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SITTING DAYS—2015

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<td>December</td>
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FORTY-FOURTH PARLIAMENT
FIRST SESSION—FIFTH PERIOD

Governor-General
His Excellency General the Hon. Sir Peter Cosgrove AK, MC (Retd)

Senate Office holders
President—Senator Hon. Stephen Parry
Deputy President and Chair of Committees—Senator Gavin Mark Marshall
Leader of the Government in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Government in the Senate—Senator Hon. George Henry Brandis QC
Leader of the Opposition in the Senate—Senator the Hon. Stephen Conroy
Manager of Government Business in the Senate—Senator Hon. Mitchell Peter Fifield
Manager of Opposition Business in the Senate—Senator Claire Moore

Senate Party Leaders and Whips
Leader of the Liberal Party in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Liberal Party in the Senate—Senator Hon. George Henry Brandis QC
Leader of The Nationals in the Senate—Senator Hon. Nigel Scullion
Deputy Leader of The Nationals in the Senate—Senator Hon. Fiona Nash
Leader of the Opposition in the Senate—Senator the Hon. Penny Wong
Deputy Leader of the Opposition in the Senate—Senator the Hon. Stephen Conroy
Leader of the Australian Greens—Senator Christine Anne Milne
Chief Government Whip—Senator David Christopher Bushby
Deputy Government Whips—Senators David Julian Fawcett and Anne Sowerby Ruston
The Nationals Whip—Senator Barry James O'Sullivan
Chief Opposition Whip—Senator Anne McEwen
Deputy Opposition Whips—Senators Catryna Louise Bilyk and Anne Elizabeth Urquhart
Australian Greens Whip—Senator Rachel Siewert
Palmer United Party Whip—Senator Zhenya Wang

Printed by authority of the Senate
## Members of the Senate

<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
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<tr>
<td>Abetz, Hon. Eric</td>
<td>TAS</td>
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<td>Back, Christopher John</td>
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<td>Bernardi, Cory</td>
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Pursuant to section 42 of the Commonwealth Electoral Act 1918, the terms of service of the following senators representing the Australian Capital Territory and the Northern Territory expire at the close of the day immediately before the polling day for the next general election of members of the House of Representatives.

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<th>Party</th>
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*Casual vacancy

(1) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice R. Carr), pursuant to section 15 of the Constitution.

** Casual vacancy to be filled (vice J Faulkner, resigned 6.2.15), pursuant to section 15 of the Constitution.

**PARTY ABBREVIATIONS**

AG—Australian Greens; ALP—Australian Labor Party;
AMEP—Australian Motoring Enthusiast Party; CLP—Country Liberal Party;
FFP—Family First Party; IND—Independent, LDP—Liberal Democratic Party;
LNP—Liberal National Party; LP—Liberal Party of Australia;
NATS—The Nationals; PUP—Palmer United Party
Heads of Parliamentary Departments
Clerk of the Senate—R Laing
Clerk of the House of Representatives—D Elder
Secretary, Department of Parliamentary Services—C Mills
Parliamentary Budget Officer—P Bowen
<table>
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<tr>
<th>Title</th>
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<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon. Tony Abbott MP</td>
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<tr>
<td><strong>Minister for Indigenous Affairs</strong></td>
<td>Senator the Hon. Nigel Scullion</td>
</tr>
<tr>
<td><strong>Minister Assisting the Prime Minister for the Public Service</strong></td>
<td>Senator the Hon. Eric Abetz</td>
</tr>
<tr>
<td><strong>Minister Assisting the Prime Minister for Women</strong></td>
<td>Senator the Hon. Michaelia Cash</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>The Hon. Charles Porter MP</td>
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<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>The Hon. Alan Tudge MP</td>
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<tr>
<td><strong>Minister for Infrastructure and Regional Development</strong></td>
<td>The Hon. Warren Truss MP</td>
</tr>
<tr>
<td>(Deputy Prime Minister)</td>
<td>The Hon. Jamie Briggs MP</td>
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<tr>
<td><strong>Assistant Minister for Infrastructure and Regional Development</strong></td>
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<tr>
<td><strong>Minister for Foreign Affairs</strong></td>
<td>The Hon. Julie Bishop MP</td>
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<td><strong>Minister for Trade and Investment</strong></td>
<td>The Hon. Andrew Robb AO MP</td>
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<tr>
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<td>The Hon. Steven Ciobo MP</td>
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<tr>
<td>(Deputy Leader of the House)</td>
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<td><strong>Attorney-General</strong></td>
<td>Senator the Hon. George Brandis QC</td>
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<tr>
<td><strong>Minister for the Arts</strong></td>
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<tr>
<td>(Vice-President of the Executive Council)</td>
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<td>(Deputy Leader of the Government in the Senate)</td>
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<tr>
<td><strong>Minister for Justice</strong></td>
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<tr>
<td><strong>Treasurer</strong></td>
<td>The Hon. Joe Hockey MP</td>
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<tr>
<td><strong>Minister for Small Business</strong></td>
<td>The Hon. Bruce Billson MP</td>
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<td>The Hon. Joshua Frydenberg MP</td>
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<tr>
<td><strong>Parliamentary Secretary to the Treasurer</strong></td>
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<tr>
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<td>(Manager of Government Business in the Senate)</td>
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<tr>
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Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there is a Department of Human Services in the Social Services portfolio and a Department of Veterans’ Affairs in the Defence portfolio. The title of a department does not necessarily reflect the title of a minister in all cases.
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Tuesday, 24 March 2015

The PRESIDENT (Senator the Hon. Stephen Parry) took the chair at 12:30, read prayers and made an acknowledgement of country.

DOCUMENTS

Tabling

The Clerk: Documents are tabled pursuant to statute. Details will be recorded in the Journals of the Senate and on the Dynamic Red.

Details of the documents also appear at the end of today's Hansard.

COMMITTEES

Joint Standing Committee on Treaties

Meeting

The Clerk: A notification has been lodged by the Joint Standing Committee on Treaties for private meeting today, from 1.15 pm.

The PRESIDENT (12:31): Unless any senator wishes to have that motion put we will proceed to business.

BUSINESS

Consideration of Legislation

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:31): I move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, allowing it to be considered during this period of sittings.

Question agreed to.

BILLS

Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015

First Reading

Bill received from the House of Representatives.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:32): I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (12:32): I table the revised explanatory memorandum relating to the bill and I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) AMENDMENT (DATA RETENTION) BILL

The Bill contains a package of reforms to prevent the further degradation of the investigative capabilities of Australia's law enforcement and national security agencies. The Bill will require companies providing telecommunications services in Australia, carriers and internet service providers to keep a limited, prescribed set of telecommunications data for two years. The Bill amends the Telecommunications Interception and Access Act 1979 (Interception Act), and the Telecommunications Act1997 (Telecommunications Act).

Modern communication technologies have revolutionised the abilities of people to communicate, collaborate and express themselves. Sadly, however, these same technologies are routinely misused and exploited by criminals, including those who threaten our national security.

Historically, telephone companies have kept call records showing the numbers of both the A and B parties, time of call, duration of call and often the location of the parties. These records have been kept for long periods and were used for billing purposes. Under existing and long-standing legislation, a range of law enforcement and other agencies have had the ability to access this information without a warrant.

The type of data referred to in the Bill as telecommunications data, more often described as metadata, is information about a communication but not its content. So, in the telephone world, it reveals that one number belonging to a particular account was connected to another number at a time and for a duration, but does not reveal what they discussed. In the IP world it reveals that a particular IP address, which may have been observed to have been engaged in some unlawful activity, had been at the relevant time allocated to a particular account. In the context of messaging—email, for example—it reveals the sender, recipient, time and date, but again not the content. Access to the content of communications requires a warrant.

Access to metadata plays a central role in almost every counterterrorism, counterespionage, cybersecurity and organised crime investigation. It is also used in almost all serious criminal investigations, including investigations into murder, serious sexual assaults, drug trafficking and kidnapping. The use of this kind of metadata, therefore, is not new.

However, as the business models of service providers are changing with technology they are keeping fewer records. And they are keeping those records for shorter periods of time because they do not need them any longer, in many cases, for billing. Many of the records that are still kept are kept because of legacy systems put in place years ago. In June 2013, the Parliamentary Joint Committee on Intelligence and Security concluded that this diminution in the retention of metadata is harming law enforcement and national security capabilities, and that these changes are accelerating.

Existing powers and laws are not adequate to respond to this challenge. Preservation notices under the Interception Act can require carriers to 'quick freeze' records that they hold, but these notices cannot create records that have never been kept, and cannot bring back records that carriers have deleted days, weeks or months before a crime is brought to an agency's attention.

Simply put, because of businesses' changing practices investigations are failing.

For example, in a current major child exploitation investigation, the AFP has been unable to identify 156 out of 463 potential suspects, because certain internet service providers do not retain the necessary IP address allocation records to enable the resolution of the IP address to the particular account number
the person in question was using. These records are critical to link criminal activity online back to a real
world suspect.

These impacts are not limited to law enforcement agencies in Australia. During a recent Europol
child exploitation investigation, child exploitation investigations relied heavily on access to
telecommunications data as perpetrators primarily shared information online, meaning that physical
evidence was rarely available. Three hundred and seventy-one suspects were believed to be in the
United Kingdom. Using retained telecommunications data, UK authorities were able to positively
identify 240 suspects, leading to 121 arrests and convictions. In contrast, of the 377 suspects believed to
be in Germany, which does not have a data retention regime in force, German authorities were only able
to identify seven and were unable to obtain sufficient evidence to arrest or convict a single person.

I can also give a clear example of how a simple business decision can undermine the national
interest. In 2013, a major Australian ISP reduced the period for which it keeps IP address allocation
records from many years to three months. In the 12 months prior to that decision, the Australian
Security Intelligence Organisation (ASIO) obtained these records in relation to at least 10 national
security investigations, including counter-terrorism and cybersecurity investigations. If those
investigations took place today, vital intelligence and evidence would simply not exist.

No responsible government can sit by while those who protect our community lose access to the
tools they need to do the job. In the current threat environment in particular, we cannot let this problem
get worse.

Data retention

As such, this Bill will allow regulations to prescribe a consistent, minimum set of records that
service providers who provide services in Australia must keep for two years.

A two-year retention period is based on the advice of our law enforcement and security agencies, as
well as the experience of a number of foreign jurisdictions. While many cases are solved within a few
months, investigations into serious and complex crimes and threats to security often span many years,
requiring access to older records.

The Government recognises that data retention raises genuine concerns about privacy. We are
committed to addressing those concerns.

The dataset that has been endorsed by the PJCIS, and inserted into the bill as recommended by that
Committee, is strictly limited. For example:

1. service providers will not be required to retain the content or substance of any communication,
   including subject lines of emails or posts on social media sites
2. the Act will expressly exclude a person's web-browsing history, and
3. providers will not be required to keep detailed location records that could allow a person's
   movements to be tracked, akin to a surveillance device.

There has also been a great deal of conjecture about how much data retention may cost. I can advise
the Senate that the cost, both up front and ongoing, of data retention in its first ten years will average
out to $73 million per year. This is a remarkably small impost on an industry that generates over $42
billion in revenue each year. It is in fact well under 0.1% of the industry's revenue.

That low cost must be measured against the immeasurable benefit to the victims of crime who will
be much better protected by our agencies than without data retention.

As has been previously stated, the government is committed to ongoing, good faith consultation with
industry and will make a substantial contribution to the cost of implementing the scheme. In terms of
the ongoing costs, it is important to recognise that providers will be able to recover from law
enforcement and security agencies the financial cost incurred in providing requested data. Those
ongoing costs will be recoverable on a no-profit/no-loss basis. These cost recovery arrangements
already apply to agency requests for telecommunications data collected by industry for its own purposes. This practice will not change.

I can say that, to date, our consultation with industry has been very productive. For example, based on industry advice, the Bill allows individual service providers to develop an implementation plan that provides a pathway to compliance over up to 18 months. These plans will allow industry and government to prioritise the retention of data that is most critical to investigations, while allowing service providers to significantly reduce their implementation costs by aligning any systems changes with their internal business cycles.

**The PJCIS Report into the Bill**

I draw to the Senate's attention the concluding remarks of the Parliamentary Joint Committee on Intelligence and Security in its inquiry into this Bill:

Through the process of this inquiry, the Committee has considered the current utility of telecommunications data to law enforcement and national security investigations. The Committee has noted the inconsistency and degradation of current retained telecommunications data, possible future reductions in retained data and the serious impact this may have on national security and public safety.

Accordingly, the Committee considered carefully the rationale for a mandatory data retention scheme, and has concluded that such a regime is justified as a necessary, effective and proportionate response. The Committee therefore supports the intention of the Bill.

The Committee's support is subject to thirty-eight recommendations. Twenty-six of these recommendations relate to amendments to the Bill or Explanatory Memorandum.

A further eleven recommendations relate to additional administrative measures (including additional resourcing for the Committee and Commonwealth Ombudsman), reviews, and further reform (including telecommunications sector security reform and data breach notification).

The PJCIS also recommended that the proposed two-year retention period be maintained.

The Government supports all of the recommendations to amend the Bill and so moved amendments to implement them. The other place has passed the Bill with those amendments.

**Access arrangements**

This Bill does not provide agencies with new powers to access communications data; the Bill simply ensures that data will continue to be available to agencies as a part of legitimate investigations, subject to strict limits that currently apply and additional safeguards.

In fact, the Bill will significantly reduce the range of enforcement agencies permitted to access telecommunications metadata without a warrant.

The Bill will allow what we might call 'traditional' law enforcement agencies, such as the police, Customs, crime commissions and anticorruption bodies, to access this information.

The Bill will also grant the Attorney-General the power to temporarily declare, via legislative instrument subject to parliamentary oversight, additional agencies. Before making such a declaration, the Attorney-General of the day will be required to consider a range of strict criteria, including whether the agency is subject to a binding privacy scheme. Any permanent additions to the list of agencies with these powers will require an Act of Parliament.

**Safeguards**

The Bill will introduce a range of new and enhanced safeguards. In particular, it:

- introduces, for the first time, independent and comprehensive oversight of agencies' access to telecommunications data
- requires the PJCIS to begin a review of the effectiveness of the scheme no more than two years after the end of its implementation phase, and
• requires the Attorney-General to report annually on the operation of the scheme.

The Government has also committed to reforms to strengthen the security and integrity of Australia's telecommunication infrastructure by establishing a security framework for the telecommunications sector. This will provide better protection for information held by industry in accordance with the data retention scheme.

Concluding remarks

This Bill is critical to prevent the capabilities of Australia's law enforcement and national security agencies being further degraded. It does not expand the range of telecommunications metadata which is currently being accessed by law enforcement agencies. It simply ensures that metadata is retained for a period of two years.

More broadly, this Bill demonstrates the Government's commitment to ensuring that access to sensitive and personal information by these agencies is strictly controlled through robust accountability processes.

Senator JACINTA COLLINS (Victoria) (12:32): The Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 is a complex and controversial piece of legislation. Regrettably, the Abbott government has done an exceptionally poor job of explaining why these laws are necessary and how they will work. The government announced its intention to introduce this legislation in the middle of last year. The political agenda at that time was dominated by the Australian people's violent reaction to the Abbott government's unfair budget, and the Prime Minister and his colleagues were in a state of panic. It was in this chaotic and dysfunctional environment that the government foisted the data retention bill on the Australian people.

There is one particular element of this botched sales job that it would be remiss of me to fail to mention. I am talking about Senator Brandis's shambolic attempt to explain the terms 'metadata' and 'internet browsing' in his humiliating interview with David Speers on Sky TV in August of last year. I congratulate David Speers on winning a Walkley award for that interview. While the interview may have been an outstanding achievement in terms of journalism, it was not the high-water mark of public policy. Senator Brandis's performance was emblematic of the government's failure to persuade the Australian people of the importance of data retention.

Senator Ludlam interjecting—

Senator JACINTA COLLINS: I do not mention the government's failings or Senator Brandis's embarrassing blunders gratuitously, as much as Senator Ludlam might like. I do so to illustrate how the Abbott government has failed to take the Australian people with it and win their support for the data retention bill.

This parliament has no greater duty than keeping Australia safe from the threats of crime and terrorism. Maintaining public confidence in our national security and law enforcement agencies is an essential element of this duty. It is incumbent upon the government to reassure the Australian people that national security and law enforcement concerns are being appropriately balanced with the importance of upholding fundamental democratic freedoms. The government must satisfy the people that additional power is not conferred on our security and law enforcement agencies unless it is necessary to do so and only where matched with robust oversight and accountability mechanisms.
The Australian people must be satisfied that in seeking to defend ourselves from crime and terrorism we do not trample upon the very rights and freedoms that characterise Australia as a free and open democracy. The Abbott government has failed this test. This failure has left the Australian people vulnerable to a scare campaign about data retention. Senator Ludlam, interjecting earlier, and the Greens Party have exploited this vulnerability ruthlessly. They have deliberately and irresponsibly misrepresented the facts for their own cynical political purposes. The Labor Party has found itself stuck between a rock and a hard place on this legislation: stuck between the failure of the government to take the people with it on the one hand and a hysterical campaign of misinformation by Senator Ludlam and the Greens Party on the other. Remember the YouTube interview, everyone? This is an invidious position. Nobody in the Labor Party is happy about once again being forced to rescue this government from its own incompetence.

Honourable senators: Oh!

Senator JACINTA COLLINS: And listen to the shrieks down at the end of the chamber. But, as the alternative government, unlike you, it is incumbent upon us, the Labor Party, to take a responsible, bipartisan approach to national security and law enforcement. We in the Labor Party believe that our law enforcement and national security agencies should have the power they need to protect Australians from the threats of crime and terrorism. However, we also believe in the importance of protecting the fundamental freedoms that define Australia as a democratic nation. It is critical that we get the balance right between keeping people safe and protecting the liberties we hold so dear.

The incompetence of the government and the hysteria of the Greens party have made it very difficult to have an open and honest conversation about data retention with the Australian people. Let me take this opportunity, though, to put some facts on the table. I have been astounded by the number of people who have responded to me in the last few days as we have been able to clearly elucidate these facts, so let me do so again. First fact: private companies have been retaining very large volumes of metadata in largely unregulated ways for many years. This data has been accessed by many dozens of federal and state and territory government agencies hundreds of thousands of times each year—with, in my view, insufficient safeguards to protect personal privacy. This is the status quo. This would be the consequence of no change.

Second fact: this legislation simply governs access to metadata, not content data. This is an important distinction to make. Metadata is data about a communication, not the content of that communication. Access to data under this scheme will allow an agency to determine the time a telephone call was made, the number dialled and the duration of the call, but it will not allow the agency to listen to the telephone call. It will allow access to the date and time an SMS message was sent and the number it was sent to, but it will not allow the agency to read the content of that message. It will allow access to the date and time an email was sent, but reading the content of that email will not be permitted. Importantly, access to a person's internet-browsing will not be permitted, despite the confusion caused—or perhaps it was a backflip subsequently—by Senator Brandis's remarks during his now infamous interview on Sky. Agencies wishing to access content data will still need a warrant, which must generally be sought from a judge subject to the usual oversight and accountability mechanisms.
Labor approached parliamentary consideration of the data retention bill as an opportunity to regulate and improve the use of metadata for law enforcement and counterterrorism purposes, while at the same time introducing safeguards that will greatly improve the transparency and accountability of storage and access to that data. Another fact: access to metadata is a legitimate tool used by security and law enforcement agencies and it plays a vital role in preventing, investigating and prosecuting crime, including terrorism. It is not some grand conspiracy—and those who say it has no role simply have it wrong. The joint parliamentary committee received evidence of 21 cases in which access to metadata was critical to the investigation, prevention and prosecution of serious wrongdoing.

Technological change and changing business practices of telecommunication providers means that less data will be retained by some companies in the future. This is the problem for law enforcement agencies. There is a significant risk that this will hamper the important work of security and law enforcement agencies and lessen their ability to keep Australians safe. It would be irresponsible for the Labor Party as the alternative government to pretend that these risks do not exist.

The bill was introduced into parliament by Malcolm Turnbull before Christmas last year and it was nowhere near good enough. The safeguards were inadequate and the detail was vague. This is why Labor insisted that it be sent to the joint parliamentary committee for proper scrutiny and to allow the public to have their say. The Labor members of the joint parliamentary committee listened very carefully and forced the Abbott government to accept 74 amendments to improve this bill, to better balance the importance of upholding fundamental democratic freedoms with national security and law enforcement concerns. And remember: the status quo is not good enough in terms of upholding fundamental democratic freedoms. As I previously mentioned, we have been particularly focused on oversight and accountability mechanisms. We believe these improved safeguards are essential to protecting the privacy of Australians and to giving the community confidence that personal data collected under the scheme will not be compromised or misused in the future.

Labor strongly believe that freedom of the press is one of the most fundamental elements of our democracy, and we will always fight to protect it. Labor forced the Abbott government to implement a regime whereby it will be illegal for agencies to access metadata for the purpose of identifying a journalist's source unless they first obtain a warrant, generally from a court. There will be a statutory presumption against issuing the warrant and agencies will be required to prove that the public interest in obtaining the metadata outweighs the public interest in protecting the confidentiality of a journalist's source, which is central to the freedom of the press. A public interest advocate will be appointed to stand in the shoes of the journalist and argue against the issuing of the warrant.

These changes will mean much stronger protections for journalists and their sources, certainly much stronger than what Malcolm Turnbull originally proposed. It has been very frustrating that it has taken so long for the Liberal Party to agree to support better protections for journalists. It is even more frustrating that the government still refuses to acknowledge that the stronger protection secured by Labor needed to occur. It took Bill Shorten writing to the Prime Minister insisting on defending the freedom of the press to force the government to back down in this area. I am told that the Prime Minister still does not see what the fuss is about. Nobody was worried about metadata when he was a journalist back in the early
eighties, we heard. Somebody might like to tell the Prime Minister about the advent of the internet and mobile phones.

Senator O'Sullivan: Metadata was kept by telcos for decades.

The PRESIDENT: Order on my right.

Senator Jacinta Collins: I will come to that point. We do need to better regulate this area. The old envelope versus content distinction does not encapsulate the intrusion involved in accessing metadata today. We can trace people's locations with these things now, Senator O'Sullivan, and you should understand that better.

The data retention bill will limit access to metadata to a much smaller number of core law enforcement and national security agencies. Corporate and competition regulators will retain access to metadata to help them crack down on serious white-collar crime and other wrongdoing. But it is also important to point out that security and law enforcement agencies will use metadata in a targeted fashion to investigate specific subjects. It will not be part of some mass surveillance dragnet that is being suggested by some.

Labor members of the joint parliamentary committee insisted that the authorisation requirements for access to metadata be tightened. Before approving access, the authorising officer must be satisfied on reasonable grounds that any interference with the privacy of persons that may result from the access is justifiable and proportionate. In making this decision, the authorised officer should be required to have regard to: the gravity of the conduct being investigated, including whether the investigation relates to a serious criminal offence, the enforcement of a serious pecuniary penalty, the protection of the public revenue at a sufficiently serious level or the location of missing persons; the reason why the disclosure is proposed to be authorised; and the likely relevance and usefulness of the information or the documents to the investigation.

The data retention bill will also significantly strengthen the Ombudsman's powers to supervise access to information under the TIA Act. The Ombudsman will be empowered to comprehensively assess agency compliance with all of its obligations under the TIA Act, including the use of and access to metadata. Oversight of this category of data would also extend to auditing the use of and access to data retained as a result of the data retention obligation. This is a significant win for oversight and accountability. There is currently no independent oversight of the use of and access to metadata. Neither the TIA Act nor the predecessor arrangements in the Telecommunications Act included an independent oversight arrangement in relation to metadata. Labor has insisted that the Ombudsman be given additional resources to fulfil this important role.

Labor has been consistent in our belief that we must strike the right balance between keeping people safe and protecting the rights and liberties we value as Australians. Parliament has no greater responsibility, and it is essential that we take a mature and bipartisan approach to these issues. I am confident that the hard fought improvements won by the Labor Party achieve the right balance. As I have already said, Labor has pushed for comprehensive amendments to this bill. But there also remains some unfinished business.

Labor remains concerned about whether companies should be obliged to store retained data in Australia. Former Director-General of ASIO, David Irvine, said at a recent Defence and
National Security round table that he would be concerned about the security of retained data if it was stored overseas because it would be:

... governed by someone else's sovereign legislative system.

This matter is currently being examined as part of the Telecommunications Sector Security Reform—TSSR—a process commenced by Labor while in government and which the Abbott government has stated will be completed well before the end of the data retention scheme implementation period. When completed, any TSSR legislation will come before the Parliamentary Joint Committee on Intelligence and Security. Consistent with the comments of the former head of ASIO, during the review of any TSSR legislation Labor will insist on a requirement that retained telecommunications data be stored onshore, an extra protection needed for people even today under the status quo.

There also remains unfinished business relating to the oversight of the entire architecture of Australia's national security agencies. My former colleague Senator John Faulkner, who retired from the parliament in February this year, was a fierce advocate of this cause. No one should doubt that Senator Faulkner believed that Australia is served by professional and well-run intelligence and security agencies. But Senator Faulkner also argued that effective safeguards against the abuse of security powers cannot depend and should not depend on the personal integrity and quality of the leaders of our agencies. If we are to have full confidence in our security agencies, we must have a suitable level of transparency built around them. It was Senator Faulkner's view that it is the parliament to which those agencies are accountable, and it is the parliament's responsibility to oversee their priorities and effectiveness, and to ensure agencies meet the requirements and the standards parliament sets. I agree.

Senator Faulkner developed a set of reforms designed to ensure that the effectiveness of parliamentary oversight of intelligence and security agencies keeps pace with any enhanced powers given to the agencies. One key reform was for the intelligence committee to have oversight of some operational matters of the security agencies. Progress towards that reform is evident in some ways in this bill, which Labor pressed be amended so that the committee could oversee the data retention scheme. But there is more to be done.

So Labor will bring forward legislation this year to give effect to the reforms proposed by Senator Faulkner to build better oversight of the whole national security framework. It is in this context that the bill was first presented. The bill now, as heavily amended, sits—(Time expired)

Senator LUDLAM (Western Australia) (12:53): I am here today on behalf of the Australian Greens to oppose this bill in the strongest possible terms. In the course of the debate over the next few days, we will spend a lot of time considering elements of the bill in detail: its impact on journalists, the unknown costs, the inevitable mass breaches of privacy that will follow and the technicalities of how the bill will actually work. But, before we disappear into the weeds and the technical detail, I want to state plainly why I believe that this bill is unamendable and why it should be rejected.

This legislation, the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, betrays a mindset that inverts the power relationship between the state and the individual. It provides for the mass collection of private information of 23 million people who are neither suspected nor accused of having committed a crime. It entrenches the ability of dozens of government agencies to access these private records hundreds of
thousands of times a year without a warrant and it normalises the fiction that this information is nothing more than billing records or the envelope that surrounds substantive communications.

Over a period of many decades, democracy has evolved, developing ways to protect citizens from the power of the state. These are some of the foundation principles of liberalism, from which the hollowed-out entity that proposed this bill takes its name. One of these points of balance is the judicial warrant: if the state wants to violate your privacy, there needs to be a good reason. These reasons include corruption; serious organised or violent crime; crimes against children; or genuine national security threats, including terrorism. In Australia, around 4,700 such warrants are issued every year, and, in a country of 23 million people, that does not seem like an undue amount. The police surveillance scandal in New South Wales has exposed the fact that even these judicial checks and balances sometimes fail, but it is a system which has worked tolerably well for the most part.

The act that we are amending today was written in 1979, under the prime ministership of the recently passed Malcolm Fraser. Mobile phones only existed in *Star Trek*. The internet was unthinkable for all but a handful of researchers and futurists. Fast-forward to 2015: there are more mobile phones than people in this country and the internet is busily infusing nearly every corner of our lives. Every one of these devices, seen and unseen, generates a cloud of information in the course of its ordinary operation. One single tweet 140 characters long is the tip of a small iceberg of code that runs to about a page and a half. Your phone handset is essentially a tracking device that allows you to make phone calls. Our relationships and our social lives are increasingly mediated by digital tools. Collectively, these devices and apps silently generate billions of records of place, time, contact, data type and volume, all of it aggregated under this loose concept of 'metadata'. Anyone who tells you that these are simple billing records or the innocent envelopes surrounding substantive communications is either technically illiterate or lying to your face.

In 2012-2013, agencies made around 340,000 demands for this information from Telstra, Optus and the rest of the telecommunications industry, without the trouble of having to apply for a single warrant. Now, I do not have more recent numbers than that because the Attorney-General's Department is refusing to publish the report for the last financial year. Telecommunications regulator the ACMA reports 748,000 warrantless authorisations were received by carriers in 2013-14. Why do agencies do this? Here is NSA contractor Edward Snowden:

… metadata is extraordinarily intrusive. As an analyst, I'd prefer to be looking at metadata rather than content because it's quicker and it's easier and it doesn't lie.

Former General Counsel of the NSA, Stewart Baker, said:
If you have enough metadata, you don't really need content.

And, just in case we were not completely clear, consider former CIA Director Michael Hayden's memorable boast of last May:

We kill people based on metadata …

This is a bill to entrench a system of passive mass surveillance. It is corrosive of the very freedoms that governments are elected to protect and it has no place in a democracy. Yet it is a democratically elected parliament that is probably about to enact it, and nothing I say in
here this afternoon is likely to change the minds or the votes of the senators from the Liberal, National or Labor parties, who will file in here later this week and vote the way they have been told to vote. Many of them strongly disagree with the bill, and a small handful have spoken out; and a few—we will pay attention to who—will no doubt be absent when the vote is finally taken.

The Liberal Party: if you go to their website, under 'About' and then 'Our Beliefs'—I wonder when was the last time you checked this out, Senator Fifield—here is what it says:

**We Believe:**
In the inalienable rights and freedoms of all peoples; and we work towards a lean government that minimises interference in our daily lives; and maximises individual and private sector initiative

That is why you have imposed a $400 million surveillance tax on the whole country! Well done!

The Labor Party: how apt that this week we are debating the return of the Australian Building and Construction Commission. Presumably you are aware that this entity, which treated the blues as though they were something worse than terrorists, was doing warrantless metadata surveillance of trade union organisers in its previous incarnation—somewhere between a dozen and 30 warrantless requests per year until we closed it down. I am sure that those union members had nothing to hide and they therefore had nothing to fear from the ABCC.

And so it falls to the Greens and the crossbench to stand up and provide the opposition that this reckless and vicious government so desperately deserves. In this, we represent views that are entirely mainstream. Guess who described metadata retention as a 'sweeping and intrusive new power' when the Labor Party was toying with the idea in 2012?

**Senator DI NATALE:** Was it Malcolm?

**Senator LUDLAM:** Senator Di Natale has it in one. Who said the following?

Leaving aside the central issue of the right to privacy, there are formidable practical objections. The carriers, including Telstra, have argued that the cost of complying with the new data retention regime would be very considerable with the consequence of higher charges for their customers.

Yes, that was the Liberal member for Wentworth, Mr Turnbull, basically demolishing the case for this proposal—probably more eloquently than I am today. Who said: 'I think that this proposal is akin to tactics that we would have seen utilised by the Gestapo'? Well, that was the Liberal member for Moncrieff, Mr Steve Ciobo. When Labor does it, it reminds him of the Nazi secret state police; when Prime Minister Abbott and Senator George Brandis pick it up, it is just to keep us all safe and there is nothing to see here. The President of the Law Council of Australia, Mr Duncan McConnell, was a little less strident but still believed the following:

They propose that the bill be withdrawn, amended and released as exposure draft legislation for public consultation.

He goes on to explain why: because of 'concerns about the proportionality of the data retention regime, security of the retained data and the impact on privacy and confidential communications.' That is the Law Council. The CEO of the Media, Entertainment & Arts Alliance, Paul Murphy, put it this way:
Any system with the capacity to go after confidential sources has a chilling effect on journalism because it targets whistleblowers who seek to expose wrongdoing, illegality, dishonesty, fraud, waste and corruption. If you are going after sources, then you are going after journalism.

This government appears to be enjoying something of a habit of going after journalists to find out who they are talking to when they print unpopular stories about things like the horrors of the prison camps that we maintain on Pacific islands. Nobody on that side of the chamber appears willing to make eye contact at the moment.

Do not say you were not warned: industry has been raising the flag, and so has the former Director-General of ASIO, Mr David Irvine. Telstra's chief information security officer, Mike Burgess, put it this way:

If [you were] that way inclined as a hacker, you would go for that system because it would give you the pot of gold, as opposed to working your way through our multitude of systems today to try and extract some data.

Of course, this $300 million or $400 million surveillance tax is going to build new data centres to store all this excess material that industry has not had to store before. But it is not just that, and I am not sure that it is well understood. It is about the systems that would allow the telcos on demand to very rapidly withdraw the material from their servers and provide it to these agencies on the basis of the rubber-stamped request, which means matching names and address types across all the various systems. It creates a huge new pool that will be entirely attractive for people with malicious intent. Do not say that you were not warned.

In the end it will be the Greens and the independent crossbenchers who provide the opposition—just as it was in the House of Representatives when this was committed to a vote last week—but anyone who can count understands that there will not be enough of us. We have seen this before—most vividly last year when the Australian government criminalised national security reporting. When Prime Minister Abbott wraps himself in the flag—no matter how much an object of desperate ridicule he has become—that is the signal for the Australian Labor Party to say something earnest about finding the balance and then to cave in. Those two words, 'national security', are all it takes for the Australian Labor Party to flop into defeated bipartisanship because they are terrified the Daily Telegraph will say mean things about them.

If the bill passes, we know this will be just the beginning. It has scope creep written into its DNA. The Attorney-General can add new categories of data and new agencies to the list of people who can look through your stuff any time he likes. They propose that parliament should ratify the Attorney-General's decision within 40 sitting days. Depending on the time of year, 40 days could be anything up to six months; and parliament will be expected to rubber-stamp the decision that the Attorney-General makes. The Victorian police wanted five years. There is no secret among some of the agencies pushing for this proposal that two years was the minimum, even though that is the maximum that has been applied anywhere else in the world. They will be pushing for five years, next time something awful happens somewhere in the world; then they will be pushing for it not to be deleted at all, because it has proven to be so valuable. Then they will be pushing for web traffic and session logs. Scope creep only operates one way: once you legislate this kind of system, it is immensely difficult to claw it back.

The saddest thing about this policy debacle is that nobody can provide any evidence that it will reduce crime or make people safer. There are any number of anecdotes about the
importance of metadata for investigations—I understand that it is used in slightly less than 100 per cent of investigations. I understand that it is valuable and I have no reason to believe that the anecdotes that are flipped out by people pursuing this policy are untrue. But where is the evidence that blanket surveillance of millions of innocent people helps reduce crime? In Europe, where a data retention regime was briefly implemented before being thrown out by the European Court of Justice as an abuse of human rights, the evidence is crystal clear in its absence—data retention had no impact whatsoever. President Obama's high-level panel on the NSA's surveillance abuses came to the same conclusion: targeted surveillance of criminal suspects and networks helps prevent and solve crime; mass surveillance of millions of innocent people does not. What an immense surprise that must be to all of us.

When I asked Senator Brandis last week in question time to provide evidence of how indiscriminate collection of the private phone and internet records of millions of innocent people helps make the country safer, instead of evidence, he referred me to an ASIO press conference—simply because ASIO says so, because they want it. Chair of the Parliamentary Joint Committee on Intelligence and Security, Mr Tehan, has done much the same thing on many occasions. Of course, clandestine agencies and police authorities want more power. It is the job of the Attorney-General to keep them in check. If the Attorney-General ends up being too compliant to uphold this responsibility, then it falls to parliament. The Abbott-Shorten mass surveillance unity ticket sets this parliament up to fail. Instead we fall back on the dismal logic of 'nothing to hide, nothing to fear'. That is the logic of the police state: if you have done nothing wrong, then the police have no need to go through your stuff. Can anyone in here recall a bill passing where the government and opposition did not know to within the nearest $100 million how much it would cost? Last week an extraordinary letter was signed by the CEOs of the nation's major telecommunications providers, and I seek leave to table that letter now. It was circulated earlier with the consent of the whips. Leave granted.

Senator LUDLAM: This is a letter that has been signed by the nation's telecommunications providers—from Telstra, Optus, Vodafone Hutchison, the M2 group, iiNet, Macquarie Telecom and a whole page of others—demanding to know who is going to pick up the tab for the 300 to 400 million dollars surveillance tax that the Liberal Party and the Labor Party are introducing today. They say in part:

We note that the Government has variously indicated it will make a "reasonable" or "substantial" contribution to these costs—

that is, out of taxpayers' money—

which might exceed $300 million—

but they do not know; they are guessing; they are as much in the dark as the rest of us—

according to estimates provided by the consultants commissioned by the Government.

They have seen that document; this parliament has not, and neither has anybody in the public, because the government refuses to table it. The letter continues:

Our request to you is, we believe, relatively simple and reasonable.

It is that the Government provide to industry, the Parliament and the wider community a degree of certainty as to the size of the Government's planned contribution—
and how they plan on cutting up these funds. This is going to drive some of the smaller telecommunications carriers in this country to the wall. Telstra is not wild about this proposal, but it will be able to adapt and upgrade its systems—and it has said as much—which are very large and complex. But, of course, Telstra has pretty deep pockets and it is going to be able to accommodate a proposal such as this. What about the smaller providers, who are suddenly being forced to participate in the building of new data centres to help host this stuff or to farm it offshore to cloud providers who knows where?—maybe China. Best of luck hanging on to that material once it has left this country.

Having tabled that letter, I would also like to move my second reading amendment. The amendment adjourns the debate until after the matters raised in the letter by the CEOs have been resolved. I move:

At the end of the motion, add:

and, noting concerns about a lack of clarification from the Government about costs associated with this bill as strongly addressed in a letter to the Government signed by the chief executives of Telstra, Optus, Vodafone, iiNet and a number of other major telecommunications companies, further consideration of the bill should be made an order of the day for the day after the Government tables its response to the industry’s concerns on cost.

On the understanding that the Abbott-Shorten surveillance unity ticket will override the better judgement of individual senators, who I know hold their own private misgivings about this bill, what happens next?

My words today are essentially for those outside the building, because, as it happens, there is plenty we can do: when the parliament fails in its fundamental job of constraining executive power, we can take our power back as citizens, as Australians, in many other ways. I want to thank everyone who called their Labour senators or who melted opposition leader Bill Shorten's phone over the last couple of weeks and everyone who hit up the Labor Party on social media. The injured tone of Senator Collins in introducing her remarks was readily apparent—I almost felt sorry for her. Forgive us for not expressing our gratitude to the Labor Party for caving in to Prime Minister Tony Abbott. It was very apparent from Senator Collins's tone that it has only just sunk in that the very medium that you are compromising with mandatory data retention is the same medium that you need to sell the rest of your agenda—and you wonder why people are not listening to you and why they are so angry.

It is entirely lawful—in fact, it is built into the bill—to circumvent mandatory data retention just by using overseas providers. If you do not want your email records kept under mandatory data retention, go with an overseas provider like Gmail or Yahoo! or Hotmail, if that is still around. Use Facebook Messenger. Use Twitter direct mail. I am not advocating that, of course, because that is extremely bad news for Australian telecommunications providers—that effectively the government is incentivising people to use offshore services. Well played; very, very smart; nicely supportive of Australian industry there! The government have had to do that, because of course there is no way of compelling overseas providers to hand over their records to an Australian data retention scheme. So, if you do not want your email records kept by this scheme, use Gmail or Hushmail or an overseas email provider. That is entirely legal. Any over-the-top service provider circumvents this bill: bravo, and well played!
Encryption is not illegal. The United States went through a very damaging variant of this debate in the 1990s during the so-called crypto wars, which fundamentally established that everything from the global financial system to global diplomacy, business and global civil society actually depends on strong encryption, depends on privacy. That was a lesson that was only learned at some cost. Encryption is not illegal. Private-key cryptography—including the very phone apps that Mr Turnbull is using to orchestrate his takeover of the Prime Minister’s office—keeps no metadata. These systems keep no metadata; they leave no trace. They will be completely beyond the reach of this data retention scheme—as Mr Turnbull, who introduced this bill, so helpfully explained a couple of weeks ago. Free services like TOR, the onion router, which allow you to use the internet anonymously, completely defeat the purpose of a mandatory data retention scheme—and everybody knows this. Virtual private networks, available at a very reasonable subscription rate, make it impossible to tell where in the world who are when you are using the internet—also not illegal. Anonymity is not illegal, circumvention is not illegal and cryptography is not illegal.

So what I am proposing now is that we take our power back from a government that quite clearly has drunk the surveillance Kool-Aid, even though there is abundant evidence that it will do nothing at all to keep people safe or to reduce crime. If you are unhappy, perhaps most of all, with the dismal arithmetic of this place, then change the balance of numbers in your parliament in 2016, and replace major party politicians with people who have the capacity to think and vote independently on issues like this, rather than just sucking it up from the leader’s office. If you have a few moments to spare, call opposition leader Bill Shorten. His number is (02)62774022. Maybe just make that call now—you will feel better; I can guarantee it.

We will not forget what the major parties have done this week and we will not forgive them when the inevitable privacy breaches occur down the track. This measure will be repealed at some stage in the future, either repealed or rendered obsolete as technology marches forward. If you are listening to this debate and you wish it were to end differently, change the way parliament operates and help break the two-party system once and for all.

Senator WRIGHT (South Australia) (13:13): I rise to speak against the passage of the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. As my colleague Senator Ludlam has so eloquently and persistently demonstrated, this bill poses an unprecedented invasion of the privacy of all Australians, and it comes at an unjustified and horrendously large financial cost. By shepherding in a new age of mass surveillance, this bill looks set to go down in history as the moment when Australia lost sight of some its most fundamental values and freedoms—and it greatly regrets me to have to say that.

As the Australian Greens spokesperson for legal affairs, and a lawyer myself, I want to use this opportunity to talk about the broader impact this bill will have on the legal rights and freedoms that, until now, Australians have largely taken for granted. To borrow the words of refugee advocate David Manne, this bill takes ‘the law out of the law’. It sets up a framework that requires telcos to keep everyone’s personal data and authorises law enforcement and intelligence bodies to collect, use and share this data without us knowing and without seeking approval from any court or independent authority.

The Attorney, with his opaque descriptions of metadata, has tried in vain to convince the community that this bill is about the collection of benign, depersonalised computer-speak. But
make no mistake: this bill will require the storage of personal, private information about where you are and who you communicate with. As the Parliamentary Joint Committee on Human Rights describes the effects of this bill, metadata can reveal quite personal information about an individual even without the content of the data being made available by revealing who a person is in contact with, how often and where. This in turn could reveal, for example, the person's political opinions, sexual habits, religion or medical concerns. As my colleague Senator Ludlam has said, it is a map of your social life—who you are close to, who you are fond of and who you contact a lot. And it is a map of your physical movements—everywhere you take your phone.

The implications of this scheme for individual rights are truly disturbing, and not just in terms of the disproportionate impact on our recognised right to privacy—a right that is recognised in domestic law and international law. For example, the right to be presumed innocent is a basic principle of common law and an internationally recognised human right. But by requiring telcos to store everyone's data for possible access by law enforcement and intelligence agencies, regardless of whether or not a person is suspected of any criminal offence at all or is a risk to national security, the bill undermines this fundamental notion of the presumption of innocence. Instead of presuming innocence, this sets up a system where everyone is a potential suspect.

This is an issue which has also been of grave concern to other countries around the world. We need look only at the very substantial body of law in Europe, where courts have consistently said that treating everyone as a suspect is profoundly disproportionate to the needs of law enforcement and national security, to see that. This concern has also given rise to the recommendation of the Parliamentary Joint Committee on Human Rights of this parliament that access to data should only be available if it can be shown to be necessary for the investigation of a serious criminal offence. Unfortunately, this recommendation has not been adopted by the government.

As a result, under this bill, everyone's data will be retained for two years. This data will be able to be accessed by a range of law enforcement agencies where it is 'reasonably necessary' for a legitimate investigation—very broad terms, indeed. Although privacy concerns and the seriousness of the offence can be taken into account, there is no requirement that such access be limited. In fact, the bill allows the minister to add new agencies to the list of those who can access data, which makes it difficult to predict where the boundaries on access will be drawn in the future. There is a need to ensure the bill limits access, and this is reflected in amendments which will be moved by my Greens colleague Senator Ludlam.

This bill also extends the system of authorisation for data access in a way that offends traditional notions of the separation of powers. In Australia we have a concept enshrined in the Australian Constitution of three separate branches of government—the courts, the parliament and the executive. This is designed to provide important checks on the use of government power and the concentration of power in any one institution. This system guards against the unjustified intrusion into the rights of individuals—something that we have previously long held dear in Australia. This is called 'the separation of powers' and is fundamental to a legal system that respects the rule of law. Over recent times, there has been a very disturbing trend away from these rule-of-law principles. This has been evident in many other recent government reforms. This bill is an example of that trend.
The power given to the executive government—the Prime Minister and his or her ministers and their agencies—to interfere with the rights of individuals should be subject to oversight by the second arm of government, the courts. But this bill allows law enforcement and intelligence agencies to effectively authorise themselves to have secret access to our highly sensitive personal information. The frightening and risky result is a system at constant risk of overuse, misuse or arbitrary use by the executive branch of government and its agencies. There is absolutely no independent check that happens before data is accessed under this bill, and this should be of grave concern to all of us. It certainly was of concern to the Parliamentary Joint Committee on Human Rights. In its recent report, which included an examination of this bill, the committee made it clear that the human right of privacy is seriously at risk here and that this bill will limit that right significantly.

People might be asking, ‘Why is privacy so important?’ Clearly, for some people, the right to privacy—to not have your movements, your contacts, your associations and your communications tracked by someone else, someone potentially in government and in a position of great power—is hugely important on its own. But it is important to understand, too, that privacy actually underpins other extremely important human rights, such as the right to freedom of religion, the right to freedom of association—the people you mix with, meet with and associate with of your own choosing—and the right to freedom of political expression. These fundamental human rights are so much more easily undermined or threatened if the state is able to breach our privacy and potentially know about these aspects of our lives. It does not take much imagination or paranoia, given world history, to understand that totalitarian states elsewhere have benefited or would benefit hugely from regimes like this.

The Australian Greens agree with many others who understand the implications of data surveillance that this bill should be amended so that access to retained data can be granted when there is a warrant approved by a court or independent administrative tribunal. In other words, it should be required that a judge or tribunal member has to give the okay before data is accessed by law enforcement or intelligence bodies. This requirement is also reflected in an Australian Greens amendment to the bill.

It is astonishing that both the old parties agree that this type of rule-of-law protection should be available to journalists under the bill but would deny the same protection to ordinary Australians or anyone else, even members in this place. That means that my data and the data of all my colleagues—and all of us, potentially—will be stored and accessed without a warrant, except in circumstances where doing so would impact on the work of a journalist. Even where a journalist is involved, the protections offered by this bill are hollow. For example, in a case where ASIO has access to data, the protection is limited to the granting of a warrant being made by the minister rather than by an independent court or tribunal. This gives rise to ongoing concerns about a lack of independent oversight of this access.

In addition, under this new part of the bill, the journalists themselves will not be informed of, or be able to challenge, the warrant application. Instead, the issuing authority will be left to make a decision on the basis of information provided by the very agency seeking access and by public-interest advocates who have been chosen by the Prime Minister. The result is a bill that not only fails to adequately protect whistleblowers and journalists' sources but also

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openly acknowledges that the conventional safeguards for this kind of intrusive invasion into individual rights are only available to a very limited category of people.

That is not the end of the incongruent amendments made to this bill by the government and the opposition, however. By seeking—largely unsuccessfully—to appease journalists, it has become even more clear just how these amendments fail to include other confidential communications that should be protected from the data retention and access scheme contemplated by this bill: those sorts of confidential communications that have been traditionally highly protected under our common law and legislative systems in Australia. Communications between doctor and patient, or lawyer and client, also fall within a category that has historically attracted the protection of the law—protections that have been wholesale abandoned under this bill.

As the Law Council of Australia has explained, under this law, data will be retained under this scheme even if it relates to communications that are protected from use. This is a grave concern because of the special relationship between lawyers and their clients, which is protected by legal professional privilege. It is a relationship which is rightly regarded as a critical protection of the rule of law and which must not be put in any way at risk.

We have had a last-minute deal struck between the old parties to amend this bill. Responding to news of the deal, the Law Council's president, Mr Duncan McConnel, noted:

There is no apparent public policy basis for recognising the need to safeguard confidential journalists' sources, while not also protecting confidential and privileged information between lawyers and their clients.

Indeed, the selective protection of a journalist's interests gives rise to a range of concerning questions, such as these questions posed by Mr McConnel:

... what would happen if a whistle-blower seeks legal advice prior to, or during communication with a journalist? Under the proposed amendments, the journalist's communication may be confidential, but what of the communications between a journalist or the journalist's source and the lawyer?

Data could allow inferences to be drawn from whether a lawyer has been contacted; the identity and location of the client, lawyer and witnesses; the number of communications and type of communications between a lawyer and a client, witnesses and the duration of these communications.

That was set out in the Law Council's media release of 20 March this year, clearly delineating their grave concerns about the effect on legal professional privilege of this bill.

Like the Law Council, the Australian Greens recognise the confidentiality of client-lawyer communication as a long held common law right and a right recognised under international human rights law. This was also recognised by the Parliamentary Joint Committee on Human Rights—a committee of this parliament. While views differed on how this right should be protected in the bill, it is my view that the protection of legal professional privilege can only be assured if the bill is amended to ensure that all content of communications that may be subject to legal professional privilege is excluded from the proposed data retention scheme.

When it comes to privileged communications, it is critically important that the community can have confidence that they will remain confidential. It is not enough to cross our fingers and hope that this is not the type of thing that the Attorney means when he talks about data. As we know, the Attorney-General has been infamously confused about the meaning of metadata in the past. No amount of assurance that legal professional privilege will be protected in the bill is sufficient to alleviate these concerns. The law must clearly and
explicitly protect these communications and, as currently drafted, this bill fails to do this. There is no excuse for that. These concerns are reflected in the amendments that will be moved by the Australian Greens.

As well as being the Australian Greens' spokesperson for legal affairs, I am also the spokesperson for mental health. This bill also gives rise to serious concerns in that portfolio area. More and more people around Australia are accessing health services, including mental-health services, online. The benefits of online support and information are very well known: it enables access for people in rural, regional and remote areas who do not have access to face-to-face services; it also allows access to those wanting confidential support and assistance; and it is often free. There is increasing evidence of the number of young people who access online mental-health services from the privacy of their own bedroom late at night when they do not feel able to reach out to other people at that time. With that increasing use of online services for mental health, there is a serious risk that this bill will undermine people's trust in these online services, with a flow-on risk to access to mental-health services and to mental health generally.

Under this bill, people cannot have confidence that where they go, what they say and who they talk to online will remain private. It may be that content of communications is intended to be excluded from retention under this bill. But, unless and until this term is comprehensively defined in the act, the community cannot have confidence about precisely what it is that authorities in Australia will be storing and collecting. Indeed, regardless of the definitions of 'content' and 'data', the fact that data can tell so much about a person's online activity means that this bill will have a chilling effect on whether and how people access confidential services online.

Of course, these concerns are not just confined to mental health services; they relate to any online activity that a person engages in that needs to be kept private. This could include any activity that people listening to or reading this debate can imagine being involved in. It could involve accessing information or joining in discussions about sex, sexual identity, gender diversity or getting advice about how to escape domestic violence. It is too early to see what impact this Bill will have on Australians' online activity and on their interaction with online services, but in my view any measure that risks turning those most in need away from potentially lifesaving services should not be pursued.

These are just a few of the very serious problems the Australian Greens have identified with this bill. Like my colleague, Senator Ludlam, I lament the deal done between the old parties that has truncated parliamentary debate on this bill. It has also ignored the concerns based on evidence which have been expressed by a broad cross-section of the community.

When future generations look back to see how and why mass surveillance became legal in Australia, I believe the Australian Greens will stand out as the only party that was prepared to fight for the privacy and legal rights of ordinary Australians. I urge the Senate not to pass this bill and, if this course of action is rejected, to at least adopt the amendments to make the bill safer proposed by the Australian Greens.

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (13:31): I rise today to speak on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. I would like to address some of the more general arguments and accusations that have been made by some members of this chamber.
I would like to talk first about what the philosopher John Locke called the social contract. It is a philosophy that underpins many democratic governments, particularly those in Europe and here in Australia. Locke's view is that the preservation of the security and the safety of the citizenry is not only a primary obligation of government; it is the source of its legitimacy. Under the social contract citizens notionally agree to forsake certain freedoms in exchange for the government assuring their security and safety on the basis of mutually acceptable moral principles. This is described as the consent of the governed.

In the *Second Treatise of Civil Government*, John Locke wrote:

The great end of men's entering into society, being the enjoyment of their properties in peace and safety, and the great instrument and means of that being the laws established in that society …

The government is there to support society in peace and safety. Even more so: as John Locke says, a government's legitimacy rests on its ability to secure the conditions for society to flourish freely and safely. This is what we are debating here today.

Our great country can only be so if we are safe. Our great country can only be so if we ensure as best we can a peaceful place for our citizens to flourish. There is a balance between freedoms of the individual and the freedom to live in safety. This is a balance that all government's and responsible oppositions must weigh up when it comes to questions of national security. It is easy for some in this place who sit outside government and the responsibilities it holds to pursue the populist route. It is also easy to quote Benjamin Franklin and claim that if somehow there is a balance between freedom of the individual and the safety of society then the terrorists win. To do so does this place a disservice.

Australia is not the United States. Unlike in the United States, the right to bear arms, thankfully, is not written into our Constitution. In Australia there is agreement that the primary role of government is to keep a society safe, whether it is the environment, whether it is labelling laws to ensure that we are not poisoned by foods, all of which get debated in this chamber on a regular basis. National security issues, the safety of people to go about their business in the streets or buy a coffee in a cafe in Sydney—all of these issues deserve to be and should be debated in this chamber. But to assert that the prime obligation is the freedom of the individual at the expense of all else is to walk away from the Lockean social contract, to walk away from the consent of the governed. There is always a balance between freedom and safety. It is a balance that all democratic and responsible governments have to grapple with.

So this bill comes to the Senate having been—and I stress this—heavily amended in the other place. It was the subject of a rigorous inquiry and report by the Parliamentary Joint Committee on Intelligence and Security. It is fair to say that this bill is wholly different from what the government originally proposed. The opposition is determined to ensure that our national security and law enforcement agencies have the powers that are necessary to keep Australians safe.

In recent times the Senate has dealt with three bills concerning national security. Like with the other bills relating to national security, Labor supports this bill, continuing our bipartisanship on national security matters. As well as defending our nation's security, Labor also strongly believes in the importance of upholding the rights and freedoms that define us as a democratic nation living under the rule of law.
This bill, it should be stressed, goes beyond matters of national security, though it does have an important national security dimension. Data retention is a tool used, in the main, for the ordinary enforcement of criminal law. It is essential that in passing these laws designed to protect the Australian community, we strike that balance between these freedoms, and Labor has approached this bill on that basis. Labor is determined to ensure that our national security and law enforcement agencies absolutely have the powers that are necessary to keep Australians safe. I will say that over and over again.

We understand, however, that this is controversial legislation. I understand why some people are concerned about it. But we need to be clear that data retention is not new. Data retained by private companies is already accessible without a warrant by a range of agencies under a scheme that has not been significantly reformed since 1979. Meta data has been collected and stored by telecommunications companies for many years. The fact is that many of the organisations that hold and manage our data for us already keep it. Some keep it for a week and others for up to seven years. They keep it in an environment that is loosely regulated with few rules and little oversight.

Also, there has been concern expressed by law enforcement agencies that technological changes and changing practices are seeing less data retained by telcos over time. This bill looks to resolve that by regulating the storage and access of metadata, including for our security agencies. As I have stated, access to metadata is currently allowed under the Telecommunications (Interception and Access) Act 1979. Police and other organisations access this data right now. The Parliamentary Joint Committee on Intelligence and Security heard evidence that last year Australian telcos had received more than half a million applications by law enforcement agencies to access metadata. The committee also heard that less data may be retained by some companies in future. We want to ensure that telecommunications data remains a reliable tool available to law enforcement and national security agencies where appropriate.

But we also want to tighten the regulation and supervision of that access ensuring Australians' safety is an objective that everyone in this parliament shares. Typically this means that proposals regarding national security are addressed in the spirit of bipartisanship. This does not mean, however, that the opposition will simply agree with all of the government's proposals no matter what. Instead, bipartisanship means the opposition will engage constructively with the government to ensure their proposals meet national interests. By way of example, while the opposition ultimately supported the National Security Legislation Amendment Bill (No. 1), the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 and the Counter-Terrorism Legislation Amendment Bill (No. 1) 2014 last year, it was Labor that insisted that these bills be referred for scrutiny to the Parliamentary Joint Committee on Intelligence and Security.

The very substantial amendments agreed to by the government on the foreign fighters bill are an example of this proper scrutiny. On this bill, Labor has argued for and achieved a number of significant improvements to the original bill. For example, Labor argued for improved oversight of the scheme by two independent Commonwealth agencies: the Inspector-General of Intelligence and Security and the Commonwealth Ombudsman. Labor also argued that the bill should provide for the intelligence committees to have an operational oversight of security agencies under the data retention scheme.
Further, Labor argued for amending the bill so that an agency must be satisfied on reasonable grounds that interference with the privacy of any person is justifiable and proportionate. All of these are the recommendations from the committee that the government has accepted. In all, the committee made 38 substantive recommendations to the original bill. Labor insisted the government implement each and every one of them, and the bill was amended as required in the other place. As a result, the bill that we debate in this chamber is of a wholly different character to that introduced into the House last October.

Senator Ludlam: That is rubbish.

Senator CONROY: Most notably, the committee recommended and successfully implemented changes—

The ACTING DEPUTY PRESIDENT (Senator Whish-Wilson): Order!

Senator CONROY: It is like you actually think you live in the United States. You guys are an offshoot of the Republican Party nowadays—seriously. You are up there with the GOP.

The ACTING DEPUTY PRESIDENT: Order! Senator Conroy, I remind you to address your comments through the chair.

Senator CONROY: My apologies. I am being harangued by your colleagues in your party—

The ACTING DEPUTY PRESIDENT: I am aware of that.

Senator CONROY: But I did not notice you mention them in that little admonishment that I received.

The ACTING DEPUTY PRESIDENT: I would ask you to come to order, Senator Conroy.

Senator CONROY: Most notably, the committee recommended and successfully implemented changes to the bill that gave journalists and their sources some protection from this bill. The committee recommended that the Ombudsman, the Inspector-General of Intelligence and Security and the committee itself be notified where retained data was accessed to identify a journalist's source. This was a worthy measure, but it was not enough. It took Labor writing to the Prime Minister to force the government into creating a warrant regime to protect journalists and their sources. I am not standing here to score points. I welcome this change of heart, and I hope that it gives the media and the broader community some reassurance.

This amendment includes the creation of a Public Interest Advocate, the PIA, which is likely to be a senior barrister or barristers, that must be notified whenever an application for a warrant is made. The PIA will be empowered to stand in the shoes of the journalist and argue why it is contrary to the public interest to issue the warrant. These changes mean much stronger protections for journalists and their sources, certainly much stronger than the government originally proposed. This is a crucial improvement on the bill as originally introduced.

While this bill is largely different from what was originally put forward by the government, there remains some unfinished business. For instance, Labor remains concerned about whether companies should be obliged to store data in Australia. The former director-general of ASIO, David Irvine, recently said that he would be concerned about the security of retained
data if it were stored overseas—because it would be 'governed by someone else's sovereign legislative system'.

Senator Ludlam interjecting—

**Senator CONROY:** This matter is currently being examined as part of the telecommunications sector security reform process. This is a process that Labor started in government and which the Abbott government says will be completed well before the end of the data retention scheme implementation period. This is an issue that Labor will have strong views on and will continue to watch with interest.

Our security agencies have requested changes to these laws to support their work in fighting terrorism and organised crime. Labor has held the government to account during this process, as is appropriate—and the bill we debate today is, despite the protestations from my left, of a wholly different character to that which was first introduced into the House in October. Labor will always work to keep Australians safe and, at the same time, to get the balance right in upholding the rights and freedoms enjoyed by all Australians. Getting this balance right can be a challenging task, but it is a task that Labor undertakes seriously and diligently.

It may come as a surprise to some of those in the chamber who have been interjecting, but I when I opened by referring to 'some of the more general arguments and accusations that have been made by some members of this chamber', I was not actually talking about them—until they self-selected by intruding into my contribution. I was referring more to one of our New South Wales colleagues. But by interjecting you have emphasised the stark contrast between your position and that of the Labor Party on this legislation. I commend the bill to the Senate.

**Senator HANSON-YOUNG** (South Australia) (13:46): The Australian Greens oppose the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. Several of my Greens colleagues have already commented on this piece of legislation: on how risky, unnecessary and dangerous it is for everyday Australians—not to mention for Australian journalists. This bill is an unnecessary, disproportionate and ineffective means of achieving its stated objective of protecting Australia's national security.

I know that national security is the hot topic in this place—it always is when a Prime Minister is polling badly. It staggers me that the Labor Party has reached the point where they are prepared to stand here and try to sell a position that we all know is more about wanting to show that there is not a glimmer of difference between them and the government on national security issues than it is about proper scrutiny of the legislation—a piece of legislation that is going to fundamentally change the way we assess and manage people's personal data.

This bill risks undermining fundamental aspects of our free society. It jeopardises the ability of journalists to protect their sources from intimidation, from blackmail and from being hunted down because the government of the day does not like the fact that they have blown the whistle. It also provides easy access for hackers to treasure troves of the most private details of people's everyday lives. In the name of protecting them, this legislation is actually putting Australians more at risk. These risks are very real and very serious.

This bill will turn all Australians into suspects by forcing telecommunications companies to store data pertaining to all Australians' telephone calls, emails and other data for two years. The legislation will not require the storage of the content of phone calls and emails—calls
will not be recorded, the content of emails will not be recorded and the content of SMS messages will not be recorded—however, the legislation will require telecommunications companies to store the so-called metadata. For example, the legislation will require the storage of details of who you called, when and from where—the physical location and which mobile phone you used at that place. It will store details of who you emailed and when. Make no mistake: if this bill becomes law, it risks fundamentally changing what we understand today to be a free society.

Australians' private lives will become, to a large degree, public. This bill makes a disingenuous distinction between metadata and the substance or content of communications. As experts have made abundantly clear throughout the committee process for this bill—my colleague Senator Ludlam has participated wholeheartedly in that process; he is probably the leading expert on these issues in this place—this is a false dichotomy. Metadata may have been a useful term in the days when telephony made up the lion's share of electronic communication, but, in an age when most Australians live their lives on smartphones, tablets and PCs, that is no longer the case. The details that can be obtained by examining the so-called metadata on a person's electronic device, particularly if you can look at all the metadata from a continuous two-year period, are extraordinary. It is intrusive, it may be embarrassing for some people and it may risk—if that information were to fall into the wrong hands—damage to the person. It may affect their friendships, their working relationships, their employment, their employment prospects and their standing in Australia's online and real-life communities. Evidence of current metadata requests under the current regime shows that a massive number have nothing to do with solving serious crime but instead relate to petty requests by agencies such as the Australian Taxation Office and the Department of Human Services to track what ordinary Australians—people not suspected of any serious crime—are doing.

So, why the red flag on national security?—because that, of course, pushes buttons. But knowing where a Centrelink recipient is at a particular time when they make a phone call, and knowing who they make it to, is the type of information that we are talking about. And that type of exposure of individuals' private lives is at risk.

Under the new legislation, the Attorney-General will be able to add agencies to the list of agencies able to access metadata. Further, history shows that the data will be hacked and leaked to the internet—there is no way that the government can pretend that they can guarantee that that would not happen—leading to massive privacy breaches. The Department of Immigration and Border Protection have been involved in one of their own scandals of breaching privacy of data, when they accidentally released the names, the numbers, the addresses, the ages and the nationalities of over 10,000 asylum seekers here in Australia.

Who, overwhelmingly, accessed that data?—governments and sources with international IP addresses. That put those 10,000 people who were seeking asylum and protection from their own countries at even more risk because it revealed that they were in Australia seeking protection. That is just one example of a current system that has gone wrong, not to mention what will happen when every single Australian will be subjected to having their metadata stored for two years. Just imagine the risk there would be if that type of information fell into the wrong hands.
There is a real risk—there has been some talk about this recently—that this legislation will lead to undermining the anonymity of journalists' sources. In this context, I am particularly concerned about the effect that this legislation will have on the vital work being done by whistleblowers in Australia's detention centres, including our offshore detention centres. As recently as last week, the Moss review demonstrated that the Australian government cannot be trusted to protect asylum seekers and refugees from abuses; nor can the government be trusted to tell the truth about what is going on. This government have already proven that they are more interested in shooting the whistleblower and covering up the crime than in dealing with the issue at hand. This government cannot be trusted with this level of sensitivity of information and data.

The government cannot be trusted to be transparent and accountable with what goes on within government departments. They cannot be trusted—at least, from what we know from the Moss review—to know about and to be in control of what is going on in their own detention centres. Employees working in our abusive and shambolic detention centres, both here and offshore, are already subject to very tight employment contracts and to confidentiality clauses gagging them from disclosing the truth.

The government system forces those people, even when they see wrongdoing, to be quiet about it—to shush and not to speak up—and the only way through this cloud of secrecy is to blow the whistle. And what happens when you blow the whistle? The government puts the AFP onto you and you start being investigated for blowing the whistle—for example, for blowing the whistle on abuse claims in detention centres. That is what we have seen happen as recently as the last few weeks. This government has proven themselves already to be obsessed with secrecy and cover-up. They cannot be trusted to tell the truth. Even when they have the information they cannot be trusted to keep it secure.

If Australian expats working in offshore detention centres cannot be safe from the abuse of surveillance and cannot be protected when they blow the whistle or stand up and report crimes, how on earth can we trust that this government is going to treat the Australian public here on the mainland properly with this type of invasive collection of personal data? These risks are simply unacceptable. They are disproportionate to achieving the bill's objectives. This is because, while ordinary Australian's will be subject to the draconian intrusion into their private lives created by this bill, those who set out to do Australia harm—who really want to talk about national security—will easily remain undetected because they will be able to avoid this type of surveillance.

It staggers me that this piece of legislation is an unsafe and risky joke of the government's. They set out to say that it is about protecting the Australian people. We have no trust that they are able to do that. In fact, the very people that the Australian government tells us we need to be protected from are going to be able to work their way around this legislation in seconds. It is a false dream that is being sold by this government. There is no protection of ordinary Australians from the awful things that somebody might want to unleash on our communities. This does not keep us protected, but it weakens not only the freedoms in our society but the protections for people who have legitimate reason for leaking information, blowing the whistle and calling out bad government decisions.

We know that the Australian government—the immigration department in particular—has already got a number of witch-hunts underway in relation to whistleblowers who work in
Australian detention centres. Why on earth they are spending energy on that rather than on the people that the government suggests we need to be protected from is beyond me. This bill does not make Australians safer. This bill puts Australians' lives at further risk. It weakens our ability to have an independent, robust and free society that is underpinned by the ability of journalists, in particular, to keep their sources private, protected and free of intimidation.

Debate adjourned.

QUESTIONS WITHOUT NOTICE

International Development Assistance

Senator SINGH (Tasmania) (14:00): My question is to the Minister for Finance, Senator Cormann. I refer to the finance minister's decision to rule out further cuts to the aid budget. Can he confirm that this was a response to the foreign minister's fit of pique at leaks from the Treasurer's office?

Senator CORMANN (Western Australia—Minister for Finance) (14:00): No.

Senator SINGH (Tasmania) (14:00): Mr President, I ask a supplementary question. Now that the Minister for Finance has ruled out further foreign aid cuts, will he also rule out further cuts to health and further cuts to hospitals?

Senator CORMANN (Western Australia—Minister for Finance) (14:00): What I will rule out is a continuation of the unsustainable spending growth trajectory that Labor put Australia on. What I can rule out is a continuation of the policies of the previous government which contributed to a weakening of the economy, rising unemployment and a budget position which was rapidly deteriorating, taking us to government debt of 122 per cent as a share of the economy within just a couple of decades. That is of course that trajectory that none other than the failed former finance minister—

The PRESIDENT: Pause the clock. Senator Moore, a point of order?

Senator Moore: Direct relevance, Mr President. Can the minister rule out cuts to health and hospitals?

The PRESIDENT: Minister, I will remind you of the question. You have 21 seconds in which to answer the question.

Senator CORMANN: Thank you very much, Mr President. As Senator Singh knows, the budget will be delivered on the second Tuesday in May, and what I can say to Senator Singh is that—

Opposition members interjecting—

Senator CORMANN: Senator Singh asked me about what I can rule out. I can rule out a continuation of the disastrous trajectory that the worst finance minister in Australia's history put Australia on, a trajectory that— (Time expired)

Senator SINGH (Tasmania) (14:02): Mr President, I ask a further supplementary question. I think the answer was no to that one. We will see how we go with the final supplementary question. The Minister for Finance has ruled out further cuts to foreign aid, so will he rule out further cuts to education and further cuts to schools?

Senator CORMANN (Western Australia—Minister for Finance) (14:03): What the government will continue to do is make the decisions in order to put Australia on a stronger
foundation for the future. The previous government put Australia on a trajectory where we were borrowing from our children and grandchildren, putting their living standards at risk by forcing them to pay for our day-to-day living expenses today as well as their own. Of course, that is not a trajectory that this government will continue. Indeed, in last year's budget we made a series of very important decisions to put Australia on a stronger foundation for the future. Three quarters—

**The PRESIDENT:** Pause the clock. Senator Moore, a point of order?

**Senator Moore:** Mr President, I was wondering whether we could get any comment about education and schools in the answer.

**The PRESIDENT:** Again, I will remind the minister of the question. He has 21 seconds in which to answer the question.

**Senator CORMANN:** Thank you very much, Mr President. When it comes to schools and education, the government will make sure that federal government funding for schools and education is sustainable over the long term. That is, of course, our responsibility as a government. If the Labor Party really cared about education, they would actually join us in making sure that federal government spending is sustainable and affordable within the economy. *(Time expired)*

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**Building and Construction Industry**

**Senator McKENZIE** (Victoria) (14:04): My question is to the Minister for Employment, Senator Abetz. Can the minister update the Senate on the most recent reports of thuggery, violence and intimidation in the building industry?

**Senator ABETZ** (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:04): I thank Senator McKenzie for her question. Just last week, the CFMEU and its officials were found to have broken the law in the 2012 blockade of the Melbourne Grocon site. Victorian CFMEU Secretary Setka led the way. He ambushed the Grocon worker, punched the windscreen of his van, told him he would come after him and that he hoped he would die from his cancer. He also shoved a security manager down a laneway and, when the worker protested, threatened to shut him up permanently.

Law-breaking is nothing new for Setka. On separate occasions he has been found guilty of assaulting police, violence against workers, threatening behaviour, intimidation, indecent language and wilful trespass. He has been convicted or fined for 40 offences and sentenced to jail twice. He was jailed for breaking into a worksite where he was banned, punching and kicking an employee, threatening another with a steel bar and throwing liquid at a security guard. All this from a person who professes you need him to ensure workplace safety!

He was convicted of threatening a manager who was planning to give evidence against him in a tribunal. Now there is a reason to keep the compulsory powers. He was also fined for threatening behaviour and charged for obstruction and intimidation of a Commonwealth official. He demanded a worker be kicked off a work site because he was related to a manager Setka hated, saying, 'I'm gonna rip his head off and bury it next to Ned Kelly.' All this from a man who has a 20-year friendship with the underworld's Mick Gatto, whom he calls 'a good man'.
Senator McKENZIE (Victoria) (14:06): Mr President, I ask a supplementary question. Can the minister update the Senate on any threats to the rule of law in the building industry?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:06): There is a very concerning threat to the rule of law in the building industry. The CFMEU is currently facing contempt of court proceedings, and there have been no less than five cases since 2001 in which the CFMEU was found guilty of contempt of court and heavily fined.

These include fines of: $1.25 million in March last year; $150,000 in 2011; and, just last week, $125,000. This is all members' money. Yet the Federal Court found last week that the CFMEU did not offer any apology or express any contrition, nor did it advise the court that it had put in place arrangements with a view to ensuring that future undertakings were complied with. Anyone concerned about upholding the rule of law should be concerned about the current state of unlawfulness in the construction sector. (Time expired)

Senator McKENZIE (Victoria) (14:07): Mr President, I ask a further supplementary question. Can the minister update the Senate on the criminal activity in the building industry?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:07): Victorian Police Assistant Commissioner Stephen Fontana told the royal commission of the links between unions and organised crime. He identified the police's concerns about corruption, drug trade, blackmail and extortion in the industry. He said that Victoria Police intelligence indicates that 'criminal activity is undertaken by trade union officials directly', and that 'union officials use organised crime figures to act as debt collectors in the industry'. Counsel assisting asked: 'Which union undertakes these activities?' to which Assistant Commissioner Fontana replied: 'Certainly, the CFMEU is one that comes to mind.' If anyone is curious as to the identity of those CFMEU officials referred to by Assistant Commissioner Fontana, I am sure that Mr Setka might be able to provide the answer. (Time expired)

Education Funding

Senator O’NEILL (New South Wales) (14:09): My question is to Senator Birmingham, the Minister representing the Minister for Education. Before the election the government promised 'more funding for people with disability through disability loading in 2015'. Instead, the government cut the More Support for Students with Disabilities program and failed to implement the Gonski disability loading as promised. Will the minister explain to the parents and students who are in Canberra today for the 'disability day of action' why the government has cut funding that gives children the educational opportunities they deserve?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:10): I thank the senator for the question. I thank her for the opportunity to set the record straight and to make crystal clear to all senators that there has been no cut to Australian government support for students with disability. In fact, there is more funding for students with disability than ever before. This government is providing $5.2 billion for students with disability over the period 2014 to 2017, including $1.2 billion for students with disability in 2015 alone.

In relation to issues around disability loading, the Commonwealth is entirely fulfilling our obligations and we are working on the process for a refined disability loading, which will be
determined by nationally consistent definitions, and which will be available for the first time, based on levels of adjustment required by a student.

The Australian government along with states and territories has been working towards gathering the nationally consistent data for students with disability. We believe it is very important to get this right and we know that we must have robust data to do so. In what is a significant achievement, this year will be the first year in which all Australian schools will complete the data collection. The refined loading is on track to be introduced in 2016, as planned, allowing the government and the states and territories to further refine the existing loadings to better support students through the levels of adjustment that are required for a student, not just a label.

Just as this government is committed to delivering on the NDIS, this government is equally committed to making sure we get this process right, that we get the loadings and support for students with a disability right. We are providing this record funding and we will deliver on this policy outcome, contrary to the lies and scares of those opposite.

Senator O’NEILL (New South Wales) (14:12): Mr President, I ask a supplementary question. Last week, the Minister for Education declared himself a ‘fixer’. Given that he has cut the More Support for Students with Disabilities program, and failed to implement the Gonski disability loading as promised, what exactly has he fixed for students with disability?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:12): Clearly, the senator was not listening to the previous answer. The process for putting in place the disability loading—funding for the needs based disability loading—was included in the last budget. It will be in this budget. It is in the forward estimates. It is there. We are committed to delivering on it. We are committed to seeing the introduction in 2016 as planned. It is completely irresponsible, frankly, of those opposite to be peddling these types of lies, to be creating this type of fear, when the reality is that the funding support is there and the policy work is being undertaken in a cooperative way with the states and territories to make sure that we get this right.

Unlike those opposite, who like to develop funding models that were just about throwing more out cash in an ill-thought-through way, we are putting in place the framework that will stand the test of time and ensure needs based funding for students with disability is delivered. (Time expired)

Senator O’NEILL (New South Wales) (14:13): Mr President, I ask a further supplementary question. During Senate estimates the government used its numbers to suppress the tabling of a report crucial to the Gonski disability loading. Why is the government so intent on keeping students, parents and teachers in the dark on this important issue?

Senator Abetz: Still not listening.

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:14): Indeed, Senator Abetz is right; Senator O’Neill is clearly still not listening to the facts, and the facts of the matter are that this government is delivering. We will deliver a policy that will stand the test of time.

The senator wants to talk about stunts like trying to table reports in Senate estimates. Every member in this place knows that there is no role for the tabling of documents like that in
Senate estimates. If the senator wants to release a document, she can release a document however and wherever she wants. This government is not interested in stunts from those opposite. We are interested in delivering support for students with a disability. We are interested in making sure that, just as Senator Fifield and the government deliver on the NDIS, we deliver the loadings that were promised in a way that will stand the test of time and deliver to families and students the assistance they need. This government will fix it, we will deliver it, we will make sure this policy is implemented. (Time expired)

Mental Health

Senator WRIGHT (South Australia) (14:15): My question is to the Minister representing the Minister for Health, Senator Nash. An open letter signed by more than 70 mental health organisations was sent to the Prime Minister this morning saying that the funding uncertainty plaguing the mental health sector has now reached crisis point. Has the minister been briefed on the number of people who no longer have access to mental health services because of staff attrition and service wind-down caused by the government's failure to guarantee funding for vital programs?

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (14:16): I thank the senator for her question. Yes, I am aware of that, and the Minister for Health is also well aware of that. She is highly conscious of the need for funding certainty and is committed to working with the sector to make sure we have that front-line service delivery that we need. That is a matter for the consideration of the minister and I know she is hoping to conclude that deliberation in the very near future.

When it comes to mental health provision in rural and regional areas—and I know this is an area of concern for those on both sides of the chamber—there are a number of programs that the coalition government is already implementing to ensure we get the outcomes we want on the ground. We need only look at mental health services in rural and remote areas. We have got $16.7 million going out to around 200 communities across rural and regional areas that otherwise would not get services. Under the National Suicide Prevention Program we have $9.2 million—

Senator Wright: Mr President, on a point of order: I specifically asked the assistant minister whether the Minister for Health has been briefed on the number of people who no longer have access to mental health services as a result of the funding uncertainty. It was a specific question and I would appreciate a specific response.

The PRESIDENT: Senator Wright, you did ask that question and the minister said up-front that she and the minister are aware of it. I take that to be a direct answer to your question. The minister is in order.

Senator NASH: As I was saying in relation to the National Suicide Prevention Program, there is $9.2 million going to 23 projects predominantly in rural and regional areas to address what is a very important issue for people not just in rural and regional areas but right across the country. The coalition is well aware of that and currently has programs in place to address that. We will be working through the issues the senator has raised.

Senator WRIGHT (South Australia) (14:18): Mr President, I ask a supplementary question. I query whether the government actually understands the depth of this crisis. These organisations need to give notice to staff who may lose their jobs if funding is not renewed in
the next few days. How many more days is the government going to make people wait to find out whether they will be out of a job and these services will be continuing?

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (14:18): As the senator would be aware, this funding agreement runs to 30 June. As I indicated in my first response the Minister for Health is very well aware of the need for certainty around these issues. I have to respond to the senator's comment that she does not believe the government fully understands the depth of these issues.

Senator Wright interjecting—

Senator NASH: I take that interjection from Senator Wright—of course we are. This coalition government is more committed to mental health in rural and regional areas and across the whole nation than we have seen from those opposite. For the senator and the Greens to say the government does not understand the depth of this issue is completely misleading. We absolutely do understand the depth of this issue and the minister will continue to work to resolve this in a timely manner.

Senator WRIGHT (South Australia) (14:19): Mr President, I ask a further supplementary question. The programs at risk here are literally life-saving services that in many cases provide support to people who may be considering suicide. Given that six Australians take their own lives each day and suicide is now the leading cause of death for young Australians does the minister agree that any loss to services could potentially have life-threatening implications?

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (14:20): I reiterate for the senator that this is an issue that is being worked through at the moment. The minister realises the importance of this issue and is hoping to conclude the deliberations. It is the coalition government that is focused on mental health, particularly for young people. We increased to 100 the headspace sites, which everyone in this chamber would know have been so effective. Indeed, 46 of those sites are specifically targeted for rural and regional areas. I visited one of them just recently up in Coffs Harbour and they do a tremendous job. This government has a very real focus on youth mental health as a priority. With one in five people across the nation facing a mental disorder every year it is absolutely right that this issue is a coalition government priority particularly in terms of how it affects young people across the nation.

Disability Services

Senator WILLIAMS (New South Wales) (14:21): My question is to the Assistant Minister for Social Services, Senator Fifield. Can the minister update the Senate on any developments in the rollout schedule of the National Disability Insurance Scheme in New South Wales? I am sure Senator O'Neill will be all ears!

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (14:22): I am delighted to advise colleagues that the Abbott and Baird governments have agreed on a plan to roll out the NDIS to western Sydney, from 1 July this year, a full year ahead of schedule.

The rollout in the Penrith, Hawkesbury, Lithgow and Blue Mountains areas will, as I say, commence from 1 July. It will cover metropolitan, urban and regional districts. Senator Payne in particular knows that western Sydney is an area of high need when it comes to early
intervention services for children with disability. This plan will bring the NDIS to 2,000 children and young people with disabilities, aged nought to 17, in these areas.

Senator Conroy interjecting—

Senator FIFIELD: I hear Senator Conroy's delight at that. Initially, from 1 July, children with disability and their families will be able to access information linkages and capacity-building supports from the NDIS and then, from September, participants will be able to access funding for the individualised NDIS plans. The Commonwealth and the returned Baird government will work with the NDIS agency to settle the finer details of the implementation, including establishing an NDIA office in the Penrith area, which I know Fiona Scott is very happy about.

We will continue to work with the New South Wales government on a rollout schedule for the NDIS across the rest of the state, from 2016. Both the Abbott and the Baird governments are very committed to a better deal for people with disability. We are committed to increasing choice and control, and this plan will see young people with disability in a high-needs area, such as western Sydney, get the vital support that they need sooner. I should in particular acknowledge the advocacy of Fiona Scott, Louise Markus and John Cobb.

Senator WILLIAMS (New South Wales) (14:24): Mr President, I ask a supplementary question. Can the minister inform the Senate why children under the age of 18 have been selected to be prioritised under this plan?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (14:24): Early intervention services can have a huge impact on the lives of children with disability, not just in the present but also in the future. The services which will be in place can help kids with disability to improve, for instance, their learning outcomes and, down the track, their economic and social participation as an adult. That is why we, along with New South Wales, have prioritised children needing early intervention services as part of this rollout plan because this is an opportunity to make a real difference not just for the lives of the kids now but also to their future.

That is what the NDIS is all about: giving people with disability and their families choice and control, letting them choose the services that are right for them. I should also acknowledge the advocacy of Mr Stuart Ayres, New South Wales Minister Assisting the Premier on Western Sydney.

Senator WILLIAMS (New South Wales) (14:25): Mr President, I ask a further supplementary question. Can the minister provide the Senate with an update on the future rollout of the NDIS across the country?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (14:25): I can confirm to the Senate that there are further bilateral agreements, which are still underway at the moment, with each state and territory to determine how we will roll out the NDIS beyond the existing trial sites. We are absolutely committed 100 per cent to rolling out the NDIS in full. I should make the point that I have made before that one of the reasons why budget repair is so important is to make sure that we have the money to fully support those things that are the core business of government—things like the NDIS—giving people who face extra challenges for reasons beyond their control the support that they need. The NDIS is one of the most significant
ventures that the federal government has undertaken and, as I say, this really is the Abbott government getting down to what is the core business of the Commonwealth government.

**Defence Procurement**

**Senator GALLACHER** (South Australia) (14:26): My question is to the Minister representing the Minister for Defence, Senator Brandis. Is the CEO of the Australian Industry Group, Innes Willox, correct when he says, "The next generation of submarines should be built in South Australia given that it is a principal hub of naval ship and submarine construction and support in this nation?"

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:27): Senator Gallacher, I know Mr Innes Willox; I have a lot of respect for Innes Willox. And I can assure you that, when the government makes its final decision on the next generation of the Australian submarine, Australian industry will be delighted because there is going to be one overriding criterion—Senator Gallacher might be interested to know—in the decision that ultimately we will make and that is what is in the best interests of Australia. And at the moment, as Senator Gallacher, I am sure, is aware, the government is undertaking a competitive evaluation process to select the most appropriate international partner for the construction of the next generation of the Australian submarine.

**Senator Conroy:** You've already voted to give it to Japan!

**Senator BRANDIS:** Now, I hear Senator Stephen Conroy braying at me and pointing his finger at me. Senator Stephen Conroy of course represents the defence portfolio in this chamber. Senator Stephen Conroy has to explain why it was that for six years not a thing was done, not a finger was lifted by the former Labor government, to progress the construction and acquisition of the next generation of the Australian submarine. So after six years—

The PRESIDENT: Pause the clock!

**Senator Moore:** Mr President, I rise on a point of order on direct relevance to the question, which is about whether the minister agrees with the comments made by Mr Innes Willox, not whether he knows him.

The PRESIDENT: I will remind the minister of the question and advise him that he has 22 seconds in which to answer.

**Senator BRANDIS:** As I said to Senator Gallacher, I know Mr Willox and I have a high regard for Mr Willox and his opinions. Mr Willox will be delighted, because we will make a decision to repair the capability gap, left by the Labor Party, to acquire a next generation Australian submarine in the national interest.

**Senator GALLACHER** (South Australia) (14:29): Mr President, I ask a supplementary question. Is Mr Willox also correct when he states that Saab Sweden, a highly experienced submarine designer, should also have been included in the government's plans for the next generation of Australia's submarines?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:30): Senator Gallacher, I regret that I cannot agree with Mr Willox's observations about Saab Sweden, and
I can tell you why: Sweden has not constructed a submarine since 1997—almost 20 years ago—when the last of the Gotland class of submarines was delivered.

**Senator Fifield:** What class?

**Senator BRANDIS:** The Gotland class, Senator Fifield. Those who advise the government assess that Sweden's ability to deliver a modern submarine, after the hiatus in its design and fill program, will be demonstrated once its next-generation submarine is delivered in 2022. There will have been 30 years between when Sweden last delivered a submarine and when it next delivers a submarine.

**Senator GALLACHER** (South Australia) (14:31): Mr President, I ask a further supplementary question. I refer to the former chief executive of Lockheed Martin Australia, Paul Johnson, who says:

Do we keep evolving this multi-billion dollar industry on-shore, or not?

The answer is, of course, unequivocally we can't afford not to.

When will the Prime Minister reverse his captain's pick to let Japan build Australia's new submarine fleet and recommence building 12 submarines in South Australia?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:31): Through you, Mr President: Senator Gallacher, I do not know how many times I have to tell you before the message penetrates, but we have made no decision. The National Security Committee of Cabinet, the cabinet and the Prime Minister have made no final decision in relation to the acquisition of the next generation Australian submarine. What I can assure you, Senator Gallacher, is this—and I think you know this: Australia alone cannot build the next-generation submarine. We will need an international partner, and at the moment potential international partners—France, Germany, Japan—are being evaluated through a competitive evaluation process. It is on that basis, on an evidence-based informed decision, that a final decision will be made.

**Infrastructure**

**Senator SINODINOS** (New South Wales) (14:33): My question is to the excellent Minister for Finance and Minister representing the Treasurer, Senator Cormann. Can the minister inform the Senate how the government is building infrastructure in New South Wales and thereby laying the foundations for future growth?

**Senator CORMANN** (Western Australia—Minister for Finance) (14:33): I thank Senator Sinodinos, a senator from the great state of New South Wales. Our Asset Recycling Initiative taps into the private sector's willingness to invest in well-established and mature assets in order to fund new productivity enhancing, job-creating infrastructure. This is, of course, a key part of our strategy, working closely with the Baird coalition government in New South Wales, to build a stronger, more prosperous economy. Those established and mature assets will continue to perform and perform better in private hands, helping to drive increased economic growth and ease congestion as a result of significant additional investment in high-quality, new economic infrastructure.

Our Asset Recycling Initiative will support up to $38 billion in new infrastructure spending across Australia, and we know that the first cabs off the rank, taking advantage of our Asset Recycling Initiative, were none other than Senator Lundy's Labor colleagues here in the ACT.
Senator Lundy is absent today. Earlier this month the federal government also announced that $2 billion in incentive payments for crucial infrastructure projects will be provided to the state government of New South Wales. The coalition government here in Canberra is working together with the coalition government of New South Wales for the benefit of the people of New South Wales. Those incentive payments made under the Asset Recycling Initiative will be used to support the New South Wales government's infrastructure plans to create jobs, reduce congestion and boost growth. It is very popular with a range of Labor luminaries, including none other than former Labor Prime Minister Paul Keating, who said about the 49 per cent lease:

I support the Premier's view about this.

There are still some obscurantists in the Labor party …

Of course the obscurantists are over there, and they are in New South Wales. I have a few other quotes I would like to share and hopefully I will get the opportunity. (Time expired)

Senator SINODINOS (New South Wales) (14:35): Mr President, I ask a supplementary question. Will the minister advise the Senate what the reform legacies of previous governments teach us about the advantages of encouraging private investment in old public utilities?

Senator CORMANN (Western Australia—Minister for Finance) (14:35): It teaches us that the Labor Party says one thing in opposition and does quite another thing in government. In opposition they try to get into government by misleading people. They tell us 'They are all against us.' Let me give Labor a little history lesson. It was none other than the Hawke Labor government that in 1988 sold the Commonwealth Accommodation and Catering Service, in November 1998 the Defence Services Homes Corporation loan portfolio, in 1991 the Australian Defence Force home loan franchise, in June 1991 Commonwealth housing loan assistance schemes in the ACT, in 1992 Australian Airlines, in March 1993 the first 25 per cent of Qantas, in October 1993 the Commonwealth Bank and in November 1993 the Snowy Mountains Engineering Corporation. At a state level, the Goss Labor government in Queensland sold Gladstone power station. (Time expired)

Senator SINODINOS (New South Wales) (14:36): Mr President, I ask a further supplementary question. Will the minister advise the Senate of the opportunities and risks arising from state and territory government decisions on funding for major infrastructure investment?

Senator CORMANN (Western Australia—Minister for Finance) (14:37): Over 16 years in government, New South Wales Labor announced and then axed important infrastructure projects again and again because they could not find the money to pay for them. And we have a whole series of former Labor state politicians who are now singing the praises of Mike Baird and his plan to keep New South Wales working. These include former Labor Treasurer, Michael Costa, who I quote here directly:

Mike Baird's proposal for a partial privatisation is moderate, sensible and the right thing to do.

To quote Martin Ferguson directly:

As a former federal minister for energy, as a former union official—and as a long-serving member of the Australian Labor Party—I am proud to stand here before you today to lend my strong support to the restructure and sale of the NSW and Queensland electricity grids.
I have got more Labor quotes here and, in the interests of the Senate, I table these quotes.

Financial Transactions Tax

Senator LAMBIE (Tasmania) (14:38): My question is to the minister representing the Treasurer, the finance minister. I note that the Abbott government struggles to find budget savings which do not target Australia’s aged pensioners, and that increasing the retired age to 70 or altering pension indexation rates in favour of the government still has not been ruled out by the Treasurer. I also note that the Abbott government struggles to ensure the banks and large financial corporations are made to pay their fair share of taxes and properly contribute to the government revenue. Given that France, Italy and many other European countries have lessened the burden on their ordinary taxpayers and created new revenue schemes by introducing financial transaction taxes, which target banks and large financial corporations, apart from not wanting to upset people who donate generously to the Liberal Party, can the minister explain why his government will not introduce targeted financial transaction taxes in order to help repair the Australian budget?

Senator CORMANN (Western Australia—Minister for Finance) (14:39): I thank Senator Lambie for that question. It is a fair question. What I put to Senator Lambie is this: our objective is to make sure that all of the Australian government benefits and services are affordable and sustainable over the medium to long term—indeed, forever. We want to ensure that the aged pension, disability pension, medical benefits, pharmaceutical benefits—all of the important benefits and services provided by government—are sustainable and affordable in the economy forever. The trajectory that we have been on as a country was taking us to 37 per cent government spending as a share of the economy. The highest level of revenue as a share of the economy ever, in the history of the Commonwealth, was 26.2 per cent, so there is a growing and rising gap.

Senator Lambie asked me: why don’t we just increase taxes? If we were to chase an unsustainable spending growth trajectory, taking us to government spending of 37 per cent of a share of the economy with tax revenue at that same level, we would kill the economy, we would make our economy uncompetitive internationally and we would cause massive increases in unemployment. We would lessen opportunity and lessen living standards. These are not easy and happy decisions for governments to have to make. But if you have to make a transition to ensure that pension payments are sustainable and affordable in the economy, over the long term, then the best thing you can do is to make sure that you take people through that adjustment in a gradual, incremental way to ease the transition. And making adjustments to indexation arrangements—bearing in mind that CPI, right now, is running above male total average weekly earnings as an index—is an incremental, gradual way to help people through that transition to adjust to a more sustainable pension arrangement into the future. That is what we want to do. On the other side, we have also got a proposal in the budget, of course—

(Time expired)

Senator LAMBIE (Tasmania) (14:41): Mr President, I ask a supplementary question. I note that the minister still prefers to target pensioners for tax increases rather than his mates in big business. Is the finance minister aware of a particular type of financing trading company which is usually co-located in or near stock exchanges that, by the use of super-computers and sophisticated software, are able to skim billions in profits from ordinary retail investors? If so,
would the minister agree that this sort of company using high-frequency trades would be a good candidate for a financial transactions tax?

Senator CORMANN (Western Australia—Minister for Finance) (14:41): I thank Senator Lambie for that supplementary question. The challenge, when it comes to proper tax policy and the best possible tax design, is how can we raise the necessary revenue to fund the important services of government in the most efficient way possible, in the least distorting way possible in the economy, so that we do not detract from economic growth and job creation opportunities. So the conversation we need to have—bearing in mind that there is no opportunity here to increase taxes with a 'the sky is the limit' approach—is—

The PRESIDENT: Pause the clock!

Senator Cameron: Mr President, I rise on a point of order on relevance. The question went clearly to a type of company operating near the stock exchange that should be taxed. That was the question, and the answer has not gone near that question.

The PRESIDENT: The question had an additional element than that, Senator Cameron, and the minister has 24 seconds in which to answer the question.

Senator CORMANN: The point I am making is that if we want to maximise economic growth and opportunities for people to get ahead, we need taxes to be as low as possible—as high as necessary, but as low as possible—to be as efficient as possible and to be the least distorting in the economy as possible. And we will be having a tax white paper review process, which can consider any suggestions on how the tax system can be improved. But I would not lock myself into any particular options at this point, because we have to go through a process. (Time expired)

Senator LAMBIE (Tasmania) (14:43): Mr President, I ask a further supplementary question. I bring to the attention of the minister a report from the Australia Institute, which claims that if a financial transactions tax were only levied on a high-frequency share and stock traders who skim profits it would conservatively raise between $1 billion and $1.4 billion while saving mum-and-dad investors about $2 billion. If this is accurate, will the minister give an undertaking to introduce this tax and dedicate its income to boosting our veterans and age pensions?

Senator CORMANN (Western Australia—Minister for Finance) (14:44): I am aware of the Australia Institute. They are, indeed, an active participant in public policy debates across Australia. I am very confident that they will be making a submission to our tax white paper review process when it is initiated very soon. But, again, I would put a bit of a caution out there. Our objective ought to be to raise the necessary revenue for government—as little as possible but as much as necessary—in the most efficient way possible, so we can continue to grow the economy to its full potential, so we can continue to create better opportunities for people across Australia to get ahead and so we can continue to ensure that future generations, our children and grandchildren, can have the best possible opportunity to enjoy the same, if not better, living standards than those that are enjoyed by us today.

Senator Lambie: Mr President, I rise on a point of order. I simply asked the minister if he would give an undertaking to introduce this tax. Would he at least look at it instead of just pushing me to the side. We are giving you other options here. I am simply asking you—
The PRESIDENT: Order! Senator Lambie, you have raised your point of order. Minister, you have five seconds in which to answer the question.

Senator CORMANN: I am not pushing anyone to the side, but I am also not going to lock the government into a new tax. *(Time expired)*

Research and Development

Senator KIM CARR (Victoria) (14:45): My question without notice is to the Minister representing the Minister for Industry and Science, Senator Ronaldson. I refer to the achievements of the Advanced Manufacturing—

Honourable senators interjecting—

The PRESIDENT: Order! Just a moment, Senator Carr. On my right.

Senator KIM CARR: I refer to the achievements of the Advanced Manufacturing Cooperative Research Centre, including the creation of the world's first 3D-printed jet engine, which they have brought to Parliament House today. I further refer to the organisation's joint bid for a new innovative manufacturing CRC, which was recommended for approval by the independent CRC committee in May last year. Why has this recommendation now been sitting on the industry minister's desk for 10 months? Given the CRC's current funding expires at the end of June, why is the minister putting at risk 20 science and engineering jobs because of his failure to act?

Senator RONALDSON (Victoria—Minister for Veterans’ Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:46): I think 9 July last year was the last time the so-called shadow minister for industry asked a question. I will take the specific question—

Senator Conroy: On notice, yes.

Senator RONALDSON: I do not even know, for a start, whether it is indeed sitting on the minister's desk. Of course I will take the question on notice.

Opposition senators interjecting—

Senator RONALDSON: Apparently, taking it on notice is amusing. I will take it on notice. What I will say in relation to the CRCs—the shadow minister for industry probably does not know, so I had better tell him—is that a review of the CRC program was announced on 16 September. Mr David Miles AM is leading that review. We are talking about what the future will be for the CRCs. I expect, from what I have here, that he will be reporting back to the minister in the next month or so. When we get Mr Miles's report then we will have a look at it. The trouble is that these are questions that were asked at Senate estimates, and Senator Carr knows exactly what the process is. He has been shamed into asking a question after nearly nine months. He knows what the answer is. He knows Mr Miles is conducting this review. When Mr Miles has finished his review then Senator Carr will be advised accordingly. I also understand that in February of last year we provided over $100 million in funding to extend the CRCs as well as $75 million to establish three new ones. *(Time expired)*

Senator KIM CARR (Victoria) (14:49): Mr President, I ask a supplementary question. Given that the 18th CRC round was due to start in December 2014, can the minister explain whether the failure to commence the round is an indication that this program is actually under threat or simply reflects this government's general chaos and incompetence?
Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:49): The failed industry minister over six years, who was in and out on three occasions, is talking to me about chaos. What a nerve, coming from this man who was renowned as the worst industry minister this nation has ever had! What I can tell the chamber is that we are investing $1.6 billion into industry programs over the forward estimates. We are serious about the future of industry in this nation. We are serious about creating a number of funds which will maximise the opportunity for industry in this country to grow, invest and employ. We are not going to be lectured by the worst industry minister on record in relation to what is required to drive industry growth and manufacturing growth in this nation.

Senator KIM CARR (Victoria) (14:50): Mr President, I ask a further supplementary question. I refer to the $80 million cut from the CRC program in the 2014 budget. Given that the finance minister has ruled out further cuts to foreign aid, can the minister similarly rule out any further cuts to the CRC program?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:51): I will take that on notice. I am actually not the minister making those decisions, but I will take that particular aspect of the shadow minister's question on notice. I will just repeat that when you wait nine months or 10 months to ask a question you had better make sure that it is actually a question that is worthy of asking. All the shadow minister is doing is what he always does: creating a scare campaign in relation to the future of these. When Mr Miles comes back with the report the government will respond accordingly. When we are in a position to do so we will make the announcements about it.

Senator JOHNSTON (Western Australia) (14:52): My question is to the very capable Assistant Minister for Immigration and Border Protection, Senator Cash. Can the minister update the Senate on the success of Operation Sovereign Borders over the last 18 months?

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:52): I thank Senator Johnston for the question. Last week marked the 18-month anniversary of the implementation of Operation Sovereign Borders, and can I take this opportunity to thank and praise the men and women of the Australian Customs and Border Protection Service, who have been at the front line of the delivery of this policy.

At the 2013 election, Australians voted overwhelmingly for the implementation of the Abbott government but also for the implementation of strong border protection policies, which, as we know, were denied to them for six years under the former Rudd and Gillard Labor governments. Australians can now judge this government on the basis of the following statistics. Since the implementation of the full suite of Operation Sovereign Borders, which, I remind senators, includes the option of tow-backs where it is safe to do so, there has been one illegal boat arrival in Australia—just one. Let's compare that with the record of the last 18 months of the former Rudd and Gillard governments. In 18 months, the Australian public endured a staggering 534 boat arrivals with 35,000 illegal arrivals on board. And that is just the last 18 months of the—
The PRESIDENT: Pause the clock.

Senator Wright: I rise on a point of order, Mr President. The minister is misleading the Senate. It is not illegal to seek asylum in Australia.

The PRESIDENT: That is not a point of order.

Senator Abetz: On a point of order, Mr President, you have ruled on this issue on many occasions now and I would invite you to consider action against senators who continually raise points of order that they know have been ruled against.

The PRESIDENT: Thank you, Senator Abetz. Senator Cash has the call.

Senator Cash: As I was saying, there have been 534 boats and 35,000 illegal maritime arrivals. Under Mr Chris Bowen, the former minister for immigration—

The PRESIDENT: Pause the clock.

Senator Whish-Wilson: Mr President, on a point of order, I draw your attention to whether the minister is deliberately misleading the chamber on this issue. She has been reminded that it is not illegal to seek asylum.

The PRESIDENT: That is not a point of order. You are debating the issue. There is an opportunity at the end of question time for those matters to be debated.

Senator Cash: Under former minister Chris Bowen, there were 24,000 illegal maritime arrivals. Under former minister Brendan O'Connor, 12½ thousand people arrived here illegally. Then we have a look at former minister Tony Burke. He only had 5½ thousand arrive on his watch, but put it into perspective, colleagues: he was minister for less than 12 weeks. That is what you get under a Rudd and Gillard government.

Senator Johnston (Western Australia) (14:55): Mr President, I ask a supplementary question. Can the minister advise the Senate of the effect the government's strong border protection policies had on the insidious people-struggling trade.

Senator Sterle: I fixed it, because I'm a fixer!

Senator Cash (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:55): Taking up Senator Sterle's interjection, you are right, Senator Sterle: we did fix it. We have fixed what was, quite frankly, one of the most disastrous policy failures the people of Australia have ever seen. How did we do that? We did it by taking off the table the promise of permanent residency in Australia, which was put back on the table when former minister Chris Evans, in fateful August 2010, rolled back the former Howard government's strong border protection policies. And we all know what happened as a result of that. Fifty thousand people arrived here illegally. The Australian taxpayer incurred a cost of in excess of $11 billion.

Senator Abetz interjecting—

Senator Cash: Senator Abetz, you are so right—the human tragedy, Senator Sterle: 1,200 people dying at sea. So you are right: we did fix it, and we are proud of it. (Time expired)

Senator Johnston (Western Australia) (14:56): Mr President, I ask a further supplementary question. Is the minister able to inform the Senate of any alternative approaches to the government's proven border protection policies?
Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:56): From the howls on the other side, you know exactly where we are going if they are ever elected back to office. I listened to a news interview of the shadow minister, Richard Marles, the other day. Yet again, he failed to commit Labor if they were elected to office to the policy of turn-backs. Turn-backs have been integral to the success of Operation Sovereign Borders. The success of Operation Sovereign Borders, if you look at the statistics, is undeniable—one boat in the 18 months since the implementation of Operation Sovereign Borders, compared to 534 in the last 18 months of the former government. If those opposite are re-elected, all we do know is that we will return to the cost, chaos and tragedy that for six long years the Australian public had to put up with.

Aboriginal Legal Service

Senator CAMERON (New South Wales) (14:57): My question is to the Attorney-General, Senator Brandis. Can the Attorney-General confirm that, as a result of the government's cuts, the Aboriginal Legal Service New South Wales and ACT will not have the funding to continue its 24-hour legal advice service in addition to its RU OK phone line?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:58): Senator Cameron, this is what I can tell you. The Abbott government will be investing $1.3 billion into this sector over the next four years and the only funding reductions to community legal centres have been the saving of $4.37 million achieved by terminating ongoing funding and additional funding provided to environmental defenders offices. In relation to Aboriginal and Torres Strait Islander legal service, no service has had its funding reduced as a result of savings—not one.

Senator CAMERON (New South Wales) (14:59): Mr President, I ask a supplementary question. I refer to comments by Chris Day of the Aboriginal Legal Service, who says: There is no fat on the bone for us to cut without cutting frontline services, and that's where the impact is really going to hit.

The PRESIDENT: I do not think there is a question in that, Senator Cameron. But I will invite the minister to make any comment.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (15:01): I am assuming it was asked in an interrogative tone, Mr President. Senator Cameron, given that there have been no cuts to Indigenous legal services, your question would appear to have been based on a false premise.

Senator CAMERON (New South Wales) (15:00): Mr President, I ask a further supplementary question. I refer to comments from ALS lawyer Morgan Hunter, who says: I'm scared that there's going to be one type of justice for people who live in metropolitan Sydney and another type of justice for people who live in remote communities and remote NSW.

Why is the government cutting front-line legal services and exacerbating the gap between Indigenous and non-Indigenous Australians?
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (15:01): That is precisely what we are not doing. That is precisely the reason, when I became the Attorney-General, I directed that all of the legal aid money would be directed to front-line services so that it would not be spent on so-called advocacy and political activism by legal aid service providers. What this government wants to ensure is that the legal aid budget, whether it be for Indigenous legal services or whether it be in other areas of the legal assistance budget, is all spent of front-line legal services—every last dollar of it—and, in case you did not hear me the first time or the second time I answered your question, there have been no cuts to Indigenous legal services. None. Not one dollar.

Senator Abetz: To put Senator Cameron out of his misery, I will ask that further questions be placed on notice.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

International Development Assistance

Education Funding

Senator SINGH (Tasmania) (15:02): I move:

That the Senate take note of the answers given by the Minister for Finance (Senator Cormann) and the Assistant Minister for Education and Training (Senator Birmingham) to questions without notice asked by Senators Singh and O'Neill today relating to funding for foreign aid and disability education.

In particular, I would like to highlight the fact that Senator Cormann did not rule out cuts to health and education. He could have done so, but he clearly chose not to. He has left the door wide open to further cuts to health and education. This is already on top of the broken promises that were made after the last election where the Prime Minister said at the time that there would be no cuts to health and education. No cuts to health, no cuts to education is what he said. But we know now that he has broken that promise, like so many others, with $30 billion of cuts to schools, the scrapping of the Gonski reforms and the abandoning of needs based funding.

That needs based funding goes to the heart of the question asked by Senator O'Neill when we asked specifically about the effect that this government's funding cuts to education is having on students with a disability. We know today the effect of those cuts, and it is clearly reported in The Australian, among other media outlets. Principals have made it very clear that they are facing an urgent crisis in schools because of this government's cuts to education when it comes to providing the needs based funding to students with disability. But it is fine for Senator Cormann because he is looking after the Minister for Foreign Affairs. Despite any assertion elsewhere, that is clearly what he is doing as a protector of that minister. Forget about every other policy area. That is the one that he has perhaps used the Prime Minister's captain's pick of today.

Let us just have a look at what Senator Cormann is protecting. The government promised not to touch the aid budget before, and we know how it treats its promises. We know that in the health space. We know that in the education space. But last year in October the Minister for Foreign Affairs said there would be no more cuts to foreign aid. But in December we know what happened. Senator Cormann knows clearly what happened. There was a $3.7 billion cut from the aid budget in the mid-year economic update. So Minister Bishop may act
outraged, but it is she who signed off on that cut. It is she who signed off on the deepest ever cut to the aid program in Australia's history. This minister has confiscated $11 billion from Australia's aid budget. So whilst we already know the deep and hurting cuts in health and the deep and hurting cuts in education, we know that already there have been very deep and hurting cuts—the biggest in Australia's history—in our foreign aid budget. She may mock the Treasurer, but she cannot roll her eyes while shirking her responsibility for these cuts that have already occurred in the foreign aid budget.

The Australian Council for International Development has said that if there were any further cuts to the aid program it will not be credible, it will not be effective. We have known that for some time. The minister knows that, and she knows Australia has got the weakest and the most depleted aid program in Australia's history. Hence her being so alarmed at the Treasurer's attempt to make an even deeper cut, and hence Senator Cormann coming to her rescue. Senator Cormann has not come to anyone's rescue. He was quite happy to have $11 billion cut out of the foreign aid budget last December. He is quite happy, as he has given in his answer today, to not rule out any further cuts to health, to not rule out any further cuts to education, and we know what effect that is having right now on students with disability, let alone all the other students who need decent quality education in our country, which only comes from decent funding of those critical government services. Labor of course contributed to official development assistance funding in every budget. We have a high record when it comes to foreign aid funding and when it comes to health and education, because our core values demand it. That is what we believe is the right way for Australia, not this government's awful— (Time expired)

Senator SESELJA (Australian Capital Territory) (15:07): I wonder what the Labor Party's values are that Senator Singh finished on there and what they meant in foreign aid, because it is interesting that Australia became, I think, the third biggest recipient of foreign aid in our region under the former, Labor government, under their shambolic policies. They so badly lost control of the borders and lost control of the budget that we became the third largest recipient of Australian aid in the region in relation to border protection policies or so-called border protection policies under the former, Labor government. That was their idea of a sustainable aid budget. I think that Senator Singh should reflect on that fact—whether that was actually a good outcome when we saw the Labor Party lose control of the budget, lose control of the borders and make Australia the third largest recipient of Australian aid. Does that fit with the Labor Party values that Senator Singh was referring to at the end of her contribution?

I would say that the Labor Party values reflected in today's question time are mainly about deceit—mainly about trying to mislead the Australian people with some of their questioning. I am not surprised that Senator Cameron's question has not been taken note of, because of the embarrassment when he got the answers from the Attorney-General. I am not surprised they did not go to Senator Cameron's question. But that was along the same lines: he was asking a question and making assertions which were false, absolutely false.

Let us deal with the other questions that we are taking note of today. Firstly, in terms of school funding, the coalition is delivering, in the four-year budget period, $1.2 billion more in school funding than the Labor Party were going to. That is a fact.

Senator O'Neill: That was just a shift from youth funding.
Senator SESELJA: That is a fact.
Senator O'Neill: That was just a shift over from youth funding.
Senator SESELJA: It is $1.2 billion more than they were going to. So not only does it increase every year—
Senator O'Neill: That's not true.
Senator Bushby: That's true.
Senator SESELJA: Not only does it increase every year—
Senator O'Neill: You cut $30 billion.
Senator SESELJA: Not only does it increase every year, Senator O'Neill—
Senator Bushby: It's $1.2 billion more than you.
Senator SESELJA: So it is going up significantly every year. We committed to that four-year funding. But the Labor Party decided, before the election, to rip out $1.2 billion and not tell anyone about it. So we have had to restore the $1.2 billion that they ripped out, whilst increasing the funding in the four-year funding period. So, that is another scare campaign that is completely false that was in this question time. We had Senator Cameron with his embarrassing effort in relation to Aboriginal legal services, which was false—
Senator Lines: That is not false—
Senator SESELJA: We had the issues around schools.
Senator Lines: It's true.
Senator SESELJA: Senator Lines interjects because—
Senator Lines: Because I'm telling the truth.
Senator SESELJA: She thinks that, if she squawks just that little bit louder, somehow what she says will be true. Well, it is not true. Those are the facts.
Senator Lines: Nothing that you're saying is true.
Senator SESELJA: Those are the facts, Senator Lines.
Senator Lines: No, they're not.
Senator SESELJA: You ripped out $1.2 billion. We restored it. We not only increased funding to schools every year; we restored the $1.2 billion you ripped out when you were trying to repair the debt and deficit that you left us. I would say that that is a very, very good start.

Senator O'Neill interjecting—

Senator SESELJA: Let's go to the issue, Senator O'Neill, of disability funding, which you also raised. I think the AEU and Senator Wright have sunk to a new low today, shamelessly creating fear over funding for disabled school students—which Senator O'Neill has taken up. So here are some facts. There is a needs-based disability loading. It was introduced by this government in 2014 as part of the new school-funding arrangements. The loading is based on the current state and territory definitions of 'disabled student', and so every student who meets this definition attracts the loading. There has been no cut to Australian government support for students with disability. In fact, there is more funding—

Senator O'Neill interjecting—
Senator SESELJA: for students with disability than ever before. The government is providing $5.2 billion for students with disability over the period 2014 to 2017, including over $1.2 billion for students with disability in 2015 alone.

On all of these issues, the Labor Party is not telling the truth. At least Senator Cameron, in his embarrassment, managed to acknowledge that he was not telling the truth. I hope Senator O'Neill, when she gets up, will make the same recognition—that she has gotten it wrong.

(Time expired)

Senator O'NEILL (New South Wales) (15:12): What we just heard there from Senator Seselja was a dismissal of parents who have travelled across the country to be here today with their children who have a disability. Essentially, they have been called liars in that contribution from Senator Seselja.

That is what is happening in every single portfolio area that the government touches. They say one thing, they deliver the other and then they try to convince you that black is blue. People are onto them, though. The joke is up, because it is not a very funny joke. When you absolutely reject the reality of people's lived experiences, when you reject the parents of children with disabilities and when you reject the children with disabilities who are here to tell their stories and have the truth told, you are sinking to a new low.

Before the election, Tony Abbott said he was on a unity ticket with Labor on school funding. That was an absolute misrepresentation of the truth. Mr Pyne said:

… you can vote Liberal or Labor and you'll get exactly the same amount of funding for your school ...

Well, that is 'exactly' not true. He did not deliver that. And we can see a $30 billion cut to education over the next 10 years, from this government. This is the same Liberal government that announced in last year's budget it was not going to fund years 5 and 6 of the Gonski reforms. It has taken $30 billion out.

The urgent question today is: what is Tony Abbott going to do about the funding for students with disability and funding for years 5 and 6 of the reforms? The Labor Gonski reforms are all about making sure every student and every school gets the support they need to achieve their best. Australians already understand: Gonski is the fair path. This government pretended it was onside with Gonski and then rejected Gonski the minute it got into office. A central plank of the Gonski model is a national needs-based loading for students with disability so every student gets the education that they deserve.

What Labor is here fighting for today and every day is fairness for every Australian—not just some Australians. Before the election the Abbott government promised to deliver on that unity ticket, especially in the area of disability funding. From 2015, they said, there would be more funding for people with disability through the disability loading in 2015. It is 2015; they have not delivered. Yet they stand in this chamber and pretend that they are honouring those promises. Day after day, misrepresentation after misrepresentation—I am not allowed to use the 'l' word—this government have betrayed students with disability. They have betrayed parents; they have betrayed the truth. Too many students with disabilities are missing out on things that other students take for granted. We have heard from parents that sometimes their kids cannot attend school all day; they can only go part time because that is as much as the school can provide; they are so resource poor.
I want to point to the report brought to the parliament today, called 'State of our schools' by the AEU. In that they talk about the resources that are lacking—assistance for teachers in classrooms, specialist support, funding to pay for the professional development of teachers, dedicated programs, appropriate learning spaces, insufficient teachers, inadequate equipment. These are basic things that people should expect to find in schools, especially if they have a child with a disability. When children are born in Australia—the kind of Australia I believe in—they have the right to an education, whether they have a disability or not. We need to be responding to that, and this government is not doing it.

The really disgraceful thing that I want to put on the record is that, when Labor came in, we tried to get a national definition of disability and so we undertook research. That research went out into the disability sector. In contrast, since this government came in, they have failed to put very important reports on the public record. On 5 March, when I tried to table a report by PricewaterhouseCoopers on additional resourcing provided for students with disability, the Liberal members of that committee used their numbers to prevent me from making this document public. This government is a disgrace; they are keeping vital information from the sector, from parents and teachers. They cut them out of the conversation and assume that they have a right to rule from on high and, when they had the chance to be transparent, they walked away from the opportunity that Labor provided them to do the right thing. Instead, they shut down debate. They have not delivered funding in 2015; they have not committed to year 5 and year 6 of the Gonski funding. This government cannot be trusted in any policy area. (Time expired)

Senator CANAVAN (Queensland) (15:17): Through you, Mr Deputy President, what I think is a disgrace is that the Australian Labor Party are abusing the vulnerabilities of parents of children with disabilities to say things that are simply not true. There is a disability loading right now.

Senator O'Neill: Defend your policy.

Senator CANAVAN: Senator O'Neill, I have actually been to a school in the last couple of months. I am sure you have too, but you did not refer to any evidence on the ground in your contribution. I went to one in Bundaberg during the state election campaign with the state member, Stephen Bennett. During 2014 that school received hundreds of thousands of dollars more to provide more disability services. That was rolled out through what we here call Gonski, but in Queensland I think they call it the Better Schools program. It was focused on providing disabled students with more services, more resources and more teacher time. That amounted to $1.2 billion this year alone in funding for disabled students. Is that enough? I do not know. Perhaps we always need more money to help disabled children. But, Senator O'Neill, what I have a problem with is that we had a bipartisan agreement to do more on the NDIS and to put more money—

Senator O'Neill: We had a unity ticket on Gonski.

Senator CANAVAN: And you on that side do not want to contribute and do not want to cooperate on something that we all agree must happen. You just want to play politics. You want to play politics with people's lives and disabled children's lives, and I find that disgraceful. I find it absolutely disgraceful, because this year we are providing $1.2 billion more, and that is funding more services. I am sure more can be done, but when I hear the arguments from the other side I am reminded of my kids.
My kids are just like the Labor Party—they want everything. They want to eat lollies for afternoon tea; they want to play computer games all night. When I go home, I am going to build a new computer with my son, and he will want to play computer games all weekend. I am going to have a monumental battle with him when I tell him: 'No, you can only play four hours at a time. You have to do your homework and other things as well.' That is what responsible people do. They say: 'Yes, you can have fun every now and again. Yes, you can have a few sweets every now and again, but you also have to worry about your weight. You also have to study for your future and put away for a rainy day.'

But the Labor Party does not think like that; they act like kids in this place. They want to have everything. They want to have more money to spend on services for disabled children—a noble cause—but we do not have an unlimited amount of money. They want to spend more money on the NDIS. We heard Senator Singh say they want more money for foreign aid. How are they going to fund all of this? The reason we have had to make some tough decisions—

Senator Lines: You're funding it through cutting pensions.

The DEPUTY PRESIDENT: Order!

Senator CANAVAN: The reason we have had to make those tough decisions is because you guys wasted all the money. You spent billions and billions of dollars on things we could not afford and now we do not have money in the bank to do all the things we would like to do.

Senator O'Neill: It's never been lower. It's a national shame.

Senator CANAVAN: Senator O'Neill, you are complaining about cuts to the foreign aid, but that is exactly what you did in your last budget—it may have been in your second last budget, 2012-13. You cut $2.9 billion from the foreign aid budget in that year and now you come in here, with no sign of hypocrisy, and sanctimoniously say, 'Oh, isn't it terrible that we're not spending more money on foreign aid.' You did it! You did it two years ago. It is unfortunate that we cannot give more money to the people overseas who need it, but we cannot give it because of the spending decisions you made when you were in government. You wasted billions and billions of dollars. We heard in question time from Senator Cash that in just one area we wasted $11 billion on processing offshore arrivals—a problem that was created entirely by the policies of the Australian Labor Party.

Wouldn't it have been nice to have had $11 billion to spend on services for disabled children? Wouldn't it have been nice to not have to cut our foreign aid budget as much as we have had to do if we had had that $11 billion? But you did that. And we cannot get that money back now; we have to pay it back. We have to pay it back to those overseas whom we borrowed money from—to the Chinese government, to oil barons in the Middle East. That is who we borrowed money from. All that money that you wasted has to be repaid now. Unfortunately, that means that we cannot fund all of the things that we would like to do, including in the disabled space, the health space and the education space.

Senator LINES (Western Australia) (15:22): I rise to speak on the motion to take note of answers to questions about cuts to disability and education funding. Despite the questions that Labor asked in question time today, the question which the apprentice working under 'the fixer', Senator Birmingham, could not answer was: 'Why are parents of children with disability here in the parliament today?' I can answer that question. They are here because funding has been cut to their children's schools and to their education. And, if we want
equality of opportunity, it means that some people need more support to get through the education system than others—and that is a fair thing, because we do want all of our children, regardless of their circumstance, to succeed at school.

When Labor was in government, we achieved a bipartisan commitment to the introduction of a disability loading as part of the national education reform, and that was for the 2015 school year. This promise reflected Australia’s commitment to progressing the rights and equal opportunities of people with disability. Of course, because the Abbott team was so desperate to get elected, they made promise after promise, none of which have been kept, all of which have been broken. The promise of bipartisanship on funding to students with disabilities went by the wayside. It just disappeared. That is why parents are here today with their children—to really push home the message to the Abbott government that this is not fair, that the funding that was promised, the bipartisanship that was promised, should be something the government commits to. There will be weasel words and they will wriggle and they will carry on and they will talk about Labor. They cannot talk about their own policies, because their own policies clearly are about cuts. Otherwise, why would parents be here today? They are here because they are seeing firsthand that that bipartisan approach is now broken. Like the PM’s promise, it is broken. It will affect around 100,000 students.

Why would the Abbott government disadvantage 100,000 students in getting a good education? They are just pawns in the game, like everyone else: pensioners, our health system, and on and on the list goes. Children with disability are the latest pawns in the Abbott government’s litany of broken promises. Of course children with disability face severe disadvantage at school: a limited choice of school, discrimination, bullying, limited or no funding for support and resources, sometimes not appropriate access to trained staff, and having to contend with the culture of low expectations. And where will the money come from to support those children at school? Does the Abbott government seriously think that parents have to put their hand in their pocket or that somehow there are schools that can twist their funding and put a little bit more money the way of children with disabilities? Is that what the coalition government expects?

Certainly in my state of Western Australia, where the state government has imposed the most severe cuts we have seen in the history of education in Western Australia, this puts those students with disadvantage in a much worse position. In Western Australia we have high schools that have lost $1 million in funding and primary schools in the most disadvantaged areas that have lost half a million dollars. Of course that equates to staff numbers. Of course that equates to the amount of time that you can give to children with disability, or to any other disadvantaged group in a school. And now, on top of this, we have the broken promise from the Abbott government.

Throwing away bipartisanship in relation to children with disability is part of a legacy that will take years and years to address in my state of Western Australia—and I imagine right across the country. That is the reason we have parents in the parliament today. That is the reason we have children with disability here today, staring the Abbott government in the face, making sure that the Abbott government absolutely understands that its broken promise on education—(Time expired)

Question agreed to.
Financial Transactions Tax

Senator LAMBIE (Tasmania) (15:27): I move:
That the Senate take note of the answer given by the Minister for Finance (Senator Cormann) to a question without notice asked by Senator Lambie today relating to a financial transactions tax.

Today I asked that the Liberal-National government introduce a new tax, a financial transactions tax, or an FTT, for Australia. I want this financial transactions tax applied to specific companies which co-locate within our stock exchanges and use supercomputers loaded with sophisticated software to make big profits. And I want the revenue from a financial transactions tax to be linked to aged Australians’ pensions and to veterans’ pensions.

The companies which I am targeting with a financial transactions tax have acquired supercomputers and software packages which enable the owners of companies to (1) identify and intercept share buy-and-sell orders; (2) high-frequency trade and skim billions of dollars in profits. These companies, according to an Australia Institute research paper, while having a huge technical advantage over retail or mum-and-dad investors, even have a big technical advantage over large institutional investors. In short, if you (1) have the right IT hardware and software and (2) are located close enough to the stock exchange, then you have a licence to print money while using supercomputers to high-frequency share trade.

A financial transactions tax is a tax that all three major parties have run away from. Whatever the reason, the bottom line is Australia is missing out on another source of income that most of Europe is now taking advantage of. Our pensioners have been targeted by the Liberals for ‘budget savings’. We all know that is Abbott code for, ‘I’m going to steal money from you.’

In a forthcoming paper from the Australian Institute, which I will help officially launch this Thursday in parliament, the writer says:

The European Commission have advocated for a 0.1 per cent tax on the transfer of shares, bonds and financial instruments, and a 0.001 percent tax on derivatives. A European Union-wide special financial transactions tax is set to be introduced on January 1, 2016. Both Italy and France are using revenue from the tax to pay down national debt.

A financial transactions tax is not a new idea. Information I commissioned from the Parliamentary Library states:

The idea to introduce FTTs goes back to John Maynard Keynes in 1936. Writing during the Great Depression, Keynes proposed a securities transaction tax to reduce destabilising speculation in equity markets. The idea received renewed interest when economist James Tobin suggested in 1972 introducing a tax on international foreign exchange transactions. Tobin saw the tax acting like soft capital controls by throwing ‘grains of sand in the wheels of the market’ thereby enhancing the policy space for national fiscal and monetary policy.

And:

In August 2009, Lord Turner, chair of the UK Financial Services Authority, canvassed the possibility of imposing a FTT on all financial transactions to promote an efficient financial sector, particularly more stable financial markets.

A general FTT has come to be seen as a way of reducing financial market volatility and excessive speculation in these markets as a safeguard against future financial crises.
As I explained in the lead-up to my question to the finance minister, the type of financial transactions tax I am proposing is very simple, targeted and not as complicated as the tax systems proposed by John Maynard Keynes and James Tobin.

The financial transactions tax I am proposing should only be levied on businesses in Australia which are co-located in or near our stock exchanges, using supercomputers, complex IT software and high-frequency share and stock trades. It would conservatively raise between $1 billion and $1.4 billion, while saving mum-and-dad investors from $2 billion worth of profit skimming. My financial transactions tax would provide a new revenue stream which could be tied to our aged pensions and veteran pensions. Who could possibly oppose it? Firstly, it is a win for our mum-and-dad investors. Secondly, it is a win for our pensioners and veterans. Thirdly, it is a win for our financial markets, which would be better protected from high-frequency share speculation and brought into, as the Australia Institute says, ‘closer correlation with activity in the real economy’.

Question agreed to.

CONDOLENCES

Mr Lee Kuan Yew GCMG, CH

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:33): by leave—I move:

That the Senate records its deep regret at the dearth on 23 March 2015 of Lee Kuan Yew, GCMG, CH, former Prime Minister of the Republic of Singapore, places on record its acknowledgement of his role in the development of modern Singapore and tenders its profound sympathy to his family in their bereavement.

Question agreed to, honourable members standing in their places.

NOTICES

Presentation

Senator O’Sullivan to move:

That the Senate notes:
(a) the importance of the sugar industry in Australia;
(b) the unique marketing challenges that face this industry; and
(c) the importance of the current marketing arrangements within the industry that have contributed to the stable and equitable status of this industry for over 100 years.

Senator Canavan to move:

That the Senate—
(a) recognises that the uranium mining industry has the potential to generate significant economic growth, jobs and income in regional Queensland; and
(b) notes:
(i) its disagreement with the Queensland Labor Government’s decision to renege on the policy of allowing developers to submit applications for the development of new uranium mining projects in Queensland, and
(ii) that this decision will have significant adverse effects on regional areas due to:
(A) the potential loss of construction and operational jobs, investment and income associated with new projects, and

(B) the potential loss of public income generated through taxes and mining royalties that could be put back into supporting infrastructure, health services and education in the surrounding communities.

**Senator Milne** to move:
That the Senate—
(a) notes:
(i) the importance of comprehensive whistle-blower protection legislation at all levels of government and across both the public and private sectors, and
(ii) the recent announcement by the New South Wales Labor Party that it will extend state whistle-blower protection laws to the private sector to encourage disclosure of corporate corruption and illegal activity; and

(b) calls on the Federal Parliament to pledge support, and move to implement, extension of federal whistle-blower protection legislation to private sector employees.

**Senators Ruston, Xenophon, McKenzie, Whish-Wilson and Madigan** to move:
That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 11 November 2015:
(a) the extent and nature of any market failure in the Australian grape and wine industry supply chain;
(b) the extent to which federal and state legislative and regulatory regimes inhibit and support the production, processing, supply chain logistics and marketing of Australian wine;
(c) the profitability of wine grape growers, and the steps industry participants have taken to enhance profitability;
(d) the impact and application of the wine equalisation tax rebate on grape and wine industry supply chains;
(e) the extent to which grape and wine industry representation at regional, state and national level effectively represents growers and winemakers with respect to equity in the collection and distribution of levies;
(f) the work being undertaken by the Australian Grape and Wine Authority pertaining to levy collection information;
(g) the power and influence of retailers of Australian wine in domestic and export markets;
(h) the adequacy and effectiveness of market intelligence and pricing signals in assisting industry and business planning;
(i) the extent to which the Australian grape and wine industry benefits regional communities both directly and indirectly through employment, tourism and other means; and
(j) any related matters.

**Senator Seselja, Senator Cash, and Senator McKenzie** to move:
That the Senate—
(a) notes recent reports and evidence of aggression and abuse towards women by Construction, Forestry, Mining and Energy Union (CFMEU) officials, including that:
(i) CFMEU organiser, Mr Luke Collier, abused a female Fair Work Building and Construction (FWBC) inspector using expletive and misogynist swear words,
(ii) CFMEU Assistant Secretary, Mr Shaun Reardon, made threatening late-night phone calls to a female staff member of the building industry watchdog,
(iii) a CFMEU official spat at a female FWBC inspector when she was called out to a worksite to inspect a union blockade,
(iv) a CFMEU official made a late-night phone call to a female staff member of the building industry watchdog, threatening her with gang rape, and
(v) on multiple occasions female FWBC officers have had to be moved off inspection duties because of the threats and aggression expressed towards them;
(b) condemns such behaviour directed at female FWBC inspectors;
(c) condemns CFMEU Secretary, Mr Dave Noonan, for attempting to defend Mr Collier's verbal intimidation of a female FWBC inspector and similar cases of intimidation, by saying that swearing on building sites is nothing new; and
(d) expresses its gratitude to FWBC inspectors, including the 31 female FWBC inspectors, who work to maintain the rule of law on Australia's building and construction sites.

Senator Rhiannon to move:
That the Senate—

(a) notes that:
(i) the Minister for the Environment (Mr Hunt) has referred the Shenhua Watermark coal mine planned for the Liverpool Plains to the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) for assessment under the water trigger provisions of the

Environment Protection and Biodiversity Conservation Act 1999

(the EPBC Act),

(ii) the Namoi catchment, that includes the Liverpool Plains, is the largest groundwater system in the Murray Darling catchment and the Shenhua project triggered the requirement to consider water impacts of the mine under the EPBC Act,

(iii) the Federal Government has passed legislation in the House of Representatives, including to hand over application of the water trigger, including approval decisions, under the EPBC Act to state and territory governments and local councils, and

(iv) as well as the proposed Shenhua Watermark project two other major mining projects are proposed for the Liverpool Plains—BHP Billiton is planning a coal mine of 500 000 000 tonnes less than 10 km from the Shenhua site, and Santos has a coal seam gas licence to explore for gas across the whole Liverpool Plains floodplain;

(b) calls on the Minister for the Environment to publicly clarify:
(i) if he is requiring that the IESC review assess the cumulative impacts of the project in association with other developments, whether past, present or reasonably foreseeable,

(ii) whether the IESC will carry out the bioregional assessment of the impact of the proposed mine on the Namoi catchment, or whether they will be simply reviewing other work rather than carrying out their own independent work, and

(iii) if the IESC will be required to engage with the Local Land Services to assess the cumulative impacts, or will a desktop assessment of the hydrogeology and geology be all that is required; and

(b) calls on the Minister for the Environment to retain the water trigger at the federal level and abandon its plans to hand it off to state and territory governments.

Senator Whish-Wilson to move:
That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 19 February 2016:

The mental health of Australian Defence Force (ADF) personnel who have returned from combat, peacekeeping or other deployment, with particular reference to:
(a) the extent and significance of mental ill-health and post-traumatic stress disorder (PTSD) among returned service personnel;
(b) identification and disclosure policies of the ADF in relation to mental ill-health and PTSD;
(c) recordkeeping for mental ill-health and PTSD, including hospitalisations and deaths;
(d) mental health evaluation and counselling services available to returned service personnel;
(e) the adequacy of mental health support services, including housing support services, provided by the Department of Veterans' Affairs (DVA);
(f) the support available for partners, carers and families of returned service personnel who experience mental ill-health and PTSD;
(g) the growing number of returned service personnel experiencing homelessness due to mental ill-health, PTSD and other issues related to their service;
(h) the effectiveness of the Memorandum of Understanding between the ADF and DVA for the Cooperative Delivery of Care;
(i) the effectiveness of training and education offerings to returned service personnel upon their discharge from the ADF; and
(j) any other related matters.

Senator Fifield to move:
That—
(1) On Wednesday, 25 March 2015:
(a) the hours of meeting shall be from 9.30 am to 7 pm and 7.30 pm to 11.10 pm;
(b) the routine of business from not later than 7.30 pm until 10.30 pm shall be government business only; and
(c) the question for the adjournment shall be proposed at 10.30 pm.
(2) On Thursday, 26 March 2015:
(a) the hours of meeting shall be from 9.30 am to adjournment;
(b) consideration of general business orders of the day relating to private senators’ bills under temporary order shall not be proceeded with, and that government business shall have precedence for 2 hours and 20 minutes;
(c) from not later than 12.45 pm, the following orders of the day shall be considered:
   (i) Public Governance and Resources Legislation Amendment Bill (No.1) 2015, and
   (ii) Parliamentary Service Amendment Bill 2014;
(d) government business shall be called on after consideration of the bills listed in paragraph (c) and considered till not later than 2 pm;
(e) consideration of the business before the Senate shall be interrupted at approximately 4 pm, but not so as to interrupt a senator speaking, to enable valedictory statements to be made relating to Senator Mason;
(f) divisions may take place after 4.30 pm;
(g) the routine of business from not later than 8 pm shall be consideration of government business only, and that the following government business orders of the day shall have precedence over all other government business:
   (i) Migration Amendment (Protection and Other Measures) Bill 2014,
   (ii) Telecommunications Legislation Amendment (Deregulation) Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014, and
(iii) Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014; and
(h) the Senate shall adjourn without debate on the motion of a minister.

Senator Abetz to move:
That the following bill be introduced: A Bill for an Act to amend the *Fair Work (Building Industry) Act 2012*, and for related purposes. *Construction Industry Amendment (Protecting Witnesses) Bill 2015*.

Senator Fifield to move:
That the government business order of the day relating to the Automotive Transformation Scheme Amendment Bill 2014 be discharged from the *Notice Paper*.

Senator Fifield to move:
That the hours of meeting for Tuesday, 12 May 2015, be from 12.30 pm to 6.30 pm and 8.30 pm to adjournment, and for Thursday, 14 May 2015 be from 9.30 to 6 pm and 8 pm to adjournment, and that:
(a) the routine of business from 8.30 pm on Tuesday, 12 May 2015 shall be:
   (i) Budget statement and documents 2015-16, and
   (ii) adjournment; and
(b) the routine of business from 8 pm on Thursday, 14 May 2015 shall be:
   (i) Budget statement and documents—party leaders and independent senators to make responses to the statement and documents for not more than 30 minutes each, and
   (ii) adjournment.

Senator Fifield to move:
That the Senate meet on Monday, 11 May 2015, and that:
(a) the hours of meeting shall be 10 am to 6.30 pm and 7.30 pm to adjournment;
(b) the routine of business shall be:
   (i) government business,
   (ii) at 2 pm, questions, and
   (iii) from 3 pm, government business only;
(c) the following government business orders of the day shall have precedence over all other government business:
   (i) *Construction Industry Amendment (Protecting Witnesses) Bill 2015*,
   (ii) *Limitation of Liability for Maritime Claims Amendment Bill 2015*, and
   (iii) *Tribunals Amalgamation Bill 2014*; and
(d) the question for the adjournment of the Senate shall not be proposed until a motion for the adjournment is moved by a minister.

Senator Waters to move:
That the Senate—
(a) notes:
   (i) the concern expressed by regional communities about the impacts on food security and water resources from coal seam gas, shale gas and tight gas, and
   (ii) that the Federal Government has power to regulate the conduct of constitutional corporations, including corporations involved in coal seam gas, shale gas and tight gas mining; and
(b) agrees that:

(i) food security and water resources should be prioritised over coal seam gas, shale gas and tight gas mining, and

(ii) the Federal Government should use its constitutional powers to regulate the conduct of corporations undertaking coal seam gas, shale gas and tight gas mining.

Senator Waters to move:

That the Senate—

(a) notes:

(i) the recent report of the Australian Coral Reef Society which stated that policies for a safe climate are inconsistent with the opening of new fossil fuel industries like the mega coal mines of the Galilee Basin, and

(ii) the comments of Professor Terry Hughes on ABC Radio that it is an impossible task to open up the mega coal mines of the Galilee Basin while sustaining the Great Barrier Reef for future generations; and

(b) agrees that Galilee Basin coal must stay in the ground in order to protect the Great Barrier Reef.

Senator Milne to move:

That the Senate—

(a) congratulates the President of the United States of America, Barack Obama for the Executive Order requiring the reduction of greenhouse gas pollution by 40 per cent below 2008 levels in 2025 from activities directly undertaken by the Federal Government;

(b) notes that measures such as energy productivity retrofits, directly contracting renewable energy projects, lifting vehicle fuel efficiency standards and increasing ethanol use in defence vehicles not only reduces operating costs and saves taxpayers money, but it boosts domestic economic activity while driving down pollution; and

(c) urges the Federal Government to assess the potential impact that it can directly make through its own activities and procurement policies as it searches for policies that will deliver Australia's post-2020 targets.

Senator Ludlam to move:

That the resolution of appointment of the Select Committee on the National Broadband Network be amended, as follows:

After paragraph (d), insert:

(da) the development of a long-term, multi-partisan vision for the National Broadband Network.

PARLIAMENTARY ZONE

Proposal for Works

The PRESIDENT (15:34): I give notice that, on Thursday 26 March 2015, I shall move:

That, in accordance with Section 5 of the Parliament Act 1974, the Senate approves the following proposal for work in the Parliamentary Zone which was presented to the Senate on 24 March 2015 namely: Parliament House Security Upgrade Works—Perimeter Security Enhancements.

The PRESIDENT: I table that document.
BUSINESS

Leave of Absence

Senator McEWEN (South Australia—Opposition Whip in the Senate) (15:35): by leave—I move:
That leave of absence be granted to Senator Bilyk for 23 March 2015, for personal reasons.
Question agreed to.

NOTICES

Postponement

The following items of business were postponed:
Business of the Senate notice of motion no. 1 standing in the name of Senator Xenophon for today, proposing a reference to the Rural and Regional Affairs and Transport References Committee, postponed till 14 May 2015.

COMMITTEES

Economics References Committee

Reporting Date

The Clerk: Extension notifications have been lodged by the following committees:
Economics References Committee—
Australia's innovation system, extended to 10 August 2015.
Cooperative, mutual and member-owned firms, extended to 30 November 2015.

Environment and Communications References Committee

Reference

Senator WHISH-WILSON (Tasmania) (15:36): I seek leave to amend business of the Senate notice of motion No. 2 standing in my name for today, proposing reference to the Environment and Communications References Committee relating to fin fish aquaculture.
Leave granted.

Senator WHISH-WILSON: I move the motion as amended:
That the following matter be referred to the Environment and Communications References Committee for inquiry and report by 10 August 2015:
The regulation of the fin fish aquaculture industry in Tasmania, with particular regard to:
(a) the adequacy and availability of data on waterway health;
(b) the impact on waterway health, including to threatened and endangered species;
(c) the adequacy of current environmental planning and regulatory mechanisms;
(d) the interaction of state and federal laws and regulation; and
(e) any other relevant matters.
Question agreed to.
Foreign Affairs, Defence and Trade References Committee

Reference

Senator McEWEN (South Australia—Opposition Whip in the Senate) (15:37): At the request of Senator Wong, I move:

(1) That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report:

The proposed China Australia Free Trade Agreement, with particular reference to the impact of the agreement on Australia's:

(a) economy and trade;
(b) domestic labour market testing obligations and laws regarding wages, conditions and entitlements of Australian workers and temporary work visa holders;
(c) investment; and
(d) social, cultural and environmental policies.

(2) That, in conducting the inquiry, the committee shall review the agreement to ensure it is in Australia's national interest, and have regard to the report of the Joint Standing Committee on Treaties on the proposed agreement.

(3) That the committee report within one month of the tabling of the report of the Joint Standing Committee on Treaties on the proposed agreement.

Question agreed to.

MOTIONS

Employment

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (15:37): At the request of Senators O'Sullivan and Day, I move:

That the Senate notes:

(a) the important economic and social contributions to Australia's regional and rural communities made by small and medium family owned primary production enterprises; and

(b) the contribution this cohort of the sector makes to providing employment opportunities within rural and regional Australia.

Question agreed to.

COMMITTEES

Joint Committee of Public Accounts and Audit

Meeting

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (15:38): At the request of Senator Smith, I move:

That the Joint Committee of Public Accounts and Audit be authorised to hold private meetings otherwise than in accordance with standing order 33(1), during the sittings of the Senate, as follows:

(a) Thursday, 14 May 2015, from 10.30 am;
(b) Thursday, 18 June 2015, from 10.30 am, followed by a public meeting; and
(c) Thursday, 25 June 2015, from 10.30 am, followed by a public meeting.

Question agreed to.
Joint Standing Committee on Treaties
Meeting

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (15:38): At the
request of Senator Fawcett, I move:

That the Joint Standing Committee on Treaties be authorised to hold private meetings otherwise than in
accordance with standing order 33(1) followed by public meetings, during the sittings of the Senate, as follows:
(a) Monday, 15 June 2015; and
(b) Monday, 22 June 2015.

Question agreed to.

MOTIONS

World Tuberculosis Day

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (15:39): At the
request of Senators Smith, Di Natale and Singh, I move:

That the Senate—
(a) notes that:
   (i) 24 March 2015 is World Tuberculosis Day,
   (ii) World Tuberculosis Day is an annual event that marks the anniversary of German Nobel Laureate Dr Robert Koch's 1882 discovery of the bacterium that causes tuberculosis (TB),
   (iii) TB is contagious and airborne,
   (iv) TB ranks as the world's second leading cause of death from a single infectious agent – people ill with TB disease can infect up to 10 to 15 people every year,
   (v) the theme for World Tuberculosis Day in 2015 is 'Reach, Treat, Cure Everyone',
   (vi) in 2013, 1.5 million people died from TB worldwide with 40 per cent of deaths occurring in countries in the Indo-Pacific region,
   (vii) TB is a disease linked to poverty and failing health systems, and an important health security threat in our region,
   (viii) Papua New Guinea (PNG) has the highest rate of TB infection in the Pacific, with an estimated 39 000 total cases and 25 000 infections each year,
   (ix) cases of multi-drug resistant TB continue to increase worldwide, rising from 450 000 cases in 2012 to 480 000 cases in 2013, and in Port Moresby, the capital of PNG, almost 5 per cent of new TB diagnosis and 25 per cent of relapse cases are multi-drug resistant,
   (x) TB is the leading cause of death among HIV positive people, given that HIV weakens the immune system and in combination with TB is lethal, each contributing to the other's progress, and
   (xi) TB is considered to be a preventable and treatable disease, however current treatment tools, drugs, diagnostics and vaccines are outdated and ineffective; and
(b) recognises:
   (i) Australia's resolve to continue to work towards combatting the challenge of TB in the region by working with partner countries to build strong and sustainable health systems, and by supporting the discovery, development and rapid uptake of new tools, interventions and strategies as recognized in the World Health Organization (WHO) End TB Strategy,
(ii) That the WHO End TB Strategy was endorsed by all member states at the 2014 World Health Assembly and aims to end the TB epidemic by 2035,

(iii) That the Australian Government funding of health and medical research is helping to bring new medicines, diagnostic tests and vaccines to market for TB and other neglected diseases,

(iv) That the development of new, simple and affordable treatment tools for TB and multi-drug resistant TB is essential if the End TB Strategy goal to diagnose and treat all multi-drug resistant TB patients is to be met, and

(v) the importance of building robust and sustainable health systems which ensure that new treatments and medical technologies reach patients, particularly those in greatest need.

Question agreed to.

Australia-Israel Chamber of Commerce

Senator DAY (South Australia) (15:39): I ask that general business notice of motion No. 668, standing in my name and in the name of Senator Leyonhjelm for today, relating to the Australia-Israel Chamber of Commerce, be taken as a formal motion.

The PRESIDENT: Is there any objection to this motion being taken as formal?

Senator Moore: Yes.

The PRESIDENT: The motion is not accepted as formal.

Senator DAY: I seek leave to make short statement.

The PRESIDENT: Leave is granted for one minute.

Senator DAY: This motion has received substantial backing from people across Australia who support Australia’s ties with Israel, and I would like to thank those people for contacting me and their MPs. I will not recite the terms of the motion, because every item is factual and uncontroversial. When it comes to formality on motions touching on foreign affairs, there are clearly no hard and fast rules in this place, as formality on foreign affairs topics has been permitted on no less than nine occasions in the past 12 months.

I put on record my disappointment over Labor’s obstruction of this motion supporting Israel. Due to a busy agenda, however, I will not move for a suspension of standing orders and a debate, but I indicate to the Senate that I am committed to securing a statement in support of our ties with Israel and will bring this matter back to the Senate, again, in the near future.

COMMITTEES

Education and Employment References Committee

Reference

Senator RICE (Victoria) (15:41): I, and also on behalf of Senator Cameron, move:

(1) That the following matters be referred to the Education and Employment References Committee for inquiry and report by 22 June 2015:

The impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders, with particular reference to:

(a) the wages, conditions, safety and entitlements of Australian workers and temporary work visa holders, including:
(i) whether the programs 'carve out' groups of employees from Australian labour and safety laws and, if so, to what extent this threatens the integrity of such laws,

(ii) the employment opportunities for Australians, including:

(A) the effectiveness of the labour market testing provisions (the provisions) of the Migration Act 1958 in protecting employment opportunities for Australian citizens and permanent residents, and

(B) whether the provisions need to be strengthened to improve the protection of employment opportunities for Australian citizens and permanent residents and, if so, how this could be achieved,

(iii) the adequacy of publicly available information about the operation of the provisions, and

(iv) the nature of current exemptions from the provisions and what effect these exemptions have on the reach and coverage of labour market testing obligations and laws regarding wages, conditions and entitlements of Australian workers and temporary work visa holders;

(b) the impact of Australia's temporary work visa programs on training and skills development in Australia, including:

(i) the adequacy of current obligations on 457 visa sponsoring employers to provide training opportunities for Australian citizens and permanent residents,

(ii) how these obligations could be strengthened and improved, and

(iii) the effect on the skills base of the permanent Australian workforce;

(c) whether temporary work visa holders receive the same wages, conditions, safety and other entitlements as their Australian counterparts or in accordance with the law, including:

(i) the extent of any exploitation and mistreatment of temporary work visa holders, such as sham contracting or debt bondage with exorbitant interest rate payments,

(ii) the role of recruitment agents, and

(iii) the adequacy of information provided to temporary work visa holders on their rights and obligations in their workplace and community, and how it can be improved;

(d) whether temporary work visa holders have access to the same benefits and entitlements available to Australian citizens and permanent residents, and whether any differences are justified and consistent with international conventions relating to migrant workers;

(e) the adequacy of the monitoring and enforcement of the temporary work visa programs and their integrity, including:

(i) the wages, conditions and entitlements of temporary work visa holders, and

(ii) cases of 457 visa fraud, such as workers performing duties outside or below the job classification of the visa;

(f) the role and effect of English language requirements in limited and temporary work visa programs;

(g) whether the provisions and concessions made for designated area migration agreements, enterprise migration agreements, and labour agreements affect the integrity of the 457 visa program, or affect any other matter covered in these terms of reference;

(h) the relationship between the temporary 457 visa and other temporary visa types with work rights attached to them; and

(i) any related matter.

(2) That in conducting the inquiry, the committee shall review the findings and recommendations of previous inquiries into such matters, including the Legal and Constitutional Affairs References Committee's report, Framework and operation of subclass 457 visas, Enterprise Migration Agreements and Regional Migration Agreements.
Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (15:41): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator CASH: The government will not be supporting this motion. The motion is politically motivated by those who are fundamentally opposed to the 457 skilled migration program. Just last week, the government released its response to the independent inquiry into the integrity of the 457 program, chaired by Mr John Azarius. This was a comprehensive inquiry that consulted extensively across Australia, meeting over 140 stakeholders face to face and considering in excess of 189 written submissions, including from businesses, unions, industry bodies and academics.

The government has announced that it will act on recommendations of the independent review to strengthen integrity, ensure that Australian workers have priority and support employers with genuine skills shortages. The independent panel found no evidence of widespread rorting. The 457 program, I note, was also the subject of both legislation and reference committee inquiries in 2013 under the former Labor government.

The PRESIDENT: The question is that the motion moved by Senator Rice be agreed to. The Senate divided. [15:46]

Ayes ......................37
Noes ......................31
Majority ...............6

AYES
Bilyk, CL
Bullock, J.W.
Carr, KJ
Conroy, SM
Di Natale, R
Hanson-Young, SC
Lambie, J
Leyonhjelm, DE
Ludlam, S
Marshall, GM
Milne, C
Muir, R
Peris, N
Rhiannon, L
Siewert, R
Sterle, G
Wang, Z
Whish-Wilson, PS
Xenophon, N

NOES
Back, CJ
Birmingham, SJ

CHAMBER
Senator Abetz did not vote, to compensate for the vacancy caused by the resignation of Senator Faulkner.

Question agreed to.

MOTIONS

Abbott Government

Senator RHIANNON (New South Wales) (15:49): I move:

That the Senate—

(a) notes that the Abbott Government has allocated $14.6 million in public funding to advertise its failed higher education changes; and

(b) calls on the Abbott Government to:

(i) direct the Federal Liberal Party to return the $14.6 million of public money allocated to its higher education advertising campaign, and

(ii) shut down its publicly-funded highered.gov.au site, which was designed to advertise the failed changes.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:49): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: This motion is an example of the Greens’ hypocrisy. The previous government, which the Greens supported, spent $500 million on advertising from 2017 to 2013, including $20 million on the Gonski campaign alone before it was legislated. The government has conducted extensive market research which showed that many students and parents thought HECS was being abolished and students would have to pay fees up-front. It is
crucial that prospective students know that HECS will remain and they will not have to pay a cent up-front or pay anything until they earn over $50,000 a year. This is a crucial message of the information campaign on higher education. Meanwhile, both Labor and the Greens are still operating websites which contain false and absurd claims about fees. This is the height of dishonesty and irresponsibility. It is all about politics. It is nothing to do with students or the quality of university education.

Question agreed to.

**Education Funding**

**Senator WRIGHT** (South Australia) (15:51): I, and on behalf of Senator O'Neill, move:

That the Senate—

(a) notes the commitment made by the current Minister for Education and Training (Mr Pyne) in the 2013 federal election to introduce a needs-based disability loading under the Gonski school funding reforms by 2015;

(b) recognises that more than 100,000 students with a disability do not receive any funded support at school; and

(c) calls on the Government to keep its election promise to properly resource disability education, and include necessary funding for a needs-based disability loading in the upcoming federal budget.

Question agreed to.

**BUSINESS**

**Rearrangement**

**Senator FIFIELD** (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:51): I move:

That, on Tuesday, 24 March 2015:

(a) the hours of meeting shall be 12.30 pm to 6.30 pm, and 7 pm to 10.40 pm;

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

(c) consideration of the business before the Senate shall be interrupted at 5 pm, but not so as to interrupt a senator speaking, to enable valedictory statements to be made relating to Senator Lundy;

(d) the routine of business from not later than 7 pm shall be:

(i) the government business order of the day relating to the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, and

(ii) other government business orders of the day; and

(e) the question for the adjournment of the Senate shall be proposed at 10 pm.

Question agreed to.

**MOTIONS**

**Welfare Reform**

**Senator SIEWERT** (Western Australia—Australian Greens Whip) (15:52): I move:

That the Senate—

(a) notes that the Healthy Welfare Card is a paternalistic approach to social security, and that income management has not resulted in any significant improvements for the communities that it has been trialled in;
(b) condemns the Government for spending money on another unproven program, while cutting millions of dollars from much needed social services; and
(c) calls on the Government to abandon the healthy welfare card proposal, and instead to work directly with affected communities to develop cooperative programs that address local need.

Question negatived.

COMMITTEES
Procedure Committee

Report

Senator MARSHALL (Victoria—Deputy President of the Senate and Chair of Committees) (15:52): I present the committee’s first report of 2015.

Ordered that the report be printed.

Senator MARSHALL: I move:

That the Senate take note of the report.

This report addresses a number of matters that have been considered by the Procedure Committee over the past few months, but it makes only one recommendation.

In the context of recent changes to the security environment in and around Parliament House, the committee is of the view that it would be prudent to strengthen the role of the Appropriations and Staffing Committee in maintaining a capacity to oversee security matters that affect the Senate and senators. While the Appropriations and Staffing Committee already has responsibility to consider the administration and funding of security measures affecting the Senate and to advise the President and the Senate, the committee considered that it would be appropriate for that responsibility to extend to security operations affecting the Senate.

This change mirrors a change being made to the terms of reference of the Security Management Board by the Parliamentary Service Amendment Bill 2014, scheduled for consideration by the Senate this forthcoming Thursday. Accordingly, at the conclusion of my speech, I will be seeking leave to continue my remarks and to move a motion to provide for consideration of the report to be listed as a Business of the Senate order of the day for tomorrow. This will allow the Senate to consider the proposal and to adopt the recommendation before the bill is dealt with on Thursday.

The committee also recommends that the ex officio membership of the Appropriations and Staffing Committee should include both the President and Deputy President and that its name should be changed to the Appropriations, Staffing and Security Committee.

The other matters dealt with in the report all relate to the operation of the rules of debate. The committee has considered whether there is a need for the chair to have the power to suspend a senator temporarily but has concluded that this should be left to existing practice.

Likewise, in response to concerns expressed about the use of politically charged or inflammatory language to raise matters under standing order 75, the committee considers that existing practices are appropriate. The committee will continue to monitor the operation of recent changes in relation to estimates hearings and will continue to consider matters raised by crossbench senators about the order of the call. I commend the report to the Senate and seek leave to continue my remarks later.
Leave granted.

**Senator MARSHALL:** Mr President, as foreshadowed, I seek leave to move a motion in relation to the consideration of the report.

Leave granted.

**Senator MARSHALL:** I move:

That consideration of the report be made a Business of the Senate order of the day for the next day of sitting.

Question agreed to.

**COMMITTEES**

**Legal and Constitutional Affairs References Committee**

**Report**

**Senator WRIGHT** (South Australia) (15:56): I present the final report of the Legal and Constitutional Affairs References Committee, *Comprehensive revision of the Telecommunications (Interception and Access) Act 1979*, together with the *Hansard* record of proceedings and documents presented to the committee and move that the report be printed.

Ordered that the report be printed.

**Senator WRIGHT:** I move:

That the Senate take note of the report.

**Senator LUDLAM** (Western Australia) (15:57): I will speak to the report of the Legal and Constitutional Affairs References Committee, which I chaired: *Comprehensive revision of the Telecommunications (Interception and Access) Act 1979*. This report has been 15 months in the making. We kicked this off in November or December 2013. It has proven to be quite appropriate that we are tabling it as the Senate has begun consideration of the mandatory data retention legislation. It has been so long in the making.

This matter, however, is a little bit different. Senators would, no doubt, be aware in the second reading contributions that I, Senator Hanson-Young and Senator Wright have made thus far that we are dead against the government's proposed mandatory data retention scheme and cannot for the life of us understand why the Labor Party has caved in and given Prime Minister Abbott the surveillance lifeline. However, it is not enough to simply put on record what it is that we oppose. This report gives some guidance as to what we support.

I guess I should break it to the Senate at this stage that, although there is a consensus document and a majority report here, it contains largely uncontroversial matters related to the warranted surveillance regime in Australia. That is, roughly 4,700-odd warrants that are issued for intercepts or for reading stored communications, such as emails. Then of course we parted ways.

The opposition has tabled additional comments and I believe government senators have done so as well. So anybody listening to this debate will need to draw their own conclusions as to where different parties landed on the issue.

It is clear to everybody, from the former secretary of the Attorney-General's Department down, that the Telecommunications (Interception and Access) Act is in urgent need of reform. That does not mean the kind of tinkering around the edges that we have seen repeatedly in
recent decades. The Telecommunications (Interception and Access) Act was written in 1979, when Malcolm Fraser was Prime Minister, when the internet had not emerged into public consciousness and mobile phones did not exist. Yet we are still dealing, in my estimation, with a system that has failed to keep up with the march of technology.

This report effectively breaks out into a couple of different sections, and the first part, which is the consensus view of the committee, goes through ways that we could appreciably streamline the existing warranted telecommunications regime. The second part, which I guess then goes to the chair's minority additional comments, goes through the regime of access to metadata. Here our recommendation could not be more clear: if an interception warrant is required to listen to someone's phone call, if a warrant is required to read someone's email, a warrant should be required to gather bulk metadata, telecommunications data—also known as the private records of your location and of your social network; everybody you are in touch with and many other details of your life. We propose effectively a streamlining of the process. At the moment there are a number of different warrants that agencies need to apply for, and agencies made the case in my view—it was not an uncontested case—that this regime needs to be streamlined and slimmed down somewhat.

We have proposed, cautiously, what is known as an attribute based warrant and the introduction of a public interest monitor similar to that which exists in Queensland and Victoria. From the evidence we took, it is working reasonably well. The things this proposal does are twofold: It streamlines the process for which warrants can be sought and granted but it also places between the agencies and the granting of that warrant a public interest advocate whose job it is to contest—not to simply roll over, but to contest. You have to imagine that, if such an entity had existed in New South Wales, perhaps the police surveillance scandal that is unfolding at the moment might have been prevented. We had very strong evidence that such a public interest monitor should exist at the Commonwealth level, and for me these two recommendations go together—rolling the various kinds of warrants in with attribute based warrants on one hand, and introducing a public interest monitor to provide that contestability is equally important.

The other recommendation I want to draw senators' attention to is that warrants should be sought for bulk metadata. That is effectively updating our surveillance laws and our interception regime to take into account the huge changes that have occurred in technology since 1979. When those early drafters under the Fraser government identified that agencies would need to seek a warrant to intercept a phone call or read a message—not that email really existed in any sort of form at that stage—I think it would also have occurred to them that being able to track someone's location everywhere they go should require warranted access as well. That is one of the key recommendations we have made here—but not for everything. It was not the view of many witnesses that reading the white pages should require a warrant, so basic subscriber data identifying who was the subscriber to a particular account or a particular handset would continue to be applicable under the existing authorisations regime, although we do propose some additional safeguards—but bulk metadata of an invasive kind should require a warrant. We also believe that the act should have an objects clause, which may seem a little bit obscure to those without a legal background, but the fact is that the word 'privacy' is barely mentioned in our Telecommunications (Interception and Access) Act. We believe an objects clause modelled on article 17 of the International
Covenant on Civil and Political Rights and the privacy principles contained in Australia's own Privacy Act 1988 should be baked into telecommunications interception legislation here in Australia.

We also pointed very briefly to international experience. Despite the fact that the government appears to believe that precisely the opposite is occurring, in Europe the mandatory data retention regime, which provided for three months to an upper limit of two years of mandatory data retention, was struck out by the European Court of Justice on the grounds that it was offensive to principles of privacy and in fact offended human rights. That is remarkable and it seems to have gone completely over the head of Senator Brandis and Prime Minister Tony Abbott, because on more than one occasion they have tried to persuade people that international practice is moving in this direction when in fact it is moving in precisely the opposite direction. On figures provided to the committee, many jurisdictions in Europe—nearly a dozen—have some form of judicial oversight over access to telecommunications data—that is, for some or all of this material you need to go to a judge and get a warrant. That is the kind of international best practice that we believe Australia should be heading towards. The situation in the United States is obviously much less clear, but the debate that has unfolded there since the revelations of Mr Edward Snowden has created some rather unusual allies across the United States political spectrum who are seeking to have the powers returned to that which are necessary and proportionate and which indeed are in accord with the United States Constitution and their Bill of Rights.

This report is extremely timely. Those who understand that the Australian Greens are opposed to mandatory data retention can find in this document what it is that we support and the kind of reforms we believe would bring our telecommunications interception regime into line with the way technology and expectations of the public have emerged in the early years of the 21st century. We could not have done this without the secretariat and we also could not have done it without the hard work of Senate colleagues from across the political spectrum. Chairing this inquiry was not always easy—it was sometimes arduous—but everybody did apply themselves over a period of time. To my great surprise, Senator Ian Macdonald, who will willingly profess his ignorance of these matters, applied himself to the task with quite a lot of dedication. He asked hard questions and did not take anything for granted, and I found myself surprised from time to time by the degree to which Senator Macdonald in particular and also Senator Reynolds, when she joined the work of the committee in its later phases, did apply themselves with diligence. Nonetheless, politics and party discipline have regretfully prevailed and that is why we see a splintering of minority reports and additional comments reflecting the views of the leadership.

We simply could not have done this work without the hard work of the secretariat who do their work behind the scenes, particularly Ms Sophie Dunstone and Ms Sandra Kennedy—who regrettably the Senate has lost to the House of Representatives committee system. To those two in particular, and to Ms Jo-Anne Holmes, on behalf of the committee I thank them for their extraordinary work.

Senator JACINTA COLLINS (Victoria) (16:07): I also rise to speak on the matter of the final report of the Legal and Constitutional Affairs Reference Committee's comprehensive review of the Telecommunications (Interception and Access) Act 1979. Although many of these issues have been, and will be, dealt with during the Senate's consideration of the data
retention bill, I too would like to thank the secretariat for the work put into this inquiry and the production of the report. I also thank the chair for dealing with the matter under somewhat difficult circumstances.

I too joined this inquiry in its later phases, but I would like to highlight that the comments from opposition senators highlight the broader context in which this inquiry was conducted. We remind people following the course of these considerations that, although a 2013 report from the Parliamentary Joint Committee on Intelligence and Security regarding the act was unanimous and included the current Attorney-General as one of its members at the time, the Abbott government has still not responded to those recommendations in chapter 2, let alone commenced the considerable work outlined under recommendation 18, which relate directly to the process suggested to update this act.

As I said in my contribution on the data retention bill, this has been most unfortunate for public policy and sensible consideration of these issues. Perhaps that is the one point that I will take issue with the chair, Senator Ludlam, here. In one breath he suggested that people looking at this report will draw their own conclusions, once they look at the various positions addressed in the report; in an earlier, more hysterical breath he referred to Labor having 'caved in' on these issues. I remind senators and anyone listening to this debate that, whilst we have not been happy with the way the Abbott government has progressed not only modernising this act but also the broader data retention issues, there is significant change in the bill that was first presented to the House of Representatives by Malcolm Turnbull. There were 38 substantive recommendations that came out of the Parliamentary Joint Committee on Intelligence and Security. As many would be aware, there was then further movement from the government amounting to, roughly, 75 amendments to ensure that what progresses in the Senate is a far more comprehensive, substantial and balanced approach to the data retention matter. That more balanced approach meets our requirements that we address oversight and privacy issues when considering how, under more appropriate arrangements, we deal with metadata.

I reminded senators earlier today of the unfortunate approach that the Abbott government took when the previous Labor government asked the Parliamentary Joint Committee on Intelligence and Security to address many issues. Had the minister of the day, Senator Brandis, taken the committee's advice and proceeded down the way that was recommended—particularly in its recommendation 18—we would, and the government would, probably be in quite a different space. There has been a measured and balanced consideration of these issues and significant changes to how the government first proposed we work with the data retention issues as one element of this report. In terms of a comprehensive review of the act, there is still much more that needs to be done. The government would be wise to reflect on the previous recommendations of the Joint Parliamentary Committee on Intelligence and Security.

We have reminded senators in our report of what those recommendations are. For instance, recommendation 7 covers some of the issues around the specific attributes of communications and the attribute based interception issues. Some of what has been considered by this Senate committee is not necessarily new; it has been previously addressed by the joint parliamentary committee. But we felt it was appropriate to have a process that enabled crossbench senators to participate as well, as they are not presently represented on the joint parliamentary process.
I hope Senator Ludlam appreciates that the Greens have had an opportunity to call before the parliamentary committee—the Senate committee—the witnesses that we had called upon the government to engage with, before designing this bill, in relation to data retention.

The Labor senators' contributions to this report put the report as a whole in a broader context of how it might better have been dealt with—not only data retention but also the modernisation of the TIA Act overall. We highlight some of the outstanding issues that the Senate needs to be mindful of. There is the issue of data storage, which has not yet been resolved, and the issues about strengthening oversight of our broader national security framework. Senator Faulkner commenced the process, but Labor will be keen to ensure progress in the context of any further work around the TIA Act and the broader national security issues.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Legal and Constitutional Affairs References Committee

Report

Senator WRIGHT (South Australia) (16:14): I now present the report of the Legal and Constitutional Affairs References Committee on the Australian Federal Police Oil for Food Taskforce, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator WRIGHT: I move:

That the Senate take note of the report.

I rise as the chair of the Legal and Constitutional Affairs References Committee to speak to the tabling of this report into the work undertaken by the Australian Federal Police's oil for food task force. Firstly, I would like to place on record my thanks to the legal and constitutional affairs committee secretariat, so competently led by the committee secretary, Ms Sophie Dunstone, for their support to the committee throughout this inquiry. I would also like to extend my special thanks to Mr Hari Gupta at the secretariat for his exemplary work in bringing the Chair's Minority Report together. This was a task that was made even more than usually challenging by the degree of in camera evidence taken by the committee. To provide a report that was comprehensible to those who were not privy to the in camera evidence, so that it had some coherence, was a very challenging task. Mr Gupta did a very good job of that, but it did take some time.

I will turn now to some of the issues relating to this inquiry. I put on the record that, unfortunately, the Australian Federal Police were not as helpful as they could have been in assisting the committee during the course of this inquiry. In particular, they declined to release the advice of Mr Hastings QC in camera to the committee. In doing so, they gave up an opportunity to clear doubts held by some members of the committee, and certainly members of the Australian public, in relation to whether the task force was shut down prematurely and on what legal basis that occurred.

In the absence of any evidence of the legal grounds for shutting the task force down—apart from some somewhat vague assertions—there is serious ongoing concern that the task force
was shut down for political, not legal, reasons. One of the reasons that concern continues is that there was a royal commission into the activities of the Australian Wheat Board, and this saga and the lingering smell associated with it is that although a great deal of illegal activity and wrongdoing was uncovered by the royal commission that has not resulted in substantive criminal charges. One of the offences that the Australian Wheat Board could potentially have been charged with is obtaining financial advantage by deception. A defence to that kind of charge would be that there was no deception, that there was no misleading. That would require a defence and evidence that those who were allegedly misled or deceived—in this case the Department of Foreign Affairs and Trade—actually knew what the Australian Wheat Board were doing, and therefore misleading action did not take place. Of course, if that had occurred it would have exposed the department and raised serious concerns about what they knew at the time. The fact that this saga has continued and that there is a lingering smell associated with the activities of the Australian Wheat Board and the royal commission, which ultimately has not resulted in substantive criminal charges, again reinforces the point that we need a national independent commission against corruption.

In the course of this inquiry, we saw the two old parties tend to close ranks in the in-camera hearings and in the finalising of the report, to protect the AFP and the Department of Foreign Affairs from being too closely scrutinised. While the Senate has the legal powers to effectively act as an ICAC, the Senate does not have the financial or human resources to have a permanent standing body. More importantly, there is not the political will to investigate something that in this case, for instance, crossed over both the Howard and Rudd governments. The Senate's power is self-restrained to the point of impotency. That will not stop the Australian Greens from moving an order for the production of documents to order that legal advice from Mr Hastings QC be tabled in the Senate. That would clear up any doubt around the reasons for the winding up of the task force, which is very clearly on the record as having failed to meet its terms of reference and wasted millions of dollars with very little to show for it—although it underspent its budget before it was prematurely closed down. It would also help to establish whether the closing down occurred was on the basis of legal advice or political imperatives.

Unfortunately, the failure of the Australian Federal Police to secure any criminal outcome against the Australian Wheat Board has been repeated in relation to other foreign bribery investigations. I make particular reference to the Secucency scandal—the Reserve Bank of Australia note-printing scandal—but I would also refer to the Leighton Holdings issue, as raised in this chamber by Senator Dastyari, and the OECD's report that was highly critical of Australia's efforts in dealing with foreign corruption, with one prosecution arising from 28 referrals.

Because of this systemic failure of our national police force to cover one of its main areas of jurisdictional responsibility, in the Chair's Minority Report of this inquiry the Australian Greens have recommended that the Australian Commission for Law Enforcement Integrity launch a broad inquiry into the structural, recurrent failings of the Australian Federal Police and the Australian Securities and Investments Commission and into whether we should look at establishing a specialised agency between them and state law enforcement agencies to ensure that foreign bribery and white-collar crime is being investigated and prosecuted without compromise or delay.
A final point that shows the desperate need for an ICAC at the federal level is the testimony of Mr Jason Young, who is a former ASIC employee. On the public transcript, before the committee went in camera, he named a senior member of parliament as being a person of interest identified by ASIC in a brief that went to ASIC’s executive. Mr Young’s evidence was that when it came back from the executive the name had been dropped from the short list of who to pursue. Unfortunately, there is often a lack of political will in the Senate for very serious issues to be fully examined and pursued.

I would like to conclude by thanking and acknowledging the role of a particular individual, Mr Ross Fusca, for his evidence to the committee. Mr Fusca's original voice, which I became aware of through the media, raised concerns about the conduct of the task force and the closure of the task force without its having completed what was, in his view, its clear job. It was what brought the issue to light and was the reason that the inquiry was launched and that the Greens were so keen to have this inquiry.

Mr Fusca is a longstanding, experienced and honourable police officer. Along with many others who could be characterised as whistleblowers, he has shown great courage to voice his concerns. He has taken steps, to his own detriment—again, a common aspect of whistleblowing—in pursuing what he saw as being in the public interest and in the interests of integrity. Mr Fusca was a very dignified witness before the inquiry and I was quite humbled by the willingness that he showed to stand up, essentially put his head above the parapet and take on and voice the concerns that he genuinely has held in relation to the way this task force was conducted and ultimately closed down.

Unfortunately, despite strong efforts on my part to have at least some unanimous or majority chapters in the report which merely recited the factual background to the Australian Wheat Board issue and the royal commission before this inquiry to essentially make it easier for the public to read this and get a coherent sense of what has occurred, that was not possible to do. It was a particularly politicised inquiry and, ultimately, a very short majority report was provided by the government senators and the opposition senators. The Greens report is longer and I think it goes into more detail, which will make more sense to people who want to get the background to the inquiry. While I never expected that we would see shared recommendations coming out of it, it was a disappointment to me that we were not able to make the Senate committee system work as well as it can in giving important information to the public.

That said, again I would like to thank the secretariat for their good work. I commend the report to the Senate.

Senator MILNE (Tasmania—Leader of the Australian Greens) (16:24): I rise this afternoon to comment also on the oil-for-food inquiry into the closure of the Australian Federal Police task force. It is my view that, if ever a case demonstrates the need for a national independent commission against corruption, it is this one. Justice has absolutely not been done here. I say that because the Australian Wheat Board declared throughout the royal commission that it did not know that the fee it paid the Alia trucking company went to Saddam Hussein. It declared that throughout the inquiry. However, when the shareholders took a class action, in the subsequent court case to settle that matter—it was a civil case—the AWB admitted that it knew all along, and that was part of its agreement to settle. The issue
then becomes: the Wheat Board lied. It knew that the money it was paying to the Alia trucking company went to Saddam Hussein.

There was an investigation by the Federal Police into what corruption might have occurred. The Federal Police task force was shut down before it could finish that work. Why was it shut down? It was shut down on the basis of legal advice, supposedly, from Mr Hastings QC, but that legal advice has never been provided or made public. We still have no idea about that legal advice. My view is that it was shut down for political reasons and for this reason: we had a situation where ASIC had been to Iraq, had interviewed people from the trucking company and had interviewed others, all making it very clear that the evidence that ASIC had would have demonstrated that not only did the AWB know the money went to Saddam Hussein but DFAT knew. The allegation through the inquiry was that it went right up to a federal minister who knew. They all knew. If the AWB had been absolutely nailed by the Federal Police, then the next question is: what would the Wheat Board's defence have been? The Wheat Board's defence would have been: they had not committed a fraud; they had not done anything wrong because they knew that the money to the trucking company went to Saddam Hussein but so too did DFAT and so too did this federal member of parliament, and therefore they could not be found guilty of a crime because they had not deceived anyone and everybody knew.

It all came unstuck. ASIC had that information, but ASIC could not just straightforwardly provide that information to the Federal Police. So it went to court. The Wheat Board, of course, appealed the judgement that came down to say that, yes, the information should be provided. Of course the AWB objected to that—they did not want that information provided at all and they objected to it. However, it was heard again and the judge reserved his decision. Before it came down, the task force was shut down. There was a small window of opportunity. Before the ASIC information could be provided to the Federal Police, which would prove that the AWB knew and DFAT knew and it was known even as high as the minister, the task force was shut down. So that information never went from ASIC to the Federal Police because the Federal Police task force was shut down. It is clear to me, and it was clear from the evidence that was provided, that it was not legal advice that there was unlikely to be a successful prosecution but that a political judgement was made that the Federal Police task force had to be shut down so that it would never come out that the AWB not only knew but that DFAT and the government of the day knew.

Of course it is hugely serious because it goes to the whole issue of Saddam Hussein, what people knew and the breach of all the sanctions that were in place. It would have shown that the Australian federal government knew that they were breaching the sanctions, because that would have been the defence of the Wheat Board if this had come out. I believe that is why the task force was shut down, which begs the question: who in the Federal Police forced the task force to close down and who directed the then head of the Federal Police, Mick Keelty, to close down that task force?

Those questions were never answered. There has never been an investigation into that. We still do not know. That is why we need a national ICAC. I find it absolutely appalling to be standing here in the federal parliament and not have the documents that you need to prove it.

Then I asked ASIC why it did not take the AWB, because they had misled the stock exchange. They had breached their corporate responsibilities by lying about what they knew
and what they did not know. ASIC would not say at the time why it did not take that action, just that there was no clear view why the name of a federal politician was taken out of the ASIC brief, who should be investigated or why ASIC did not take on AWB as a corporate entity for having lied to the stock exchange. They are very clear and serious allegations that should have been followed up. So I can only conclude that this whole thing was covered up because it went to the heart of government, that the Australian government knew at the time that the AWB was breaching the sanctions and it would have all come out.

The Federal Police task force being shut down was a political directive to avoid all of that coming out, and I want to thank the whistleblowers who came forward in this inquiry. As my colleague Senator Wright, the chair of the committee, has said it is very clear that because this covered two periods of government, two different sides of the political spectrum, the Liberal government and then a Labor government, there was no interest in having Australia exposed in this way in the international forum. The world would have been looking at this level of corruption. The OECD is already looking at the extent to which Australia takes international corruption seriously, and I think that it is an absolute disgrace. I want to put on the record my appreciation of the courage that Mr Fusca showed in coming forward and raising serious questions as to why he was essentially frustrated in his ability to do his job in that task force and the task force was closed down.

It is a very serious issue that the Australian parliament still to this day does not have the documents it needs to prove the case. That is why we will be moving for the legal advice on the basis of which that task force was shut down. We want that legal advice provided because I do not believe that it will prove the point that the government has always claimed it proved. If it is so clear then why not release it and let the community see it? The whole thing has been a cover up from start to finish.

Quite apart from the AWB case, as I indicated, we need a much more serious approach to foreign bribery and corruption. The Federal Police now has a much more significant unit to do that work. But, frankly, no unit will be able to do the work if ultimately they are leant on politically to shut down investigations. That is why we need a national ICAC. We will not have a break in the corruption that goes on in this country, and let us not pretend that corruption ends in New South Wales. ICAC has made it fairly clear in New South Wales what the story is. We now need to make sure that we get a national ICAC, that we expose this and that the people responsible for the cover ups are held to account.

Senator IAN MACDONALD (Queensland) (16:33): I was a member of the committee that investigated the food for oil task force and the suggestion by the Greens political party that there was rife corruption amongst the police forces and the investigatory agencies. So I have a slightly better understanding of the report that has just been tabled than the previous speaker who, I think, breezed in on a couple of occasions for a short period of time. This oil for food matter has been the subject of the Cole royal commission. It was then the subject of a $23 million investigation by the Federal Police and by ASIC. It was the subject of very intense scrutiny across the board.

Why the Senate agreed with the Greens political party to re-establish yet another committee to look at alleged shortfalls in the first inquiry I could never understand. They did say they had some new evidence that would expose widespread corruption amongst Australian agencies. The Senate committee duly sat. We heard the new evidence in camera.
Whilst I accept the genuineness of the person involved, those who were there to actually see the demeanour of the witness and the evidence given were not in any way persuaded that the evidence was accurate, relevant and was such that it did expose any new information into this inquiry. With all the respect I can muster, this inquiry was a complete waste of the Senate's time and the costs of the committee. You will see that the majority report tabled today indicates that there was no evidence at all of any impropriety, no evidence at all of any necessity to conduct further investigations and, in fact, the majority report congratulated the Australian Federal Police and ASIC and all those involved on their work.

The Greens political party took a lot of umbrage at the fact that the inquiry was shut down, and the committee went into that in some detail. Why was it shut down? Not because there was corruption that was about to be exposed but nobody wanted to be exposed. It was quite the contrary. There was no evidence whatsoever that the original investigation was anything but appropriate and proper. The reason it was shut down—and, unfortunately, the Greens political party never seemed to be able to understand this—was that the law as it stood prevented any serious further investigation. The investigators came to that conclusion, and so they engaged a senior QC, at quite a cost, as you would expect, to look through all aspects of the investigation and to advise the police and the then government—which, incidentally, was the previous government—whether it should go any further. The QC fully investigated it and indicated that the difficulties in getting evidence to substantiate any prosecution were far outweighed by the cost and the likelihood of being able to get evidence that was telling.

As the majority report points out—something the Greens political party and perhaps some columnists did not understand—evidence given to the Cole royal commission could not be used, under Australian law, by the Federal Police to mount prosecutions. So the police had to go round and reinterview everybody, many of whom came from overseas and many of whom were unwilling, or uninterested in even talking to the Australian Federal Police. That was the problem that confronted the AFP when they started the investigation, but they had to go and again get all of the evidence that was given at the Cole royal commission. They interviewed some people in Australia, most of whom claimed privilege and some of whom refused to talk to the police. Whilst the Federal Police did a very thorough job, it became very obvious that there was nothing further that they could reasonably do that had not already been done.

It was clear to the committee that nothing important, nothing useful, could ever come from a further investigation into this. Certainly, there was no evidence and no suggestion of any corruption, impropriety or lack of good faith in anything the Australian Federal Police and ASIC did in their further investigation of that oil-for-food matter.

The Greens are calling for a federal ICAC. That, of course, is another issue. But, certainly, the results of this inquiry by the Senate Legal and Constitutional Affairs References Committee do not in any way provide support or evidence for the call the Greens are making. Now, that is a debate for another time. But, as I said, there was nothing in the inquiry by our committee that would support such a call at this time.

There are other things I would like to say on this—and I am sure there are other senators who were going to speak. Unfortunately, I rushed into the chamber when I heard Senator Milne speaking and I do not have the report in front of me or all of my notes, so hopefully I will have an opportunity to speak on this again. Suffice to say that the report of the committee really gives a clear indication of the determinations of that committee. It is a majority
committee report that I urge all senators to read, because it is only about six pages. It is very succinct, it is very to the point on the terms of reference for the inquiry and, as I said, it found almost unanimously that there was no point in wasting the resources of the Commonwealth and certainly of the Senate in further investigating this particular matter. I see another committee member in the chamber, but I understand he does not want to speak at this time. If nobody else wants to speak, I seek leave to continue my remarks later so this matter can be debated further at another time.

Leave granted; debate adjourned.

**Rural and Regional Affairs and Transport References Committee**

**Government Response to Report**

**Senator RYAN** (Victoria—Parliamentary Secretary to the Minister for Education and Training) (16:42): I present the government's response to the report of the Rural and Regional Affairs and Transport References Committee on its inquiry into the role of public transport in delivering productivity outcomes, and I seek leave to have the document incorporated in *Hansard*.

Leave granted.

The document read as follows—

**Australian Government response to the Senate Rural and Regional Affairs and Transport References Committee Report:**

**The Role of Public Transport in Delivering Productivity Outcomes**

**March 2015**

**Government Response**

**Role of Public Transport in Delivering Productivity Outcomes**

Report of the Senate Rural and Regional Affairs and Transport References Committee

The Australian Government welcomes the Committee's report and its continued focus on the productivity of Australia's transport systems.

The Australian Government supports investment in productivity-enhancing infrastructure. The Government's infrastructure reform agenda, such as reforms to Infrastructure Australia and the Government's ongoing commitment to improve the robustness and consistency of Benefit Cost Analysis in project appraisals, is directly designed at better identifying and selecting the infrastructure projects that best enhance national productivity.

Efficient and productive transport infrastructure services are important for both sustained economic growth and for delivering continued improvements to our quality of life. With all levels of government in Australia facing substantial fiscal constraints, governments will need to work collaboratively to deliver the infrastructure that Australia needs.

The Australian Government has committed to delivering over $50 billion of funding toward major productivity-enhancing infrastructure projects, designed to support more than $125 billion in new and upgraded infrastructure. In turn, this contribution is freeing up state and territory governments to invest in state and local priorities.

The Government's infrastructure policy settings are designed to enable all levels of government to focus on, and deliver, their core responsibilities in infrastructure investment. This is supported by the Asset Recycling Initiative, which provides incentives for jurisdictions to transfer mature infrastructure assets...
to the private sector and invest in productivity enhancing projects that address their local infrastructures priorities—including public transport.

The Australian Government also plays a leading role in the coordination of integrated national approaches to transport and infrastructure planning, through the Council of Australian Governments (COAG) and the Transport Infrastructure Council. This includes driving national reforms to the way infrastructure projects are planned, assessed and selected.

The Government's independent advisory body, Infrastructure Australia, is considering nationally significant infrastructure priorities across all types of economic infrastructure, as part of the national Infrastructure Audit and the development of a 15-year Infrastructure Plan. This long-term approach will ensure that the necessary infrastructure is delivered at the right time, without placing undue financial pressure on future generations.

Getting the planning, selection and investment in transport infrastructure right is crucial for Australia's future productivity, both in our major cities and across our regional areas. The Australian Government is committed to working with jurisdictions to collectively deliver the infrastructure that Australia needs.

Response to recommendations

**Recommendation 1**

2.59 The committee recommends that public transport infrastructure should be considered as nationally-significant infrastructure, alongside private transport infrastructure such as road construction.

The Australian Government agrees to this recommendation.

The Australian Government considers nationally significant transport infrastructure to include all major infrastructure assets in which investment would help materially improve national productivity. The Government recognises that public transport infrastructure forms an important element in supporting Australia's economic activity and productivity, particularly within Australia's major urban centres.

Infrastructure Australia, the Government's independent advisory body on infrastructure, is expected to consider infrastructure it deems to be nationally significant transport infrastructure as part of:

- the audit of Australia's nationally significant infrastructure;
- the national 15-year Infrastructure Plan; and
- its evaluation of proposals for investment in, or enhancement to, nationally significant infrastructure seeking Commonwealth funding of at least $100 million.

In particular, the significance of public transport infrastructure is expected to be acknowledged in Infrastructure Australia's soon to be released audit of nationally significant infrastructure. It is anticipated that the audit, which measures the capacity, utilisation and economic contribution of Australia's nationally significant infrastructure, will detail the important contribution that public transport infrastructure makes in the national context.

**Recommendation 2**

2.60 The committee recommends that wider economic costs and benefits, including social and economic connectivity, environmental factors, active lifestyle benefits, safety factors and avoided costs and benefits be factored into transport project analysis.

The Australian Government agrees to this recommendation.

The Government considers Cost Benefit Analysis (CBA) to be the most appropriate tool for determining the merits of infrastructure projects. The Commonwealth expects that all land transport infrastructure projects seeking Commonwealth funding are subject to a CBA. Appropriate consideration
of wider economic costs and benefits during the assessment of project proposals can complement the CBAs by providing a richer understanding of the project's impacts.

The National Guidelines for Transport System Management (NGTSM) provide a comprehensive framework for strategic-level transport planning and analytical approaches to transport assessment. The current edition of the NGTSM, released in 2006, is under review. Once updated, it is anticipated that Infrastructure Australia will consider the methodologies recommended in the NGTSM as part of its method for evaluating infrastructure projects.

As part of the Government's Response to the Productivity Commission's Inquiry into Public Infrastructure, the Government agreed to the development and publication of a national best practice framework for evaluating projects. The framework will update the methodology for using CBA to assess infrastructure projects, as well as provide guidance on how best to incorporate wider economic impacts in project assessments.

In November 2014, the Government released an Overview of Project Appraisal for Land Transport which explored these issues. This Overview is informing ongoing work to update project assessment methodologies within the NGTSM, including the consideration of the consistent application of CBA and wider economic impacts. Initial draft sections of the updated NGTSM were released for public comment between December 2014 and February 2015, including discussion papers on how wider economic benefits should be measured and considered within the assessment of transport infrastructure projects. The review is currently considering the outcomes of this consultation.


Further information about the review of the NGSTM is available on the review website at: <http://ngtsmguidelines.com/about/>.

**Recommendation 3**

3.70 The committee recommends that, given the productivity cost of capital city congestion, all levels of government interested in increasing national productivity consider backing solutions to congestion, including public transport.

**The Australian Government agrees to this recommendation, noting that it is also a matter for state, territory and local government.**

The Australian Government agrees that reducing congestion on our transport networks will be a key factor in increasing national productivity into the future.

The Australian Government's $50 billion investment in land transport infrastructure will deliver major road and freight rail projects that are necessary for improving the productivity of Australia's transport network. These include upgrades to major freight routes and improved access to ports, airports and intermodal facilities, reducing congestion at key transport bottlenecks.

This approach is also freeing up state and territory governments to invest in infrastructure where they have particular expertise and responsibility, such as public transport. Since late 2013, state and territory governments have committed to a record more than $36 billion in new infrastructure projects. This includes commitments such as:

- the North West Rail Link ($8.3 billion), South East Light Rail ($1.6 billion), the Sydney Rapid Transit Network ($7 billion, including the second harbour crossing), the Parramatta Light Rail ($1 billion) and the Western Sydney rail upgrades programme ($1 billion) in NSW;
- the Melbourne Rail Link (up to $11 billion) and Cranbourne-Pakenham Rail Corridor project (up to $2.5 billion) in Victoria;
• $5 billion for a public transport tunnel crossing of Brisbane River in Queensland;
• the $2 billion Forrest Airport Link in Western Australia; and
• $783 million for the ACT Capital Metro light rail project.

The Australian Government's investment is also addressing upgrades to major shared use road corridors, including supporting more efficient bus movements. In 2013, buses accounted for over 690 million passenger journeys in Australia's capital cities. This was more than heavy rail (around 660 million journeys)\(^1\).

The Government is also supporting jurisdictions' effort to reduce major city congestion through the Asset Recycling Initiative, which rewards jurisdictions for unlocking capital from mature assets and reinvesting in state infrastructure priorities which return net positive benefits. For example, on 19 February 2015 the Government signed the first bilateral agreement under this initiative with the ACT Government, under which the ACT Government will sell mature assets to help deliver the ACT Capital Metro project.

Collectively, investment at all levels of government is providing additional transport capacity, across modes, which is reducing congestion and its impact on productivity.

**Recommendation 4**

3.71 The committee recommends that when addressing congestion and other transport problems, a range of reasonable solutions, be examined, including the publication of cost-benefit analysis, before decisions on funding are made by government.

The Australian Government agrees in principle to this recommendation.

The Australian Government agrees that proposed solutions to congestion and other transport problems should be considered with regard to alternative options.

Proposals for funding under the Infrastructure Investment (National Land Transport) Programme are expected to consider:

- alternative options for addressing the identified problems;
- more efficient use of existing infrastructure, such as through regulatory changes, the use of technologies or user charging mechanisms; and
- construction of alternative infrastructure solutions, which may involve public transport solutions, as appropriate.

As outlined in the Australian Government's response to the Productivity Commission's *inquiry into public infrastructure*, the Australian Government expects that all land transport infrastructure projects seeking Commonwealth funding are subject to cost benefit analysis. In addition, all infrastructure projects seeking $100 million or more in Commonwealth funding are required to provide a proposal to Infrastructure Australia for evaluation, including a cost benefit analysis. Infrastructure Australia will publish summaries of all proposals evaluated on its website at least quarterly.

**Recommendation 5**

3.72 The committee recommends that smaller cost projects, especially so-called smart projects involving the more efficient use of existing infrastructure, or the more effective integration of routes and modes, be prioritised according to the positive benefits they produce.

The Australian Government agrees to this recommendation.

The Australian Government supports investment in projects that more efficiently address identified infrastructure priorities. To this end, the Government has put in place more robust project assessment
and selection mechanisms, designed to ensure that Commonwealth-funded infrastructure projects have undergone appropriate planning works, including, where appropriate, options analyses.

In particular, and as already indicated, the Australian Government requires all major economic infrastructure projects seeking $100 million or more in Commonwealth funding to be reviewed by Infrastructure Australia, including consideration of the proposal's CBA. Infrastructure Australia is required to publish summaries of all evaluated proposals on its website.

In addition, as part of the Government's Response to the Productivity Commission's Inquiry into Public Infrastructure, the Government agreed to give preference for funding under its major economic infrastructure funding programmes to projects that, amongst other things:

- demonstrate strong economic productivity benefits; and
- have considered and, where appropriate, applied alternatives to construction, including through enhanced use of existing infrastructure and technological solutions.

In addition, the Government funds a number of programmes that support maintenance and other minor works to ensure the ongoing safe and efficient use of existing road infrastructure.

- The Government's $2.1 billion, five year Roads to Recovery commitment is providing local governments with untied funding to support the maintenance of existing roads.
- The $500 million Black Spots programme targets road locations where crashes are occurring. By funding minor upgrades at dangerous locations, the programme is reducing the risk of accidents and saving the community many times the cost of the works undertaken.
- The $200 million Heavy Vehicle Safety and Productivity Programme is helping support heavy vehicle operations in Australia through minor upgrades that enhance the capacity of existing roads and improve the safety for heavy vehicle operators.
- The $300 million Bridges Renewal commitment supports state, territory and local governments to rehabilitate bridges to support higher productivity vehicle access and to service local communities.
- The $1 billion National Stronger Regions Fund supports local governments and not-for-profit organisations to undertake capital works on regional community infrastructure priorities. This programme supports new infrastructure construction as well as the upgrade, extension and enhancement of existing infrastructure.

The Australian Government notes this recommendation.

All levels of government in Australia are facing fiscal constraints that impede investment in infrastructure. To this end, it is imperative that governments work together to achieve Australia's infrastructure priorities.

The Australian Government's infrastructure policy is designed to support all levels of government in focusing on their core infrastructure responsibilities. This involves targeting Commonwealth funding towards national priorities, allowing state and territory governments to focus on delivering state and local priorities.

To this end, the Australian Government's $50 billion investment in transport infrastructure is targeting the interstate road and rail freight networks and those urban corridors which will support the delivery of national objectives including improved economic and productivity growth. This includes reintroducing, where appropriate, an 80:20 funding split for new projects on the national network outside major metropolitan centres, reflecting the importance of these links to the national economy.
In delivering its significant investment in interstate and export freight networks, the Australian Government works closely with state and territory governments to identify the best solution to meet the identified infrastructure needs. This includes consideration of road and rail options, determined on a case by case basis, with due consideration of the costs and benefits of each option.

| Recommendation 7 |
| 3.74 The committee recommends that the Australian Government take a leadership role on urban policy, working with the states and territories, given the strong link between transport and urban planning. |

The Australian Government agrees to this recommendation, noting that the state, territory and local governments have primary responsibility for implementation of urban policy.

The Australian Government works with state and territory governments, through COAG and its supporting bodies, to implement agreed reforms and to drive best practice across infrastructure planning, procurement and delivery. Governments are working together to develop coordinated approaches to infrastructure planning, including the protection of transport corridors for future infrastructure requirements. This work will also be informed by Infrastructure Australia's national infrastructure audit and 15-year infrastructure plan.

In its recent response to the Productivity Commission's inquiry into public infrastructure, the Australian Government outlined its plans to encourage state and territory governments to undertake early planning for major infrastructure projects. These included aligning future funding for planning activities under the Infrastructure Investment Programme with the priorities identified in IA's 15 year Infrastructure Plan.

| The Australian Greens' Additional Recommendations |
| **Australian Greens Recommendation 1** |
| 1.8 Given the productivity cost of capital city congestion, the Australian Greens recommend that all levels of government should take action to reduce congestion. |

The Australian Government agrees to this recommendation, noting that it is also a matter for state, territory and local government.

The Government's response to this recommendation is incorporated within the response to Report Recommendation 3, above.

| **Australian Greens Recommendation 2** |
| 1.9 We recommend that transport infrastructure projects being considered for funding by the Australian Government must have a comparative benefit cost analysis undertaken, in particular comparing major proposed road projects with other options available to address the identified transport needs. These options should include mobility management and public transport options. |

The Australian Government agrees in principle to this recommendation.

The Government's response to this recommendation is incorporated within the response to Report Recommendation 4, above.
Australian Greens Recommendation 3
1.10 The Australian Greens recommend that smaller cost projects, involving the more efficient use of existing infrastructure and more efficient integration of routes and modes, be prioritised according to the positive benefits they produce. This would include mobility management measures which provide people with real choices in the way they travel, and encourage the use of modes of transport other than single occupancy private vehicle use.

The Australian Government agrees to this recommendation.
The Government's response to this recommendation is partially incorporated within the response to Report Recommendation 5, above.
The Australian Government also supports modal choice for the travelling public and supports safe road environments for all road users, including cyclists and pedestrians. This is reflected in the National Road Safety Strategy 2011–2020, which aims to reduce serious road casualties by at least 30 per cent by 2020; and the National Cycling Strategy 2011–2016, which aims to double the number of people cycling by 2016.

Australian Greens Recommendation 4
1.11 The Australian Greens recommend that investments in public transport should be prioritised for consideration for funding by the Australian Government, given the legacy of underinvestment over the last 30 years.

The Australian Government does not agree to this recommendation.
Consistent with the Report Recommendations, the Australian Government supports a merit based approach to project assessment.
The Government recognises the need for adequate investment in infrastructure to support the economic growth and deliver improvements to Australian's quality of life. This includes efficient, functioning transport systems in our major urban centres. However, the Government also recognises the fiscal constraints facing all levels of government.
To this end, the Australian Government's policy is to target its transport infrastructure investment into projects that meet national priorities, including strengthening interstate freight connections and unlocking national productivity growth through improved national competitiveness.
In comparison, the state and territory governments are better placed to determine state and local infrastructure priorities. The Australian Government's approach has freed up state and territory funding towards such priorities, including improved connectivity within our major urban centres. For example, since late 2013 state and territory governments have announced over $36 billion in new and upgraded public transport projects.
In addition, the Australian Government is delivering the Asset Recycling Initiative. Under this $5 billion Initiative, the Government will provide incentive payments to states and territories that transfer government-owned assets to the private sector and invest the proceeds in infrastructure projects that deliver clear positive net benefits. This Initiative encourages state and territory governments to unlock capital in their balance sheet to fund local infrastructure priorities, including public transport.

1 2013 figures, as reported in the Bureau of Infrastructure and Regional Development's Long-Term Trends in Urban Public Transport Information Sheet, published September 2014.
COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Sterle) (16:43): The President has received letters from party leaders requesting changes in the membership of a committee.

Senator RYAN (Victoria—Parliamentary Secretary to the Minister for Education and Training) (16:43): by leave—I move:

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

Economics References Committee—

Appointed—Substitute member: Senator Cameron to replace Senator Carr for the committee’s inquiry into insolvency in the construction industry, and Senator Carr be appointed as a participating member.

Question agreed to.

BILLS

Aboriginal and Torres Strait Islander Peoples Recognition (Sunset Extension) Bill 2015

Offshore Petroleum and Greenhouse Gas Storage Amendment (Miscellaneous Measures) Bill 2014

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Designated Coastal Waters) Bill 2014

Excess Exploration Credit Tax Bill 2014

Export Finance and Insurance Corporation Amendment (Direct Lending and Other Measures) Bill 2014

Corporations Legislation Amendment (Deregulatory and Other Measures) Bill 2014

Tax and Superannuation Laws Amendment (2014 Measures No. 5) Bill 2014

Tax and Superannuation Laws Amendment (2014 Measures No. 7) Bill 2014

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2015

Succession to the Crown Bill 2015

Assent

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

COMMITTEES

Finance and Public Administration Legislation Committee

Education and Employment Legislation Committee

Report

Senator RUSTON (South Australia—Deputy Government Whip in the Senate) (16:44): At the request of the chairs of the respective committees, I present reports on the Public Governance and Resources Legislation Amendment Bill (No. 1) 2015 and the Seafarers
Rehabilitation and Compensation and Other Legislation Amendment Bill 2015, together with the Hansard records of proceedings and documents presented to the committees.

Ordered that the reports be printed.

BILLS

Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

to which the following amendment was moved:

At the end of the motion, add:

"and, noting concerns about a lack of clarification from the Government about costs associated with this bill as strongly addressed in a letter to the Government signed by the chief executives of Telstra, Optus, Vodafone, iiNet and a number of other major telecommunications companies, further consideration of the bill should be made an order of the day for the day after the Government tables its response to the industry's concerns on cost."

Senator LUDWIG (Queensland) (16:44): I would like to note at the outset, that this bill is invaluably complex—particularly the provisions on the data retention scheme. A number of factors have been considered by various committees and amendments have now been made to this bill. As I indicated, the bill differs greatly from the original bill introduced by the government, but this bill proposes to introduce mandatory data retention scheme, which was explored in the Parliamentary Joint Committee on Intelligence and Security in its 2013 report of the inquiry into potential reforms of Australia's national security legislation. At over 300 pages, the PJCIS report provides extensive analysis of, and commentary on, the bill and the proposed scheme more generally.

Some of the concerns raised by the PJCIS about the bill include: the appropriateness of using regulations to specify the definition and scope of data that must be retained; expansion of the category of services that will be subject to the data retention obligations; expansion of the number of criminal law enforcement and other enforcement agencies that can access the retained metadata; the length of time metadata is to be retained; the cost of the scheme; access to, and use of, retained metadata by civil litigants; the application of the Privacy Act of 1988 to all service providers covered by the scheme; the application of the scheme to offshore and over-the-top providers; and evaluation of the effectiveness of the scheme using retained metadata to identify journalists' sources. This unanimous and bipartisan report by the PJCIS made a total of 38 recommendations, and the government has accepted all of them—after what I could only refer to as the assistance of the Labor Party. There are significant recommendations in the report which provide for greater safeguards to the community.

Before I go to the detail, I would like to reflect on Senator Collins's contribution to this second reading debate. Senator Collins observed that Senator Ludlam and the Greens had launched what could only be described as a deliberately misleading and irresponsible scare campaign against this bill for what could only be considered as political purposes. Their campaign has been described by some as 'hysterical'—it is not the language I generally use—but I do think it clouds the proper debate on this bill. The criticism did provoke much
excitement from Greens senators, and Senator Ludlam indicated that he disagreed with the assessment of his campaign. I share the view that Senator Ludlam's campaign against data retention has been over the top and has not always relied on facts. Perhaps the best example of Senator Ludlam's hysteria is a rap video that he appeared in regarding data retention. This video claimed that data retention was—

Senator Cameron: A rap video?

Senator LUDWIG: Yes, it was part of a conspiracy designed to coincide with last year's meeting of the G20 in Brisbane, which the video described as 'an event at which the captains of the world's most powerful states gather to plan a planetary fascist…' and it goes on with a phrase that I do not want to go to.

Senator Ludlam: Rap it for us.

Senator LUDWIG: I am no rapper, but can I say that this video was not entertaining to me in the slightest. The language was over the top; I would even say that at times I was surprised that Senator Ludlam could use such language. Senator Ludlam threatened to go 'full Gandalf' to stop the parliament passing the bill—a reference to a character from the fantasy novel, *The Lord of the Rings*. This is another thing I am not generally familiar with but, nonetheless, Senator Ludlam is always able to pursue ways of attracting attention to his particular interests. I think ultimately it was a most undignified and perhaps even an inelegant production—that is probably the best way I can describe it. I would like to acknowledge, though, that Senator Ludlam does take telecommunications interception seriously and has done so for many years in this parliament. The video did seem to depart from what I would call his usual approach to things. We can always depart from the usual path, and perhaps I can put it down to that in this instance.

I do worry that we then miss the whole debate proper and the need for it. My own view of this type of political campaigning is that you have to be very careful that you do not sacrifice your dignity for the sake of a few votes but, of course, I always leave that to the judgement of individual senators in this place. I will not go to other elements of Senator Ludlam's argument; I will only say that Senator Collins provided a note of congratulations to Mr David Speers for his Walkley-award-winning interrogation of Senator Brandis on metadata. From Labor's perspective, I did find that extremely amusing. It was reported on the Sky News website today that Mr Speers has been nominated for a Gold Logie for this interview. As Senator Collins noted, this interview was not the high-water mark of public policy. Indeed, it has been variously described as a train wreck, embarrassing and humiliating, but it was a fine example of good journalism in action, and I join with Senator Collins in congratulating Mr Speers on his achievements. To be fair in this place, yes, I have criticised perhaps what Senator Ludlam might say is unfair, but also the person who has brought this legislation forward. Perhaps if it had been made in a much more considered way, we would not have had a report which required so many amendments, which the government then had to accept. Why? Because it was a significant improvement to the legislation, in truth. The committee made a substantial number of recommendations. I will not go into them all. That did provide a vastly better bill.

The reality is that the opposition to this bill has been unjustified. I worry that the Greens do not support the retention of any metadata, even the existing arrangements. I think that colour came through, not because in this instance it will put regulations and safeguards on the
collection and retention of metadata but because they simply do not support this type of legislation in any shape or form.

What astounded me the most was not the video but that, with respect to the legislation as it was originally introduced, the Abbott government and the Attorney-General, Senator Brandis, did not take with sufficient seriousness the safeguards that needed to be put in place to ensure it was effective and would garner the support of the Senate. The original version of this bill was severely lacking in the protections that the community and business would have expected. The bill gave a disproportionate amount of power to the Attorney-General to make decisions, with no parliamentary oversight. It placed fundamental provisions into regulations instead of into the primary legislation and provided no protection to journalists or their resources.

The introduction of the bill in its original form showed the lack of thought given to the privacy of our citizens and the integrity and freedom of the media. It is only thanks to Labor and members of the PJCIS, who pursued these common-sense, important and numerous amendments to the legislation, that this bill strikes the right balance between ensuring that there are sufficient tools available to our law enforcement agencies and that there are privacy protections. The requirement for a journalists information warrant was initially rejected by the government, but after a sustained public campaign the Abbott government finally succumbed to reason and commonsense and included the warrant provisions.

Our law enforcement and national security agencies should have the power they need to protect Australia from the threats of crime and terrorism. However, we also believe in the importance of protecting the fundamental freedoms that define Australia as a democratic nation. It is critical that we get the balance right between keeping people safe and protecting our civil liberties. There is nothing new about the collection of metadata. It has occurred for many years and it has been accessed by government agencies for many years with insufficient safeguards to protect personal privacy. Data being collected in huge volumes in an unregulated manner is what this bill aims to remedy.

The bill in fact aims to provide more security and confidence to the community about the reasons for and the manner in which this data can be accessed. It puts a greater burden on government agencies to prove the need for this information. This data has been accessed by many dozens of state, federal and territory agencies, including local councils, and that does beg that we require sufficient safeguards to ensure this legislation meets and demands the protection of personal privacy. Labor's approach to this bill is an opportunity to regulate and improve the use of data for law enforcement and counter-terrorism purposes while at the same time introducing safeguards that will greatly improve the transparency and accountability of storage and access to that data. We cannot overlook the fact that access to metadata is vital to the work of our law enforcement and national security agencies.

The bill was introduced into parliament late last year. It was inadequate at that time. In particular, safeguards were insufficient. Labor made sure that the bill would be sent to the Parliamentary Joint Committee on Intelligence and Security for proper scrutiny and to allow the public to have their input into the bill. As a result, the government has accepted many amendments to improve the bill to better balance the importance of upholding our fundamental democratic freedoms, with national security concerns addressed. In particular, Labor believes that freedom of the press is one of the most fundamental elements of our
democracy and we will always continue to argue for its protection. Labor forced the Abbott government to accept a regime where it will be illegal for agencies to access metadata for the purposes of identifying a journalist's source unless they first obtain a warrant from a court. Agencies will be prohibited from accessing metadata to identify a journalist's source unless they obtain a journalists information warrant. Consistent with other warrants under the T(IA) Act, law enforcement agencies will seek warrants from a judge or an AAT member. ASIO will seek warrants from the Attorney-General. There will be a presumption against the issuing of the warrant, and agencies must prove that the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the identity of the journalist's source and having regard to, among other things, the importance of personal privacy, whether the agency has made reasonable attempts to obtain the information sought by other means, the importance of the matter being investigated, the extent to which the metadata sought would assist an investigation and any submissions made by the public interest advocate. There will always be a presumption against issuing the warrant, and agencies will need to prove that the public interest in obtaining the information sought under the warrant outweighs the public interest in protecting journalists' sources, which is essential to the freedom of the press.

The PRESIDENT: Pursuant to the order of the Senate agreed to earlier today, the Senate will now move to valedictory statements.

PARLIAMENTARY REPRESENTATION

Valedictory

Senator LUNDY (Australian Capital Territory) (17:00): Thank you, Mr President, and Senate colleagues. I want to take this opportunity to pay my respects to you and to thank you. It has been an honour to work with many of you over many years as we have sought to make this extraordinary country a better place in which to live and work. Obviously this occasion lends itself to a little reflection. I want to begin by saying that being a senator for the ACT has been an incredible experience. I have had the privilege of being part of an extraordinary community. It is the best-case scenario as a politician—having a smart, engaged, politically savvy electorate. I want to thank the people of the Australian Capital Territory for their support through seven elections and through 19 years and 22 days.

I believe that inside everybody is the desire to contribute to the greater good. Here in Canberra you see it formally through the work of members of the Australian Public Service and the Australian Defence Force. I want to take this opportunity to pay my respects to both public servants and members of the ADF. In particular, last Saturday a commemoration ceremony was held at the Australian War Memorial for all those who have served and who have lost their lives in recent conflicts. I extend my sincerest condolences to the families that have lost their loved ones. I give my heartfelt thanks to those who have served Australia and who continue to do so. Your work is truly valued by the community and your parliamentary representatives.

However, for those in the service of the public, job security and employment conditions become enmeshed in the shallower end of some of our profession's deliberations, and I am sorry to see this occur. As public servants and serving Defence personnel, you deserve better—and there remains important work to do to honour the principles informing the original undertaking relating to the maintaining of the purchasing power of your respective retirement incomes.
Like all close communities in our beautiful country, Canberra's heart and soul is found within people's volunteer efforts, extracurricular activities, unconditional caring and giving, welcoming of new migrants and refugees, lifelong learning, philanthropy, creativity and sustainment of our community through community and sporting clubs. It is often at times of crisis that you see this generous heart, such as what happened when people turned out to support the family of a woman murdered in her own home or after the devastating fires of 2003. I say thank you to all of you. You have inspired me every day to be the best I can be on your behalf and you will continue to inspire me as I find other ways to contribute.

Beyond the community warmth that we know so well, Canberra has another important dimension: it is the national capital. In this way, Canberrans are the collective custodians of the heart of our democracy. Our national institutions house our treasures, records, native flora, art and history. The Commonwealth of Australia, this parliament, carries the responsibility of sustaining the principles that govern the relationship for planning between both the Commonwealth and the ACT. The interaction and collaboration between the now amply mature territory legislature and its ACT planning authority and the National Capital Authority is the key. It has not been without its dramas over the years and there have been quite a few inquiries of the Joint Standing Committee on the National Capital and External Territories.

One such inquiry related to Norfolk Island. I wish the government, the opposition and, indeed, the parliament the very best in their united pursuit to create a more effective way to support the people of Norfolk Island to manage and participate in their economy and society. I wish the people of Norfolk Island the best. They deserve better than what they have.

I am really proud to have seen how this city has grown over the last 20 years. I congratulate the ACT government for its part in Canberra's progress. I acknowledge the role successive territory governments have played in Canberra's development. I know the Chief Minister, Andrew Barr, will provide the inspired leadership we need right now as federal expenditure continues to contract. His commitment to economic growth, innovation and infrastructure will provide a critical counterbalance to the economy-wide impact of the cuts. He fills the very big shoes left by Katy Gallagher, who will soon take her place here in the Senate.

On the nature of cutbacks, it would be remiss of me not to remind people that Labor told you so. Many here in Canberra, including commentators, were beguiled by the fake budget crisis and disingenuous promise to limit cuts to voluntary redundancies. I cannot tell you how infuriating it is to have public sector jobs treated in such a cavalier way and notably relative to other regional jobs, which have policymakers doing somersaults to save them. All jobs are important, as is productivity.

Productivity is most likely to grow on the back of technological innovation, like it has always done. Is it so surprising that the only logical conclusion that can be drawn by markets when programs supporting technological innovation, research and development are cut is that productivity is not, in fact, a priority? The last 20 years we have seen the pace of technological change escalate, impacting on how we live our lives and share our experiences. Navigating the policy terrain accompanying the many changes has been a challenge that I have relished. It remains one of the most complex, demanding and fast-moving areas of public policy.

I decided even before I was elected that I would apply myself to the task of ensuring through progressive policies that technological change was harnessed for progressive
outcomes. In my first speech, I reflected on information and how it is communicated as being a major determinant of power and why universal access to the internet was required if we were serious about harnessing the next phase of economic expansion and social participation. For this reason, the National Broadband Network as it was under Labor stands out for me as the substantive achievement of our generation in parliament and certainly of the previous Labor government. It breaks my heart and offends my vision for this country to see the vision and now the plan so vandalised.

I can say this with authority because I did much of the work exposing the underinvestment in Telstra’s copper network during the Howard government in excruciating estimates hearings, back in the day when it was not unusual to sit until 4 am. I would race home for an hour’s sleep, get up, get the children to school and do it all again. Unfortunately for Australia, that government’s primary concern in comms and IT policy was maximising the returns to shareholders through the sale of Telstra. As a nation we lost ground. I believe the fibre-to-the-premises wholesale NBN made up this ground. In contrast, the multitechnology-mix model is a complete reversion.

Why is the real NBN important? The internet is both an open platform of knowledge and the practical embodiment of distributed power—of democratic participation. The NBN is the pipe in which data flows. If information is power, then now we can all have some, affordably, wherever we live. It is my hope that my colleagues can find a path back to the real NBN, and I wish them well in this task. I remember back in the late nineties, when I was regaling my colleagues with my ideas about the potential of the internet, I was told by one of them that the internet was indeed a fad and that I would stuff up my career if I kept at it. Obviously, I did not listen. And you know who you are. One of my most shameless stunts was facilitated by Tom Worthington, the then president of the Australian Computer Society. In an elaborate exercise back in my first year as senator, we were the first people in the world to download a photo from a hot-air balloon to the internet. That was no mean feat back in 1996.

I believe in technology. I believe in the people that create it, and I celebrate the disruption that it causes. It can solve any problem, provided the problem is well understood and the ethical boundaries of any solution are well-defined. I have been on almost all of the communications and IT related Senate inquiries over the last 20 years, except when I was a minister, of course. Most of the time governments are trying to solve problems that are not well understood, with tools they know little about and the ethical boundaries of any solution are either confused or absent. The responsibility for these things falls to the leadership group of any entity, be it cabinet or, in the private sector, the board. After all, good information is the precursor to making good decisions.

Many of my friends know that Alan Turing is one person who inspires me greatly. This story is easier to tell now that a movie has finally been made that goes some way to giving an insight into this extraordinary person who made something new to solve an urgent and diabolical problem. I draw on his personal journey for understanding the enablers for profound technological progress. The tag line for that movie, called The Imitation Game, is 'Sometimes it is the people no-one imagines anything of, that do the things no-one can imagine.' It reminds me that our responsibility is to provide every person, regardless of gender, race, religion, socioeconomic status et cetera, with opportunity. How? Through education, by removing discrimination in all its forms and by encouraging creativity and
original thought. If we can do this, then we have a society that can do anything. As an aside, I was really proud of the anti-racism campaign that former Attorney-General Nicola Roxon and I launched when ministers. Time has shown how necessary it is to remain vigilant in the fight against racism.

Just to bring it all back home, in all of that, we have come a long way in 20 years. I bought my own PC and software in 1996 and organised a humble dial-up service to be privately connected to my office, here in Parliament House, so I could build and update my website. In those days it was not expected that senators and members needed or used a computer. Social media did not exist, and most parliamentarians were not sure what the internet was. Later, I remember hosting colleagues for what I called a 'breakfast for technophobes' and explaining that their emails were all kept on servers, for years, for evidentiary use if required. People were shocked, outraged and ultimately happy to continue using the system because the amenity outweighed the risk.

Since then, there have many issues where outrage is expressed and people are still happy to continue using the system because the amenity outweighs the risk. Take the internet filter, interactive gambling and the metadata debate as examples of where the devil is definitely in the detail and in the political projection of the problem. The inability to explain detail and the opportunism in the safety/security narrative fuels distrust in the perceived hidden agenda, the unintended consequence, the unethical or sinister motivation and, finally, the lack of transparency and accountability.

With the exception of Labor’s promotion of the internet filter in government—which I note that I opposed after we opposed it in opposition, when I was the shadow minister—invariably it is left to Labor in opposition to do the hard yards on the detail of the new laws, to expose the hidden agenda, to remove the unintended consequences and to prevent the sinister motivation by creating transparency and accountability within the regime. It is Labor that comes up with the frustratingly complicated compromise, and it is Labor that often gets wedged between the political projection of the extremes in the process. But it is Labor that puts evidence, not emotion, at the forefront of its deliberations, and it is Labor that is prepared to compromise for the sake of progress and in the interests of the public and the nation.

In short, I believe it is possible to design solutions to solve a well-understood problem, within well-defined ethical boundaries. I know that privacy and security can coexist in an accountable and transparent framework. While the absence of a simplistic, pithy yes/no position on such issues can be disappointing for many Labor supporters, it is a process that honours a standard and heritage of a party that acts in the national interest, not political self-interest or self-preservation. This approach has arguably kept us out of office for longer, and in office more briefly. But, for better or worse, this is modern Labor’s narrative in an environment of ever-diminishing returns on the credibility of our political system. I thought people were cynical back in 1996; relative to now, they were downright joyous in their participation in our democracy.

At this relatively low ebb in the level of confidence in our political system, it was often the excitement and anticipation of new migrants and refugees settling in Australia that reignited my enthusiasm for our democratic system. One of the most memorable of many extraordinary experiences of my time in public office was being Minister for Multicultural Affairs. I met people every day whose life stories would both shock and inspire. I met people every day, in
the settlement services sector, who devoted themselves to the wellbeing and happiness of others. I met the most motivated social and business entrepreneurs, from humble start-ups to some of our most successful global corporations. With migrants often starting from nothing, Australia boasts the most amazing list of self-made women and men.

I want a big shout out to go to our multicultural ambassadors, appointed to that role to reflect their leadership and contribution. These people were active in their own right within their cities, regions and communities, promoting, celebrating and contributing to community harmony and to making Australia's multiculturalism the best in the world. If any of you are listening, I think we should definitely have a reunion in a few months time! To everyone in the multicultural and settlement sector, I offer you my thanks and heartfelt respect for the role that you play. I thought I knew a thing or two about multiculturalism but it was not long before I realised how much I did not know. I learned so much and grew as a person because of the time I spent in this portfolio.

I also want acknowledge the work of the Australian Multicultural Council, led initially by Andrew Demetriou and then Rauf Soulio and Gail Ker, and all the members who gave their time, experience and intellect. The launch of the multicultural policy was one of the proudest single moments of my time as minister.

There are many ways to promote inclusion in Australian society and I believe sport is one of the most important and effective. Sport, in the broadest definition of the term, is one of Australia's strongest egalitarian platforms. It is part of our ethos as a nation that if you have talent, discipline and a dream, you will be able to achieve it. Given our small population we perform exceptionally well internationally. This is for a couple of reasons that are interlinked. First, we have a diverse population. Our first Australians, our Pacific islanders who now call Australia home and our multicultural character mean we can draw on a multitude of strengths. And I am not saying that just because I am sitting next to one of the most highly acclaimed Aboriginal sports people in Australia, by the way. Having Senator Peris here in the Senate is a reflection on her strength of character and political substance. Senator Peris is a fantastic role model in a multitude of roles, an inspiring woman of substance and, I am proud to say, a friend.

In general our diverse population is a core strength, but it only comes into play because Australia has the broadest possible participation base at the heart of our system of sport. Participation unlocks the opportunity to explore one's sporting potential. The high achievers, the sports stars, inspire the next generation of participants. In this way the relationship between sustaining the participation base and supporting high performance is inextricable. They go together. Participation in sport also provides far more than the sum of its parts. How do you place a dollar value on these things, just to name a few—physical and mental health, social inclusion, a sense of belonging, teamwork, discipline, respect, community pride and national pride. Name another area of public policy that does all of these things so effectively and then have a quick look at the total budget of sport relative to other areas of social expenditure. My colleagues know my passion for sport and protecting its budget. Never has so little budget done so much for so many—I know you will forgive me for that!

For millions of Australians and their families, their hour or two of sport as participants and spectators is often the most fun hour or two of the week. It brings families and friends together; generations, across families, stay close through their team loyalty. We need only
look to Senator Conroy to see the absolute personification of a football fanatic—and we all know you scored a hat-trick against the SBS All Stars at the Harmony Day match last week!

My passion for sport means that I am prepared to defend it at all costs. I was tested on this when the Australian Crime Commission report was released when I was the Minister for Sport. It gave me the opportunity to work with the sports to harden their environments and protect their athletes and their game against new threats from new drugs and methodologies used for cheating as well as the infiltration of criminal elements. There was not a bone in my body that was willing to sweep that aside or disassociate myself with the bad news. It was a turning point for sport all right—one that, that to their credit, the sports leadership fully subscribed to. In unprecedented circumstances I acted in the best interests of Australian sport: the ACC described the problem and the government worked with the sports to fix the problem on behalf of all the clean athletes, the ethical clubs and the parents who were deciding if and where their child would be playing sport. For all the pain and discomfort I am proud that Australian sport remains the most accountable, cleanest, safest sporting environment in the world and that other countries now look to Australia to improve their integrity regimes in the way that we have done.

Before I leave the issue of sport, there is one more thing I feel compelled to reflect upon—and it will not surprise you. How is it that, despite women being 50 per cent of our population, women's sport is so ridiculously under-represented on our television sets? The answer is that editorial decisions are made to under-invest in, or ignore, that content's potential. And the business case has never been tested in Australia; it is the exception that provides the evidence for their folly. Where the women's game is actively integrated with the men's game, there is no problem at all with the popularity, ratings or business case. Examples include the Olympic Games, the Paralympic Games, the Commonwealth Games and the Australian Open. Credit to Netball Australia and the WNBL as they have achieved remarkable results in the most challenging of circumstances. Keep up the fight for the right to be broadcasted. It is both pathetic and disgraceful that the urgent need to develop a sustainable business model around the broadcast of women's sport has been so ignored by broadcasters. It is not like it needs a subsidy—although it probably does need one just to keep going. It needs the belief that if you build it, invest in it, promote it properly, advertise on it and sponsor it, it will fly. Just try it! Maybe then our female athletes can also earn what they deserve for doing what they are best at. These are perennial issues that should not be perennial. I wish my colleagues all the best in solving these problems and I will continue to be passionate about them.

In all my time in this place I have tried to draw on my vision for Australia as a guide. One of the great benefits of being part of a large party like the Labor party is that you have the ability to specialise in areas of policy. The corollary of this is that you rely heavily on colleagues in areas where they are specialists and you are not, and you accept to be bound by the decisions of the caucus. My vision was always focused on where we go to next, where the jobs will come from and how we retain our humanity and sustain our environment as we leverage technology more and more and find ourselves drawn into new challenges. Australia needs to have a fair, civil, healthy, engaged and educated society that values and leverages its cultural diversity to build social cohesion and global engagement. This society needs to be
I believe in living a full life and I have decided to pursue the things I am passionate about in a different way. Nearly 20 years in the Senate has been long enough. Like most people, I have had ups and downs in my career. It has been far more creative than I would have thought possible, and I certainly came at it not wanting to fit the standard mould at the time. I wanted to innovate, to try and do things differently and to see what the internet could do to help me engage with the people I represent. Technology has been at my side through this journey. I want to acknowledge three people in this regard who at different points have given me the confidence and inspiration to make this so—Tom Worthington, Jason Ives and the amazing Pia Waugh.

Personally, sport plays a huge role in my life. It helps me to outpace the 'black dog'. I love how the sports groups in the parliament have evolved; many of my favourite personal moments have been playing footy, netball and rowing. I recall one particular race—a coxed four no less—at the 1998 Australian Masters Games here on Lake Burley Griffin. Our crew was Senator Penny Wong, Catherine King MP, Kirsten Livermore MP, me and Michelle O'Byrne MP, who was cox. We managed a bronze medal that year. I cannot remember what division it was, but it is a brilliant memory for us all.

And so I am moving on to new things. I am excited, happy, relieved and more than a little nostalgic to be leaving one of the best roles one could ever hope to have in a wonderful country like Australia. In my new role as director of the NRMA, I am excited to be part of a mutual association that has a deep history in representing motorists and road users. And to be involved in technology start-ups is something I have always wanted to do.

Holding public office is an illusion in some respects. All that people see is the senator, the MP, but we are sustained by institutions, our party members, our colleagues, the parliamentary services and of course our staff and our families. I would like to say just a couple of words about each.

I want to thank the staff of the parliament, in particular the Clerk of the Senate, Rosemary Laing, and the late Harry Evans before her; the staff of the committees; the Library; the Education Office; the volunteers; hospitality staff; everyone at Aussies; the wonderful security guards; the tech support—I got to know them well; the sound and vision staff; the tradies; the Comcar staff; and the cleaners, who clean our offices every day. There are many more but the list got too long.

The current goings on, the subject of an inquiry, will hopefully lead to improvements. I think you all deserve better. Thank you for your esprit de corps over the years and thank you for helping me whenever I have needed it.

To the ALP branch members here in Canberra: I feel like I am part of a big family. We have campaigned together and have attended a ridiculous number of meetings and conferences. You have held me to account and given me great ideas to move forward. Thank you.

I am a proud former union official and I want to thank the ACT unions for their unwavering loyalty over so many years. In particular, I want to mention United Voice. We have worked together to promote fair pay and affordable, high-quality childcare, as well as to
stamp out the exploitation of vulnerable migrant workers. I am proud to have worked with you and the other unions on important campaigns.

To my parliamentary colleagues: I am going to miss you. What an amazing group of people! It has just been incredible. You do get to know people who are on committees perhaps more than by any other way. I have had a wonderful experience on all of the Senate committees. People have put up with me on those committees, with often endless meandering questions. But I can assure you that I had a plan!

I want to acknowledge and thank John Faulkner. He was my mentor, whether he knew it or not. I am lucky to have made so many friends in the party and of course across party lines.

To soon-to-be-senator Katy Gallagher: I could not be happier or prouder that someone of your calibre and standing is replacing me here. It makes me feel great, knowing that you will be here, taking your place on behalf of Canberrans. To you and your family, David, Abby, Charlie and Evie: I wish you all the luck in the world.

To my staff—and I have had a lot over the 20 years—I particularly want to mention Kate Ward, Meg Martin and Taryn Langdon. They are all more than staff. To the rest of my current staff, staff in my former ministerial office, staff going back literally 20 years: we just cannot do our jobs without you. It is what allows us to do our work with confidence, to get from place to place and to understand the complex issues that we are presented with. Thank you so much for your work. In particular, I would like to wish Taryn and Ash the best for the birth of their first child, due in a mere three days! Taryn: you have been incredible, in the latter stages of your pregnancy, helping wind things up in the office. Thank you so much.

To my family: my family keeps me grounded. They are so wonderful. Not only have they ensured that I keep my head firmly in the right place but they have reminded me from time to time about what is and what is not real. My late grandmother, Mira Barratt, used to ring me and tell me off if she saw me interjecting in question time. It was like: 'Oh, I didn't mean to. I was provoked, Grandma!'

To my mother Helen and father Peter, and stepmother Maureen; my brother Charles and his wife Bronwen; my nephews, Max and Jack: thank you. I would also like to mention my late sister Jane's children: Olivia, Sophie and James. To each of you, thank you for your unrelenting support in quite extenuating circumstances. When the wheels fall off my system, you are always there to help me pick up the pieces.

But most of all, to my children: Alexandra, Annabelle and Ben, and my stepsons Robert and Matthew, thank you for your understanding about what I have needed and wanted to do in public life. You are all remarkable young people. I would not have been able to do this without your understanding and support. It has been an incredible journey and today I say goodbye to the Senate. But I do so happily, inspired and feeling extremely confident that not only will you fulfil the challenges before you but you will do it in a way that continues to inspire other people. Let the next generation of young people be inspired, who look to our democracy and who seek that inspiration. Good luck to all of you and thank you so much.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (17:27): Whilst this is Labor's day to farewell a longstanding, loyal, capable and faithful member of the labour movement, I rise on behalf of the coalition government to offer our very best wishes to
Senator Kate Lundy. Senator Lundy is leaving us to begin a new career, which is increasingly common in politics—people spending a period of time in the parliament and then going on to new opportunities. Most people now in jobs will have, at least, three substantial careers in their working life. Albeit sometimes the need for a new career is foisted on us by either our electors or our party, Senator Lundy has the dignity of going at a time of her choosing. I wish that were the case for all of us, that we would be as fortunate.

Senator Lundy came to the Senate, if I might say, relatively youthful but already with a career on Canberra's building sites behind her. We wish her well in her new career.

I am aware that Senator Lundy has had a long interest in sport, and she spoke of that in her excellent coverage of her 20-year career that we have just had the privilege of listening to. She was, of course, a very enthusiastic federal Minister for Sport I am also aware that she was a keen rower, and indeed she was patron of the Canberra Rowing Club. Some would say that rowing is the most appropriate sport for us politicians, because we look one way whilst we are going the other way.

In terms of information technology, Senator Lundy has held portfolios of IT in both shadow ministries and in government. She has always had a very keen interest in IT and you will know, Mr President, that she served for many years as a very effective member of the Presiding Officers Information Technology Advisory Group, agitating in a completely bipartisan away, so that we could serve our electors better, to improve the technology available to senators and members in this place and when we are travelling, and in particular she forcefully argued for improvements in the compatibility of IT in Parliament House and our electorate offices. All of us are in your debt for that advocacy.

On a policy front and personally, can I say to Senator Lundy that I have appreciated her bipartisan approach to the Mr Fluffy asbestos issue in the ACT. It has been an understandably very sensitive issue, affecting people and their homes, and I did appreciate the engagement I had with you, your colleague Senator Seselja and of course the former Chief Minister, Katy Gallagher, who will soon be taking her place here with us in the Senate. The coalition wishes Senator Lundy and her family all the best for the next phase in her life. Senator Lundy should leave this place knowing she earned the respect and affection of her opposite numbers in the Senate. We wish you success for the future.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (17:32): I rise to speak on the valedictory for my colleague and friend Senator Kate Lundy. When Kate arrived in the Senate following her election on 2 March 1996, she was 28 years old, John Howard had just been elected Prime Minister and Australia had recently lost the cricket World Cup to Sri Lanka. In better sporting news, and something Kate will probably remember, later that year in Atlanta the Oarsome Foursome would win their second Olympic gold medal.

Unfortunately, then as now, Labor was in our first term of opposition. We had been heavily defeated in the 1996 election. One would have thought that a new and energetic young senator, full of enthusiasm, might have found it hard to arrive in this place following such a devastating defeat. However Kate has spoken, since she made her decision to leave us, about how excited she was and that her excitement and enthusiasm was somewhat out of place when compared to the sad faces of the remainder of her colleagues. She probably felt
somewhat conflicted at the time because she was also surrounded by people who had just seen the door close on 13 years of government.

I have had a look at Kate’s first speech, and it is often said that first speeches are probably the most honest speeches people give in this place. Kate's reminded me of how consistent she has been since she arrived here in both her values and her interests. They are also reflected in the speech she gave today. In her first speech, Kate spoke about the importance of the enduring Labor 'social and political values of equality, democracy and freedom'. She said these were the principles that she brought to the Senate, and those were the principles she again articulated today. In that speech she said this:

In September 1984, at 16 years of age, I found myself employed in an industry largely unexplored by women. No, I am not talking about the parliament; I am talking about the building and construction industry.

She certainly started being a trailblazer early, not only in the career she had prior coming into parliament. It is worth again reminding ourselves of the situation in which she and many others of that era—it makes her sound old, I am sorry—found themselves. At the time Kate came into parliament four out of 49 members of the Labor Party in the House of Representatives were women and there were nine women out of 29 senators. Now we have some 14 women in the Labor Senate team—certainly considerably more than at the time Kate entered the parliament. I pay tribute, as another Labor woman, to the work of Kate Lundy, and for being courageous and persistent in those years when she first arrived here, when there were very few women in our caucus. The fact that we have so many more today I think is something we honour but we also recognise and honour the work of the women who have gone before. Kate is a courageous Labor woman. In November last year, when Kate made public her decision not to nominate again for the Senate, I said at the time how significant it was, for me, that she was one of the women who was in the Senate when I first came to parliament in 2002. At that time she had already been a senator for six years.

During Kate’s career she has been an outstanding senator and an outstanding representative for the Australian Capital Territory and for the Australian Labor Party—a parliamentary career that has spanned 19 years and 22 days, during which Kate Lundy has been a Labor minister, a front bencher, a senior backbencher and somebody who has made a contribution in many areas. I particularly want to speak briefly of her contribution in the areas of information technology, sport, multicultural affairs and industry. It was in information technology that Kate first made a name for herself. She has quoted from her first speech, and I thought it was quite prescient when I went back and looked at what she said about information technology at that time. She said:

Information and how it is communicated are major determinants of power in our society …

By the year 2000 the information sector will be the world’s second largest industry.

She went on to talk about disruption, and continued:

… I am not yet convinced that we have sufficiently analysed and discussed the societal and community effects of this shift in our economic base.

These words seem self-evident today, but at the time they were spoken they were indeed prescient.
It is fair to say that Kate Lundy has been one of the most influential parliamentarians in leading the way towards the embrace of information technology not only in the parliament but also as a matter of public policy within the parliament. She was also an influential politician in foreseeing the impact that technology would have not only on public policy but also on the economy more broadly. She certainly was one of the first of the internet generation to enter the parliament, and to enter the Senate. Her story of the—and she has been very polite and not told us who it is—very kindly person who told her to do something else with her career reminds us that at the time she was somewhat out of the ordinary in her interest in this area. Appropriately, she served as Minister Assisting for the Digital Economy in 2013 and, prior to that, had spent time on the opposition frontbench, with particular responsibility for IT, from 1997 to 2004.

Kate has had a long interest, in a parliamentary sense, in sport. She served variously as shadow parliamentary or shadow minister in sport for about a decade, and that was prior to becoming minister in the portfolio at the end of the last government. That period encompassed both the Olympic Games in London and some significant challenges, which she has referenced today, involving drugs in sport. In a statement, federal Labor leader Bill Shorten acknowledged Kate following her announcement that she would not be recontesting her seat in the Senate. He said she had:

…steered through the most significant changes to the Australian Government's funding of high performance sport since the Australian Institute of Sport was established in 1981.

Congratulations, Kate, for that work. Kate has also been a consistently strong advocate, and again today, for the profile of women's sport. We thank her for that and we hope other senators in this place will take up that cause because, unfortunately, even after 19 years and 22 days it appears we still need to argue for it.

Kate said today that Australia's multiculturalism is the best in the world. I agree with you, Kate. More importantly, I want to thank you—as somebody for whom this has a personal edge—for your work as a minister. In this country we often do not speak of how important multiculturalism is and how valuable it is to who we are. I am of the view that, like many other progressive social policies, if you do not argue for it you often go backwards. Kate always argued for it, and I know from personal experience that the ambassador program was such a worthwhile initiative. There were such wonderful people working with community and doing that real work of building community and building bridges and communication between different parts of the Australian society. It was a really worthy program, and one of which I know Kate is rightly proud.

As Minister for Multicultural Affairs, Kate had responsibility for progressing Australia's multicultural policy and responding to the needs of our diverse community. She recognised the connection, in many ways, that multiculturalism in Australia has to the foundational values of our nation. She had oversight of many programs, including the National Anti-Racism Partnership strategy and, of course, Harmony Day, which we have just celebrated. I have spoken about the People of Australia Ambassadors Programme and I put on record, again, Kate: thank you for that. We had fantastic people, including in my own state of South Australia, who did such great work whilst appointed as ambassadors.

Today, again, we saw the extent to which Kate Lundy is a passionate representative of the ACT. She spoke today of the special place the ACT has in our democracy, describing people
from the ACT as being 'the collective custodians of our national democratic institutions'. This is consistent with her tireless advocacy and support for the people who elected her from the day she arrived until the day she is leaving. She also spoke of the challenges that the ACT is facing with the cutbacks that we see from this government. It is a somewhat sad irony that those are the same issues she addressed when she arrived here in 1996, when the Howard government was implementing wide-scale changes and cuts to the Public Service.

Throughout her nearly 20 years in this place Kate Lundy has always fought for the people of the ACT. She has always represented them passionately and with integrity within the parliament and on the committees on which she served. On a personal level, I want to thank Kate for her work. She has spoken about our fantastic rowing career together. She did remind me somewhat—'caustically' is perhaps too strong a term—wryly that that was, in fact, the last time she managed to get me into a rowing boat with her, which is true. It was probably because I felt outclassed, to be frank.

There are a few things I want to say about Kate in closing. Kate is someone who has stayed real. Not for Kate the sorts of airs and graces and pretentions that we sometimes see in this place; Kate has always been somebody who has stayed grounded and stayed real. Perhaps it is having three children and two stepchildren that requires it. I suspect it is also the nature of who she is. She is someone who has stayed grounded and someone who has continued to demonstrate her humanity throughout her political career.

We remember that Kate arrived in this Senate as one of the youngest members, having been a builder's labourer as well as a union official, and she will now leave the Senate as one of our most senior senators. But, as Senator Abetz said, she has the benefit of doing so while she is still pretty young. So while she is leaving the Senate, I am sure retirement is the last thing on her mind.

So, as you depart, the Labor Party wishes you well. We hope you go on to your fulfilling next stage in your career. We thank you for all your service to the ACT, to the Labor Party; and, as a senator, we wish you all the best and we hope that what you said today will continue to be true for you: you believe in having a full life. I have no doubt that will continue to be true.

**Senator LUDLAM** (Western Australia) (17:45): I would like to rise on behalf of the Australian Greens and add a few comments. Arriving myself in this place in mid-2008, Kate had already been here for 12 years, and while I was trying to find my feet I guess it was handy to come across somebody who not only knew the operation and the workings of this place backwards but was also technologically literate and obviously cared about technology—particularly communications technology.

During your valedictory you spoke about the National Broadband Network and how it has been being part of that project from its initiation through various phases and then seeing it, effectively, vandalised and destroyed. I do not know that you went into it in great detail, but I think one of the first things that I came across in your work was the Gov2.0 work, effectively taking the masses of data that government departments produce over time and actually making that legible to the general public, putting it out there, allowing people to find out what is actually happening inside Treasury and what government is doing in our name. You name checked Pia Waugh, and I think you two were certainly a formidable combination.
Your work in promoting the value of information communications technology, whether it be from the economic side—the fact that entire new industries are being created before our eyes—its value to civil society, including global civil society or, indeed, its value to this place as MPs I found highly instructive and quite inspiring.

I am very much looking forward to seeing what you do next now that you are off the chain, maybe freed from some of the things you were prevented by caucus solidarity from being able to say. It was always good to know that there are people on this side of the chamber who get these issues who might not always be able to be as strident—or I think 'hysterical' might have been the phrase used by Senator Ludwig a short time ago.

Senator Cameron: Going to rap about it!

Senator LUDLAM: I'm not going to rap about it, much to Senator Ludwig's distress and disappointment!

It has been good to have you here, Kate, and I very much look forward to seeing what you do next and on behalf of the Australian Greens wish you well.

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (17:47): I rise on behalf of the National Party to make a few comments in the valedictory for Kate Lundy. Kate and I actually share a few things, as only four in this place do. We are all Territorians; and, for those senators who think preselection every six years is a tough gig, you want to have a chat to Kate and the rest of our team!

I got here, and Kate was somebody who really knew the ropes. I can remember being on one of my first committees, and this pretty strident individual was cross-examining someone. I can remember it was actually about customs for some reason. My first experience in a committee was to hear Kate really going hard at someone. They obviously knew each other quite well but always found the balance between ensuring that the public servant was going to provide the information that she required but on a balanced basis of respect. I can always remember that.

I also spent some time as a young bloke in the Australian Capital Territory and, as you know, worked as a builder's labourer a lot earlier than you did on the infamous Melba flats for Leighton, which since have become slums and been knocked down. I can really see the difference in building sites in the times between then and now, and it is terrific to see people who have come here with that life experience. You were removing asbestos, and doing that in the early nineties is a completely different way of doing things. Understanding from a personal perspective about the challenges facing workers in occupational health and safety in that time, I am sure, was much of what led you to becoming a union organiser and representing workers to get a better deal for them. I think that richness of your experience is reflected in much of the work that you have brought here.

You were the youngest female elected to parliament, in 1996 at 28, which I understand was a record held until Kate Ellis came to parliament. I know you play hockey and soccer. You row. I was not familiar with your rowing, but I often saw you at a variety of sporting events around Canberra, and certainly we can see your head bobbing along around the Fyshwick Markets at the various times that I spend my weekends in Canberra. You are proudly involved as the patron of numerous organisations: Computing Assistance Support & Education, the
Artists' Society of Canberra, Canberra United Football Club of course and the National Association of Women in Construction.

I was around as a shadow spokesperson of several portfolios in opposition. I can recall when you became a member of the front bench. You rose from parliamentary secretary positions to the Minister for Sport and Minister for Multicultural Affairs, Minister Assisting for Industry and Innovation and Minister Assisting for the Digital Economy. I can recall that from before that time that you were one of those people who seemed to me as a newbie to be on almost every committee. Wherever I went and whatever committee I was on, you popped in. So you certainly leave this place with an enormous experience across such a range of portfolios; and, listening to your portfolio today, I can see that you have taken so much of that with you. I think it is such an important thing that you can actually take something from this place.

Being the chair of the National Broadband Network committee and the Joint Standing Committee on the National Capital and External Territories—it is one of those compulsory processes that, if you are from a territory, you have to be on the external territories committee—you have travelled to not only the Indian Ocean territories but to Norfolk and other places and faced the particularly challenging environment that is, in effect, much of the time our own electorates. I think people find it difficult to understand why the senator for the Australian Capital Territory would have Norfolk Island halfway across the Pacific in the same way Nova and I are responsible for Christmas Island, but it does add a lot of interest to our electorate.

I think one of your greatest challenges when you served as Minister for Multicultural Affairs and as Minister for Sport was when you co-launched the former government's response to the allegation of widespread corruption and drug use in professional sport. It must have been such a tough time. Many Australians see sport with almost a theological approach. To be in a position, with your own love of sport, of actually doing the right thing, there must have been some very hard yards. I think we all recognise that this was a very tough series of decisions that you had to make and throughout that time you never blinked. I think that not only this place and Australia but also sport should be very grateful for that.

You have improved accountability while here through your ferocious cross-examination of anyone who you thought might have been able to provide a bit more insight and a bit more transparency. I think that integrity will be part of your legacy. Also, the work you have done has very much boosted the profile of women not only in this place but also across all workplaces.

With regard to your passion for technology, we have spoken about you establishing your own website. It was only six years before I came here that we did not have a computer in this place. I think it is a good reminder of all the things that are brought to us in this place in a technological sense and where many of my colleagues say 'Oh that won't work. This won't possibly work'. Of course we are still as out of step as the individual who said to you that you needed to take another track. I think that is a good lesson for all of us.

Kate, you were named as one of the 25 global leaders in government in online innovation by the International Centre for E-Democracy and Politics Online. You have chosen your time for retirement. I do not think that many of us in this chamber necessarily have the luxury of doing that. I know you are going to be very successful in the future. You have spent 19 long
years in this place and, as people have indicated, you are still young enough to have another
career. I know that you will enjoy it very much. We will watch that space. Good luck, and
God speed.

Senator MOORE (Queensland) (17:54): Kate, I want to put on record this evening our
appreciation and acknowledgement to you personally for the inspiration and challenge you
have provided to women in our party—and that is from candidates. I well remember working
and watching you supporting women in our party who had made the decision to run for
politics when sometimes no-one else was there for them. We could know that you would be
genious with your time, with your effort and also with your humour. So often, in working
with the candidates, it was seeing your experience.

Senator Wong has gone through the awful statistics about what this place was like in
gender balance when you were first elected and how you have been able to oversee the
changes that we are all benefiting from now. I can name so many candidates, and you know
them well, who you have provided with your knowledge and also the support of your
experience, whether it was staring into Telstra trenches looking at the horrors of pair gains—
something I will never forget; those things were truly ugly—or the way that you were able to
talk so effectively with the people who cared about that technology. Your natural ability to
communicate was seen with Telstra workers on the job, your understanding of the pressures
under which they were working proved that politicians did and could understand technology.
It was inspirational for all of us.

Through your multicultural experience, you were so much a part of developing the
ambassador's program. Attending some of the functions that you chaired at that time and
feeling the genuine love and respect of the people in those rooms is what makes the job
worthwhile. You led with that and made us all so proud. It gave us the chance to think that we
could work with you. Kate, also on behalf of Emily's List, we know the work that you have
done for that organisation is, again, inspiring and challenging because people could get the
sense, by working with you, that they could do it too.

I know that Senator Wong used the term 'you are real'. Well, you will always be real, Kate.
That is part of your nature and your charm. But you are able to share that with all of us not
just within our party, though of course we have been able to speak about that this evening, but
also with the wider community. This is what we need to do to reinforce to the wider
community the challenge and the reality of choosing to be in this job, rebuilding trust,
rebuilding reality and giving us an opportunity to know that you have served your community
so well. And you will continue to serve that community and continue to be an inspiration for
women who work in this business.

Senator PERIS (Northern Territory) (17:57): I also want to say farewell. I am going to
cry. When I came into parliament it was a very daunting experience—shut up, Kate. I say
farewell not only to my chamber buddy but also my Territorian buddy. I also want to put on
record that the Australian Labor Party is saying goodbye to an incredible woman and an
incredible politician. You are going to be a big loss, Kate. Yes, you will be because not only
have you been a friend but also you have been a mentor, a confidante and someone who keeps
things real. Coming from the Territory, it is hard to lose yourself in this place. So I thank you
for the time I have spent with you. We have shared many conversations over a couple of
vinos, which has been great. Kate and I have a lot of things in common apart from sport being
the obvious. We both left home at the age of 16, but have still been able to have pretty incredible careers as women and we have both, at times, been single mums. I had the privilege of spending time with Kate and her family on a trip to the Northern Territory. Kate had obviously been a senator for 19 years and had spent many times getting off aeroplanes at Darwin airport but had never been beyond Darwin. So she took her kids and we did an outback adventure which is hashtag ‘doin’ the Territory’. It was absolutely incredible. Entering this chamber as a woman, who has a tribe of kids herself, I thank you for your friendship. What you have been able to provide for me is that you can only make change by being the change yourself. For all the women who are wanting to enter this place: it is sad that an incredible woman like Kate Lundy is leaving, but she leaves incredible footprints. Senator Lundy, you are in the hearts of the sportswomen of this country, whose dreams you helped elevate into reality. I thank you not only on behalf of the sporting fraternity but for your work on multiculturalism and for everything you have done in parliament.

Senator LINES (Western Australia) (18:00): I also want to put my formal thanks to Senator Lundy on the record—for everything she did on behalf of educators working in the early education and childcare space in Australia. I can see Yvette Berry, a former United Voice staffer and now a minister in the ACT government, up there in the gallery. When Yvette and Lyndal Ryan, the secretary of United Voice, came to see me and said, ‘There is this wonderful senator in parliament; she will really advocate on behalf of low-paid educators’—this was when the union was trying to run a very big agenda around wages and quality on behalf of low-paid members—I have to say that I was a bit cynical. However, Senator Lundy stood firm for educators throughout the Big Steps campaign.

I thought that perhaps when she became a minister during that period she would be too busy to be concerned about educators or to continue to push the Big Steps agenda—but she wasn’t. Every time we called on Senator Lundy to do something for us, she rallied to the cause. Not only did she do that but she managed to spread the word about what we were doing and get other Labor members involved in the campaign. In the end, we had a very big group supporting the important agenda that educators were running.

I wanted to say that the other night, but it was too noisy and there were other people with bigger agendas. But I felt that, given that Senator Lundy mentioned United Voice today, it was absolutely fitting that I put on the public record—as a former official, as I was then, who negotiated with you—the absolute gratitude of educators. We knew we had a champion in this parliament. We knew it was a difficult agenda, but educators absolutely knew that Senator Lundy was always going to be there for them. And it went beyond that. It went to cleaners; it went to all low-paid workers—the membership of United Voice. Senator Lundy, we will miss you. You were an absolute Big Steps champion. On behalf of the educator members of United Voice, I put my thanks to you on the record.

The DEPUTY PRESIDENT: That concludes the valedictories. Good luck, Kate—all the very best.
Debate resumed on the motion:
That this bill be now read a second time.
to which the following amendment was moved:
At the end of the motion, add:
"and, noting concerns about a lack of clarification from the Government about costs associated with this bill as strongly addressed in a letter to the Government signed by the chief executives of Telstra, Optus, Vodafone, iiNet and a number of other major telecommunications companies, further consideration of the bill should be made an order of the day for the day after the Government tables its response to the industry's concerns on cost."

Senator MILNE (Tasmania—Leader of the Australian Greens) (18:03): I feel as if the parliament is playing catch-up—and not doing it terribly well—with what is in fact a revolution. The revolution, or the major transformation, is in big data. We have now reached the point where the revolution is not in the machines that calculate the data—something which has been our lived experience and which Senator Kate Lundy just spoke about in her valedictory remarks—it is now in the data itself.

I am strongly opposing the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 because I think the overwhelming majority of people in this parliament have no idea about what the retention of data actually means for the Australian community and for society in general—or what it could mean in the longer term. Up until now, because we could only deal with relatively small datasets, we have always looked for evidence, analysis and causation. We have looked at the dataset, looked at the evidence, tried to work out the causes and tried to extrapolate that to support evidence based decision making. Causation was where our focus was. Now the whole world is going to be shifting. We are going to be exchanging causality for correlations—in other words, no longer actually needing to know why, just focusing on what.

You get the correlation in the data and that gives you information about where people go, what they eat, who they see, which doctor they go to and so on. What does the information mean? There is nothing about causation, nothing about evidence—it is just about the correlation. It has reached the point where, with that data, the more you know about people—where they go, what they do, what their health is—the more valuable that data is to various businesses. The problem we have is that, if you collect data on people, no matter what the primary purpose of collecting it is, you do not know how, in two years time, that data might be used. It might be used for something entirely different. The data itself is now the product that is valuable to corporations, to governments or to anyone who gets hold of it. It enables them to make decisions; it enables them to develop and sell goods and services. The book, Big Data: A Revolution That Will Transform How We Live, Work and Think, tells us:

Mobile operators have long been loath to monetize that information for fear of running afoul of privacy regulations. But they are starting to soften their stance as their financial fortunes flounder and they regard their data as a potential source of income. In 2012, the large Spanish and international operators
Telefonica went so far as to create a separate company, called Telefonica Digital Insights, to sell anonymous and aggregated subscriber-location data to retailers and others.

So that is the new market for people who have the data—to on-sell it to other people for profit, and basically to use that data about people. The argument will be that you can make it anonymous. You cannot. It is clear that even if you try to make it anonymous you cannot, because the dataset will match somebody. And inevitably that person will be locatable. That is one of the big problems.

So here we have a parliament which is deciding to legislate to allow the data about every Australian to be kept by telecommunications companies for two years. That is incredibly invasive. The data is going to tell you everything about that person—where they have been, the fact that they used their phone and who they spoke to, for how long they spoke and then the network of people that those people have spoken to. There will be a whole set of data built up about a person.

Who is going to have access to that data? There is no saying in this legislation that that data is going to be held and controlled by these corporations in Australia, under Australian privacy law. What is to stop one of these providers, who will store this information for two years, storing it in another country, where the privacy laws are not the same as Australia's and that—as Telefonica has done—they will allow access to that data to medical insurance companies, for example, who might decide that they want to determine whether they should give someone health insurance or adjust the cost of that health insurance over time?

There was an extraordinary example that I read about, where a car company is designing the most up-to-date seats. When you buy or get the car you can log in the impression of your body as you sit upright in the seat of that car. It will then program the car so that if you slump over the wheel or start going to sleep, the car will wake you up. It is meant to be a safety device, but the data is owned by the company. The company can then make that data available to law enforcement agencies or insurance companies, in the case of an accident, to say that you went to sleep at the wheel of that car or that you were distracted, leaning across or whatever you were doing, because of the physical imprint of you sitting in the seat. If you were not sitting up, that information can be made available and you could find that the data will get you, in the end.

We are getting to the point where people are making themselves vulnerable to the data collection agencies that hold the data. They could on-sell it or make it available. They could be vulnerable to being hacked. Yet this parliament is saying that 23 million Australian people are going to have all their data stored somewhere. The government and Labor think that it is perfectly all right to do that.

Already up to 80 agencies are able to access people's data. That is going to be pared down in this legislation, but the big flaw is that all those agencies have to do is to apply to the Attorney-General, and he or she can then allow those new agencies to be on the list of agencies that can collect the data. We have no idea what the Attorney-General of the day will rubber-stamp in terms of saying that any of these agencies can have access to the data.

Of course we know that ASIO, the police and all of the law enforcement agencies will want this. It is being dressed up to look as if it is to deal with terrorism. Nothing could be further from the truth. These agencies—up to 80 agencies now—want this data because it makes it easier to track down information about people or to engage in audits of compliance,
enforcement and the like. It is a matter of considerable concern that these agencies wanted data to be stored for five years. They are not going to get it; they are getting two years—but that is, in fact, too many. There is a real concern here about what is going to happen to information that pertains to all Australians.

And, as I said, what about confidentiality? The Labor Party seems to think that it has made some very thin confidentiality arrangements to protect journalists and their sources—I will come back to that; it does not protect journalists' sources—but what about doctors and lawyer groups? What about any of those organisations which require and demand privacy of information? They will no longer have that privacy, because there is only one group of people protected through this fairly thin provision for a new public interest advocate. What about the people who provide the information? What about doctors? What about lawyers? They are not covered.

In fact, any information about any individual can be uploaded and held for two years. There are no confidentiality provisions. This legislation undermines everything we have understood about the rule of law and about professions that are protected in terms of the information that they hold. As I said, the idea of causality has gone; we now have the idea of correlation. Correlation allows people to work out probability. So we are going to get profiling of people and communities as being likely suspects in particular crimes—these groups of people have a greater probability, according to the data, of committing a crime. It does not allow for individuals in the community or for any analysis of other things in the community. So you are going to get additional policing and surveillance put into those areas, and that is completely unnecessary.

We are not saying—and I heard a few comments earlier to this effect earlier—that the Greens do not want to see adequate surveillance from police and law enforcement organisations dealing with terrorism. Of course we do. And that is why there are data preservation orders. If they have reason to suspect that somebody is likely to be involved in criminal matters then they can get a data preservation order. So 'targeted' is one thing; indiscriminate surveillance of an entire population under the guise of terrorism and national security is quite wrong. This has been on the agenda for a long time. Under the shadow of terrorism, we have had Labor roll over, go and join up with the government, and agree to legislation that will lead to surveillance of all Australians.

I just want to go to this public interest advocate that has been set up to oversee the metadata searches on journalists. There are a number of problems with that. There are no rules requiring the Attorney-General to seek the views of the public interest advocate to argue against warrants being issued for journalists' metadata. In addition, it will be an offence involving two years' jail for anyone to disclose that a warrant for metadata has been requested or applied. So the journalists will not be able to contest the idea that this has actually occurred.

Testimony from the Attorney-General's Department, combined with evidence from countries which have enacted data retention, has shown that there is no evidence of improved crime resolution statistics once data retention is enacted. Law enforcement agencies have consistently claimed that the extra powers are needed, but they have failed to provide any concrete examples of why it is needed—and in fact it is to the contrary.
I was surprised to see that the Attorney-General was going on about how this is the way that Western nations are going. No, it is not. Western nations are actually going in the opposite direction. That is why I said in my opening remarks that this parliament is playing catch-up. The fact of the matter is: the European Union had a data retention directive on this in 2006. In 2006, John Howard was Australia's Prime Minister. I do not think he would even have had any idea of what data was doing at that particular time in terms of retention or in terms of the transformation of what it would do. That was in 2006. Since then, countries have been winding it back. In fact, the European Court of Justice found it is unconstitutional. Austria has used it—for theft, for drugs, for stalking, but not for terrorism. Poland has used the data, mostly for civil disputes and to assist in divorce cases. In Denmark it was given up in June this year. And Germany abandoned the legislation in 2010.

So it is not about national security. It is about collecting data on every Australian, for every law enforcement agency and regulatory compliance agency to use. You will get this surveillance capacity and this data being used for everything from crime to trivial infractions of various things, for the tax office, the ACCC, ASIC, fisheries, health compliance agencies, local government and even the RSPCA. There are any number of organisations which have accessed data for various reasons. That is where we will actually end up in this country. Once you are identified, once your data is there, it will be used. We cannot even know now what the secondary use of that data will be, either next week, next year or in two years' time—how you might be able to use that data or what it is actually for.

Then we go to the cost of it. This is an extraordinary thing—that we have the Labor Party agreeing with the Abbott government that we go ahead and conduct the collection of data on every Australian for two years, and we have no idea what it is going to cost and no evidence that it actually assists in doing anything about terrorism. This is an extraordinary lie to the Australian people that is being perpetrated.

Let us go to cost for a moment. We have no idea what it is going to cost. The companies and government agencies not only will need to store the data but have to ensure it is stored safely. As I said before, how do we know that it is even going to end up being stored here?

It will be very attractive, for the reasons I indicated earlier, to hackers, and I want to know how the government is going to guarantee, if the data is not stored in Australia, how it will meet Australian privacy laws or will be protected from hacking. But let us go to the actual cost. What is it likely to cost a year? We have had all this talk. We had a budget emergency; now we do not have a budget emergency. Last year's budget was to fix the emergency; this year's budget is going to be dull. It is very interesting the way that the news about the budget travels. But what is the cost? Australians deserve to know how much the government intends to contribute to the mass surveillance of the Australian population. How much money are we going to put up to have this surveillance on ourselves? Surely the parliament deserves to get an answer to that question. We do not have an answer to that question. And it is fundamentally wrong.

Then we get to this idea that, if you are not doing anything wrong, you have nothing to hide. That is what the Stasi said in East Germany as well. And it is what every police state has to say: 'We will follow you. We will do surveillance on you. But do not worry about it; if you have nothing to hide, it won't be a problem for you.' Well, we saw what happened with the Stasi in East Germany and we know about the chilling effect that this will have on people. It
will mean, for example, that you will know who attends a protest rally, for example, anywhere; you will have their location, if they make a call or have their phone on them while they are there, as they attend that rally. What is it worth to a foreign government to know who has been there and which of their overseas students was at a rally against human rights abuses, for example? Who knows how anyone is going to use this data on particular individuals. So this idea that if you are not doing anything wrong you have nothing to hide is no excuse whatsoever for this invasion of people's privacy.

When you get to the issue of trusting our government bureaucracies and intelligence agencies, what about the scrutiny? What about the oversight that we need? You know that if there is not proper oversight you will have corruption and you will have creep in what this data will be used for. Today people are deciding which agencies can access it but, as I indicated, the Attorney-General can change that anytime—add new agencies add different levels of surveillance—and that is where we will end up on this.

When we get to looking at this as an overall objective in Australia, I think it is really sad that we have got to the point that we are legislating without evidence. (Time expired)

Senator SINGH (Tasmania) (18:23): I rise to speak to the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015. The current bill has brought deep concern to many Australians—and rightly so, because it raises complex and concerning issues, especially in relation to privacy, freedom of expression and media freedom.

I have had my own deep concerns about this legislation and I know some of my Labor colleagues—such as the member for Chifley, the member for Fremantle, the member for Charlton and other Labor colleagues as well—have had similarly deep concerns. I have wrestled with these issues, because data retention is a complex global issue but an issue that has to be dealt with in this era of advanced technology.

It is not a surprise that these are concerning issues. Communications data can reveal quite personal information about an individual. Without the content of the data being made available, it can reveal who a person is in contact with, how often and where. But we are informed that this bill is needed to ensure that our law enforcement agencies can keep pace with the rapidly evolving telecommunications technology and services.

I agree wholeheartedly with the comments of former Senator John Faulkner who said:

The Australian Parliament's ... must ensure our intelligence and security agencies have the necessary powers and resources to protect Australian citizens and Australian interests. However, these powers can impinge on the values and freedoms on which our democracy is founded ... which Australian citizens rightly expect Parliament to protect.

So Parliament must strike a balance between our security imperatives and our liberties and freedoms. Key to achieving this balance is strong and effective accountability.

Therein lies the essence of what this debate is all about and what we as parliamentarians must try and strive to achieve.

So what we have before us now follows amendments that were brought through the work of the Parliamentary Joint Committee on Intelligence and Security. They have done a great deal of work to improve the bill the government presented last year—which I think can be
regarded as a shell of a bill—making it into something which now is trying very hard to get that balance right.

On that, I would like to thank my Labor colleagues for their work. They have closely reviewed and rewritten this legislation. After months of work, their approach to the issue has led to a much improved piece of legislation being presented for debate, and that is what we have currently before us here in the Senate: significant minor, technical and consequential amendments to clarify the intent of the bill; limiting the dataset required to be retained under the scheme to that which is prescribed in the bill itself, rather than allowing the dataset to be prescribed by regulation. These are just some of the things my Labor colleagues achieved through that joint committee.

Labor has insisted on significant improvements to oversight and transparency through the PJCIS inquiry into this bill, and the work of that Parliamentary Joint Committee on Intelligence and Security has led of course to the 38 recommendations for inclusion in this legislation. These amendments, including protections for journalists, have been absolutely crucial to the substance of this bill.

The work of the Leader of the Opposition, the shadow minister for communications, the shadow Attorney-General and my Labor colleagues in pursuing the government for these amendments to be included has meant that today we are debating legislation of a much greater quality than what we saw last year. So I thank them wholeheartedly for the work they have done but also for their consultative approach to this issue, which has been part of our Labor caucus.

Looking at the substantive matter of this bill, examining the issues seriously and exploring all the options available to achieve a balance between the public interest in granting access to metadata and the protection of privacy rights, has been critical. In fact that is the critical factor when we debate this bill. That has been the focus from the outset for the Labor opposition.

The storage of data onshore, protections for journalists to ensure freedom of speech is preserved, the inclusion of privacy alerts and the importance of oversight have helped shape my position from one of having great concern to one where I am comfortable with the outcomes that have been now delivered through that process and into this legislation. As I said at the outset, it was a difficult issue at the beginning, but what we have before us now is a much more substantial bill than that which was provided to the parliament last year.

**Sitting suspended from 18:30 to 19:00**

**Senator SINGH:** I return to highlight the important factors that have helped to shape my position on this piece of legislation, and I want to list the improvements that have been made through Labor's input and through the process of the PJCIS inquiry. They include: listing of dataset in the bill so that we know what data is retained; limiting access to telecommunications data to those enforcement agencies specified in the bill; oversight of the operational use of this legislation by parliament's intelligence committee, the first time that committee has been given this power; authorising ASIC and the ACCC to access telecommunications data to assist in the investigation and prosecution of white-collar crime; requiring telecommunications companies to provide customers access to their own telecommunications data upon request; requiring stored data to be encrypted to protect the security and the integrity of personal information; prohibiting access to telecommunications
data for the purpose of civil proceedings, such as preventing its use in copyright enforcement; requiring the mandatory data breach notification scheme to ensure telecommunications companies notify consumers if the security of their telecommunications data is breached—I currently have a private senator's bill in this place on this very matter. Other improvements are: increasing the resources of the Ombudsman to strengthen the oversight of the mandatory data retention scheme; and a mandatory review of the data retention scheme by no later than four years from the commencement of this legislation. All these factors are improvements that have helped to shape my position.

I do want to go into some further detail on a number of those issues, and the first of them relates to data storage. Protecting the cloud of data collected under this legislation is critical to the privacy of individuals. The storage of data needs to remain under Australia's jurisdiction to ensure that it is regulated by Australian law. On the eve of the data retention changes being reintroduced into the parliament, the former Director-General of the Australian Security Intelligence Organisation, Mr David Irvine, voiced his concerns clearly about where Australians' data should be stored in the cloud. He described himself as a 'cyber nationalist' when it came to the position of the cloud. He is correct: metadata provides knowledge of an individual whom this country has a duty to protect. In that sense I also describe myself as a 'cyber nationalist'. The issue of the location of stored data is one of concern not just to myself or not just to Labor, but to the broader Australian public as well. I am pleased that this matter is currently being examined as part of the telecommunications sector security reform, TSSR.

Mr Irvine said there had to be awareness in government, business and with private individuals of the fact that the internet world had brought huge benefits but it had created all sorts of vulnerabilities. He said:

We should be trying to develop for Australia, particularly for government and industry, the ability to manage national data on a national basis, with international hook-ups of course, but then it can be subject to national law, which can be privacy law and national security considerations.

He also said:

Our ability to use metadata is just as important in eliminating people from suspicion as it is from incriminating them.

I think that really highlights the importance of onshore data storage.

We are informed that this bill is going through another process to address that important issue. This bill raises another issue—which may come as a surprise to many Australian citizens—about who has access to data. There are currently more than 80 agencies, including many local councils and other organisations that can already access data without a warrant, and that is of quite grave concern. My understanding is that access to this data has grown over the years and now the types of agencies which can apply to access this data include Centrelink, the RSPCA and even Harness Racing New South Wales. Not many Australians would be aware of that. This bill addresses the issue and confines access to law enforcement agencies, and that is an important improvement that has been made in this bill. Having such a broad definition of the agencies that can authorise themselves to access your metadata, my metadata, I think is a problem. This bill very much deals with that issue. Limiting access to criminal law enforcement agencies specifically prescribed in the bill, rather than by an open-ended definition, and authorising ASIC and the ACCC to access metadata to facilitate the
prosecution of white-collar crime I think is a better outcome. As I have said, Labor's position is that there should be onshore data storage of that metadata.

Another improvement made to this bill is in relation to the protection of journalists. The protection of journalists and their sources along with freedom of the press have been issues of particular concern to Labor. The Australian Federal Police have confirmed for the first time that they have accessed journalists' telecommunications metadata in the past 18 months, but said that the requests were 'rare'. Under the new laws, a public interest advocate, who will be able to contest police applications for warrants to identify a journalist's source, will be created. That is a great improvement to the current regime. Allowing a list of security-cleared barristers to argue the public interest case before judges deciding whether government agencies should be allowed to access journalists' metadata is important—and to argue the public interest case as a judge weighs that consideration against national security interests in deciding whether to issue such a warrant is the substance of it. Of course, there will be a presumption against issuing the warrant, and agencies must prove that the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the identity of the journalist's source.

One other issue I want to highlight is that Labor has advocated for the inclusion of a system of mandatory notifications of data breaches or privacy alerts, a system of mandatory notifications similar to those contained in the Privacy Amendment (Privacy Alerts) Bill, which I introduced into the Senate in 2014 on behalf of the Labor Party. I am pleased that that system, introducing a new consumer privacy protection for Australians that will keep their personal information more secure in this digital age, forms part of this bill. Time and time again, we have heard examples of data breaches like that by the immigration department, where some 10,000 asylum seekers' details were accidentally breached as far as their security was concerned. It is important that, following the recommendations of the Law Reform Commission in 2008, those changes will finally be addressed in this bill. At the time we were debating my private senator's bill in this place, I was disappointed that it seemed that government senators were not going to support it. I am glad that they have seen the light.

I have raised a number of other aspects of this legislation that are great improvements. But, overall, regardless of those improvements—and they are very good—this bill was introduced very speedily and the government showed too little concern for the substance of the bill and the importance of getting it right. That is clearly on record with the bill that the government first introduced late last year. The government should have taken a different approach to this important piece of national reform dealing with security, privacy and our freedoms. There should have been a review of the data access regime, for example. Investigation should have been undertaken into whether warrantless access should have been allowed to continue at all. There has not been time to debate and go further into those issues because this government rushed this legislation into the parliament last year and has continued to rush it through the parliament this week. What we do have has gone through a very careful improvement in its design, due to the fact that my Labor colleagues on the PJCIS put in the effort and paid it the concern that was needed.

I will finish with a comment by former Senator John Faulkner, a former defence minister and someone who has very strong values in relation to freedom and privacy issues. He said that parliament must always strike the right balance between our security imperatives and our
liberties and freedoms. That is what this bill should achieve. With any review in the future, that must always be at the forefront.

**Senator RHIANNON** (New South Wales) (19:13): The Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015 should not be passed. My colleagues Greens senators Scott Ludlam, Christine Milne and Penny Wright have set out a very clear case as to why this bill should not be passed. The way in which the Liberal, National and Labor parties have colluded to rush through parliament this bill, which creates the government's mass surveillance regime, is a disgrace. It is a result of an ugly backroom deal between these parties.

By the government's own admission, mandatory data retention alters the balance between government and individuals when it comes to their right to privacy. The best the Prime Minister and the Leader of the Opposition have come up with to justify their antidemocratic deal on internet and smartphone surveillance laws is to say, 'Just trust us.' They want us to trust a government which has broken election promise after election promise. They want us to trust a government which has shouted down any attempt to hold it to account and which has publicly savaged statutory bodies and human rights watchdogs for simply doing their job. We have to ask: why do Labor want us to trust this Liberal-National government? Our colleagues in the House of Representatives were contemptuously given just 30 minutes to debate 74 amendments, denying the public and parliament a chance to scrutinise this backroom deal between Prime Minister Tony Abbott and opposition leader Bill Shorten.

The bill now before this chamber should hold the government to account, but, no, instead it effectively waves through mass surveillance of Australian citizens. We know that because we have heard the opposition and the government saying, 'It'll be right. Just trust us.' There are a number of questions that remain unanswered as the government tries to ram these changes through.

There has been a lot of hyperventilating and hyperbole from the Prime Minister, who has all but claimed that law enforcement will halt without warrantless access to metadata and mass surveillance of our citizens. That is clearly ridiculous. It is just a new form of the law-and-order campaign that we have seen wheeled out by conservative governments, particularly at a state level but increasingly at a federal level, on national security. They are now using metadata in a similar way.

It is clear that the amendments agreed to by the Prime Minister and the opposition leader do not implement the recommendations of the Parliamentary Joint Committee on Intelligence and Security or address the concerns that have been raised. Labor rolled over. Why? We still have not got to the bottom of that. On an issue as serious as giving security agencies additional rights and powers over people's smartphones and internet records, the Labor, Liberal and National parties, as I said before, are saying, 'Just trust us.' But that raises a number of key questions. Where will the data be stored? Will it be subject to foreign laws? How does the government define a journalist and a journalist's source? Will the data be deleted after the mandatory period? If so, how? Will the data be secure from cyberattacks? But the answer we are getting is, 'Just trust us.'

We have already seen how this sort of metadata can be abused. The existing Telecommunications (Interception and Access) Act allows law enforcement authorities in Australia to access some categories of metadata from certain ISPs and telcos. However, a
laundry list of other organisations have gained access to the metadata for undisclosed purposes, including Centrelink, the Western Australian Department of Fisheries, Racing Queensland, the New South Wales Health Care Complaints Commission, the Victorian taxi directorate, various local councils, the RSPCA and the Office of Environment and Heritage. I will come to the issue to do with the ABCC shortly.

It is open season on metadata already. Already under the current law there is the ability to do so much of what the government says that it needs to achieve. Three hundred and forty thousand warrantless accesses took place in the 2012-13 financial year, and that was before a mandatory data retention regime was in place. My colleague Senator Scott Ludlam set out very clearly the issue about the number of warrants that are out there. The evidence about metadata requests under the current regime shows that a massive number have nothing to do with solving serious crime but instead relate to petty requests by agencies, including the Australian Taxation Office and Centrelink, to track what ordinary Australians not suspected of any serious crime are doing. Again, this highlights the dangerous territory the Labor, Liberal and National parties are taking us into.

The Attorney-General has pointed out that this bill does not change the existing arrangements, and that is precisely the problem. It welds on two years worth of additional data which can be indiscriminately accessed by agencies. This is despite the fact that evidence shows that most law enforcement metadata requests are for short-term data, meaning within three months rather than two years. Now, under the new legislation, the Attorney-General will also be able to add to the list of agencies with access to our data. Senator Ludlam called this 'scope creep', and that is what you see all over this legislation.

Very relevant to the debate is to note that the now-defunct Australian Building and Construction Commission received a total of 77 authorisations for data through the T(IA) Act between 2007 and 2012. The Fair Work Building and Construction agency, which replaced the ABCC following a successful union campaign, received one authorisation in the 2012-13 financial year. We know the Abbott government is trying to reinstate the ABCC. That is one of the issues right at the top of its agenda. It also flagged in November 2014 that it is considering another agency with similar powers to ASIC dedicated to monitoring unions. Both of these organisations, like the ABCC before them, may be able to access the metadata of union officials and union members. This is a very frightening aspect of the bill. Again, what Labor have signed off on, considering they say they are so deeply against the ABCC, is very troubling. We need to look at these bills together and what this government is up to. As I said, it is a frightening aspect of this bill that the government will supercharge its anti-union attack legislation with these anti-democratic measures that we are making tonight. Again, that has to be emphasised so strongly—that Labor are hand in hand with this government in bringing forward legislation that, as we look into it more and more, we can see is like a twin of the ABCC legislation.

The Media, Entertainment and Arts Alliance has voiced concerns on behalf of its members on the chilling effect that the Abbott-Shorten deal will have on journalism in this country. While the Labor Party has claimed it wants to protect journalists and their sources, its deal with the government fails to deliver on this. As the MEAA has said, the requirement to get a warrant to access data of journalists still ignores the key ethical obligation of journalists to not allow their confidential sources to be revealed. While journalists worldwide have faced jail in
upholding this obligation, mandatory data retention means it is no longer their decision. Journalists in Australia can no longer guarantee their sources and whistleblowers that they will be protected. Journalists, understandably, are concerned that this law is anti investigative journalism and anti whistleblowers.

I think we need to take a pause here. We need to consider what this means for investigative journalism and a free and open media in this country. So often we hear people in this place espousing the importance of a free media, but this bill puts that at threat. Again, this is a key consideration that should be at the top of this debate. We do not need to wait until we see whistleblowers hauled before courts for exposing dishonesty, fraud, waste or corruption to know that this bill is wrong. Investigations will not go ahead. Whistleblowers will hesitate. Courageous public servants will wonder if they should speak out. Reporters will decide that they do not want to put the people they depend on for their stories at risk. That is how we expect this to play out.

The public-interest advocate, which is to be set up to oversee metadata searches on journalists' data, is no solution. For example, there are no rules requiring the Attorney-General to seek the views of the PIA or for the PIA to argue against warrants being issued for journalists' metadata. In addition, it is an offence involving two years jail for anyone to disclose that a warrant for metadata has been requested or applied. This is compounded by the fact that, in today's environment, we see a fragmentation of journalism and the greater need of protection for acts of journalism—acts by the likes of Edward Snowden and Chelsea Manning. In fact, the protections—such as they are—may not apply to many of the new players in the media landscape, such as bloggers.

This prompts the question: who is really protected by mandatory data retention? In the rush to pass data retention, the government has failed to demonstrate how it will achieve even its own stated goals. The Attorney-General’s Department could provide no evidence from anywhere in the world that mandatory data retention improves community safety or helps reduce crime. There you have it: no proof that it will improve our safety or reduce crime. Why is this being done? That is why you have to go back and look at the organisations that will access this.

The government still has not defined the metadata it wants industry to store, and it wants to change the definition on a whim. Law-enforcement agencies have consistently claimed that the extra powers are needed, without providing concrete examples of why they are needed. For example, why is it that we need to retain data for two years, when evidence shows that most law-enforcement metadata requests are for much shorter-term data, usually within three months? Evasion of the scheme is easy for anyone with ill intent. Virtual private networks are easy to set up and use, while something as simple as using a Gmail account can put one outside of the scheme jurisdiction. However, while those who may wish harm can easily bypass the scheme, all Australians will be subject to surveillance. It is wrong to assume that only those engaged in criminal activity will be affected by this surveillance.

The recent New South Wales parliamentary inquiry into police surveillance of other police officers underlines how irresponsible this legislation is. We cannot rely on police to determine issues to do with the surveillance of the public, with no external oversight. The New South Wales inquiry has revealed extensive abuses of how surveillance warrants have been issued and abuses by police using their resources to spy on other police and journalists. The inquiry
found that TV reporter Steve Barrett was targeted by crime agencies, with dozens of improperly obtained covert surveillance warrants, between 1999 and 2000.

The inquiry uncovered a series of warrants rubber-stamped by the Supreme Court. In one case, there was zero supporting evidence for 46 of the 114 targets on a single covert surveillance warrant. A former judge admitted that there was no way to properly check that the warrants were in order. He resorted to checking for obvious errors, like inclusion of the names 'M Mouse' or 'D Duck' before he signed off. That is serious; that is what he said. Despite an inundation of warrants, he could not remember refusing a single one. I set that out in detail because this is from an inquiry about police surveillance, where they could not get it right and where there was no accountability, standards or external involvement. It shows what we are walking into. Those abuses by police officers have been revealed, but did the Attorney-General take any notice or learn any lessons? Clearly, that has not occurred. The Attorney-General is ready to give police and security forces unprecedented access to endless quantities of data, to intensify surveillance in such an extreme way.

Then there is the still unresolved issue of who will actually pay for this surveillance. Senator Ludlam set out this out very clearly. He detailed the important letter, which came just last week, from a number of telecommunication companies, setting out how much this is going to cost. That is a very relevant part of the debate. The Australian government will not say who will be paying this surveillance tax. What we do know is that the public will end up paying, either with higher data changes or through higher taxes.

The New South Wales Council for Civil Liberty is one of the many groups that have provided in-depth analysis on the dangers of this bill. They have stated in some of their material:

It is not acceptable for ASIO, the AFP, police forces and other agencies to be able to access the extensive metadata of citizens on their own internal authorisation. The bill allows them to do just this—albeit within some parameters. Legal experts and organisations, civil liberties, privacy and human rights groups among others, argued the need for a warrant system—a longstanding safeguard within our legal system. The intelligence and security agencies argued—successfully it seems—that any form of warrant system would impose too great a logistical and bureaucratic operational constraint. It would seem the self-serve system is to continue and long standing safeguards to be sacrificed.

This is a mistake and will lead to misuse, abuse and overuse of this data. The post-hoc safeguards proposed will not be adequate to protect against these outcomes.

I do urge senators to look up, in full, the material on this issue from the New South Wales Council for Civil Liberties.

Big Brother has become 'Big George' in this situation, and 'Big George' works hard to keep a straight face as he spouts his justification for these extreme laws, saying, 'Those who have nothing to hide, have nothing to fear.'

Senator O’Sullivan: Mr Acting Deputy President, on a point of order: if 'Big George' refers to Senator Brandis, the senator should withdraw the remark, call the senator by his correct title and, if she feels so inclined, apologise.

The ACTING DEPUTY PRESIDENT (Senator Gallacher): Senator Rhiannon, if you have been referring to the Attorney-General, I would invite you to refer to him by his correct title.
Senator RHIANNON: Thank you for the advice, Mr Acting Deputy President. With regard to the issue of collecting metadata, what the Attorney-General is doing to his own office is very concerning. The standing of the Attorney-General is very important to the whole nation in terms of the upholding of justice. We have already seen abuses of metadata. When the Australian intelligence agencies were interested in the phones of the former Indonesian President and his wife—leading figures in Indonesia—it was an issue of metadata. Again, that shows how these services have been abusing the use of that data.

Ever since the terrorist attack of September 2001, crime, spy and security agencies have been demanding more and more powers to reach into our private individual lives. This incursion for mandatory metadata retention will not make us safer or more secure. Mandatory data retention strikes at the very heart of the relationship between governments and the public. This bill, which is set to be passed on the combined vote of the Liberal, National and Labor parties, is an enormous setback as it delivers an increase in the power of the state over private individuals for indiscriminate surveillance. The campaign to stop this level of surveillance and to have this bill repealed is I believe set to become one of the most important issues in Australia.

Senator LEYONHJELM (New South Wales) (19:32): I rise to oppose passage of the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. I do so despite the fact that there are 10 amendments circulating in my name. These amendments will do the following: (1) require a warrant not just for access to journalists’ metadata but also for access to the metadata of lawyers and medical professionals—lawyers have expressed particular concern about threats to legal professional privilege; (2) use the definition of ‘journalist’ in the Commonwealth Evidence Act so that freelancers are protected by Labor's warrants regime; (3) reduce the period of data retention from two years to three months, consistent with commercial practice among ISPs; (4) limit the use of retained data to serious criminal offences; (5) remove ASIC and the ACCC from the list of law enforcement agencies; (6) provide for a warrants regime that protects members of the general public; (7) ensure a definition of 'content' is included in the bill; (8) ensure that the most invasive parts of the bill will sunset rather than being merely reviewed by a committee that includes no crossbenchers or Greens; (9) prevent the addition of further agencies to the list of law enforcement agencies in order to halt creeping government overreach; and (10) provide that the penalty for disclosure of a warrant is reduced significantly from the current two years imprisonment and subject to a public interest test.

I wish to make it very clear that even if all my amendments were to pass—in addition to those proposed by Senators Ludlam, Xenophon and Wang—this would still be bad law. I recognise that I am on the losing side in this matter, so I propose to do two things here. First, I want to explain why one does not protect a free society by legislating liberty away. Secondly, since so few people seem to understand what this bill purports to do, I will explain exactly what it means in practical terms. Everyone has something to hide, and something to fear, from mandatory data retention. It is one thing to require monitoring of certain individuals where there is reasonable cause; but the idea that the government needs to store everyone's metadata without cause, including my 84-year-old mother's, should not be countenanced.

Data retention will do nothing to save us from terrorists. Paedophiles are already canny enough to use the 'dark net' and avoid it. Data retention instead places the entire population
under surveillance no matter who they are or how blameless their lives. And thanks to its sheer volume, it will make terrorism harder, not easier, to track. This emerged in the wake of the Charlie Hebdo attacks in France; in fact, even real-time collection of targeted metadata was of no benefit to France’s police. For the record, I have no problem with data retention when it comes to genuine suspects. But what the attacks in France show is that sifting through data is difficult. It places a significant burden on law enforcement. In France the perpetrators were dropped from watch lists. Finding a needle in a haystack is not made any easier by adding more hay to the stack.

ISPs such as iiNet, TPG and iPrimus, along with Telstra and Optus, will also be liable for hundreds of millions of dollars in storage costs, which raises the obvious question: who pays? This bill, as amended—thanks to the PJCIS report—now provides for the Commonwealth to make financial assistance available to ISPs to help pay for this wretched scheme. When you hear the word ‘Commonwealth’, remember, it really means ‘taxpayer’. Wonderful—we will pay for the privilege of being spied on through our phone bills and through our taxes! And we really are talking about everyone—Air Chief Marshal Mark Binskin, Chief of the Defence Force; Duncan Lewis, the head of ASIO; and Prime Minister Tony Abbott. And unless the bill is amended to ensure data is retained in Australia, it may be simpler to bundle up two years worth of all our personal information and send it directly to the Chinese. After all, cloud storage is cheaper over there and access will not be subject to Australian law.

Then there is the basic reality that the government already has substantial powers to deal with terrorists and paedophiles. Apart from the fact, as Bret Walker SC often points out, that violence and conspiracy to commit violence have always been crimes, Australia’s security agencies have extensive surveillance powers. They can, for example, obtain data preservation orders, ensuring metadata is retained and an individual’s activities on the internet are examined. They can obtain warrants to intercept phone calls. People can be held and compelled to answer questions. Preventative detention orders and control orders, without any crime having been committed, restrain people from leaving their homes, if it is suspected they may commit a crime in the future. Passports can be cancelled. These powers are already so over the top that there is a serious case to be made that they are incompatible with the rule of law in a liberal democracy. Preventative detention orders and control orders, for example, are a direct assault on the presumption of innocence. They allow people to be locked up without a finding of guilt. And this in 2015, the 800th anniversary of Magna Carta, the source of the presumption of innocence at common law!

In preparing these remarks I tried to avoid references to George Orwell’s Nineteen Eighty-Four. Too often banal developments are equated to this depressing future world. But in trying to describe the pervasive impact this law will have on our lives, there really is no better reference. In 1949, Orwell wrote of CCTV listening to our every word, in every room and alleyway. Had he imagined the advent of the internet and smartphones and the concept of metadata he would surely have written of the ‘Ministry of Retention’, tracking every step and every conversation with every device we use.

Government agencies already exploit the information they have about us in disturbing ways. In the year to June 2013, there were almost 320,000 authorisations to access telephone records, including 375 by Australia Post and 15 by Wyndham City Council, in Victoria. Stored data is a honeypot for intrusive snoops and bullies. And those are only the legal ones.
That is why it is important to be aware that these immense data retention powers will not be used to fight terrorism. They are not really suited to that. As happened with the UK's Regulation of Investigatory Powers Act, RIPA, it is likely they will be used for minor welfare fraud, unpaid parking fines and catching petrol stations engaging in the heinous crime of comparing petrol prices. The latter is especially likely now that the ACC and ASIC have been added to the list of law enforcement agencies.

The idea for data retention of this type came from Europe, which is why Europeans were the first to appreciate that its record in crime clear-up is poor. Germany's parliamentary research unit, for example, surveyed that country's crime statistics, between 2005 and 2010, and found no evidence to suggest that data retention helped solve serious crimes. It was marvellous, though, for catching people who did not pay their rates or who evaded road tolls.

In April last year, the European Court of Justice overturned the EU's Data Retention Directive, in large part because data retention makes life miserable for law-abiding citizens, while criminals dodge it.

This bill shows government and opposition alike view ordinary people as criminals in waiting. Similar thinking in the past led to proposals for a national identity card to prove we officially exist and for national fingerprint and DNA databases to track us down when we inevitably offend.

What has been forgotten in all this is the fact that it is the state that poses the greatest threat to our freedom, not criminals and terrorists. It is the state that requires watching, not the people. We, the people, should hold the government to account. It is not a legitimate role of government to require us to account for ourselves, unless there is a reasonable suspicion that we have committed or are about to commit a crime.

For police forces across the land to so strongly support mandatory data retention, as their submissions to the PJCIS made clear, suggests they have all forgotten Peel's principles of policing, where the police are the public and the public are the police. ASIO's claim that data retention is justified, thanks to Edward Snowden's exposure of massive US government encroachment on privacy, is Orwellian.

And the claim by our own secret police, the Australian Crime Commission, that not having access to data is equivalent to having two hands tied behind their back, suggests the ACC is ineffectual and should be abolished. This would, of course, represent a considerable saving to the taxpayer.

It is high time that police and security agencies alike rediscovered their erstwhile status as public servants, not public masters. It would be helpful if they returned to real police work. It is legitimate to monitor the data of actual suspects, subject to appropriate oversight, as with traditional phone tapping, but it is not legitimate to treat every Australian as a potential criminal.

Now to my second point: what does mandatory data retention look like in practice? It has become clear to me that many people do not grasp just what this bill involves. Senator Ludlam has explained many of the technical aspects, and I mean no disrespect to him when I say that we need to better understand how it will work. Maybe what follows will convince a few brave souls to join those of us voting against this bill. And remember: mandatory data retention will apply to everyone, not just individuals of interest.
late last year I undertook a controlled experiment. With the assistance of Mark White, of The Sydney Morning Herald, I had a technical firm record my metadata for a month to see what it revealed. This process deliberately avoided anything to do with my role as a senator. Before entering parliament I ran an agribusiness consulting company; I still have it. Data-monitoring equipment was installed in my business office and connected to the router. Because it only collected data relating to office traffic—my smartphone is tied to my job as a senator—there was no geographical information. This is important to bear in mind, because it was still spectacularly invasive. Without knowing any more than the company's name, in less than a day metadata revealed the business sector in which it operates. It was possible to work out which bank it uses, a record of its purchases, and a record of its staff's purchases—everything from furniture to renovations to compulsory third party insurance. Metadata also revealed how often and for how long staff used social media like Facebook, where they planned to go on holiday, what they wanted to buy for Christmas, and—chillingly—when a female member of staff knocked off early. As an employer, I have never been interested in monitoring people in this way. I have always taken a dim view of bosses who time their employees' loo and cigarette breaks. But at least a worker has a fighting chance of telling that person or company where to get off. Trying to tell the government—which is far more powerful than any employer, union, or professional association—where to get off is another kettle of fish completely.

Despite my desire to keep politics and business separate, metadata also revealed my membership of the Inner West Hunters Club and the subjects I and other members discussed in group emails, including gun law reform. I was not the only person identifiable, either—everyone who corresponded with me also had their identities revealed. It was possible to establish who was publicly in favour of gun law reform, and who was in favour of it privately but unwilling to say anything about the issue in public for, say, employment reasons. The possibilities for blackmail are obvious. Had the analysis included a smartphone, it would have been easy to leap to conclusions based on my location. What would a telephone call or Google search placed in front of a brothel, gay bar or abortion clinic reveal? That will be known from the metadata. Imagine if the caller were not me—with my classical liberal views—but a conservative Christian politician. What mischief could be had at his or her expense?

Yes, it is true that mandatory data retention is relatively easy to evade. My company could start using proxy servers, for example, and its staff could communicate with each other using wickr—which encrypts messages and destroys metadata—instead of normal text messaging. I have no doubt that many people—both criminal and not—will respond to passage of the bill in this way.

But why should a company concerned with the business of keeping animals healthy and crops productive be treated as though its employees are all potential criminals? Among other things, it has an interest in fertilisers. Terrorists use fertiliser. Do you see where this is leading? That is the nub of this issue. Mandatory data retention forces all of us to evade our own government. This is not how the system is supposed to work. What sets liberal democracies apart from authoritarian regimes of every stripe is the relationship between the citizen and the state. The citizen does not just enjoy the ability to 'kick the bums out' at election time. The citizen also has the capacity to hold the government to account, to reject its
meddling in his or her life, to come and go as he or she pleases, to tell it where to get off, all subject to few or no controls. When we legislate those capacities away—allowing the state to hold the citizen to account, subjecting the citizen to state control—we then come to resemble the authoritarian regimes we are fond of criticising. Do we really wish to be spoken of in the same breath as Indonesia or Malaysia, whose citizens are monitored extensively and where there are widespread constraints on press freedom? And, make no mistake, these laws will persist, ripe and ready for future misuse by governments of every stripe.

This is bad law—law that compromises our rights and freedoms, treats us all as criminals-in-waiting, and invites abuse and overreach. It is wrong on every level. This bill should not be entertained in a liberal democracy such as ours.

**Senator LAMBIE** (Tasmania) (19:49): I rise to briefly contribute to the debate on the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. It is commonly known as the government bill which introduces the new metadata laws. I oppose this bill. The government has used the threat of a terrorist attack from Islamic State to grossly invade the privacy of every Australian. In an opinion piece in the *Mercury* newspaper Bruce Felmingham, the principal of a Tasmanian economic consulting firm, wrote:

> There must be an exceptionally powerful argument for introducing such draconian laws in a pluralist, democratic society such as our own.

I agree with Mr Felmingham—and it is my view that the government has failed to make the argument for introduction of these draconian laws. It is my strong view that the government is misleading the Australian public over the government’s capacity to respond to the threat posed by ISIS sympathisers and ISIS soldiers. This government already has the laws and the capacity to crack down on ISIS supporters if it chooses, and those laws are called sedition and treason. It is just that this government has chosen not to use existing laws to charge and put behind bars every Australian who assists in any way whatsoever our enemy the Islamic State and its members.

Why should the majority of law abiding Australians have their privacy invaded because a minority of our citizens have decided that their loyalties lay with a different country—with a different people? Why should the civil rights of law abiding Australians be lessened because some of our citizens decide to betray their country and give support and assistance to foreign powers that would do us harm? Instead of passing these laws, I am calling on this government to use the existing laws of sedition and treason to tackle terrorism—which I will turn to shortly.

I am also calling on this government, politicians and indeed all Australians to discriminate. My call to discriminate may alarm some, especially those who pride themselves on their level of political correctness, but the time has now come in Australia to discriminate against those whose loyalty is not 100 per cent to Australia. While I acknowledge that in Australia, by our law, you are not allowed to discriminate against anyone for his or her race, religion, ethnicity, sexuality and disabilities, it is a little known fact that Australian law—our Constitution—demands that we discriminate against citizens who are not 100 per cent loyal to this country. *Senate Practice* refers to section 44 of our Constitution, which indicates that anyone who has an allegiance to a foreign power—either formal or informal—is disqualified from standing for election to this place. Clearly, our Constitution and laws demand that even if your loyalty is
divided between Australia and a friendly foreign power you are still legally discriminated against and you, correctly, are not allowed to stand for election in this place.

In order to stop the terrorist rot that has set into Australia it is time, firstly, to educate Australians. Rule No. 1: if you do not have 100 per cent loyalty to Australia and our democratic freedoms, rights and privileges then I will say it—and I will continue to say it—get out! As the Australian Constitution states, if you have an allegiance or loyalty to a foreign power not only should you be disqualified from standing for election to this parliament but also you should not be able to vote or to receive government benefits. If your allegiance happens to be with a hostile or foreign power—as is the allegiance of thousands, perhaps tens of thousands, of Islamic Australians—then you should be charged with the high crimes of sedition and/or treason, depending on your level of support for our country's enemies. If the government were serious about stopping terrorist attacks on peace-loving, loyal Australians instead of introducing laws to take away our civil rights, then the government, through the Attorney-General, should enforce that every citizen who in any way assists the ISIS forces fighting our troops should face at least seven years maximum jail sentence for sedition.

I know this government is negligent by failing to use existing laws of sedition and treason. If you have the evidence to deny our citizens passports and travel, then you have the evidence to lay charges, at least, of sedition, which carries a maximum sentence of seven years in jail. If some of these young people who are running off to fight and assist ISIS were caught and made to face a serious charge, which carried a seven-year jail sentence, and they, their families and the communities they came from were made to think about the concept of 100 per cent loyalty to our country—a secular constitution and democratic government—then maybe we would be building a more tolerant, safe and free Australia for our children and grandchildren. That is the reverse of what this legislation is doing, which is taking away democratic civil rights and privileges and making us less safe from future home-grown tyrants.

The loyalty or not of citizens of Australia is an important part of the legislative and constitutional foundation of this nation. Those citizens with loyalties divided between Australia and foreign powers that are our enemies are a direct threat to our nation's peace and long-term survival. It is important to know that, in my view, you cannot be a 100 per cent loyal Australian with undivided loyalty if you support sharia law. If you support sharia law it is clear that your allegiance is, at the very least, with a foreign power—namely an overseas religious figure that exercises the powers of both state and church. At the very worst, if you support sharia law it is likely that your allegiance and loyalty is with an overseas religious figure who has declared war on Australia and every other Western democracy, simply because he wants to impose by force his religious rules and rules of state.

If you do not believe me, just use your reason and look to countries which are ruled by sharia law. They are some of the most backward, violent, aggressive countries in the world, which have failed to separate church and state. They are ruled by religious dictators who promote the death penalty for crimes such as book burning, adultery, being gay and changing your religion. Some of those sharia governed countries may try and put up a window dressing of democracy. Countries like Iran might hold elections, but the reality is that all power—religious, state and military—rests in that one religious dictator who personally chooses all the candidates for the country's election. And God help the world if that Iranian leader is ever
allowed to get his finger on a nuclear trigger! Confronting and admitting to ourselves the
plain truth of the sharia ideology we are fighting will do more to make us and our children
safe than will passing laws like this that will undermine the civil rights of all law-abiding
Australians.

Introducing laws which reinstate the death penalty for terrorism and traitors who kill during
their attacks will do more to prevent attacks against us from our enemies than this piece of
rubbish legislation. If you disagree with that argument, I ask that you think about what would
have happened if the Sydney ISIS terrorist had survived the Lindt Cafe siege after killing
hostages. The worst our current legal system could have done is to have put him behind bars
for life—a sentence he would have welcomed, I am sure, clapping gracefully. He would have
been able to turn his jail cell into a terrorist-recruiting cell. Imposing the death penalty on
terrorists and traitors who kill during their attacks on Australia will do more to protect the
national security of Australia than this legislation will ever do. This legislation and the
establishment of the capital equipment that stores the metadata will also cost the Australian
taxpayer, and an unknown amount of money at that. Some people are saying it will be $400
million, but that does not appear to take into account the charges that will be levied on all
Australian telecommunication users.

I have had community feedback and hundreds of people have contacted my office and
expressed their opposition to this legislation. The following is an example of that opposition:
'Given that law-enforcement agencies are already able to apply for a warrant to access
metadata for known suspects, I am curious to know just how mandatory data retention will be
used.'

Option 1: will the AFP or state police conduct random audits on Australian residents and
citizens' metadata on the off-chance they find something suspicious? This clearly represents
an unacceptable intrusion on the right to privacy and does not accord with a free and
democratic country. It would be unacceptable to allow the police unfettered access to the
metadata of people who are not engaged in or planning any criminal activity.

Option 2: will the Australian federal police racially, religiously or culturally profile groups
of people who they believe may be more likely to engage in terrorist-type activities or other
criminal activities or people who are socially undesirable, and do regular checks on their
metadata? All Australians, regardless of background and country of origin, should have a
right to privacy. I would hope that the AFP and-or police would not engage in this kind of
behaviour, but history has shown it to be inevitable.

There are many examples of the police profiling groups of people based on who they are or
their background and treating them unfavourably. For example, Indigenous people and those
of ethnic origin are often treated worse than other Australians by the police, resulting in
discrimination. If the coalition's proposed laws are passed, this will be a very real outcome of
how the metadata will be used, leading to greater disunity in the community and further
disenfranchising groups. Those who intend committing atrocities will find other ways to
communicate or source information to get around any law change, and I fear that only
innocent people will be affected.

Option 3: will the metadata be stored, at a huge cost to industry, until a suspect is identified
and then that person's history for the past two years checked? This is the only option that I
believe provides an acceptable use of the metadata. This option is already covered by existing
laws. The Australian Federal Police and state police simply need to apply for a warrant before accessing the data.

I am struggling to think of any other ways that metadata may be used for law enforcement purposes. It may be noted that, internationally, mandatory data retention has not worked and no compelling arguments or evidence have been provided by the government as to why it would work in Australia. I would like to note that I find any act of terrorism devastating and fully support efforts to combat terrorist activities. However, any law change, particularly that which infringes on the rights of innocent people, must be backed up by evidence that it will actually bloody work. In the case of mandatory data retention, that is not the case.

In closing, it must be said that the mass storage of the metadata of all Australians is a huge invasion of the privacy of every Australian citizen. It is open to misuse and abuse, with no systems to monitor it or monitor whether other countries are hacking into storage facilities and using the data to spy on high-profile Australians and, even, the Australian government itself for both commercial and God knows what other reasons. This level of invasion of privacy, which will be committed on every Australian who uses online phone services, is completely over the top to achieve the purpose the government claims it will achieve. In order to catch a few hundred or thousand terrorists it wants essentially to search every Australian household in this nation via electronic devices.

Giving away this level of privacy of every Australian to that level of invasion by the government and its agencies no longer makes us a free society in my view and in the view of many courts and respected privacy advocates throughout the free world. I say this: I have a very, very strong suspicion that this is going to come back and bite the coalition. When it does there will be a few of us on this side standing up to say, ‘I told you so!’ I will be looking forward to that. I oppose this legislation.

Senator XENOPHON (South Australia) (20:02): I indicate my serious reservation about this legislation and its safeguards or, rather, its lack of adequate safeguards. We do have an existential threat in our nation with the threat of terrorism—I acknowledge that; I am acutely aware of it—but the issue is how you best tackle this threat. My concern is that this bill, the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015, will have a number of consequences that will impact on the freedom of the press in this country, which will be unambiguously bad for our democracy. I am concerned that this bill will have the potential to cause serious harm to our democracy without appropriate checks and balances in place. I do recognise the need for legislation to adapt and change in response to new technologies, new political and social circumstances and, above all, threats to our security, but I believe such change should be measured, thought out and carefully considered. This is particularly the case when it comes to security and intelligence, which should have greater accountability and scrutiny than all others because of their greater capacity for abuse. It is interesting to reflect on remarks made by former Senator Faulkner, who put the very simple proposition when the counterterrorism legislation amendment, the foreign fighters bill, was in this place last year that enhanced power requires enhanced accountability. This is enhanced power because of the swoop of metadata storage. The capacity of the state to have everyone's online information, in terms of whom they have contacted, does carry with it a need for much greater scrutiny.
I am concerned in particular about the adverse impact of some of the measures in this legislation on journalists' ability to do their jobs. There is a line that has often been attributed to George Orwell:

*Journalism is printing what someone else does not want printed. The rest is public relations.*

To me, this epitomises the essence of what journalism, at its very best, should be about. Journalism should provide the checks and balances, should hold public figures accountable for their actions and should inform the public and foster debate. There are countless examples of times when journalists have broken stories that were clearly in the public interest but those in power did not want that information to be disclosed. Look at Woodward and Bernstein's expose of Watergate; the Frost-Nixon interviews; the *Spycatcher* story, when our now Minister for Communications, as a barrister, very courageously defended Peter Wright; the coverage of detainees David Hicks and Mamdouh Habib; and the saga of Dr Mohamed Haneef. My concern is that the provisions in this bill will mean that journalists will no longer be able to investigate such stories because sources and whistleblowers will be too frightened to come forward and, in some cases, to report on such things will be an offence punishable by imprisonment.

I acknowledge that the government and opposition attempted to address these concerns in relation to the access of journalists' metadata, but I must say I am very disappointed with the compromise that has been reached. The committee stage will give us an opportunity to explore that. With respect, the amendments moved in the House of Representatives do not go nearly far enough. We need to put this in the context that things go wrong. The authorities, our intelligence services, sometimes make mistakes and they need to be held accountable for that. For instance, on 18 February last year the Australian Federal Police raided the offices of the Seven Network in a very heavy-handed manner, as part of a proceeds-of-crime investigation related to a story on Schapelle Corby. Seven West Media chairman Kerry Stokes, the owner of the Seven Network, is big enough and, dare I say, ugly enough to look after himself. And he did, eventually getting an apology for his network from the AFP for executing search warrants, later quashed by the Federal Court, erroneously describing a Seven West lawyer a suspect in the case. But the botched raid shows that the authorities can make mistakes and that the ability for journalists to expose that may well be compromised by this.

The metadata bill will give the AFP and intelligence agencies very long arms to reach into our everyday lives to track our whereabouts and with whom we have been communicating. For journalists, they will require a warrant, but some fear it will be issued as a formality, and the very process of that warrant concerns me greatly. What kind of future are we ushering in for our democracy with this bill? I foreshadow that I will be moving some amendments in the committee stage in an attempt to fill a number of the gaps left by the government and opposition, and I will speak further on this at that stage.

I want to look at the intention of this bill as a whole. The Australian law has, in general, lagged far behind technological advancements. We see this in all sorts of areas, not just national security—the way we have failed to respond to regulation of online gambling, for example—but in this case the most significant matter we are looking at is the regulation of metadata. It is important to note that there is no legal definition of metadata in Australian law or, indeed, in this legislation. While it concerns metadata as it is generally understood, it outlines this under the term 'retained data'. In essence, metadata is everything but the content
of a communication, so it includes the fact that I made a phone call at a certain time to a certain person but not what was said between the two parties. When you browse a webpage, however, the distinction between content and metadata disappears because it is all machine-produced and machine-understandable information about web resources. It is all metadata.

As Professor Clinton Fernandes from the University of New South Wales Centre for Cybersecurity said a few months ago: ‘Metadata can be incredibly intrusive. For instance, if a woman rings her GP and then an abortion clinic and then her mum but not her boyfriend, you can probably figure out what's going on.' That is incredibly intrusive. Examples of metadata include the email address, the phone number, the voice over internet protocol number, the time and date of the communication, the general location of information such as cell tower data, information about the duration of the communication, and the names and addresses—home, postal and billing if they are different—of the parties.

Under current law, law enforcement agencies do not have to get a warrant to access metadata. They do, however, have to get a warrant to access content. Further, there are a huge number of organisations that can request metadata, and some of the examples that I have put out over the last couple of years include local councils, parking enforcement services and the RSPCA. I acknowledge that this bill tightens that access to law enforcement agencies, although organisations can come under that umbrella term if designated by the minister. But my question is: why shouldn't there be much stricter safeguards and protocols for journalists, who are an essential part of our democracy? A free press is at the very foundation of a democracy. Of course the police should be able to access metadata when investigating serious crimes or a terrorist plot in the making and, indeed, they should be able access that information quickly and efficiently, but why should journalists and whistleblowers, who invariably want to expose malfeasance, corruption or waste in government, be subject to the same rules as ISIS, or Daesh? Indeed, there are increasing calls from citizens around the country that the government should not have the right to access their data willy-nilly. That was the response that I got from an article that I wrote for The Drum not so long ago. The extent of information that can be gathered through metadata and the conclusions that can be drawn from it mean that, in some situations, content is almost superfluous.

The arguments put forward by some of my colleagues in this place, Senators Ludlam and Leyonhjelm in particular, have clearly dispelled the myth that metadata is less intrusive than content and so can safely be subject to a lesser level of control and scrutiny. The fact that both Senator Ludlam and Senator Leyonhjelm, on perhaps very different parts of the political spectrum, take this position indicates that this is an issue that goes beyond ideology. Many people are unaware of the scrutiny their information could be subject to both now and under this proposed legislation. The government are, in effect, asking the public to trust them with this information—to trust that it will not be misused or abused—even though there are not any measures to protect against this, as I see it. Historically, blind trust in government has not worked out well for democracy in general and individuals in particular.

The key potential drawbacks to the compromise that was reached between the government and the opposition on the public interest advocates are, firstly, that the public interest advocate cannot disclose any confidential information to the affected journalist or receive instructions from them about how to deal with it, thus limiting the journalist's ability to test
any adverse evidence. Secondly, the playing field will be skewed in favour of the authorities. Unlike the authorities, such as the police, who have the resources, researchers and analysts, public interest advocates will lack the resources of an ordinary legal team for the purpose of mounting a proper case in secret. Thirdly, unlike available to the police or those seeking the warrant on the journalist, who have a long corporate memory, the lack of a searchable database of secret judgements will mean that individual public interest advocates are unaware of what arguments are likely to sway the judge who decides whether to issue the warrant. Fourthly, public interest advocates may well have no power, as I see it, to call witnesses. Finally, the tactic that could be used of prejudicially late disclosure may eliminate the public interest advocate's practical ability to call evidence.

Contrast this bill with the approach in the United States of America, our closest ally. No one can question their seriousness in tackling terrorism and threats to their citizens, particularly after the calamity of the terrorist attacks of 9/11. After a bungled attempt to obtain metadata from the Washington bureau of the Associated Press some two years ago, the US Attorney General, Eric Holder, issued comprehensive guidelines and protocols to protect journalists' sources. In the United States, media organisations and journalists are given advance notice of an attempt to obtain metadata and have the right to argue the public interest case before a decision is made. I will be moving amendments based on the American approach. Not only has this worked well but just two months ago Mr Holder, the US Attorney, issued new guidelines that further strengthened protections. Just this month, legislation was introduced to the UK's House of Commons which included draft codes of practice to protect journalists' sources where the public interest is also a primary consideration. Back home, it seems the approach to metadata by both the government and the opposition can be paraphrased this way, with apologies to Sting: every click you make, every keyboard stroke you take, the government will be watching you.

I just wanted to reflect briefly on the most recent terrorist attack that this country has had, the awful events of the Sydney siege. Some people say that Man Haron Monis was a madman. He may well have been a madman, but he was also a terrorist. He fulfilled the definition of a terrorist. I still do not understand why this man, with his appalling history of taunting the families of Australian soldiers who had died in service overseas, did not continue to be on a watch list; why this man, with a long history and string of sexual assault matters before the courts, was not still on the watch list; why this man, who was charged as an accessory before the fact of the murder of his wife, was still in the community; and why this man, who praised the work of ISIS and other terrorist groups and jihadists, was allowed on the streets. That does not involve metadata. That involves some decent intelligence work, some appropriate surveillance and, more importantly, information that should have been used and that should have been collated to prevent this man—both madman and terrorist—from doing the terrible harm that he did. Two innocent lives were lost, in my view, needlessly, and I will wait—for what the New South Wales coroner will say.

These are important matters. The impact of this legislation on the free press in this country, in my view, will be chilling. We failed to have the same sorts of safeguards that the United States, our closest ally, has or, indeed, the broader safeguards that are in the process of being adopted in the United Kingdom. For that reason, I will be moving a number of amendments. I look forward to the committee stages of this bill. But I am deeply concerned that our
democracy will be weakened as a result of the chilling impact this will have on journalists and their ability to do their valuable work.

Senator JACINTA COLLINS (Victoria) (20:17): I will take a moment to respond to the Greens second reading amendment before Senator Brandis winds up this debate. The Greens second reading amendment would defer consideration of this bill until the government provides a full response to the letter from the Communications Alliance tabled by Senator Ludlam today. That letter expressed concern about the government's contribution to costs of the scheme for industry. Labor does call on the government to work with industry to finalise arrangements around the costs of this scheme. We have been clear all along that the government should be transparent about the costs of this scheme with both industry and the public.

The Joint Parliamentary Committee on Intelligence and Security made a number of recommendations about how costs would be met. Chief among them was that the government should meet a substantial proportion of those costs. However, there is no need to hold up this bill while final details of costs are settled. The government has assured us and the public that it will honour the committee's recommendations in full. I also note that the letter tabled by Senator Ludlam does not ask the government to delay this legislation.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:18): In closing the second reading debate, I thank honourable senators for their contributions. In particular, I acknowledge the thoughtful contributions of Senator Leyonhjelm and Senator Xenophon, and I will respond with particularity to certain of the issues which those two senators from the independent crossbench have raised. I see Senator Xenophon is still in the chamber. So let me say to you, Senator Xenophon, that anyone listening to the broadcast of this debate could be forgiven for thinking from some of the language that has fallen from the lips of Senator Xenophon or Senator Leyonhjelm and others who have spoken from the crossbench or from the Greens that this bill proposed an important or significant or even draconian new set of powers which the state would be able to exercise over the citizen. You would think that that was so from what those contributions suggested.

I can tell you and those who may be listening to this broadcast tonight that this bill contains no powers exercisable by the state over the citizen. Not one. The only change that this bill makes to the relationship between the state and the citizen is to introduce safeguards in relation to the access of law enforcement agencies to metadata which were not there before. That is the only change this bill introduces to the relationship between the state and the citizen. Senator Leyonhjelm, whose libertarian principles I greatly respect, would be reassured to know that, whereas under existing law some 85 government agencies and even local councils and NGOs can access metadata, as a result of the bill before the chamber this evening, that number of agencies has been reduced to 21. Those 21 agencies—all of them law enforcement agencies—are set out in the bill, and they cannot be added to except by regulation, which is disallowable by this chamber. So, far from expanding the power and the reach of the state, this bill very significantly reduces the power and reach of the state by reducing by three-quarters the number of bodies which can access metadata without a warrant.
It would shock you, Mr Acting Deputy President Williams, to learn of some of the agencies which today can access metadata but, as a result of this bill, will no longer be able to do so. Some eight Commonwealth departments will no longer be able to do so. Australia Post will no longer be able to do so. The Clean Energy Regulator; the Office of Environment and Heritage of the New South Wales government; and municipal authorities including the Ipswich City Council, the Knox City Council and the Wyndham City Council can today access metadata. As a result of this bill, they will no longer be able to do so.

Would you believe, Mr Acting Deputy President, that even the RSPCA can today access metadata? But, as a result of this bill, they will no longer be able to do so, because this bill, by proposed section 110A, limits the agencies which can access metadata specifically to law enforcement agencies: the Australian Federal Police and the state and territory police forces; the anticorruption authorities in the states; and the principal economic regulators—ASIC, the ATO and the ACCC. All of those agencies of course can access metadata today, as can another 60-odd agencies or entities; as a result of this bill, they will be prohibited from doing so. So, far from expanding the power of the state over the individual, Senator Xenophon and Senator Leyonhjelm, this bill actually does the opposite.

It also introduces a provision that is not part of our law at the moment—that is, a large and detailed architecture of protection for journalists. There are no protections for journalists under existing law. There are no protections for journalists or their sources. But, as a result of this bill, there are protections. And I have heard your critique of them, Senator Xenophon; I will deal with it in particularity during the committee-stage debate. I simply make the broad proposition that, whereas under existing law there are no protections for journalists and their sources in relation to metadata, under this bill there will be. How this bill can then be described as having a 'chilling effect' on the freedom of the press, when it introduces a protection of the freedom of the press which forms no part of the existing law, escapes me.

As well, there are other protective mechanisms, Senator Xenophon. There is, for example, a new role given to the Commonwealth Ombudsman which does not exist under existing law, to ensure that access to metadata is not abused. There are additional powers of oversight given to the Parliamentary Joint Committee on Intelligence and Security which do not exist under the current law, to ensure that access to metadata is not abused. So, far from this being a bill that introduces draconian new powers, it introduces no new powers but extensive new safeguards.

Mr Acting Deputy President Williams, let me explain very simply why both sides of politics, after long deliberation, have concluded that there is a need for this legislation. For more than 20 years or so, telecommunications service providers and ISPs have collected the metadata of their clients as a business record—as a business record—because they needed it for billing purposes. That is why the metadata was stored, and it has been accessed by the 85 or more agencies and entities that I mentioned before, essentially for law enforcement or regulatory purposes. But, with the evolution of technology, the retirement of legacy systems and, in particular, the change in the billing practices of the telcos, it is no longer necessary for them to retain that metadata, so they are not doing so. But, as a result, the capacity of the law enforcement agencies to conduct criminal investigations, which are materially assisted by access to metadata, has been degraded. So the core provision of this bill is to impose upon
telecommunications companies an obligation to retain the metadata that they hitherto had retained anyway for two years. What the bill does, in effect, is freezes the status quo.

So, not only does the bill contain no new powers of the state against the citizen, not only does the bill contain protections which do not exist under existing law; what the bill does in relation to the telcos is it freezes a status quo which has existed for the last two decades and about which we have heard no complaint from those who have suddenly and rhetorically seen fit to claim, erroneously, that the bill contains draconian new powers.

Let me turn to another error, which came from Senator Xenophon, I am sorry to say, and from others who have spoken in this debate—that, as a result of this bill, 'The government will hold our metadata.' No, it will not, Senator Xenophon. The government will not hold metadata as a result of this bill. What this bill does is mandates private industry to retain metadata that it currently retains. It is the private sector, not the government, that will retain the information, the metadata, that it actually currently retains. You praise the American system, Senator Xenophon, but you do not refer to the fact that, in the American system, government agencies hold metadata. But, under our system, no government agency holds metadata. The 21 agencies listed in proposed section 110A of the bill will have access to that metadata on the same basis that they currently do, but with additional safeguards. But that is all.

Let me turn to the claim that has been made, in particular in Senator Ludlam's contribution, that this legislation has been rushed and that there has been insufficient deliberation. Well, Senator Ludlam, I do not know what you think is rushed, but the process by which this legislation was developed was initiated in May 2012—almost three years ago—when my predecessor, then Attorney-General Roxon, sent a reference to the Parliamentary Joint Committee on Intelligence and Security, asking it to review, among other things, the applicability in Australia of the European Data Protection Directive. The Parliamentary Joint Committee on Intelligence and Security, of which I was a member during the last parliament, deliberated at great length throughout the rest of 2012 and the early months of 2013. In May 2013 it produced a unanimous report after a year of deliberation, in which there seemed to me to be endless hearings—the hearings are actually listed in the appendices to the report. It received thousands of pages of submissions. The PJCIS produced this unanimous report. Then, with the change of government and acting upon the unanimous report that was tabled during the period of the previous Labor government, my department developed this bill.

The bill was introduced by my colleague, Mr Malcolm Turnbull—who is not well-known for his authoritarian propensities, I might say—into the House of Representatives on 30 October last year. The bill was referred back to the same committee, which, now under the chairmanship of Mr Dan Tehan, the member for Wannon, deliberated at great length again—in particular during the Christmas period—and on 27 February produced a detailed report with 38 recommendations, many of which involved amendments to the bill, plus a 39th recommendation that the bill be passed. That report was also unanimous. The government, having considered that unanimous report of the PJCIS decided to adopt all of the recommendations of the report. We have the balance of this week—for many hours to come—to debate the bill in the committee stage. So far from being rushed, it cannot honestly be said that that is so, when this is the work of two parliaments, of two successive
governments, of two long inquiries by the Parliamentary Joint Committee on Intelligence and Security, spanning almost three years.

Let me, in the time left to me, turn to—though we will return to it more detail—the claim that we heard from Senator Xenophon that this will have a chill effect on freedom of the press. Well, Senator Xenophon, about a quarter of the bill, about 20 pages, is devoted to a very extensive architecture of protections of the very thing about which you claim to care but which under existing law has no protection is at all—none at all. Division 4C is devoted to the matter. To respond to your claims, Senator, that you fear that a rubber-stamp approach might be taken to approvals, we have a long series of criteria about which the minister must be satisfied and then a long series of criteria in relation to which a court must be satisfied and, uniquely in my experience in Commonwealth law, we have the creation of the special statutory office—a public-interest advocate who can appear and argue where appropriate that it is not in the public interest that a warrant be issued in relation to a journalist or a journalist’s source. At the moment, access to metadata by some 85 agencies and entities is warrantless. This legislation introduces a requirement for a warrant, where none existed before; a more complex series of preconditions and the procedural steps and criteria for the issue of the warrant, where none existed before; and a unique provision for a public-interest advocate, which is unknown in any other area of Commonwealth law enforcement where warrants are required.

It is being claimed by some, particularly from the Greens, that metadata has no utility. Senator Leyonhjelm said the same thing: that the retention of metadata has no investigative significance. I note what you say, Senator Leyonhjelm and Senators from the Greens, but that is not the view of those who actually have the responsibility for carrying out these investigations. As I have done many times, I refer you to the view of the much-respected former Director-General of ASIO, Mr David Irvine, who, when asked about the importance of metadata in the investigation of terrorist crime and terrorist networks, said that it was ‘absolutely crucial’, a view shared by the current Director-General of ASIO, Duncan Lewis, and by the Commissioner of the Australian Federal Police. You may have a scepticism about the law enforcement authorities being interested in accreting to themselves more power, but, as I have pointed out to you, they do not have any additional powers under these laws—none. I, with all due respect to my colleagues, would rather rely on the professional judgement and advice of those who actually have the responsibility than on the wild rhetorical claims of certain senators with no professional experience in the field at all. Metadata is in fact used in every significant criminal, organised criminal, paedophile and terrorist investigation.

Finally, let me address the issue of cost, and I note Senator Ludlam’s second reading amendment, which, of course, the government will oppose. The question of cost is a matter of discussion, and has been for some months now a matter of discussion, between government and industry. The government announced, as Mr Turnbull made clear in his second reading speech in the House of Representatives on 30 October, that the government will make a substantial contribution to the capital costs of industry in establishing a retention regime. In relation to the ongoing costs, a PricewaterhouseCoopers review has estimated that, even if there were to be no government funding, the average cost over 10 years would equate to between $1.83 and $6.12 per customer per annum, with a median price of $3.98 per customer per annum. That is not, it seems to me, with all due respect, Senator, a vast cost for what this
legislation seeks to do to preserve—not to extend; in fact, in important ways to limit—an important investigative capability.

The PRESIDENT: The question is that the second reading amendment moved by Senator Ludlam be agreed to.

The Senate divided. [20:43]

(The President—Senator Parry)

Ayes ......................15
Noes ......................31
Majority ...............16

AYES
Di Natale, R
Lambie, J
Leyonhjelm, DE
Milne, C
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Lazarus, GP
Ludlam, S
Muir, R
Rice, J
Waters, LJ
Wright, PL

NOES
Brandis, GH
Bushby, DC
Canavan, M.J.
Collins, JMA
Edwards, S
Gallacher, AM
Ludwig, JW
Marshall, GM
McGrath, J
Moore, CM
O'Sullivan, B
Reynolds, L
Singh, LM
Smith, D
Urquhart, AE (teller)
Williams, JR

Bullock, J.W.
Cameron, DN
Colbeck, R
Dastyari, S
Fierravanti-Wells, C
Ketter, CR
Madigan, JJ
McEwen, A
McKenzie, B
O'Neil, DM
Parry, S
Ruston, A
Sinodinos, A
Sterle, G
Wang, Z

Question negatived.

The PRESIDENT: The question is that the bill be now read a second time.
The Senate divided. [20:46]  
(The President—Senator Parry)

Ayes .................31
Noes .................15
Majority .............16

AYES

Brandis, GH
Bushby, DC
Canavan, M.J.
Collins, JMA
Edwards, S
Gallacher, AM
Ludwig, JW
Marshall, GM
McGrath, J
Moore, CM
O'Sullivan, B
Reynolds, L
Singh, LM
Smith, D
Urquhart, AE
Williams, JR

Bullock, J.W.
Cameron, DN
Colbeck, R
Dastyari, S
Fierravanti-Wells, C
Ketter, CR
Madigan, JJ
McEwen, A
McKenzie, B
O'Neill, DM
Parry, S
Ruston, A (teller)
Sinodinos, A
Sterle, G
Wang, Z

NOES

Di Natale, R
Lambie, J
Leyonhjelm, DE
Milib, C
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Lazarus, GP
Ludlam, S
Muir, R
Rice, J
Waters, LJ
Wright, PL

Question agreed to.
Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDLAM (Western Australia) (20:49): I might start with a couple of quick general questions that relate to cost since that was the second reading vote that just went down. My first question to the honourable Attorney-General is to ask him to give a sense of how the government sees a couple of issues that I suspect are related. One is the location of storage. We suspect other crossbench senators also have an amendment that relates to where this data will be stored. Is there a requirement—and I do not believe there is—in the bill that it be stored here in Australia? I would expect on advice from the sector that that would potentially raise costs. I understand that where the material should be stored is something that the government is giving some consideration to as well as how the costs should be...
apportioned—such as directly funding telecommunications providers as opposed to letting costs wash through and there being potentially increased data charges or potentially not.

I am interested to know, firstly—and the Attorney-General is welcome to take these questions together, if he wishes—how the government proposes to resolve issues of cost as relayed in the letter from the Communications Alliance and obviously representative of concerns of the CEOs of major and minor telecommunications companies. Secondly, how does the Attorney-General see the issue of where the data is to be hosted and how that may affect considerations of cost?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:50): In relation to the issue of cost, as I said in my contribution on the second reading of the bill, there have been long discussions between government and industry. The government has indicated that it will make a substantial contribution to capital cost. I refer you to the estimate in the PricewaterhouseCoopers report as to the likely average cost per customer per annum. Those discussions have not been finalised. Ultimately, this is a matter that will be determined in the budget process.

In relation to the locality of hosting the storage of data, the bill does not mandate a particular locality. It casts, as you know, an obligation on the ISPs to retain metadata. It is really quite a simple requirement. How they retain the metadata and where they retain the metadata is a matter for them; it is not mandated by the bill. The only thing that is mandated is the type of metadata that is to be retained and the duration of the retention obligation. One would expect that the ISPs would retain metadata in a manner and at a locality which was least costly to them.

Senator LUDLAM (Western Australia) (20:52): I thank the Attorney-General for his concise answers. I refer to comments that were made quite recently by somebody the Attorney quoted a couple of times during his second reading contribution, Mr David Irvine, the former director-general of ASIO. He declared himself a ‘data nationalist’—I think that was the phrase he used. He said that it was his concern that the material be hosted in Australia precisely so that we are not exposed to data-privacy regimes or otherwise of other countries. For example, if smaller service providers choose a Chinese cloud-hosting provider because they offer, as you observe, the lowest costs, that is something that concerns many people. It certainly concerns me, and it appears to also concern Mr Irvine.

I wonder whether you think that issue has any validity. In the course of the various reviews that are occurring into the way that this bill is going to operate, I wonder whether the government's mind is closed to a requirement, as Mr Irvine proposes in his comments, to adopt a position of data nationalism. It is not one that sits comfortably with me, but I am interested to know whether or not the government has a fixed view on this.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:53): Senator Ludlam, I start by pointing out to you that Mr Irvine's views about the location of cloud storages have been misrepresented. There is no more enthusiastic supporter of the bill in its current form than Mr David Irvine. I do not think he would mind me telling you that, when the bill passed the House of Representatives last week, I received a message from Mr Irvine expressing his happiness and satisfaction with the fact that the bill was through the House of
Representatives and looking forward to its passage through the Senate this week. I am not accusing you of misrepresenting him, but I think a remark that Mr Irvine made has been rather taken out of context and exaggerated. Mr Irvine wants legislators, senators, to know that he supports this bill in its current form and is very happy with it.

On the broader issue, the government does not have a closed mind. Australian law currently permits companies to store personal information in the cloud or offshore, provided that the appropriate risk-management strategies are in place. But they are subject—as I imagine you would know, Senator Ludlam—to some obligations, particularly under the Privacy Act. That act requires them to take reasonable steps to notify consumers if their information will be disclosed to an overseas recipient and the countries where the information will be held, and to ensure that any overseas recipient of personal information does not breach the Australian privacy principles.

As well, Senator Ludlam, you would be familiar with recommendation 36 of the 2015 PJCIS report, which recommends that the government introduce the telecommunications sector security reforms promptly. In the latter part of this year, that legislation will be introduced. The telecommunications sector security reforms will contain protections. It would, in particular, operate to provide a statutory framework for security agencies to work with industry to identify and mitigate security risks. Carriers and carriage-service providers would be required to manage security risks, including outsourcing and offshoring, by demonstrating effective control and competent supervision of their networks, the data on them and their facilities. The security framework would be based on a government and industry partnership to effectively manage national security risks and protect data stored and carried across telecommunications networks. So that is the answer to your question. There are, at the moment, under the Privacy Act, obligations, and there is in prospect, later this year, under the telecommunications sector security reforms, additional safeguards.

Senator MILNE (Tasmania—Leader of the Australian Greens) (20:56): Just to follow up on the answer from the Attorney-General, it interests me that you are bringing in legislation that deals with the security issues, after the fact. Why did we not do that first, before you brought that in as it currently stands? I particularly want to go to what you have just said: that the companies will be required to give an undertaking that, if they store the data offshore, it would be compliant with Australia’s privacy requirements. I am interested to know what auditing or enforcement of compliance there will be. A company could easily say, ‘Yes, we undertake to be in compliance with Australia’s privacy laws,’ but store the data offshore. Who is going to audit it? Who is going to enforce it? Where is the compliance?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:57): Senator Milne, you should read the bill. If you want to participate in this debate, it would really be helpful if you read the bill. If you had read the bill, you would be aware that there is an 18-month implementation period for this metadata-storage regime. Well before that 18-month implementation period has run its course, the telecommunications sector security reform legislation will have been enacted—subject, of course, to the will of the Senate—because it will be introduced and deliberated upon before the end of this calendar year. That is the answer to your first question. In relation to the second question, I do not understand that there
is an audit function or obligation under the Privacy Act but, in preparing the TSSR legislation, I will bear in mind the observation that you have made.

Senator XENOPHON (South Australia) (20:58): On this issue that has been raised by Senator Ludlam and Senator Milne, I accept what the Attorney has said—that Mr Irvine, a former director-general of ASIO, welcomes this legislation and congratulated the Attorney for its passing. But Mr Irvine did say in the media that he is a cybernationalist when it comes to where you position the cloud. In fact, I asked the Attorney questions about this in question time last week. I appreciate the context that there will be further legislation to deal with these issues, in terms of the implementation of metadata. I ask the Attorney this particular question: does he broadly agree with the concerns of Mr Irvine—someone that he and many others in the committee have enormous respect for—that it is preferable for the cloud, in a sense, to be hovering over Sydney, Melbourne or Adelaide rather than over Shanghai or Bangalore?

As a general principle can the Attorney-General indicate at this stage whether there will be a preference, from a policy point of view, that any storage should be controlled here in Australia, by Australian providers, rather than being offshore?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:00): I do not want to give any credence to the suggestion in your question that Mr Irvine has some misgivings about the way in which the matter is dealt with by this legislation because I can tell you he does not. I know that Mr Irvine is unhappy that the remarks to which you have referred that are attributed to him have been interpreted wrongly to suggest that he does. In relation to the broader issue, I really cannot add to what I said in response to Senator Ludlam's intervention. Australian telecommunications companies are subject to Australian law, wherever the data is stored, as you would be aware.

Senator XENOPHON (South Australia) (21:01): In a story by Mark Eggleton in The Australian Financial Review, Mr Irvine essentially said that the would feel much more comfortable if data were governed by Australian law rather than law by some other country. I will not take it any further than that. I accept what the attorney has said. I think it is important that any metadata that is stored is stored with very much Australian control, by Australian entities and under Australian law. I do not want to take it any further than that. I do look forward to the next tranche of this legislation, or consequential legislation, so that the unmisrepresented concerns of Mr Irvine can at least be addressed.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:02): I am sure we would all as Australian legislators be most comfortable if the obligations which are imposed are obligations imposed by Australian law. The point I made to Senator Ludlam, and which I would make to you, is that the obligations under the Privacy Act and under the telecommunications sector security reform legislation which is in prospect will be obligations arising under Australian law binding companies carrying on business in Australia, wherever the metadata may be stored.

Senator LEYONHJELM (New South Wales) (21:02): Senator Brandis, I am just wondering if you could explain the thinking behind requiring a warrant for journalists metadata but not the metadata of others who have particular concerns about the privacy of their relationships. I refer in particular to lawyers, and their clients, and medical professionals.
I have received representations from quite a range of legal professionals, including the Law Society of New South Wales, expressing concern that their metadata will be exposed to this regime without the protection provided to journalists via a warrant system.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:03): The blunt answer to your question is that the government did not consider that it was necessary to have a special regime for journalists because this law is not about journalists. As I said in an interview with a media organisation early last week, this is a law about terrorists, organised criminals, paedophiles and people who are likely to be the subject of investigation by the police. Frankly, I am not acquainted with any journalists who are terrorists, organised criminals or paedophiles—and I do not think there are any; I am sure there are none. The 20 pages that have been introduced into this bill have been introduced really to put to rest what I consider to have been a false issue. But people, in good faith, were troubled by this—including your good self—in my view unnecessarily and unwarrantedly. Nevertheless, we have introduced this into the legislation.

In relation to members of the legal professional, there is a pretty clear answer to your question. This is a bill about metadata; it is not about the content of a communication. I can understand the argument that the metadata of, for argument's sake, a telephone connection between a journalist and a telephone number could identify a source. But what the law regarding lawyer-client privilege protects is legal advice, which is, of its very nature, content. The law relating to lawyer-client privilege does not protect or prevent a person from being asked, for example, whether he had engaged a lawyer or whether he had had a communication with a lawyer. The interest, the confidential information that that legal principle protects, is what the lawyer advised the client or what the client may have told the lawyer in the course of seeking advice and representation. So the whole basis of this legislation, which excludes content, means that legal advice or what passes between a lawyer and his client could never be captured by it.

Senator LEYONHJELM (New South Wales) (21:06): I will frame the question a little differently in the context of something that I hesitate to say I know more about—in theory at least—than lawyer-client confidentiality, and that is medical professional confidentiality. Yes, you are right in saying that the content is not the subject of this legislation; it is the metadata. But the metadata includes the heading, for example, in an email. Suppose a doctor emailed somebody, stating, 'Your venereal disease test results'—they did not state what those results were, just simply, 'Your venereal disease test results'—how could it not be a serious imposition on both the doctor and particularly the patient to have that kind of information available without a warrant?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:07): Senator Leyonhjelm, the answer to your question is that your premise is wrong, because that would be content. And it is not correct to say that the heading line on an email would be caught by this legislation. It is not, because that is content. So that is the simple answer to your question. More broadly, except where the states and territories may have made specific statutory provision, of which I am unaware, the relationship between doctor and patient is not protected in the way that the relationship between lawyer and client has traditionally been protected. So,
for example, a doctor called to give evidence in the witness box could be required to disclose matters about a patient, which he only knew by reason of a professional consultation, whereas a lawyer could not be asked a question obliging him to disclose information provided to him by a client. The conceptual bases of lawyer-client privilege are quite different from the reasons the law does or, in this case, does not protect other relationships which, in the public arena, are regarded as confidential. Bear in mind also of course, Senator Leyonhjelm, that lawyer-client privilege is really an aspect of the rules of evidence. It is an aspect of the admissibility or exclusion of evidence in a proceeding before a court.

Senator WRIGHT (South Australia) (21:09): Perhaps if I could follow up on that issue around lawyer-client privilege, which has been raised very firmly by various legal commentators in Australia, including the Law Council. I would just like to ask the Attorney-General to respond in a bit more detail about issues that have specifically been raised by Mr Duncan McConnel, President of the Australian Law Council, who says that some of this information in relation to lawyer-client communications may, potentially, be caught under the bill. Firstly, I will quote from Mr McConnell. He says:

It is not difficult to envisage situations where client/lawyer telecommunications data would reveal a range of information that could compromise confidentiality and even legal professional privilege.

For example, what would happen if a whistle-blower seeks legal advice prior to, or during communication with a journalist? Under the proposed amendments, the journalist's communication may be confidential, but what of the communications between a journalist or the journalist's source and the lawyer?

Data could allow inferences to be drawn from whether a lawyer has been contacted; the identity and location of the client, lawyer and witnesses; the number of communications and type of communications between a lawyer and a client, witnesses and the duration of these communications …

So they may not go to content, as we understand it at this point in time, but they certainly go to the relationship, the manner, the occurrence, the time, the length and the number of communications that have occurred. He goes on to say:

The Law Council's position is simple—lawyer communications deserve the same level of protection to that afforded to journalists …

I suppose my question is: is that a concern that has been consistently raised? There are really good policy reasons for protecting lawyer-client communications. Why is it, Attorney, that lawyer communications do not deserve the same level of protection as that afforded to journalists?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:11): Because, Senator, there is no possibility that the principles governing lawyer-client privilege could be violated by a bill that may not access or cause the disclosure of content. That which is protected is the lawyer-client relationship and what passes between a lawyer and the client in the course of that professional relationship. What the client tells his lawyer and the advice that the lawyer gives his client is content.

This bill, ex hypothesi, does not deal with content. It is defined specifically to ensure that it does not deal with content. So the mischief to which you refer could never arise. And, as I said to Senator Leyonhjelm, it is conceivable that a journalist's source could be disclosed by metadata. It is, at least theoretically, conceivable. Let me give you an example. Let us say a
journalist's metadata was accessed and it appeared that the day before the journalist published a particular scoop, the journalist was ringing a particular telephone number and that was the telephone number of a person who was leaking confidential information to the journalist. That person could be identified and, by a process of inference, it might be concluded that the telephone communication between the journalist and the particular telephone number identified the source of the leak and therefore identified the source. This is the difference you have to understand, Senator Wright. Where we protect journalists' sources, we protect their identity. Where we protect lawyer-client confidentiality, we protect what passes between the lawyer and the client—not the identity of the lawyer or the client but what the client says to the lawyer and what advice the lawyer gives to the client. That is the difference.

Senator WRIGHT (South Australia) (21:14): I am trying to work out the potential implications of that. If, for instance, a government was minded to raid a lawyer's offices on the basis that it had suspicion that that lawyer had information that the government might be wishing to gain access to and the reason that the government might have that information might be related to identification of communications between that lawyer and a particular client, whether that particular client might also be considered to possibly be a whistleblower because they have talked to a journalist or had some other interest, that would not necessarily be in relation to the content of the communication between the client and the lawyer. But certainly that information about the contact, the number of contacts, the time of contact and the fact that communication was occurring would be relevant and could indeed be useful information for a government that was intending to do that kind of investigation such as visiting lawyers' premises and looking at their files and their records.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:15): Senator Wright, I love this topic and I could talk to you about it for hours. Let me point out why the example you have given is not germane. In order to attract lawyer-client privilege, the relevant information has to be information arising during the course of the lawyer-client relationship. It has to be information arising or exchanged in the course of the lawyer's retainer. If a person happens to be a friend of a lawyer and visits them at their home for a barbecue, let us say, and they have a conversation, obviously what passes between the lawyer and the client during that social conversation is not protected by lawyer-client privilege merely because one of the interlocutors happens to be a lawyer and the other happens to be a client of his for other purposes.

With the example you have given, if a particular lawyer's client was a whistleblower, well, he was a whistleblower—it has nothing to do with the lawyer-client relationship, the terms of the retainer; the scope of that which is protected is confidential information arising in the course of that relationship.

Senator LEYONHJELM (New South Wales) (21:16): One of my concerns is the definition of 'journalist'. It would appear that freelance journalists, bloggers, amateur journalists and so forth will not enjoy the protections of the warrant process that professional journalists will enjoy. Attorney, can you please advise me on that?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:17): Senator Leyonhjelm, I think you have some amendments in relation to this. The government is of the
view that this limitation on the ordinary scope of the legislation should be confined to journalists working in the professional capacity of a journalist. That is a straightforward test currently used in division 119 of the Criminal Code. As we have the not unmixed pleasure of dealing with journalists ourselves in the course of our working day, we know there has been a debate about what are the metes and bounds of journalism, particularly in the era of so-called citizen journalism when there is a huge multiplicity of blogs written by people who would like to be protected by the privileges that protect journalists, but the decision the government has made has been to confine the definition of journalist to the narrow and traditional notion of a person engaged in the profession of journalism—or, to use a vernacular expression, a working journalist.

As my colleague the Minister for Communications, of course a former journalist himself, said in the other place when dealing with this issue, a journalist is a person who is engaged in the collection and dissemination to the public of material in the form of news, current affairs or a documentary, or in commentary or an analysis of such material—and the bill is drafted to reflect that traditional and orthodox understanding of what the profession of journalism consists of.

Senator LEYONHJELM (New South Wales) (21:19): I participated in some of the hearings of the Senate committee inquiring into revisions to the Telecommunications (Interception and Access) Act. Some of the witnesses described how they were voluntarily retaining information about their customers in order to benefit those customers who made subsequent inquiries as to their data usage, essentially. It was not all of them—some of them were doing it. The maximum period that anyone was doing it for was three months. It would seem logical that if you are going to solve a crime three months of metadata would be fairly handy to have. I am just wondering whether consideration might have been given to having the retention period for three months and on what basis did the government decide not to limit it to that period?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:21): Before I turn to that, Senator Leyonhjelm, let me add some information to my answer to your last question. I should point out to you that this issue of the definition of a journalist is also dealt with in the explanatory memorandum. I refer you to paragraph 443. It basically says what I just told you, but it sets it out a little more fully.

The selection of two years as the retention period was the conclusion to which the Parliamentary Joint Committee on Intelligence and Security unanimously came. Of course, one must always make a judgement. The purpose for which this metadata is being retained is to facilitate and assist investigations. It is entirely possible that the retention of metadata for a longer period than two years might assist some investigations which would not be helped if the metadata is destroyed after two years. On the other hand, of course, there will be many investigations in which the relevant acts or events which might be disclosed by the metadata will have occurred much less than two years after the investigator seeks access to them. There is a degree of an arbitrary time limit here. All I can say to you is that two years was the period chosen by the PJCIS, on the advice of the agencies, as a reasonable period within which their investigative needs were—in most, though not necessarily all, cases—likely to be met.
In relation to the metadata-retention practices of ISPs, there is no common standard. It is one of the problems here—there is no common standard. I do not say they all retain metadata for precisely two years; some retain it for less; some retain it for longer, as a matter of fact. After long discussion, which I well remember, in particular with the intelligence agencies, it seemed in all the circumstances to be the right period to reconcile the need not to hold onto this material indefinitely with the need for it to be retained sufficiently long to be serviceable and useful to an investigation.

Senator LEYONHJELM (New South Wales) (21:24): Attorney, the publicly stated justification for the data-retention system and obligation to retain data is to deal with terrorism and paedophilia. I acknowledge that the number of law-enforcement agencies with access to the data will be, thankfully, substantially reduced. I think that is commendable. But what will prevent them from using this for the quite wide range of relatively trivial offences that similar data retention involved in the United Kingdom?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:24): I think you have to take a practical view of this. The resources of agencies, and police agencies in particular, are concentrated naturally on the most serious crime. The particular motive or reason or purpose of the government and the opposition—which at the time of the first PJCIS inquiry were, of course, themselves the government—in bringing this forward was to deal with terrorism. I make no apology for saying that. It is also true that access to metadata is not just useful for investigating terrorist networks. It is useful for investigating other, particularly networked, criminal groups: paedophilia, notoriously, which we know from investigations operates through networks and often over the internet; organised crime. Common or garden crime is less likely to involve reliance upon networks perhaps of people in different countries.

So it is a question of judgement by the law-enforcement agencies. It is a question of how they allocate their resources. But we do know that some types of crime—terrorist related crime is one of them, organised transnational crime and transnational crime is another of them, and paedophilia is another of them—in which the modus operandi, as it were, of those involved peculiarly involves reliance upon networks. It is the mapping of those networks which is particularly important in locating and identifying the actors, and that is something that is facilitated by access to metadata.

Senator LEYONHJELM (New South Wales) (21:27): Thank you, Attorney. I acknowledge that ASIO, AFP and ASIS will only be focusing on serious crime, the kind that you mentioned. But I also note that ASIC and the ACCC are to be included among the list of law-enforcement agencies. My experience with ASIC is that if you do not lodge your annual return they are relentless—relentless—in pursuit of you. The ACCC recently took an egg producer to the Federal Court for not producing their eggs under what they thought were acceptable free-range conditions. In other words, they did not think they had enough space to be justifiably called free range. Can you give me a guarantee that the retained metadata will not be used by ASIC and ACCC and others of the less significant agencies for such types of infractions?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:28): Let me say three things to you, Senator Leyonhjelm. First of all, I really admire your commitment to
economic liberty. I really admire it, and I admire your scepticism about economic regulatory agencies and the risk of over-reach of their powers, so let me put that on the record. I am much of your mind. The second point I would make to you is that in the original draft of this bill, as it was introduced on 30 October last year, the ACCC and ASIC were not included in the list in section 110A of agencies that would have a right to access metadata. But the PJCIS, in recommendation 20 of its report, recommended that they be included. I think we do have to acknowledge that ASIC and the ACCC are the two most important economic regulators in this country. We have to acknowledge that there is a great deal of conduct, including criminal conduct, conduct such as cartel conduct and conduct such as market manipulation and other forms of commercial fraud, which it is the remit of the ACCC or ASIC, respectively, to investigate and to police. Although the primary target of this legislation is terrorism, organised crime and paedophilia networks, there will be circumstances in which it will be useful for ASIC and the ACCC to have access to metadata for those purposes. Although I cannot give you the guarantee you seek, I can tell you that under the existing law there is no limitation either. At worst, from your point of view, this law does not change anything for the worse. It does not change anything at all in relation to the capacity of the ACCC and ASIC to have access to this information.

Senator LEYONHJELM (New South Wales) (21:30): I heard your closing speech in the second reading debate from my office. I noted that in your remarks you said that in many respects this tightens up access to metadata and that many agencies do not have any restrictions on their access to metadata, which they will have under this legislation. The difference, of course, is that the ISPs in many cases do not store the metadata for those agencies to access. Under this legislation they will be required to store it for two years, as you know. What I would like from you is to explain whether that changes anything. What you are suggesting is that the situation will not be any worse. There will be two years of metadata available. If ASIC, the ACCC or one of the other agencies with lesser status, if you like, to ASIO, the AFP and so forth, who are chasing terrorists and paedophiles, have a mind to use it for trivial offences, and there is precedent for that overseas, is there anything actually to prevent them from doing so?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:32): I would have hoped you might be rejoicing, libertarian as you are, that the number of agencies and entities which would access the metadata has been reduced from 85 to 21. That is a reduction by more than three-quarters. At the moment, as a result of this legislation, only the core law enforcement agencies—and the two main economic regulators, I will acknowledge—will have access. I think you need to be realistic, Senator Leyonhjelm. Police forces, but particularly the economic regulatory agencies, are resource constrained. They make judgements about the allocation of their own resources. I for many years used to act for the ACCC on a regular basis. I know them very well and I know that the enforcement committee, as it used to be called, makes judgements about which particular matters to pursue and which particular matters to let go. Those are a function, of course, of the severity and unlawfulness of the conduct involved, but they are also a function of the available resources. You would not expect, as a matter of common sense, an economic regulator to devote limited resources in the pursuit of trivial matters. I think it is that practical common-sense consideration, rather than any statutory guarantees, which should put your mind at ease.
Senator LUDLAM (Western Australia) (21:34): I have just a couple of questions tonight. I will save most of mine until we get to the clause by clause, because they relate to specific amendments. By way of confirming and maybe closing that thread from Senator Leyonhjelm, is it the case that there is no essential gravity of conduct threshold? We have narrowed the range of agencies which is appropriate—I commend the government for doing that; I do not think I have heard a critical work from any stakeholder about that step—but there is no actual threshold of gravity of conduct below which it would be unlawful or outside the ambit of the act?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:34): No.

Senator LUDLAM (Western Australia) (21:34): I would like to know what the government’s process is for establishing the overall start-up costs. You gave us earlier some rough calculations relating to operating costs, once the infrastructure is up and running, both of new storage capacity and whatever other infrastructure the ISPs and telcos need to install. Firstly, Senator Brandis, are you in a position to provide the Senate with the source documents that you are quoting from? It is my understanding that this parliament has not seen either of the two consultancies that were undertaken by PwC. It is good that you are reading from them; I had not heard those numbers before. Can you provide us with those documents or a summary of them, please?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:35): In relation to the capital cost, there has been, as I said earlier in the debate, a quite long negotiation between government and industry, and there are very diverse estimates of the capital cost—I see you nodding—as I think you know. As to which of those within that diverse range the government will settle upon as a reasonable estimate of the capital cost across industry and as to the percentage contribution the government will make to that figure as its substantial contribution, as promised, to the capital cost, those are matters currently before the government. They are a matter of deliberation as part of the budget process, because there will be an outlay here, of course. Those matters, because they are part of the budget deliberations at the moment and are cabinet in confidence, I am not at liberty to share with you.

Senator LUDLAM (Western Australia) (21:37): Perhaps the Attorney cares to also address the direct question that I put as to whether he is able to share the PwC documentation with us, because I do not think the parliament has seen either the documents or a summary of them.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:37): Senator, I have told you as much as I feel able to. That is also a cabinet-in-confidence document and I am not in a position to release it to you.

Senator LUDLAM (Western Australia) (21:37): With the greatest respect—and the Attorney-General has been here longer than I have—I cannot recall in my experience a government bringing forward a bill with support from the opposition that it did not know how much it would cost. You do not know to within the nearest $100 million what it is going to cost. That is remarkable.
Senator Brandis interjecting—

Senator LUDLAM: I can finish, Senator Brandis; I am still going. It is remarkable that you would bring forward a bill without knowing how much it is going to cost or how you are going to evaluate the costs. A specific question: unless you are going to be walking something of a tightrope, the government are going to be facing claims by industry at very different scales, operating very different kinds of back-end systems, who are going to be putting all kinds of claims to you. Without casting aspersions on the telecommunications sector, you are going to be in a position of having to judge whether these are ambit claims or whether they are reasonable. Presumably, industry is not going to put cost claims to you that do not cover their costs. I understand it is going to have to be case by case, and maybe that is why you cannot give us an aggregate figure. What is your process going to be for assessing the fairness or otherwise of these cost claims by different providers?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:38): To deal first with your first observation, I did not say that the government does not know what figure it is dealing with. I said there are a range of estimates and the government, as part of this process, will select what it considers to be the most reasonable and credible estimate and contribute a substantial proportion of that as its contribution to the capital costs of industry.

In relation to the other matters that you raise, a lot of the considerations that you have adverted to are, I think, very pertinent considerations. I do not cast aspersions on the telecommunications industry either, but the hazards that you identify in a negotiation of that kind are undoubtedly present and they are something that the government is seeking to guard against. That is why we have had the long consultation with industry, by the way. So that is the process. The process is the consultation with industry to satisfy ourselves—I think you would acknowledge that it can only be an estimate—what is the most reliable and credible estimate to use as our base figure for the proportionate contribution that we have promised to make. In that regard, I will not read it into the record because I do not want to prolong things, but recommendation 16 of the PJCIS report also specifically addresses the issue you raise and was adopted by the government.

Senator LEYONHJELM (New South Wales) (21:40): Attorney, one of my concerns, I suppose, is that this bill has, like the previous national security legislation, had very limited scrutiny by anyone other than the Parliamentary Joint Committee on Intelligence and Security. As a consequence, I and the other crossbench senators have struggled, I suppose, to address its implications and, as a result, these committee phases of the bill's consideration by the Senate have been protracted and difficult and, I know, frustrating to you. I wonder whether you have any views as to what the process might be for when this bill is reviewed and whether or not that process might be broadened to include those who currently have had no opportunity to comment on this prior to seeing it in the Senate.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:41): You are right when you say that the principal committee consideration of this bill has been by the Parliamentary Joint Committee on Intelligence and Security. The first report—that is, the report of the previous parliament—was prepared after there had been nine full hearing days, which is, by anyone's measure, a very long committee hearing process. The report of the
PJCIS that was tabled on 27 February was also the subject of extensive hearings—in fact, public hearings.

Senator Leyonhjelm, it is the case that the PJCIS does not at the moment contain any members of the Senate crossbench. It is not a committee that excludes independent members of parliament. For instance, Mr Andrew Wilkie was a member of the PJCIS throughout the course of the entire inquiry during the last parliament, which was the genesis of this legislation. The composition of the PJCIS, like the composition of all parliamentary committees, whether joint or committees of either chamber, are a matter of deliberation between government, opposition and independents and crossbenchers. I do not, with respect, think it reflects poorly on the process that the members of the committee on this occasion did not include any of the Senate crossbenchers. As you rightly point out, we look like we are having a very long committee stage debate, in which I am available to you to respond to any questions you may have. But the composition of any parliamentary committee cannot guarantee that any individual minor party or independent member will be a member of that committee, and I think you understand that.

Senator XENOPHON (South Australia) (21:44): I will just put a general question to the Attorney-General, as this appears to be the appropriate time. There is a long piece on security issues called 'The whole haystack' by Mattathias Schwartz in the 26 January edition this year of The New Yorker. I know the Attorney-General has limited time to indulge in reading The New Yorker, but I will send it to him. He may find it of some interest. Essentially, the point made is that almost every major terrorist attack on Western soil in the past 15 years has been committed by people who are already known to law enforcement. A whole range of examples were given, such as that one of the gunmen in the attack on Charlie Hebdo in Paris had been sent to prison for recruiting jihadist fighters. He goes on and refers to the men who planned the Mumbai attacks in 2008, saying they were under electronic surveillance by the United States, the United Kingdom and India.

The point made is that, in each of these cases, the authorities were not wanting for data. What they failed to do was appreciate the significance of the data they already had. I appreciate what the Attorney-General said in his summing up speech about what he considers to be the breadth of this legislation. My question to the Attorney-General is: with this ability to access metadata, will there be a different approach to assessing that information to avoid the mistakes of intelligence agencies referred to overseas, where they failed to appreciate the significance of that data? General Keith Alexander, the former head of the National Security Agency, has called all this digital information 'the whole haystack'. How do we find the needles when the haystack seems to be so much bigger? I hope he understands the spirit in which I ask this question. It is not being provocative. How do we ensure that intelligence agencies are not swamped with so much information that they do not make a good analysis as to where the threats are?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:46): I do not think you are being provocative, Senator Xenophon. I hope nothing I have said causes you to be fearful that I think you are being provocative. I think you are asking constructive questions in a genuine spirit of inquiry, if I may say so. I do not have much time to read The New Yorker. What little time I have I have to read magazines I devote to reading The Spectator.
Therefore, I have not read the article to which you have referred in your question and I cannot comment on it.

You seem to be making two points, as I understand you. The first point is whether the fact that, in most terrorist outrages in recent years, the perpetrators were known to authorities means that access to metadata is not of utility. The answer to that question is that, although in some cases what you say is true, in other cases it is not true. For example, in the outrage that we suffered in Australia in Martin Place last December, Man Haron Monis was known to the authorities, but he was not known to the authorities as a terrorism suspect. He was not considered to be assessed by the authorities to be somebody who they appreciated was likely to commit a crime of the kind that he committed. So, although he was on their radar, it was not in that capacity, which is why he was not on a so-called watch list.

Senator Xenophon: But he was previously.

Senator BRANDIS: He was not on a so-called watch list at the time. The main point about metadata is it is primarily an investigative not a surveillance tool. It cannot be a surveillance tool, and I think, with respect, Senator Xenophon, you are confusing the American experience with the Australian experience. As I tried to explain to you before, in America the agencies collect the metadata, and I daresay some of the metadata held by the agencies in the United States are used for surveillance purposes. But in Australia no government agency collects metadata. It does not today and it will not as a result of this bill.

This is, as I say, a retention obligation imposed on the private sector, not an obligation to surrender that to a government agency. In a way, you can regard this bill as being as prosaic as a bill about business records. Just as, under the Taxation Administration Act, we oblige people to retain their tax records for five years, so we are obliging telcos to retain metadata for two years. This is a bill essentially about the retention of business records. But they are business records which potentially have a usefulness in an investigation. For that reason, ordinarily, the utility of this will be ex post facto for investigative purposes, rather than, as I said before, for surveillance purposes, which is not why it exists.

Coming to the second point I understand you to be making, I think we should leave it to the agencies to judge what information is useful to them because it is not the agencies that collect or hold this information. It is the agencies that seek the information, that require it to be provided to them by the ISPs that hold it. In making that request, as they do now, the agencies make a professional judgement as to what particular items of metadata are useful to an investigation.

Senator XENOPHON (South Australia) (21:51): I am grateful to the Attorney-General for his response, but I want to go back earlier to the issue of the PJCIS—the Parliamentary Joint Committee on Intelligence and Security. Reference was made to my friend and fellow independent Andrew Wilkie, the member for Denison. I want to put on the record that there is a big difference between the PJCIS and the United States Senate Select Committee on Intelligence. In the United States, the members of the Intelligence Committee are briefed on operational details. My understanding is that the PJCIS is banned from anything other than administration and the financing of agencies. It is much more circumscribed in terms of what it can look at than in the United States. So I worry that the charter of the PJCIS, compared to the United States committee, is much more limited. I will not labour the fact but I think that that distinction needs to be made.
My final question—and I am grateful to the Attorney for his response—is: when you have obtained the whole haystack, does the fact that there is all this additional information in any way fetter the work of intelligence agencies, in that they are looking at that rather than focusing on risk assessment?

I take issue in relation to Man Haron Manis. He was on a watch list and he dropped off that watch list; and I know the Attorney has acknowledged that. I am not privy to the information, of course, that others would be, other than what I read in the media about this, but I still cannot understand to this day why that man, both madman and terrorist, was on the streets, given his extensive history. The issue is one of assessment by intelligence agencies. Whilst he was not regarded as a terrorist threat at the time of the Martin Place siege and the tragedy that unfolded, that it resulted in, I wonder whether that raises the issue of a failure of our intelligence services to appropriately assess him as a terrorist threat and the fact that, in my view and, I think, the view of many others, this man, with his extensive history, should not have been on the streets.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:53): I do not want to revisit that, Senator Xenophon, other than to remind you that this matter was looked at very closely and promptly by the Thawley-Comley review, which was conducted by, respectively, the Secretary of the Department of the Prime Minister and Cabinet and the secretary of the Premier's department in New South Wales.

Senator Xenophon, you are right when you say that the Senate intelligence committee of the United States and the House of Representatives intelligence committee of the United States have more extensive oversight powers over the intelligence agencies in that country than does the PJCIS. When I was in Washington last year, I actually met with the then respective chairs of those committees, Senator Feinstein and Congressman Rogers. But I do not think we should fall into the trap, Senator Xenophon, of assuming that, just because the Americans do it in a particular way, that therefore represents some kind of gold standard. We in Australia have an office of Inspector-General of Intelligence and Security, which does not exist in the American system, who has a very wide ranging statutory charter to investigate the conduct of the intelligence agencies, including a power to investigate the way in which they have conducted particular intelligence operations. Now, that is a function located in that official in the Australian system that does not exist in the American system.

Lastly, having served for a term during the term of the last parliament as a member of the PJCIS, I have to tell you, Senator Xenophon, your understanding of the scope of its capacity to inquire is too limited. The PJCIS, although it does not examine operational matters in granular detail, does nevertheless receive briefings—for example, from the director-general of ASIO or the Commissioner of the Australian Federal Police—which are more than, as it were, auditing exercises. It is informed by the heads of the respective intelligence and policing agencies, in the broad, of the work they undertake, their assessment of risks and threats and where those risks and threats lie, and how the agencies are responding to them.

Senator XENOPHON (South Australia) (21:56): I appreciate the Attorney's response. Very briefly, in respect of IGIS I think it is fair to say that, whilst IGIS has extensive powers, very little information can be forthcoming, even through a Senate estimates process, which I think is quite unsatisfactory. But can the Attorney indicate whether, given these metadata...
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:57): This was looked by the PJCIS, actually, in considering this bill. Can I refer you, Senator Xenophon, to committee recommendation 34, which provides:

The Committee recommends that the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 be amended to provide that the Committee may inquire into any matter raised in the annual report prepared under proposed section 187P, including where this goes to a review of operational matters.

Legislative change to the Intelligence Services Act 2001 should be implemented to reflect this changed function.

The Committee further recommends that the Commonwealth Ombudsman and Inspector-General of Intelligence and Security provide notice to the Committee should either of them hold serious concerns about the purpose for, or the manner in which, retained data is being accessed.

The government responded positively to that recommendation. The government's response—let me read it to you—is this:

The Government considers there is benefit in conferring an appropriate function on the Committee for the purposes of establishing a further oversight mechanism for the operation of the data retention scheme.

Consistent with the focus of the PJCIS on non-operational matters concerning security and intelligence, the new function would enable the PJCIS to inquire into the effectiveness of the operation of the data retention scheme, with respect to the purpose and manner of access by ASIO and AFP (to the extent those agencies are the subject of PJCIS oversight).

So, that recommendation was adopted, at least in part, by conferring an additional power, and that is reflected in one of the clauses of the bill before the chamber. But the government has not gone the further step, for reasons that I have indicated, of modelling or remodelling the PJCIS along the lines of the US Senate or House intelligence committees.

Senator LUDLAM (Western Australia) (21:59): I will put a really quick question to the Attorney. It is my last question tonight on costs. It is about the formal mechanism, if there is one, for assessing costs from individual telecommunications companies. Are you standing a working group? Will it be done by way of a consultancy? How will it be done?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:59): Senator, all I can say to you is that the funding model, which the government has developed, will be approved through the budget process. When the budget is published, you will know.
ADJOURNMENT

The PRESIDENT (22:00): It being 10 pm, I propose the question:
That the Senate do now adjourn.

World Tuberculosis Day

Senator SMITH (Western Australia) (22:00): I am grateful for this opportunity this evening to rise and briefly acknowledge that today, 24 March, marks World Tuberculosis Day, which aims to raise awareness of the fact that, even in today's modern world, tuberculosis is a disease that causes the death of nearly 1.5 million people each year. The date for World Tuberculosis Day is chosen because 24 March marks the anniversary of the day in 1882 that German Nobel Laureate, Dr Robert Koch, discovered the bacterium which causes the disease.

I think most Australians would be surprised to learn of the prevalence of TB in today's world. Many of us think of it as a disease that has been consigned to history. But, in fact, the World Health Organisation estimates that around 9 million people contracted the disease in 2013 and, as I mentioned a moment ago, around 1.5 million lost their lives to TB in that year alone. The overwhelming bulk of these cases occur in developing nations. Further, the World Health Organisation estimates suggest around two billion of the world's citizens are infected with latent TB. That is almost one third of the world's population—and the chance of latent TB becoming active in a person's lifetime is around 10 per cent. Those at highest risk are those with compromised immune systems—people living with HIV, the undernourished and smokers are at particular risk. TB is ultimately responsible for around a quarter of all HIV-related deaths.

Last night, as chair of the Parliamentary Liaison Group for HIV/AIDS, Blood Borne Viruses and Sexually Transmitted Infections, I was pleased to join with a number of parliamentary colleagues from all parties, including Senator Moore who is in the chamber this evening, to attend an event here in Parliament House to launch the Australasian Tuberculosis Forum. We were joined by the Minister for Foreign Affairs, Hon. Julie Bishop, representing the Prime Minister, who announced that Australia will offer further support towards the eradication of tuberculosis and malaria in the Indo-Pacific region. This $30 million investment over three years will help with the introduction of new diagnostic tests and drugs to deal with the epidemic. When we say 'developing nations', many Australians automatically tend to think of the nations of Africa. But it is important to realise that this epidemic is one that is very much occurring in our own region. More than half of global TB cases—around 56 per cent—occur in the Asia-Pacific, with our nearest neighbour, Papua New Guinea, being especially hard hit at present.

Last night's function was also addressed by the chair of the newly formed Australasian Tuberculosis Forum, Dr Justin Denholm, who offered some interesting historical analogies. In Australia, 100 years ago, TB was contracted by around 100 people in every 100,000—which is about the same as the rate as those affected today in Malaysia or Thailand. In Australia now, the infection rate is fewer than just six in every 100,000—meaning there has been roughly a 20-fold decrease in infections over the past century. That is, indeed, a very happy story. Our challenge is now to determine the best way to share that good fortune with our
neighbours. Announcements such as the one made by Minister Bishop last night are an important part of the process.

Last evening's function also heard some harrowing personal stories, including one from Mrs Louie Zepeda, a young woman from the Philippines who was on her way to building a strong career as an architect before contracting tuberculosis meningitis. Regrettably, her condition worsened, with the effects including paralysis, insomnia and psychosis from the gruelling treatment regime that she undertook. Eventually, the treatment left Mrs Zepeda blind, thus ending her burgeoning career as an architect. Sadly, her story is just one of many similar tales.

Current tools for prevention, diagnosis and treatment of TB are outdated and have not really evolved from the time the test was first developed in 1882. It has a number of limitations, not least of which being that it only detects 45 to 60 per cent of active TB cases and is not able to detect multiple-drug resistant TB. The current TB vaccine was developed in 1921, but is largely ineffective in preventing adult TB, can wear off over time and does not offer adequate protection against TB of the lungs.

TB is one of the most serious public health challenges now affecting our region. It is my hope that Australia's ongoing efforts to provide support to nations in our region suffering through the epidemic will play a significant role in reducing the disease's impact in the years immediately ahead. In conclusion, I would like to extend my gratitude to Mrs Mary Moran and Ms Isabelle Brown of Policy Cures who first came to see me in my capacity as chair of the Parliamentary Liaison Group for HIV/AIDS, Blood Borne Viruses and Sexually Transmitted Infections. Their passion, their commitment and their conviction are very powerful tools for advocacy around TB issues. I am sure many of us would share their ambition for a modern cure for TB.

New South Wales Electricity Network

Senator DASTYARI (New South Wales) (22:06): Three days out from the New South Wales state election, I rise to tell the real story about the sale of that state's electricity network, which is only starting to emerge—and what a sordid tale it is. Tonight, I put to this place that the New South Wales Premier, Mr Mike Baird, must make a full disclosure. Under state law, ministers are obliged to provide summaries of all their meetings. These are called diary disclosure summaries. And, at first glance, the Premier appears to be complying with this requirement. Well, actually, that is not quite accurate. It appears that he has been complying with this requirement. But there are no diary disclosure summaries—absolutely none—for the period starting on Saturday, 30 August, 2014 and ending on Sunday, 8 September. This covers the period when Mr Baird was travelling in China.

On 3 September, Mr Baird issued a press release that concludes that he 'will be meeting senior government leaders, business leaders and potential investors in Guangzhou, Shanghai and Beijing'. What is Mr Baird trying to hide? I put it to this chamber, to the people of New South Wales and to Mr Mike Baird: why are there no records? Why are there no records of who he met? Why are there no records of what he discussed? Why have we been left completely in the dark?

Thanks to an article in today's Sydney Morning Herald, we now know that on 19 November last year, the New South Wales Treasurer, Mr Andrew Constance, also had a
secret meeting. That was with the State Grid Corporation of China, the largest state-owned electric utilities company in the world. And, thanks to the ChinaDaily, we now know that the purpose of this meeting was not what the Treasurer would like you to think. Mr Constance's compulsory diary disclosure summary records that the purpose of the meeting was 'introductory meeting and discussion of state grid investment in NSW'—very uncontroversial but, unfortunately, very misleading. Just days ago, on 6 March, the ChinaDaily reported:

Constance has already met with Chinese power firm State Grid Corp late last year regarding the sale of the state's multi-billion electricity infrastructure.

So the cat is out of the bag. And who do we have to thank for this revelation? Not the Treasurer, and certainly not the Premier, Mr Mike Baird—both of whom should have been frank and honest—but the newspapers in China!

This revelation raises more questions than it answers. Before the people of New South Wales go to the elections this Saturday to decide whether to sell their electricity network, they deserve some straight answers, and so far Mr Mike Baird has provided none. I call on both the Premier and the Treasurer of New South Wales to come clean about their involvement with the State Grid Corporation of China. What discussions have they had with its representatives? What has been promised? What is on the table? Who else have they met with? And what was discussed in these meetings? I call on Mr Baird to reveal his diaries to the people of New South Wales. Give the electorate the full story. This is just too important to stay covered up.

I now move on to my second concern tonight. We all know that there is no 'plan B' if the Premier cannot pass his legislation through the New South Wales state parliament. But what is the plan B if the sale of our transmission networks is opposed by our national security agencies, namely, ASIO? Are we all so naive as to think that the Australian security agencies do not have a view on the sale of TransGrid to an international buyer? This is an electricity company supplying the whole of Canberra, including this place and including all of the buildings that our federal departments and security agencies are housed in.

My concern is that the people of New South Wales have not been told that this deal will be subject to security considerations. It is a gross misconception to think that an international bid will be assessed on the offer price alone. We found this out in the NBN negotiations, where potential buyers were excluded for security considerations. We ask our security agencies to state their concerns and identify what conditions they would place on foreign ownership, whether they have the same concerns they expressed during NBN negotiations, and to put these on the public record, where appropriate, so that New South Wales voters can be fully informed before election day.

Moving to my third concern tonight, we have all heard the story of Mr Baird giving up a lucrative career as a merchant banker with HSBC, the Hong Kong and Shanghai Banking Corporation. But he has retained some important ties to his old employer in the form of shares in this company. Now, I am quick to note that, ordinarily, there would nothing controversial about this. However, on 19 January, Bloomberg reported:

State Grid Corporation of China has retained HSBC to advise it on the acquisition of up to $50 billion worth of electricity assets earmarked for sale by the Queensland and NSW governments.

Again, ordinarily there would nothing controversial about this. But you would think that, when the Premier is a direct financial beneficiary of a shareholding interest in the bank that is advising State Grid Corp, he would go out of his way to ensure that any possible conflict of
interest was clearly disclosed. Instead, the state Treasurer's meeting with State Grid was concealed by a misleading diary entry. Premier Baird must give a full account of his dealings, if any, with State Grid. And he must do it before New South Wales voters go to the polls.

In conclusion, I put to this place tonight that, first, Mr Baird must explain—

Senator Ian Macdonald: Mr President, I raise a point of order under standing order 149, which relates to a failed director of the New South Wales state Labor Party trying to help a failed Labor Party in the state of New South Wales with this inappropriate submission to the Senate.

The PRESIDENT: No, there is no point of order, Senator Macdonald. Senator Dastyari, you have the call.

Senator DASTYARI: First, Mr Baird must explain why his diary is blank from 31 August to 8 September and put all of his meetings, and the subjects that were discussed, on the public record, as is required by New South Wales law. Second, I put to this place that Australian security agencies put their concerns about this sale clearly on the public record, before election day. Third, I put to this place that, given the direct conflict of interest that Mr Baird has with HSBC, he clearly put on the public record just how much he stands to gain personally from this sale. There are just too many questions, too many risks. The stakes are too high to re-elect Mr Baird on Saturday.

Middle East

Senator XENOPHON (South Australia) (22:14): I would like to speak on the issue of Israel and Palestine, as vexed as it is. From the outset, I want to acknowledge that both Israel and Palestine have the right to live in peace within secure borders. I am grateful for the meeting I had with APAN—the Australia Palestine Advocacy Network—just yesterday. I want to reflect on Gaza. Even before the latest period of conflict in Gaza, at least two-thirds of the population were reliant on food aid and 90 per cent of the aquifer water was unfit for human consumption. Unemployment was 45 per cent, with youth unemployment at almost 70 per cent. 1.8 million people live on a strip of land that is only 11 kilometres wide and 51 kilometres long, making it one of the most densely populated places on earth. Gaza has been living under an Israeli blockade since 2007 when Israel placed massive restrictions over movement of people and goods in and out of Gaza. They have even placed restrictions on how far out fishermen can go from Gaza's shores. There are reports that boats that drift over the line are shot at. Most recently, a fisherman was killed on 7 March 2015.

However, between 7 July and 26 August 2014, Israel launched a massive military assault on Gaza through Operation Protective Edge, causing catastrophic effects. I want to make it clear that Israel responded to a number of rockets being fired into Israeli territory, itself a war crime and an act that cannot be justified under any circumstances. But the issue of whether the response was proportionate or not is one that we must reflect on. Preliminary reports from the UN Office for the Coordination of Humanitarian Affairs say that this resulted in 2,131 fatalities, including 501 children. Over 11,000 people were injured, and it is estimated that 1,000 children will have a permanent disability. The Israeli military action destroyed or severely damaged 18,000 homes. Essential infrastructure was also destroyed—12 per cent of wells were damaged or destroyed, 22 schools were completely destroyed and 118 schools were damaged. An air strike destroyed Gaza's only power plant, affecting a range of services,
including water treatment plants, leading to raw sewage flowing through the strip and into the sea.

More than six months after the cessation of hostilities, Gaza looks as though the attacks occurred only yesterday, according to Jessica Morrison from APAN, who was just there relatively recently. Although $5.4 billion was pledged by international donors in the wake of the crisis, only a tiny fraction has been paid. And the Israeli blockade is providing mountains of red tape, restricting access any aid that has been paid to a large extent.

In a statement of 26 February, Oxfam stated that:

… it could take more than 100 years to complete essential building of homes, schools and health facilities in Gaza unless the Israeli blockade is lifted …

They said that:

Less than 0.25 percent of the truckloads of essential construction materials needed have entered Gaza in the past three months. Six months since the end of the conflict, the situation in Gaza is becoming increasingly desperate. Oxfam is calling for an urgent end to the blockade of Gaza, which has now been in place for nearly eight years.

Oxfam is a well-respected international aid agency organisation; we should heed their concerns.

One horrific example of the effects of this lack of reconstruction is baby Salma, who died of hypothermia at just 40 days old in January this year. Chris Gunness of the UN Relief and Works Agency for Palestine Refugees in the Near East reports:

I meet Salma's mother, Mirvat, and 14 members of her extended family in the very place, indeed the room, where Salma slept during her last night at home. They still live there in Beit Hanoun, northern Gaza, in a tiny three-room wooden structure, covered with plastic. When I see it from the road, I assume it houses animals. The door is a blanket which flaps in the biting wind. It is raining. Water flows in. Mirvat pulls back the sodden carpet that serves as flooring and scoops the wet sand below. Memories of Salma's death on 9 January are painfully fresh.

"The night she died the storm was strong. We were all soaking wet, but some of us managed to sleep. The rain came and in and drenched Salma's blankets. I found her shaking. Her tiny body was frozen like ice-cream. We took her to hospital, but later the doctor called. Salma was dead. My beautiful girl weighed 3.1kg at birth. She was healthy and would be alive today if we had not been bombed out of our home in the war and reduced to living like this."

During the Gaza conflict last summer, Mirvat, her husband and four children lived in a complex of five simple buildings with their 40-member extended family, just one kilometre from the barrier between Gaza and Israel. Her father-in-law, Jibril, knew that life on the frontline was unsustainable.

"There was a smell of death in the air. The children were traumatised and couldn't sleep," he tells me. "After a week of fighting we fled as the bombs fell around us, terrified for our lives. We went to my brother's house, but that became too dangerous, so we took refuge in a hospital. After an hour, that was hit, so we ran to the shelter of an UNRWA [United Nations Relief and Works Agency] school. There were thousands of us living in a school built for one thousand students. So after the war we came here."

Linking this tragedy to a larger scale, the UN relief and works agency, tasked with delivering aid, developed a program to provide rental subsidies to families who could not pay their rent. Chris Gunness, the Senior Director of UNRWA says:

After the conference in Cairo last October at which donors pledged $5.4bn to rebuild Gaza, we created a $720m project. With the generous pledges at Cairo we were certain the funds would be there. Or so we thought. With this money, we aimed to give rental subsidies to people whose homes were
uninhabitable. We hoped to give cash so people could repair and rebuild their houses. But the billions pledged did not materialise and the programme was left with a shortfall of nearly $600m.

The day after we announced suspension of the cash assistance, anger boiled over. The office in Gaza of the UN special co-ordinator for the Middle East peace process was attacked. The threat of violence remains. You can feel it in the air, just like last summer.

On 26 February, 30 aid agencies released a joint statement entitled 'We must not fail in Gaza'. They said that:

As UN agencies and international NGOs operating in Gaza, we are alarmed by the limited progress in rebuilding the lives of those affected and tackling the root causes of the conflict. They ask for action from the international community. They ask that cash assistance to families be provided, they say that little of the $5.4 billion pledged has reached Gaza and they ask for action from Israel. They say:

Israel, as the occupying power, is the main duty bearer and must comply with its obligations under international law.

International law is the key to this. They also say:

In particular, it must fully lift the blockade, within the framework of UN Security Council Resolution 1860 (2009).

They also point to Egypt and the other donors who have yet to pay, the need for Egypt to open the Rafah crossing most urgently for humanitarian causes and that donor pledges must be translated into disbursements.

Since the call by aid agencies, there have been some hopeful developments. In the last two weeks Israel has allowed some small amounts of fruit-and-vegetable exports from Gaza into Israel, and a thousand tonnes of cement arrived in Gaza last week from Qatar. This shows the importance of strong international pressure towards gaining action.

Australia, to its credit, pledged $15 million to the Gaza reconstruction, and I understand that this has been paid. This is one practical step. However, this aid money is such a small drop in the bucket, and our contribution remains at risk of not being effectively used, because of the blockade. Australia must join others in calling for the full lifting of the Israeli blockade of Gaza, for humanitarian purposes. The blockade cannot be accepted as normal; it is clearly collective punishment under international law.

Back in July 2014, the UN Secretary-General, Ban Ki-moon, said:

Going back to the status quo ante won't solve the problem, it will only defer it for another day. It will not stop the bloodshed, it will make it even worse the next time the cycle rolls over the people of Gaza and plagues the people of Israel. Gaza is an open wound and Band Aids won't help. There must be a plan after the aftermath that allows Gaza to breathe and heal.

This plan, sadly, has not eventuated. It is not only to our deep shame but it is costing the lives and the future of Gazans. I add that this allows extremists to foment. Such an atmosphere allows those extreme elements of hatred to be incubated.

I also refer briefly to remarks made by Bishop George Browning of APAN, who has been a tremendous contributor in this debate. Essentially, he says that the future of the region lies in the respect that they can give to their neighbours and to each other. Palestinian, Arab or Israeli, they must have that respect for each other, and I urge the parties to do so. At the
moment, there is an absolute imperative for the people of Gaza to get the aid they deserve to be able to reconstruct and rebuild their lives.

**Housing Affordability**

Senator CANAVAN (Queensland) (22:24): Mr President, it looks like you need something to wake you up, so I thought I would rise to my feet to help you. No offence there, Senator Xenophon.

I wanted to speak tonight about something that is quite personal for me and something that was very important to my wife and me in our time together, which is only very short in the scheme of things. We have been married for just over 10 years, and the hardest thing that we have had to do in that time is save up for and buy our first home. I know that this issue is very close to Senator Xenophon's heart as well. It was hard because, as most people in this chamber would know, since the early 2000s there has been a great run up in house prices. Home ownership is becoming increasingly unaffordable for young families in Australia.

I do not mean to make this too personal, but I am perhaps one of the few in this chamber and this parliament who have had to buy their first home since those prices ran up. We were starting our family during this time, and it was very difficult to save up the money for a significant deposit while having kids, while my wife was necessarily out of the workforce and while still trying to pay rent in a very costly market. At the time we were trying to save for our first home and save for that deposit, my wife and I had tens of thousands of dollars in superannuation: our money, which we had worked for, which had been paid to us and which, because of the regulation that we have on superannuation, we were not allowed to use. I thought it was an inequity that we could not use our money to buy something as important as our first home, where we would raise our children and, hopefully, ultimately build ourselves a nest egg for our retirement.

Obviously, this is an idea that has been kicking around for some time. I point out that one of the first people to support and propose this idea was Mr Paul Keating, in 1993. At the 1993 election, Mr Keating launched the Labor Party's election platform at the Bankstown Hall. In that platform policy, he promised to let all Australians draw down from their superannuation, up to $10,000, to purchase their own homes. In launching that policy, the Labor Party said: For most people … a debt-free home is as important a part of retirement security as superannuation income.

And they were right. They were right 20 years ago. It is unfortunate that they have moved away from that position.

I would like to return to that position and go through some of the arguments that have been raised against this idea, in the last couple of weeks, as it has been aired. I start with an argument that Mr Keating has now made against this idea, despite supporting it 20 years ago. Mr Keating said that we should not do this because, if we allowed people to purchase their own homes, they would lose the compounding interest of investment. Yes, it is very important that you save and put your money into assets so they grow and over time you will be wealthier. But that forgets the fact that putting your money into superannuation is not the only form of asset, that putting your money into equities is not necessarily the only or best-performing asset and that putting your money into bricks and mortar also lets you gain from the benefits of compounding, as has been experienced in the last 20 years in Australian
property markets. Indeed, the ASX 2014 *Long-term investing report* shows that, over that period of time, property has earned a return of 9.9 per cent a year in nominal terms, compared to equities, which have returned 8.7 per cent a year. So putting your money in your home is not just good for you, your family and your financial security, it is a good investment.

The second argument that has been made against this idea is that it may undermine the retirement-income system. That is connected to the first point, the first argument against it: the loss of compounding. But there is a broader issue here that people will not catch up on their savings if they take money out in their young ages. The first point I make about that is the superannuation system, right now, does not do a very good job of keeping people off the pension. After more than 20 years of having superannuation, 70 per cent of retirees claim the pension. In the *Intergenerational report*, Treasury projected that over the next 40 years—and in that period we will start to have retirees who have had their whole working lives contributing to superannuation—that figure will drop from 70 per cent to 67 per cent. According to Treasury, in 2054-55, after we have had our superannuation system in place for 65 years, we will still have a situation where 67 per cent of retirees claim the pension.

The principal reason for that is that superannuation does not guarantee you income when you are 80 or 90, it only guarantees you income when you retire. So at 55 or 60 you have income and you can do whatever you like with it—buy homes, go overseas or buy fast cars—but it does not guarantee that people have an income throughout their entire retirement.

The second point to make about that argument is that it depends how any such idea was put in place. Such a scheme has existed in Canada for 22 years now; young people can borrow from their future selves, from their superannuation, to buy a home and then they are required to pay it back after they are 35 years of age. They can borrow $25,000 a year to put into a home when they are young and, when they are 35 or over, they have to increase their superannuation contributions to pay that back. That seems to be a very sensible system. It is more sensible to borrow from yourself than to borrow from the bank and to have to pay lender's mortgage insurance which just goes to other banks overseas and does not help young people here.

An argument often made against this is that providing more money to first home buyers will push up house prices. It is strange to argue that by helping people we are going to make it harder for them. The only way that works is if the supply of housing is completely unresponsive to price or, even more unusually, that it actually reduces the supply of housing by increasing demand. That is clearly not the case. Yes, in certain pockets of our property markets, supply is rather inelastic and unresponsive to price. But in many of the areas where first home buyers typically buy their homes there is not a limited supply of land. I bought my first time on the fringes of Canberra, where there is plenty of land. There is not a limited supply and supply is not unresponsive to price. This would be a well designed policy because it would help people who want to build homes in those areas of our cities, where there is a comparatively good supply of housing.

That is not to say there are not issues at the state government level on the supply of housing and that there are not things that need to be done there, but that is not something we can do in this chamber. I do think we should help young people, and this is a good way of doing that. It works overseas, as I said before. The Canadian government has had it in place for 22 years and one-eighth of first home buyers in Canada now use this scheme to buy their homes. That
is not a majority, it is not abused—many people still can afford to save up for their own deposit—but one-eighth is not an insignificant number of people. And I believe that it is probably the people who would otherwise struggle to save a deposit who would access such a scheme.

It also has some other benefits that are not often commented on. One of the big problems we have in our financial sector at the moment is people taking on too much debt with too little equity. When I bought my first home I had five per cent equity. I would have been a bit underwater if anything went wrong, but that is all we could afford. If we allowed people to dip into their super, they would have more equity, there would be more financial security and there would be less risk in our financial sector if the worst happened and prices fell—and that is another good thing that we should promote. It would also at the moment be a significant boon to the construction sector. Again, first home buyers often buy house and land packages on the fringe of cities. We need to build more houses in this country at the moment. We need something to replace the investment we have had in the mining sector which has fallen away. Housing is the great hope of future. We might get some boost in investment in new houses and such a scheme could help promote that.

The main reason we should support this policy—and it is something that I put in my first speech—is that we should strive to help everybody own their own home, start their own family or start their own business, if that is what they want to do, and take control of their own lives. Owning your own little piece of Australia is the first step for most Australians in doing that. They will have a little piece of land that they can call their own and they can be king of their own castle. We should help them achieve that as soon as possible with the money that they save up. We should not put restrictions on them by telling them how to invest their money and not giving them financial security. We should be supporting people to have a go in our society. If they want to save up to invest in the most important asset of their lives, that is something we should support and celebrate. We should assist people to do this by removing the chains on their superannuation accounts.

Senate adjourned at 22:34

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

_Aged Care Act 1997—Aged Care (Subsidy, Fees and Payments) Amendment (March 2015 Indexation) Determination 2015 [F2015L00316].

_Aged Care (Transitional Provisions) Act 1997—


_Aged Care (Transitional Provisions) (Subsidy and Other Measures) Amendment (March 2015 Indexation) Determination 2015 [F2015L00315].

_Australian Bureau of Statistics Act 1975—


CHAMBER
Rural Environment and Agricultural Commodities Survey—Proposal No. 4 of 2015.
Vineyards Census—Proposal No. 2 of 2015.


Commissioner of Taxation—Public Rulings—
Class Ruling CR 2015/22.

Taxation Determinations TD 2015/2 and TD 2015/3.

*Defence Act 1903*—Section 58B—


*Fisheries Management Act 1991*—
Macquarie Island Toothfish Fishery Management Plan 2006—
Macquarie Island Toothfish Fishery Fishing Year Determination 2015 [F2015L00327].
Macquarie Island Toothfish Fishery Total Allowable Catch Determination 2015 [F2015L00328].

Northern Prawn Fishery (Closures) Direction No. 171 [F2015L00329].

*Higher Education Support Act 2003*—VET Provider Approval—No. 4 of 2015 [F2015L00323].

*Social Security Act 1991*—Social Security (Deeming Threshold Rates) Determination 2015 (No. 1) [F2015L00312].

*Student Assistance Act 1973*—Student Assistance (Education Institutions and Courses) Amendment Determination 2015 (No. 1) [F2015L00318].

*Student Identifiers Act 2014*—Student Identifiers (VET Admission Bodies) Instrument 2015 [F2015L00314].


*Telecommunications Act 1997*—
Telecommunications Numbering Plan 2015 [F2015L00319].
Telecommunications (Provision of Pre-selection) Determination 2015 [F2015L00326].

Tabling
The following documents were tabled pursuant to standing order 61(1) (b):


Indexed Lists of Files
The following documents were tabled by the Clerk 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 2014—Statements of compliance—
Communications portfolio.
Health portfolio.