which is obviously important.

We also promised to pay the childcare rebate quarterly and delivered on that promise. However, we do understand that families need to budget weekly or fortnightly. That is why, from July 2011, parents are able to receive the rebate no later than fortnightly, giving them access to this important assistance when their fees are due. This is another area that has made a huge difference for families. Since 2004, out-of-pocket costs for families earning $75,000 a year have reduced from 13 per cent of their disposable income to only seven per cent. In addition to the assistance given to families to pay for the expenses of child care, the Gillard Labor government has enhanced the information available on local childcare services. The MyChild website provides a searchable database of 13,500 childcare centres. It includes information about the types of services available in local areas and the vacancy and fee information of those services. This is really important information for parents who are looking for child care. It means they do not have to run around to all the different services to find out.

We have invested $126 million through the 2008-09 budget over four years to train and retain a high-quality early education and childcare workforce. Having worked in the childcare industry for over a decade, let me say that they are a group of very dedicated people. That is my personal opinion, of course. Probably the key issues that brought me to politics were the working rights and conditions of childcare workers and the way society views childcare workers. The more we can give them quality training the more likely they will be more recognised in society for the valuable work they do. After all, parents leave their most valuable possessions with these people, no matter what type of service they work in, and they should be suitably recompensed. That is an argument for another day. It is one I have had for 25-plus years. As people in this place know, it is not something I have given up on yet.

Other government childcare initiatives have included the Home Interaction Program for Parents and Youngsters, which has been delivered in 50 disadvantaged communities, and Budget Based Funding payments that provide care to some of Australia's most vulnerable children. Of course, as I have mentioned, there is the new national quality framework of which this bill is a key feature.

Announced in the 2011-12 budget were new requirements for teenage parents to actively participate in developing their skills from the birth of their child until their child turns six. These new measures will commence from 1 January 2012 and will apply to teenage parents on Parenting Payment in 10 disadvantaged communities. Supporting these measures, the government will cover close to 100 per cent of a teenage parent's childcare costs while they are studying or training through the Jobs, Education and Training—or JET—Child Care Fee Assistance scheme. Because being a parent is tough for anyone, but especially for a young parent, and often they are single parents, we will expand the successful Communities for Children services to provide teen parents and their children with new playgroups,
parenting education classes, mentoring support and early learning programs.

As I have said, the Gillard Labor government has put an enormous amount of money into child care. It is unfortunate that the previous government did not see fit to treat child care at the level that it deserves to be treated. We have had some catching up to do. There was the collapse of the ABC Learning Centres as well, which, as I mentioned, caused quite a lot of stress for the families involved and meant that the government had to find some extra money to help keep those centres going.

Overall, I am very impressed with what we have been able to do. We are always working to improve child care and I know that the Gillard Labor government considers child care to be part of early education. I am very pleased about that because, as I said, the first few years of a child's life, when they are quite often in a childcare service of one sort of another—some for a short period of time and some for longer periods of time—is the critical time for their development. This time shapes the future. The young children of today are the future for all of us. The best care that we can give them and the better and more affordable the child care we give them the better it will be for the nation as a whole.

This government has shown that it is very serious about child care and the broad range of issues around child care. We are making record investments in childcare assistance—quality, training and workforce retention. This bill before the Senate will improve accountability within the childcare industry as well.

As I said, I still have a lot of contact with people within the childcare industry—predominantly in Tasmania, but certainly in other states as well. I have spoken to a number of them about this bill and they all see it positively; I have not had anyone from the childcare industry tell me anything negative about it. So I urge all senators to support it and to help make the future better for Australia by making sure that we get things right within the childcare industry.

**Senator NASH** (New South Wales—Deputy Leader of The Nationals in the Senate) (12:44): I rise today to make some remarks on the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011. There is no doubt that child care is one of the most important issues for families right across the country, particularly in regional areas such as the one where I live. Too often we see families in regional areas facing difficulties when it comes to getting childcare places for their children, compared to families in city areas. As a mother I have certainly availed myself of childcare services—admittedly a long time ago now as I have two boys who are 18 and 16—and I recognise that it is vitally important that those childcare services are available and operating appropriately and affordably right across the country, particularly, from my perspective, in regional areas.

The primary purpose of the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011 is to provide for the implementation of a new national regulatory system for early childhood education and care prescribed under the new education and care services national law. The bill seeks to amend a couple of acts: the A New Tax System (Family Assistance) Act 1999 and A New Tax System (Family Assistance) (Administration) Act 1999. There are other acts, as I understand it, as well. This bill will allow for greater scope for the recovery of debts from approved childcare operators and clarify when a childcare service has stopped providing care for a child and, thus, when a childcare service or a carer is no longer
eligible for childcare benefit. It will allow for instruments made under family assistance law to be part of family assistance law and thus be subject to the internal and external review mechanisms provided for in the FAA Act.

The bill will allow the minister to make guidelines for the release of protected information collected by Centrelink relating to education and care services for the purposes of the new education and care services national law. The coalition has some concerns around the privacy issues contained within that amendment. The understanding is that they will work appropriately but I think it was important that those concerns were raised to ensure that the proper privacy measures were in place so that parents and families could be reassured that it is appropriately delivered.

The bill will also provide greater scope to the Department of Education, Employment and Workplace Relations to refuse approval of childcare services. That is particularly important to ensure that, when a childcare provider is looking to end their service, payments are made to the provider right up until the very last point in time. My understanding is that this bill will address that and allow the department to deal with that early.

In addition, the bill will allow for information which has been collected by Centrelink in relation to the childcare benefit to be shared with state and territory bodies. The privacy issue comes up again there. We need to be entirely sure that that will work appropriately. I understand that the intent is for the shared information to be streamlined. That is a worthy intent as long as those reassurances are given to people out in the community.

In essence, this is fairly complicated language for what is quite a simple intention. The intention of the bill is to improve the effectiveness of the recovery of fee reductions, enrolment advances and business continuity payments paid to improved childcare services. The intent of this bill is supported by the coalition, particularly, when we look at the cost to government. The bill is trying to ensure that payment recovery can be done in a timely manner. It is quite right that the bill intends to address that, given that the cost to government of having payments sitting there for an extended period of time has been significant.

I note that DEEWR officials in the 2010 budget estimates indicated that the debt owing to the Commonwealth was around $70 million, with about 6,000 childcare providers owing a debt to the government. Those being taxpayers’ dollars, I am sure the Australian people would be supportive of a far more timely and efficacious process. I am sure that people would be quite concerned to hear that $70 million is, in essence, being held up in the system because the system is not working as best it could. They would be quite concerned to know that a figure of that amount was being caught up in the bureaucratic process. It is something that needs to be addressed, and is addressed by the government in this bill.

There has been a lot of discussion in this place around a number of childcare measures that the government has introduced lately, but one thing of note has been the government’s move to cut the childcare rebate and remove the indexation. While that is not related to this particular bill, there are a number of bills, there is a range of legislation, at the moment in this place within the childcare basket, so it is important that we take child care holistically and do not just pull off piece after piece as we go through bill after bill. When the government moved to remove the indexation and cut the
childcare rebate, many families that I talked to were very concerned about the government looking to cut that rebate. Indeed, it seems counterintuitive and quite extraordinary, if they are trying to encourage and assist families in affording child care—particularly when so many families are faced with the rising cost of living at this point in time—for the government to move to cut the childcare rebate.

I note that Senator Bilyk before me touched on a range of areas throughout the childcare system, and it was quite right that she did so. But families in the community, particularly regional communities, are struggling in particular to come to terms with why the government would want to cut the childcare rebate to families. It simply does not make sense. If this Labor government wanted to give families greater access to child care, to lighten their burden, to give them assistance in placing their children into child care, you would think that cutting the rebate would be the last thing they would move to do. Unfortunately, that is what we are seeing from this government.

As I said, it simply does not make sense. Of all the things we could do, within the range of changes we are seeing in the childcare sector, to reduce the rebate, putting added pressure on families across the country—as I say, particularly in regional areas—really does not make sense. I think it is simply a matter of the government not understanding the very real financial pressure that families are under. When you compare families in regional communities—and I know that Senator Moore will understand very well what I am talking about—with many of those in cities, you see that the tyranny of distance, the difficulty of finding appropriate child care and the lack of choice in child care that we often see combine to make it that much tougher, that much more difficult, in regional communities for families trying to access childcare services.

When families across the country look at the reason that the government has moved to cut the childcare rebate, it becomes even more extraordinary to them as they realise that the reason is to put funding towards the national quality framework that Senator Bilyk was talking about earlier. The government has said that $86.3 million will be saved by the changes that it has made. Again as Senator Bilyk said, the first five years of a child's life shapes their whole life; it is a very important part of the child's upbringing and education, and shapes who they will be in the future. But the government are saying to Australian families working very hard to give their children every opportunity that they are going to take $86.3 million from them to put towards the national quality framework.

I am sure Senator Moore will stand up after me and argue how appropriate it is that we reduce the level of the rebate, how important it is that we have that funding go to the national quality framework. I am sure we will then get a good 10 minutes on how good the national quality framework is. But at the end of the day this government should not be cutting the childcare rebate to fund the framework. Let me discuss with the chamber how obvious that became recently.
For the last couple of years, the government has had a borrowing limit of $200 billion. That is right, anybody listening out there in voter land: $200 billion. In the last few weeks, legislation was put through the parliament to raise the level of borrowing to $250 billion. Can I point out that, historically, that type of request of the parliament for increased borrowings has come as a separate piece of legislation. It has gone forward separately and debate and discussion has occurred separately. That requirement from the parliament happens on its own. But this time we saw the government tuck that request of the parliament in with the other appropriations bills, which are normally passed by the parliament so the government can get on with the business of running the country. So there was no opportunity whatsoever for this parliament to deal separately with that piece of legislation that increased the borrowings of this government from $200 billion to $250 billion.

The reason I make that point is that, when families across the country realise that is the state of this nation's finances, they will be doubly annoyed this government is going to the hip pockets of mums and dads and carers across this country by cutting the childcare rebate. That is simply not on. It is no wonder that the parents, families and carers talking to me are saying: 'Why should I take a cut to the rebate for the government to pay for something else when it simply cannot manage the country's budget? It simply cannot do it.' That $250 billion borrowing limit is going to place enormous pressure on the economy. This financial year this government is going to be paying $15 million of interest a day. Families with children in those childcare places have watched this government blow billions of dollars on the pink batts scheme, on the Building the Education Revolution debacle and on the $900 cheques of a few years ago, and that very same government is now coming to them and saying, 'By the way, we're going to cut your childcare rebates.' I do not think that is acceptable. I do not think that is the way to govern. I do not think it is fair for the parents and the carers across this country, who are doing it tough.

Those parents and carers are going to do it even tougher when this government brings in a carbon tax. Heaven help us then. Even though the government has announced that fuel is not going to be subject to a carbon tax, everything else still is. The increased cost of food, electricity, transport—a whole range of products right across the sector—will be passed down to people in their homes. Every time the coalition make comments like that, the government says we are scaremongering. Rubbish! It is a fact. The Prime Minister keeps saying that she is only going to tax the big emitters when she knows full well that those costs will be passed on. The expenses in the budget for all of those families out there with children in child care are going to be worse under a carbon tax.

It will be interesting when we see the detail. The Prime Minister has said there will be no tax on fuel, but let us just watch; let us just look and see. For each service station incurring those increases in their electricity costs, you watch those getting passed on as more cents on the bowsers. What about companies like Shell which transport the fuel? They are obviously a major company. Our understanding is that they are going to have to pay the carbon tax. You watch that cost go onto the bowser of the service station at the corner. There will be a range of things that become clearer over ensuing days once we can have a proper look at this, and those increased costs will affect mums and dads and carers right across the country.
This government is trying to cut the childcare rebate but is going to give a double whammy down the track with increased costs through a carbon tax. No matter what this Prime Minister says, I simply do not see how you can believe her. This is the Prime Minister that said we were not going to have a carbon tax. Now apparently we are not going to have a tax on the carbon from some fuel. How can you believe her anymore? Her credibility has gone. Those families who have their children in child care or are looking to have their children in child care want this government to have policies in place to support them. They want this Labor government to have policies in place that have some vision for this country, that have some vision for those children in child care. The government keeps talking about their futures being bright. Their futures will not be bright if this government saddles the parents and carers of those children in those childcare places with a carbon tax. It is going to be a nightmare for them.

When he introduced the legislation the Minister for School Education, Early Childhood and Youth said—and, interestingly, Senator Bilyk made similar comments; I am sure she has been listening well and truly to her minister:

We are doing this because we know from years of international research that the first five years of a child’s life shapes their future—their health, learning and social development—and we want to make sure that future is bright.

That does not stop at five. We want our young people's futures to be bright, whether they are one, whether they are five or whether they are 18 and trying to get to university, and if this government truly believes that it wants a bright future for young people it would have made independent youth allowance fair for regional students long before now. This government says on the one hand that it wants the future of our children to be bright and on the other hand consigns thousands of students living in inner regional areas to unfair treatment because they cannot access independent youth allowance in the same way that those students living in regional areas which are not classed as inner regional can. That is simply appalling.

The Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Chris Evans, will say, 'We’re going to make some changes; we’ve just had the review done.' The government will not be making any changes until next year. These thousands of regional students who are currently being treated unfairly have no choice but to continue being treated unfairly at least until next year—and who knows until when? The minister has already said that any changes have to be within the current budget context. That means no more money. It is no surprise that there is no more money because the government now has a $250 billion borrowing level and it has billions of dollars of debt. No wonder there has been no money to make things fair for those students when there should be. Those in the government should hang their heads in shame that they have let those students in the inner regional areas continue to be treated unfairly. Those students deserve just as much support as the young children in the one-to-five age bracket.

The coalition is supportive of the intent of this bill. It does make sense to streamline the process. It does make sense to make claiming back of finances easier. It certainly does represent a good step forward in ensuring that the process can be as streamlined as possible for the benefit of the government and those families and services that are the recipients.

Senator MOORE (Queensland) (13:06):
It was good that Senator Nash got back to the
bill that is actually before us today, the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011. This bill, as has been discussed by other senators, makes a number of administrative amendments to family assistance law to strengthen debt recovery and improve compliance in the administration of the childcare benefit. That could sound extremely litigious, because what we are talking about is a bill that is looking at tightening up compliance so that we can have true accountability in the system.

Senator Bilyk in her contribution referred to the concerns that spread across our whole country when the ABC childcare centres collapsed. In fact, many of the processes in this bill have come about because of what happened in communities. I think there was absolute shock around Australia, in every region, about the collapse of these childcare centres. These centres had been highly promoted. There was a great advertising campaign and they were out there selling their services to the community, and in some cases they were doing a really good job. But there were great concerns with the way the compliance system was operating and with the administrative arrangements that were in place.

I am sure all the senators in this debate will be talking very seriously about the great influence of trust that must be around in the community about child care and the certainty that parents, families and communities must have when they are placing their greatest asset into the care of others. In our communities many families are making that choice. It has been established as a worthwhile and valuable exercise for a whole range of reasons, particularly for people involved in the workforce. Our government is committed to ensuring that more people have the opportunity to work and, when they have child-caring responsibilities, they must be assured that the services that are out there in the community are completely reputable and there will not be a repeat of the overnight shock that occurred in our community due to the collapse of the ABC childcare centres. The government took active and immediate action in that case to ensure that we would work with families, childcare providers and the people involved in the ABC issues to ensure that they would be able to have effective child care in their regions.

This bill puts in place the administrative arrangements that have to happen to ensure that there is accountability and certainty in the system. The amendments will make important changes to the A New Tax System (Family Assistance) (Administration) Act 1999 and other legislation, as pointed out by Senator Nash, to improve accountability in the sector. Importantly, it will broaden the powers of the secretary of the department to refuse the approval of a childcare service for the purposes of family assistance law to ensure that operators are fit and proper persons. We often hear the term 'fit and proper person', but in this case—and more than in most others—we need to have the assurance that childcare service providers are indeed fit and proper.

The bill will give the Australian government greater scrutiny over operators and their past practices. This is an important process that is coming into play. The bill will enable the Australian government to offset and recover payments owed by one service from another service operated by the same operator—keeping that knowledge of similar people involved in providing the service and ensuring that there is absolute certainty that the financial trace will be able to be made. It will ensure that operators that run up debt to the Commonwealth in one service can be held accountable for their actions. It does
seem that that is a straightforward process and must be put in place. For instance—and this is just an example to make sure that we understand how it will work—it will stop an operator who accumulates debts and then exits the market, as happens, from coming back into the market under a restructured company with similar but not identical directors. It is pure company law. It is maintaining the scrutiny so that that element of trust can be put in place.

Under the current legislation, the government can only consider the exact operator and their history in the industry. This will widen the scrutiny to ensure that people cannot come in and out and set up different companies and then take on the extraordinarily important role of providing childcare services. It follows that we need to have that trace so that people can be clearly identified and action can be taken to ensure that the knowledge is there and that follow-up action can be taken by the department. This will facilitate a broader consideration of childcare operators, associated organisations and individuals in both the approvals and ongoing approvals processes.

The need for this was identified by the ABC process. There was major media coverage—newspaper, radio and television coverage—of what happened with ABC. It reflected the pain, the shock and the fear of families across our country because the operational processes had fallen over in their childcare centres. As a result of the action that the government took in working with other providers and working with the community, there has been a remarkable rebirth of childcare centres in regions that now have that link to local centres and the acceptance that there must be openness between families, providers and the government, which actually provides the funding.

I take most seriously Senator Nash’s point about the issues of privacy. This comes up in so many areas of interaction between people and their government. I know that the department has taken immense time to consider the issues of privacy in this whole area. When families are entering the childcare system, we know that through the interactions they have to have when filling in forms and giving their financial circumstances and the interactions with the various officers that provide information about their payment eligibility and their childcare operators, the issue of privacy is supreme—it must be—through the whole process. The department has worked very hard and has been involved in many discussions—as it always is—to ensure open and effective consultation on the decisions to be made not just in the childcare area but across the board in government service delivery. But today, as Senator Nash knows, we are talking about the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill. We need to have absolute knowledge that you are protected and that your personal circumstances that you need to provide to government to ensure that you get your appropriate payment are protected by the full force of the privacy law. That has been completely reinforced and will continue to be a key principle in the ongoing operations.

The whole process of what happened with ABC has been a valuable lesson. Since 2008 the government has introduced a range of new measures to ensure the financial viability of childcare providers, including strengthening the approvals process and requiring additional notification of closures of centres. There should be no shock. If you have your children enrolled in a childcare centre, you have a just expectation that that service will be available while you have that need, so there should not be any shock
closure. That should be arranged and notified.

The process has been clearly supported through a new penalty regime to reinforce the accountability aspects. The new approvals process includes financial checks for new childcare centre operators to make sure that they are viable from the outset and well placed to meet the quality standards. It is a business process: if you are going to be setting up a childcare centre, you need to be an effective business. Those processes should be transparent and available to the government department to ensure the future actions will go through.

The government is also developing an enhanced financial viability framework for large childcare providers. As we know, in the Australian system there are many providers that operate more than one centre. They are reputable, understood and known by their community, but we are going to ensure through the legislation that there will be an enhanced financial viability framework. The amendments in the bill represent part of our government's commitment to improving accountability within the childcare market and protecting the market from unscrupulous operators. That is what our families deserve. They need to trust that they will not be subjected to unscrupulous operators moving into this business situation.

The bill will also support the government's $273.7 million investment in the national quality framework. The framework, very importantly, is endorsed by COAG, bringing the full force of the COAG arrangements together to ensure that the national quality framework has engagement from all states and all players in the market. The COAG arrangement will improve educator-to-child ratios so that each child gets more individual time and attention—a pure expectation of the families that are choosing to have their children in child care. They need to know that each child will have individual time and attention from skilled, trained operators within the childcare market.

It will introduce educator qualification requirements so that educators are better able to lead activities that inspire youngsters and help them learn and develop—again an expectation from every family in our community that care be much more than just making sure the child is safe for a period of time. The terms used in the COAG agreement—to 'inspire' and help with 'learning and development'—sum up part of the experience. As we know, the childcare experience leads on to the opportunities children have for effective education across their whole lives, not only during their childhoods. The education experiences someone has in child care may well determine the options they will have in the future, so the expectation is that there will be trained, skilled and—I like this word very much—'inspirational' educators in the childcare arrangement.

It will include a new rating system so parents know the quality of care on offer and can make informed choices. One of the core principles of this government has been to ensure that our people have informed choices. When you are seeking child care, you need to have information about the providers and their backgrounds and the kinds of staff members they have, and this is part of the expectation that there will be an effective rating system so the link of trust and accountability will be reinforced in the system.

Important for the service providers is that regulation burdens are reduced so that services only have to deal with one regulator. When talking with the providers, one of the aspects they raise regularly is the work they have to do to be part of the system. We have raised the commitment that we will reduce
regulation burdens. That is across many aspects of service delivery put forward by this government, but in child care it is one we have made to the providers so that they know that we understand the work they have to do and that we understand that they will be under scrutiny and will have to be good operators. But they understand that we are not going to burden them with a high regulatory workload that will take time away from what they are there to do, which is to provide care for children.

I know Senator Bilyk, with her experience in child care, talked about the international research. As I have said, as a community we understand the value of child care. We respect the work that is done, and that creates the first step in a learning environment that will last a lifetime. Over many years there have been various surveys done about the community response to child care, and increasingly there has been an acknowledgement that child care is something that people take as a matter of course in their lives. It is no longer just a luxury or an option just for a few people. The expectation is that when you are doing different things in the community you can have the option of safe, accountable child care for your children into the future. With regard to the changes to protected information—this is the point that Senator Nash was raising about privacy—we will know that we will have those protections and shared information, which is the living spring of the COAG arrangement. There must be shared information, but there must be confidence.

I know Senator Bilyk went through in detail the expenditure that the government has made on child care, and that reinforces the importance and value we place on it. It is always interesting to listen to arguments about who spends more and whose budget is bigger. The one true, inescapable budgetary fact about expenditure on child care is that the Australian government—our government—has been investing $20 billion in funding for early childhood education and child care over the next four years. That is almost $13 billion more than provided in the last four years of the former coalition government. You can talk about the value of services, the way money is expended or the locations of childcare services.

All those things are valuable and need to be considered, and we can stand on our record. When you look at the network of childcare providers across the country now, you can see that child care is an option right across this country. Certainly one of the things this government has done of which I am most proud is the extended expenditure in the area of Aboriginal and Torres Strait Islander child care, which was not effectively funded under the previous government. It was a commitment of our government that we would look at providing an equal option for Aboriginal and Islander families, wherever they live, to effective child care. Again, this is an important aspect of our Closing the Gap commitment; it is one we talk about and on which we are assessed in the Closing the Gap process.

The funding of child care by this government cannot be questioned in terms of the quantum and of the commitment. These figures are so confounding: 627,980 Australian families with 869,770 children in approved child care are benefiting from assistance across 13,899 services. Only 10 years ago those figures could not have been considered. When we see the numbers of families who have made the choice to access childcare services across 13,899 services in the country, we know that child care is important to the community. We know that there is a clear understanding of the value of—and I use this word again—inspirational childcare services and that people can trust that they will have access to worthy,
trustworthy, trained child care and receive an effective childcare rebate.

The government are committed to child care and we have said that since we were elected. It was a core part of our promises when we were first elected in 2007 and it was reinforced in the last election that it would be a core element of action for the government. The bill we have before us looks at the tightening up of administration to ensure that the business element of child care is particularly well regulated; that there is an understanding of accountability; and that there is a reinforcement to childcare providers that they are a valued part of the government service delivery model and there will be an expectation of strong performance, but they will be supported in providing that service by their government. We will continue to have extensive consultation with the industry—with the core groups within the industry and also with individual providers—so that they understand the relationship they have with their government and know they are a trusted element of community service. We will continue to make a strong commitment to the families of Australia that, when they choose to have child care, they can trust that their children will be effectively cared for under this government.

**Senator STEPHENS** (New South Wales) (13:25): I too rise to contribute to this debate on the Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011. I thank Senator Moore for taking us through the implications of the changes in the bill as they relate to Australia's extraordinary childcare services. I was quite blown away by some of the figures when I heard Senator Moore articulate that there are 627,980 Australian families with 869,770 children in approved child care and that we have across Australia 13,899 childcare services. It reminded me of how important it is that we have a well-regulated system for many reasons, not just because of the issues, which the measures in this bill address, of recouping payments and managing the childcare system. It is a truism, of course, that children are our future. But every one of us aspires, as parents and grandparents, to ensure that the children in our lives have access to stimulating child care and the early learning programs that are such a critical part of our whole education system. So we need to make sure we understand the quantum of the childcare sector in Australia because it is now so huge and so many children and families are dependent upon it, and that does make quite a difference.

Senator Moore's comments focused very clearly on the purpose, the direction and the strategic approach of the government in the childcare changes, so in my contribution today I will go to some of the other measures in the bill which I think are equally important. The first of these measures that we need to talk about, other than the changes to the childcare system more broadly, is the change that lowers the maximum child age of eligibility for family tax benefit A from 24 to 21 from 1 July 2012. This is an important issue. I do not think we ever get rid of dependent children, whether they are 25 or 35—and I can attest to that—but I do think some signal needs to be sent to our children that we expect them to start to be a little bit more independent once they get to 21. That is not the purpose of this legislative change; it is actually about some policy coherence by bringing into line the reduction in the youth allowance age of independence from 1 July 2012. Policy consistency and coherence is an important part of good governance, so we line these things up and make sure there are no misunderstandings or misapprehensions about what is happening. What it will do is ensure that the family system payment
continues to support families with dependent children who are studying or training, at the same time recognising that young people aged 22 and over are considered independent.

The second measure in the bill, another very important measure, builds on the reforms announced in the 2009-10 budget that better target the family payment system to focus on low- and middle-income families. In the 2009-10 budget indexation on the upper limits for family tax benefit parts A and B and the baby bonus were paused, and this bill will extend the indexation pauses on higher income limits for some family assistance payments for a further two years. In addition, the indexation of the Paid Parental Leave scheme income limit will not commence until 1 July 2014.

The third measure in the bill goes to the indexation of family tax benefit end-of-year supplements, which will also be paused for three years from 1 July. This will keep the end-of-year supplements at their current level for the next three entitlement years. The current supplement amounts are $726.35 per child for family tax benefit part A and $354.05 per family for family tax benefit part B.

The bill also introduces a very important measure from the 2010-11 budget which reforms assessments for disability support pensions. This has been brought forward, as part of the 2011-12 budget, to start on 3 September 2011 rather than on 1 January 2012. It is a new assessment procedure for disability support pensions that will help people with disabilities return to the workforce wherever possible by focusing on their ability rather than their disability. If you have had contact with anyone in the disability sector, you will know the big thing that those people who live with a disability, their families and their carers really want in their lives is for the rest of us who are able-bodied to look beyond their disability and really see their potential. This is an important part of our social inclusion agenda and we will really focus our employment services to support people who have a disability or who incur a disability to get back into the workforce. It is a new assessment procedure that will require most people to have their future work capacity tested by participating in training or work related activities in order to qualify for the disability support pension.

We know that one of the critical issues is that the disability support pension is a poverty trap. We are well aware of the temptation—particularly, as Senator Nash would know, in a rural community where there are not great employment opportunities—to park someone on a disability support pension and, by doing so, actually lock them into a poverty trap that is very difficult for them to get out of. So the notion that employment services, programs and commitments of this government in this budget are going to be targeted at improving employment and workability of people living with disability is a very important part of our agenda. The requirement does not, of course, apply to people with severe impairment. People with a severe disability or illness who are clearly unable to work will be fast-tracked so that they can receive financial support more quickly and will not have to continue to participate in a program of support.

The next part of the bill, which is something that I have been very interested in and have followed very closely since its inception, is an amendment that enables the extension of the income management elements of the Cape York welfare reform trial. The trial is a partnership between the communities of Aurukun, Coen, Hope Vale and Mossman Gorge with the Australian government, the Queensland government and
the Cape York Institute for Policy and Leadership. This trial has had a transformational impact on many of the communities of the cape. Where we saw appalling levels of literacy and numeracy in the NAPLAN results a few years ago, we are now seeing the amazing transformation of children's learning and performance. It is to do with the way in which these communities have embraced this idea of managing their own welfare payments, have taken the responsibility within their communities of ensuring that their children are well fed and are attending school, and have ensured that the income management system there is owned and operated by the communities. It is a very directed and specific project which, I think, leads the way in reform for breaking the cycle of disadvantage that is part of Indigenous circumstances in Australia.

The Queensland government is now in the process of leading a consultation with the Cape York communities in relation to a proposed extension of the trial for another year to 1 January 2013. In the 2011-12 budget the Australian government is providing $16.1 million for this extension. Recently, there was a heartfelt and very moving program on national television about the impact of this measure in the Cape York communities. It challenges families in a way that perhaps has not happened before, but it is leading to striking improvements in family life, in the care and responsibility of children, in reducing alcohol consumption, in reducing domestic violence and, of course, in improving attendance at schools.

They are the significant measures of this bill. While the consultations are taking place under the auspices of the Queensland government, our government is moving to put in place the amendments required to Commonwealth legislation to enable the extension of that trial. It is very important to proceed with those amendments so that any extension of the trial is not delayed and so that those four Cape York communities are not adversely affected. Every time I go to the Cape and go to these communities I am amazed by the changes that are happening there, by the great sense of ownership and by the positive spirit that is part of being involved in such a powerful social change program. Changes to the Queensland government legislation are also going to be required to allow the trial to be extended, so these measures are all part of the enabling legislation required.

There is also a minor non-budgetary measure here that clarifies that the Public Works Committee Act 1969 does not apply to Aboriginal land trusts established in the Northern Territory under the Aboriginal Land Rights (Northern Territory) Act 1976, because land trusts were never intended to be Commonwealth authorities to which the Public Works Committee Act applies, and this amendment puts that position beyond doubt.

The legislation that is before us today really goes to some fundamental issues about good governance. The first one is around transparency. As Senator Moore so clearly and coherently argued, the issue that really triggered and focused the national mind was the collapse of ABC Learning in 2008, and the implications of that could have been catastrophic for Australian communities. One hundred thousand families could have been in the position of waking up on the Monday morning and not being able to have child care. Those 100,000 families translated into many, many thousands of small businesses who would have been in a desperate situation. Because of the very competitive nature of ABC Learning at that time, the ABC Learning Centres collapse meant that many, many families and communities would have been desperately affected—and I know that Senator Nash is aware of the
circumstances of some of the small community childcare centres not far from here who were really caught in the dilemma.

ABC came into their communities, really took over the community-based childcare centres and 'put them out of business', for want of a better term. Then they collapsed themselves, leaving the community with no child care. So the notion that we have improved transparency, improved governance and improved the regulatory environment is a big part of the government's commitment to the not-for-profit sector. We are about reducing regulation, simplifying the regulatory burdens and improving the red tape circumstances that come into play so that, at the same time that we have the national quality standards for child care, we need to ensure that we are not imposing a massive regulatory burden on those childcare centres, many of which are not-for-profit organisations.

The COAG agenda is about simplifying the regulatory framework. It is about improving the quality standards for children's services. It is about improving the ratios. It is about actually skilling up the childcare workforce so that the workforce development, which is part of the government's broader strategy here for improving childcare services, gets the focus on the finding that it deserves.

But the changes in this bill are far more fundamental for families. We have a mechanism that recognises the cost-of-living pressures. It allows the changes to our childcare system and to the fortnightly payments of the childcare rebates as part and parcel of recognising, first of all, cost-of-living pressures for families. It improves the reconciliation process for the family tax benefits A and B, which I know has been quite confusing for many families, to ensure predictability for our childcare centres so that there are no overpayments and then repayments needing to be made and claimed back, but at the same time it simplifies the system and ensures that the government has a viable mechanism for getting overpayments returned. These are all important in terms of improving the flexibility, the responsiveness and the management of a childcare system which, as I say, affects so many families—hundreds and hundreds of thousands of families and children—across Australia.

Senator Moore touched on the issue that we have in terms of the COAG agenda, which I think is so fundamentally important, and that is around the early intervention and assessment of children with early learning needs. The whole investment that we have in supporting children with autism and being able to diagnose autism and disabilities early means that children can participate in supportive services in the early years that they have never, ever had before. We are able to target our childcare funding, a massive investment in funding that stimulates children, improves their capacity, their vocabulary and their learning at a very early age and sets the foundation for their learning right through their school years. The fact that we can actually ensure that we support children with disabilities into child care is critically important for ensuring their future learning as well, and I am really proud to be part of a government that is recognising and doing that.

When I think about it—when I think about the consumer protections that are in this bill and the protections to government and the issues of transparency that are all part and parcel of these amendments—I know that what we are doing is strengthening the services in our communities for families. The MyChild website provides great transparency and great consumer advocacy, it gives parents choice and helps them
understand and really demand the best quality services, and it is part of the COAG agenda. It is critically important. We think that parents deserve choice. They should not have to be limited in their childcare services to the lowest common denominator. They deserve better and our children deserve better, and the measures that are contained in this bill will ensure that our children have the best childcare system that we can afford.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs) (13:43): I thank the senators for their contribution to this debate. The Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011 contains important amendments to the Family Assistance (Administration) Act and other legislation to improve accountability in the childcare sector.

The government, and indeed families across Australia, know how important this is. The overnight collapse of ABC Learning in 2008 was quite simply unprecedented and the government's quick and decisive action meant that 90 per cent of the centres continue to operate for Australian families today. Had government support not been provided, almost 100,000 families may have been faced with the prospect of having to find alternative care arrangements with little or no notice. Since 2008, the government has introduced a range of new measures to better ensure the financial viability of childcare providers, including strengthening approvals processes and requiring additional notification of closures of centres.

The amendments in this bill represent a part of our commitment to improving accountability within the childcare market and protecting the market from unscrupulous operators. This bill broadens the powers of the secretary to refuse the approval of a childcare service for the purposes of family assistance law. Combined with other measures, this will give the Australian government greater scrutiny over operators and their past practices, including the power to look at whether service operators are fit and proper persons. The bill also enables the Australian government to offset and recover payments owed by one childcare service from another childcare service operated by the same operator.

These measures will also enhance the government's ability to deal with phoenixing, where an operator who accumulates debts exits and then re-enters the market under a restructured company. Under the current arrangements, the government can only consider the exact operator and their history in the industry. Importantly, the bill will support the government's $273.7 million investment in a national quality framework. The changes to protected information will support the national quality framework by enabling the Commonwealth to share information on childcare services within the state and territory regulator bodies. This will benefit services by not having to provide the same information to more than one body.

In summary, this bill makes a number of amendments that will improve transparency of the childcare sector and protect families from unscrupulous operators, and I commend it to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (13:47): Perhaps if I could just ask the minister in the first instance if she could give a bit more detail by way of background
around the privacy issue that has been raised. I know there has been a fair bit of discussion in the chamber today around those concerns about the privacy issues. I note that Senator Moore raised this a little while ago. While we are broadly supportive of the bill—there is no doubt about that—I think it is very important if we could have on record the detail around the consideration the government gave to this particular area and the consultation that was taken with industry and, if available, with parent groups.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs) (13:48): Changes to the confidentiality provisions will benefit individuals by allowing agencies to share an individual's information where the individual has given consent. Individuals will no longer have to go to multiple agencies to provide the same information. By way of further clarification, information held by the department for family assistance law purposes is protected and, despite the amendment providing for disclosure for certain purposes, this does not offend the Privacy Act as the disclosure is authorised by law and therefore the Privacy Act does not apply to that disclosure.

It is also important to remember that disclosure of information will only be for certain purposes that will streamline the administration for families and services. It will not be disclosed for any other purposes. I trust that satisfies Senator Nash's query.

It is probably timely for me to also reflect in a little more detail about the improvements in controls on the administration of child care. I am happy to go into that now, unless Senator Nash has more specific questions she would like to ask.

Senator Nash: No.

Senator LUNDY: Thanks for indicating that, Senator Nash. The changes to family assistance law will increase controls of the recovery of childcare benefit and other childcare assistance payments made to childcare services by extending the offsetting and debt recovery provisions. Currently, the debts of one childcare service may be recovered only from that service. I mentioned this briefly in my summing up but I will just provide a little more detail. These changes will allow the debts of one service to be recovered from another service operated by the same operator and, as I mentioned, this will make them more accountable and provide for more flexible arrangements for services.

Where a service notifies that they are ceasing to operate, the changes will allow recovery of enrolment advances made to the service to commence immediately. This will also allow ceasing of further enrolment advances during the notification period. These changes will mean that services do not incur debts that need to be resolved at the point that they cease operating. Many services that cease are surprised when they receive debt notifications at this point, so I think it will be a very important clarification and change within the sector. Changes to the absence provisions will clarify when an absence can be considered to have permanently ceased and services will be less likely to be noncompliant through misinterpretation of the family assistance law.

Another area that I think it is timely to mention is how the changes will improve childcare services through compliance with the childcare benefit requirements. The overnight collapse of ABC Learning took everyone by surprise. I know a number of senators have commented on that. We did take decisive action to ensure continued care for the almost 100,000 families impacted. We are continuing to support the sector and
families to ensure that such an occurrence does not occur again.

I think the issue of strengthening the childcare approvals processes will place us in really good stead. It is something that the sector, I know, is very supportive of. It allows the secretary to refuse a childcare service's application for childcare benefit approval unless the operator has been previously approved for childcare benefit and has a history of noncompliance as I mentioned.

**Senator NASH** (New South Wales—Deputy Leader of The Nationals in the Senate) (13:52): Thank you, Minister; that was very useful. Can I also just ask about the current debt that is owed. The most recent figure that we have was an indication in estimates in 2010 that current debt was around $70 million and related to 6,000 children in care. Please clarify that if I am incorrect. Is that figure still correct, have there been any changes to that and what is the understanding and expectation of government of the speed of reduction of that debt? Is there any time frame in mind by which that level—if indeed that is still the case or whatever the current level is—will be reduced as a result of this legislation being introduced?

One of the areas that has been highlighted with the introduction of this legislation is that there has been a significant cost to taxpayers as a result of the current arrangements. As I indicated before, I think there is concern out there in the community that a figure of that magnitude—around $70 million—is caught up in a bureaucratic process. While I certainly understand that the intent of the legislation is to address that, it would be useful for the chamber if we had some information surrounding the current level and indeed the expectation from the government of improvements to that level that will be made by the legislation that we are dealing with today.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs) (13:54): Thank you, Senator Nash. I am advised that the debt, as you say, was around $70 million but that is now down to around $10 million and it is expected that these measures will continue to see that level of debt fall.

Given we are talking about the general issue of this bill, it is probably useful for me to share with you at this time some of this government's credentials with regard to child care and improving affordable access to quality child care. Senator Nash, I know you are aware that overall we are investing $18.2 billion in funding for early childhood education and child care over the next four years, almost $11 billion more than provided in the last four years of the former government.

In the June quarter of 2010 we provided $812.6 million to assist Australian families with the cost of child care in the form of the childcare benefit and childcare rebate. We know that some 627,980 Australian families and 869,770 children in approved child care were benefitting from this assistance across some 13,899 services. Since the September quarter of 2000 there has been a 40 per cent increase in the number of families and a 37 per cent increase in the number of children using approved child care. This is a huge increase over many years and justifies the ongoing investment, which includes $126 million through the 2008-09 budget over four years to train and retain high-quality early education and childcare professionals; $32.5 million over five years to roll out the Home Interaction Program for Parents and Youngsters to 50 disadvantaged com-
munities; $59.1 million to support budget based funded services to provide care to some of Australia's most vulnerable children; $273.7 million over four years to support the introduction of the new national quality framework; and $14.9 billion to help some 800,000 Australian families annually with the cost of child care through the childcare benefit and the childcare rebate.

The Family Assistance and Other Legislation Amendment (Child Care and Other Measures) Bill 2011 also makes a number of administrative amendments, which I have outlined earlier in my summing-up speech on the second reading debate.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading
Senator LUDWIG: I move:
That this bill be now read a third time.
Question agreed to.

Bill read a third time.

PARTY OFFICE HOLDERS
Chief Opposition Whip and Deputy Opposition Whip

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (13:52): by leave—I am delighted to announce that Senator Helen Kroger has been elected as Chief Opposition Whip in the Senate and that Senator Judith Adams has been re-elected as the Deputy Opposition Whip in the Senate.

Senator Bob Brown: Mr President, I rise on a point of order. I ask that you look at the Hansard of this morning's proceedings and inform the Senate whether or not all was in order during the ballot under the control of the Clerk.

The PRESIDENT: Senator Bob Brown, I hear your point of order but I am not sure what you are asking me to review.

Senator Bob Brown: Mr President, during the Clerk's presiding for the ballot for your position this morning, there were a lot of interjections and a lot of noise in the chamber. I ask you to look at that because I believe that it ought to be proper behaviour for this chamber to not interrupt the Clerk and to hear her in the decency of silence. I would ask you to look at that and report back to the chamber.

The PRESIDENT: I will look at that, Senator Bob Brown.

BUSINESS
Leave of Absence
Senator CHRIS EVANS: by leave—I move:
That Senator Carr be granted leave of absence this week as he is travelling on parliamentary business.
Question agreed to.

Senator CHRIS EVANS: Senator Sherry will take questions on behalf of Senator Carr on Senator Carr's portfolio, Innovation, Industry, Science and Research. Senator Wong will represent the Minister for Infrastructure and Transport, and Senator Ludwig will represent the Minister for Immigration and Citizenship. I think party leaders have already been advised.

QUESTIONS WITHOUT NOTICE
Live Animal Exports
Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (14:01): My question is to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig. Is the government aware of any abattoirs in Indonesia that currently comply with World Organisation for Animal Health, OIE, standards?
Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:01): In terms of complying with OIE international standards—that is, meeting those relevant standards—in Indonesia, can I say at the outset that the industry working group set up by me has been working through the standards document. This is an issue that the opposition fails to appreciate the subtlety of, but it is quite plain to those who understand this issue. We are putting in place tracking—in other words, so the standards meet supply chain assurance.

It is does not rise or fall on whether an abattoir is up to standard or meets OIE guidelines. What is required is that there be supply chain assurance in place—that is, the supply chain for tracking animals from onshore through to the boat, through to the feedlot and then from the feedlot to the slaughter yard. This requires both tracking and transparency in the supply chain plus independent auditing at the abattoir—all the way through. All of those elements are required. So it is not only that the abattoirs themselves are required to meet OIE standards, because they are; but it is important to note that for the—

Senator Scullion: Mr President, I rise on a point of order on relevance. The question was quite a simple one: is the government aware of any abattoirs in Indonesia that currently comply with OIE guidelines? What is required is that there be supply chain assurance in place—that is, the supply chain for tracking animals from onshore through to the boat, through to the feedlot and then from the feedlot to the slaughter yard. This requires both tracking and transparency in the supply chain plus independent auditing at the abattoir—all the way through. All of those elements are required. So it is not only that the abattoirs themselves are required to meet OIE standards, because they are; but it is important to note that for the—

The PRESIDENT: There is no point of order.

Senator LUDWIG: I understand the opposition's interest in this. While abattoirs are a key link in the supply chain, they are not the only part. What is important is to be able to ascertain that animals are being handled well throughout the process and that the exporters have certainty about where the animals they export are being slaughtered. It is important not to focus on, as the opposition is, on the specific abattoirs but on the entire supply chain, including ensuring animals can be traced from ship to feedlot to abattoir. There is a clear need for transparency and independent auditing in respect of that supply chain.

Senator Heffernan: Mr President, I rose some time ago on a point of order.

The PRESIDENT: I am sorry, Senator Heffernan; I did not—

Senator Heffernan: My point of order is that the report to which the minister refers is here and in it is the full traceability program adopted by the industry.

The PRESIDENT: That is not a point of order. Senator Heffernan, that is a debating point, which you can pursue at the end of question time.

Senator SCULLION (Northern Territory—Deputy Leader of The Nationals) (14:06): Mr President, I ask a supplementary question. I refer the minister to his interview on 7.30 on 16 June, in which, in responding to a question on the standards that would need to be met in order to resume the trade, he said:

What I'd be keen to see is the OIE standard, that is the international standard and encourage stunning.

Since the government is aware of the abattoirs that currently comply with OIE standards, why was the trade to these abattoirs stopped? Will the government
immediately resume trade with those abattoirs that comply with the standard?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:05): This is the difficulty with what the opposition has been peddling all along. It is the supply chain assurance that is required to be put in place. It is not correct simply to focus on the abattoirs themselves. The abattoirs do have to meet OIE standards. They are required to meet that as part of their supply chain assurance. To indicate that abattoirs on their own could—

**Senator Heffernan:** I seek leave to table a report that sets out what the minister is talking about.

Leave not granted.

**Senator LUDWIG:** What the opposition wants is for the trade to resume immediately, notwithstanding that there would not be any safeguard to ensure animal welfare outcomes are adhered to as animals move through the supply chain. What the opposition is calling for is the continuation of animals to be mistreated throughout the supply chain. That is what the opposition says. Because there is no traceability, there is the potential for leakage out of the system. If you do not have the supply chain in place, you are providing information which this government— *(Time expired)*

**Senator SCULLION** (Northern Territory—Deputy Leader of The Nationals) (14:07): Mr President, I ask a further supplementary question. Minister, if the government refuses to immediately resume exports to abattoirs that meet the government's stated requirements, what will they say to working families such as Steve and Cyndi Bakalian from Northern Feed & Cube in Katherine who, through no fault of their own, no longer have any income and are forced to lay off workers and struggle to pay their bills to other Territory businesses?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:07): What you are asking for is a three-word stunt by Mr Abbott and those in the opposition to reopen the trade whilst there is no supply chain assurance in place. The word of the abattoirs alone, as I have said again and again in this chamber, is not sufficient; it requires traceability, transparency and independent auditing. The opposition fail to appreciate that that is required to ensure there is no leakage from the system. Otherwise, you would ensure that cattle would end up in noncompliant abattoirs, would be leaked from the system and would continue to be mistreated. That is what your assurance would give. We argue that supply chain assurance is required. The government, for its part, has done three things to provide assistance to industry. The first thing was to provide income subsidy arrangements for those who are unemployed as a consequence. The second thing was to provide supply chain— *(Time expired)*

**GetUp! Advertisement**

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (14:08): My question is to the Minister for Broadband, Communications and the Digital Economy. By way of preamble, I note that the High Court in 1999 ruled that freedom of communication in a representative democracy on political matters was 'essential', 'necessary' and 'indispensable'. I ask the minister: is he aware that commercial TV has banned an ad by GetUp! relating to Harvey Norman's import of furniture made out of Australian wild forests? Will the government
look at this matter and uphold freedom of speech, whether it is on commercial or public communications?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:09): I thank Senator Bob Brown for his question. I am aware that GetUp! have launched a campaign targeting Harvey Norman and the use of products made from Australia's native forests. I understand that Commercials Advice Pty Ltd, CAD, have refused classification for the advertisement.

Commercial television advertisements are regulated under the Commercial Television Industry Code of Practice. Under the code, an advertisement must be given a television classification appropriate to its content and it must be broadcast at a time that its classification allows. I have not been advised of the reasons for the decision. If requested by CAD's director, the advertiser may need to provide further substantiation of claims made in the commercial and/or evidence of legal clearance. Getup! Australia can seek a review of CAD's decision. During this process, they would have to show that the commercial complies with the classification criteria and does not defame companies such as Harvey Norman.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (14:10): Mr President, I ask a supplementary question. I note that Harvey Norman has not been accepting the will of the people in electoral matters, so I ask: does this particular multimillionaire have any special right to overrule the ability of all Australians—

Opposition senators interjecting—

Senator BOB BROWN: They don't like it.

The PRESIDENT: Those on my left, I need to hear the question.

Senator Ian Macdonald: No, you don't; it's not worth listening to.

Senator BOB BROWN: On a point of order, Mr President: you will have heard Senator Macdonald say 'No, you don't need
to hear the question', and I ask you if you could make a ruling on that.

The PRESIDENT: Senator Bob Brown, I did not hear that.

Senator BOB BROWN: No, you didn't!

The PRESIDENT: I am asking you to repeat the question because I did not hear it due to the interruption from my left which was completely disorderly.

Senator BOB BROWN: It is a disorderly coalition. My further supplementary question was: does Harvey Norman or any other billionaire have a special right to override the freedom of speech, which is central to the democracy which 22 million Australians want to see flourish?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:13): As I think you mentioned in your earlier question, Senator Bob Brown, the High Court has actually opined on this. I am sure that everyone in this chamber would agree that no individual Australian has the right to override the freedom of speech of individuals.

Budget

Senator MARK BISHOP (Western Australia) (14:13): My question is to the Minister for Finance and Deregulation, Senator Wong. I refer the minister to the government's commitment to return the budget to surplus by 2012-13.

Opposition senators interjecting—

Senator MARK BISHOP: That's right—the commitment. Can the minister outline to the Senate any recent opposition to the return to surplus? Is this consistent with previous commitments?

Honourable senators interjecting—

The PRESIDENT: It is very early in the new Senate, and people are just a little bit too excited.

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:14): As everyone in this chamber knows, the opposition to return to surplus comes from those opposite, comes from the opposition. They do not need to listen to me to believe this because they can listen to their own shadow Treasurer who finally, on Friday, made it clear what their grand fiscal plan to fund tax cuts is. Do you know what it is, Mr President? It is to risk the surplus. What Mr Hockey said—

Honourable senators interjecting—

Opposition senators: There is no surplus!

Senator WONG: I know they do not want to hear it, but they should listen to what Mr Hockey had to say.

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence we will proceed.

Honourable senators interjecting—

The PRESIDENT: All you are doing is chewing up the valuable time of question time by disorderly interjections. Senator Wong, please continue.

Senator WONG: Thank you, Mr President. For those members of the shadow cabinet—

Opposition senators interjecting—

The PRESIDENT: Senator Wong, resume your seat. As I said, when there is silence on both sides, we will proceed.

Senator WONG: For those members of the shadow cabinet who may not have been aware of their new policy, they might want to know that Mr Hockey on 1 July said as follows:
The truth about tax reform is that you have to leave money on the table for people, even if it means you are reducing the size of the surplus. This is their great plan to fund tax cuts: run down any surpluses in order to fund tax cuts that they have not costed and they have not funded. It is not surprising, Mr President, that they do not want to talk about this because it is extremely embarrassing for them that the shadow Treasurer's great plan for tax cuts is simply to attack the surplus, to risk the surplus. That is their plan!

Honourable senators interjecting—
The PRESIDENT: If senators on both sides want to debate it, they know the time to debate it is post question time.

Senator WONG: I suppose the only thing one can say about Mr Hockey's comments is that at least he is being upfront about the fiscal recklessness of the opposition. This is an opposition with an $11 billion black hole, an opposition with a climate change policy which will cost $30 billion—$20 billion more than they told the Australian people—and an opposition that is blocking saves worth $6 billion. There are some on that side who do understand the importance of sound fiscal policy, but it appears that Mr Hockey is not listening. (Time expired.)

Honourable senators interjecting—
The PRESIDENT: Order! When there is silence on both sides, we will proceed!

Senator Cameron interjecting—
Senator Joyce interjecting—
The PRESIDENT: Senator Cameron and Senator Joyce: if you want to have a debate about this, post-question time is the time.

Senator MARK BISHOP (Western Australia) (14:18): Mr President, I have a supplementary question for the minister. Can the minister outline for the Senate the approach the government is taking to return the budget to surplus and how this contrasts with alternative approaches?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:18): It is always interesting to go back over what Mr Hockey has said from day to day. It is always a new the surprise about what he is going to come up with on each day. In May this year he committed the opposition to delivering a surplus perhaps even earlier than 2012-13. In May he said they would deliver it earlier and then in June he said theirs would be a bigger surplus—'We'll deliver a bigger surplus; no doubt about that!' And then on Friday, 'No, actually we're going to run down the surplus to pay for the tax cuts because we haven't worked out how we're going to cost them.' So the opposition were going to do it earlier, then they were going to have a bigger surplus, now they are going to have a smaller surplus because they will not do the work to find the savings to cost the tax cuts to protect the surplus. They simply will not do the work; they are completely fiscally irresponsible. (Time expired.)
pleased to share with the Senate that a range of economists have provided very positive responses to the government's budget. The CommSec chief economist, UBS, the Commonwealth Bank chief economist and a whole range of economists recognise the importance of returning the budget to surplus. This is a government that is happy to engage with economists; this is a government that is happy to listen to economic advice. Of course, that does put us at odds with those opposite, who are led by a man who believes that economics is boring and now, most recently, has described Australian economists as 'a joke'. This is what Mr Abbott had to say last Friday. When confronted by the fact that his climate change policy is not supported by a single economist, he said:

Maybe that's a comment on the quality of our economists.

What a typical approach: shoot the messenger. The joke is the surplus-free zone opposite. That is where the joke resides. (Time expired.)

Live Animal Exports

Senator BACK (Western Australia) (14:21): My question is to the Minister for Agriculture Fisheries and Forestry, Senator Ludwig. I refer the minister to statements attributed to Indonesian minister for agriculture, Suswono, in which he stated, following a meeting with Minister Ludwig on 20 June this year, that future supply of chilled beef and live cattle will be sourced from countries other than Australia. I ask the minister what economic and social impacts will the suspension of live cattle exports have on Australian beef producers and those who rely on the export trade for their income? I also ask the minister: what did he take into account prior to him making the decision to totally suspend the live export trade on 8 June, thus denying Northern cattle producers their livelihoods?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:22): Dealing with the last issue first, I took the decision to suspend the trade to Indonesia because of our concerns about animal welfare. It is about ensuring that we put a supply chain assurance in place which ensures the safeguard of animal welfare outcomes.

In terms of the live cattle trade, I do believe it has a strong long-term future. I want to see this trade resumed as quickly as possible, not one day later than it needs to be. It is an important area. The best outcome for the Northern Territory, Western Australia and Queensland, which manage the live animal export industry, is for this trade to get up and running as quickly as possible.

In the short term, the government has provided three types of assistance. Firstly, the government has provided for unemployment—in other words, for those people who have been made unemployed as a consequence of the suspension. The government will provide income subsidy assistance for those people who have been affected by the suspension. Secondly, the government has provided assistance to the supply chain, for those people who are onshore in the supply chain, and the industry has provided $5 million for onshore supply. Thirdly, the government has contributed $30 million to assist those hardship cases where the suspension has impacted on businesses and producers in the live animal export industry.

This industry does have a strong and sustainable future, but we do have to get the animal welfare issues right to ensure that it does continue for the longer term. That is the
important issue that we both are working cooperatively to resolve. *(Time expired)*

**Senator BACK** (Western Australia) (14:24): Mr President, I ask a supplementary question. Can the minister advise on what basis the government calculated this $30 million compensation package for the entire live export industry? Does the government seriously believe that $30 million is adequate compensation for a $320 million Australian live export industry? The industry does not want a handout, Mr President; it just wants to get back to normal.

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:25): As I have indicated—

**Senator Cameron:** It needs to clean up its act; that's what it needs!

**Senator LUDWIG:** Senator Back is correct when he identifies the best form of assistance to industry—

**Senator Ian Macdonald:** Is for you to resign!

The **PRESIDENT:** Order! Senators arguing across the chamber do not assist in hearing the answer that is being given.

**Senator LUDWIG:** Senator Back is correct when he identifies that the best thing we can do for industry is to get this industry up and running as quickly as possible, not one day later than it needs to be, but while ensuring that animal welfare outcomes are dealt with. Why? So that we have a sustainable industry for the longer term.

The alternative to that is the opposition’s, who simply say that abattoirs are fine and therefore we should recommence the trade. This is the entire point: the industry would not have a safeguard against another incident occurring in two years or four years, which would put this industry again on the back foot. What is important to consider is that we do need to put in the supply chain assurance—that is, the tracking, the transparency and the independent auditing—so that we can safeguard animal welfare outcomes. That is the best form of assistance this industry could get. *(Time expired)*

**Senator BACK** (Western Australia) (14:26): Mr President, I ask a further supplementary question. Given that most Northern Australian cattle properties are on leasehold land and that livestock are now effectively worthless, can the minister advise the Senate what security beef producers can offer to banks in seeking loans to help them survive while the minister sorts out the mess that he has created in suspending the live cattle export trade to Indonesia?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:26): I reject some of the underlying assertions by Senator Back in that question. I will deal broadly with what the government has done. It has sought to suspend trade so that we can get this industry back up as quickly as possible for the longer term. What the opposition failed to do when they were in government is address how you ensure, through the supply chain, that you continue to meet animal welfare outcomes.

In the interim, we do recognise the impact on local producers in those regions. That is why, to deal with the short term, the government has put together a package which includes three parts. The first is to encourage industry to deal with the onshore supply chain, with a $5 million package for food and watering of cattle, for agistment purposes and for transport. The second, of course, is the income assistance. The third is
the $30 million package to provide immediate hardship assistance. *(Time expired)*

**Forestry**

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (14:28): My question without notice is to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig. Is the minister aware that in its recent report, *The critical decade*, the Climate Commission identified:

... eliminating harvesting of old-growth forests as perhaps the most important policy measure that can be taken to reduce emissions from land ecosystems.

If so, does the minister agree and what is he doing about it?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:28): In the area of agriculture, what we have been doing as a government is, firstly, putting together a price on carbon; and, secondly, in this portfolio, working with the minister for climate change on the Carbon Farming Initiative.

The coalition is divided on this issue. Until recently, the opposition was describing the Gillard government's CFI as the 'fastest and cheapest way for Australia to reduce its emissions'. The critical issue here is how we then progress the Carbon Farming Initiative. It will allow farmers to generate carbon credits and new earning opportunities through a range of activities, such as manure management, fertiliser management, reduced livestock emissions, soil carbon and reforestation. This initiative will provide us with the opportunity to lead the world in the development of land based sector offsets.

The carbon market will be supported through a number of initiatives, including the development of offset methodologies, because it is important to put those methodologies in place, on-farm demonstrations for biochar and the provision of $4 million for Landcare facilitators to educate farmers on the opportunities presented by the carbon market. So within this portfolio and with the minister for climate change we are pursuing a way to ensure that the land based sector—that is, the farmers and the producers across this area—can utilise the Carbon Farming Initiative to develop outcomes for farmers to ensure we can have long-term security around reafforestation, if that is additionally supported. Of course, Mr Garnaut argued that allowing offsets for carbon— *(Time expired)*

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (14:30): Mr President, I ask a supplementary question. Given the minister's answer, does he think there needs to be more done to stop the logging of old-growth forests? Particularly, can he inform the Senate whether he is aware of, or has been part of, any discussions with the Tasmanian government pertaining to an offer of a loan from the Tasmanian government to Aprin logging to purchase the Triabunna woodchip mill in order to keep it operating to woodchip native forests?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:31): I indicate that it is best that I take the second part of that question on notice. I have not spoken recently to the Tasmanian government specifically about the matter that you raise. It does seem to be part of the Tasmanian forestry principles agreement process; however, in the detail
you have indicated, I am not aware whether the specific loan you speak of exists or not.

In terms of the two matters, the government has consistently stated that the statement of principles is a community led process. The signatories to the statement of principles include the environment NGOs. It is up to these signatories to come to an agreement. The government will consider its response in conjunction with the Tasmanian government.

(Time expired)

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (14:32): Mr President, I ask a further supplementary question. I look forward to the minister coming back to me in relation to that woodchip mill. I want a particular undertak

Taking that the Commonwealth government will not give any funding to Tasmania under any negotiated forest outcome until the full details of the involvement of Forestry Tasmania, the Tasmanian government and Aprin logging in this woodchip mill deal are made public.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (14:32): I think it is worth while putting on the record that on 14 June 2011 Gunns announced on the Australian Stock Exchange the sale of its Triabunna export woodchip facility. I understand that sale is to be to an entity established by the family owned logging and haulage company Aprin Pty Ltd. Gunns further announced that the sale was conditional on satisfactory progress in the implementation of the Tasmanian forest statement of principles. The Australian government has not been approached regarding the sale or operation of the Triabunna mill.

Senator Bob Brown: Mr President, I rise on a point of order. The question from Senator Milne was whether the government would guarantee that no public moneys would flow to that purchase by Aprin logging until it is aware of the details. That was the question.

The PRESIDENT: There is no point of order. Senator Ludwig, continue with your answer. You have 23 seconds remaining.

Senator LUDWIG: Industry and government want to see an operating mill which will provide the best results for jobs in Tasmania. The issue of course is whether there is Commonwealth support. The government is committed to this process, as outlined in the Prime Minister's statement of 7 December last year. We continue to support discussions—(Time expired)

Broadband

Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (14:34): My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Can the minister provide an update to the Senate on the progress of the National Broadband Network rollout, particularly in Tasmania.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:34): I thank Senator Carol Brown for her ongoing interest and support for the NBN in Tasmania. I am happy to announce that late last week the second stage of construction of the National Broadband Network in Tasmania began in Sorell, just outside Hobart. Sorell is the first of seven Tasmanian stage 2 communities where construction will get under way over the coming weeks and months. The other stage 2 communities are Triabunna, Kingston Beach,
Deloraine, St Helens, George Town and South Hobart. Importantly, this will provide access to high-speed broadband to more than 11,000 homes and businesses in Tasmania upon completion. We expect that those services will be available progressively from March 2012.

The commencement of construction in the stage 2 communities follows the launch of commercial services in Tasmania in July 2010 in Scottsdale, Smithton and Midway Point. Households, businesses and schools in these communities are already experiencing the benefits of high-speed broadband and improved competition. Just this last weekend the Principal of the Circular Head Christian School in Smithton told the Hobart *Mercury* that in the past the area's students had to leave to access education beyond grade 10 and that one of the big advantages they have gained from the NBN is 'being able to provide a greater range of learning opportunities for all students but particularly those in years 11 and 12'. Because of the NBN they are now able to offer their students almost any course they want. Sadly, those opposite want to take that away from them and every other school student in Australia. *(Time expired)*

**Senator CAROL BROWN** (Tasmania—Deputy Government Whip in the Senate) (14:38): Mr President, I ask a further supplementary question. Can the minister advise the Senate what positive impacts the NBN has already made in some local communities and whether there are any examples of people already moving into towns where fibre is becoming a reality right now?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:38): We on this side of the chamber remain committed to rolling out the NBN and know only too well the positive impacts it will have on all Australians. I am pleased to report that, as of 1 July, NBN Co.'s interim satellite solution came into operation and will be available until the long-term satellite solution becomes ready for launch in 2015. The new interim satellite service will deliver substantial speed and performance improvements over current satellite services and replaces the Australian Broadband Guarantee, providing access to affordable broadband to those who need it most. The ISS has been designed by NBN Co. for residents and small businesses in rural and remote Australia, who cannot currently access broadband services comparable to those available in metropolitan areas. This new service is being launched in a ramp-up phase until November, during the transition period from the ABG, after which up to 1,000 new connections per month are expected.

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**Senator CAROL BROWN** (Tasmania—Deputy Government Whip in the Senate) (14:38): Mr President, I ask a supplementary question. Can the minister advise the Senate of any new service offerings by NBN Co. that are meeting the Gillard government's commitment to providing rural and regional Australians with fast and fairly priced broadband?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:38): We on this side of the chamber remain committed to rolling out the NBN and know only too well the positive impacts it will have on all Australians. I am pleased to report that the NBN is already attracting families and small businesses into areas where it is being rolled out. For example, in the Kiama Downs-Minnamurra first-release site the prospect of a high-speed NBN connection is already drawing...
businesses to the area. Photographer Paul Gosney says the NBN was a major factor in his decision to move from Sydney to Minnamurra with his wife—also a photographer—and his young family. He said: 'I might even have an advantage over my competitors. I can shoot a job in Sydney, do the post production down here and then deliver them all to my clients.'

Those on this side of the chamber remain committed to delivering equivalent services to those in regional and rural Australia, unlike those in the far corner. (Time expired)

Carbon Pricing

Senator IAN MACDONALD (Queensland) (14:39): My question is to Senator Wong in her own ministerial capacity and also representing the minister for climate change and the minister for industry, as far as it is relevant. Is the minister aware of recent reports that the showroom price of a Holden Commodore or a Ford Falcon would increase by $1,000 with the introduction of a $25 a tonne carbon tax? Does the minister agree with this estimate by the Australian car companies? If not, what is the estimate of retail cost increases with a carbon tax? I emphasise those two simple questions. Does the minister agree with the estimate? If not, what is her estimate of the increase?

The PRESIDENT: Senator Wong, answer only those parts that relate to your portfolio.

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:40): In answer to the first part of the question: no, I am not aware of that particular modelling. It is unsurprising, however, that there are a range of assertions out there from some parts of industry around the impact of a carbon price. We are aware, for example, of various mining companies, some of whom are coalmining companies and some of whom are—

Opposition senators interjecting—

The PRESIDENT: Senator Wong, ignore the interjections. Those on my left will cease interjecting.

Opposition senators interjecting—

Government senators interjecting—

The PRESIDENT: The time for debating this issue is at the end of question time. Senator Wong, please continue.

Senator WONG: As I was saying, there are obviously a great many assertions being made by those opposite about the effect of pricing carbon—which used to be their policy—on industry and on different parts of the economy. I recall, for example, in relation to the mining tax Mr Abbott saying that it would kill the mining boom stone dead. It is interesting to note that, since the government announced the resource tax reforms, we have actually seen an increase in mining employment—

Opposition senators interjecting—

Senator WONG: Yes, an increase. On the one hand we have Mr Abbott saying the sky will fall in and mining will stop, but in fact we have seen an increase.

Senator Brandis: Mr President, I rise on a point of order relating to direct relevance. There were two questions. The minister answered the first question in the first 10 seconds when she said she did not know. There was a second question: what is the government's own estimate of the cost increases for retail motor vehicles? Nothing she has said since has come anywhere near to that question.

The PRESIDENT: I believe the minister is answering the question. The minister has 41 seconds remaining to answer the question.
Senator WONG: I would also make the point—and the senator knows this because he has asked me similar questions on carbon pricing over many years—that obviously the effect of a price depends, amongst other things, on the level of that price, and the government has not yet announced what that will be. In relation to the automotive sector, this government has ensured that the new Car Plan will deliver about $5.4 billion to the automotive sector in recognition of the importance of that industry and the need to invest for the future.

Senator IAN MACDONALD (Queensland) (14:43): Mr President, I ask a further supplementary question. I point out to the minister that these are not allegations by me or the coalition, they are allegations by industry leaders. Holden's chief executive officer, Mike Devereux, has said that a carbon price of between $20 and $30 a tonne would raise the costs of production in Australia by $40 million to $50 million. Minister, what would such increases do to the ability of Holden's Australian produced cars to compete with South-East Asian produced vehicles coming from countries which do not have a carbon tax?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:44): One wonders, of course, where the good senator was when former Prime Minister Howard committed to a carbon price through an emissions trading scheme. One wonders whether this senator went to the 2007 election saying, 'I know we've agreed to an emissions trading scheme but I actually don't want one because it's a very bad thing for industry and a very bad thing for jobs.'

One wonders whether this was discussed in the Howard ministry, whether this good senator—who was, I think, a minister at that time—stood up and said, 'I don't think we should do this because this is bad for the economy.' That was the policy of the coalition at the 2007 election and under Prime Minister Howard when they used to actually care about economic policy, when they actually used to care about ensuring there was an economically responsible approach to climate change. We will continue to proceed with this policy because it is the right thing to do. *(Time expired)*

Senator IAN MACDONALD (Queensland) (14:45): Mr President, I ask a further supplementary question.

Opposition senators interjecting—

The PRESIDENT: Just wait a minute, Senator Macdonald. You are being interjected on by your own side.

Senator IAN MACDONALD: That is fine; they are very good interjections, I might say, Mr President.

The PRESIDENT: You are entitled to be heard in silence, Senator Macdonald, regardless of what side.

Senator IAN MACDONALD: I ask the minister: will the government do anything to support the local manufacturing industry in view of the stated concerns by both Ford and Holden as they 'reassess their commitment' to manufacturing in Australia because of the carbon tax? Is this just another example of Australian jobs going offshore with no impact whatsoever on the reduction of carbon emissions?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:46): What is interesting is the senator's interest in the automotive sector when those opposite, on various occasions in various types of costings plans and savings plans, have sought to reduce some of the assistance to the car sector. We have made clear that we will retain the other components of the $5.4 billion new-car plan. That is a very
substantial investment in the automotive sector by the government which, in tight fiscal circumstances, has committed to continue because we understand the importance of providing assistance.

Senator Brandis: The livestock industry, the coal industry and now the automotive industry.

Senator WONG: It is interesting to note Senator Brandis interjecting. He used to believe in a carbon price—but nothing now! Where are you, George? *(Time expired)*

Senator Brandis: I never supported a carbon tax.

Honourable senators interjecting—

The PRESIDENT: You can debate the issue at the end of question time, on both sides.

**NAIDOC Week**

Senator CROSSIN (Northern Territory) (14:47): My question is to the Minister for Indigenous Employment and Economic Development, Senator Arbib. Given that this is NAIDOC Week, can the minister please inform the Senate of the significance of this event and its importance to Indigenous Australians? And can the minister outline how this relates to the government's Closing the Gap agenda, particularly in relation to employment outcomes between Indigenous and non-Indigenous Australians?

Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (14:48): I thank Senator Crossin for her question and also for her commitment to Indigenous people in the Northern Territory. As the senator said, this is NAIDOC Week, which is an opportunity for all Australians to join together to acknowledge the outstanding achievements of Indigenous Australians and their contribution to the nation. There are events taking place across the country to celebrate the week. The national theme of this year's NAIDOC Week is 'Change: the next step is ours'. NAIDOC Week is therefore more than just a reflection on our proud past. The theme also highlights the importance of taking responsibility for the future and taking action to make it happen. It encourages Indigenous Australians to make positive changes in their own lives.

The federal government has set ambitious targets to close the gap and an unprecedented investment of $5.75 billion over three years is beginning to change the lives of Indigenous people by delivering better services, better houses and healthier communities. But we cannot do it alone. Closing the Gap requires a genuine partnership with Indigenous Australians at all levels. In my portfolio alone, meeting the target of halving the gap in employment outcomes between Indigenous and non-Indigenous people means creating and sustaining 100,000 jobs, which is a big task, and personal responsibility in this area is vital. The most impressive and successful projects we are seeing are ones where Indigenous people are leading the way. The work we are doing in stimulating and working with Indigenous businesses continues. Just last week, the Indigenous Opportunities policy was put in place with major changes to the way we undertake procurement in this country, ensuring that if a company—*(Time expired)*

Senator CROSSIN (Northern Territory) (14:50): Mr President, I ask a supplementary question. Could the minister also outline for the Senate some of the successful Indigenous employment initiatives he mentioned and, in particular, could the minister please inform the Senate of the success of some of the mainstream employment focused programs in getting Indigenous Australians into jobs?
Senator ARBIB (New South Wales—Minister for Sport, Minister for Indigenous Employment and Economic Development and Minister for Social Housing and Homelessness) (14:51): I have mentioned in the past in this chamber the success of the Indigenous Employment Program. Already, there are over 43,000 placements in jobs and training, which exceed our budget targets by 3,500, but there are also a number of mainstream projects and programs that I have not mentioned in the Senate and which are important to bring to your attention.

The Caring for our Country program has put 625 Indigenous Australians into jobs as rangers. Minister Garrett has put in place a cadetship program for rangers to try to encourage more young Indigenous Australians through their schools to be involved, to have a career as a ranger and to preserve their traditional country. Through the Jobs Fund and the Innovation Fund, funds were put together during the worst of the global financial crisis to try to stimulate the economy. Over 535 jobs have gone to Indigenous Australians, disadvantaged backgrounds and 11 Indigenous owned companies are benefitting from—

(Time expired)

Senator CROSSIN (Northern Territory) (14:52): Mr President, I ask a further supplementary question. I understand that the Australian employment covenant is one of the programs that has been supported by the Australian government, so could the minister please provide the Senate with an update on the progress of the covenant? In particular, can the minister inform the Senate of how many job commitments it has achieved?

(Time expired)

Australia Network

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (14:53): My question is to the Minister for Broadband, Communications and the Digital Economy. I refer to the tender process for the $233 million 10-year Australia Network contract for Australia's free-to-air international television network. Is it a fact that the recommendation on the successful tenderer was originally to be made by an independent panel of public servants and that this panel favoured the proposal from Sky News over the ABC?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:54): I thank Senator Abetz
for his question. The ABC, as he would be aware, currently provides the Australian Network international television service under contract through the Department of Foreign Affairs and Trade. On 23 November 2010, the Minister for Foreign Affairs, the Hon. Kevin Rudd MP, announced the government's decision to open a public tender for a 10-year contract for the Australia Network. A competitive tender process ensures the best return on the government's investments. Moving the Australia Network service to a 10-year contract will provide greater certainty to the service provider. The tender opened on 4 February 2011 and initially closed on 25 March 2011.

The government has approved a maximum of $223.1 million for the contract, excluding GST, which represents the current contract cost of $94.2 million over five years with an adjustment for inflation. In light of changed international circumstances since the request for tender was issued, the government has decided that national interests should be addressed more broadly. Tenderers have been asked to submit amended bids to specifically address how their operation of the Australia Network service would meet Australia's national interests in light of the increasing influence of key emerging markets on the global economy. Given the significance of the tender to Australia's national interests, the government considers that the decision should be taken at a ministerial level. As I have responsibility for broadcasting and communications policy, the government decided that I was the most appropriate minister to take on the approver role. Prior to this decision, I had no role in the process. However, this process will continue to be administered— *(Time expired)*

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) *(14:56)*: Mr President, I ask a supplementary question. Can the minister advise who originally had the final authority—something he studiously avoided—to decide on the successful tender for the Australia Network? I understand it was a decision of cabinet to reject the independent panel's recommendation, but can he advise the Senate what changed after 4 February?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) *(14:57)*: The process will continue to be administered by the Foreign Affairs and Trade portfolio. The amended RFT will be released shortly and a decision on the preferred tenderer is expected to be taken by September 2011. Both tenderers will be given an equal and reasonable opportunity to respond to the additional criteria. The current contract between DFAT and the ABC expires on 8 August 2011. Accordingly, the government will exercise its option under the existing contract to extend the service operated by the ABC for six months until 8 February 2012. On the range of other issues, I addressed those questions in my earlier answer.

**Senator ABETZ** *(14:58)*: Mr President, I ask a further supplementary question. The minister still has not told the Senate what changed after 4 February 2011 in relation to international circumstances requiring the change of tender. What role does the minister now have in determining the successful tenderer? Given the minister's responsibility for the ABC, doesn't he have a potential conflict of interest?

**Senator CONROY** *(Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) *(14:59)*: The role as approver is a ministerial role and is defined in the Corporations Act. I am responsible for the tender process, including determining the successful tenderer. The tender process was administered by the Foreign Affairs and Trade portfolio. However, as the ABC is a broadcasting service, I consider it appropriate for me to approve the successful tenderer.
As I mentioned in my first answer, in light of changed international circumstances—

Senator Abetz: What were they?

Senator CONROY: There were a few changes in the Middle East, as Senator Abetz may not have noticed. I am the approver because, from a legal perspective, the cabinet is not an individual and it is required for an individual to be the approver. The cabinet believes that this is a cabinet-level decision. So that is my function. I have been appointed the approver, but the decision is a cabinet decision.

Industrial Relations

Senator MARSHALL (Victoria) (14:59): My question is to the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Senator Evans.

Opposition members interjecting—

Senator MARSHALL: You are a long way away, Mr President.

The PRESIDENT: I can still see you, Senator Marshall, and I can hear those people on my left, which is most unfortunate because I need to hear your question.

Senator MARSHALL: Can the minister outline to the Senate the benefits to the economy of the Fair Work Act?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (15:00): I am happy to report on the progress of the Fair Work Act and thank Senator Marshall for his question. The Senate would be aware that, following very lengthy public consideration of the issues involved, in 2009 the federal government returned fairness and balance to the industrial relations landscape in Australia when we introduced the Fair Work Act. With its strong provisions to regulate industrial relations and restore fairness the act is working well and delivering low levels of industrial disputation and high levels of agreement making.

I am pleased that thousands of employers and their employees are getting on with the business of bargaining under the Fair Work Act. The total number of enterprise agreements reached is at a record level. Almost 24,000 current agreements are in place, covering 2.4 million Australian employees. Interestingly, during this period wages growth in the private sector has remained constrained. The recent wage price index figure shows a continued trend of contained growth. The wage price index for the March 2011 quarter rose by 0.8 percent, which made an annual increase of 3.8 percent. Also, the levels of industrial disputation continue to fall, following the long-term trend. ABS March quarter data confirms that continuing trend. The number of days lost in the March quarter was down again from the previous December quarter.

In addition to delivering fairness in the workplace the Fair Work Act is seeing reduced levels of industrial disputation and constrained wages growth but record agreement making among employers and employees. By all of the independent evidence the Fair Work Act is delivering good and fair outcomes in the context of good economic progress.

Senator MARSHALL (Victoria) (15:02): Mr President, I have a supplementary question. I thank the Minister for that answer. Despite these obvious benefits, is the Minister aware of any data or other evidence to support moving away from the Fair Work Act?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate)
(15:02): As I indicated in my earlier answer, all the evidence points to the act delivering the sorts of outcomes that the parliament would expect. It is delivering low levels of disputation at the same time that it is providing employees with important rights and obligations that allow them to be treated fairly and safely in their work places. This is in stark contrast to the regime of the previous, Liberal government—the regime of Work Choices—where rights and conditions of ordinary working people were being downgraded and ripped away.

It is interesting to note that Senator Abetz and others have rejoined the debate on industrial relations in recent days thanks to Mr Reith but they are starting to talk about flexibility. 'Flexibility' is code for reducing wages and conditions and removing rights to unfair dismissal protection. This is, again, the traditional Liberal Party agenda of reducing rights and conditions for— (Time expired)

Senator MARSHALL (Victoria) (15:03): Mr President, I ask a further supplementary question. Again, I thank the minister for that answer to the question. Maybe he could expand on his finishing comments. Is the minister aware of alternative policy positions in this regard?

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (15:03): As I understand it there are two alternative policy positions. They both relate to downgrading workers' wages and conditions and removing protections. There is the half of the Liberal Party who believe in being honest about that and advocating that at the next election, and the other half who say, 'Let's not talk about it; let's wait until after the election. If we win we'll introduce again the Work Choices agenda.' Peter Reith belled the cat. He also learned that Tony Abbott cannot be trusted: 'I will vote for you mate but—' What we now know is that the Liberal Party is having an ideological debate.

Honourable members interjecting.

The PRESIDENT: Senator Evans, resume your seat for a moment. Both sides! Senator Evans you have 17 seconds remaining to answer the question.

Senator CHRIS EVANS: The Australian people will work out—like Peter Reith did—that Tony Abbott cannot be trusted. He said that Work Choices was dead, cremated and buried, but we know that it is alive, kicking and back. The only argument in the Liberal Party is whether to come clean about their real intentions. (Time expired)

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

ANSWERS TO QUESTIONS ON NOTICE

Question Nos 4, 340 and 660

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:05): Mr Deputy President, congratulations on your first ascension to the chair after your vote this morning. I draw your attention to the fact that question on notice No. 4 to the minister for climate change and No. 340 to the Minister for Foreign Affairs have not been answered. Although I have not sought an answer to question No. 660 from the Special Minister of State that is also beyond 30 days without an answer. If answers are not forthcoming I will seek to take further action in the sitting of parliament after the winter break.

The PRESIDENT: Does any minister wish to provide an explanation to Senator Brown? If not, we will move to the motions to take note of answers.
QUESTIONS WITHOUT NOTICE:
TAKE NOTE OF ANSWERS

Answers to Questions

Senator IAN MACDONALD (Queensland) (15:06): I move:

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

Can I be the first in this chamber who actually voted for you to congratulate you on your accession to the Deputy President's role?

The DEPUTY PRESIDENT: Thank you.

Senator IAN MACDONALD: We have a new Senate but we have the same, old, incompetent, tired, dishonest and wasteful government before us. You only have to look at the ministers who answered questions today at question time to understand what abject and unmitigated failures they are as ministers, and consequently that incompetence shows on the government of the day.

We had Senator Ludwig telling us about the live cattle export ban. Every Australian can see that, as a result of Senator Ludwig's incompetence, Australia has lost a very fine industry, the cattle industry, employing many thousands of Northern Australians, including Indigenous Australians. We had Senator Arbib telling us how he is making make-work programs for Indigenous stockmen and Indigenous workers whilst at the same time Senator Ludwig is destroying their jobs and their livelihoods with his incompetent decision on live cattle export.

We also had Senator Conroy answering questions and demonstrating again how he and his government promised that the government would spend $4.7 billion on a national broadband network and how that has now grown to some $55 billion.

We also had a failed Minister for Climate Change and Energy Efficiency trying to in some way exculpate the government from the mess it has created with its various climate change policies. On Friday the heads of Ford and Holden in Australia indicated that, as a result of the carbon tax, the saleroom cost of a Holden Commodore or any basic-model Australian-built car would increase by some $1,000 and the cost of production of Australian cars would increase by something like $40 million to $50 million. As the head of Holden Australia said, this sort of new tax on the manufacturing industry in Australia will cause them to 'reassess' their manufacturing presence in Australia. This is what the Labor Party's carbon tax will do. It will not do anything for reducing greenhouse gas emissions; it will simply send offshore Australian jobs, and those manufacturing industries will be working in countries with far less stringent limits on greenhouse gas emissions than the Australian nation has.

The failure of the current and past climate change ministers was easily determined by today's question time. This is the whole problem with the Australian Labor Party. There will be no appreciable benefit whatsoever to reduction of greenhouse gas emissions because all of the jobs that create them will go offshore. We have heard today that fuel is going to be exempt from carbon tax. So what is going to happen to greenhouse gas emissions? They are not going to reduce at all, and we all know that the transport industry is one of the biggest emitters of greenhouse gases.

So the government is all over the place. They are putting on this huge tax for measures which will not reduce the emissions from Australia; what they will do is send jobs offshore. The minister and the government are afraid to answer questions on what the addition of the carbon tax will
do to the cost of production of Australian vehicles. The minister said she did not know about it. Well, she has a very poor department if they did not alert her to the very widespread news article that appeared last Friday. The car industries are definitely worried about their future in Australia, all because of this government's carbon tax proposals. One wonders what the workers so-called 'friends', the Labor Party, are doing to try and save those jobs in Australia.

**Senator CROSSIN** (Northern Territory) (15:11): Can I also add my congratulations to you, Mr Deputy President, in obtaining this position today. One regret is, though, that we have lost you from the Senate Legal and Constitutional Committee. We know you will look kindly on that committee in your deliberations in this role. Congratulations.

I rise also to provide a contribution today to this debate to take note of answers. I want to re-emphasise the answers given by Senator Ludwig. As a senator for the Northern Territory, I know only too well the importance of the live cattle industry to people in the Northern Territory. I also know the benefit, of course, that that live cattle trade provides to our economy in the Northern Territory and also nationally.

I want to reiterate that there are a number of us who are diligently working with the live cattle industry, particularly the Northern Territory Cattlemen's Association, to resolve this issue as quickly as possible. Despite the calls around the country to totally ban live cattle export, this government will not do that. This government has not said that it will take that stance at all; in fact, this government is working constantly, hour by hour, to deliver an outcome as quickly as possible, to again get the cattle moving and on those boats and off to Indonesia.

We have had the Prime Minister in the Northern Territory twice in one month to meet with the cattle industry to talk through with them their issues and concerns. On Wednesday last week, in fact, she spent quite a bit of time with them. As a result of that, we announced a further Live Exports Assistance Package of $30 million. That was done in consultation with that industry.

I and Minister Warren Snowdon from the House organised for the Northern Territory Cattlemen's Association executive to meet here in Parliament House for two days. That occurred only a fortnight ago. It was unprecedented for an association such as that to have access to ministers and people from the opposition, and people from any caucus, for 48 hours to talk through and highlight their concerns about what they were going through and experiencing.

But, as we have said on record, we want to ensure that, when the cattle leave this country on the boats and get to Indonesia, the welfare of those animals, to the extent that we saw on that Four Corners program, is resolved forever. We do not want just a stopgap solution to get the current cattle moving but not fix up the problem in the long term. We want to ensure that the problems that have been highlighted are resolved definitely and forever and that we never, ever have this problem recur.

We are trying to resolve this issue as quickly as possible. The Minister for Agriculture, Fisheries and Forestry, Senator Ludwig, travelled to Indonesia to talk this through and a range of people are working on this constantly. We have talked through with the Indonesian government some provisions which we believe will improve what is happening in abattoirs and improve the control and regulation of the supply chain. We also have an industry-government working group on live animal exports which was established in June. The new system may include placing controls on Australian
exporters' licences. Such controls would require that exporters demonstrate they are supplying animals into a supply chain that meets agreed animal welfare standards. The exporter would also have to fulfil all other export requirements.

We have to ensure that when those animals arrive in Indonesia we work with the Indonesian government cooperatively—not dictating to the government but respecting the policies and the wishes of that government—so that as quickly as possible the cattle are placed in feedlots that are well controlled, well organised and supervised and after leaving those feedlots they go to an abattoir which meets the expectations that Australians require. We are the only country at this stage demanding that of Indonesia. It is another country. You need to respect the rights and the protocols of that country. It is not for us to simply take over and dictate to that country what it ought to do. This government is working hard to resolve this.

(Time expired)

The DEPUTY PRESIDENT: Senator Crossin, I thank you for your kind remarks.

Senator BACK (Western Australia) (15:16): Mr Deputy President, I add my congratulations on your election. All of the points made by Senator Crossin in the last couple of minutes are admirable. What a shame they were not actually undertaken prior to 8 June when the decision was taken by the Minister for Agriculture, Fisheries and Forestry to suspend trade completely.

The simple fact of the matter is that the minister is correct in the points he makes about animal welfare and all of its issues. Anybody who saw the footage on the ABC was shocked at the cruelty et cetera—there is not a person in Australia who was not—and action had to be taken. He was correct in the action he took initially, which was to suspend trade with those abattoirs that did not meet standards. Unfortunately, there were already a number of abattoirs that did—and still do—meet international standards, including those to which 1,900 cattle were sent from Port Hedland on 6 June, two days before the ban was imposed, by Elders and which were to go to Elders' own feedlot and then their own internationally acclaimed abattoir. We now have a total abrogation of any capacity on the part of Australia to control or have any say in this industry.

The minister is well aware, as are others, that Minister Suswono, the Indonesian Minister for Agriculture, was deeply insulted as a result of the suspension without any consultation. The minister made a point in answer to my question about supply chain assurance. All he need have done was to consult with people in the industry—exporters, me and others who offered that opportunity—and the whole question of the integrity of the meat chain from station to port, from port to feedlot and from feedlot to abattoirs could have been well and truly and easily handled by consultation in advance. He is correct about traceability, transparency and independent auditing. I was the one who suggested that veterinarians well versed in abattoir management after many years in Australia would have been the appropriate people to have undertaken that independent auditing.

The coalition offered the minister all the support it could prior to the time in which he made the decision, but once the door is closed it is only the Indonesians who can open it. Today they made a decision that they are not going to issue any more import licences until the end of September. For those who are not familiar with the cattle industry in the north of Australia, that could effectively be the end of the trade. If we get an early break to the season and we get the summer rains in September-October, there will be no mustering of cattle, there will be
no trucking of cattle, there will be no trade beyond September.

Animal welfare issues, of course, are critically important. So are the hundreds of thousands of cattle on the rangelands. Those cattle that are now too heavy to go to Indonesia will not go to Indonesia. The mothers from last year's calving will be calving again this year, so we will have three generations—cows, this year's calves and last year's calves—that should be in feedlots or in abattoirs in Indonesia right now. We are facing an animal welfare disaster. Should we have a light summer rain this coming summer, this time next year we will have hundreds of thousands of animals facing starvation and we will have a natural environment that will be decimated. This could have been avoided.

We already have an animal welfare issue in Indonesia where cattle are on trucks for up to four days to try and meet the supply in advance of Ramadan, which is now 26 days away, the period of the biggest consumption of red meat in the year. Others have asked why cattle cannot come to the south for a southern winter. They are too light to be slaughtered in the south. It would be an animal welfare disaster to bring Bos indicus cattle down to the southern winter and try to fatten them at this time of the year.

I asked a question about the welfare and wellbeing of not only the pastoralists in the north but also all those who rely on the industry. We have a circumstance in which $30 million has been offered. The $30 million would have been far better spent in Indonesia with the Indonesians upgrading Indonesian abattoirs so that they would meet the correct standards that the minister has identified, OIE standards. We do not want handouts. What we want is support to get this trade going again. The effect across the north is catastrophic. The risk to this country if the Indonesians decide to buy live cattle and buffalo from India which is rife with foot-and-mouth disease is incredible. The risk to animal welfare in this country should ever we get foot-and-mouth disease would be on a scale never contemplated. (Time expired)

Senator FURNER (Queensland) (15:21): Mr Deputy President, I join with other Senate colleagues in congratulating you on your appointment today.

The DEPUTY PRESIDENT: Thank you.

Senator FURNER: It is a fine choice and it is good to see you in the chair. I wish to respond to the motion to take note of answers provided by Senator Ludwig to questions on the live export issue. It was a decision that was not taken harshly; it was a decision that was taken with concern for the welfare of and impact on the industry. I am certain that you would be aware, Mr Deputy President, that we do not take these decisions on the spur of the moment, whether on the issues associated with Four Corners or on others. We looked at the concerns of this industry in the approach that has been taken. I remind senators opposite that this is a matter that has been raised with the industry, with Meat and Livestock Australia, since January of this year. The minister actually wrote to that association, expressing concerns about this particular animal welfare issue of the method of slaughter in Indonesia.

Again, we do not take these decisions lightly and we do not take them with the degree that people think we might—certainly those opposite. I think Senator Macdonald made the claim—the wild accusation—that we have lost a fine industry. That is typical of this scare campaign that they consistently run. Whether it be on carbon pricing or on
other mechanisms, they run this scare campaign—

Senator Ian Macdonald: Have you ever been up into the Gulf Country?

Senator FURNER: Yes, I have been to Indonesia.

Senator Ian Macdonald: Not to Indonesia—to the Gulf Country!

Senator FURNER: I have been up north, as a Queensland senator, and have been involved in the cattle industry, so I am well aware of what happens in abattoirs and I am well aware of what happens in Indonesia. I have not been to an Indonesian abattoir but I am aware of the customs and the culture there, and I do have an appreciation of why this is an issue. That is why we need to work through this particular problem and get a resolution in the mechanisms and measures that we are taking, whilst taking into consideration the welfare of those animals and at the same time taking into consideration the welfare of the industry.

We also have an obligation under World Trade Organisation rules to take action to ensure that Australian cattle are treated in accordance with those standards on animal welfare. Hand in hand with that particular requirement and obligation, we are also supporting the industry in terms of a contingency fund of $5 million for assistance to workers. That is why we are involved in trying to find a resolution and provide assistance for the industry and workers up in the cape, the Territory and other northern parts of Western Australia. It is another example of what we have done in times of need when people have been seeking assistance from this government. If we reflect back on the Queensland floods and cyclone, the government was there. We provided assistance for workers and for people who were affected by those particular terrible incidents. From memory, I think that those opposite opposed the flood levy. They were not interested in assisting people who were in a time of need. I do not know what their position is on this issue; they seem to be lost in some respects.

It is a case of a fine balance between working with the industry and working with the Indonesian government. That is why the minister has been up there and has consulted and discussed it with his Indonesian counterpart. We also have the Minister for Foreign Affairs, Kevin Rudd, who is willing to have some dialogue with the government of Indonesia. One thing that we have been able to do with the Indonesian government, since we have a healthy relationship with them, is to come up with solutions and outcomes that are suitable for both countries. It was not that long ago that we welcomed the Indonesian president to the House, and I think that the dialogue and communication, the understanding and respect for one another and the healthy relationship between the two governments was demonstrated by each government on the floor on that occasion. That healthy relationship will continue with our involvement in this particular issue.

So it is not a case of the industry being destroyed or being lost, as stated in the scare campaign that is being run by some of those opposite. It is not all of them; I take on board some of the comments made by Senator Back. He comes from a veterinary background, so he understands the reasons for this and the issues associated with animal welfare in this particular area. I think that, if more people like Senator Back had come forward and expressed the concerns of this industry, we would be in a position of reaching a solution. (Time expired)

Senator FISHER (South Australia) (15:27): Thank you and congratulations, Mr Deputy President. I rise to take note of
answers given by Senator Ludwig today and to commiserate with Senator Furner on the crocodile tears that he has shed and that his colleagues are shedding as to the state of the cattle industry in Australia. Crocodile tears are all they are. This is a government that has been cowed into submission. It has been cowed into suspending our live cattle trade with Indonesia—cowed into a blanket suspension that is all pain for no gain. It is all pain for Indonesian cattle, which continue to be slaughtered daily in Indonesian abattoirs. It is all pain for the Indonesians themselves, who have a government that is clearly miffed.

The Australian Labor Party are trying to suggest that they are working with the Indonesian government. The Indonesian government are clearly miffed at the lack of consultation prior to the blanket banning of trade with their country. They are so clearly miffed that they have today announced that there will be no more import licences for three months. It is all pain and no gain. What about Australian cattle? As my colleague Senator Back has mentioned, *Bos indicus* cattle coming down from the north to the south aren't gonna put on any condition if they are trucked south. And every time you handle cattle—every time you handle any animal—you risk stressing them? What about the carbon miles in transporting cattle from the north down to the south or to the west?

As for the compensation that has recently been announced by the government to the industry of $30 million plus some $5 million plus some Centrelink payments—please! How offensive. And what a waste, because the only reason the government is even having to contemplate making those payments is that it is in the process of trashing our live export trade and, in particular, our cattle trade to Indonesia. What a waste, and how offensive. All that the industry wants is its trade back up to those abattoirs in Indonesia which we know treat our cattle humanely. So whose bidding is the Australian Labor Party really doing? Is it the bidding of the Australian Greens? How low will this government stoop? Will it support the Australian Greens' bill to ban live exports, writ large? Is that how low this Australian government will go? Alternatively, will it stoop so low as to adopt the policy of the New South Wales Greens, who in May 2010, according to their website—I am sure Senator Rhiannon can talk more about this—considered it environmentally essential to decrease production of animals for food and other products? Australian Labor Party, do you know about this? Is this how low you are going to stoop? The Labor Party may be in government, but they know that the Greens are in power.

What is Senator Brown's position on the New South Wales Greens' policy? Has he had a discussion with Senator Rhiannon about it yet? While we are at it, how extensively do the Greens consult with their constituents and their supporters? For my part, in this Parliament House today is my aunt, once an Independent senator—and a very good Independent senator, although quite some political policies apart from me—for Western Australia, Jo Vallentine. Former Senator Vallentine is here. Is it for me being sworn in? No. I wish she were here to support me, but she is here to support the nine Greens senators sworn in today, which I find a bit tragic. But former Senator Vallentine and I grew up in the same farm house in Western Australia. I cannot believe that former Senator Vallentine, as a stalwart of the Greens, would really support decreasing production of animals for food and other animal products. *(Time expired)*

Question agreed to.
Forestry

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (15:32): 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 logging of old growth forests.

I rise to take note of an answer from Minister Ludwig in relation to the logging of forests and, in particular, what is going on in Tasmania. I asked the minister what he knew about the Tasmanian government's involvement in maintaining the ongoing operation of the woodchip mill at Triabunna. The minister said that he would have to take that on notice. I do not know why, because I went around to his office last week, briefed his office on what is actually going on and asked the minister to investigate the matter.

The reason is this. Here we have the Commonwealth negotiating with the Tasmanian government to develop a package which will protect high-conservation-value forests in Tasmania and assist the exit of logging of native forests. Tasmania is cap in hand to the Commonwealth, asking for a cheque yet again—more Commonwealth money. It is supposed to be exiting native forests, not entrenching logging in native forests. We knew Gunns was selling the woodchip mill at Triabunna, but what we were horrified to learn was that suddenly a company, Aprin Logging, took a couple of holding companies off the shelf—one company, Fibre Plus, had 24 shareholders and a valuation of $24—and bought a multimillion-dollar woodchip mill. Then we found out after the event that it depended on a loan from the Tasmanian government in order to clinch that sale.

Furthermore, we have Forestry Tasmania supposed to be supporting the Commonwealth in exiting native forests, but they must have provided a guarantee to that company that it will provide a supply of logs in order for Triabunna to have a source of timber. So what is going on? One government is negotiating with another government to get out of logging, and the Tasmanian government is facilitating logging through Forestry Tasmania. Now we discover that the Department of Economic Development, Tourism and the Arts actually approached Aprin Logging and said, 'If you were to apply for a loan from the Tasmanian government, it is likely to be looked on favourably.'

What sort of dodgy behaviour is going on in Tasmania in the logging industry at exactly the same time that the Commonwealth is working with the Tasmanian government in order to get through a package which is supposed to be about a 100 per cent solution to the ongoing conflict in Tasmania's forests?

We have known for a very long time that there are very suspect dealings in the Tasmanian logging industry. We have known that Forestry Tasmania, while the rest of the public service has taken cuts and lost a number of employees, has continued to build its empire at the same time as it is in debt to the people of Australia for at least $130 million. It has only returned a matter of $7.2 million in tax returns or in dividend in all that time, and yet it got a huge amount of money—more than $145 million—from the Commonwealth. So it is living on borrowed time and borrowed money, and now we discover it is up to its neck with the Tasmanian government, with Aprin Logging and with Fibre Plus, and we do not even know who the operatives in Fibre Plus are. We do not even know who the principals are. Who are they covering for? Who actually has put up the rest of the money for Aprin Logging?

I urge Minister Ludwig to stand in here and say the Commonwealth will not give Tasmania one cent in a forest deal outcome.
until Aprin Logging, Fibre Plus, Forestry Tasmania, the Department of Economic Development, Tourism and the Arts and the Premier of Tasmania come clean on their dealings and what is going on. I want to know from the minister exactly what he knows about it. Has he been discussing this with the Tasmanian government? What sort of duplicity is it to say you are trying to stop logging at the same time as you are trying to maintain a woodchip mill? There was another buyer for the woodchip mill. They had the money to pay in cash, and yet they were rejected in favour of this deal dependent on a government loan.

I would further like to know what ASIC is doing about this, because Gunns has an obligation to maximise its return to its shareholders. How can it say to its shareholders it is doing that if it does not take a cash offer for the woodchip mill and, instead, relies on an offer from a company which does not have the money and which needs a government loan? I would like to know what dealings have gone on, because this merely cements the image of Tasmania as being rotten at the core when it comes to logging and when it comes to the relationship of government with the logging industry in Tasmania.

Question agreed to.

NOTICES

Presentation

Senator HANSON-YOUNG: To move:

That the Senate—

(a) notes that:

(i) the New York State Congress has legislated for marriage equality, and

(ii) in doing so, New York has joined the following states of the United States of America, Massachusetts, California, Connecticut, Iowa, Vermont, Washington DC and New Hampshire, along with more than 10 other nations;

(b) recognises that Australia is one of only a few democratic nations that does not provide same-sex couples with equal marriage rights; and

(c) calls on the Government to support marriage equality for all Australian citizens.

Senator SIEWERT: To move:

That the provisions of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 be referred to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 9 September 2011.

Senator BILYK: To move:

That the Joint Standing Committee on Migration be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 17 August 2011, from 10.30 am to noon.

Senator MARK BISHOP: To move:

That the Joint Committee of Public Accounts and Audit be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 6 July 2011, from noon to 1 pm, to take evidence for the committee's inquiry into national funding agreements.

Senator SIEWERT: To move:

That the time for the presentation of reports of the Community Affairs References Committee be extended as follows:

(a) the funding and administration of mental health services in Australia—to 20 September 2011; and

(b) supply of Pharmaceutical Benefits Scheme medicines to remote area Aboriginal Health Services—to 11 October 2011.

Senator MARSHALL: To move:

That the provisions of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 be referred to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 15 September 2011.

Senator MOORE: To move:

That the time for the presentation of the report of the Community Affairs Legislation Committee
on the 2011-12 Budget estimates be extended to 7 July 2011.

Senator STEPHENS: To move:
That the Joint Standing Committee on the National Broadband Network be authorised to:
(a) hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 5 July 2011, from 6 pm; and
(b) hold a public meeting during the sitting of the Senate on Tuesday, 5 July 2011, from 6.15 pm.

Senator MASON: To move:
That the Senate—
(a) acknowledges the importance of the role that non-government schools play in reflecting the diversity of Australian society and serving a broad range of students, including those from a variety of religions, social backgrounds, regions and socio-economic circumstances;
(b) supports the continuation of a funding model into the future that distributes funds according to socio-economic need and which recognises that every non-government school student is entitled to a basic level of government funding;
(c) calls on the Government to continue to support parents in their right to choose a school which they believe best reflects their values and beliefs, by not penalising parents who wish to make private contributions towards their child’s education, nor discouraging schools in their efforts to fundraise or encourage private investment;
(d) notes the many submissions made to the Review of Funding for Schooling panel by non-government sector authorities requesting that changes to school funding arrangements not leave schools or students worse off in real terms;
(e) acknowledges that any reduction in government funding for non-government schools would need to be addressed by increasing the level of private income required to be raised by the school community, such as school fees, or through a reduction in the quality of the educational provision in affected schools; and
(f) calls on the Government to make a clear commitment to the continuation of current funding levels to all non-government schools, plus indexation, and for this to be the basic starting point of any new funding model resulting from the review of funding for schooling process.

Senator HANSON-YOUNG: To move:
That the following bill be introduced: A Bill for an Act to amend the Migration Act 1958 in relation to the declaration of third countries for removal of offshore entry persons, and for related purposes. Migration Amendment (Declared Countries) Bill (No. 2) 2011.

Senator HANSON-YOUNG: To move:
That general business order of the day relating to private senators’ bills no. 57, relating to the Migration Amendment (Declared Countries) Bill 2011, be discharged from the Notice Paper.

Senator XENOPHON: To move:
That the resolution of the Senate of 9 February 2011, relating to the terms of reference of the Foreign Affairs, Defence and Trade References Committee on the procurement procedures for defence capital projects, be amended as follows:
At the end of the motion, add:
(e) assess the effectiveness of the Defence Materiel Organisation, including:
(i) its role and functions,
(ii) its processes, management structure and staffing, in particular as compared to similar organisations in the United Kingdom, Canada and other comparable jurisdictions and large Australian commercial enterprises,
(iii) its full costs, assessed against the timeliness and quality of its output and the service it provides to the Australian Defence Force, and
(iv) the extent to which it value-adds to national defence and to the long-term viability of Australian defence industries.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods
Monday, 4 July 2011

SENATE

Recovery) (15:37): I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs 5 to 8 of standing order 111 not apply to the Social Security and Other Legislation Amendment (Miscellaneous Measures Bill) 2011, allowing it to be considered during this period of sitting.

I table a statement of reasons justifying the need for this bill being considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave granted.

The statement read as follows—

Statement of Reasons for Introduction and Passage in the 2011 Winter Sittings

Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill

Purpose of the Bill

The primary purpose of the bill is to provide certainty in relation to prosecutions and previous criminal convictions for social security fraud.

Reasons for Urgency

Introduction and passage of the bill during the 2011 Winter sittings is urgently required to:

(a) mitigate the risk that up to 12,000 previous convictions for social security fraud could be overturned if the High Court decision in relation to the matter of CDPP v Poniatowska (Poniatowska), which is overdue and imminent, is adverse to the Commonwealth, as advised by the Commonwealth Director of Public Prosecutions; and

(b) ensure the certainty of social security fraud prosecutions currently on hold pending the High Court's decision in Poniatowska.

Postponement

The following items of business were postponed:

General business notice of motion no. 298 standing in the name of Senator Xenophon for today, proposing the introduction of the Bankruptcy Amendment (Exceptional Circumstances Exit Package) Bill 2011, postponed till 5 July 2011.

General business notice of motion no. 307 standing in the name of Senator Ludlam for today, relating to Burma, postponed till 16 August 2011.

BUSINESS

Leave of Absence

Senator McEWEN: Mr Deputy President, my congratulations to you on your election. I seek leave to move a motion relating to leave of absence for Senators Carr and Farrell.

Leave granted.

Senator McEWEN: I move:

That leave of absence be granted to Senators Carr and Farrell from 4 July to 7 July 2011, on account of parliamentary business.

Question agreed to.

Senator KROGER: by leave—I move:

That the leave of absence be granted to Senator Coonan from 4 July for the remainder of this sitting week, for personal reasons.

Question agreed to.

MOTIONS

Foetal Alcohol Spectrum Disorder

Senator BOYCE (Queensland) (15:40): I seek leave to amend notice of motion No. 300 standing in my name and the names of Senator Adams and Senator Siewert relating to foetal alcohol spectrum disorder.

Leave granted.

Senator BOYCE: I move the motion as amended in the terms circulated in the chamber:

That the Senate:

(a) notes that Foetal Alcohol Spectrum Disorder (FASD) is:
(i) an overarching term used to describe a range of physical, mental, behavioural, learning and development disorders that can result from foetal exposure to alcohol, and
(ii) reported to be the greatest cause of non-congenital, irreversible and permanent brain damage to new-borns in Australia;
(b) calls on the Australian Parliament to continue to facilitate and support the development of a FASD national diagnostic tool for the use of medical professionals and other health service providers; and
(c) calls on the Australian Government to:
   (i) give those with FASD access to disability support funding and services, where appropriate,
   (ii) institute an awareness campaign targeted to groups most at risk to raise their awareness of the risks to the unborn child when alcohol is consumed in pregnancy and highlight the potential cognitive and developmental consequences for affected individuals as these pertain to service providers, law enforcement and justice, the community sector and education, and
   (iii) give support to the development of models of care and helping strategies for families and individuals dealing with the impacts of FASD.
Question agreed to.

NOTICES
Postponement
Senator BOSWELL (Queensland) (15:41): by leave—I move:
That notice of motion No. 308 standing in my name for today, be postponed to the next day of sitting.
Question agreed to.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:42): Mr Deputy President, consequent on Senator Boswell’s delay of that motion, I ask that my amendment be replaced with the amendment circulated in the chamber today and that that also be delayed until the consideration of Senator Boswell’s motion.

The DEPUTY PRESIDENT: That will be done, Senator Brown; there is no need to seek leave for that.

Senator XENOPHON (South Australia) (15:42): Mr Deputy President, can I foreshadow that I too have moved an amendment that I understand will be dealt with on the next day.

The DEPUTY PRESIDENT: Thank you, Senator Xenophon.

MOTIONS
Student Visas
Senator HANSON-YOUNG (South Australia) (15:42): Mr Deputy President, I extend my congratulations to you. I move:
That the Senate—
(a) notes that after the Tiananmen Square massacre in 1989 the Hawke Labor Government allowed many thousands of Chinese students studying in Australia to stay after their visas had expired; and
(b) calls on the Government to:
   (i) provide an extension of student visas on humanitarian grounds to the students of the conflict-ridden countries of Libya, Syria and Bahrain, allowing them to stay in Australia until it is safe to return home, and
(ii) lift the current work restrictions, to allow these students, who have had their assets and bank accounts frozen, an increased ability to work and access basic entitlements in Australia.

Question put.
The Senate divided. [15:47]
(The Deputy President—Senator Parry)

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

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

NOES
Adams, J
Bilyk, CL
Bishop, TM
Cameron, DN
Colbeck, R
Crossin, P
Fawcett, DJ
Furner, ML
Kroger, H
Lundy, KA
Marshall, GM
McKenzie, B
Moore, CM
Parry, S
Pratt, LC
Stephens, U
Thistlethwaite, M

Question negatived.

MATTERS OF PUBLIC IMPORTANCE

Carbon Pricing

The DEPUTY PRESIDENT: The President has received a letter from Senator Fifield proposing that a definite matter of public importance be submitted to the Senate for discussion, namely:

The Government's continued failure to release the full details of its broken carbon tax promise for parliamentary and public security.

I call upon those senators who approve of the proposed discussion to rise in their places.

More than the number of senators required by the standing orders having risen in their places—

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (15:50): Mr Deputy President, might I also congratulate you on your appointment to the lofty heights of the chair. It is interesting how the Labor Party is always leading us down these paths of half-truths and half-lies—the quandary of what is the Labor Party. Yesterday, merely a day ago, we heard the Prime Minister of this great nation stroll up and say that she is going to protect fuel from a carbon tax. What she should have been saying is that she is going to protect her own people from her own policy. The Australian people already have no carbon tax on fuel. The Prime Minister is not giving them anything that they have not already got. They are not afflicted with the problems of a carbon tax. Ms Gillard, the Prime Minister of Australia, is saying that she is not going to endow the Australian people with her tax—that she is not going to inflict on the Australian people her tax. That was merely a day ago, and now a day later we find that she is going to put a tax on fuel. She has only been telling us half the story. You see, they are going to be putting a tax on fuel for big business but they have not actually told us yet what big business is. Who are these big businesses who are going to have the tax on fuel? Which ones are they? How big do you have to be before you are big enough for Julia to tax you? That is the question that is on everybody's lips: how big do you have to be
before you are big enough for Julia, the Prime Minister, to tax you? We do not know.

Wayne Swan got out there and talked about a 'battler buffer'. It sounded like a toy. I do not know what a battler buffer is—sounds like something you buy in Fyshwick. Apparently the battler buffer is only going to happen in certain areas. It seems that the battler buffer might not be there if you are a bit too big. If you are big, you are going to be exempt from the battler buffer—you are actually going to have to pay the tax.

So which companies are we talking about? Are we going to have the transport companies—do they pay the tax? If the transport companies pay the tax, what does that mean? Obviously it means the tax is on fuel. What about the bus companies—are they going to pay the tax? If so, it is going to be on tickets. What about diesel? What about farming? Is it going to be on farming? Are they going to have an amendment on excise so that it is on farming? That is another little unanswered query, a point of pondering: is it going to be on farming?

And how does this actually work, seeing that it is not on fuel? The Prime Minister, nearly a day ago, said that it was not on fuel. Does that mean that it is now exempt for refining? They use a lot of power in refining: are they going to say to the refining companies that they are not going to have to pay the carbon tax? I think that it probably will be on refining. Then, 24 hours later, we find that indirectly it is on fuel. What about those dens of iniquity, the fuel stations—those terrible places? Are they going to be exempt from the carbon tax? Quite obviously not. They are going to be paying the carbon tax, the refiners are going to be paying the carbon tax, the people who transport the fuel are going to be paying the carbon tax and, if you are big enough, it is going to be on the fuel itself. What a marvellous promise! What an endowment the Prime Minister has given us! In fact, it starts to become hard to understand who is not going to be paying the carbon tax on fuel. And the answer, of course, is that everybody in Australia is going to be paying the carbon tax on fuel.

Mr Windsor has done an absolutely superlative job. He has managed to get a carbon tax on fuel. Maybe he was not paying attention or maybe he does know and does not want to tell us. It is always a mystery. Every day Mr Windsor and Mr Oakeshott re-endorse this Labor Party. Every day they say that this is the way to go; this is the way to govern. Every day we see Mr Windsor and Mr Oakeshott doing such things as voting in support of the Labor Party's ban on the live cattle trade, even though the vast majority of the electorate actually have cattle. So it is a wondrous new world we live in.

I was interested today to observe the Greens. As you know, we have seen the corsage in Bob Brown's lapel when he signed the book—when he signed the register with Julia Gillard with all the attendants—the maid of honour and the best man—standing beside them as they signed the register for this new wondrous form of government. Now they pretend that they are separated—living in the same house but separated, sleeping in different rooms. But it is all a farce. If they are not together then let's call it divorce. Let's throw the party. Let's change the government.

But they are together and the Greens, you see, want the tax on fuel. They think fuel is too cheap. They believe that the price of fuel should go up just as the price of power is going to go up. They believe that the Australian people are doing it too easy at the moment and need to pay more. I never knew carbon was free; I never knew coal was free; I never knew fuel was free. There is already a price on carbon, a massive price, a price
that so many people in the Australian community cannot afford right now. What is their answer to that? We see the Greens, we see Senator Rhiannon, saying that in 10 years time Sydney has to be carbon free. I do not know what they are going to do with the wooden furniture; that is going to be hard. I do not know what a carbon-free Sydney looks like—no fuel stations and no cars. Electric trains are run by power and power is made by coal—so no electric trains. What a marvellous world this is going to look like.

How are they going to actually make any money? How do they pay for all this? Do we print the money or do we just borrow it? No-one is going to lend it to us, because there is no way that we can live. We have no real relevance. As Senator Madigan has said, a country that does not make anything or grow anything is a country of nobodies, and that looks like what they are going to try to turn us into—a country of nobodies with massive debts.

So we have a peculiar state of affairs. Before the election Ms Gillard said, 'There will be no carbon tax under a government I lead,' and, straightaway after she got in, the government she leads has a carbon tax. Nearly 24 hours ago she said that there will be no carbon tax on fuel. She made the announcement. She credited Mr Windsor. He is 'a wonderful man': 'He saved you from me.' Then we found out that even that is not true. There is a carbon tax on fuel. There is a direct one on the big fuel users—and who knows what 'big' is? We are about to find out. It is in that secret multiparty discussion of the Greens and the Labor Party and the Independents. There is a tax on fuel and there is an indirect tax on everybody.

So this is the world we have been led to. This is what is in front of us. What will happen, of course, is that fuel prices will go up. Maybe they will have Fuelwatch on that.

We will be able to watch them go up in a voyeuristic expose of what they are doing to the standard of living. And we will be able to ask Mr Swan, the Treasurer of Australia, how the battler buffer is going, how it is making him feel and whether it is making him feel excited. We do not quite know what is happening with the battler buffer, but these issues will be before us. What promises are going to be broken in the next couple of days? How ridiculous does this government have to get? How absurd does our nation have to become? How much more bizarre can it get than it is already? What more could they possibly do to make our nation a complete and utter pythonesque fiasco? It is incredible. Instead of business trying to glean what they can from various incomplete news reports, this is incompetence from the incompetence of this government.

It is going to be an interesting couple of days. We have all come back here to stroke the ego of our new colleagues on the left side of me here, who talk about themselves as being the majority. That means that we must be in the minority and that they must be part of the government. They are part of the government that has closed down the live cattle trade, the government that has engaged in the brick-through-the-window diplomacy with our nearest neighbour and the government that has had oversight of the closure of the Murray-Darling Basin, as they agreed 7,600 gigalitres have to go from the Murray-Darling Basin. Now with the carbon tax they want to close down everything in between. That is the new world we are living in.

I was fascinated to see today the Greens turn up one after the other in their own cars. I thought they would have been riding here on pushbikes, unicycles and horses, but no, they all took a car to the Senate today.
Senator CAROL BROWN (Tasmania—Deputy Government Whip in the Senate) (16:00): This matter of public importance debate on a carbon tax highlights the void that exists in the opposition's policy formulation. On examination, the policy formulation and constructive debate from those opposite, I am sad to report, is severely lacking. I think that was amply displayed today by Senator Joyce as he went on a frolic in his contribution to this matter of public importance debate. I think that the opposition putting these sorts of debates up highlights exactly where they are coming from. They do not believe in climate change. That is one of the reasons why they have a policy that does not work. Of course, from the contribution of Senator Joyce we now know he is not taking it seriously.

Unfortunately, this lack of policy and constructive debate is nothing new from those opposite. Catchy slogans, misinformation and scare campaigns have taken the place of legitimate public policy debate. It appears that the only policy in the opposition's cupboard is negativity. It is extremely disappointing that the sole policy focus that those opposite seem to pursue is to oppose everything. Time and time again we are confronted by an opposition led by a leader renowned for his negativity and lack of policy detail. He does not seem interested in engaging in positive policy debates.

Again, last week we were exposed to Mr Abbott's true colours. In what can only be described as a political stunt gone wrong, Mr Abbott proposed a $70 million opinion poll through the use of a plebiscite. Let us not forget that, even if a plebiscite were agreed to by the parliament and then voted on by the Australian people, Mr Abbott was going to totally ignore the results. This exposed the plebiscite for exactly what it was—a political stunt that fell flat in a day. I think this move to introduce a plebiscite exposes exactly who the opposition are—an alternative government totally devoid of public policy ideas. This lack of policy detail stands in stark contrast to this government, which believes in climate change and which is taking action on climate change by placing a price on carbon. Placing a price on carbon is placing a price on pollution. It is the cheapest and most effective way for us to build a clean energy future. The carbon price will apply to the 1,000 biggest polluters in our economy. As the government has stated previously, all of the revenue from the carbon price will be used to provide households with generous assistance packages, which I will touch on later in my contribution, to support jobs and to invest in clean energy.

Those opposite need to accept that the broad coverage of the economy using a market mechanism, like a carbon price or an emissions trading scheme, is the cheapest way to reduce emissions. The market based approach we have outlined was endorsed by the Productivity Commission as recently as 9 June 2011, in their report *Carbon emission policies in key economies*, and is the best way forward for Australia. Unlike the direct action regulatory approach of those opposite, a market based approach is endorsed internationally. In fact, that same Productivity Commission report showed us that countries around the globe are implementing policies to reduce emissions and transform their economies. Seven of our top 10 trading partners have adopted emissions reduction policies. The report also shows that there are over 1,000 policies in operation in selected countries aimed at reducing greenhouse gases.

In spite of this compelling evidence of global action on climate change, along with the bulk of the climate science, those opposite still insist that climate change is not real or is not caused by human activity. The
best they can offer is a direct action policy, which will involve higher costs to the budget, have a greater impact on prices and create higher taxes over time. Their plan is not to assist households either. All their policy does is shirk responsibility for taking effective action on climate change.

In contrast, the government's plan to price carbon will ensure Australia transitions to a clean energy economy in a way which fits within our economic context and that assists households and businesses. Australia's carbon price will not include the agricultural sector, but our scheme will cover the resource sector. That is the best fit for our economy. The Prime Minister has also announced in recent days that there will be no carbon price on any fuels, including petrol, diesel and LPG, for passenger motor vehicles and light commercial vehicles. At his recent address to the National Press Club, the Treasurer, Mr Wayne Swan, released a snapshot of the Treasury's carbon price modelling and, whilst the details of the carbon price package are still being worked out, we know that, under a theoretical carbon price of $20 per tonne, our economy would still grow solidly as we make deep cuts to carbon pollution.

That modelling also showed employment would continue to grow with the introduction of a carbon price, with Australia on track to increase our national employment by 1.6 million jobs by 2020. We have also had modelling that suggests that the demand for low-emissions goods and services will increase dramatically with a price on carbon. This would lead to stronger growth in the less emissions intensive and renewable sectors.

As we have made clear time and time again, the Labor government is committed to taking action on climate change—evidence based appropriate action that is in Australia's best interest. That action is a carbon price mechanism. The government will assist households as well as industry when that price is introduced. As the Treasurer has outlined, around nine out of 10 Australian households will receive some assistance for their household budgets. In fact, the vast majority of those seven million households will not be a single cent worse-off under the carbon price. Low- and middle-income earners as well as pensioners will be the focus of the government's assistance package as these are the people most exposed to cost-of-living pressures. These low-income earners—over three million households—will receive a buffer of up to 20 per cent in tax cuts and payments over and above meeting the price impact of the carbon price. The government also recognises that self-funded retirees will need support. That is why we will be providing financial help for around 280,000 self-funded retirees equal to the extra payments we will provide to over three million pensioners, part-pensioners and carers.

The key point to take from the assistance package is that it will be the top 1,000 biggest polluters who will pay, and the revenue from that will assist households—unlike the scheme proposed by those opposite. The coalition's direct action policy would have the taxpayer footing the bill and subsidising big polluters. Mr Abbott does not believe in climate change, which is why, as I have said before, he has a policy that does not work. In stark contrast, the Labor government is engaging in effective policy formulation through the Multi-Party Climate Change Committee, which is hard at work on the details of the carbon price package. The plan is to introduce a mechanism on 1 July 2012.

The carbon price will operate with a fixed price. After this time it is our intention to move to an emissions trading scheme. We
know that the best way to stop businesses from polluting is to charge them every time they pollute so that businesses themselves will begin to invest in, and transition to, clean energy. We know that we have to act now to try and prevent the devastating impact of climate change. If we do not act now, the climate science is clear that we will see more extreme weather events such as bushfires and droughts, we will have more days of extreme heat and our coastlines will flood as sea levels rise.

The ACTING DEPUTY PRESIDENT (Senator Fisher) (16:11): Thank you, Senator Brown. Senator Bernardi, there may be no left turn for you, but thank you for patiently awaiting your turn, given my premature call a little earlier.

Senator BERNARDI (South Australia) (16:11): Thank you, Madam Acting Deputy President. You were very generous in extending those extra seconds to Senator Brown for her less than impassioned plea on behalf of justifying this government's deceit and deception of the Australian people. It is quite an extraordinary thing to hear a less than impassioned defence of one of the government's key policies—and I notice that Senator Brown was reading from prepared notes from the Prime Minister's office. She is defending this Prime Minister when the simple fact is that we cannot believe a single word that your Prime Minister says because she has lied repeatedly to the Australian people. This is a gross deception and it is characterised by the fraudulent use of language—the misrepresentation of an environmental scheme that is going to do absolutely nothing for the environment—and the simple fact that the Prime Minister will not reveal any detail.

Senator Brown and other speakers say we are going to have compensation packages and there is not going to be any tax on fuel. But we cannot believe a word the Prime Minister says. She said she would have a citizens' assembly—but that is gone, ditched, out the window. She said there was going to be no carbon tax under a government she leads—but that has gone out the window. She said Kevin Rudd had her full support—oops, sorry, that was right! She convinced Kevin Rudd to ditch the emissions trading scheme and then she knifed Kevin Rudd and did him in as well. The Australian people are right not to trust this government and particularly this Prime Minister because we have been deceived again and again and again. This policy development of the Labor
administration is a shoot first, aim later program: 'We need a policy. Gosh, we've got to announce something enormous. We will do that. Oh my goodness, the consequences of what we have done are devastating!' And they continue to shift the target and change it as they go along. How else can we believe that they are going to create 1.4 million jobs by taxing the Australian economy? That beggars belief. It does not pass the common-sense test. How can they say that this is a tax on 1,000 big polluting companies but they do not expect the costs to be passed on to consumers? It is a tax on every single taxpayer in this country.

How can we believe this government when it said all the money—and it did say 'all the money'—raised by this tax was going compensate people for their behaviour? That has been mitigated now to about 50 per cent of the money raised. It has not detailed how much it is going to send off to the United Nations to be redistributed around some of the most corrupt regimes in the world. This is a government that has no idea of the detail of policy development and how it is going to affect the Australian economy. It has no idea because it really does not want to know. Its whole ambition is to cling to power, to pedal furiously so that it looks like it is doing something and hope that the Australian people will not wake up to this and the consequences of it before it is too late.

I could give the benefit of the doubt to the government and say that their intentions are good, but by their own admission—by their own parliamentary secretaries, by their own ministers—they have said that this is not going to make one cracker of a difference to the environment. When challenged, 'How much is the temperature going to drop by?' they say it is not going to drop. Mark Dreyfus wrote a letter the other day saying 'No, it's not going to change the temperature one iota.' Even their own paid spruiker, the alarmist of the year, Tim Flannery, who has taken hundreds of thousands of dollars in consultancy fees from the government, has said that it is not going to make any difference. What are we doing it for? That is the simple question.

Senator Pratt: That is not true. Get the facts.

Senator BERNARDI: I ask Senator Pratt, who is obviously going to get up in a minute and prattle on, to disclose exactly how much the temperature is going to drop under their carbon tax and their emissions trading scheme. I ask you, Senator Pratt: if you are so proud of the detail in your policy development and how effective it is going to be, to tell me what price is going to be put on carbon. What price is the tax going to come in at? What compensation will there be for pensioners? If you cannot answer these questions, Senator Pratt, you are not worthy of standing in this chamber and defending such an idiotic policy as this carbon tax. The reason I know you cannot answer these questions, Senator Pratt, you are not worthy of standing in this chamber and defending such an idiotic policy as this carbon tax. The reason I know you cannot answer these questions is that none of you has any idea. You have not got a clue about what is going on. You are in the dark. You are like mushrooms pushing themselves up through the mess that has been left behind by the factional stooges.

The problem is that you might well push your way through the mess but the stink is going to stay with you forever. The stink is going to stay with the Labor Party forever and a day because you have proved yourselves to be inept. All of you have proved yourselves to have endorsed a Prime Minister that has been the most deceitful and deceptive Prime Minister we have ever had. You know I did not have any personal rapprochement with Kevin Rudd and I know that all of you dislike Kevin Rudd more than I do, but that is not the point. At least when
Kevin Rudd said something you could almost believe him, unlike the current Prime Minister.

When it comes to policy, and effective policy, it is always the detail that brings people undone. It is not the great first lie, it is the detail and the subsequent lies that follow, and this is what we have found with this government. We know that the Prime Minister cannot be trusted. We know that the Treasurer has no idea what he is doing and talking about most of the time. We know he cannot be relied upon to give a straightforward answer either. We know that, amongst the shadow ministry, they do not have much input into what is going on—

Senator Jacinta Collins: The ministry!

Senator BERNARDI: I beg your pardon, the ministry, you are quite right. It will be the shadow ministry one time soon, Senator Collins, don't worry about that! When a government is so untrustworthy it looks for any sort of beacon of hope. We know that the Labor Party has now clung to the Greens as its beacon of hope. It thinks that if it aligns itself with the Greens it can somehow achieve some notoriety. When we see a government pursuing an ideological extremist agenda that is not going to have any impact in a policy sense on its desired outcome, when we know that the government is captive to any sort of extreme flank or pressure from an extremist lobby group like the Greens, we know that the Australian people are suffering a gross disservice.

I have no doubt that it is only a matter of time before this government is thrown out. I only hope that it will be thrown out well before this obnoxious, ill-advised, ill-considered and, quite frankly, deceptive tax is imposed upon the Australian people. Make no mistake: it will not have any impact on the environment. It will not create jobs. This just beggars belief. It will not do any of the things that the government claims, except take $12 billion out of the pockets of Australia's mums and dads and put it in the government's pockets for them to lord around and hand out largess as they see fit—including the funding of Kevin Rudd's promotion to the United Nations in the years ahead. Make no mistake: that is what they want more than anything else. Sorry, that is the second thing they want more than anything else—they want to get rid of Mr Kevin Rudd but they also want to cling to power. They think that by handing money back to taxpayers they can somehow ingratiate themselves with taxpayers.

I put to the Australian people that this is a fallacy. The Australian people have wised up to big government. They know it is wrong. They know this government is wrong. It cannot be trusted and, accordingly, it will be thrown out at the next election.

Senator PRATT (Western Australia): I acknowledge Senator Bernardi's somewhat pointless contribution to the climate change debate in this matter of public importance. As a climate change sceptic, he clearly has no imperative to help Australian households, businesses or our climate adapt to a carbon constrained future. Even though sceptics are very much discredited in this debate, he still sees fit to put these views forward. Clearly, as a senator in this chamber, he has the right to do so. What he expresses is certainly not in the national interest. I certainly know that many of his colleagues on that side of the chamber do not agree with him.

Frankly, it makes me very happy to have this timeslot in the MPI debate to yet again open it up to talk about the importance of acting on climate change. I am very happy to stand here and talk about the important work being done to get this policy formulation right before the details are completely
announced. There is nothing wrong with working through the detail and taking the
time to do that, but there is a lot of important
detail already on the table and there is more
to come. I make no apology for the import-
ance of working through the premises.

We know that the 1,000 largest polluters
should be paying every time they pollute
under a carbon price. We also know that the
government has committed to using every
cent raised through putting a price on carbon
to get our biggest polluters to pay for
providing the household assistance to help
with family budgets, protect jobs and
businesses as they make the transition to a
clean energy economy, tackle climate change
and invest in new, clean technology. This
stands in stark contrast to the kinds of
policies we see the Liberals put in place,
including the policies of the Barnett govern-
ment in Western Australia. They are cutting
the feed-in tariff from 40c to 20c from 1
July. We have also seen massive electricity
increases. We have had the fifth price
increase in less than three years. There is a
five per cent increase hitting now. There has
been a total increase of nearly 50 per cent
since 2009 in Western Australian electricity
bills. But there have been no offsets for those
households—there has been no care factor
whatsoever—whereas we know that in
pricing carbon we need to help households
adjust to any price impact, and that is why
we will provide generous household
assistance to help with family budgets.

We know, for example, that as part of the
assistance package the Australian com-
unity will get more than 50 per cent of the
money collected from big polluters. That will
go straight to households. We also know that
petrol will be—

Senator Ronaldson: What's the carbon
price, then? You must know if—

Senator PRATT: No. I said that we
know that it is 50 per cent of the money
collected. It is going to depend on how much
money is collected. This means millions of
households are, in fact, going to be better off
and they will be able to invest in reducing
their energy consumption and pocket the
difference. Most importantly, we know this
assistance will be permanent. I do not see
why you are calling on us to rush this. When
people see it, when they are taken through
the detail, this package will win people's
confidence. A price on carbon is a price on
pollution. It will make dirty energy more
expensive and clean energy—like solar, gas
and wind—cheaper, as it should. It is only
going to apply to the biggest polluters in our
economy—fewer than 1,000—and they will
have to pay for the pollution that they emit.
This is the most effective and cheapest way
for us to build a clean energy economy.

Senator Williams: They won't pass it
on—no.

Senator PRATT: Of course they are
going to pass it on, but they need an
incentive. They will pass some of it on and
they can reduce their costs. That is why we
have a transition package. That is why we
help households adjust. That is why we
have a transition package for those industries to be
able to adjust. It is a market mechanism. A
price on carbon is a price on pollution. It is
the most effective and cheapest way for us to
build a clean energy economy.

No-one is denying the fundamentals of
what this looks like. We know that all
revenue from a carbon price will be used to
provide households with fair and generous
assistance. It will support jobs in the most
effective industries and will support
investment in clean energy. It is about
making the economy transition. It is about
helping households transition. It is critically
important to this nation's future. It is critically important to our children's future.

Senator Williams: What about China?

Senator PRATT: It is particularly important to the children of China and to the children of Australia. China is acting. It is critically important to the developing world, because the developing world will not want to play their part in reducing emissions. We have had decades of economic growth in this country on the back of being an energy-intensive country. Senator Bernardi asks: why should Australia act if we are not going to make one iota of difference? If a country like Australia cannot act, and it has already had a huge economic benefit, then what is the incentive for any other nation on this earth to act?

Senator Williams: They'll laugh at us.

Senator PRATT: They are looking to us to act so that they can also act. It is only fair. We know it is only fair. It is the right thing to do for Australia. It is the right thing to do for our economy, our jobs and our environment. Taking this action is not easy, but we will not shirk this responsibility like those opposite. It is the right thing to do. It is not about winning votes. It is not about leveraging off scare campaigns and leveraging off discredited sceptics like Lord Monckton. We have a responsibility to be guided by good science and policies that make good economic sense and good environmental sense. I have heard the critique of senators opposite time and time again. They say that Australia does not count and that it is too small to matter, but that is simply not true. Other nations are acting and they expect Australia to act. This is a diabolical global problem and we all have to play our part in taking on this issue.

It is in our interests—our environmental and our economic interests—to act. It is predicted that we are to be impacted harshly by climate change. Western Australia has suffered a dramatic decrease in rainfall since the early 1970s. I, like many other Western Australians, feel this very acutely. We have had dramatic rainfall decreases and rainfall is predicted to continue to decrease under the impacts of climate change. So we need the world to act to cut emissions and we cannot expect the rest of the world to act if we do not. It is in our economic interest.

We need to do our best as a nation to adapt to the future. Staying locked into the old ways will put us behind other nations who are acting. Other nations are adapting their economies in response to a climate restrained future. Thank goodness they are, because we desperately need the rest of the world to act. Our climate future here in Australia depends on it. And there are many Liberals that agree. The shadow Treasurer said, on that issue just last year: inevitably we'll have a price on carbon ... we'll have to.

As the former Leader of the Opposition said: ... politics is about conviction and a commitment to carry out those convictions. The Liberal Party is currently led by people whose conviction on climate change is that it is 'crap' and you don't need to do anything about it.

This continuing inconsistency from the opposition demonstrates that they are clearly unfit to be the alternative government. It is also deeply impacting on investment and investment certainty in this nation. That is something that we will require through these reforms. (Time expired)


Senator Pratt: Thank you!

Senator RONALDSON: I do! I think that she honestly believed some of the things that she said. But I have never seen better attack points for our arguments about the carbon tax than we saw from the senator
today. If someone told me about that speech and I had not heard it, I would have said, 'That's not right; she couldn't possibly have made those comments.' I would have had to go to Hansard to double check. I would have said, 'No, no, she wouldn't have said that today, surely.' Luckily enough I am here to hear it. I consider myself one of the luckiest senators in this chamber today because I was here. I can see the Parliamentary Secretary for School Education and Workplace Relations at the table thinking to herself, 'Should I call a quorum so that we do not expose—

Senator Jacinta Collins: I rise on a point of order. I ask that the senator not misrepresent me in the chamber.

The ACTING DEPUTY PRESIDENT (Senator Fisher): Senator Ronaldson, would you care to rephrase?

Senator RONALDSON: No, I said, 'I looked at the parliamentary secretary and thought to myself, "I bet she wishes she could call a quorum to stop this."' And I can understand why the parliamentary secretary would want to put an end to it. Sometimes 10 minutes is far too long. I am not sure that three minutes would have saved your bacon but it certainly would have stopped this.

We have been told by the good senator today that there is absolutely no issue about working out compensation if you do not know what the carbon price will be. According to the senator it is quite easy and she wonders why you would be worried about setting a compensation package without knowing what the carbon price is. How utterly silly of us to think that you can get a compensation package without actually knowing what the price is! Silly old us! We have clearly missed the point here.

Silly old us because we have been saying for some time now that if you tax business, business will pass the cost on. 'No,' said the Prime Minister, 'That is outrageous.' 'No,' says the Treasurer, 'How can you possibly say that?' Fortunately I was here today to hear the good Senator Pratt acknowledge it. I quote her: 'Of course they're going to pass it on.'

Senator Birmingham: She speaks the truth.

Senator RONALDSON: The truth. There is a lot more truth from the good senator than from her leader, who said before the last election, 'There will be no carbon tax under the government I lead.' We have the truthful senator across the chamber here and we have the untruthful Prime Minister in relation to the carbon tax.

We have been saying for some time that none of these other countries is going to act. Particularly, the developing countries will not act in relation to this issue. We have been saying that that is a real matter of concern because, given our contribution to pollution levels, that is an issue. And the good senator has said today, 'They are not going to play their part.'

So we have had today an extraordinary contribution. If one of my own had made this speech I would have patted them on the back and said, 'That was a marvellous speech.' But it was not from one of ours. I wonder whether the parliamentary secretary, who is now jumping up and down and who probably wants, even more, to call a quorum, is aware of a Joint Committee of Public Accounts and Audit report, which was tabled today. My good friend the member for Kooyong has alerted me to this issue. The Commissioner of Taxation revealed today that the Australian Taxation Office was not consulted prior to the announcing of the latest incarnation of the carbon tax. I will repeat the quote from the ATO's supplementary submission to the committee. The parliamentary secretary should listen to this:
The ATO was not consulted on the current proposal for a carbon price, as the matter was being handled by another department.

It was not consulted. That is extraordinary. Who is going to be administering the tax?

Senator Williams: The tax office.

Senator RONALDSON: The Australian tax office. And they were not consulted—what an extraordinary revelation today from the ATO. What an extraordinary revelation: they were not consulted. But does it really surprise you when it comes from a government who has now got the reputation of being a knee-jerk reaction government who have completely and utterly lost any ability to govern this country?

We had a question which I am quite indignant about today from the senator from the Northern Territory about Indigenous issues, when she should have asked Senator Arbib: 'What are you doing about Indigenous employment as a result of this knee-jerk reaction in the Northern Territory?' That is the question that should have been asked today. How many of those stockmen are going to lose their jobs as a result of your government's knee-jerk reaction? Did you consult with the Indonesian government? No, you most certainly did not.

I will just have a quick look through some of the recent press in the time that is left to me to tell the Australian community again—that when we look at the Greens-Labor alliance—

Senator Williams: And the Independents.

Senator RONALDSON: The Independents have again made their little contribution to this, and people, in New South Wales particularly, will not forget what Rob Oakeshott and Tony Windsor have done in relation to these issues. For example, today it was reported that RMIT economists have issued a report, and their research shows that if the Greens policy to shut down the coal industry was implemented it would see 200,000 jobs lost and cost our economy between $29 billion and $36 billion a year, without reducing global carbon emissions—200,000 jobs. I ask those opposite: are you serious about having as your partner a political party that will destroy the coal industry? Are you happy to have as your partner a political party which will destroy the cattle industry?

Another report shows that the Cattle Council of Australia and the NFF, the National Farmers Federation, have conducted independent research which shows that there will be a $700,000 impost on cattle producers with a carbon tax. That impost will range 'from $4,200 for beef producers in Victoria to $9,200 for graziers in Queensland'. So we have the coal industry, the Australian Taxation Office, which has not had any input into this at all, and the cattle industry.

Then, of course, we have the senior partner, the leader of the Greens-Labor alliance, who happens to sit in our chamber, the man who fronts up every Monday morning in the Prime Minister's office and says: 'This is what you're going to do.' What did Senator Brown—this is not the senator who changed her name to Rhiannon, I hasten to add; this is Senator Bob Brown—say about the Prime Minister's announcement yesterday in relation to the effect on petrol with a carbon tax? I will read it so those in the gallery can hear and so those opposite can hear, because they are the ones, quite frankly, who need to know what is going on. This is from an article in the Age this morning by Richard Willingham:

But Senator Brown, who had campaigned for petrol to be included—
Senator Polley interjecting—

Senator RONALDSON: Oh, so you do not like the Age now, either? So the Australian you don't like and now you don't like the Age: there's no-one left, Senator, for you to dislike in the media! The article says: But Senator Brown, who had campaigned for petrol to be included in the tax, said: "Forever is a very brave word in politics. Down the line I think there is an inevitability that all fossil fuels will, under the weight of evidence that they should, pay the full cost of the creation of climate change."

In other words—

The ACTING DEPUTY PRESIDENT (Senator Fisher): Sadly, Senator Ronaldson, your time is up. Of course, you did intend, didn't you, Senator, your references to be to 'Mr' Oakeshott and 'Mr' Windsor during your interesting discourse?

Senator Ronaldson: I did indeed, Madam Acting Deputy President.

Senator FURNER (Queensland) (16:42): I rise this afternoon to contribute to this matter of public importance, because it is a matter of public importance. I am sure it is a matter that the public wish to have some sensible debate on and hear some information on. This is not a case of mounting a scare campaign and frightening people about what will affect them and what industries will be affected; we have a developing plan around this issue, and the Gillard Labor government is working hard to design a carbon price which will tackle climate change and enhance opportunities and prosperity now and into the future.

Unfortunately, there is no-one in the chamber opposite that was involved in the two inquiries I and other senators from the government were involved in. I am referring to the Carbon Pollution Reduction Scheme and climate change inquiries, where we heard firsthand the opportunities in renewable energy—opportunities for industries to foster and grow and for jobs promotion in this area. For some reason, those opposite did not think the contributions and evidence from those inquiries was relevant. Well, it is easy to stick your heads in the sand being climate change sceptics, or whatever you refer to yourself as; I refer to you as the coalition of climate critics, because I have not heard anything from you that contributes to dealing with climate change.

I guess it is easy for me, being a Queensland senator, to understand the importance of this issue. In the likes of Cairns, starting from around Mackay and going up to the Great Barrier Reef, thousands and thousands of jobs will be lost in the tourism industry if we do not act on climate change. I know those opposite claim to be the champions of industry, employers and jobs. Why aren't they prepared to put their hands on their hearts and start protecting those people in vulnerable industries and areas of Queensland where this will greatly impact on jobs? It is not just jobs—you need to look at the residential properties along the coastline, and not just in Queensland; other coastlines will be affected if we do not act on climate change. I am pretty certain that those opposite know that.

We do need to take some action on climate change to ensure that future generations are able to enjoy this beautiful country that we share. It is an environment we treasure and it is an environment that we need to make sure we look after. That is why it is our responsibility as a government to make sure we act on this particular issue. We need to be in a position today where we can deliver on an environment that is healthy and economic resilience for Australians for tomorrow. We have a strong economy. We know we can deal with this issue. We know we can work hand in hand on what needs to
be done to assist this particular area. We have a track record on that in the way we handled the global financial crisis. We made sure that our industries and jobs in this country were protected and shielded from the global financial crisis. I remind people opposite, over there in the opposition, that they voted against that package, the $43 billion package that saved jobs and protected the economy—yet you voted against it. I could not believe that. Those in the public gallery should always remember that the opposition opposed good economic measures, measures that protected our economy. We never had an impact from the global financial crisis in this country, but those opposite opposed the package hook, line and sinker.

The other point we need to be reminded about is that Australia is the highest polluting country per capita in the developed world. The science is out there on these points. We need to put on record what this means. Climate scientists around the world are telling us that carbon pollution is causing climate change. There is no point in denying that. The government accepts the climate science on this. Globally, 2010 was the warmest year on record. It tied with 2005 and 1998, with 2001 to 2010 being the warmest decade. You would know that, Senator Williams, coming from the land. You would realise the changes that are happening as this affects our climate and our country. In fact, 2010 is the 24th consecutive year with global temperatures above the 20th century average. In Australia, 2001 to 2010 was the warmest decade on record and each decade since the 1940s has been warmer than the preceding decade.

Australia faces huge economic costs from climate change across a range of sectors, including energy supply, water security, agriculture, health, coastal communities and infrastructure. The climate scientists are also telling us that with temperatures rising we would expect to see more extreme weather events, including more frequent and intense droughts, floods and bushfires. Unfortunately, we saw a lot of devastation in Queensland this year. No doubt there was a contribution from climate change to severe floods and the horrific Cyclone Yasi that devastated some of the communities in North Queensland. That is another reason we need to act on this issue.

We cannot be left behind. We need to be part of this global economy as it moves to clean energy. Many countries are already acting to reduce greenhouse emissions by setting renewable targets and introducing emissions trading schemes. Fourteen of Australia's trading partners have renewable energy targets. Even President Obama has recently proposed that the US have 80 per cent of its electricity coming from clean energy by 2035. Emissions trading schemes already operate in 31 European countries, including the United Kingdom, Denmark, Finland, Norway, Sweden and the Netherlands. Emissions trading schemes are under discussion elsewhere, including in Canada, the EU, Japan and South Africa. So do not believe those comments that you hear either from the press or, some cases, from those opposite indicating that we are acting alone. We are not acting alone; we are part of an outcome and solution acting in concert with other countries around the globe.

Our policy means that 1,000 of the top polluters will be responsible for paying for the pollution they emit. They are the ones who are polluting. We will be pricing per carbon tonne for them to clean up their act. How it works is that it provides generous household assistance to help with family budgets. It will protect jobs as businesses make the transition to a clean energy economy. It will tackle climate change, including investing in new, clean technology.
That is, in principle, how the government's carbon price framework will operate in relation to our scheme.

Conversely, if you look at how the opposition will operate, their direct action will cost families and the budget. It will cost the average family $720 a year and it will cost the budget over $30 billion. What an irresponsible position to take in dealing with one of the most significant issues that we have to handle at this particular time. Figures show that the coalition's direct action policy would cost over $30 billion rather than the claimed $10.5 billion. The rising costs of direct action mean that a future coalition government would face a $30 billion budget black hole. Direct action is ineffective. It is a scheme that is so environmentally ineffective that it will deliver only 25 per cent of the carbon pollution abatement required for the coalition to meet the bipartisan target of minus five per cent. What an irresponsible position to take in handling this major issue.

Today the Leader of the Opposition fails to deliver on good policies and plans for the nation. We believe in climate change and the science is there to show its effect on our planet. There are some reasonable quotes from those who are knowledgeable about Mr Tony Abbott's position on climate change, which is that it is 'crap'. There was a comment recently that that was a comment on the quality of our economists rather than on the merits of their argument. I think that is a typical example of how irresponsible the opposition is when it comes to this matter.

Debate interrupted.

DOCUMENTS

Tabling

The ACTING DEPUTY PRESIDENT (Senator Fisher): Pursuant to standing orders 38 and 166, I present documents listed on today's Order of Business at item 18 which were presented to the President and temporary chairs of committees since the Senate last sat. In accordance with the terms of the standing orders, the publication of the documents was authorised.

The list read as follows—

(a) Committee reports

1. Scrutiny of New Taxes—Select Committee—Report, together with the Hansard record of proceedings and documents presented to the committee—The mining tax: A bad tax out of a flawed process (received 29 June 2011)

2. Joint Select Committee on the Christmas Island tragedy of 15 December 2010—Report, together with the Hansard record of proceedings and documents presented to the committee (received 29 June 2011)

3. Legal and Constitutional Affairs Legislation Committee—Report, together with the Hansard record of proceedings and documents received by the committee—Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 [Provisions] (received 29 June 2011)

4. Economics References Committee—Interim report—State government insurance in Australia (received 30 June 2011)

5. Finance and Public Administration References Committee—Report, together with the Hansard record of proceedings and documents received by the committee—Superannuation claims of former and current Australian Public Service employees (received 30 June 2011)

6. Select Committee on the Reform of the Australian Federation—Report, together with the Hansard record of proceedings and documents received by the committee—Australia’s Federation: an agenda for reform (received 30 June 2011)

(b) Government responses to parliamentary committee reports

2. Select Committee on Ministerial Discretion in Migration Matters—Report (received 30 June 2011)


(c) Government documents

1. Report to Parliament on barriers to generic medicines entering the market through the inappropriate use of intellectual property rights over product information (received 30 June 2011)

2. Extended Medicare Safety Net Review of capping arrangements, together with contextual overview (received 1 July 2011)

(d) Report of the Auditor-General

Report no. 57 of 2010-11—Performance audit—Acceptance into service of navy capability: Department of Defence; Defence Materiel Organisation (received 28 June 2011)

(e) Return to order

Trade—New Zealand—Import protocol for apples (motion of Senator Colbeck agreed to on 23 June 2011) (received 30 June 2011)

(f) Letter of advice relating to the Senate order on lists of departmental and agency grants

Sustainability, Environment, Water, Population and Communities portfolio (received 24 June 2011)

COMMITTEES

Joint Standing Committee on Foreign Affairs, Defence and Trade

Select Committee on Ministerial Discretion in Migration Matters

Government Response to Report

The ACTING DEPUTY PRESIDENT (Senator Fisher): In accordance with the usual practice and with the concurrence of the Senate 1 ask that the government responses be incorporated in Hansard.

The documents read as follows—
The Government guidelines for official witnesses before Parliamentary committees and related matters - November 1989 make clear the need for official witnesses to ensure the accuracy of their evidence. In accordance with the guidelines the Secretary requested that DMO employees review evidence provided to the Defence sub-committee and, as a result, minor corrections to the Hansard were made.

On 8 April 2010, with the consent of all parties, the Federal Court ordered that the decision terminating Ms Wolfe's employment be set aside and that the matter be referred to the Secretary, for further consideration, in accordance with law. The Secretary subsequently identified a suitable delegate, and provided Ms Wolfe with an opportunity to raise any objections in relation to the proposed delegate, the proposed tasking and the proposed documents to he provided to the delegate. The delegate has been appointed and is currently considering the matter.

Recommendation 3

I recommend that the policy and strategy options contained in my minority report at paragraphs 1.43 and 1.44 of my minority report be deeply considered by Government, and done so with recognition that the most 'controversial' of these is the inclusion of the Taliban in discussions about the future of Afghanistan as a democratic country.

1.43 And the key strategic considerations include:

- Afghanistan should be ruled by a council made up of respected tribal elders and ethnic leaders.
- The Karzai Government should take responsibility for the country.
- The President of the United States should state his plan for achieving his goals and be given a specific time to make progress. Australia should not be afraid to take a position of holding the Coalition forces, and the US leadership in particular, to account on this issue of an explicit progress-based timeframe.
- The Coalition and Australian forces in particular, must help build a strong Afghan army, police and intelligence agency capable of tackling the security problems the country will inevitably face whenever the Coalition departs.
- The Coalition must focus on a long-term program to develop Afghanistan's economy, through direct investment and aid, and to concentrate on generating income for local communities. Engagement with tribal elders on this point is an important starting point for a more secure nation-state.
- And finally, and the most difficult "pill" for us all to swallow after nine years in Afghanistan, is that no viable political solution can fail to include the Taliban, even if they insist on imposing Sharia law in areas where they are strongest. As Aushev finally points out; "it's the same law used in Saudi Arabia but you (the Coalition) are not seeking to impose democratic elections there".
- Therefore, it is hard to form a view different from Aushev and Butler on the above strategy through and out of this war for Australia.

1.44 I recommend that both these policy and strategy options be deeply considered by Government, and done so with recognition that the most 'controversial' of these is the inclusion of the Taliban in discussions about the future of Afghanistan as a democratic country.

Government Response

Agreed in part.

The Australian Government agrees, in the main, with the recommendations in the minority report, with the bulk of them already being addressed by existing government policies on, and approaches to, our Afghanistan contribution.

Afghanistan's current system of government has been decided by Afghans, initially at a meeting in Bonn, Germany, in November 2001. The resulting Bonn Agreement installed a new government, the Afghan Interim Authority, in Kabul under President Hamid Karzai. Following a Loya Jirga (Grand Council of Afghans representing tribal and ethnic groups) in June 2002, this was replaced by the Afghan Transitional Administration. Afghanistan adopted a new constitution at a further Loya Jirga in January 2004. The constitution provides for a presidential system of government, with a
parliament, within the framework of an Islamic republic.

Transition to Afghan responsibility is a key element of the International Security Assistance Force (ISAF) strategy for Afghanistan. The strategy involves building the capabilities of the Afghan National Security Forces (ANSF) and improving the Afghan Government's ability to deliver government services. US President Obama has said that the US intends to commence a drawdown of American troops in Afghanistan in mid 2011. The US Administration has made it clear, however, that July 2011 is not a deadline for withdrawal, but the beginning of a conditions-based transition to Afghan-led security responsibility.

At the International Conference on Afghanistan in July 2010, Afghanistan's international partners, including Australia, supported Afghanistan's objective that the ANSF lead and conduct military operations in all provinces by the end of 2014. Australia will continue to support efforts to create the conditions necessary to allow for this transition, where Afghan security forces are capable of maintaining security.

The primary focus of Australia's military mission in Afghanistan is to train the Afghan National Army (ANA) 4th Brigade in Uruzgan Province to the level where it is able to take responsibility for the security of the Province. The Australian Defence Force also conducts security operations throughout the Province to provide safe, secure spaces for development work in Uruzgan. While much work remains with our mission to train and mentor the ANA 4th Brigade, this mission is on track. The Australian Defence Force (ADF) assesses the task of training the ANA 4th Brigade will take a further two to four years, and this is in line with the 2014 timetable agreed at the International Conference on Afghanistan. To support ISAF-led programs to sustain and develop the Afghan National Army, both in Uruzgan Province and more broadly across the country, the Australian Government has pledged US$200 million over five years to the ANA Trust Fund.

The Australian Government recently announced an enhancement to our civilian effort to complement our military mission, in line with broader ISAF strategy. The Government announced an expansion of our diplomatic, development assistance and police contribution to around 50 personnel. The enhanced civilian component of Australia's efforts in Afghanistan is designed to provide more effective basic services for the people of Uruzgan, improve livelihood opportunities for local communities, and create a strong foundation for the eventual transition of the Province to full Afghan responsibility. Our whole-of government approach reflects our commitment to strengthening the legitimate political, legal, economic and security institutions of Afghanistan:

- AusAID has increased its staff in Afghanistan, to develop local service delivery, and support the Afghan Government in building health and education services, infrastructure and agriculture. Australia has committed more than $700 million in development assistance since 2001.
- DFAT has increased the number of officers in Afghanistan as well as at key posts, to manage Australia's political and economic relationships with Afghanistan and our key international partners.
- AFP officers are deployed to Tarin Kowt in Uruzgan Province, Kabul and Kandahar as experts in counter narcotics and criminal intelligence. The increased police effort as part of the enhanced civilian commitment is designed to strengthen our ability to train the Afghan National Police so that they can increasingly assume greater responsibility for their own law and order needs, to improve security for the people of Uruzgan.

Following commencement of the drawdown of Dutch forces from Afghanistan on 1 August 2010, an Australian senior civilian coordinator has taken up leadership of a Provincial Reconstruction Team (PRT) in Uruzgan under the multinational, ISAF-flagged Combined Team-Uruzgan. The PRT is the primary mechanism in Uruzgan focused on governance and development. It also seeks to build relations with key government and tribal actors in the Province.

The Australian Government recognises and has consistently stated that the conflict in
Afghanistan will not be ended by military force alone. Political reconciliation and, ultimately, settlement between the Afghan Government and insurgents will be essential to a lasting and durable solution. The Australian Government supports Afghan-led efforts to reach out to elements of the insurgency that might be prepared to lay down their arms and rejoin their communities.

Australia is supporting the Afghan-led reintegration effort by contributing $25 million to the Peace and Reintegration Trust Fund, subject to the establishment of appropriate governance arrangements and role for donors, like Australia, in the administration of the fund. The Australian Government welcomes the release of the Afghan Government's draft Peace and Reintegration Plan, which set out a number of preconditions for reintegration, including renouncing violence, ceasing support for the insurgency, recognising the Afghan Constitution, and cutting all current and future ties with al-Qaida and other terrorist groups. These pre-conditions are of course a matter for the Afghan Government to determine.

SELECT COMMITTEE ON MINISTERIAL DISCRETION IN MIGRATION MATTERS
MARCH 2004
Department of Immigration and Citizenship
April 2011
The Government welcomes the Senate Select Committee’s Report on Ministerial Discretion on Migration Matters (the Report).

The Migration Act 1958 (the Act) provides the Minister for Immigration and Citizenship (the Minister) with discretionary, non-compellable, and non-delegable powers to resolve cases, if it is considered in the public interest to do so. Therefore, Ministerial Intervention (MI) processes differ from those in the codified visa framework.

The Report identified a number of issues for reform of MI under the Act, including the need for greater accountability, transparency and procedural fairness. It also recommended regulation changes allowing greater access to the migration visa framework, thereby providing access to review and reducing the number of MI cases.

In 2008, the government commissioned Ms Elizabeth Proust to provide advice to the Minister on arrangements for the exercise of the Minister’s public interest powers. The Proust Report, released in July 2008, reiterated a number of issues outlined in the Senate Select Committee’s Report. It recommended that, to the extent MI was retained, it should be very limited and subject to strict guidelines.

Both Reports supported the retention of MI to deal with cases which are unable to be resolved within the codified visa framework in the Act but which, nevertheless, require a migration outcome.

Taking into account the views of the Committee and the Proust Report, the government and the Department of Immigration and Citizenship (DIAC) are engaged in ongoing reform of MI, with a number of significant changes already implemented.

Following are DIAC’s responses to the Committee’s 21 recommendations.

Chapter 3 – Patterns of use of ministerial discretion

Recommendation 1 (3.54)

The Committee recommends that the Minister require DIMIA to establish procedures for collecting and publishing statistical data on the use and operation of the ministerial discretion powers, including (but not limited to):

- the number of cases referred to the Minister for consideration in schedule and submission format respectively;
- reasons for the exercise of the discretion, as required by the legislation;
- numbers of cases on humanitarian grounds (for example, those meeting Australia’s international obligations) and on non-humanitarian grounds (for example, close ties);
- the nationality of those granted intervention;
- numbers of requests received; and
- the number of cases referred by the merits review tribunals and the outcome of these referrals.
Government Response

DIAC collects and reports on most of the information covered by the recommendation and is working to increase its capacity to record and report on a broader range of MI issues. Key statistics on MI under section 417 is published in the DIAC annual report and will henceforth be available quarterly on the DIAC website.

A significant proportion of MI requests exhibit circumstances which may meet more than one of the grounds for referral, making identification and recording of any one specific ground problematic.

Chapter 4 – Development of ministerial guidelines and the exercise of the Minister’s discretionary powers

Recommendation 2 (4.67)

The Committee recommends that DIMIA establish a procedure of routine auditing of its internal submission process. The audits should address areas previously identified by the Commonwealth Ombudsman, namely identifying ways to improve departmental processes for handling cases, and ensuring that claims are processed in a timely way and case officers consider all of the available material relevant to each case.

Government Response

Since the tabling of the Ombudsman’s report, DIAC has strengthened arrangements for supporting the Minister in the use of his powers.

To ensure consistency in assessments, decision-making and referral of MI requests to the Minister, changes have been made to DIAC’s guidelines on the administration of ministerial powers. DIAC has implemented an analysis-based approach for all information provided by clients seeking the exercise of the Minister’s public interest powers. New templates for submissions and schedules have been developed which support a comprehensive analysis of the case and provide a preferred option in all cases that are referred to the Minister for consideration.

In line with evidence-based decision making principles and to ensure timely case processing, DIAC has conducted extensive training for staff involved in assessing MI requests.

A quality assurance process has been developed and implemented to review MI processes under section 417 of the Act, in line with DIAC’s National Quality Assurance Framework. The process monitors whether quality controls such as templates, guidelines and training are effective.

Recommendation 3 (4.70)

The Committee recommends that the Commonwealth Ombudsman carry out an annual audit of the consistency of DIMIA’s application of the ministerial and administrative guidelines on the operation of the Minister’s discretionary powers. The audit should include a sample of cases to determine whether the criteria set out in the guidelines are being applied, and to identify any inconsistency in the approach of different case officers.

Government Response

The Government notes that it is a matter for the Office of the Commonwealth Ombudsman to determine whether to carry out such an audit and, if so, the timetable, priority and focus of such an audit. DIAC would cooperate fully and provide support in any such audit.

Recommendation 4 (4.84)

The Committee recommends that the Migration Review Tribunal (MRT) and the Refugee Review Tribunal (RRT) standardise their procedures for identifying and notifying DIMIA of cases raising humanitarian and compassionate considerations.

Government Response

The Migration Review Tribunal (MRT)’s and Refugee Review Tribunal (RRT)’s standard procedures for identifying and notifying DIAC of cases raising humanitarian and compassionate considerations are set out in “Tribunals’ Policy and Procedures Guideline 1/2010 – Referrals for Ministerial Intervention” (issued on 4 February 2010).

The guideline contains standardised procedures for identifying and notifying DIAC of those cases considered by Tribunal members to exhibit unique or exceptional circumstances, including compassionate and humanitarian grounds, which the Minister may wish to consider in accordance with sections 351 or 417 of the Act.
Recommendation 5 (4.85)

The Committee recommends that the MRT and the RRT keep statistical records of cases referred to DIMIA, the grounds for referral and the outcome of such referrals.

Government Response

The MRT and RRT keep statistical records of cases referred to DIAC and records of the grounds for referral.

DIAC provides monthly advice to the Tribunals of cases in which the Minister has intervened under sections 351 or 417 in a format which enables the matching of outcome of referrals with the relevant Tribunal’s records.

Chapter 5 – Operation of the powers – problems encountered by applicants

Recommendation 6 (5.9)

The Committee recommends that DIMIA create an information sheet in appropriate languages that clearly explains the ministerial guidelines and the application process for ministerial intervention. The Committee recommends that the new information sheet be accompanied by an application form, also to be created by the department. Both the information sheet and application form are to be readily and publicly accessible on the department’s website and in hard copy.

Government Response

DIAC provides written information about the MI process for public distribution on its website. A general fact sheet about MI is available on DIAC’s website in English and 11 other languages including Arabic, Bengali, traditional and simplified Chinese, Hindi, Indonesian, Korean, Malaysian, Tongan, Urdu and Vietnamese. This is provided in hard copy through DIAC counters to clients interested in submitting a first MI request and refers to the more detailed information online.

Unlike a visa application process, a MI request does not require a client to comply with statutory criteria. Introduction of a prescribed application format has the potential to misrepresent MI as an application or review process, rather than as a safeguard for resolving unique and exceptional cases. It would therefore be inappropriate to create a binding format for making MI requests.

In addition to the aforementioned general fact sheet, all clients making their first MI request are provided with a detailed fact sheet outlining the process and the expectations of the Minister and DIAC.

Recommendation 7 (5.12)

The Committee recommends that coverage of the Immigration Application Advice and Assistance Scheme (IAAAS) be extended to enable applicants for ministerial intervention to obtain an appropriate level of professional legal assistance. Extending the coverage of IAAAS should assist in reducing the level of risk of exploitation of applicants by unscrupulous migration agents.

Government Response

The Immigration Advice and Application Assistance Scheme (IAAAS) is a carefully directed response to Australia’s international obligations not to refoule persons who might engage Australia’s protection by meeting the Refugee Convention definition of a refugee. It provides publicly funded application assistance and independent and professional immigration advice to vulnerable clients seeking protection in immigration detention, and to the most disadvantaged, vulnerable Protection Visa (PV) applicants and other visa applicants in the community. The focus of IAAAS is on achieving an immigration outcome at the primary and merits review stages of the protection process.

A MI request is not a visa application process, nor does it require applicants to comply with statutory criteria. MI is intended as a safeguard to resolve unique or exceptional circumstances and not as a standard part of the visa application process. As clients request MI at their own discretion after receiving an immigration outcome, it is not appropriate for IAAAS services to be available to this group.

It should be noted, however, that the Migration Amendment (Complementary Protection) Bill 2011 is before the Parliament. This Bill may pass into law, matters that are currently considerations in cases for MI such as other international conventions that have a non-refoulement (non-
return) obligation. Where IAAAS assistance is available, these complementary protection considerations may be brought within the operation of the IAAAS.

The responses to recommendations 13 and 14 detail measures put in place to address the problem of unscrupulous migration agents.

**Recommendation 8 (5.18)**

The Committee recommends:

- That DIMIA inform persons when a representation for the exercise of ministerial discretion is made on their behalf by a third party;
- That each applicant for ministerial intervention be shown a draft of any submission to be placed before the Minister to enable the applicant to comment on the information contained in the submission. This consultative process should be carried out within a tight but reasonable time frame to avoid any unnecessary delay; and
- That each applicant be given a copy of reasons for an unfavourable decision on a first request for ministerial intervention.

**Government Response**

The revised Minister’s Guidelines which came into effect on 5 December 2008 provide that a request for the exercise of the Minister’s public interest powers can only be accepted from the person who is the subject of the request or their authorised representative, unless initiated by DIAC. Letters of support provided by the person’s supporters can still be forwarded to DIAC and may be taken into account when a request for MI has been made.

In keeping with the principles of client service delivery and the best interests of the client, DIAC consults with clients to obtain any additional documentation which might assist to present their case holistically to the Minister. DIAC is currently considering the potential impact on MI of the High Court decision of November 2010 in Plaintiff M61/2010E v Commonwealth regarding procedural fairness.

However, providing individuals with draft submissions would cause significant delays to finalising MI requests. Due to the non-compellable nature of the MI powers, providing individuals with a draft submission for their comment would be an unnecessary measure. For this reason, it would also be inappropriate for the Minister to provide reasons for not considering or declining to intervene in a request.

**Recommendation 9 (5.35)**

The Committee recommends that DIMIA take steps to formalise the application process for ministerial intervention to overcome problems surrounding the current process for granting bridging visas, namely:

- processing times that can take up to several weeks;
- applicants not knowing when they should apply for a bridging visa; and
- applicants being ineligible for a bridging visa because an unsolicited letter or inadequate case was presented to the Minister, often without the applicant’s knowledge.

**Government Response**

Unlike a visa application process, a MI request does not require a client to comply with statutory criteria. Introduction of a prescribed application format has the potential to misrepresent MI as an application or review process, rather than as a safeguard for resolving unique and exceptional cases. It would therefore be inappropriate to create a binding format for making MI requests.

The guidelines published by the Minister on 5 December 2008 provide that a request will only be considered when made by the person for whom intervention is requested or their authorised representative. This ensures that clients are not disadvantaged if supporters request MI without their knowledge.

These changes also included the direction that, unless a client is in immigration detention, the Minister will not generally consider their request unless they hold a current bridging visa or other visa, or have applied for a bridging visa. Details regarding bridging visa conditions for MI clients are outlined on the DIAC website, including permission to work arrangements, access to Medicare and eligibility for Centrelink benefits.

Departmental ministerial powers instructions state that “requests or information provided by
any third party who is not the person’s authorised representative may be taken into account if a request by the person or their representative has been made.”

Recommendation 10 (5.44)
The Committee recommends that all applicants for the exercise of ministerial discretion should be eligible for visas that attract work rights, up to the time of the outcome of their first application. Children who are seeking asylum should have access to social security and health care throughout the processing period of any applications for ministerial discretion and all asylum seekers should have access to health care at least until the outcome of a first application for ministerial discretion.

Government Response
As part of the 2009-10 Budget, the Government announced changes to permission to work and Medicare access for PV and MI applicants.

New arrangements introduced on 1 July 2009 support the principle that PV applicants and people making an initial MI request, who have remained lawful and actively engaged with DIAC to resolve their immigration status, should be eligible for permission to work (and therefore access to Medicare) while they await the outcome of their application.

In addition, DIAC’s Community Assistance Support (CAS) program specifically targets clients who are assessed as being highly vulnerable, on temporary visas (including Bridging visas) while their immigration outcome is being actively managed.

Recommendation 11 (5.53)
The Committee recommends that DIMIA consider legislative changes that would enable ministerial intervention to be available in certain circumstances where there is a compelling reason why a merits review tribunal decision was not obtained.

Government Response
Existing provisions in migration legislation may offer further options in certain circumstances to applicants who fail to seek merits review. Section 48 of the Act enables a person whose visa application has been refused, whether or not they have sought merits review, to apply for a range of specified visas, including a PV if they have not already applied for such a visa.

The Minister also has the personal power under section 48B of the Act to allow a person who did not seek review of a PV refusal to lodge a further PV application. If that application is unsuccessful at the primary stage and at review, the MI power becomes available. Additionally, section 195A of the Act provides the Minister with a personal non-compellable power to grant a visa to a person who is in immigration detention, if the Minister considers it to be in the public interest to do so, whether or not the person has applied for a visa.

Making MI available only after both the primary decision and merits review was intended to preserve the statutory basis and consistency of visa decision making generally, while also providing a safety net for unique and exceptional cases after all of the formal processes have concluded. The comprehensive criteria in the Migration Regulations for each visa class which are considered at both the primary and review stage, allow for a structured and transparent assessment process to be undertaken.

In 2009, the Migration Regulations were changed to allow certain partners of Australian citizens, permanent residents and eligible New Zealand citizens, who were previously barred from making an application for a Partner visa in Australia, to do so where they meet certain criteria.

Chapter 6 – Representations to the Minister

Recommendation 12 (6.71)
The Committee recommends that the Migration Act be amended so that, except in cases under section 417 that raise concerns about personal safety of applicants and their families, all statements tabled in Parliament under sections 351 and 417 identify any representatives and organisations that made a request on behalf of an applicant in a given case.

Government Response
Publication of the identity of representatives or organisations could identify the client, raising complex privacy considerations and the potential
for delay while agreement to publish such information is sought.

**Recommendation 13 (6.74)**

The Committee recommends that DIMIA and MARA disseminate information sheets aimed at vulnerable communities that explain the regulations on charging fees for migration advice, the restrictions that apply to non-registered agents and the complaints process. The information should also explain that the complaints process does not expose the complainant to risk.

**Government Response**

To protect communities from exploitation by unscrupulous and unregistered migration agents, DIAC has implemented a number of initiatives including:

- issuing warning letters to unregistered persons who may not be aware that they need to be registered in order to provide immigration assistance;
- improving provision of information to client contact officers in Australia so that they can consistently and appropriately respond to suspected cases of unregistered practice;
- publishing new brochures to improve consumer information and protection;
- developing a videoclip on the dangers of using unregistered migration agents;
- writing to the editors of ethnic press publications (in which unregistered persons purportedly advertise) advising them not to accept advertisements from unregistered agents;
- distributing community notices warning against unregistered practice.
- working with the Office of the Migration Agents Registration Authority (OMARA) on developing a client information sheet which agents must give to every client and is available on OMARA website.

In consultation with key stakeholders, the OMARA is publishing a Consumer Guide to provide information on what to expect from a registered migration agent and the complaints process. OMARA also publishes agent average fee information on its website.

**Recommendation 14 (6.75)**

The Committee recommends that the Migration Agents Taskforce should expand its operations to target unscrupulous operators that are exploiting clients through charging exorbitant fees, giving misleading advice and other forms of misconduct.

**Government Response**

The Migration Agents Taskforce (MATF) was set-up in June 2003 to deal specifically with particularly unscrupulous operators (who may be registered migration agents or unregistered persons acting unlawfully as agents) and to target any related criminal behaviour. It was originally intended that the taskforce would exist for a limited time and was dissolved in March 2007.

The 2007-08 Review of Statutory Self-Regulation of the Migration Advice Profession (the Review) found that there is a strong view in the broader stakeholder community that the architecture of the arrangements for regulating the migration advice profession was not ideal.

On 9 February 2009, the then Minister announced the establishment of the new OMARA. On 1 July 2009, the new OMARA was established to regulate migration agents to ensure visibility and transparency of the operations of the Office and to enhance consumer confidence. The new Office, attached to DIAC, is supported by a representative and independent advisory board.

Persons who may have been exploited by unscrupulous operators may make a complaint to:

- OMARA. If a registered migration agent is alleged to have breached the migration agents Code of Conduct, the OMARA is responsible for investigating and if appropriate sanctioning the agent; and
- state consumer protection bodies; and police.

**Chapter 7 – Role of the Minister**

**Recommendation 15 (7.53)**

The Committee recommends that the Minister ensure all statements tabled in Parliament under sections 351 and 417 provide sufficient information to allow Parliament to scrutinise the use of the powers. This should include the Minister’s reasons for believing intervention in a
given case to be in the public interest as required by the legislation. Statements should also include an indication of how the case was brought to the Minister’s attention – by an approach from the visa applicant, by a representative on behalf of the visa applicant, on the suggestion of a tribunal, at the initiative of an officer of the department or in some other way.

**Government Response**

Statements tabled in Parliament under sections 351 or 417 of the Act are prepared in a manner consistent with legislative requirements and include broad reasons why the Minister considers it in the public interest to intervene in a case. Any circumstances by which the case was brought to the Minister’s attention that would identify the person cannot be included in the tabling statement.

**Recommendation 16 (7.54)**

The Committee recommends that the Migration Act be amended so that the Minister is required to include the name of persons granted ministerial intervention under section 351 in the statement tabled in Parliament unless there is a compelling reason to protect the identity of that person.

**Government Response**

Publishing the names of people whose case the Minister has intervened on under section 351 of the Act in statements tabled in Parliament could give rise to genuine concerns about the person’s personal safety, such as in cases involving domestic violence or children.

Interventions under section 351 of the Act may relate to a person owed protection under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CROC) or the International Covenant on Civil and Political Rights (ICCPR) and disclosure of the name of the person involved may place them at risk, as well as family members or associates in their home country.

**Recommendation 17 (7.71)**

The Committee recommends that DIMIA establish a process for recording the reasons for the immigration Minister's use of the section 417 intervention powers. This process should be consistent with Recommendation 15 about the level of information to be provided in the Minister's tabling statements to Parliament. This new method of recording should enable the department to identify cases where Australia's
international obligations under the CAT, CROC and ICCPR were the grounds for the Minister exercising the discretionary power.

**Government Response**

As the Minister's public interest powers are discretionary and non-compellable, the Minister is only required to table in Parliament statements that comply with section 417 of the Act. For privacy and security reasons, the tabling statements do not hold specific information on the reasons for the Minister’s decision to intervene in specific cases.

**Recommendation 19 (8.82)**

The Committee recommends that the government give consideration to adopting a system of complementary protection to ensure that Australia no longer relies solely on the Minister's discretionary powers to meet its non-refoulement obligations under the CAT, CROC and ICCPR.

**Government Response**

The Migration Amendment (Complementary Protection) Bill was reintroduced in Parliament on 24 February 2011.

If this Bill is passed and Complementary Protection implemented, the legislation will allow Australia’s non-refoulement obligations under CAT, CROC and ICCPR to be considered as part of an integrated Protection visa framework. This would improve the efficiency of decision-making by more rapid and accountable assessments of asylum seekers’ protection claims in a single process with access to merits review.

If a system of complementary protection is adopted, it is anticipated that the Minister’s public interest powers would continue to allow the Minister to consider cases involving unique or exceptional circumstances where it may be in the public interest to substitute a more favourable decision.

**Chapter 9 – Appropriateness of the Minister’s discretionary powers**

**Recommendation 20 (9.73)**

The Committee recommends that the ministerial intervention powers are retained as the ultimate safety net in the migration system, provided that steps are taken to improve the transparency and accountability of their operation in line with the findings and other recommendations of this report.

**Government Response**

The Government response to the Committee’s recommendations outlines a number of areas where steps have been or are being taken to enhance the transparency and accountability of the MI process.

These steps include the amendments to the Minister’s Guidelines and the associated Administrative Guidelines implemented on 5 December 2008, which clarified the process of referring MI requests to the Minister.

Work continues in DIAC to identify areas of reform and further efficiencies and to provide greater clarity, transparency and fairness to clients. These include:

- considering other options for broad-ranging reform to limit the scope of MI to a true safety-net provision;
- further strengthening the Minister’s Guidelines; and
- providing better information about MI to clients. Recommendation 21 (9.77)

The Committee recommends that the government consider establishing an independent committee to make recommendations to the minister on all cases where ministerial intervention is considered. This recommendation should be non-binding, but a minister should indicate in the statement tabled in parliament whether a decision by the committee is in line with the committee's recommendation.

**Government Response**

As the Minister’s personal public interest powers are discretionary and non-compellable, it would not be appropriate for an independent committee to make recommendations on cases.

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1 Refer to Government Response to Recommendation 5 regarding review tribunal referrals.
2 Refer to Government response to Recommendation 8.
Refer to Government response to Recommendation 10.

Refer to Government Response to Recommendation 17 for more information.

Refer to Government Response to Recommendation 19.

Government Response to the Joint Standing Committee on Electoral Matters
Report on the 2007 Federal Election — Events in the Division of Lindsay

Recommendation 1

The committee recommends that the Special Minister of State, with assistance from the Attorney-General, introduce amending legislation to update the penalty provisions in the Commonwealth Electoral Act 1918 using the schedule provided by the Australian Electoral Commission which is reproduced at Appendix K as a guide.

The penalty provisions in the Referendum (Machinery Provisions) Act 1984 should be updated in accordance with changes to the Commonwealth Electoral Act 1918.

The Special Minister of State is requested to refer the relevant amending legislation to the committee so that it can conduct a bills inquiry into the proposed changes to the penalties in the Commonwealth Electoral Act.

Response

Supported. The Government supports amending the Commonwealth Electoral Act 1918 (Electoral Act) and the Referendum (Machinery Provisions) Act 1984 (Referendum Act) to update the penalty provisions. Using Appendix K of the Report as a guide, the Special Minister of State will review the penalty provisions in both Acts, with advice from the Department of Finance and Deregulation and other agencies, including the Attorney-General's Department, as required.

Recommendation 2

The committee recommends that section 328 of the Commonwealth Electoral Act 1918 be redrafted as a strict liability offence, and the maximum penalties be 60 penalty units for an individual and 300 units for a body corporate.

Response

Partly-supported. The Government agrees that electoral advertisements published or distributed during an election campaign by a candidate, a political party or another participant in an election campaign must have the appropriate authorisation. Failure to do so should be a strict liability offence in the Electoral Act with the maximum penalties being 60 penalty units for an individual and 300 penalty units for a body corporate.

However, the Government notes that section 328 currently applies more broadly to a wide range of publications that may be published or distributed at any time of year by persons or organisations, including the Government. The Government is concerned that as section 328 currently applies this offence may often be inadvertently breached.

The Government therefore proposes to prepare legislative amendments to the Electoral Act to establish two offences in section 328 to apply to certain publications that do not include the required authorisation:

- during the period from the date of the issuing of writs for an election until the close of voting, a strict liability offence with the maximum penalties of 60 penalty units for individuals and 300 penalty units for a body corporate would apply to electoral advertisements published or distributed by candidates, political parties and other participants; and
- at all other times, the current arrangements in section 328 would apply to electoral advertisements.

Recommendation 3

The committee recommends that the Australian Electoral Commission should, at the next federal election, record all polling booth offences that are reported, the actions that were taken and provide an appraisal of the adequacy of the powers under the Electoral Act to deal with polling place offences.

Response

Supported in principle. The Australian Electoral Commission reviews and reports on the
adequacy of the powers under the Electoral Act following each election. This advice will assist the review of some of the penalty provisions in response to Recommendation 1.

Senator POLLEY: I move:
That the committee reports be printed in accordance with the usual practice.

The reports being printed are:
• Select Committee on the Scrutiny of New Taxes
• Joint Select Committee on the Christmas Island tragedy of 15 December 2010
• Legal and Constitutional Affairs Legislation Committee
• Finance and Public Administration References Committee
• Select Committee on the Reform of the Australian Federation

Question agreed to.

Economics References Committee

Reporting Date

Senator WILLIAMS: I seek leave to move a motion relating to the presentation of a report of the Economics References Committee.

Leave granted.

Senator WILLIAMS: I move:
That the time for the final presentation of the report of the Economics References Committee on State government insurance in Australia be extended to 29 July 2011.

Question agreed to.

Consideration

Senator POLLEY: I seek leave to move a motion to list committee reports and government responses to committee reports on the Notice Paper for further consideration.

Leave granted.

Senator POLLEY: I move:
That consideration of each of the committee reports and government responses to committee reports tabled today be listed on the Notice Paper as orders of the day.

Question agreed to.

DOCUMENTS

Register of Senate Senior Executive Officers' Interests

Tabling

The ACTING DEPUTY PRESIDENT (Senator Fisher): I present the register of Senate senior executive officers' interests, incorporating notifications of alterations of interests of Senate senior executive officers lodged between 14 December 2010 and 30 June 2011.

Reserve Bank of Australia

Tabling

The ACTING DEPUTY PRESIDENT (Senator Fisher): I present a response from the Reserve Bank of Australia to a resolution of the Senate of 21 June 2011 concerning bank fees and charges report.

COMMITTEES

Community Affairs References Committee

Additional Information

Senator SIEWERT: On behalf of the Community Affairs References Committee, I present additional information received by the committee on its inquiry into the impacts of rural wind farms.

Senators' Interests Committee

Report

Senator WILLIAMS: On behalf of the Standing Committee of Senators’ Interests, I present a register of senators' interests incorporating statements of registrable interests and notifications of alterations of interests of senators lodged between 14 December 2010 and 30 June 2011.
DOBUCMENTS
Tabling
The Clerk: Documents are tabled in accordance with the list circulated to senators.

Details of the documents appear at the end of today’s Hansard.

COMMITTEES
Various
Membership

The ACTING DEPUTY PRESIDENT (Senator Fisher): Order! The President has received letters from the Leader of the Government in the Senate and the Leader of the Opposition in the Senate requesting changes in the membership of various committees.

Senator JACINTA COLLINS: by leave—I move:

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

Australia’s Food Processing Sector—Select Committee—
Appointed—Senator Edwards
Australian Commission for Law Enforcement Integrity—Parliamentary Joint Committee—
Appointed—Senator Wright
Corporations and Financial Services—Parliamentary Joint Committee—
Appointed—Senator Milne
Environment and Communications References Committee—
Discharged—Senator Singh
Appointed—Senator Cameron
Law Enforcement—Parliamentary Joint Committee—
Appointed—Senator Wright
Public Accounts and Audit—Joint Committee—
Appointed—Senator Milne.

Question agreed to.

Electoral Matters Committee
Membership

Senator JACINTA COLLINS: by leave—I move a motion to vary the membership of a committee:

That the order of the Senate of 23 June 2011 relating to the membership of the Joint Standing Committee on Electoral Matters, for the purposes of the committee’s inquiry into the funding of political parties and election campaigns, be amended as follows:

omit “Senator Birmingham”.

Question agreed to.

BILLS
Financial Framework Legislation Amendment Bill (No. 1) 2011
Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Bill 2011
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Oil Transfers) Bill 2011
Statute Stocktake Bill (No. 1) 2011

First Reading

Bills received from the House of Representatives.

Senator McLUCAS: I indicate to the Senate that these bills are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question agreed to.

Bills read a first time.

Second Reading

Senator McLUCAS (Queensland—Parliamentary Secretary for Disabilities and Carers) (17:00): 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—

FINANCIAL FRAMEWORK LEGISLATION AMENDMENT BILL (NO. 1) 2011

The Financial Framework Legislation Amendment Bill (No. 1) 2011 would, if enacted, amend 8 Acts across 5 portfolios to help further clarify aspects of the Commonwealth's financial framework.

This Bill is the eighth Financial Framework Legislation Amendment Bill since 2004, and forms part of an ongoing program to address financial framework issues as they are identified, taking a collaborative and whole-of-Government approach.

The work behind this Bill has already been partially presented to Parliament through the Statute Stocktake Bill (No. 1) 2011, which I tabled on 23 March 2011 to repeal 39 redundant special appropriations relating to the Commonwealth's financial framework.

The breadth of appropriation, governance and financial management issues across the Government compel continued attention. For this reason, the Department of Finance and Deregulation works with all parts of Government, in a culture of strong collaboration, to address statutory financial framework issues promptly.

Accordingly, this Bill seeks to amend 2 Acts in the Finance and Deregulation portfolio, but also 6 Acts in 4 other portfolios. These are: the Attorney-General's portfolio; the Agriculture, Fisheries and Forestry portfolio; the Climate Change and Energy Efficiency portfolio; and the Innovation, Industry, Science and Research portfolio.

Specifically, Schedule 1 of the Bill contains minor amendments to the Commonwealth Authorities and Companies Act 1997 to enable the content requirements for the corporate plans of government business enterprises to be specified under regulations, rather than in the Act. This allows that content to be updated more readily.

Schedule 2 of the Bill contains minor amendments to the Financial Management and Accountability Act 1997 (FMA Act) primarily to clarify the legal status of various legislative instruments, such as determinations, instructions, and guidelines issued under that Act or under its regulations. There is also an amendment to clarify that the Auditor-General is the external auditor of FMA Act agencies.

Schedule 3 of the Bill then makes consequential amendments to the Legislative Instruments Act 2003 and removes reference to an instrument under the FMA Act that is now redundant. As a result, the matters dealing with the Legislative Instruments Act 2003 will be covered in the FMA Act alone.

Schedules 4 to 8 of the Bill contain minor amendments to 5 Acts of Parliament. These amendments seek to:

- update the Wheat Export Marketing Act 2008 to clarify the scope of credits to the Wheat Exports Australia Special Account;
- amend the Wine Australia Corporation Act 1980 to update the circumstances in which the Wine Australia Corporation must provide their annual operational plan to the responsible Minister, and clarify the term in office of a member of the Geographical Indications Committee;
- remove a redundant reference to the former name of the 'Australian Bureau of Agricultural and Resource Economics and Sciences' in the Primary Industries (Excise) Levies Act 1999; and
- repeal a redundant paragraph and make technical amendments to the Science and Industry Research Act 1949.

This short Bill is, accordingly, another step to help ensure that specific provisions within our financial legislation remain clear and up-to-date.
The Australian Government is committed to transforming the scale, potential and quality of higher education in Australia.

When we came to office in 2007, we understood very clearly the transformative potential of higher education.

We understood that new investment and reform was required to allow our nation’s universities to meet the increasing demand for higher qualifications from students and employers, to meet our nation’s future workforce needs.

In 2008, the Government commissioned a wide ranging Review of Australian Higher Education, known as the Bradley Review.

This review was the catalyst for the major package of reforms, Transforming Australia’s Higher Education System, announced in the 2009 10 Budget.

The Higher Education Support Amendment (Demand Driven Funding System and Other Measures) Bill 2011 which I am introducing today will implement more of the reforms announced in that package.

Fundamental to the Government’s reforms has been the understanding that the Australian economy today – and the Australian economy of the future – will require more Australians to be degree qualified.

The demand for ever more sophisticated goods and services will require higher levels of innovation and skills in our workforce.

In Australia today, the demand for professionals, managers, and community and personal services workers is outstripping demand for clerical workers and labourers.

More professionally qualified people, engineers and managers will be needed by 2015. We will need them in the health care sector. We will need them in the mining sector. We will need them to respond to future challenges that arise across the breadth of the Australian economy.

This is why the Government has made a commitment to the expansion of a high quality university sector, to educate the graduates needed by an economy based on knowledge, skills and innovation.

This approach is essential if Australia is to participate fully in, and benefit from, the global knowledge economy.

The Government has set an ambitious goal for national attainment. It is seeking to increase the proportion of 25 to 34 year old Australians with a qualification at bachelor level or above to 40 per cent by 2025.

This was one of the major reasons the Government committed to demand driven funding for undergraduate student places at public universities.

We are committed to funding growth in undergraduate student places and to opening the doors of higher education to a new generation of Australians.

The Bill being introduced today gives effect to that commitment.

The Bill reforms the Commonwealth Grant Scheme which provides the Australian Government’s financial contribution to a student’s place at university.

Australian universities will no longer be asked by the Government to ration Commonwealth supported student places among students competing to get a bachelor degree.

The Government will make its financial contribution to the cost of educating all students admitted to undergraduate courses of study.

The Government will no longer set the number of undergraduate places that a university can offer.

From 1 January 2012, universities will have greater flexibility to respond to student demand, and employer and industry needs.

The Commonwealth Grant Scheme is to be changed so that universities will be funded, not on the number of places which the Education Minister decides they will be given, but based on the number of places they provide.
The legislated cap on the Commonwealth Grant Scheme is being removed by the Bill.

By 2012, the Government will have increased higher education expenditure on teaching and learning by 30 per cent in real terms since 2007.

This year, the Government will fund more than 480,000 undergraduate places at public universities.

With an anticipated 4 per cent growth, next year this will rise to over half a million places – a 20 per cent increase since 2008.

To fund this historic expansion of opportunity, the Government provided an additional $1.2 billion in this year’s Budget, bringing the total demand-driven funding to $3.97 billion over successive budgets.

The Government recognises that it will continue to have a role in the national oversight of our higher education sector.

It will retain some powers to assist achievement of those outcomes and to enable it to respond to national imperatives.

Higher education providers will continue to be required to have a funding agreement with the Commonwealth in order to be eligible to receive Commonwealth Grant Scheme funding. The Bill amends some provisions relating to these funding agreements.

The most significant of these amendments relate to the specification of maximum basic grant amounts.

These changes are required by the change to the method of calculating the amount of grant a university will receive under the Commonwealth Grant Scheme.

In addition, there may be circumstances in which the Australian Government needs to limit the extent of future growth in unallocated undergraduate places. The Minister will be able to do this by specifying a maximum basic grant amount for these places in a university’s funding agreement.

Significantly, the Minister will not be able to specify an amount that would reduce the funding for undergraduate student places that a university receives from one year to the next.

The Government will not be specifying any maximum basic grant amount for unallocated undergraduate places in any funding agreement for 2012.

It also does not plan to do so in future years, but the Government does wish to ensure that growth in undergraduate courses is sustainable, does not involve excessive risk and that the Government’s fiscal position is properly managed.

The Government is not uncapping funding for student places in postgraduate and medical courses. It will continue to allocate Commonwealth supported places in these areas.

The Government will be maintaining each university’s current target for postgraduate student places in 2012. It will also be ensuring that postgraduate student places that have been provided within the existing allowance for over-enrolment continue to be funded.

The Bill provides that the Government can specify in a university’s funding agreement a maximum basic grant amount for allocated places that is higher than the amount for the university’s target load.

The Government’s forward estimates of expenditure provide sufficient funding to ensure that there is no contraction in the level of Commonwealth supported postgraduate student places. It will be working with the sector to establish a framework for funding postgraduate places into the future.

The outcomes of the Base Funding Review will also be taken into account when considering future arrangements in the postgraduate coursework area.

In recent years, there has been a major expansion in the number of medical schools.

The number of domestic medical graduates is projected to rise from around 1900 to over 3100 – an increase of over 60 per cent.

This has placed significant pressure on the availability of clinical training places and internship opportunities. These are vital to maintaining the quality of graduating doctors.
For these reasons, the Government will not be removing the controls on student medical places at this time.

The Government will be monitoring demand and supply for graduates in all disciplines in the early years of implementation of the new funding system.

The Bill ensures that the Government has the capacity to respond to any new skill shortages and, if necessary, to the oversupply of graduates in particular areas.

Amendments to the Higher Education Support Act 2003 will ensure that the Government retains powers to allocate places for particular disciplines.

The Bill allows the Minister to declare a course of study to be a designated course of study. This will provide the Minister with the capacity to allocate places for those particular courses.

The Bill provides that such a declaration must be tabled in both Houses of Parliament and is a disallowable instrument.

The Government believes that the measures contained in this Bill for demand driven funding of undergraduate places provide for much needed investment in higher education.

As a result of these reforms, universities will be able to grow with confidence and diversify in response to student needs.

Consistent with the shift to a demand driven funding system, the Government agreed in its response to the Bradley Review that the Student Learning Entitlement (SLE) provisions of the Act would be abolished from 2012.

The SLE currently limits a person’s ability to study at university as a Commonwealth supported student to the equivalent of seven years full-time study, subject to exceptions specified in the Act which allow for further periods of ‘additional’ SLE and ‘lifelong’ SLE to be allocated.

Application of the SLE has resulted in instances of hardship for particular students – for example, where a student who completes a three-year undergraduate science degree subsequently goes on to re-enrol in a six year medical degree. In cases such as these, students can exceed their SLE and no longer be eligible for a Commonwealth supported place.

The Bill repeals Part 3-1 of the Higher Education Support Act and amends other provisions of the Act to remove the SLE and its role in the various funding schemes under the Act.

The Bill amends the Higher Education Support Act to require that each Table A and Table B higher education provider enters into a mission-based compact with the Commonwealth. Compacts will provide for Commonwealth oversight of the teaching and research missions of universities.

Mission-based compacts provide an important process of dialogue and communication between universities and the Government.

Compacts provide assurance concerning the alignment of university missions with the Commonwealth’s national goals in the areas of teaching, research, research training and innovation. They do so in a way that recognises that the objectives of Government and universities are often shared.

In preparing compacts for the 2011-13 period, the Government has been made aware of universities’ growth strategies, their intentions for maintaining the quality both of teaching and the student experience, and their contributions to the Government’s attainment targets.

As a consequence, the Government is better informed about the future research directions of universities, their strategies to advance innovation and of their efforts to train Australia’s future research workforce.

The Australian Government will continue to work cooperatively with higher education providers through compacts to ensure that individual university missions serve Australia well in teaching, research, research training and innovation. It will continue to monitor developments, progress and achievement across the sector.

The Bill will amend the Higher Education Support Act to promote free intellectual inquiry. Free intellectual inquiry is an important principle underpinning the provision of higher education in Australia. It is one that the Government has committed to include in the Act.
Free intellectual inquiry will become an object of the Act. The Government’s funding arrangements should not be used to impede free intellectual inquiry.

Table A and Table B providers will be required to have policies that uphold free intellectual inquiry in relation to learning, teaching and research. This will be a new condition of funding.

Most universities already have such policies and I know they all wish to support research and teaching environments which promote free intellectual inquiry. It is fundamental to the scientific method and rigorous scholarship. It is necessary to enable evidence to be challenged, competing theories to be debated and facts to be established. It provides the foundation for our understanding of the world and the accumulation of knowledge.

This Bill reflects the Government’s continued commitment to invest in Australia’s universities and to expanding opportunities for Australians to obtain a higher education degree.

As a consequence of this Bill and our investment in higher education, more Australians will have the opportunity to gain a university education.

In this next generation of students, there will be many people who will be the first in their family to embrace the opportunities that a university education can offer, with the promise of a high skilled, high paid job when they graduate.

Our industries will get the university-educated workforce they need. Our regional communities and industries will share in the benefits. Australia will have a growing and sustainable higher education system which meets the needs of our nation.

**PROTECTION OF THE SEA (PREVENTION OF POLLUTION FROM SHIPS) AMENDMENT (OIL TRANSFERS) BILL 2011**

Australian transport relies almost entirely on oil products. A significant amount of Australia’s oil is imported as crude oil for refining at one of Australia’s seven oil refineries.

On occasions, crude oil is transported in super tankers. Because of their size, these large ships are unable to enter most ports. To enable their cargo to be taken to an oil refinery, it will often be transferred to two or more smaller tankers. There may also be other times when oil cargo is transferred between tankers.

While such transfers are rare in Australian waters, indeed the first and, so far, only such transfer was successfully carried out off the NSW coast in March of this year, it is important that they be carried out in a responsible manner.

The Marine Environment Protection Committee of the International Maritime Organization has recognised the potential for pollution damage resulting from an oil spill during a ship-to-ship oil transfer operation. In July 2009, the Committee adopted amendments to Annex I of the International Convention for the Prevention of Pollution from Ships (MARPOL) to regulate ship-to-ship oil transfers. The purpose of this Bill is to implement those amendments in Australia.

The key provision of the Bill is the requirement for all tankers with a gross tonnage of 150 tons or more to have on board an operations plan setting out how ship-to-ship oil transfer operations are to be conducted. The carriage of such a plan indicates that a tanker is fully prepared to undertake STS oil transfers in accordance with the requirements of Annex I of MARPOL. Transfers are to be carried out in accordance with the plan.

Should a plan not be in place for a tanker involved in an oil transfer operation, then the risk of an oil spill would be greatly increased. Failure to have a plan would be an indication that the tanker may not have sufficient safeguards in place to avoid an oil spill and that there is the potential for major environmental damage resulting from the escape of oil during the oil transfer operation.

The ship-to-ship operations plans for Australian oil tankers will be checked and, if found to comply with the requirements of the amendments contained in this Bill, will be approved by the Australian Maritime Safety Authority.
The master of an oil tanker involved in a ship-to-ship oil transfer operation will be required to notify the administration of the country in whose waters the transfer is to take place. Notification is required at least 48 hours before oil transfer operations begin. This is to allow sufficient time for authorities to ensure that pollution response equipment is on standby in case of an oil spill during the transfer.

The requirements set out in the Bill will apply to all ship-to-ship oil transfer operations carried out from 1 April 2012. The requirements will also apply to any tanker which has undergone a survey to check compliance with safety and marine pollution prevention requirements between the date of Royal Assent of this Bill and 1 April 2012.

Since coming to power in 2007 this Government has significantly improved the protection of Australia's marine environment; this Bill continues that work.

**STATUTE STOCKTAKE BILL (No. 1) 2011**

The Statute Stocktake Bill (No. 1) 2011 seeks to reduce red tape in the Government’s internal administration by repealing redundant special appropriations and a statutory Special Account.

This Bill is an important part of Government housekeeping in keeping the financial regulatory framework of the Commonwealth up to date.

The Bill, if enacted, will update legislation across a range of portfolios, by abolishing 39 special appropriations, including a statutory Special Account, repealing redundant provisions in 11 Acts and repealing 25 Acts in their entirety.

These redundant provisions have been identified through a stocktake of special appropriations. The Government committed to regular stocktakes of this nature in response to the report, *Operation Sunlight – Overhauling Budgetary Transparency* released with the Government’s response on 9 December 2008.

The Bill carries on from the efforts of 5 previous Financial Framework Legislation Amendment Acts from 2005 until 2010 and the *Statute Stocktake (Regulatory and Other Laws) Act 2009*, and contributes to Commonwealth efforts to clean up the statute book. The Bill also assists the Government to maintain effective legislative housekeeping, which is consistent with the Government’s Better Regulation Agenda.

The Bill contains no significant policy changes.

Schedule 1 of the Bill would, if enacted, repeal 13 special appropriations that have either been fully expended or would concern functions that are no longer being undertaken, such as the *Loans (Australian Industry Development Corporation) Act 1974*.

Schedule 2 of the Bill will repeal 26 redundant special appropriations, including 25 Acts and a statutory Special Account that no longer have any effect, such as the *Forestry and Timber Bureau Act 1930*.

The measures contained in the Bill reflect the Government’s commitment to enhance transparency and accountability across the Commonwealth’s financial framework.

I commend the Bill to the Senate.

**Senator McLUCAS:** I seek leave to continue my remarks later.

Leave granted; debate adjourned.

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

**Remuneration and Other Legislation Amendment Bill 2011**

**Returned from the House of Representatives**

Message received from the House of Representatives agreeing to the amendments made by the Senate to the bill.

**Tax Laws Amendment (2011 Measures No. 2) Bill 2011**

**Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011**

**Tax Laws Amendment (2011 Measures No. 4) Bill 2011**
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Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011

Assent

Messages from the Governor-General reported informing the Senate of assent to the bills.

National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator RONALDSON (Victoria) (17:02): It gives me great pleasure today to talk about the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011.

An honourable senator: It is one of your pet subjects!

Senator RONALDSON: That is right. I have been keeping a very close eye on this matter and I am very pleased to be making some presentations today. This bill outlines changes to the National Consumer Credit Protection Act 2009, which introduces, first, a requirement for lenders to provide a key fact sheet for standard home loans. Second, it introduces reforms to lending terms for credit cards, which was the government’s election policy announcement, by, firstly, prescribing rules for approval of the use of credit cards above the credit limit; secondly, specifying an allocation hierarchy for payments made under credit card contracts; thirdly, restricting credit providers from making unsolicited invitations to borrowers to increase the credit limit of their credit cards; and, finally, introducing a requirement for lenders to provide a key fact sheet for credit card contracts. The coalition will not oppose this bill; however, we do have concerns over some of the elements contained within it.

By way of background, I think it is important to advise the chamber that, as part of the 2010 election campaign, the Labor government introduced a Fairer, Simpler Banking policy which, among other things, aimed to more closely regulate the issuance, limits, fees and charges, and product disclosure of credit cards in order to enhance the protection of consumers. This was then followed by Treasurer Swan’s announcement in December of last year of the government’s Competitive and Sustainable Banking system, which included a key fact sheet for new home loan customers. This was in response to the coalition’s nine-point banking plan. The National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011 deals with both of these policy announcements.

There are a number of issues associated with this matter, Mr Deputy President—and I congratulate you on your appointment today to that very high position. This bill is an unsatisfactory response to perceived issues within the banking industry. While some elements within the bill such as changes to the hierarchy of payments under credit cards contracts are worthy of consideration, the other sections relating to credit card reform seem to be poorly drafted. Industry concerns seem not to have been fully addressed. At the eleventh hour, the government decided to listen to industry and put forward some substantial amendments to this bill in the House of Representatives. These amendments are embarrassing for the government as they had previously refused to listen to industry concerns—a matter I would have thought of extraordinary embarrassment to this government given their behaviour in relation to this matter.
The bill sets out the following changes. First is a key fact sheet for standard home loans. This measure was initially set to apply from 1 September 2011. Following consultation with industry, the deadline has now been extended by the government—I have to say it was at the eleventh hour through amendments—to 1 January 2012. The contents of the key fact sheet will be prescribed by regulations which are yet to be released by the minister. We expect them soon—unless they have already been prescribed, which I do not think they have; I am sure the parliamentary secretary would have told me so. It is another delay, and these regulations are yet to be prescribed. The government has also chosen to remove in their amendments the strict liability which applied to this section—a concern which was consistently raised by industry and institutions.

I will now turn to reforms to lending in terms of credit cards. Firstly, in relation to prescribing rules for the use of credit cards above the credit limit, the government has chosen to remove the sections relating to the default buffer limit at 10 per cent of the credit limit, as well as the allowance for a supplementary buffer. These reforms were to prevent consumers from exceeding an agreed-upon limit. However, industry bodies and institutions expressed concern that the bill could send a message to consumers that they may in effect have a 10 per cent higher credit card limit if they choose. The government has now removed this section through its eleventh-hour amendments and replaced it with a requirement for consumers to be notified if a credit card is used in excess of its credit limit and an express requirement for no fees to be imposed and no higher rate of interest to be charged if a customer exceeds their credit limit, unless they have provided explicit consent for a fee to be charged.

The second reform specifies an allocation hierarchy for payments made under a credit card contract. This section of the bill requires credit providers to apply relevant repayments first to the part of the consumer's balance that attracts the highest credit rate, and this seems to be a reasonable reform. The third restricts credit providers from making unsolicited invitations to borrowers to increase the credit limit of their credit card. Some institutions have stated that a potential unintended consequence would be to force credit providers to push borrowers towards higher initial credit limits than otherwise would have been offered. The fourth introduces a requirement for lenders to provide a key fact sheet for credit card contracts. Concerns about this section of the bill are similar to those for the key fact sheet for standard home loans.

I would now like to turn to Greens amendments rejected in the House of Representatives—and that, of course, is the Greens political party, who are in a political alliance with the Australian Labor Party that we are all acutely aware of. We have seen the outcomes of that in the last 36 hours and undoubtedly we will see a lot more of that relationship between the Australian Greens and the Australian Labor Party as they head, in coalition, to thoroughly and completely destroy this country. Mr Adam Bandt MP, the member for Melbourne, moved amendments seeking to have divisions 5 and 6 apply to transactions and payments made under a credit card contract entered into before or on the date of the legislation coming into effect. Division 5 relates to the use of a credit card in excess of the credit limit and division 6 relates to the order of application of payments made under credit card contracts, which is a reasonable reform. The coalition opposed this amendment in the House of Representatives. The amendment was retrospective on existing contracts.
entered into prior to the legislation coming into effect.

In summary, the coalition will not oppose this bill. The amendments moved in the House of Representatives are embarrassing for the government and highlight the deficiencies in their approach to this policy matter. It is not just with this that we have seen this sort of lack of detail and lack of understanding about what is required to properly govern this country. We have seen time and time again this government dragged kicking and screaming into having some sensible policy responses to key issues. Why is it that they are so inept that they require others to do their work for them? I look at the work that Senator Cormann has done in relation to this. I look at the work the shadow Treasurer has done in relation to this. Again the coalition is required to fix the government's messes—time after time after time. Industry and institutions have warned on a number of occasions throughout the legislative process that some of the elements contained in this legislation would have unintended consequences—a fact that the government have chosen to take on board at the eleventh hour. The unintended consequences were not news to them; they had been told about them and they chose to do nothing about it until the eleventh hour, when again the coalition addressed their deficiencies and told them how to best rectify the matter.

The coalition believes that the government's approach of imposing additional regulation and interfering in commercial decisions of banks is not the preferred approach when addressing market deficiencies. The coalition stands by its call for a root-and-branch review into Australia's financial system as part of the nine-point banking plan announced in October last year. Of course, that nine-point banking plan was the coalition again proactively putting forward some policy proposals to address issues. Again there was a requirement for the coalition to do the policy work for an inept government. Again the coalition was required to go out and say to industry and others: 'We've got some solutions. We will work with you to make better legislation'—and that has been the outcome today. So I congratulate Senator Cormann and the shadow Treasurer for again being in a position to get bad laws made better. We will not be opposing this bill, but I hope the government finally starts to learn some lessons about its completely inept handling of legislation and of the economy.

Senator XENOPHON (South Australia) (17:13): I indicate my support for the second reading of the National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011, but I foreshadow that I will have a number of amendments that I will ask the Senate to consider seriously. This bill follows the Treasurer's announcement in December last year that the government wanted to 'promote a competitive and sustainable banking system to give every Australian a fair go'. Under this bill, yes, some good measures are being introduced. Consumers will be provided with fact sheets prior to entering a home loan or a credit card contract. Lenders will not be able to offer unsolicited invitations to borrowers to increase credit limits they may not be able to afford. This is something that as a member of the South Australian parliament I campaigned for and it is an important issue in terms of basic consumer rights in the face of that sort of aggressive behaviour by some lending institutions. Also, over-limit fees will be prohibited, and credit card payments will pay off higher interest debts first, which I think is a good and innovative solution. These are good measures.

But if the government is serious about ensuring a competitive and sustainable
banking system then it needs to seriously reconsider its blanket ban on exit fees. I acknowledge that this chamber recently debated a motion—moved by my colleague Senator Cormann, for the opposition, and by me—to disallow the government's regulations which came into force on Friday, 1 July. However, I wish to highlight again my concerns about the impact this blanket ban will have on small lenders and the consequence for competition in the banking sector.

At the outset, I make it clear that I do not support the excessive exit fees that have been imposed by lenders to date. While the government might have the right intention, a blanket ban on exit fees is not the solution. Banning exit fees across the board was the government's knee-jerk reaction late last year to public demand for greater competition in the banking sector. The only way to ensure competition in the banking sector, however, is to support the smaller players. All the government's ban on exit fees will do is reduce competition in the longer term because smaller players will be severely impacted as a result and there will simply be cost-shifting in where the fees are being charged.

The simple fact is that small lenders need to be able to cover their costs of lending, which the big banks are able to offset in other areas of their business. The big banks also have much greater flexibility in their ability to raise finance. Smaller lenders are forced to pay third parties to complete the administrative necessities of a home loan such as valuations, legal fees et cetera. These costs usually total between $1,000 and $2,000, so fees are applied to cover these costs should borrowers leave their mortgages in the first few years. Unlike the big four banks, small lenders are not able to offset these costs in other ways. By banning exit fees, small lenders will have to either bear the costs themselves or lift their rates, making them uncompetitive against the big banks that can absorb these costs elsewhere.

While the government's ban may have been intended to improve competition, it will actually have the consequence of reducing competition by severely impacting on the non-bank lending sector and, as a consequence, interest margins on mortgages will rise over time. To address this, I foreshadow I will be moving amendments in the committee stage of this bill so that the ban on exit fees will only apply to lenders and their subsidiaries who hold a particular market share or greater to ensure that smaller players are able to, within reason, apply fees to their own customers.

There will be an overarching consumer protection provision, which this bill has not addressed, because the amendments I will be moving will have a reasonableness test. There must be some materiality for all fees and charges relating to the provision of credit. For instance, that reasonableness test would also apply to credit card fees.

I welcome the measures in this bill, but I think the government needs to seriously think about its blanket ban on exit fees if it truly wants to promote a competitive and sustainable banking system to give every Australian a fair go. My concern is that the government's changes will have the effect of further reducing the competitive pressures within the banking industry. It will further, since the GFC, consolidate the power in the big four banks.

There is something fundamentally missing here and that is the issue of unfair contract terms. At the moment, ASIC needs to give some guidance in unfair fees. I think the current test is simply too vague. The amendments I will be moving will ensure there must be a link, a reasonableness test, a materiality test, between what is being
charged by any lending institution in the
provision of credit with respect to any
penalty fees and the like. I think it is
important that there is substantial consumer
protection reform. Simply giving consumers
information is not enough. You need to give
consumers protection so that what they are
being charged is reasonable and so that the
fees being charged are materially linked to
the cost of providing that service. This bill
does not do this and that is why I will be
moving amendments during the committee
stage to improve this bill.

Senator SHERRY (Tasmania—Minister
Assisting on Deregulation and Public Sector
Superannuation, Minister for Small Business
and Minister Assisting the Minister for
Tourism) (17:19): Firstly, congratulations,
Mr Deputy President, on your election. The
National Consumer Credit Protection
Amendment (Home Loans and Credit Cards)
Bill 2011 delivers on the government's
election commitment to crack down on the
unfair treatment of Australians with credit
cards and to help them obtain a better deal
with their credit card and home loans. I thank
senators for their contributions and commend
the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator XENOPHON (South Australia)
(17:20): I seek leave to split amendment (2).

The CHAIRMAN: For clarity, it is your
intention to move the first part of amendment
(2) on sheet 7110, which relates to the
Banking Act, and then move the second part
of amendment (2), which relates to the
National Consumer Credit Protection Act
2009, and deal with them as separate
amendments.

Senator XENOPHON: That is the best
way of dealing with it, I believe. I am sorry it
was not split up previously, but they are
distinct concepts and so it is appropriate to
split them.

The CHAIRMAN: Is leave granted for
Senator Xenophon to deal with this as two
separate amendments?

Leave granted.

The CHAIRMAN: We will deal with the
first one first. We will call it No. 2 on sheet
7110.

Senator XENOPHON (South Australia)
(17:22): For the sake of completeness, I
should move amendment (1), which is a
consequential amendment that relates to the
commencement of part 3 of the act and states
that it commences 'The day after this Act
receives Royal Assent'. I should move that
along with—

The CHAIRMAN: Senator Xenophon, if
I could just interject there, we will deal with
that afterwards as that is consequential. We
will deal with the two amendments that we
have just highlighted, if you are comfortable
to deal with it that way.

Senator XENOPHON: I do not think
that it is possible for you to interject from
your position.

Senator Sherry: It's disorderly!

The CHAIRMAN: Can I offer a
direction in that regard.

Senator XENOPHON: I was not
suggesting that what you were doing was
disorderly, Mr Chairman. I am suggesting
that you are giving me a direction rather than
an interjection.

The CHAIRMAN: And, if you accept
that direction, we will go ahead and deal
with amendment (2).
Senator XENOPHON: I wholeheartedly accept that direction and I move amendment (2) on sheet 7110:

(2) Schedule 1, page 25 (after line 20), at the end of the Schedule, add:

Part 3—Amendments relating to termination fees and credit fees and charges

Banking Act 1959

1 At the end subsection 9(4)
Add "or the requirements of section 9AF".

2 After section 9
Insert:

9AF Variation of conditions of certain authorities

(1) APRA must, within 30 days of the commencement of this section, vary the conditions of relevant existing section 9 authorities to give effect to this section and any new section 9 authority granted after that commencement to which this section applies must include conditions that give effect to this section.

(2) The section 9 authority for a bank which has a market share of more than 10% must prohibit the bank from imposing an early termination fee in respect of any loan agreement or mortgage contract entered into by the bank after the commencement of this section.

(3) If a bank which has a market share of more than 10% has an interest of 51% or more in a subsidiary which is an ADI, the section 9 authority for that ADI must prohibit the ADI from imposing an early termination fee in respect of any loan agreement or mortgage contract entered into by the ADI after the commencement of this section.

(4) In this section:

bank means an Australian ADI that is permitted under section 66 of the Banking Act 1959 to assume or use:

(a) the word bank, banker or banking; or

(b) any other word (whether or not in English) that is of like import to a word referred to in paragraph (a).

early termination fee means any additional charge imposed on a borrower or mortgagor in any situation in which the borrower or mortgagor chooses to pay out the loan agreement or mortgage contract, as the case may be, ahead of the time specified in the relevant loan or mortgage contract.

market share means market share determined by APRA on the basis of proportion of total deposits.

National Consumer Credit Protection Act 2009

3 Before section 31 of the National Credit Code (in Division 4 of Part 2)
Insert:

30C Credit fees or charges relating to credit contracts

(1) A credit fee or charge payable by a debtor to a credit provider must be reasonable.

(2) ASIC may, if satisfied on the application of a debtor or guarantor that a credit fee or charge is not reasonable, apply to the court for an order annulling or reducing the credit fee or charge and for any other ancillary or consequential orders.

(3) In determining whether a credit fee or charge is not reasonable, ASIC must have regard to whether the amount of the credit fee or charge materially exceeds:

(a) the credit provider's reasonable costs of undertaking the activity or service to which the credit fee or charge relates; or

(b) the credit provider's average reasonable costs of undertaking the activity or service to which the credit fee or charge relates in respect of that class of contract.

(4) In considering an application by ASIC under subsection (2), the court must have regard to whether the amount of the credit fee or charge the subject of the application materially exceeds:

(a) the credit provider's reasonable costs of undertaking the activity or service to which the credit fee or charge relates; or

(b) the credit provider's average reasonable costs of undertaking the activity or service to which the credit fee or charge relates in respect of that class of contract.

early termination fees and credit fees and charges
This first amendment prohibits banks of greater than a particular market share percentage from imposing an early termination fee in respect of any loan agreement or mortgage contract. It also includes a reasonableness test—or that is what it relates to.

According to APRA, based on total deposits the big four banks hold 75 per cent of the market. Westpac has 20.5 per cent market share, the NAB 16 per cent, ANZ 15.9 per cent, and the Commonwealth Bank 22.5 per cent. There is no question that there is a real concern about the lack of competition in Australia's banking sector because of the dominance of the big four. It is vital therefore that small lenders are given as much support and assistance as possible to ensure that they are able to continue to offer consumers alternative banking choices, and I believe that an unintended consequence of the government's blanket ban on exit fees is that small lenders will be pushed out of the market.

Unlike the big four, who can offset costs and who have much greater capacity for borrowings, the small lenders need to be able to charge basic fees to keep them in the market. The fact is that small lenders pay third parties to complete the administrative necessities of a home loan such as valuations and legal fees, and small lenders cannot offset losses like the major banks and there may well just be a case of cost-shifting.

But what concerns me is that since the GFC, with the guarantee that the government has put in place—which of course was welcome and was the right thing to do—the nuances of that in terms of the implementation of that were that it simply strengthened the power of the big four. They increased their market share in business banking and the home loan sector and I fear that, unless we provide some support for those small lenders, consumers will ultimately be worse off.

So effectively that is what this amendment relates to. This amendment applies the ban on exit fees only to big banks with more than 10 per cent of market share and their subsidiaries, which are defined as being owned 51 per cent or more. That is the gist of this amendment and I urge my colleagues to support that. I am not sure what the coalition's view would be, but it would be not inconsistent with the measure that I co-sponsored with my colleague Senator Cormann on behalf of the opposition that sought a blanket ban on exit fees. It is not in the same form—I acknowledge that—but it is true to the general intent there about the impact that it would have on small lenders.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (17:25): I indicate that my remarks apply to the other amendments, Senator, in moving the amendment and your commitment to a better deal for consumers. You have been very consistent in that approach over many years. However, the government cannot support the amendments, as they duplicate laws we have already created and would put their enforcement at risk. The government has already banned exit fees for all lenders, not just the big banks. Making any further regulation in this space is therefore unnecessary. It would create significant difficulties for our financial regulators in enforcing an exit fees ban on new home loans.

The government has already given ASIC the power to prosecute any fee in any credit
contract that is unfair or unconscionable to consumers. These powers are contained in section 128F and 12CB of the ASIC Act. Duplicating these laws with inconsistent tests and definitions would put at risk ASIC’s ability to prosecute under our existing laws, and that in turn would risk letting the banks off the hook and hurting consumers. Therefore we cannot support Senator Xenophon’s motions to amend.

Senator RONALDSON (Victoria) (17:27): Just quickly and on behalf of my colleague Senator Cormann—and obviously I am acutely aware of the motion jointly sponsored by Senator Xenophon and my colleague, as Senator Xenophon quite rightly said—this is not in the same form and we will not be supporting the amendment, on the basis that it introduces a differential regulation based on market size.

Senator Xenophon: It’s a cousin to it.

Senator RONALDSON: I fear a distant one, Senator. We are opposed to differential regulation as it creates market distortions and market-distorting regulations will eventually reduce the efficiency of markets and cost consumers more. Differences in fee structures based on market size will make comparison of products harder and will create confusion for consumers. The coalition favours a level playing field where consumers are able to select between products with certainty and clarity.

Senator XENOPHON (South Australia) (17:28): I am disappointed but not surprised. I can indicate that I have introduced a bill which I hope will be dealt with by committee, particularly in relation to the next amendment, and I hope that there will be a modification of the position of my colleagues on both sides at some stage in the future. I indicate that Senator Ronaldson of course is quite correct: it is not identical but it would have, I believe, a similar effect in relation to the market distortion that has occurred as a result of the blanket ban on exit fees. If the ban were applied only to the big four, that is something that they could easily absorb, but the disproportionate impact on the smaller players in the market is one that is of concern. We have seen the contractions since the GFC, in part because of the way that the guarantee was structured. That was something that was raised in the banking inquiry of the Senate Economics References Committee, very ably chaired by Senator Bushby, and I supported the coalition in their concerns about that blanket ban on exit fees.

This is a slight modification, but I think it will have the same effect in terms of those small operators in the marketplace. I understand that this amendment will go down. I will not be seeking to divide on it. I think we need to carefully monitor the effect of the blanket ban on exit fees, including whether consumers get slugged with other fees—so in the end consumers are not any better off; they are simply affected some other way. That is something that I believe my next amendment will substantially remedy.

Question negatived.

The CHAIRMAN: We will now move to the part of amendment (2) on sheet 7110 that relates to the National Consumer Credit Protection Act 2009.

Senator XENOPHON (South Australia) (17:30): I move:

(2) Schedule 1, page 25 (after line 20), at the end of the Schedule, add:

National Consumer Credit Protection Act 2009

3 Before section 31 of the National Credit Code (in Division 4 of Part 2)

Insert:

30C Credit fees or charges relating to credit contracts

(1) A credit fee or charge payable by a debtor to a credit provider must be reasonable.
(2) ASIC may, if satisfied on the application of a debtor or guarantor that a credit fee or charge is not reasonable, apply to the court for an order annulling or reducing the credit fee or charge and for any other ancillary or consequential orders.

(3) In determining whether a credit fee or charge is not reasonable, ASIC must have regard to whether the amount of the credit fee or charge materially exceeds:

(a) the credit provider's reasonable costs of undertaking the activity or service to which the credit fee or charge relates; or

(b) the credit provider's average reasonable costs of undertaking the activity or service to which the credit fee or charge relates in respect of that class of contract.

(4) In considering an application by ASIC under subsection (2), the court must have regard to whether the amount of the credit fee or charge the subject of the application materially exceeds:

(a) the credit provider's reasonable costs of undertaking the activity or service to which the credit fee or charge relates; or

(b) the credit provider's average reasonable costs of undertaking the activity or service to which the credit fee or charge relates in respect of that class of contract.

This amendment is also the subject of a private senator's bill that I introduced in the last sitting week. I hope it will be subject to an inquiry. I urge my colleagues to support this because it is quite straightforward in what it is intending to do. I am grateful for the advice I have received on this from Associate Professor Zumbo, from the University of New South Wales School of Business. He has been a long-time champion for small businesses and for the rights of consumers.

This provision seeks to modify the current Consumer Protection Code and is entirely consistent with what this legislation is trying to achieve—that is, to empower consumers, to give them more information and to level the playing field for consumers. The current rules state that ASIC has the power to strike down any unconscionable terms in relation to early termination fees for residential loans, unconscionable fees and unfair contract terms. This provision seeks to introduce a reasonableness test into the National Consumer Credit Protection Act 2009 for any credit fee charge payable by a debtor to a credit provider.

I know there have been concerns about the level of bank fees, not just exit fees, that are charged. This amendment states that any fee or charge that relates to the provision of credit, whether it is a personal loan, a mortgage or a credit card, must be reasonable as compared to the cost of undertaking the activity by the credit provider. That means that smaller lenders may have a different fee structure. They might be charging more for termination fees or penalty fees than a bigger institution. Having a reasonableness test—so there is some material link between what is being charged and what it is actually costing that institution—is entirely consistent with the National Consumer Credit Protection Act in its current form. It is about giving some certainty. It is about having a specific test that targets the whole issue of unreasonable fees.

The whole issue is one of materiality. ASIC's Regulatory guide 220 issued in November 2010 is welcomed but it does not give the clarity that I believe is required. You need to have a link between the materiality of charges that a lending institution is hitting a consumer with and the issue of reasonableness. To say that you must apply the test to consider the issue of materiality I think would make a big difference. This amendment states:

In determining whether a credit fee or charge is not reasonable, ASIC must have regard to whether the amount of the credit fee or charge materially exceeds:
(a) the credit provider's reasonable costs of undertaking the activity or service to which the credit fee or charge relates; or

(b) the credit provider's average reasonable costs of undertaking the activity or service to which the credit fee or charge relates in respect of that class of contract.

Again, that is the question of reasonableness and materiality.

I understand that the government and the opposition do not support this, but I would like to hear them say whether there is enough specificity and clarity under the current ASIC guidelines. This is a reasonable amendment that will give clarity and certainty to lending institutions and consumers and will prevent the sort of gouging we see with various credit fees.

Senator RONALDSON (Victoria) (17:35): We will be opposing this amendment. The National Consumer Credit Protection Act 2009, which came into effect in July 2010, already deals with unconscionable or unfair fees and charges. Borrowers can already complain to ASIC or to an external dispute resolution scheme. The borrower or ASIC can seek a review of fees by a court. This proposal would require ASIC to determine what is a reasonable fee, which is beyond the current scope and role of the regulator. As each credit provider's average reasonable costs would be different, this would require extensive ASIC resources and high costs in each case. These higher costs would need to be passed on to consumers or funded by the taxpayer.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (17:36): I referred earlier in my contribution that the government would not be supporting this regulation. The government has given ASIC the power to prosecute any fee in any credit contract that is unfair or unconscionable to consumers. That is contained in sections 12BF and 12CB of the ASIC Act. As I mentioned earlier, duplication and inconsistent test definitions are inappropriate. We will not be supporting the amendment.

Senator XENOPHON (South Australia) (17:37): Again, I am disappointed but not surprised. I am just trying to understand the coalition's point of view. Senator Ronaldson, I apologise if I misheard you but how would it cost taxpayers more if there were greater clarity in the test? How would it be a burden to simply have guidelines that say there must be some materiality between what has been charged and the cost, and to measure that as a yardstick of reasonableness in terms of interpreting the ASIC guidelines?

Senator RONALDSON (Victoria) (17:38): I am sure that Senator Xenophon and my colleague Senator Cormann can have a longer discussion about this at some time in the future, but the point I was making is that the increased costs that might be imposed on ASIC would require extra resourcing from somewhere.

Senator XENOPHON (South Australia) (17:38): For a man of Senator Ronaldson's calibre, I am surprised that this is the best he can come up with. I have a lot of respect for his powers of argument and putting up a cogent case—but honestly! He is saying do not add an extra layer of protection for consumers because ASIC will not have the resources to do so. In fact, this would make it easier. Let us put this argument to rest. Having a clearer test would mean less uncertainty. If you have clearer guidelines and a clearer test it would arguably lead to a lessening of the resources needed by ASIC to deal with what is currently very vague. I am not sure if that will convince Senator Ronaldson to change his view in relation to
this. He seems unmoved, so I will not pursue it.

The minister says there is a regulatory guide. Since the guide came out in 2006 how many actions have there been, how many warnings have been sent out and how many prosecutions have there been in relation to breaches of unfair contract terms that we are supposed to interpret with this regulatory guide?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (17:39): Firstly, I want to congratulate Senator Ronaldson for the fine speech he has just made. Senator Xenophon, I think you are a little harsh on him.

Senator Ronaldson: Yes, I agree with you.

Senator SHERRY: Senator Xenophon, I will have to take your question on notice. Unfortunately we do not have anyone from ASIC here. But there are plenty of opportunities to find out. ASIC attend estimates on three occasions during the year, and I am the representative minister at those hearings. They also attend two or three meetings of the Joint Committee on Corporations and Financial Services. So that is at least five times a year. I will take your question on notice and endeavour to get that information for you as soon as possible. I will personally follow it up and see what we can find out.

Senator XENOPHON (South Australia) (17:41): I did not mean to be harsh in relation to Senator Ronaldson. I actually have a great personal regard for him.

Senator SHERRY: You said that but then you whacked him!

Senator XENOPHON: I just thought it was a weak argument! And Senator Ronaldson said that I have a weak argument. He is not shy in coming forward, and I respect that. But let us wait and see, I guess. I still believe this amendment has merit. It is about tying in a test to make it clearer as to what is reasonable or not. It does not seem unreasonable to have a material link between the actual costs of providing a service and what a consumer is charged. Some banks and credit institutions charge a fee that is completely disproportionate to the cost of providing that service, and that is what this amendment is intended to provide clarity on. The minister has indicated that he will provide an answer in due course in relation to the matters raised. I think ASIC has one hand tied behind its back by virtue of the vagueness involved in these current regulations. So I will maintain this amendment and, if there is another voice with me, I will be seeking a division.

The CHAIRMAN: Thank you, Senator Xenophon. I think Senator Ronaldson will survive the evening with that bruising! I call Senator Madigan.

Senator MADIGAN (Victoria) (17:42): I support Senator Xenophon's amendments to the bill as tabled.

Question put:
That the amendment (Senator Xenophon's) be agreed to.

The committee divided. [17:47]

(The Chairman—Senator Parry)

Ayes ................2
Noes ................43
Majority ..............41

AYES

Madigan, JJ
Xenophon, N (teller)

NOES

Abetz, E
Adams, J
Back, CJ
Bilyk, CL
Birmingham, SJ
Bishop, TM
NOES

Boyce, SK
Brown, RJ
Cash, MC
Crossin, P
Edwards, S
Feeney, D
Gallacher, AM
Johnston, D
Lundy, KA
Maw, B
Milne, C
Parry, S
Polley, H
Rhiannon, L
Sherry, NJ
Singh, LM
Sterle, G
Urquhart, AE
Wright, PL

Brown, CL (teller)
Cameron, DN
Colbeck, R
Di Natale, R
Fawcett, DJ
Furner, ML
Hanson-Young, SC
Ludlam, S
Marshall, GM
McEwen, A
Moore, CM
Payne, MA
Pratt, LC
Ronaldson, M
Siewert, R
Stephens, U
Thistlethwaite, M
Waters, LJ

Question negatived.

The CHAIRMAN: That now makes amendment (1) on sheet 7110 redundant.
Bill agreed to.
Bill reported without amendments; report adopted.

Third Reading

Senator Sherry: I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

Military Justice (Interim Measures) Amendment Bill 2011
Second Reading

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

Senator JOHNSTON (Western Australia) (17:52): Mr Deputy President, I also congratulate you on your election to that position today. It is well deserved and is a very popular appointment. I sincerely congratulate you and look forward to attending the chamber and arguing the toss under your judicial and judicial guidance.

The Military Justice (Interim Measures) Act was introduced as an interim measure to sustain the military justice system while Defence attempts to address the issue of the trial of serious service offences following the invalidation of the legislation establishing the Australian Military Court in the famous case of Lane v Morrison, which was handed down on, I think, 26 August 2009. The minister at the time, Senator Faulkner, said that the legislative mechanics of establishing a correctly constituted military court was of the highest priority. Unfortunately, like most high priorities for this government, we have neither seen nor heard of a successful piece of legislation arresting this problem since.

TWO years later, here we are and nothing has been achieved. Minister Smith, in his second reading speech on 10 May 2011, acknowledged that there would be new legislation but that it was still in the formulation stage.

The Military Justice (Interim Measures) Amendment Bill 2011 is very, very important. It is a stopgap measure to provide for the appointment and also the remuneration and other entitlements of statutory office holders—namely, the Chief Judge Advocate and two judge advocates, each of whom are full-time members of the Australian Defence Force. Schedule 3 of the act currently provides a fixed tenure for up to two years. Of course, the expiry of that term is the problem for the government. It expires in September this year and, accordingly, this bill is necessary to continue the remuneration and entitlements of those statutory office holders.

The Australian Military Court was established in 2007 by legislation supported by both sides of the parliament. The court's establishment followed a series of Senate committee reports over a number of years. I was involved in the 2005 Senate Standing Committee on Foreign Affairs, Defence and
Trade military justice inquiry, which made a number of very important and serious recommendations touching on the issue of the administration of military justice inside Defence. As I said, on 26 August 2009, the High Court of Australia handed down its decision in the case of Lane v Morrison. The case challenged the constitutional validity of the then Australian Military Court. The High Court found unanimously that the provisions of the Defence Force Discipline Act 1982, establishing the Australian Military Court, were invalid because the Australian Military Court purported to exercise the judicial power of the Commonwealth without meeting the requirements set out in chapter 3 of our Constitution.

As I said, the defence minister at the time said that the mechanics of establishing a correctly constituted military court were a priority. Here we are, two years later, and we are still waiting. This legislation is necessary because of the wait—because of the dilatory performance of the government on this. All stakeholders are keen to see the permanent establishment of a properly constituted military court to administer justice inside Defence.

The opposition supports the bill as drafted. I commend the bill to the Senate. The Senate has a very energetic and active role as a participant in the oversight of the military justice system and, as far as the opposition is concerned, that role will continue into the future.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (17:57): I thank Senator Johnston for his contribution and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

**Third Reading**

The DEPUTY PRESIDENT: As no amendments to the bill have been circulated, I call the minister to move the third reading, unless any senator requires that the bill be considered in the Committee of the Whole.

Senator SHERRY: I move:
That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**Intelligence Services Legislation Amendment Bill 2011**

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator HUMPHRIES (Australian Capital Territory) (17:58): The Intelligence Services Legislation Amendment Bill amends the Australian Security Intelligence Organisation Act 1979—the ASIO Act—the Intelligence Services Act 2001—the IS Act—and the Criminal Code Act 1995 to ensure consistency and interoperability of provisions, to clarify provisions relating to computer access warrants, to provide new grounds for the collection of intelligence on an Australian person and to clarify the existing immunity provisions for intelligence agencies and officers.

On behalf of Senator Brandis, I indicate that the amendments proposed by the bill amend the ASIO Act to align the definition of 'foreign intelligence' with the definitions in the IS Act and the Telecommunications (Interception and Access) Act 1979 and amend the ASIO Act to clarify that a computer access warrant authorises access to data held in the target computer at any time while the warrant is in force, and that is not limited to data held at a particular point in time, such as when the warrant is first executed. This does not change the law but
ensures consistency within the computer access warrant regime. The bill's provisions amend the ASIO Act to exclude the communication of information concerning the engagement or proposed engagement of staff within the Australian intelligence community from the security assessment procedures in the ASIO Act and put ASIO on the same footing as other intelligence agencies in relation to sharing information relevant to employment within the community.

The provisions amend the IS Act to permit the Defence Imagery and Geospatial Organisation specifically to provide assistance to the Defence Force in support of military operations and to cooperate with the ADF on intelligence matters. This is for clarification to ensure consistency with the Defence Signals Directorate. They provide for ministerial authorisation for the purpose of producing intelligence on an Australian person where the minister is satisfied that an Australian person is involved in, or likely to be involved in, activities related to a contravention of a UN sanction enforcement law. They amend the IS Act to clarify that the immunity provision in section 14 is intended to have effect unless another law of the Commonwealth, a state or a territory expressly overrides it, and they make a corresponding amendment to the computer offences in part 10.7 of the Criminal Code.

The amendments to the act proposed in this bill are relatively procedural and non-controversial. However, because any amendments in relation to enhanced intelligence gathering on Australians or conferring immunity in respect of otherwise criminal activity should be subject to close scrutiny this bill was considered in detail by the Senate Legal and Constitutional Affairs Legislation Committee. That committee reported very recently and I think it is worthwhile making some reference to that report.

The majority of the committee agreed that the proposed amendments would improve the practical operation of some key provisions in relevant legislation while maintaining sufficient safeguards where appropriate. The committee expressed confidence that the oversight by the IGIS to review the legality and propriety of activities of agencies within the Australian intelligence community—including monitoring, inspection and inquiry powers—is a sufficient and appropriate safeguard. I respectfully agree with the views expressed by the committee. However—and this is an important qualification—the committee had serious reservations about the quality of the explanatory memorandum produced to accompany this bill. It found:

The lack of detail in the EM, particularly in relation to the proposed foreign intelligence amendments, did not assist the committee in undertaking its consideration of the legislation. The EM does not provide a detailed explanation of the need for the provisions and how the expansion of ASIO's powers will assist it and other foreign intelligence agencies to perform their functions, nor does it mention the safeguards in place that will ensure appropriate use of the enhanced powers.

Unsurprisingly, the committee considered this a significant omission. It found that the information subsequently provided by the department to the committee was extremely helpful and should have been included in the EM in the first place. The committee therefore recommended that the Attorney-General's Department revise and reissue the explanatory memorandum to the bill as a matter of urgency to specifically include all additional information contained in the department's submissions relating to the proposed foreign intelligence amendments in items 3, 7 and 13 of schedule 1 of the bill, including detailed justification and
explanation of why the amendments are considered necessary; specific examples of how the expansion of the definition of 'foreign intelligence' will assist ASIO and other foreign intelligence agencies to perform their functions; and an explanation of the safeguards in place to ensure appropriate use of the foreign intelligence collection function.

Given the strength of that recommendation to the Senate and the bipartisanship of that recommendation to the government, apparently—unless my information has been superseded—the government has not seen fit to comply with that—

Senator Sherry interjecting—

Senator HUMPHRIES: There is one available, I gather from the minister. That is very good to see. It is an omission which has been rectified. I am pleased to hear that the government has taken that advice on board.

This is important legislation and the opposition will not delay its passage. For those who seek a proper explanation of the bill, I will record for Hansard that they should seek out the committee's full report.

Senator LUDLAM (Western Australia) (17:54): I start my remarks by congratulating you, Deputy President Parry, on the role that you now hold. I know that it was a bit of a close call for you this morning but congratulations nonetheless.

I would like to add some comments on behalf of the Australian Greens. We have very strong reservations about the bill. We will go through the parts of the bill that we believe are extremely controversial and also touch on those that are not. Senator Humphries has managed to skirt around most of the main issues that the Australian Greens have concerns about and, with just a shift of emphasis, has informed us that the coalition sees no problem in waving this bill through.

We have very serious reservations about this and it is the intention of the Australian Greens to vote against this bill, more or less on the single ground that I will identify now. The bill authorises the Attorney-General to issue a search, computer access or listening device warrant to ASIO for the purposes of collecting intelligence when the AG is satisfied that the collection is, 'in the interests of Australia's national security, Australia's foreign relations or Australia's national economic wellbeing'. This is a sharp contrast to the current conditions for a search, computer access or listening device warrant, which occurs when the Attorney-General is, 'satisfied that the collection of that foreign intelligence is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs'.

This bill also redefines 'foreign intelligence' to mean, 'intelligence about the capabilities, intentions or activities of people or organisations outside Australia.' What we have before us this evening is a significant departure from the current definition that is 'intelligence relating to the capabilities, intentions or activities of a foreign power'. A foreign power is currently defined as, 'a foreign government, an entity that is directed or controlled by a foreign government or governments, or a foreign political organisation'. That is the definition we have at the moment. The amendments would change the definition to, simply, 'people or organisations outside Australia'.

To be honest I do not understand how the Legal and Constitutional Affairs Committee got through the assessment of this bill and took the evidence that we did and, at my insistence, held a hearing which took about 90 minutes on a sitting day, and did not find that the provisions have radically expanded the scope of work that ASIO can now undertake. Most of the other clauses in this
bill are more or less inoffensive, and some of them we strongly support. But the fact of the matter is that we have completely widened and opened up the mandate of this intelligence service, which has operated until now on very strict definitions of what it can and cannot investigate, and these strict definitions have been there for very good reason.

The bill clarifies that a computer access warrant authorises access to data held in the target computer at any time while the warrant is in force, not limited to data held at a particular point in time. That to me seems like a fairly common-sense amendment. It allows ASIO, like other AIC agencies, to share information about employment decisions about a person’s employment or proposed employment without fear of that person gaining access to the information.

Again, ASIO does not have these immunities and has requested them.

The bill gives the Defence Imagery and Geospatial Organisation, DIGO, a function to provide assistance to the ADF in support of military operations and to cooperate on intelligence matters. This is not an extension of power but a clarification of functions and is consistent with the functions of the DSD. The bill provides a new ministerial ground for obtaining intelligence when a person may be contravening a UN sanction. That is a common-sense amendment.

The bill provides immunity from civil and criminal activities for a limited range of circumstances directly related to the proper performance by the agencies of their functions. So certain laws, including state and territory laws, could impose a liability on agencies. The immunity provisions for computer offences in part 10.7 of the Criminal Code will also be amended to clarify immunity unless another Commonwealth law or state or territory law expressly overrides it. All of these provisions in the bill would be supported by the Australian Greens if we win support for the amendments that I will debate and move in the committee stage.

During the inquiry into this bill, very serious reservations were expressed by the Law Council and by the Castan Centre at Monash University. The Legal and Constitutional Affairs Committee, of which I have now been a full member for three years and one day, fast-tracked this inquiry and nobody was able to tell why. Our initial reporting date was September, and I am going to call on the minister when we go into the committee stage to explain what on earth was the rush, why the committee was required—and, I propose, probably instructed—to report three months early, just as we had identified these very serious concerns.

The Law Council expressed strong concern in their submission and at the hearing, which was eventually held, as I say, during a sitting day. I was only able to attend because a particular bill that I was working on was pulled, and it still has not returned to the chamber; otherwise, I would not have been able to attend at all. ASIO, who you would argue is probably the most important agency with respect to this bill, did not appear. They were too busy on that day, so we did not take evidence from them. The questioning that I put to ASIO during the last round of budget estimates was curtailed by the chair. She informed us that the agency would report to the committee when it held its hearing, and of course that did not occur. So there has been quite a serious breakdown of process, on a really important matter, and I do not think we should overlook that.

The Law Council said in their submission that the bill would:

… afford the Minister and the agency almost unfettered discretion to determine when and how ASIO’s powers may be used to gather
information about people’s activities, communications and relationships abroad.

'Almost unfettered discretion'—and it is the very tightly bound discretion under the current act that oversight agencies like the IGIS, for example, absolutely depend on to determine whether ASIO is acting within its mandate or not. We will splatter that mandate all over the landscape and allow them to simply go wherever they like. It will make it incredibly difficult for oversight agencies to tell whether the agency is within its mandate or not, because it is going to be very difficult to tell what that mandate is henceforth.

Currently, the threshold test for obtaining a warrant domestically is much more stringent. The minister must be satisfied that there are reasonable grounds to believe that it 'will substantially assist the collection of intelligence … in respect of a matter that is important in relation to national security'. So there is an implied test in there which is about to go missing. The Law Council indicates this is significant broadening of the range of circumstances where listening device warrants, computer access warrants and surveillance and search warrants are available about any person or group outside Australia whenever those activities are considered to be somehow relevant to national security, foreign relations or economic wellbeing—for heaven's sake. We have dramatically expanded the scope of this agency's reach, at the stroke of a pen.

The Law Council also expressed strong concern in their submission that:

… the oversight function of the Inspector General of Intelligence and Security is seriously undermined because, ultimately, the ASIO Act provides the framework against which that Office assess the lawfulness and appropriateness of ASIO's activities.

We repudiate these views, I think, at our peril. It will be very, very difficult to unpick this or constrain ASIO if this sails through the parliament again on this bipartisan consensus that I am wearily used to on anything with 'national security' in the title. I think the committee process in this case—and it is unusual for me to say this—has actually failed us.

I have great respect for the vital work of the IGIS, but I am concerned that when I asked her for a response to the Law Council's concern she said she would:

… continue to monitor this closely, as not only will it affect my workload but also a significant increase in warrant applications could be a clear indicator of whether the relevant conditions are being applied too broadly

So she is going to just wait and see. She has clarified in subsequent correspondence to the committee that that was not intended to be a concern, that she was not anticipating or proposing that there would be a radical increase in warrant applications; she was simply stating the facts of the matter. If there are suddenly a flood of warrants, that will be an indication that the power is being interpreted too broadly. By then it will be too late. If I come in here with a private senator's bill proposing to restore the situation to that of the present day, there will be nine of us on this side and everybody else on the other. I can be fairly sure of that. It is important to get this right now because, once these powers are expanded, it will be extraordinarily difficult, as we have seen since September 11, to bring them back into some kind of proportionality.

The Castan Centre also registered concern that the amendments permit ASIO to investigate a far wider range of individuals and organisations, even where Australia's defence interests and international relations are not at stake. That is what is happening here. They explain in their submission that most non-state actors that threaten Australia are captured by existing notions of 'foreign
political organisation'. That was the pretext provided in the—as Senator Humphries outlined, manifestly inadequate—explanatory memorandum. We found during the committee work and during estimates hearings that the most difficult thing was to establish exactly what it is that the government proposes by way of these amendments. What is it ASIO needs to do that it cannot currently do? Nobody has been able to tell us that. The hearing descended into farce, as far as I was concerned, when the officer at the table simply was not able to tell us what ASIO would be able to do that they currently cannot. I can give the minister a heads-up now that that is the first thing I am going to ask him when we go into the committee stage.

Under existing law, the collection of foreign intelligence is confined to the collection of intelligence concerning the activities of foreign governments, organisations they control or foreign political organisations for the purpose of the defence of Australia or the conduct of international affairs. That is how ASIO have been doing the work that they have been doing in tracking al-Qaeda and tracking terrorist organisations that are much closer to home operating in our neighbourhood. They have these powers. They use them extensively. It is the sole justification that has been given to us for why their staffing and their budget quadrupled in the last decade. It is precisely because they have the range of powers that they need to track non-state actors who mean Australians harm or mean to pursue violent political activities in other countries. They have the powers that they need. When we asked what exactly this was all about, nobody was able to tell us.

What it does do is that it permits ASIO much wider scope to investigate the activities of Australians who are overseas and who do not necessarily pose a threat but perhaps do have implications for foreign relations, such as Julian Assange and other people working in the WikiLeaks organisation. WikiLeaks and Mr Assange obviously have implications for Australia's foreign relations. Things falling out of the document drop were on the front page of every newspaper in the country day after day after day six months ago, and even now those shock waves continue to reverberate through the diplomatic community. So there is no way that you can say that there are no implications there for Australia's foreign relations. But should that entity be spied on by ASIO? Should our clandestine Cold War era spy agency be tracking down Mr Assange, maybe his family if they travel abroad, people working for that organisation, journalists, or people he is talking to or that that organisation is involved with? It appears that the reason that this bill has been known as the 'WikiLeaks amendment' in the Attorney's department is that that is precisely what is intended. The committee simply did not address that issue, and neither did the officer at the table when we asked during the inquiry. This is one example of how a person or organisation outside Australia, combined with the notion of Australia's foreign relations, very considerably expands the scope of ASIO's activities. Australians working overseas for firms that are major rivals to key Australian industries would also be covered. They would be caught by the economic wellbeing argument. If the government has a counterargument to this, it would be delightful to hear it.

Finally, the Australian Greens object very strongly to the committee reporting three months early so that this bill can be rushed through the Senate. What is the hurry? Why must the committee report on 22 June and not on 21 September, our original reporting date? Why is this bill being passed today? I was told in the hearing by the department:
'While I cannot reasonably talk about specific cases here, I can assure you that this is very important.' That is the clarification that Senator Humphries and the rest of the committee were seeking. We were told, 'It is very important, I can assure you.' We have to take that as read without any justification at all. Eventually in the Attorney's third submission they came up with the example of illegal fishing. This whole process smells fishy, so it is interesting that that was where they landed—illegal fishing, for heaven's sake. What is it meant to mean that the shorthand term for this bill in the A-G's department is the 'WikiLeaks amendment'? The fact is ASIO are already empowered to obtain, correlate and evaluate intelligence relevant to security and they may obtain warrants for this purpose. That is what they do. That is what this agency is up to day to day. The current definition of 'foreign intelligence' includes intelligence relating to the capabilities, intentions or activities of foreign political organisations, whether or not they are connected to or sponsored by a state. The power is there already, so what is this bill about? In their evidence to show how the amendments would operate in practice and in their second and even third submissions—it is quite unusual for a department to have to come back with a third submission because the first two were so inadequate—the department were not clear on what additional targets they envisaged being picked up by the amendments. They do not explain—and I do not think they can explain—what legitimate targets of spying would not get picked up by the current definition of 'foreign political organisation'. Please do not give us illegal fishers, for heaven's sake. The answers, I think, have been quite embarrassing. They have been the subject of media attention as a result, and I think that has been entirely justified.

The Senate's committee system is pivotal to the thorough scrutiny of legislation. I have enjoyed serving on the committees that I have served on in the last three years. I think it is an incredibly powerful role of this chamber through the committee work it does. It is mostly extremely collegial. The work is mostly collaborative. To a degree party allegiances, if the bill is not too polarising, get left at the door and we can do the jobs that we were elected to do and that we are paid to do. When the committee process is short-circuited, we are all the poorer for it because there is no other line of defence in here. When this vote is taken, we will have missed the opportunity.

The inquiry process solicits expert opinion. It takes evidence in public hearings. It was absolutely not appropriate to hold a rushed public hearing in 90 minutes on a sitting day. I think that was completely out of order. The process is meant to assist in weighing up whether laws afford the right balance between security and civil liberties and whether they are necessary and proportionate. Something that the new independent terrorism legislation monitor is going to be giving a great deal of his time—his very limited time as a part-time appointment—to assessing is whether the laws that we have guiding the agencies that are tracking, challenging and shutting down terrorist activities in Australia and in our neighbourhood are proportionate, whether they are necessary and whether they are doing what the government said. If you wanted to get a headline on being tough on security and if these laws were put through on a bipartisan and not cross-party basis, are they actually serving a function? Do they make us safe? If they make us safe, let us leave them there and let us review them, assess them and approve them. If they do not—if they are simply about attacking civil liberties or pursuing other agendas under the
guise of national security, which is a term I think is now far too loosely interpreted under the amendments that we are considering tonight—then let us at least take a good, cold, hard look at what we are doing, because it is extraordinarily difficult to roll these things back once they are in force.

I for one am very concerned that we are simply following the United States down the path of the Patriot Act—that anything at all can be justified in the name of national security. I invite the opposition and the government to contemplate the amendments that we will move in the committee stage. They are no more or less than what the Law Council proposed. They do nothing more than go after the definitions that I have been speaking on tonight. They do not go into any of the other non-controversial or quite sensible aspects of the bill. They are very tightly constrained. So I invite both the opposition and the government, when we move into the committee stage, to consider pausing and paying attention to what the Law Council and other witnesses told us on this extremely important matter and not just to wave this bill through because it has 'national security' in the title.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (18:22): I would like to acknowledge and thank senators for their contributions to the debate on the Intelligence Services Legislation Amendment Bill 2011. Before I make my concluding remarks about the bill, there were a couple of points raised during the debate that I would like to take the opportunity to respond to.

Firstly, I would like to acknowledge and thank the members of the Senate Committee on Legal and Constitutional Affairs Legislation Committee for their work in examining and inquiring into the bill. The committee tabled its report on 22 June 2011, making one recommendation, which was that the explanatory memorandum be revised and reissued in order to include more detail on the foreign intelligence amendments. The government accepts this recommendation, and I have the replacement explanatory memorandum which includes this additional information.

In respect of at least some of the matters that Senator Ludlam raised, there has been a lot of interest in and speculation about the amendments in this bill relating to ASIO's foreign intelligence function. I will take just a moment to reiterate that this is not about expanding ASIO's functions so that it can do a whole range of new activity; it is about ensuring that ASIO's limited foreign intelligence role is consistent with the foreign intelligence functions of Australia's other intelligence agencies.

ASIO has long played a role in and is intended to complement the foreign intelligence role of the other intelligence agencies. These roles have not been completely aligned, because legislation was drafted at different times, reflecting different threat environments. The amendments in this bill will complete the process of aligning the terminology in the Intelligence Services Act and the ASIO Act. This continues the government's commitment to more seamless cooperation between relevant agencies, which was recognised in the National Security Statement and the Smith review.

ASIO's core function is to obtain and assess intelligence and advise government in relation to matters relevant to security. This will not change. In addition, ASIO has a limited function to obtain foreign intelligence within Australia under warrant issued by the Attorney-General at the request of the Minister for Defence or the Minister
for Foreign Affairs, who are responsible for Australia’s foreign intelligence agencies. This is separate from ASIO's security function and is not initiated by ASIO.

Currently, the definition of ‘foreign intelligence’ in the ASIO Act differs from that in the Intelligence Services Act. This could create intelligence gaps because it would mean that foreign intelligence collected within Australia would be a narrower range of intelligence than the foreign intelligence agencies are able to obtain in exercising their functions outside Australia. With the rise of individuals and non-state or non-political organisations engaged in activities such as the proliferation of nuclear, biological, chemical and conventional weapons and related technologies, it is increasingly important to address this issue.

There are a range of safeguards and accountability mechanisms that apply to ASIO's foreign intelligence function. These are outlined in the replacement explanatory memorandum. In particular, I emphasise that ASIO can only exercise its foreign intelligence function under warrant or authorisation issued by the Attorney-General. The Attorney-General must be satisfied, on the basis of advice from the Minister for Defence or the Minister for Foreign Affairs, that issuing a warrant or authorisation in a particular matter is in the interests of Australia's national security, Australia's foreign relations or Australia's national economic wellbeing.

These are serious matters of significant national interest. These matters have provided the construct and limitations for the functions of Australia's foreign intelligence agencies since these functions were enshrined in the Intelligence Services Act in 2001. ASIO's foreign intelligence function, as with all its activities, is subject to rigorous oversight and accountability, including by the Inspector General of Intelligence and Security. The inspector general has access to all of ASIO's records and warrant documentation and is able to examine the legality and propriety of ASIO's activities.

In addition to the foreign intelligence amendments, the bill makes a number of other important amendments to improve the operation of the ASIO Act, the Intelligence Services Act and the Criminal Code. These are measures that have been identified through practical experience with the legislation. The government remains committed to ensuring that our national security agencies have the necessary tools and resources to undertake their important functions in a changing and dynamic national security environment.

I table a replacement explanatory memorandum relating to the Intelligence Services Amendment Bill 2011. The memorandum takes account of recommendations made by the Legal and Constitutional Affairs Legislation Committee. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

The CHAIRMAN: The question is that the bill stand as printed.

Senator LUDLAM (Western Australia) (18:28): In the few minutes remaining to us I think that, rather than moving the Greens amendments, I might just put a fairly simple question to the minister. Maybe the government has had a bit of time to think about this one now: what will this bill allow ASIO to do that it cannot currently do?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for
Tourism) (18:28): The amendment will mean that ASIO's foreign intelligence function is complementary to the functions of Australia's foreign intelligence agencies. The ASIO Act is currently limited to intelligence about foreign powers, which may not cover the same range of intelligence about individuals and non-state or non-political organisations that are covered by the Intelligence Services Act, so I emphasise that 'foreign powers' could be taken to read as being different from intelligence about individuals and non-state or non-political organisations.

An officer of the Attorney-General's Department gave a number of examples of the sorts of scenarios where the proposed amendment might apply at a Senate estimates hearing on 21 May 2011. The examples are: the proposed amendment will enable foreign intelligence collection agencies to better counter the activities of weapons proliferators. The proliferation of nuclear, biological, chemical and conventional weapons and related technologies is a complex global issue, and those involved include individuals and companies working in and across multiple countries.

Sitting suspended from 18:30 to 19:30

Senator LUDLAM (Western Australia) (19:30): Welcome, Senator Feeney. Maybe you can shed a little bit more light than Senator Sherry has.

Senator FEENEY (Victoria— Parliamentary Secretary for Defence) (19:30): I understand we were in the middle of having a conversation about cybersecurity. In considering the cyberattacks on Australian government and commercial infrastructure related information networks, I understand that cyberattacks are an emerging threat to Australia's national security and national economic wellbeing. There is also a concern about major organised crime syndicates and their capacity to be effective in attacking the Australian banking sector. That would mean that there would be a significant loss of confidence in the banking system, and that would have collateral effects through our whole financial and economic system and in that way would do considerable damage to our national economic wellbeing. I understand that was the point that Minister Sherry was halfway through when we broke for dinner. From this moment onwards I am happy to take questions as I hear them.

Senator LUDLAM (Western Australia) (19:32): I have a couple of questions before I discuss and then move the set of amendments I have proposed. The issue that I had put to the minister before we got up for dinner was the purpose of the bill—what it is actually for—because nobody has really been able to satisfactorily identify what you need ASIO to be able to do that it cannot already do. In the pursuit of its quite legitimate surveillance and intelligence-gathering activities on organisations engaged in politically motivated violence, terrorism and so on, I do not think there is anything controversial about ASIO going ahead and doing that. What becomes controversial is when we quadruple its budget and staffing allocation, build it a fortress down on the lake and then completely open the floodgates to the kind of investigative work that it can undertake.

This is not about new powers for ASIO. That was something that the minister said before we rose for dinner to try to ease my mind that ASIO was not getting any new powers here. That is not the point. What they are being given is the ability to exercise the powers that they currently have across a vastly broader range of groups, individuals and now, I think quite clearly, civil society organisations.
I will put to you a brief quotation from the submission of the Law Council of Australia to the Senate Legal and Constitutional Affairs Legislation Committee on 5 May. They told us that the threshold tests—the boundaries around which ASIO is permitted or not permitted, either on their own motion or, later, if ASIO is being investigated by the IGIS as to whether they were inside or outside their mandate—are important. Mr Grant, the Secretary-General of the Law Council of Australia, said:

These threshold tests are important. If they are framed too broadly they provide no safeguard against the misuse or overuse of ASIO's powers. Further, the effectiveness of the oversight function of the Inspector General of Intelligence and Security is seriously undermined because, ultimately, the ASIO Act provides the framework against which that Office assess the lawfulness and appropriateness of ASIO's activities.

My question to you, Minister, is how, even if you accept that the government does need to expand ASIO's mandate—and I do not for a moment—you answer the quite legitimate point raised by the Law Council. You have thrown the baby out with the bathwater. You have gone so far that there will henceforth be no benchmarks against which to assess whether ASIO is acting legitimately or not, because you have so broadened the range of targets that it may now surveil.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:35): I thank the senator for his question. While your question is a reasonable one, I do not accept your conclusion. The first point I would make is that the amendments to the foreign intelligence collection provisions are not too broad. We must remember that ASIO's foreign intelligence role is a role that is defined by and complements the functions of the other existing intelligence agencies, which are also responsible for obtaining foreign intelligence. ASIO's foreign intelligence function is intended to enable similar intelligence to be collected where it is necessary to collect foreign intelligence within Australia. For the ASIO foreign intelligence function to operate as a truly complementary function, it needs to reflect the same intelligence and purposes for which that intelligence may be obtained under the Intelligence Services Act 2001. If they are not aligned, there are some potential gaps in Australia's intelligence coverage.

I would also make the point that the threats that are identified to Australia in this space are forever changing, and it is our challenge as legislators to make sure that the agency remains continually equipped with the powers it needs to discharge the function we all require of it. So the ASIO Act being currently limited to intelligence about foreign powers may mean that ASIO is not able to cover the same range of intelligence about individuals, non-state and even non-political organisations and actors that are covered by the Intelligence Services Act.

The obvious issues we need to turn our minds to in that respect are the proliferation of nuclear, biological, chemical and conventional weapons. Of course, what flows from that is the need to have a look at related technologies in a complex global environment and the multiplicity of actors that might be operating in that space, and that then may mean individuals and companies working across multiple countries. I know, from having listened to you talk about nuclear proliferation issues in the past, you are utterly familiar with those questions. In addition to those, it will facilitate opportunities to detect cyberattacks. Cyberwarfare, I guess, is an increasing focus not just of commentators, not just of intelligence organisations, but also of us legislators. So my answer is that, as ASIO's role needs to countenance new technologies, the internet and increasingly complicated networks that
may span non-state actors, for all of those reasons this legislation is giving ASIO powers that accord with its traditional task but enable it to move across the changing environment of organisations and non-state actors that it must keep an eye on.

**Senator UDLM** (Western Australia) (19:38): I thank the minister for his response. Minister, can you clarify for us that, for the 60 years of the Cold War and the entire period of the existence of this agency, they have been unable to track nuclear, chemical and biological weapons if they are in the hands of non-state actors? I find that utterly incredible.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (19:39): It is probably fair to say that I am not in a position to confirm that at all, because I am not the minister to whom ASIO reports and it is not the sort of operational information that would properly find its way into my hands, and it has not found its way into my hands. So, no, I am unable to confirm that.

**Senator UDLM** (Western Australia) (19:39): Minister, I just wonder then whether, as a courtesy, you could put that question to the officers from the department who are sitting immediately on your left and who are paid by the responsible minister to know answers to questions like this one, which goes to the heart of the question that I put to Minister Sherry before we got up for dinner: what is this bill allowing you to do that you cannot already do? ASIO has been able to track non-state actors' handling of weapons of mass destruction, precursor materials and things involved in exactly that kind of trafficking, which are legitimate targets of clandestine intelligence agencies. You have been doing that for 60 years. Can you please tell us what has changed.

There is nothing in this bill—unless you can point it out to me; there is certainly nothing controversial—that addresses the medium; there is nothing that addresses cyberattacks. It is about the people and the 'who' we can go after, not about the medium or the vector that we might be being attacked behind. There are a couple of questions rolled in there, but I am still trying to get to the heart of what this amendment actually allows ASIO to do that it cannot already do. Just by way of an aside, I do not think the example of tracking of weapons of mass destruction or their precursor materials is a legitimate example. Our intelligence agencies are already perfectly capable of doing that, and they have been doing that for decades.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (19:40): Two points, Senator. The first is that ASIO's mandate, if you will—and that is my word—is set out in the section I am looking at here, which is where 'security' is defined. It is part I, section 4. There we see the definition of security:

"security" means:

and then it is set out in paragraphs (a), (aa) and (b). I think we see there a codification of some of the issues that you are looking for.

I guess that when one contemplates the Cold War one is contemplating an environment that is dramatically transformed today. We are obviously not today working in an environment where there is something of a global contest between two clearly discernible ideologies and constellations of nation states. What we are looking at today is, firstly, a multipolar international environment where non-state actors are particularly relevant and, secondly, an environment which has been transformed by technology. So the sorts of materials you were talking about and the sorts of tools that are required...
to monitor the movement of those materials, I think, have greatly changed, and as legislators we need to make sure that that is something we remain abreast of.

Senator LUDLAM (Western Australia) (19:42): Minister, that was fascinating. I recognise that you are here in a representational capacity.

Senator Feeney: Yes!

Senator LUDLAM: The internet has been around for a decade and a half in broad use. We saw the extraordinary violence inflicted by non-state actors on the people of the United States on September 11, and the subsequent attack that killed Australian citizens. We have been in this fluid security environment, you could say, at least since the late 1980s or early 1990s. What does this bill do, after all that period of time, that our intelligence agencies have not been able to do for the last 15, 20 or 30 years? I still feel absolutely no closer at all to understanding that.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:43): If anything is a threat to security as defined in the ASIO Act then ASIO can investigate that matter. There may be some overlap, but this is about ASIO's foreign intelligence function and it is important to align the definitions so that there is no gap.

Senator LUDLAM (Western Australia) (19:43): Minister, you will be very pleased to hear that when I move the Australian Greens amendments we will in fact be moving some consequential amendments to the Telecommunications (Interception and Access) Act 1979 so that the definitions remain entirely consistent. This is not an argument about consistency; it is an argument about appropriateness. Can the minister address the question that in framing—and I will use the same term as you did—the mandate of ASIO to be able to track a vastly larger range of actors you have now brought in groups of people who were up until this point, and I guess that is the whole point of the bill, beyond the range of surveillance and tracking by ASIO, including civil society organisations such as WikiLeaks?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:45): Firstly, I will address your point concerning WikiLeaks, which I am sure was not entirely rhetorical. At a Senate estimates hearing on 25 May this year, the Secretary of the Attorney-General's Department stated that that was not the department's view and that the officers of the department did not refer to this amendment as the 'WikiLeaks amendment'. The Director-General of Security also advised that the amendments are not connected to the WikiLeaks matter and he stated that the amendments to the legislation were considered long before WikiLeaks arrived on the scene in the way that it did.

I suppose the government would emphatically assert that this legislation is not the product of WikiLeaks or the issues around WikiLeaks. We would assert that this bill was in development long before WikiLeaks became the topical issue that it has subsequently become.

Senator LUDLAM (Western Australia) (19:46): Thank you, Minister, for the comprehensive answer to the question that I did not ask, which was how the bill was being described within the A-G's Department. Is it fair to say that this organisation, very specifically and not hypothetically, is now within the range of surveillance by ASIO, whether or not it was before?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:46): The problem I have here, Senator,
is that it is inappropriate for me to get into operational matters. As a consequence, I would be straying wildly outside my lane if I started to identify those organisations that may, were or may not be subject to ASIO investigation. So I do not think I am able to provide an answer.

Senator LUDLAM (Western Australia) (19:47): I am incredibly disappointed but not at all surprised, because that is the same brick wall we ran into with the officers of the department, the same ones who are advising you tonight—'It is just tremendously important. We cannot tell you exactly why but it is important. You will just need to trust us that, operationally, something or other needs to happen behind the scenes so that undisclosed organisations can now be tracked by our clandestine surveillance agency.' It is going to make it monstrously difficult for the oversight agencies and offices like the IGIS to determine whether or not they are acting unlawfully because henceforth it is going to be impossible to tell. If we have landed at the same point of stalemate as we did in the estimates committee and in the committee hearing into this bill, I will proceed to the amendments that I have circulated on sheet 7102.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (19:48): Senator Ludlam, taking that point, the government would make the counterpoint that the legislation that is being proposed, together with the existing regulatory framework, means that there are already significant safeguards that apply to ASIO's foreign intelligence function. For those of us who are students of political history, we will find that the Greens are not unique in seeking to make sure that these intelligence organisations are subject to the proper controls. That is a tradition to which my own party belongs as well. Having said that, the government is obviously satisfied with the safeguards that exist. I am happy to spend a moment talking about those. Firstly, safeguards under the Intelligence Services Act are applicable because ASIO's foreign intelligence function is performed at the request of the Minister for Defence or the Minister for Foreign Affairs, and they are responsible for Australia's foreign intelligence agencies. Before a request is made of ASIO to collect foreign intelligence within Australia, requirements under the Intelligence Services Act need to be complied with. These include requirements to obtain a ministerial authorisation if the agencies undertake an activity for the purpose of producing intelligence on an Australian person. You would have to agree that is of signal significance. A ministerial authorisation may be granted by the Minister for Defence or the Minister for Foreign Affairs only if they are satisfied that the Australian person is engaged in certain specified activities. There is a range of other safeguards that apply in the event that a ministerial authorisation is given, including time periods for that authorisation, being six months. In addition to all of that, the defence minister or the foreign affairs minister must be satisfied of the basis of the request for ASIO to collect foreign intelligence. The relevant minister would provide sufficient information for the Attorney-General to be satisfied as to why the request is in the interests of Australia's national security, foreign relations or national economic wellbeing.

In making a decision regarding the discharge of its foreign intelligence function, ASIO has to comply with relevant guidelines and ministerial directions about how it should perform its functions. ASIO must also comply with internal protocols and procedures, which have been carefully drawn with a view to ensuring that their powers are
exercised carefully and appropriately. ASIO also has to consider this in the context of its limited resources and other intelligence priorities. It is not resourced to the point that it can engage in intelligence frolics.

Warrants are submitted to the Attorney-General for approval only after they have been through an exhaustive system of checks within ASIO and the Attorney-General's Department. If ASIO seeks to procure a foreign intelligence collection warrant, ASIO has to make a case with supporting material when putting a warrant request to the Attorney-General. The Attorney-General must be satisfied on the basis of advice received from the relevant minister that the collection of foreign intelligence relating to a matter is in the interests of Australia's national security, Australia's foreign relations or Australia's economic wellbeing. All of these are significant matters of national interest.

There are also reporting obligations in section 34 of the ASIO Act requiring the Director-General of Security to report in writing to the Attorney-General on each foreign intelligence collection warrant. The Director-General must report on the extent to which the action taken under the warrant has assisted the organisation in carrying out its functions. Similar reporting requirements apply to the foreign intelligence agencies under section 10A of the Intelligence Services Act. This provides further assurance that foreign intelligence collection by ASIO is appropriate and being used for legitimate purposes.

Finally, section 17A of the ASIO Act includes an express protection for lawful advocacy, protest or dissent, and I am sure that you will agree that that is also of signal importance. The Inspector General of Intelligence and Security regularly reviews ASIO's warrant documentation and, in doing so, has full access to all of the warrant information including the supporting evidence that is provided to the Attorney-General. The Inspector General of Intelligence and Security looks at the legality and also the propriety which encompasses all those other aspects that sit in and around the legislation, including of course whether ASIO has sufficiently adhered to its internal guidelines. So, Senator, I suppose the government's position here is that there are strong protections and strong safeguards and this is not an undue or unwarranted, let alone frivolous, expansion of the powers of our intelligence agencies.

Senator LUDLAM (Western Australia) (19:53): I thank the minister and I feel enormously reassured.

Senator Feeney: So you should!

Senator LUDLAM: I feel as though the minister just read a big bag of wet cement into the Hansard record. All I will do, I suppose, by way of response is read briefly one last time from the Law Council's submission, where they put to the committee:

The proposed changes will almost render meaningless the threshold test that must be met by ASIO in order to obtain a warrant or authorisation to collect intelligence under 27A and 27B. A warrant or authorisation will be able to be obtained to gather information about the activities of any person or group outside Australia whenever those activities are considered to be somehow relevant to Australia's national security, Australia's foreign relations or Australia's national economic well-being.

Even if it is accepted that the current definition and test need revision in light of the changing nature of threats to Australia, it does not follow that the new definition and test must necessarily be reframed in such broad terms.

And finally they say:

The new definition and test will afford the Minister and the agency almost unfettered discretion to determine when and how ASIO's
powers may be used to gather information about people's activities, communications and relationships abroad.

And I think that pointed submission from the Law Council kicks a bit of a hole in what the minister just read in that was supposed to reassure us about the safeguard framework that has been built up in a cross-party way by this parliament, by state parliaments, by conservatives, by the Labor Party and by the Greens to safeguard against the undue use of power by clandestine agencies that this parliament has a limited oversight of. This is where we find ourselves. Chair, I will seek your advice about whether I should seek leave to move amendments (1), (2), (3) and (4) together or just (1), (2) and (3).

The TEMPORARY CHAIRMAN (Senator Moore): My advice would be (1), (2) and (3), Senator. Are you seeking leave to move (1), (2) and (3) together?

Senator LUDLAM: Unless Senator Brandis would like to make a brief late contribution and put some sense on the record.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (19:55): I have been listening to the exchanges between Senator Ludlam and Senator Feeney. I do intend to say something but I thought I might say that when Senator Ludlam moves his amendments.

Senator LUDLAM (Western Australia) (19:56): by leave—The Greens oppose items 3, 7 and 13 in schedule 1 in the following terms:

(1) Schedule 1, item 3, page 3 (lines 13 to 16), item TO BE OPPOSED.

[definition of foreign intelligence]

(2) Schedule 1, item 7, page 3 (line 24) to page 4 (line 4), item TO BE OPPOSED.

[collection of foreign intelligence]

(3) Schedule 1, item 13, page 4 (lines 17 to 24), item TO BE OPPOSED.

[collection of foreign intelligence]

I think that they do no more or less than what the Law Council proposed. They oppose the definition of 'foreign intelligence' and the language around the collection of foreign intelligence in two clauses. I will subsequently move amendment (4), which makes consequential amendments to the Telecommunications (Interception and Access) Act which then change the definition in that act to provide for that consistency that I think all parties are very keen to see remain on the statute books. So, without further debate, I will commend those first three amendments to the chamber.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (19:56): The opposition opposes the Greens amendments. Let me explain why. Before I do, let me affirm the opposition's full confidence in ASIO, and in its Director-General in particular. I listened to the exchanges between Senator Ludlam and Senator Feeney, and the opposition joins with the government in being of the view that the safeguards provided for in the ASIO Act and the mechanisms of institutional scrutiny through the director-general of intelligence services and parliamentary scrutiny through the joint parliamentary committee provide for an appropriate and thorough range of safeguards. There are also—and this is a point that Senator Feeney made—statutory protections in the ASIO Act itself which are unaffected by this legislation. So, on a statutory basis, from the point of view of parliamentary oversight and from the point of view of institutional oversight through appropriate oversight agencies, the opposition is well satisfied that we have the appropriate balance between giving ASIO, the particular agency in this case, the operational flexibility it needs and
ensuring that it does not overreach its functions and that, were there to be any overreach or inappropriate use of power, that overreach or inappropriate use of power would be identified and arrested by institutional and parliamentary scrutiny.

Against that background, let me address the amendments which Senator Ludlam moved. The effect of the amendments is to oppose the proposed amendments to the ASIO Act which change the definition of 'foreign intelligence'. Let me deal with them seriatim. The first of the amendments opposed by the Greens would insert a new definition of 'foreign intelligence' into the ASIO Act. The new definition would define foreign intelligence as 'intelligence about the capabilities, intentions or activities of people or organisations outside Australia'.

The current definition of 'foreign intelligence' in the act, which would be replaced by that definition, is intelligence relating to the capabilities, intentions or activities of a foreign power. A foreign power in the ASIO Act is defined as a foreign government, an entity that is directed or controlled by a foreign government or governments, or a foreign political organisation. The term 'foreign political organisation' is not defined. There is no question at all that the effect of this amendment would be to expand the scope of foreign intelligence that might be lawfully gathered by ASIO, in particular, by identifying individuals which the current act does not provide for and expanding, by making more generic, the character of organisations which might properly be the subject of intelligence gathering by ASIO.

I am bound to say that in the changed national security and international security environment, particularly with the growth of terrorist organisations of a very amorphous form, many of them identified with individuals and inspired by individuals, and those organisations which are unstructured and represent a much less easily defined character of threat to Australia and its interests, it seems to the opposition to be absolutely prudent for the definition of foreign intelligence to be made more flexible than being defined merely by reference to foreign governments or foreign powers, given the rigidity of the definition of 'foreign powers' in the ASIO Act. There is much talk, as we know, in this area of policy about non-state actors, but non-state actors can assume a variety of forms, and it is because of the variety of forms which non-state actors may represent that it is, in our view, important that the intelligence capability of ASIO be made more flexible. None of the safeguards in the act is affected by this amendment. This is a jurisdictional amendment to reflect the realities of the practice of international terrorism in particular. It leaves the protections in the ASIO Act entirely unaffected.

The other two government amendments to the ASIO Act which are opposed by the Greens are amendments to sections 27A(1)(b) and 27B(b) of the ASIO Act. They have a common form. In both cases, they extend the interests which might be the subject of a ministerial directive from the interests as currently defined which are—and I will paraphrase—limited to the collection of intelligence relating to matters important to the defence of the Commonwealth or the conduct of the Commonwealth's international affairs—that is the language of the current act—to intelligence relating to the interests of Australia's national security, Australia's foreign relations or Australia's national economic wellbeing. Apart from the substitution of the term 'Commonwealth' for the use of the word 'Australia', there are two substantive changes effected by those amendments. The first is to broaden the first
I will pause here and challenge Senator Ludlam to tell the chamber why it is that it is unwise to define the proper subject of a ministerial directive to the Director-General of ASIO as a matter relating to Australia's national security rather than Australia's defence. National security has a broader connotation, but surely what ASIO is concerned with is protection by the gathering of intelligence in relation to Australia's national security—'national security' being a somewhat more comprehensive and more modern term—rather than Australia's defence in a purely military sense. That seems, to the opposition, to be the very thing that ASIO ought to be concerned with.

The second respect in which these two proposed amendments of the ASIO Act expand the scope of a ministerial directive is to include a new category—that is, Australia's national economic wellbeing. Senator Ludlam, who could possibly imagine that in the modern world in which economic warfare, in particular cyberwarfare, is identified by any intelligent observer as one of the great threats to a nation's wellbeing, there is something wrong or perverse or overreaching in character about identifying a new category—that is, Australia's economic wellbeing—as a matter properly to be within the purview of a ministerial directive to the director-general of intelligence? For those reasons the two material changes, the second and third of the government amendments which you oppose, are appropriate amendments by redefining defence as national security and including a new category—that is, the protection of Australia's economic wellbeing. These seem to the opposition to be entirely suitable amendments and, for that reason, the opposition supports the government's amendments and opposes your amendments which would seek to delete them from the bill.

**Senator LUDLAM** (Western Australia) (20:07): I thank Senator Brandis for making a contribution to at least make clear the coalition's views on these changes. I think Senator Trood raised a couple of issues during the committee hearing but, apart from that, the coalition has been almost totally absent from the debate. So it is good that you are least here this evening to give us the benefit of your views. I do not share your comfort that the definitions that the government is introducing here, which we are seeking to repeal tonight, do not, as the Law Council and the Castan Centre for Public Law have indicated, radically broaden the range of subjects on whom ASIO should now be spying. I am not as comfortable as Senator Brandis and his colleagues in the coalition or the Labor Party with the idea that corporate espionage is now an entirely legitimate activity for ASIO. They must be doing something in that giant complex that is under construction on the other side of the lake; they are not in there quite yet, but we now have a better idea, albeit still shrouded in complete ambiguity, of what ASIO will be up to. I do not share the opposition’s comfort whatsoever that we are not about to vote through a very significant expansion to ASIO's mandate. I will not detain the chamber further. I commend the amendments.

**Senator BRANDIS** (Queensland—Deputy Leader of the Opposition in the Senate) (20:08): I do not want to prolong this, but may I respond to Senator Ludlam's contribution by saying this. First of all, we have discussed like matters in the past—not these particular matters but like matters—and I entirely accept your good faith in relation to this. As the saying goes, I know where you are coming from. I think you understand that I always cast a sceptical eye
over any legislation which significantly expands the policing power of the state, including the intelligence-gathering power of the state. With all due respect, I urge you not to adopt the Pavlovian response that, merely because a piece of legislation expands the mandate of a national security agency, it is ipso facto to be opposed. There are materially changed circumstances.

Any sophisticated observer of these matters would share your view, whether they be from the right of the political spectrum or the left or all points in between. We do have a broader understanding of what national security consists of—beyond merely military defence—than we did when this provision was written into the ASIO Act. We do have a more acute awareness of the extent to which damage to the economic wellbeing of Australia is itself a matter which has a direct bearing on the Australian national interest.

As I said earlier, the practice of attacking our important and vital trading interests through cyberwarfare—a phenomenon we have seen in recent years—has a direct bearing on our national wellbeing.

Like you, Senator Ludlam, I start from a presumption against further expanding the policing powers of the state—because I am a good Liberal. You are probably not a good Liberal, Senator Ludlam; you are probably a good Green—whatever that means. But Liberals do have a presumption against the expansion of state power. It is therefore a non sequitur that any statutory amendment which brings up to date and contemporises the powers of a national security and policing agency is ipso facto a bad thing. On this occasion, on a considered and reflective view, the opposition agrees with the government that these are beneficial and appropriate amendments.

**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (20:11): The government obviously opposes Greens amendments (1) to (3). I do not think that will come as any surprise to Senator Ludlam but I needed to state that on the record. I thank Senator Brandis for his contribution. Indeed, I thank the opposition for their position with respect to these amendments.

**The TEMPORARY CHAIRMAN** (Senator Mark Bishop) (20:12): The question is that schedule 1, items 3, 7 and 13, stand as printed.

The committee divided. [20:16]

(The Chairman—Senator Parry)

Ayes .................34
Noes .................9
Majority ............25

AYES

Abetz, E  
Bilyk, CL  
Boyce, SK  
Brown, CL  
Cameron, DN  
Collins, JMA  
Fawcett, DJ  
Furner, ML  
Lundy, KA  
Marshall, GM  
McLucas, J  
Nash, F  
Polley, H (teller)  
Sherry, NJ  
Stephens, U  
Thistlethwaite, M  
Williams, JR  
Arbib, MV  
Bishop, TM  
Brandis, GH  
Bushby, DC  
Cash, MC  
Crossin, P  
Feeney, D  
Gallacher, AM  
Madigan, JJ  
McEwen, A  
Moore, CM  
Parry, S  
Pratt, LC  
Singh, LM  
Sterle, G  
Urohquart, AE  
Xenophon, N

NOES

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

Question agreed to.
Senator LUDLAM (Western Australia) (20.20): I move Greens amendment (4) on sheet 7102:

Schedule 1, page 7 (after line 14), at the end of Part 1, add:

Telecommunications (Interception and Access) Act 1979

28A Section 5 (definition of foreign intelligence)

Repeal the definition, substitute:

foreign intelligence means intelligence relating to the capabilities, intentions or activities of a foreign power.

I do not think I need to further debate amendment (4) on the same Australian Greens sheet, 7102. It is consequential to the first three amendments, so I will just commend it to the Senate.

Senator BRANDIS: It is a consequential amendment. I would indicate on behalf of the opposition that, for the reasons indicated in the speech I gave a little earlier, the opposition will be opposing this change to the definition of foreign intelligence.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (20:20): Chairman, I take this opportunity to congratulate you on your election as Deputy President of the Senate. I would also indicate the government's opposition to Greens' amendment (4). The government does not support this amendment and I would make a few points with regard to that.

The Telecommunications (Interception and Access) Act 1979 was amended in 2010 to provide a definition of foreign intelligence that is consistent with the Intelligence Services Act. Earlier in the debate, Senator Ludlum indicated that his amendment would remove any inconsistencies and certainly would not give rise to any new inconsistencies. Unfortunately, it is the government's view that this is not the case. While the government's bill ensures that there is consistency with the Intelligence Services Act, the act that governs the collection of foreign intelligence by other agencies, Senator Ludlum's amendment would introduce a further inconsistency between these acts.

Further, the amendment of 2010 was particularly important for ensuring that Australia's national security agencies were able to obtain interception warrants, to gain intelligence necessary to protect our national interests, not just from traditional sources but from challenges posed by foreign individuals and organisations operating without any government support, whether it be for economic or personal gain.

Repealing this definition would prevent interception warrants being obtained under sections 11A, 11B and 11C of the Telecommunications (Interception and Access) Act in relation to individuals in nonstate or nonpolitical organisations who might be involved in activities such as people smuggling, people trafficking, illegal fishing and weapons proliferation. I simply repeat the point that has been made several times during this debate: the plethora of nonstate actors and the development and evolution of new threats and new technology threats are all things that the government remains keenly concerned about and the legislative framework should reflect that fact.

The CHAIRMAN: The question is that Greens amendment (4) on sheet 7102 be agreed to.

Question negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator FEENEY: I move:

That this bill be now read a third time.
Question agreed to.
Bill read a third time.

**Senator LUDLAM** (Western Australia) (20:24): by leave—I would like the Australian Greens votes on the third reading of the bill recorded.

**Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011**

**Second Reading**

Debate resumed on the motion:

That this bill be now read a second time.

**Senator CASH** (Western Australia) (20:24): Mr Deputy President, in commencing, I add my congratulations on your election by the Senate to the office of Deputy President.

I rise to speak on the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011. The bill amends the Migration Act 1958. The purpose of the bill is stated to ensure that anyone who is charged with a criminal offence whilst in detention is found to have failed the character test. From the date of commencement, a person will fail the character test if they have been convicted of an offence committed in immigration detention, during an escape from immigration detention, during a period where a person has escaped from immigration detention or if the person has been convicted of the offence of escaping from immigration detention, whether the conviction or offence occurred before, on or after that commencement. Where a person fails the character test, the delegate has the power to refuse the grant or cancel a visa on these new character grounds.

The coalition will be offering some support to this bill. However, we will be seeking to make an important amendment which I will return to later in my remarks. In the coalition's position, the bill is too little too late and it has only become necessary because of the deliberate policy of the former Rudd and the current Gillard Labor governments to soften the coalition's tough but fair border protection policies. All this bill does is create provisions to ensure that anyone inside a detention centre will fail the character test if they commit a crime that attracts a custodial sentence of less than 12 months duration. These changes are in part in response to the criminal behaviour during the recent disturbances at the Christmas Island and Villawood immigration detention centres which caused substantial damage to Commonwealth property and which cost taxpayers millions of dollars. It is stated that it is intended that these changes will also provide a disincentive for people in immigration detention from engaging in violent and disruptive behaviour.

In discussing this bill we must be cognisant of the fact that it does not excuse the minister's continued failure to act to cancel or refuse visas during his time in office. The important point to remember is that the minister currently has the powers to do that but he has failed to avail himself of those powers. After the Christmas Island riots, which began on 12 March 2011, the minister gave a press conference where he stated:

Character can have regard to a number of factors: whether somebody has been sentenced for a criminal activity to prison for more than 12 months, and also general conduct and whether somebody’s general conduct implies that they are not of good character. ... character considerations will be taken into account for those on Christmas Island who have organised and perpetrated this sort of activity. It will be taken into account by our decision makers and ultimately by me.

That was the statement of the current minister. When the minister uttered those words he was admitting that he is currently
personally able to make a decision to cancel a person's visa pursuant to section 501(3) of the Migration Act. In such a case, the decision is not subject to the rules of natural justice, nor is it reviewable on the merits and nor is the minister bound, in Australian law, by any of the matters set out in ministerial directions. I again state for the record: the minister has failed to make any decision to refuse or cancel visas using the existing powers. In fact, despite these powers, the history of Australian Labor Party ministers is that they have used their powers under section 501 only once in the past two years to refuse or cancel a visa.

Let's now compare that to the time between 1996-97 and 2003, when Philip Ruddock, as the minister for immigration, personally cancelled 570 visas under the character test provisions of section 501. Those are provisions which are in place and which the current minister, if he chose to, could avail himself of.

However, the current minister is one who refuses to exercise these powers. Why?—because he is a minister who is weak, spineless and completely out of his depth when it comes to the immigration portfolio. One of the fundamental flaws of this bill is that the amendment proposed by the government will only apply to a limited number of people. Whilst the coalition support the new criminal provisions we believe they do not go far enough in that they do not apply to every non-citizen. In fact, the government have failed to provide an explanation as to why the provisions do not apply to every non-citizen.

The government is very good in its rhetoric when it talks about wanting to strengthen the current border protection policies in Australia but this bill only goes part of the way. The coalition want to see this bill go all of the way and will help the government. We will help the government strengthen border protection in this country. We are going to propose an amendment to ensure that all visa holders are subject to the same requirement. Every visa holder convicted of a crime that attracts a custodial sentence of less than 12 months will also be found to be of not good character and liable to visa cancellation.

Why does the government want to restrict this bill to a certain class of person—those inside immigration detention—when it is telling the Australian public that the purpose of this bill is to strengthen the current laws? The current laws entitle the minister, if he chooses, to cancel someone's visa. But he does not choose to do that.

Proceeding to visa cancellation requires decision makers to consider the requirements set out in ministerial direction 41. The minister is not bound by these directions, nor is his decision subject to appeal on the merits. Under section 499 of the Migration Act the minister may give written directions to decision makers, including the Administrative Appeals Tribunal, on how they are to exercise powers under the Migration Act. The direction requires no act of parliament or regulation. It is issued administratively by the minister and is legally binding on all decision makers.

In June 2009, Minister Evans, the then immigration minister, issued direction 41 under section 499 in relation to visa refusal and cancellation under section 501 of the Migration Act. Minister Evans's direction revoked the previous direction 21 issued by Minister Ruddock in August 2001. The three primary mandated considerations established in the Ruddock directive for determining whether discretion should be used under section 501 to deny a non-citizen from remaining in Australia were (a) protection of the Australian community and members of
the community; (b) the expectations of the Australian community; and (c) the best interests of the child or children, where they are involved.

The Evans directive abolished the 'community expectations' mandatory consideration. This requirement would have had special relevance to the recent riots and incidents in our detention network, where, surprisingly, under the coalition's directive, it would have demanded action. However, under Minister Evans—under the Australian Labor Party's watered down directive—there is no community expectation test.

In addition, under the 'protection of the Australian community' mandatory consideration, the Evans directive abolished the subcriteria that 'visa refusal or cancellation may prevent or discourage similar conduct (general deterrence)' as well as specific reference to serious crimes against the Migration Act. This is also telling, given that the minister is now saying to the people of Australia that he wants to provide a general deterrent against misbehaviour in the detention network. If this is the case why doesn't the current minister merely seek to amend the new directive?

The Evans directive also abolished references to non-citizens providing bogus documentation or providing misleading statements or declarations as relevant to the consideration of a person's general conduct when considering whether they were of good character. Why is this relevant? This is relevant because during the coronial inquest into the explosion on board the SIEV36, numerous false statements were provided by those on board. However, we were faced with a minister who, yet again, did not take any action. All of the people on board the boat were provided with permanent visas, including those found to be part of a plan to scuttle the boat.

The Evans directive also gave greater primacy to international treaties. These are elevated to mandated primary considerations in all cases when exercising discretion. In the previous Ruddock directive they were listed to be considered only where relevant and they were subject to an overarching qualification that Australia's national interest take precedence. Paragraph 2.24 in the Ruddock directive stated:

Notwithstanding international obligations, the power to refuse or cancel must inherently remain a fundamental exercise of Australian sovereignty. The responsibility to determine who should be allowed to enter or to remain in Australia in the interests of the Australian community ultimately lies within the discretion of the responsible Minister.

That was under the Ruddock directive. That is not the case under the directive implemented by former Minister Evans.

The Ruddock directive states:

The purpose of refusing or cancelling a visa under section 501 is to protect the safety and welfare of the Australian community and to exercise a choice on behalf of the Australian community as a whole as to who should be allowed to enter or to remain in the community.

It is this latter sentiment that has been abandoned by the Australian Labor Party in the Evans directive, and maintained by Minister Bowen, despite his public statement that he wants to get tough.

The coalition believes the minister should repeal direction 41 and restore the provisions contained in direction 21, in particular the community expectations test and the sovereignty clause to give primacy to national interest requirements over international obligations. Whilst it is clear that the Evans directive weakened the grounds, it would not have prevented the minister acting in relation to the SIEV36 bombers or Christmas Island rioters should he have chosen to do so. The only reason we are debating this piece of
legislation in the chamber today is that we have a minister that, despite having certain powers available to him, declines to exercise those powers and make a decision. We have a minister that is weak. We have a minister that fails to exercise the discretionary powers that he is able to under an act.

As outlined by the shadow minister for immigration, Mr Morrison, in his speech on the second reading of this bill, on several occasions the minister has simply refused to use his discretionary powers and let the opportunity pass by him. We have a government that knowingly and willingly dismantled the successful policy regime it inherited from the coalition. They had the issue under control and yet they chose to make policy changes and created the problems that we are faced with today.

This is a government that has well and truly lost its way when it comes to protecting Australia's borders. Notwithstanding the current bill, former Prime Minister Rudd and current Prime Minister Gillard have an appalling record, and their lack of strong, decisive or appropriate action continues to confirm that the Australian Labor Party is failing to protect Australia's borders.

Senator HANSON-YOUNG (South Australia) (20:40): I rise to speak to the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011. After listening to Senator Cash's contribution, I am still unclear as to why the opposition are voting for this legislation. While I and the Greens have a very different reason for why we will not be supporting this legislation, the point was made very clearly by Senator Cash that the powers that the minister has spoken publicly about and that this bill would give him already exist within the current legislative framework. We know that he already has powers to ensure that people who hold convictions for serious criminal acts can be judged on that in terms of their character test when applying for permanent protection or permanent residency in Australia.

I struggle to see exactly why the opposition would support this bill, despite Senator Cash—with all due respect—spending the entire speech saying how the government does not need this particular piece of legislation. I agree: the government does not need this piece of legislation. I think it is simply for show. It is a knee-jerk reaction by the government of the day, in the aftermath of some pretty awful and horrific events in detention centres on Christmas Island and in Villawood, as to how to deal with the public concern about what was going on in immigration detention centres.

We know that the big problem within the current system is the length of time people are detained without access to information about their cases. They start to dwell, often leading to a deterioration of their mental health, of their feelings and, of course, of their hope that at some stage down the track their application process will be resolved.

The bill is unnecessary because the existing mechanisms within the act that enable visa refusal or cancellation on the basis of character are sufficient. They already exist. In the view of the UNHCR, the 1951 Refugee Convention provides the appropriate legal framework and parameters through which matters relating to a refugee's character should be considered by the country of asylum. Article 51 of the convention sets out an exhaustive list of grounds on which an asylum seeker can be refused protection. The Migration Act as its currently stands already enables the minister to delegate or to consider past and present criminal conduct in determining whether to exercise discretionary powers under the
existing character test outlined in sections 501 and 500A.

Let's get some facts on the table. The laws already exist for the minister to do this. In the past four to five years the minister has used this particular section no more than three times. I take the point that Senator Cash made when she said that, under Minister Ruddock, some 500 applications for visas were cancelled. I think that probably says more about the government of the day and the minister—that is, the 'lock up the kids and throw away the key' minister, Philip Ruddock—than about whether the legislation is sufficient to deal with these issues.

The legislation is sufficient if you want to judge people's character based on their criminal history. We know that. People have been able to do that in the past. The minister could do that now. This legislation simply goes to punishing people—vulnerable people—twice over because of their situation. If somebody is in serious doubt of an individual's character or the minister does not believe that a person should be given permanent protection and residency in this country, the minister already has the power to make those decisions. The proposed amendments will impose another tier of punishment on a person in addition to the punishment imposed by the court.

Because we have an awful situation within the immigration detention system, because we have people acting out of pure frustration about their current circumstances, and because we have overcrowding and long-term detention—the detention of children; the detention of people behind barbed wire, including children, as we do at the moment with 300-odd people held on Christmas Island—this bill says that, regardless of what the court decides, the minister will make a second judgment. This bill will take the power away from the court and the minister will decide whether somebody, simply because of one minor offence, should be subjected to a lifetime of fear, uncertainty and anxiety. That is what this bill will do.

This is not a bill that should be introduced by a government that believes in the fundamental principles of law. This is not a bill that should be introduced by a government that understands the fundamental principles of human rights. This is not a bill whose passage a government should be asking for if that government fundamentally believes in our principles and obligations under the refugee convention. This government wants to ship people off to Malaysia—expel vulnerable men, women and children to a country that has not signed the refugee convention and that cannot guarantee their rights. This government is doing everything it can to undermine Australia's obligations to the refugee convention.

Existing criminal law is adequate to deal with the criminal acts committed in immigration detention centres. I totally agree that the people responsible for the destruction of property, the burning of buildings, the rioting and violence that we have seen in immigration detention centres need to feel the full force of the law. That is what the law is for; that is what the courts are for. Let them do their job. Since when should the immigration minister be above the courts? Since when should the immigration minister, simply because of the political will of the day and the knee-jerk jumping at the ghosts of John Howard and Philip Ruddock, think, 'Hang on a minute; I'm going to put in a law that says that my decision is going to be greater than the courts of this land'? That is what this legislation does. It does not follow that this piece of legislation would be upheld by a government that believes in the principle of justice and the principles of law. It is likely to hand down lifetime sentences
that are absolutely disproportionate in terms of punishment for the offence committed.

The Australian Human Rights Commission submitted during the inquiry to this bill that:

... people involved in disturbances in immigration detention centres may currently be prosecuted, convicted and sentenced under the Criminal Code Act 1995.

Any additional punishment is incompatible with the principles of Australia's democratic justice system. During the Senate inquiry into this bill, not only did the government try and push it through and give us only an hour and a half to inquire into this legislation late on Thursday night in the middle of a Senate sitting, but they did not receive one supportive submission to this piece of legislation except their own submission from the bureaucratic department. No-one else believes that this is a good idea. Speak to the legal experts: no-one thinks that this is a good idea. It undermines our basic principles of justice. It says that because this government is jumping at the ghosts of John Howard and Philip Ruddock—and we can see why; we can see the opposition jumping up and saying, 'You're not tough enough'—we have this government saying, 'We are going to start giving punishment above that of the laws and courts in our land.'

This bill proposes amendments that would breach our international obligations. We know that, as outlined by Professor Jane McAdam from the University of New South Wales, the existing character test regime under sections 500A and 501 already breaches Australia's obligations under international law because the scope and matters that are to be considered in refusing to grant a visa exceed the exhaustive grounds permitted under article 1F of the 1951 refugee convention. We already have these laws, they already breach our obligations and this government wants to extend them even further without any justification, without using the existing laws thus far, all simply to grab a headline to say: 'You know what? We can be as tough as John Howard and Philip Ruddock were.' Bollocks.

A refugee who commits a crime in this country should feel the full force of the law. No-one is suggesting that they should not, but the current laws allow for the minister to use that, to understand that and not to grant a visa if that is the case. We simply do not need something that extends this beyond the laws that already exist.

The way in which this bill has been designed—the way it looks and the impact that it has on individuals—is discriminatory towards detainees. We know that the Law Council of Australia noted:

... the proposed amendments continue a legislative approach which treats people differently depending on their mode of arrival.

That is, of course, another breach of our international obligations. We should in this country, as other countries who are signatories to the refugee convention do, accept people's case for protection regardless of their mode of arrival. If somebody comes by boat, or if somebody comes by plane, the place from which they fled, their reasons for fleeing and their need for protection are not different simply because they came by boat rather than coming by plane.

This particular piece of legislation continues that abhorrent discrimination against people simply because of their mode of arrival—and I will tell you why. It is because people who arrive by boat in this country are automatically thrown into immigration detention. We know that the current process means that they are in immigration detention for longer. It is prolonged detention—indefinite detention for some, especially those who have arrived since 7 May. It actively discriminates against
people who are in immigration detention and those people who have had to take the most desperate avenues to reach our country.

The amendments are solely for those in immigration detention, which disproportionately affects those who have arrived by boat, who are immediately placed into immigration detention. The amendment is focused on deterring:

… detainees from engaging in disturbances in immigration detention, rather than the need to ensure all non-citizens arriving in Australia are of good character.

That is what the Australian Law Council said. The weight is not on whether people are of good character. The weight is on what happened to them, what they did and their behaviour while locked up for months and months and years on end. Of course that is going to disproportionately affect people who come here as asylum seekers and are immediately subject to our mandatory detention laws.

Do not believe for one second that this is about ensuring that we have people in this country of good character. It is absolutely not. It is about deterring behaviour that could simply be deterred if we did not have 6½ thousand people locked up in immigration detention centres in remote locations around the country and, of course, on Christmas Island. Amnesty International cites that failing the character test is not fair or reasonable punishment for criminal behaviour. Amnesty International further highlights that, unlike punishment in the criminal justice system, such as imprisonment, being denied a visa may have unquantifiable, ongoing, long-term consequences. Of course that is the case. Very vulnerable people who are subject to long-term detention, mental health deterioration, anxiety and confusion about their case do unfortunately do desperate things and take desperate measures.

The idea that anybody who is charged with any type of criminal activity, regardless of how big or small, should not be able to access the protection laws that our country has signed up to under the refugee convention not just undermines our obligations but undermines our ethos as a country for a fair go. It says that, regardless of the circumstance, we will automatically deny you protection simply because we lock you up and put you in a situation where you are so desperate that the only cry for help you can make is to sew your own lips together and cause disturbance—whatever the definition of that is—in the small, confined space that you have been locked up in for months and months.

This is not at all an honourable piece of legislation. These are very vulnerable people. These are very desperate people. I absolutely agree that if people are convicted of serious criminal acts then of course we need to be looking at their character. But the laws already exist for us to be able to do that. That is not what this piece of legislation is about. This legislation is saying that if you act in disturbance in an immigration detention centre, regardless of your personal circumstance, regardless of how long you have been there and regardless of the lack of service provision and access to independent support and advice that you have—who cares?—we are not going to let you into our country. We are not going to give you the protection of the convention that for some reason Australia's signature still sits on.

This government seriously has to start thinking about what it means to be a signatory to the refugee convention if it is simply able to be waved about or waived depending upon the domestic needs of the government of the day. That is not what the refugee convention is about. That is not what signatories to the refugee convention should be showing. Australia can do better than that.
Australia should be showing the way in our region as to what a serious business being a signatory to the refugee convention is. When we start playing with our laws and saying that one minister should be above the courts of our land, we have a problem. If the courts want to give somebody a serious conviction, that should, of course, be taken into consideration. That is what the current laws allow.

If we simply believe in this place that, regardless of what the courts say, the minister can automatically deny people permanent protection or avenues to be able to apply for protection then why do we even bother to go to places like Malaysia to negotiate protection for individuals? We do not even know what that means. We totally undermine it. We are trashing our reputation in the international sphere because of laws like this which this government wants to introduce. We are trashing our obligations to the refugee convention, and it makes it very, very difficult for countries like Australia to argue that others in our region should sign up to the refugee convention when we do not even prove or show what that obligation really takes: commitment to human rights, justice, fairness and, of course, the rule of law.

This is a terrible bill, and the Greens will not be supporting it. I think the government has to seriously consider how far it wants to go simply to undermine our basic principles of law and access to justice, the principles of a democratic justice system and, of course, our international obligations. It is an appalling piece of legislation and it should not proceed. (Time expired)

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:00): I rise both to speak to the amendment of Senator Cash and the opposition and to sum up the government’s position. Firstly I thank all honourable senators for their contributions to this second reading debate on the bill. I remind senators that the purpose of the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011 is to ensure that a visa applicant or holder will fail the character test should they be convicted of any offence committed while they were in immigration detention. The bill will also increase the maximum penalty for the manufacture, possession, use or distribution of weapons by immigration detainees from three to five years imprisonment. I remind senators that this strengthening will provide a more significant disincentive for criminal behaviour inside our immigration detention centres now and in the future. I note from the contributions of both the opposition and the Greens that there does at least appear to be a unanimity of view that it is not okay for immigration detainees to destroy property, to start fires, to throw roof tiles at staff and so forth. Senator Hanson-Young herself spoke to this point, and on that basis I think that is something we can all agree on.

The Australian community expects non-citizens who seek to remain in Australia to be of good character. To meet this expectation the government must not only have the ability to act decisively and effectively to deal with criminal behaviour by people in immigration detention but also have the legislative basis to refuse to grant a visa or to cancel a visa for those non-citizens who are not of good character. Where the character test is failed, it would, however, remain a matter for the minister or the minister’s delegate to consider the factors in relation to the nature of the conviction, any sentence applied and countervailing considerations before deciding whether to exercise the discretionary power under sections 501 and 500A of the Migration Act to refuse or cancel a visa. In other words, a determination that a person does not pass the character test under the new ground would enliven the
discretion to refuse or cancel a visa but would not dictate the outcome of the exercise of the discretion.

There is a vitally important point here, and I could not help but reach the conclusion on the basis of Senator Hanson-Young's remarks that it had been lost on the Greens. That is that the ministerial discretion exists only when considering the case of a person who has been convicted. I refer to the explanatory memorandum. It states very clearly:

The amendments to sections 501 and 500A have been drafted to ensure that, where applicable, they apply only to persons who have been convicted of an offence by a court. The amendments made to sections 501 and 500A would not apply to a person who is charged before a court with an offence or offences, and the court is satisfied, in respect of that charge or more than one of those charges, that the charge is proved, but has discharged the person without a conviction on that charge, or any of those charges. That is, there must be at least one conviction for the amendments to sections 501 and 500A to apply.

I think, Senator Hanson-Young, that, when one absorbs the import of that, much of your argument vanishes. You are right: it is not enough to accuse a detainee of making a disturbance. You are right: a minister is not above the courts of this land. You are right: it is a foundation principle of our legal system. It is a question of what is right and proper. I think that, when you absorb that critical point, you must by your own logic find yourself in support of this bill.

The amendments to the character provisions also do not change the existing arrangements relating to natural justice or review rights in relation to the character test. The measures are intended to send a strong and clear message—a message that those opposite have agreed with and a message that the Greens party and Senator Hanson-Young's contribution agree with. That message is this: the kind of unacceptable behaviour recently seen at immigration detention centres will not be tolerated by this government.

I turn to the opposition's amendment found on sheet 7100. In considering this, I make the point that this amendment has already failed in the House of Representatives. I trust it will do so here too, because this is an amendment that, amongst its many failings, seeks to introduce a test that is effectively impracticable. The opposition have flagged an amendment which would amend section 501(7) so that all people who have ever had a conviction for any offence with a custodial sentence would have the character test enlivened.

There are some four million permanent and temporary visa holders and applicants to Australia each year. The amendment would mean that, for instance, somebody applying to visit Australia on a tourist visa who had been sentenced to a custodial sentence in their home jurisdiction, even if that were 40 years previously, would fail this character test proposed by the opposition. It would mean that every single tourist to this country, regardless of visa type, would then have to be considered by the department in that light. This of course would have a significant impact on the tourist industry, let alone the regulatory and administrative burden that the opposition flings so blasely at the Australian government.

The amendment would also apply to skilled workers coming to this country under the 457 visa program, so many employers would be affected through that, and student visas would also be affected. I would like to see the impact on processing times. A regulatory impact statement on the opposition's amendment, I am sure, would bring tears to all our eyes. The opposition has not thought this through. That is why the
amendment has failed the common-sense test in the House of Representatives and why I trust it will fail that same test here.

It is appropriate that, if you are in immigration detention, you have a very clear understanding of your obligations, because offences in immigration detention—even offences which do not attract a penalty of 12 months or more—involve damage to Commonwealth property, risk to other detainees, risk to Commonwealth staff and risk to staff of service providers. We have seen all of this in recent times. They are serious offences and it is appropriate that this parliament and this government send a clear message about that sort of behaviour.

I table an addendum to the explanatory memorandum relating to the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill 2011. I thank the Senate and commend this bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator CASH (Western Australia) (21:09): I move coalition amendment (1) on sheet 7100:

(1) Schedule 1, page 3 (after line 31), after item 4, insert:

4A Paragraphs 501(7)(b), (c) and (d)

Repeal the paragraphs, substitute:

(b) the person has been sentenced to a term of imprisonment or periodic detention; or

(c) the person has been convicted of an offence and the court orders the person to participate in:

(i) a residential drug rehabilitation scheme; or

(ii) a residential program for the mentally ill; or

4B Subsections 501(8) and (9)

Repeal the subsections.

[character test]

I listened carefully to the minister's speech, and one of the things the minister said about why the government is putting forward this bill is that it expects non-citizens who remain in Australia to remain of good character. I agree with that; the coalition agrees with that. However, what I would say to the minister in relation to that statement is: if you expect non-citizens who remain in Australia to remain of good character, why are you proposing a bill that only applies to certain non-citizens, and they are those non-citizens who are in immigration detention? The bill as it is currently drafted does not apply to all non-citizens; it only applies to a certain class of non-citizen.

The coalition can help you with that, as I have already outlined. The coalition's amendment will ensure that the Migration Amendment (Strengthening the Character Test and Other Provisions) Bill to strengthen the provisions relating to general criminal conduct under the character test will apply to all persons who are not citizens, not just to those who are or should be held in detention. In other words, the amendment would actually achieve what the government has stated that it wants to do, which is to ensure that all non-citizens who remain in Australia remain of good character. The amendment that the coalition puts forward would enable this same test to apply to those on one side of the fence, in immigration detention, as it would to those on the other side of the fence, not in immigration detention. If the government were of a mind to ensure that we had clear standards about acceptable conduct and behaviour—and the minister has stated that that is what the government does have—it would apply these provisions across the board by supporting the coalition's amendment.

In relation to the allegation that the opposition's amendment will cause chaos in the processing of tourist visas and deny
access to subclass 976 visas provided through the electronic travel authority, or ETA as it is known, the first thing I would say to the minister in relation to his comments is this: please don't talk about processing times to those on this side of the chamber. The department is currently gridlocked due to the continuous arrival of boats. It simply, at this stage, does not have the resources to properly deal with the processing of most types of visas. Delays are being experienced, as we have heard in evidence at estimates hearings, across most visa categories. Why? Because of the government's failure to control Australia's borders. Turning specifically to the amendment the opposition has put forward, the allegation that it would cause a collapse of the electronic travel authority and would somehow cause chaos within the processing system is simply wrong.

The condition to deny a person access to the 976 electronic travel authority or ETA visa is specifically provided in the Migration Regulations. It is not provided in section 501 of the Migration Act, which the coalition's amendment specifically relates to. Regulations relating to the 976 ETA visa stipulate—and I suggest the minister read this—that regulation No. 8528 is a condition that must be imposed with respect to that visa. If you go to regulation 8528, it clearly sets out:

The holder must not have one or more criminal convictions, for which the sentence or sentences (whether served or not) are for a total period of 12 months duration or more, at the time of travel to, and entry into, Australia.

It is this document here, the regulation, that sets the bar of a 12-month custodial sentence for the ETA; it is not the Migration Act, which is what we are dealing with. They are two completely separate processes.

The coalition agrees that it is important to the national security of this country that we are made aware of any convictions prior to the person entering the country. I am very surprised at the minister's statement in relation to persons that are convicted of an offence with a sentence of less than 12 months. The implication of what the minister has said is that that makes them less of a threat to Australia. The coalition does not subscribe to that position. If you have been convicted of an offence carrying a custodial sentence of 12 months or less, quite possibly you are just as much a threat to Australia, and that is why we are moving these amendments.

We also need to bear in mind, in relation to the amendment put forward by the coalition, that—surprise, surprise—we are not the first country, and I would pre-empt that we will not be the last country, that has a requirement to notify of criminal convictions carrying sentences of less than 12 months. This is not a novel idea that is being put forward by the coalition. It is a standard requirement in China, India, Russia, Canada and the United States. If the minister actually wants to stand by the statement that he made that the government expects non-citizens who remain in Australia to remain of good character, supporting the coalition amendment would be a very good start.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (21:17): I will seek to respond to some of the points made by Senator Cash. Firstly, Senator Cash, you are quite right. This bill does have a narrow goal, if I can put it in those terms, and that is to deal with questions pertaining to persons in detention. It is not seeking to deal with the much wider class of persons that can be described as non-citizens. That is deliberate on our part and it is our continuing intention that that is the appropriate way for this legislation to operate.
On the question of boat arrivals and the workload of the department, I guess I would simply make the point that we believe the bill that we are offering to the Senate is practicable. We think that the amendment you are proposing would have a number of consequences, as I have already outlined in my summation of the second reading debate, that would render this legislation gravely flawed.

With respect to section 8528, the government simply makes the point that legislation always overrides regulation. We think the phenomenon you described is in fact a strengthening rather than a weakening or a distraction of the legislation.

Finally, on your point of custodial sentences and our using the time-honoured test of 12 months or more for a custodial sentence, I simply make the point that that is commonly found across legislation. It has been commonly found across legislation for many years. It was the same standard that applied when the coalition was in office and when Philip Ruddock was the minister for immigration. We think it is an entirely sensible course of action to continue to use that standard.

**Senator CASH (Western Australia)**

(21:19): Very briefly, the bill does have a narrow goal; I absolutely agree with you. That is why the coalition has put forward its amendment. But having a narrow goal is clearly inconsistent with the statement I believe that you made to the Senate, which was that the government expects non-citizens who remain in Australia to remain of good character. The more precise statement should have been that the government expects a certain class of non-citizens who remain in Australia—

**Senator FEENEY (Victoria—Parliamentary Secretary for Defence)**

(21:20): The government would make this point: we expect every person in Australia to be of good character. I point to the fact that this bill adds to the existing regulatory and legislative framework; it does not replace or subtract from the framework. What I mean by that is that we are, with this bill, providing the government with additional legislative powers with respect to non-citizens who are detained, but that in no way changes the existing obligations, or rights for that matter, of non-citizens found throughout the country. The existing pantheon of rules, laws and regulations will continue to apply to those persons. We would say to all of them that we expect them to remain of good standing in this country.

**Senator CASH** (Western Australia)

(21:21): I will briefly respond to the minister's comments on the custodial sentence of 12 months or more, the reason the government has adopted that definition of more than 12 months and the fact that it was the same under the former Howard government—in particular when Mr Ruddock was minister for immigration. I would merely state that you are right; it was. However, the fundamental difference, as I outlined in my speech during the second reading debate, was that Minister Ruddock took it upon himself to undertake and use the discretionary powers that were available to him in, I believe I stated, over 500 circumstances, which is fundamentally, diametrically opposite to the use of the powers by ministers under a Labor government.

Question put:
That the amendment (**Senator Cash's**) be agreed to.

The Senate divided. [21:25]

(The Deputy President—Senator Parry)

Ayes ...................... 28
Noes ...................... 34
Majority ................ 6
AYES

Abetz, E
Back, CJ
Birmingham, SJ
Boyce, SK
Cash, MC
Edwards, S
Fawcett, DJ
Fisher, M
Humphries, G
Macdonald, ID
Mason, B
Payne, MA
Scullion, NG
Adams, J (teller)
Brandis, GH
Colbeck, R
Eggleston, A
Fifield, MP
Heffernan, W
Joyce, B
Madigan, JJ
McKenzie, B
Parry, S
Ryan, SM
Williams, JR

NOES

Arbib, MV
Bishop, TM
Brown, RJ
Collins, JMA
Di Natale, R
Feeney, D
Gallacher, AM
Ludlam, S
Lundy, KA
McEwen, A
Milne, C
Polley, H
Rhiannon, L
Singh, LM
Sterle, G
Urquhart, AE
Wright, PL
Bilyk, CL
Brown, CL (teller)
Cameron, DN
Crossin, P
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludwig, JW
Marshall, GM
McLusas, J
Moore, CM
Pratt, LC
Siewert, R
Stephens, U
Waters, LJ
Xenophon, N

PAIRS

Bushby, DC
Coonan, H
Cormann, M
Fierravanti-Wells, C
Johnston, D
Kroger, H
Ronaldson, M
Sherry, NJ
Wong, P
Conroy, SM
Evans, C
Carr, KJ
Farrell, D
Hogg, JJ

Third Reading

Senator FEENEY: I move:
That this bill be now read a third time.
Question put.
The Senate divided. [21:32]
(The Deputy President—Senator Parry)

Ayes ................... 43
Noes ................... 9
Majority ............... 34

AYES

Abetz, E
Arbib, MV
Bernardi, C
Back, CJ
Bilyk, CL
Bishop, TM
Brown, CL (teller)
Cameron, DN
Cash, MC
Colbeck, R
Collins, JMA
Crossin, P
Eggleston, A
Fawcett, DJ
Feeney, D
Fisher, M
Furner, ML
Gallacher, AM
Joyce, B
Ludwig, JW
Lundy, KA
Macdonald, ID
Madigan, JJ
McKenzie, B
McEwen, A
Moore, CM
Nash, F
Parry, S
Polley, H
Pratt, LC
Siewert, R
Stephens, U
Thistlethwaite, M
Urquhart, AE
Wright, PL
Xenophon, N

NOES

Brown, RJ
Hanson-Young, SC
Milne, C
Rhiannon, L
Siewert, R (teller)
Waters, LJ

Question negatived.
Bill agreed to.
Bill reported without amendments; report adopted.
Mutual Assistance in Criminal Matters Amendment (Registration of Foreign Proceeds of Crime Orders) Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (21:36): I rise to speak on the Mutual Assistance in Criminal Matters (Registration of Foreign Proceeds of Crime Orders) Amendment Bill 2011. The coalition supports the purpose of this bill, which is to address potential constitutional issues with Australia’s current legislative framework for registering proceeds of crime orders. The coalition supports the aim of the amendments, which is to ensure that the framework for providing assistance to foreign countries and international tribunals in registering proceeds of crime orders issued by them continues to operate as intended.

It should be acknowledged that the Commonwealth Proceeds of Crime Act 2002 was introduced, and passed, under the former coalition government. The act provides a scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth law. The act allows in some circumstances for it to be used to confiscate the proceeds of crime against foreign law or the proceeds of crime against state laws. The act also permits confiscated funds to be returned to the Australian community in an effort to prevent and reduce the harmful effects of crime in Australia.

The act was the result of a review which found that the inclusion of civil forfeiture at a federal level would vastly extend the capacity to recover funds from breaches of federal law. The coalition supports the policy of confiscation of assets and profit derived from crimes committed overseas. In this context, I regret that it is still necessary to raise the issue of the convicted terrorist David Hicks. Mr Hicks was convicted of a terrorism related crime on his own plea of guilty in the United States. His memoir Guantanamo: My Journey is estimated to have generated about $350,000 in earnings for Mr Hicks in its initial print run. This is a matter I have raised on numerous occasions in Senate estimates and I am mystified still that no action has been taken to ensure that Mr Hicks does not profit from activity that, on any objective assessment, was seriously criminal and, by his own admission, related to the support of terrorism. The only thing the government will say is that it has commenced an investigation into the applicability of the legislation for Mr Hicks's publication that details his support for, and participation in, a terrorist organisation.

Part 2-5 of the Proceeds of Crime Act provides for the making of a 'literary proceeds order' where a person has committed an indictable offence against either Australian or foreign law and the court is satisfied that the person has derived 'literary proceeds' in relation to the offence. The offence to which Hicks pleaded guilty under the Military Commissions Act of the United States clearly falls within the definition of 'foreign indictable offence' under the Proceeds of Crime Act. The failure of the government to pursue the matter is symptomatic of its slowness to act and its inability to make difficult decisions, preferring instead to brush an issue under the carpet until someone drags it out and confronts them with it. Even then, the government will prevaricate and delay. So I use the occasion of the second reading debate on this bill to once again call upon the government to take the action available to it against Hicks and, in particular, to call upon the Attorney-General to issue the instruction
which he is enabled to issue under section 8 of the Director of Public Prosecutions Act to require the commencement of appropriate literary proceeds proceedings under the Proceeds of Crime Act.

Having said that, let me turn to some of the provisions of the bill currently before the Senate. Australia has a regime to permit cooperation with foreign countries in criminal matters, which includes the restraint and confiscation of benefits derived from foreign criminal offences where those assets are located in Australia. Part VI of the Mutual Assistance in Criminal Matters Act 1987 enables an Australian court to register and enforce orders issued by a foreign court. These foreign orders comprise restraining, confiscation and pecuniary penalty orders over property derived from serious criminal offences. Once a foreign order is registered in Australia, it is able to be enforced as though it were an Australian order made under the Proceeds of Crime Act. Provisions in the International Criminal Court Act 2002 and the International War Crimes Tribunals Act 1995 expand upon the regime in the Mutual Assistance Act and allow an Australian court to register and impose forfeiture orders issued by the International Criminal Court and designated international war crimes tribunals.

The need for this legislation arises from the High Court's decision in the case of International Finance Trust Company Ltd v New South Wales Crime Commission (2009). The court found provisions in the New South Wales proceeds of crime legislation which allowed for ex parte restraining orders to be invalid because they dictated to the New South Wales Supreme Court to a degree inconsistent with its status as a chapter 3 court under the Constitution. Under the New South Wales legislation the court had no discretion whether to hear from a person affected by the order, and there was no statutory provision available which allowed the person affected to challenge the making of the order.

The High Court's decision reinforced the principle that courts must be in a position to exercise control over the making or enforcement of proceeds of crime orders. Because there are similar mandatory provisions in the relevant Commonwealth legislation, there is an obvious need for the amendments proposed by this bill so that the Commonwealth legislative scheme does not fall foul of the High Court's decision. The amendments in this bill aim to ensure that the legislative regime providing a court with the power to register and enforce foreign orders continues to function as intended—that is, in conformity with what the High Court decided in the International Finance Trust Company case.

The bill will make technical but important amendments to the Mutual Assistance Act, the International Criminal Court Act and the International War Crimes Tribunal Act. The amendments will allow a court greater discretion when deciding whether a foreign order should be registered and enforced in Australia and whether or not to hear an application for registration on an ex parte basis. The amended provisions will require a court to register a foreign order unless it considers it would be contrary to the interests of justice to do so. In deciding whether registration of a foreign order is in the interests of justice, the court is to give due regard to the primary intention of the system. The bill will also insert an objects clause into subdivision A of part VI of the Mutual Assistance Act in order to clarify the intention of this system. The purpose of the subdivision is to allow Australia to give effect to foreign orders in circumstances where property related to serious foreign offences is located in Australia.
These amendments aim to bolster reciprocity as the basis of international crime cooperation. They aim to ensure Australia is able to provide the same level of assistance to other countries as we would expect of them. As I have foreshadowed, the amendments proposed by this bill are necessary and desirable. More than that, they are probably essential to the continued operation of the proceeds of crime regime as it applies to mutual assistance matters. Accordingly, they have the coalition's support.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs) (21:44): In the few minutes we have left I would like to take the opportunity to respond to Senator Brandis’ comments about proceeds of crime action in relation to David Hicks. As Senator Brandis well knows, part 2 of the Proceeds of Crime Act 2002 enables action to be taken to prevent a person from earning profits by exploiting their criminal notoriety.

This can apply to crimes against foreign law if the benefit is derived in Australia or is transferred to Australia, and a decision to commence literary proceeds action under the Proceeds of Crime Act 2002 is at the discretion of the Commonwealth Director of Public Prosecutions following an investigation by the Australian Federal Police. The Australian Federal Police has given a range of material to the Commonwealth Director of Public Prosecutions for their consideration in this case and it would be inappropriate to comment on the likelihood of any future legal proceedings.

In general, it is appropriate to make a couple of general comments on this bill, including the fact that criminals have no respect for borders and they exploit new technologies to expand the parameters of their activities. Increasingly, the proceeds derived from a criminal enterprise are being moved offshore and hidden in other countries in an attempt to thwart law enforcement authorities in their investigations and prosecutions. In these situations, it is imperative that law enforcement authorities in different countries can cooperate with each other to register and enforce the proceeds of crime orders issued in one jurisdiction where the subject of the order is located in another.

The proposed amendments in this bill, as we have heard, will make sure that Australian authorities can continue to offer efficient and effective assistance to their foreign counterparts in enforcing proceeds of crime orders issued by foreign courts. This ensures that criminals cannot escape the consequences of their actions by hiding their illicit gains in Australia. These measures will allow Australian authorities to continue to assist in returning property to its rightful owners. It will also send a strong message of deterrence to potential criminals and where you have derived material gains from the commission of a criminal offence, law enforcement authorities will strip you of that benefit.

I commend the Mutual Assistance in Criminal Matters Amendment (Registration of Foreign Proceeds of Crime Orders) Amendment Bill 2011 to the Senate and I thank senators for their contribution.

Question agreed to.

Bill read a second time.

Third Reading

The TEMPORARY CHAIRMAN (Senator Moore) (21:47): As no amendments to this bill have been circulated I shall call the minister to move the third reading, unless any senator requires that the bill be considered in Committee of the Whole.
Senator LUNDY: I move:
That this bill be now read a third time.
Question agreed to.
Bill read a third time.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Moore): Order! It being almost 9.50 pm I propose the question:
That the Senate do now adjourn.

Houston, Air Chief Marshal Angus AC, AFC

Senator FAULKNER (New South Wales) (21:48): Today, 4 July 2011, marks the end of the distinguished service of Air Chief Marshal Angus Houston in the Australian Defence Force, where he served for 41 years, the last six as Chief of the Defence Force.

The military has always been part of Angus's life, from his very early childhood which was spent on airbases in the United Kingdom where his father served as a Royal Air Force fighter pilot. Angus—or Allan, as his parents named him—was born in Ayrshire, Scotland, in 1947. Angus's efforts to join the RAF were thwarted by him simply being too tall, and this rejection was to be a life-changing event. At 20 years of age, and with less than $100 in his pocket, he headed for Australia.

After two years hard yakka on a sheep and wheat farm in Mukinbudin, experiencing floods, drought and penury, Cadet Air Crew Houston—by then and forever more known as Angus—was accepted into the RAAF, where he became a helicopter pilot. He never looked back. In 1980 Angus was awarded the Air Force Cross for his extraordinary skill as the pilot of an Iroquois helicopter during a maritime rescue in the most dangerous and difficult of conditions. The citation reads 'His display of outstanding skill, resolution and leadership undoubtedly provided inspiration for his crew in effecting this most difficult rescue.'

I think those words—outstanding skill, resolution and leadership—say much more about Angus Houston than just his endeavours on that shocking night back in 1979. He has shown those qualities, without fail, in every responsibility he has been asked to fulfil in the ADF. And let us not pretend this has always been easy. In 2002 it was Air Marshal Houston, the then Chief of Air Force, who was asked in his first appearance at a Senate estimates committee about whether he, as the Acting CDF, had informed the then defence minister there was no evidence to support the children overboard claims. I remember that afternoon well, as I asked Angus those questions. No-one should be surprised that, regardless of the consequences, he answered forthrightly and honestly. The headline 'Houston, we have a problem' was inevitable. The no-nonsense approach that day was typical of Angus Houston, who has earned and deserves such a strong reputation for his integrity and decency.

Tonight I would also like to acknowledge Angus's concern and compassion for the men and women of the ADF he has led. This has been clear to all—unfortunately far too often—when we have lost soldiers, killed in action in Afghanistan. The pain for families on their loss is searing, but Angus has always provided comfort to grieving families and grieving soldiers. He knows this to be a critically important and heavy responsibility for our nation's military leader.

In any organisation as large and as complex as the ADF, things will go wrong, and such problems will end up on the desk of the CDF. Angus has the highest standards and the highest expectations of our defence personnel, but, to be fair, they have not always been met. Angus Houston has driven
major cultural changes in the ADF. He has not tolerated bullying, bastardisation or sexual harassment. I am sure he would have preferred to have seen current inquiries, such as those into HMAS Success and ADFA, concluded before his retirement, but he can be absolutely confident that his leadership will result in enduring cultural change for the better in the ADF. His commitment to the men and women of the ADF has always impressed me—even his use of language. He would always say 'our people'. He had no higher priority, and everybody knew it.

Angus has won very wide respect within and without the ADF, from all sides of politics and in the international community, where he has been a formidable advocate for Australia's interests. I have seen firsthand how influential and respected Angus was in international forums, particularly with our partners in the International Security Assistance Force in Afghanistan. I thank him for that strong and effective advocacy. I would also like to acknowledge his close working relationship with secretaries of the Department of Defence and other senior Australian public servants that he worked with as CDF. He respected the Defence diarchy and was committed to making it work. I know too, of course—it goes without question—that he had the absolute respect of all three services.

At a personal level, as Minister for Defence, I always appreciated his wise counsel and his confidences on so many very sensitive matters. I simply say tonight to Angus: I sincerely thank you for your help, support and steadfastness to me and my staff when I was defence minister. It was a real pleasure to work closely with you.

Angus's story is a unique Australian story. I think Australia, his adopted nation, owes him a great debt of gratitude. He has done his country proud. I also thank his family, particularly his wife, Liz, for all her support over so many years of service. I sincerely hope that Angus and Liz will now have time to do all the things together that were never possible over the past 41 years.

Finally, I wish General David Hurley, the new CDF, as well as Air Marshal Mark Binskin, the new Vice Chief of the Defence Force, and all the new chiefs well for the future. General Hurley has big shoes to fill, but I have total confidence that he too will serve with great distinction as Chief of the Defence Force.

**Palliative Care**

**Senator BOYCE** (Queensland) (21:57): Two weeks ago I tabled and then spoke to my palliative care petition, which was signed by more than 4,000 Australians who care about palliative care. Later this week, I intend to table petitions with more signatories. Tonight, I want to speak about the palliative care service in South Brisbane that the Queensland state government is going to close down. In fact, the palliative care service at Canossa hospital would already have been closed but for people power in Queensland and—imagine this—the incompetence of the Queensland government. They could not even get their act together to achieve one of the savings they claimed to so desperately need to pay off the cost of the Queensland Health payroll mess. They hope to save a miserable $1.8 million by closing down the publicly funded beds at Canossa Private Hospital in South Brisbane.

The South Brisbane area currently has two level 3 palliative care services. Level 3 is the highest level of palliative care service there is. These services are at the St Vincent hospice service, which has 30 beds, 18 of which are public, and the Metro South Palliative Care Service, which currently has seven publicly funded beds located at Canossa Private Hospital. Both these
services provide high-quality care and services, and both are working to full capacity.

In the June budget, the Queensland state government announced 10 new palliative care beds for the QEII Jubilee Hospital, but they forgot to mention that the hospital has not been finished yet and the beds are not, in fact, new beds; they simply replace the publicly funded palliative care beds at Canossa Private Hospital, which currently operates and has patients. The beds announced in the budget must be additional beds if the government is to call them 'new beds', not beds taken away from another service.

For the Labor state government to even contemplate taking these beds away from the Canossa Private Hospital is bewildering to say the least, because of what this hospital has to offer. Patients of Canossa palliative care unit—people who are terminally ill—and their families and friends, cannot praise enough the level of care that it provides. These patients know what they are talking about because they have had very considerable experience within the hospital system in all its incarnations.

Canossa provides a peaceful, caring and serene environment and a high level of care for its patients. Patients say that the staff are simply wonderful. Staff are compassionate because they have a deep understanding of what patients and their families are going through. That is what good palliative care means—well trained and understanding staff. It is worth remembering that it is not only the patients who need the physical, spiritual and emotional support but also family members. That is what good palliative care means—a holistic approach to the impending death of a loved one. Otherwise family members are left to process not only their loss but also the way in which their loved one died.

It is not only exemplary care that Canossa Private Hospital provides; it also provides excellent training for palliative care medical specialists—another must for good palliative care—and can provide training for palliative care nurses and other professionals involved in offering palliative care. These are all absolute necessities for good, holistic palliative care.

Nationally, there is a critical shortage of palliative care medical specialists, yet the registrar training program at Canossa is the largest registrar training program in Queensland and provides doctors with vitally important skills in the palliative care area. These are much needed skills which will cease to be taught at Canossa if the state Labor government has its way. Research has shown that medical specialists treat the underlying condition but often overlook taking care of the palliative care needs of a patient, such as ensuring the most basic of things like managing pain appropriately or managing the support needed by a patient's family.

A strategy paper released earlier this year by the Australian Pain Management Association made the point that one-third of older Australians live in chronic pain. It identified huge gaps in knowledge and the services available to Australians living with pain. Amongst those gaps was the inadequate pain relief for end-of-life care.

We must remember that palliative care is different to acute care. It is not uncommon to see palliative care patients, sometimes in chronic pain, waiting for hours in accident and emergency wards in Queensland hospitals and then being admitted to an acute ward that does not have the skill set to deal with palliative care patients.

We have a growing and an ageing population. In Queensland, the total population is just over 4½ million and the
Metro South Health Service District, which Canossa Private Hospital falls under, has a catchment population of 1.34 million people. As I said, not only is our population growing, but it is ageing. It is therefore inconceivable that the Queensland government plans to take away these desperately needed palliative care beds from South Brisbane. Something is seriously wrong with both our federal and state health systems and our priorities if I have to make this argument.

Last year a petition was tabled in the Queensland parliament and a rally was held objecting to the closure of the public palliative care beds at Canossa hospital. I refer to the people power I spoke about earlier. That was partly the reason for a delay to the closure but, as I said, the other reason for the delay was the ineptitude of the Queensland government, which could not get anything else happening.

I urge the Queensland state government to listen to the people and to provide recurrent funding to Canossa Private Hospital for these palliative care beds. Across Australia we do not have enough palliative care beds. In Brisbane's Metro South area we do not have enough palliative care beds.

There was a paper released last year by Palliative Care Victoria, which gave a short summary of the growing body of evidence on the benefits of palliative care. It outlined a study conducted in 2008 of 33 high quality systematic literature reviews and 89 intervention studies and concluded that there is strong to moderate evidence that palliative care improves important aspects of end-of-life care, such as reducing a patient's distressing symptoms and relieving some of the burden on caregivers. Any of us can put ourselves in the situation and think about what it actually means when we talk about relieving the distressing symptoms of a terminally ill person or assisting their caregivers. I think that would give us a better picture of what we have to do here.

Studies of a range of palliative care interventions from Europe, Canada, Australia and the US demonstrate that good palliative care leads to consistent improvement in pain and other symptoms, to consistent improvement in patient and family satisfaction, and to the likelihood that the patient will receive care, and die, in the place of their choice—usually, and I think quite unsurprisingly, their home. That is not a common occurrence right now.

The evidence that palliative care delivers quality-of-life benefits and better use of limited health resources provides a strong case for increased funding of palliative care as an integral part of our health and aged care services; not the miserable and counterproductive approach of the Queensland government.

In closing, I urge the Queensland state government to keep the publicly funded beds at Canossa Private Hospital open. They should not be shut down.

Northern Territory: Health Services

Senator CROSSIN (Northern Territory) (22:07): I rise this evening to place on record and to proudly boast of the support that this federal government has provided to people in the Northern Territory when it comes to the provision of health services.

On 9 June this year I was delighted to accompany Prime Minister Julia Gillard, my Territorian colleague the Minister for Indigenous Health and minister for other areas, Warren Snowdon, the Chief Minister of the Northern Territory, Paul Henderson, and the Northern Territory Minister for Health, Kon Vatskalis, in opening a wonderful new medical teaching and education centre in Darwin. Based at Charles Darwin University and operated in
partnership with South Australia's Flinders University, this centre will for the first time enable students to undertake an entire medical degree in the Northern Territory.

The centre will play a crucial role in providing training support for medical students during their first two years under the new Flinders University Northern Territory Medical Program. The Northern Territory Medical Program has been made possible by capital funding from this government of $27.8 million over three years, $14 million of which will fund the new teaching and education centre. A further $6.6 million will be provided over the next four years for operational costs. The Northern Territory government is putting another $2.2 million a year towards the recurrent costs of training these doctors and pharmacists. This program is helping to train more Indigenous doctors to work in Aboriginal communities in the Northern Territory, which suffer some of the worst GP medical workforce shortages in the country.

What is absolutely fantastic about this new facility is that we can now grow our own doctors in the Northern Territory. Students will no longer have to leave the Territory and their homes to become a doctor. For many kids in school aspiring to be doctors, the practicalities have become much less challenging. As well as being great for future students, by association, this is a great step forward for the future of health services in the Northern Territory. I have heard the Chief Minister champion many times—and with his generosity I will reiterate his sentiments this evening—the fact that, for the very first time in the Northern Territory, whether you are Indigenous or non-Indigenous, you can now go to preschool, primary school, secondary school and then university and come out as a qualified doctor. For us that is a great step forward when it comes to the provision of health services in the Territory.

Research has long told us that the quality of a training and educational experience is very important in determining future locational choice. What this means, we would hope, is that a doctor trained in the Territory is much more likely to remain and practise in the Territory. And we desperately need more of them. Moreover, the new centre and its medical program is going to have a focus on Indigenous health and the needs of Indigenous communities. It is already showing dividends for the Northern Territory. Currently, only 1.6 per cent of the national health workforce is made up of Indigenous people. When the NT Medical Program commenced this year, 24 students began the course, of whom 10 are Indigenous, with enrolments increasing to 40 per year in the future.

This facility, and its focused program, will make a real difference to the way in which we deliver health care across the Northern Territory. Remote Australia is sorely in need of more doctors and healthcare workers. I am quite confident that a good proportion of the 24 students currently enrolled will end up working in the Northern Territory, and hopefully in the bush, where they are most needed. I have now had the pleasure of meeting these students twice—on the very first day they started this course in February and, of course, back in June when we opened the physical location in which they now continue their course. Already, several of them have indicated to me their desire to stay in the Northern Territory once they have completed their training. This is the start of making a tremendous difference to health outcomes for Aboriginal people in the Northern Territory.

Even if not all of the students end up working in the bush or going to remote
communities, it will be just as valuable if they choose to work in Darwin, Katherine or Alice Springs. The Royal Darwin Hospital's Emergency Department is the busiest in the country, and this is largely because of a shortage of GP services in Darwin and Palmerston. This new facility at Charles Darwin University will help take pressure off Territory hospitals by producing more GPs for the Territory.

I also add that the technology in this new centre is state-of-the-art. Our first-year students enrolled in this combined course with Flinders University watch and participate in lectures given at Flinders University with 100 or so other first-year students by teleconferencing over the internet. They now have the capacity to watch what is happening at a hospital in Adelaide or at Flinders University via the internet techniques and the state-of-the-art technology that has been put into this new medical facility. So it is not only forging a path when it comes to training more Indigenous and non-Indigenous doctors for the Northern Territory but it is also state-of-the-art when it comes to tele-health, e-health and internet service facilities for educational provision.

Also, we have the Palmerston Superclinic, another initiative of this government that is already starting to take pressure off our hospital. The Palmerston Superclinic will be a training centre for students who are at the medical school at CDU. The general practice side of the superclinic places an emphasis on providing the best care to the patients as well as teaching the new generation of doctors. It provides fantastic hands-on learning opportunities to medical students in a clinical environment, and an incentive to studying, training and ultimately working in the Territory.

Of course, if the opposition had their way, there would be no superclinic in Palmerston and there would be no funding for the dedicated placements in regional and remote Australia because they campaigned against that at the last election. This silly policy decision by the opposition would have negatively impacted the Northern Territory for generations. In fact, one of the reasons we are struggling for doctors today is that the Howard government capped the number of places across the country for students to study medicine. But this government's national health reform ensures doctors, nurses and allied health professionals are trained and equipped to work in areas where they are most needed. This new facility is an important part of our aspiration to train 6,000 more doctors in Australia.

The Gillard Labor government is serious about investing in health, particularly in the bush. The Northern Territory got a further $150 million surcharge in health infrastructure, a massive boost that will not only provide much needed health infrastructure but also have the added benefit of stimulating the local economy and creating jobs. Through the Health and Hospitals Fund, the federal government is providing $70 million to go towards a hospital for Palmerston, with the Northern Territory government providing the additional $40 million. Not only will the Palmerston hospital reduce patient waiting times, encourage patients to get treatment and reduce the number of hospital admissions but it will also focus on improving Indigenous health. The Palmerston hospital will be tailored to meet the needs of people in the Top End, including culturally appropriate services and the capacity to train Aboriginal support workers as well as medical, nursing and allied health staff.

Of course, the rest of the Territory has not been forgotten either. From the health infrastructure surcharge we will see $50.29
million invested in seven new primary healthcare clinics in remote communities: at Robinson River, at Ngukurr, at Canteen Creek, at Numbulwar, at Elliott, at Galilwinku and at Ntaria—a massive injection for the provision of health services for Indigenous people in those communities. Also included in this funding are four upgrades to existing clinics at Titjikala, Papunya, Maningrida and Docker River. Laynhapuy Homelands Association will receive a $623,000 grant out of the Health and Hospitals Fund to build new health facilities in three East Arnhem communities.

These investments in health across the territory are crucial to working towards closing the gap on Indigenous disadvantage. By educating and training Territory doctors in Territory schools and our own Territory university medical facility, we will be growing our own much-needed medical workforce, combined with the injection of capital funds to ensure that those remote communities in the Northern Territory have the best equipped and most modern clinics they can get access to. We are uniquely placed to start to tackle the health challenges in the Northern Territory and commit to truly closing that gap.

**Indexation of Military Pensions**

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Immigration and Multicultural Affairs) (22:17): Congratulations on your election to your new role, Mr Deputy President. Since the Senate debate on 16 June on the Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill, my constituents and those of senators in other states have expressed frustration and anger at the bill's failure. I understand this. Their indexation campaign has been a long one, and I have worked over the years to help promote it.

The reasons for the bill's failure were, firstly, the present budget situation and the need to return to a surplus by 2012-13; and, secondly, that the bill itself was so flawed. I took part in the debate on 16 June to point out some of the problems of this bill and why I was voting against it. In summary, this bill did not provide a sustainable, fair and funded solution to the inadequacy of CPI indexation. Unfortunately a lot of misinformation has since been circulated, either from ignorance or malice. One of these myths is that before the last election I and the Labor Party had promised to vote for this bill.

The facts are that in June last year the opposition put out a press release announcing that a coalition government would index DFRDB superannuation pensions by the same factors as used for aged pensions. This indexation would include a wage related or MTAWE factor, which the coalition government had so strenuously opposed throughout its 11 years of government. However, before this announcement the then Minister for Finance and Deregulation had announced that our government, the Labor government, had accepted the Matthews report and its recommendations. In essence the Matthews report recommended that the method of indexation for Commonwealth defence and civilian pensions should remain indexed by CPI alone, unless:

... a robust index which reflects the price inflation experience of superannuants better than the CPI becomes available in the future.

So at the pre-election meetings last year my colleagues and I were bound by the terms of the Matthews report and, of course, we were criticised by some for this stand. In a pre-election meeting in Canberra organised by SCOA and DFWA on 16 August last year, specifically on the topic of indexation, I
acknowledged the government's acceptance of the Matthews report and I said:

And so my work and that of my colleagues has been to find a way to use the Matthews report to still achieve our basic aim of fair retirement incomes for all ComSuper and Defence superannuants.

Firstly, recommendation 4 of the Matthews report gives us the green light to implement a new and fair indexation method. The shortcomings of the CPI alone as a measure of the cost of living have been acknowledged—even by Matthews! The government in introducing its new index for the aged pension (the PBLCI—Pensioner and Beneficiary Living Cost Index) acknowledged this also, so it is not a point of argument.

I also said at that pre-election meeting:

I do not consider, as the coalition does, that a changed indexation applying to only one section of defence pensions is a fair solution. Of course they deserve it, and of course we owe a debt to those who have served Australia, but we should not seek to water down this campaign, or to divide those involved, by choosing to benefit only one group and not the others. I agree with David Jamison and the DFWA that this political football with veterans should stop.

At this same pre-election meeting Senator Humphries admitted that the coalition had no plans to extend the indexation provisions to other similarly disadvantaged groups, such as the over 7,200 Military Superannuation and Benefits Scheme members or those in the CSS or PSS schemes. I thought it fairly ironic to see that Senator Nick Minchin, who throughout the 11 years of the Howard government so vigorously opposed any change whatsoever to the indexation of military and civilian pensions, was on 16 June paired on the side of supporting the private member's DFRDB indexation bill.

As I have noted, I have supported the campaign to improve the indexation factors applying to all Commonwealth military and civilian pensions and have sought ideas on how to achieve this within the terms of the Labor government policies. This has included setting up a campaign section on my website. Through this website we have been able to gather information and ideas, to compile some case histories and case studies, and to gauge major areas of need, such as those on the lower pensions. I thank contributors who have made constructive suggestions and comments and those who have raised legitimate criticisms and aired their frustrations.

Unfortunately, because of recent inappropriate, inaccurate and abusive comments which unfairly reflect on many passionate and constructive advocates for fair indexation, I have decided to close this comments section for the time being. Of course, I could have filtered out the abusive comments, but that would bring accusations of censorship. Those interested in the history of the campaign to date can still access it on the website, and comments can still reach me by mail or email.

Together with many other senators and members, I continue to seek ways to improve the superannuation outcomes for those on Commonwealth, military and civilian pensions. Our work in persuading our colleagues of the merits and necessity for this action has, I think, been hampered by a daily barrage of abusive, sometimes racist and inaccurate emails apparently sent to all senators and members as well as staff. This is counterproductive to the campaign, and it has been recognised by the DFWA, who have apologised and disassociated their organisation from such action.

We need to remember that the Labor government, in so successfully tackling the impact of the global financial crisis, took major initiatives to help those on the lowest incomes, and these were welcomed by the superannuants organisations. They particularly noted the benefits, such as the increase
in the low-income tax offset, the increase in the tax-free threshold for low-income earners and the 50 per cent tax discount on interest on savings and deposits of up to $1,000. Those on ComSuper and Defence pensions, like others in the community, benefited from the economic stimulus plan and received either the $900 tax bonus payment or the earlier Economic Security Strategy payments to pensioners and carers of $1,400 for singles or $2,100 for couples. They have shared the benefits of the Labor government’s investments in health reform and aged care services. Australians in general, including those on Commonwealth defence and civilian pensions, would not have fared so well under a coalition government and its cuts.

That said, we recognise there is still more to do. That the CPI no longer provides fair indexation is no longer in dispute, and I have sought advice on the development of a new analytical living cost index, or ALCI, as foreshadowed in the Matthews review, to reflect more accurately the cost of living of military and civilian superannuants, including the DFRDB recipients to whom this bill would have applied.

I will continue to consult and to work with representative organisations such as DRWA, SCOA and the peak body, ACPSRO, to whom I am indebted for ongoing advice. A priority of my advocacy within government will be to make the case for recognition of specific cost of living impacts on Commonwealth defence and civilian superannuants and to alleviate the tax burden of those on the lowest incomes. This is a campaign I feel very strongly about, and I commend this issue to all of my colleagues and believe that the campaign is at its best when it is bipartisan in its character.

Senate adjourned at 22:26
Residential Care Subsidy Amendment Principles 2011 (No. 2) [F2011L01222].


Anti-Money Laundering and Counter-Terrorism Financing Act—Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment Instrument 2011 (No. 4) [F2011L01266].


Australian Prudential Regulation Authority Act—

Australian Prudential Regulation Authority (Confidentiality) Determination No. 13 of 2011—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 [F2011L01226].

Australian Prudential Regulation Authority Instrument Fixing Charges No. 2 of 2011—Models-based capital adequacy requirements for ADIs for the financial year 2010-11 [F2011L01260].


Authorised Non-operating Holding Companies Supervisory Levy Imposition Act—Authorised Non-operating Holding Companies Supervisory Levy Imposition Determination 2011 [F2011L01332].


Child Support (Registration and Collection) Act—Child Support (Registration and Collection) (Designated Program Act) Specification 2011 (No. 1) [F2011L01326].

Civil Aviation Act—

Civil Aviation Order 82.3 Amendment Order (No. 1) 2011 [F2011L01197].

Civil Aviation Order 82.5 Amendment Order (No. 2) 2011 [F2011L01195].

Civil Aviation Regulations—

Civil Aviation Order 100.5 Amendment Instrument 2011 (No. 1) [F2011L01193].

Civil Aviation Order 100.23 Amendment Order (No. 1) 2011 [F2011L01186].

Civil Aviation Order 100.24 Amendment Order (No. 1) 2011 [F2011L01190].

Civil Aviation Order 100.26 Amendment Order (No. 1) 2011 [F2011L01251].

Civil Aviation Order 100.66 Repeal Order 2011 [F2011L01184].

Civil Aviation Order 104.0 Amendment Order (No. 1) 2011 [F2011L01189].

Instruments Nos CASA—


181/11—Authorisation – to carry out maintenance on class A or class B aircraft; Exemption – to certify maintenance on class A or class B aircraft [F2011L01198].

268/11—Direction – number of cabin attendants [F2011L01253].


EX59/11—Exemption – take-off with residual traces of frost and ice [F2011L01215].

EX60/11—Exemptions – applicable to Part 42 aircraft [F2011L01213].

Civil Aviation Regulations and Civil Aviation Safety Regulations—Instrument No. CASA 180/11—Authorisation – Category A maintenance authority holder in a CAR 30 organisation; Exemption – from regulation 66.130 of CASR 1998 [F2011L01196].

Civil Aviation Safety Regulations—

Instruments Nos CASA—

EX61/11—Exemption – from paragraph 42.030 (2)(b) and subparagraph 42.030 (2)(e)(ii) of CASR 1998 [F2011L01235].

EX65/11—Exemption – precision runway monitor system standards [F2011L01298].


Corporations Act—ASIC Class Orders—
[CO 11/555] [F2011L01303].
[CO 11/617] [F2011L01250].

Customs Act—
Tariff Concession Orders—
0902344 [F2011L01123].
0909958 [F2011L01185].
0928054 [F2011L01142].
1012994 [F2011L01169].
1014887 [F2011L01175].
1016152 [F2011L01135].
1022426 [F2011L01177].
1023820 [F2011L01153].
1032396 [F2011L01181].
1043104 [F2011L01149].
1043662 [F2011L01166].
1044228 [F2011L01172].
1045657 [F2011L01103].
1048555 [F2011L01147].
1055724 [F2011L01182].
1056465 [F2011L01161].
1056466 [F2011L01163].
1100392 [F2011L01133].

Tariff Concession Revocation Instruments—
13/2011 [F2011L01148].
14/2011 [F2011L01151].
15/2011 [F2011L01205].
16/2011 [F2011L01156].
17/2011 [F2011L01165].
18/2011 [F2011L01168].
19/2011 [F2011L01216].
20/2011 [F2011L01209].

21/2011 [F2011L01183].
22/2011 [F2011L01237].
50/2011 [F2011L01187].
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64/2011 [F2011L01201].
65/2011 [F2011L01212].
70/2011 [F2011L01231].
71/2011 [F2011L01238].
72/2011 [F2011L01236].
73/2011 [F2011L01243].
75/2011 [F2011L01244].
77/2011 [F2011L01245].
78/2011 [F2011L01246].


Education Services for Overseas Students Act—
ELICOS Standards [F2011L01252].
Foundation Program Standards [F2011L01247].

Specification of criteria for the purposes of the definition of designated authority [F2011L01264].

Environment Protection and Biodiversity Conservation Act—
Amendments of lists of exempt native specimens—
EPBC303DC/SFS/2011/12 [F2011L01280].
EPBC303DC/SFS/2011/16 [F2011L01289].
Health Insurance Act—Health Insurance (Cone Beam Computed Tomography) Determination 2011 [F2011L01323].
Human Services (Centrelink) Act—Human Services (Centrelink) (Designated Program Act) Specification 2011 (No. 1) [F2011L01327].
Human Services (Medicare) Act—Human Services (Medicare) (Designated Program Act) Specification 2011 (No. 1) [F2011L01300].
MN26-11c of 2011—Migration Agents (Continuing Professional Development – Seminar) [F2011L01256].
11/026—Required health assessment [F2011L01258].
11/027—Pass marks and pool marks in relation to applications for General Skilled Migration Visas (classes VE, VC, VF and VB) [F2011L01218].
11/033—Migration occupation in demand [F2011L01229].
11/034—Skilled occupations, relevant assessing authorities, countries and points for general skilled migration visas and certain other visas [F2011L01227].

11/035—Skilled occupations, relevant assessing authorities and countries for general skilled migration visas [F2011L01242].

11/036—Language tests, score and passports for general skilled migration [F2011L01233].

11/037—Educational qualifications [F2011L01239].

11/038—Credentialled community language qualifications [F2011L01225].


National Health Act—Instruments Nos PB—
46 of 2011—Amendment Determination under section 84AH of the National Health Act 1953 (2011) (No. 3) [F2011L01207].

47 of 2011—National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2011 (No. 6) [F2011L01221].

48 of 2011—National Health (Chemotherapy Pharmaceuticals Access Program) Special Arrangement Amendment Instrument 2011 (No. 6) [F2011L01202].

49 of 2011—National Health (Remote Aboriginal Health Services Program) Special Arrangements Amendment Instrument 2011 (No. 1) [F2011L01220].


Radiocommunications Act—
Radiocommunications (Accreditation—Prescribed Certificates) Amendment Principles 2011 (No. 1) [F2011L01312].

Remuneration Tribunal Act—
Determinations—

2011/08: Remuneration and Allowances for Holders of Full-Time Public Office [F2011L01276].


Sydney Airport Curfew Act—Dispensation Report 05/11.

Taxation Administration Act—Lodgment of statements by first home saver account providers for the year ended 30 June 2011 in accordance with the Taxation Administration Act 1953 [F2011L01297].

Telecommunications Act—

Telecommunications (Regulated Services) Determination (No. 1) 2011 [F2011L01248].

Telecommunications (Structural Separation—Networks and Services Exemption) Instrument (No. 1) 2011 [F2011L01249].

Telecommunications (Consumer Protection and Service Standards) Act—
Universal Service Subsidies (2010-11 Contestable Areas) Determination (No. 1) 2011 [F2011L01265].

Universal Service Subsidies (2010-11 Default Area) Determination (No. 1) 2011 [F2011L01261].

Universal Service Subsidies (2010-11 Extended Zones) Determination (No. 1) 2011 [F2011L01262].

Indexed List of Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2010—Statement of compliance—Fair Work Ombudsman.
QUESTIONS ON NOTICE

(Question Nos 270, 282, 295, 297 and 298)

Senator Humphries asked the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, Minister representing the Minister for School Education, Early Childhood and Youth and Minister representing the Minister for Employment Participation and Childcare and the Minister for Indigenous Employment and Economic Development and the Minister for Sport, upon notice, on 29 November 2010:

Since 14 September 2010:

(1) Do the Minister and Parliamentary Secretaries have access to a departmental credit card; if so, can a copy be provided of all bank statements.

(2) (a) How many mobile devices are provided to the Minister's office; and (b) what is the total spend on mobile devices for each office to date.

(3) At what level is each staff member employed in the office.

(4) What has been the total cost of travel for the Minister and Parliamentary Secretaries.

(5) What has been the total travel for all staff, by office.

Senator Chris Evans: The answer to the honourable senator's question is as follows:

(1) The Minister and the Parliamentary Secretary are not issued with departmental credit cards.

(2) (a) The following mobile devices have been assigned to the Minister and ministerial staff since 14 September 2010:

<table>
<thead>
<tr>
<th>Ministerial Office</th>
<th>Mobile phones, blackberries and data cards</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minister</td>
</tr>
<tr>
<td>Senator Chris Evans</td>
<td>*</td>
</tr>
<tr>
<td>The Hon Peter Garrett MP</td>
<td>1</td>
</tr>
<tr>
<td>The Hon Kate Ellis MP</td>
<td>1</td>
</tr>
<tr>
<td>Senator the Hon Mark Arbib #</td>
<td>**</td>
</tr>
<tr>
<td>Senator the Hon Jacinta Collins</td>
<td>2</td>
</tr>
</tbody>
</table>

* Mobile devices provided by the Department of Finance and Deregulation

** Mobile devices provided prior to 14 September 2010

# The Department of Prime Minister and Cabinet has not issued any mobile phones, blackberries and data cards

(b) Total spend on mobile devices for each office as per the Telstra and Optus billing period between September and November 2010 is as follows:

<table>
<thead>
<tr>
<th>Ministers</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senator Chris Evans</td>
<td>$246</td>
</tr>
<tr>
<td>The Hon Peter Garrett MP</td>
<td>$569</td>
</tr>
<tr>
<td>The Hon Kate Ellis MP</td>
<td>$1,257</td>
</tr>
<tr>
<td>Senator the Hon Mark Arbib</td>
<td>$4,663</td>
</tr>
<tr>
<td>Senator the Hon Jacinta Collins</td>
<td>$1,342</td>
</tr>
</tbody>
</table>
Ministerial Staff | Total
---|---
Senator Chris Evans staff | $14,190
The Hon Peter Garrett MP staff | $10,134
The Hon Kate Ellis MP staff | $9,213
Senator the Hon Mark Arbib's staff | $16,084
Senator the Hon Jacinta Collins staff | $4,765

(3) The employment of staff under the Members of Parliament (Staff) Act 1984 is administered by the Department of Finance and Deregulation. On 19 October 2010, the Department of Finance and Deregulation tabled with the Senate F&PA Committee, Government Personal positions as at 1 October 2010.

(4) The costs of official travel by Ministers, Parliamentary Secretaries and accompanying staff employed under the Members of Parliament (Staff) Act 1984 are largely paid by the Department of Finance and Deregulation. As such, with the exception of those costs listed below, the information sought will be tabled by the Special Minister of State in the last sitting week of June 2011 in his six-monthly report on Parliamentarians Travel paid by the Department of Finance and Deregulation.

The total cost of short-term transport (e.g. hire cars, taxis) since between September and November 2010 was:

<table>
<thead>
<tr>
<th>Ministers' office</th>
<th>Domestic Taxi, Comcar and car hire</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senator Chris Evans</td>
<td>$10,630</td>
</tr>
<tr>
<td>The Hon Peter Garrett MP</td>
<td>$6,291</td>
</tr>
<tr>
<td>The Hon Kate Ellis MP</td>
<td>$5,953</td>
</tr>
<tr>
<td>Senator the Hon Mark Arbib</td>
<td>$8,701</td>
</tr>
<tr>
<td>Senator the Hon Jacinta Collins</td>
<td>$4,966</td>
</tr>
</tbody>
</table>

(5) The Special Minister of State will respond on behalf of other ministers.

Tertiary Education, Skills, Jobs and Workplace Relations: Media Monitoring
(Question No. 394)

Senator Mason asked the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, upon notice, on 10 February 2011:

What is the total cost of media monitoring services for the department, its agencies and the Minister's office (listed separately) for each financial year since 2007-08.

Senator Chris Evans: The answer to the honourable senator's question is as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DEEWR</td>
<td>$1,284,566.30*</td>
<td>$1,170,251.90</td>
<td>$1,051,827.42</td>
<td>$652,695.44 (to 28 Feb 2011)</td>
</tr>
<tr>
<td>Minister Evans</td>
<td>None to date</td>
<td>None to date</td>
<td>None to date</td>
<td>None to date</td>
</tr>
<tr>
<td>Workplace Ombudsman/Fair Work Ombudsman**</td>
<td>$40,609.94</td>
<td>$21,094.83</td>
<td>None to date</td>
<td>None to date</td>
</tr>
<tr>
<td>Fair Work Australia***</td>
<td>None to date</td>
<td>None to date</td>
<td>None to date</td>
<td>None to date</td>
</tr>
</tbody>
</table>

QUESTIONs ON NOTICE
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Office of the Australian Building and Construction Commission</td>
<td>$12,977.66</td>
<td>$11,814.29</td>
<td>$7,878.79</td>
<td></td>
</tr>
<tr>
<td>Safe Work Australia</td>
<td>$14,894.00***</td>
<td></td>
<td></td>
<td>$8,272.00</td>
</tr>
</tbody>
</table>

Figures are GST inclusive.

Portfolio agencies and ministerial offices use the main DEEWR service but pay for any special orders placed (such as transcripts or video files) or additional services (such as subscription to services such as Meltwater or AAP wire services). The amounts for the additional orders and services are listed above by minister and agency.

* Includes former DEST, former DEWR and then DEEWR from December 2007.

** Office of the Workplace Ombudsman became the Fair Work Ombudsman on 1 July 2009.

*** FWA came into existence on 1 July 2009

**** Paid for a 2 year subscription to online/internet monitoring service – hence no cost recorded for the subsequent year.

**Tertiary Education, Skills, Jobs and Workplace Relations: Websites**

(Question No. 400)

Senator Mason asked the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, upon notice, on 10 February 2011:

Can a list be provided detailing:

(a) the internet domain names registered by the department, related statutory bodies or agents on their behalf;

(b) the cost of designing and building each site; and

(c) the cost of maintaining each site (broken down by year since establishment).

Senator Chris Evans: The answer to the honourable senator's question is as follows:

Attachment A contains a list of domain names that represent active websites used by the department, related statutory bodies or agents on the department's behalf. A number of additional domain names have been registered to protect the trademarks held by the department.

The majority of departmental websites are developed in-house using existing staff from program areas, communication and IT teams from across the department. The department often uses in-house resources to develop websites for its statutory bodies and agencies, consistent with APS guidelines. In some cases elements of production of a website may be outsourced to support in-house activities. The department does not attribute costs of the various activities associated with the production of each website to that particular website.

Maintenance of websites is routinely performed using in-house resources, contracted service providers or a combination of both. The department does not attribute costs of the various activities associated with the ongoing content development and maintenance of each website.

Attachment A

List of DEEWR domain names for active websites.


http://www.reframingthefuture.net
http://www.safeworkaustralia.gov.au
http://www.skillsaustralia.gov.au
http://www.skillsinfo.gov.au
http://www.smarterschools.gov.au
http://www.socialinclusion.gov.au
http://www.studyoverseas.gov.au
http://www.sustainability.edu.au/
http://www.tpatwork.com/
http://www.vetnetwork.org.au/
http://www.whatworks.edu.au/
http://www.worldskills.org.au
http://www.yalp.org.au/
http://www.youth.gov.au
http://www.youthweek.com
http://www1.curriculum.edu.au/ozjacweb/about.html

Tertiary Education, Skills, Jobs and Workplace Relations: Staffing
(Question No. 613)

Senator Siewert asked the Minister for Tertiary Education, Skills, Jobs and Workplace Relations, upon notice, on 27 April 2011:

1. What is the total number of staff currently employed.
2. What is the total number of staff with a disability currently employed.
3. What policies or programs are in place to encourage the recruitment of people with a disability.
4. What retention strategies are in place for people with a disability.
5. What career pathways or plans are on offer for people with a disability; if none, why.
(6) Are there any specific targets for recruitment and retention; if not, why not.
(7) What policies, programs or services are there to support staff with a disability.
(8) Can details be provided of any policies, programs, services or plans currently under development within the department and its agencies, concerning the employment of people with a disability.

Senator Chris Evans: The answer to the honourable senator's question is as follows:

(1) As at 30 April 2011, DEEWR employed 5472 staff.
(2) As at 30 April 2011, 147 who disclosed a disability.
(3) DEEWR's existing recruitment programs have been effective in attracting employees with disabilities. For example, the department's annual graduate intake has been successful in attracting graduates with disability from local universities. In addition the department has continued to participate in the 'Stepping Into Program" facilitated by the Australian Network on Disability (AND). The department is also developing a pilot traineeship program for people with disability. Participants will be engaged under the APS Special Measures Circular utilising Disability Employment Service providers.
(4) DEEWR has a range of supports in place for employees with a disability. Through our reasonable adjustment policy, DEEWR ensures that all new employees and existing employees who return to work after injury or illness receive the equipment (including assistive technology) they need to support them in the workplace. This also extends to modifying their physical environment to suit their individual circumstances.

More generally, DEEWR promotes a supportive environment for employees with disability. For example the department has a Disability Employee Network supported by DEEWR's Disability Champion, Mr John Kovacic, Deputy Secretary, Workplace Relations.
To increase disability confidence and awareness in the department, disability awareness sessions have been delivered for managers. Future additional sessions will focus on Mental Health and Workforce Wellbeing.

DEEWR also raises awareness by celebrating significant events focusing on disability. For example DEEWR celebrated the International Day for People with Disability by inviting some prominent people with disability to share their inspiring stories with employees, and hosting an awareness forum together with disability support agencies such as Vision Australia, Better Hearing Australia and members of the Disability Employment Network.
(5) By successfully removing barriers for people with disability, DEEWR ensures that people with disability can fully participate in the workplace. This includes working with their managers to develop individual performance and development plans to access training and other development opportunities to achieve their career aspirations.
(6) DEEWR's Disability Employment Plan 2009 – 2012 includes a target of 10% average annual growth in the number of employees with disability as a proportion of total employees.
(7) DEEWR has the following specific policies to support staff with a disability:
   a. Reasonable Adjustment Policy
   b. Reasonable Adjustment Funding Policy
   c. Rehabilitation and Return to Work Policy
   d. IT Support Processes for Assistive Technology

DEEWR has the following specific programs to support staff with a disability:
   a. DEEWR Graduate Program
   b. Participation in the Australian Network on Disability (AND) 'Stepping into' Program
DEEWR has the following specific services to support staff with a disability:

- **a. Disability Coordination Unit** – The unit provides centralised support for staff with disability, their colleagues and managers, and ensure all DEEWR's workplace policies support employees with disability.

- **b. Disability Employee Network** – The Network offers peer support, helps to raise disability confidence, and provides a voice for employees with disability in the department.

- **c. DEEWR's Disability Champion** – Champions our commitment to employees with disability at our most senior forums.

- **d. DEEWR Disability Portal** – Provides consolidated information for staff with disability, managers and colleagues.

- **e. DEEWR's Gold membership of the Australian Network on Disability (AND)** – provides access to key services and professional support.

- **f. Access to DEEWR's Equity and Diversity Officer Network.**

- **g. Access to Employee Assistance Program (EAP).**

(8) DEEWR is currently developing a pilot traineeship program for people with disability in consultation with Work Force Australia (WFA). The pilot is expected to commence in mid 2011.

DEEWR is also developing an online disability learning module as part of the department's onboarding process. The module is designed for all employees new to the department and will continue to raise disability awareness in DEEWR.

DEEWR will continue to work in consultation with the Australian Public Service Commission to share ways of improving attraction and retention of people with disability.

United Nations Framework Convention on Climate Change

(Question No. 670)

Senator Abetz asked the Minister representing the Minister for Climate Change and Energy Efficiency, upon notice, on 26 May 2011:

With reference to the Australian delegation to the United Nations Framework Convention on Climate Change to be held in Durban, South Africa, in December 2011:

1. What is the estimated cost of:
   - (a) airfares;
   - (b) accommodation;
   - (c) travel allowance; and
   - (d) any other items.

2. How many officers and ministers will attend.

3. How many of the delegation will fly:
   - (a) first class;
   - (b) business class;
   - (c) premium economy; and
   - (d) economy or equivalent.

Senator Wong: The Minister for Climate Change and Energy Efficiency has provided the following answer to the honourable senator's question:

With reference to the Australian delegation to the United Nations Framework Convention on Climate Change to be held in Durban, South Africa, in December 2011:
(1) (a) The estimated cost of airfares is not known, as the delegation has not yet been determined.
(b) The estimated cost of accommodation is not known, as the delegation has not yet been determined.

Given the limited accommodation available in Durban, the Department of Climate Change and Energy Efficiency has entered into a contract to secure appropriate accommodation well in advance of the 17th Conference of the Parties of the United Nations Framework Convention on Climate Change (COP17) for the period of the conference (28 November – 9 December 2011) and for associated pre-sessional preparatory meetings in the days leading up to the conference. A preliminary estimate of $245,104.60 is based on quotes provided by a COP17 accommodation service provider in January 2011.

This full amount has not been paid, and the estimated cost will be revised closer to the conference once it is clearer what the composition of the delegation will be.
(c) The estimated cost of travel allowance is not known, as the delegation has not yet been determined.
(d) The estimated cost of any other items is not known, as the delegation has not yet been determined.

(2) It is not yet known how many officers and ministers will attend, as the delegation has not yet been determined.

(3) Please refer to the response to part (1) (a) above.

Climate Change
(Question No. 672)

Senator Abetz asked the Minister representing the Prime Minister in the Senate, upon notice, on 30 May 2011:

(1) Since 21 August 2010, have there been any meetings of Cabinet, the National Security Committee, the Expenditure Review Committee and the Multi Party Committee on Climate Change; if so, for each meeting can the following be provided: (a) who met i.e. Cabinet or which committee; (b) who attended the meeting; and (c) did anyone deputise for any attendee; if so: (i) who deputised, and (ii) for whom.

(2) Pursuant to agreements reached following the federal election in 2010 have there been any meetings between the Prime Minister and Senator Brown, Mr Windsor, and Mr Oakeshott; if so, for each meeting can the following be provided: (a) the date of the meeting; and (b) who attended.

Senator Chris Evans: The Prime Minister has provided the following answer to the honourable senator's question:

I am advised that:

(1) Yes. In the period 21 August 2010 to 20 June 2011, the following number of meetings have occurred (current as at 20 June 2011):

<table>
<thead>
<tr>
<th>No. of meetings</th>
<th>Cabinet</th>
<th>NSC</th>
<th>ERC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>36</td>
<td>17</td>
<td>33</td>
</tr>
</tbody>
</table>

It is not normal practice to discuss the details of Cabinet or Cabinet committee meetings.

The Multi-Party Climate Change Committee is not a Cabinet committee. The details relating to MPCCC meetings are publicly available at:


(2) As the Agreements provide, the Prime Minister meets with the Leader of the Greens, and with the three Independent Members of Parliament who have signed agreements with the Government, every sitting week, with less frequent meetings occurring in non-sitting periods.
IP Australia
(Question No. 676)

Senator Abetz asked the Minister for Innovation, Industry, Science and Research, upon notice, on 31 May 2011:

With reference to issues arising between Mr Peter John Wilkshire and IP Australia and given that the Minister states 'an internal review was conducted by the Director General of IP Australia' in correspondence to the Parliamentary Secretary for Agriculture, Fisheries and Forestry (Dr Kelly) on 17 January 2011:

(1) Was the inquiry formal or informal.
(2) Was the inquiry and its findings ever committed to paper and/or in writing.
(3) How was the inquiry conducted.
(4) With whom did the Director General discuss the matter during the inquiry.
(5) From what sources did the Director General glean his information and who was interviewed.
(6) To whom did the Director General report his findings.
(7) Can a full account be provided of how the Minister became aware of the review, for example, was it by a written brief from IP Australia to the Minister or verbally third hand.

Senator Carr: The answer to the honourable senator's question is as follows:

(1) The inquiry was informal.
(2) No.
(3) A review of files and correspondence associated with Mr Wilkshire's case was conducted.
(4) The Director-General discussed the matter with the officers involved.
(5) The Director-General's information came from correspondence from Mr Wilkshire, the hearings decisions and material associated with the case.
(6) The Director-General informed Mr Wilkshire of his findings via correspondence.
(7) The Minister became aware of the review when responding to correspondence from Dr Kelly on behalf of Mr Wilkshire.

Immigration and Citizenship
(Question No. 677)

Senator Cash asked the Minister representing the Minister for Immigration and Citizenship, upon notice, on 1 June 2011:

(1) What is the number of charges laid and convictions recorded against non-citizens for each financial year from 2006-07 to 2010-11 to date: (a) by state; (b) by visa type; (c) by type of offence, and (d) where relevant, the nature of any sentence, classified as: (i) no custodial sentence, (ii) a custodial sentence of 12 months or less, (iii) a custodial sentence of more than 12 months to 3 years, (iv) a custodial sentence of more than 3 years to 10 years, or (v) a custodial sentence of more than 10 years?

(2) What reporting requirements are in place to the department from responsible state, territory and other Commonwealth agencies, for charges laid and convictions recorded against non-citizens?

(3) Are there any proposals to change the reporting requirements to the department from responsible state, territory and other Commonwealth agencies, for charges laid and convictions recorded against non-citizens?

Senator Carr: The Minister for Immigration and Citizenship has provided the following answer to the honourable senator's question:
(1) My Department does not collect the data sought in the question. The Department considers the preparation of an answer to the question would involve significant diversion of departmental resources in the seeking of information from each state or territory and the Australian Federal Police and, in the circumstances, does not consider that the additional work can be justified.

(2) My Department has in place information sharing arrangements with state, territory and other Commonwealth agencies to identify non-citizens serving prison sentences who fail the character test. Such agencies are not required to report to my Department on charges laid and convictions recorded against non-citizens.

(3) No.