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<td>1, 2, 3, 7, 8, 9, 10, 21, 22, 23, 24, 28, 29, 30</td>
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FORTY-THIRD PARLIAMENT
FIRST SESSION—FOURTH PERIOD

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

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

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

Printed by authority of the Senate
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<td>Abetz, Hon. Eric</td>
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

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

**PARTY ABBREVIATIONS**


**Heads of Parliamentary Departments**

Clerk of the Senate—R Laing

Clerk of the House of Representatives—B Wright

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

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<td>Minister for the Arts</td>
<td>Hon. Simon Crean MP</td>
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<td>Minister for Social Inclusion</td>
<td>Hon. Tanya Plibersek MP</td>
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<tr>
<td>Minister for Privacy and Freedom of Information</td>
<td>Hon. Brendan O'Connor MP</td>
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<tr>
<td>Minister for Sport</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Special Minister of State for the Public Service and Integrity</td>
<td>Hon. Gary Gray AO, MP</td>
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<tr>
<td>Assistant Treasurer and Minister for Financial Services and</td>
<td>Hon. Bill Shorten MP</td>
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<tr>
<td>Superannuation</td>
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<tr>
<td>Minister for Employment Participation and Childcare</td>
<td>Hon. Kate Ellis MP</td>
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<tr>
<td>Minister for Indigenous Employment and Economic Development</td>
<td>Senator Hon. Mark Arbib</td>
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<tr>
<td>Minister for Veterans’ Affairs and Minister for Defence Science and</td>
<td>Hon. Warren Snowdon MP</td>
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<td>Minister for Defence Materiel</td>
<td>Hon. Jason Clare MP</td>
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<td>Hon. Mark Butler MP</td>
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<td>Hon. Kate Ellis MP</td>
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<td>Cabinet Secretary</td>
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<td>Senator Hon. Jacinta Collins</td>
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<td>Hon. Dr Mike Kelly AM, MP</td>
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<tr>
<td>Minister Assisting the Minister for Tourism</td>
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<td>Hon. Mark Dreyfus QC, MP</td>
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Leader of the Opposition
Hon. Tony Abbott MP
Deputy Leader of the Opposition and Shadow Minister for Foreign Affairs and Shadow Minister for Trade
Hon. Julie Bishop MP
Leader of the Nationals and Shadow Minister for Infrastructure and Transport
Hon. Warren Truss MP
Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations
Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate and Shadow Attorney-General and Shadow Minister for the Arts
Senator Hon. George Brandis SC
Shadow Treasurer
Hon. Joe Hockey MP
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House
Hon. Christopher Pyne MP
Shadow Minister for Indigenous Affairs and Deputy Leader of the Nationals
Senator Hon. Nigel Scullion
Shadow Minister for Regional Development, Local Government and Water and Leader of the Nationals in the Senate
Senator Barnaby Joyce
Shadow Minister for Finance, Deregulation and Debt Reduction and Chairman, Coalition Policy Development Committee
Hon. Andrew Robb AO, MP
Shadow Minister for Energy and Resources
Hon. Ian Macfarlane MP
Shadow Minister for Defence
Senator Hon. David Johnston
Shadow Minister for Communications and Broadband
Hon. Malcolm Turnbull MP
Shadow Minister for Health and Ageing
Hon. Peter Dutton MP
Shadow Minister for Families, Housing and Human Services
Hon. Kevin Andrews MP
Shadow Minister for Climate Action, Environment and Heritage
Hon. Greg Hunt MP
Shadow Minister for Productivity and Population and Shadow Minister for Immigration and Citizenship
Mr Scott Morrison MP
Shadow Minister for Innovation, Industry and Science
Mrs Sophie Mirabella MP
Shadow Minister for Agriculture and Food Security
Hon. John Cobb MP
Shadow Minister for Small Business, Competition Policy and Consumer Affairs
Hon. Bruce Billson MP

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<td>Mr Luke Hartsuyker MP</td>
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<td>Senator Mitch Fifield</td>
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<td>Senator Marise Payne</td>
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<td>Mr Jamie Briggs MP</td>
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<td>Mr Andrew Laming MP</td>
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The PRESIDENT (Senator the Hon. John Hogg) took the chair at 09:30, read prayers and made an acknowledgement of country.

COMMITTEES

Economics Legislation Committee

Meeting

Senator McEWEN: by leave—At the request of the Chair of the Economics Legislation Committee, Senator Bishop, I seek leave to move a motion to enable the committee to meet during the sitting of the Senate today.

Leave granted.

Senator McEWEN: I move:

That the Economics Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today,

Leave of Absence

Senator McEWEN: by leave—I move:

That leave of absence be granted to Senators Carr, Farrell and Wong today, on account of ministerial duties.

The DEPUTY PRESIDENT: The question is that that motion be agreed to.

Senator Bob Brown: Mr Deputy President, I ask if the senator who has moved this motion would go beyond just saying 'ministerial duties'. This is a sitting of the Senate. We have important matters before us. It is about to be followed by a motion requesting leave of absence for an equal number of members of the opposition. I believe the Senate is owed an explanation that is explicit about the need to put the Senate sitting second to the activities of the seven senators we are about to be asked to give leave to.

The DEPUTY PRESIDENT: Senator Brown, there is a motion before the chair. The Senate will decide. The question is that that motion moved by Senator McEwen be agreed to.

Senator Ian Macdonald: On a point of order, Mr Deputy President: is there no opportunity to discuss this motion?

The DEPUTY PRESIDENT: No. The motion has been taken as formal. Permission was given by the Senate for the motion to be taken as formal. I have now put the motion. So you are debating the point but there is no further discussion.

Question agreed to.

Leave of Absence

Senator KROGER: by leave—I move:

That leave of absence be granted to the following senators:

(a) Senator Cormann for today, on account of parliamentary business;

(b) Senator Payne for today, for personal reasons; and

(c) Senator Heffernan for today, for personal reasons.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (09:34): We have got a request for Senator Cormann to be absent from this sitting of the Senate, for parliamentary—

Senator Ian Macdonald: Mr Deputy President, on a point of order—

The DEPUTY PRESIDENT: Just a moment, Senator Macdonald. Do you have a point of order, Senator Brown?

Senator BOB BROWN: No, I am speaking to that motion.

The DEPUTY PRESIDENT: You are speaking to the motion?
Senator BOB BROWN: I am; that is correct.

Senator Ian Macdonald: Mr Deputy President, on a point of order: leave was granted for it to be a formal motion.

The DEPUTY PRESIDENT: We are not in formal business but leave was granted for the motion to be moved. Senator Brown is now debating the motion. Is that correct, Senator Brown?

Senator BOB BROWN: Yes, that is right.

Senator Ian Macdonald: On a point of order, Mr Deputy President: it is the exact point I made in relation to the previous motion, and I was told that it was a formal motion, that leave had been given to deal with it as a formal motion. I was told I could not speak on it. Now we are having the exact same motion with a different ruling.

The DEPUTY PRESIDENT: You are correct, Senator Macdonald, and it is my error for calling that incorrectly to you in the first instance. However, it has been the tradition of the Senate that when these motions are moved they are treated as formal motions even though we are not in formal business. Leave was sought for a motion to be moved, and that is how they have normally been dealt with. If Senator Brown now wishes to debate the motion, as will be your entitlement, he can do so. I have called Senator Brown. He has the call.

Senator BOB BROWN: Thank you, Mr Deputy President. I am pleased to be making a precedent here.

Senator Ian Macdonald: You've made a lot of precedents, Bob—1.6 million of them.

Senator BOB BROWN: Yes, I have. What we have is seven senators from the major parties missing from a Senate sitting which is to deal with important matters—

Opposition senators interjecting—

Senator BOB BROWN: yes, six, as somebody has dropped off the list—without due explanation except it is on parliamentary business, personal business or ministerial business.

Honourable senators interjecting—

Senator Abetz: He's pre-prepared it and he's adjusting his speech to what's actually occurred.

Senator BOB BROWN: Senator Abetz objects, but he has got an opportunity to speak here. I think it is more than a courtesy. It is a matter of public interest as to why six or seven senators from the major parties should be missing from this last day of sitting of the Senate. They should be here unless there is some cogent reason—

Senator Fifield: On a point of order, Mr Deputy President, I think that Senator Brown is very close to misleading the Senate. This is not the last day of the sitting of the Senate. The last scheduled sitting day of the Senate is Wednesday next week.

The DEPUTY PRESIDENT: There is no point of order.

Senator BOB BROWN: There is no point of order. I can see that Senator Abetz has gone Dickensian and I suppose that suits him. I am making a very logical and reasonable point here on behalf of the voters of Australia and the importance of the parliament and, not least, the importance of the sittings of the Senate. There is large-scale absenteeism of frontbenchers of both sides showing up here. This sitting is not sudden; we have all known about it for quite some time. The voters of Australia deserve to have a better explanation.

Of course, if there is a family illness or a major occasion which requires a senator to be absent, or a ministerial requirement which is beyond that of the requirement for a senator to be present in the chamber, or if
there is a parliamentary duty which is more important than the sitting of the Senate, then let us hear what it is.

Of course Senator Abetz would call this a stunt, but I am serious about it and I think the Senate is owed a better explanation than a one-word adjective to say why a senator is away. It is a legion of absenteeism on the last day of the sitting of the Senate and the big parties should do better than that.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (09:39): The duplicity dripping out of that Pecksniffian pocket of the Senate is just sickening. Here we have the Australian Greens combining in their alliance with the ALP to shut down this parliament three days early. Three days early they have combined with the ALP to guillotine through 20 bills by the end of the day without a single word having been spoken on those bills. And the reason for the guillotine, the reason for this abuse of parliamentary process and the abrogation of parliamentary duty by Senator Brown, the Australian Greens and the ALP, is that they do not want to sit the extra three days that have been on the parliamentary calendar since day one. Why is that? It is because Senator Brown and Senator Milne want to scuttle out of this place to go to Durban. They are the absentees, and what they are now putting up before this place is a ruse to suggest that somehow there are absentees from both sides to cover up for the fact that they have deliberately forced the government not to sit next week for those three days so that they can scuttle off to Durban and be absentees—the whole lot of them—for a full three days!

It has been accepted practice—and I will not delay the Senate much longer—that people are granted leave of absence in circumstances where the whips believe it appropriate and in circumstances where we do not seek to inquire into each other's business.

Senator Bob Brown: You don't inquire into ministerial or parliamentary business?

Senator ABETZ: Senator Brown foolishly interjects, and of course whenever anybody interjects on Senator Brown, what does he do? He puts out his hands, Messiah-like, and says, 'Chair, will you protect me from these interjections?' This is the sort of Pecksniffian attitude we get from Senator Brown day after day after day in this place, and we are getting sick and tired of it.

It is the accepted practice in this place that we do not have to divulge matters that may be of a personal nature or, indeed, the nature of ministerial business. Much as we on the opposition would like to know the detail of it, we believe that it is inappropriate to make those sorts of inquiries of each other. If the Greens were ever to be in a position to require leave of absence—and I am sure that it has occurred in the past—we do not go inquiring into that sort of detail.

But the real reason that Senator Brown is now trying to make an issue out of this is that he knows that later on today he will be voting with the ALP to give himself and the Australian Greens not just one day's leave of absence, but the whole nine Greens will get leave of absence for a full three days. It was a good try, Senator Brown, but we have seen through the ruse, and now let us get on with the business of the Senate.
through to give senators leave for both personal reasons and parliamentary business. They are generally not debated. Why? Everyone from the opposition, the government and the cross-benchers will at some point seek the same result; they will ask for leave of parliament for private or personal business or for parliamentary business and it will be granted without debate. We all know in this place that there are reasons for people to undertake that and it is not undertaken lightly. People do have to convince their own side that they do have work that will take them away. Leave of absence is certainly not handed out easily. From my perspective, I do not allow senators or the whip to go easily out of this place. This is where they should be, doing their business. However, there are circumstances that will warrant that.

I am not about to set any precedent here. I think we should be very careful about that because we will not be able to live easily with the precedent we set. With those short words I would encourage people to draw a breath and realise that this is an ordinary issue that occurs on many days that the Senate sits.

Senator IAN MACDONALD (Queensland) (09:45): Regrettably, we have already passed without discussion the motion giving leave to the Leader of the Government in the Senate—

Senator Sherry: He has not been given leave; it was the deputy, not the leader.

Senator McEwen interjecting—

Senator IAN MACDONALD: I can only go by the Order of Business. You tell me that Senator Evans is here. Therefore we have Senator Carr, a very senior minister; Senator Wong, a very senior minister; and Senator Farrell, who is no doubt somewhere organising another leadership coup in the Labor Party. Three very senior members of the government choose to absent themselves on the last day of sitting—I beg my own pardon, it is not the last day of sitting. The last day of sitting is next Wednesday.

I want the people of Australia who are listening to this debate to understand that for almost nine months the Senate has agreed to sit next Monday, Tuesday and Wednesday. Were we to do that, we would not have needed to guillotine through some 20 bills without a word being spoken on them—not a word in favour of them nor a word opposed to them. I think the people of Australia, and there are many who do listen to these debates, need to understand that the Greens and the Labor Party combined to guillotine through in excess of a dozen bills without a word being spoken on them. They also guillotined through perhaps the most complex parcel of bills that this parliament has seen in the last decade; they were the carbon tax bills, the bills based upon a promise by the Prime Minister that she would never introduce a carbon tax. She then introduced a carbon tax with 18 complex bills, which were guillotined through this chamber without proper debate. And we are already seeing that those bills are suffering because they were not subject to parliamentary scrutiny. We are already finding, by reports from around the globe, that these pieces of legislation on the carbon tax have suffered because they were not properly considered in this chamber. The whole carbon tax issue will become a farce at Durban next week when the United States, China, Japan, Korea, Russia and India indicate that they are not going to have a $23-a-tonne tax on their particular emissions of carbon dioxide.

I am very angry about the guillotining—about the dealing of these bills without any discussion whatsoever, and I think the people of Australia expect better than that of this parliament, and particularly the Senate,
which has a reputation for scrutiny. We have a very extensive committee system, and the people like that because they understand that the Senate does expose difficulties with government legislation.

We have three senior ministers leaving this parliament four days before the parliamentary year concludes. The Labor Party stands condemned and the Greens political party, which have made a virtue over decades of allowing parliamentary scrutiny, of allowing people to have their say, even if they disagree with them, have joined with the Labor Party in curtailing debate on important bills, and particularly the carbon tax bills. It is outrageous that ministers should be given leave four days before the parliamentary year concludes. If Senator Abetz has suggested—I am not aware of this; I do not think I have seen it on the Order of Business—the Greens political party are going to agree to the Senate rising today so that they can go to Durban, then this is an absolute disgrace. It should allow GetUp! and all of those other fringe groups that support the Greens political party to understand what a mob of frauds are those who occupy the benches of the Greens political party.

Senator Bob Brown: Mr Deputy President, I ask that that unparliamentary remark about a group of senators be withdrawn.

Senator IAN MACDONALD: I withdraw. People like GetUp! and those other fringe groups that support the Greens, people like Mr Graeme Wood, who donated $1.6 million to Senator Bob Brown and then had Senator Brown asking questions in the parliament that would seem, on face value, to relate to different benefits to—

The DEPUTY PRESIDENT: Senator MacDonald, could I just draw your attention to the question before the chair.

Senator Bob Brown interjecting—

Senator IAN MACDONALD: Yes. It is about leave being given to leave this parliament four days early. And I know Senator Bob Brown does not like this. I hear him interjecting. When anyone else interjects he is first on his feet. Again, it shows the different standards this man has for himself as opposed to anyone else. It is okay for him to interject, but if anyone else does it, 'Oh, please Mr Deputy President, protect me.' But he does not mind it himself. If Senator Brown is, as Senator Abetz suggests, going to join with the Labor Party and shut this chamber down three days early so that he can go for a jaunt to South Africa then that needs to be condemned. I want to say that the people who have in the past supported the Greens for what they thought was their principled approach to parliament should now understand that there is nothing principled about the Greens political party. They will on the one hand rail against leave being given to ministers and, on the other hand, vote so that this parliament stops three days early so they can go on a—

The DEPUTY PRESIDENT: Order! Senator Brown, do you have a point of order?

Senator Bob Brown: With respect to part of this rant: I have no plans for a jaunt to South Africa—

The DEPUTY PRESIDENT: That is not a point of order.

Senator Bob Brown: No, but I have made the point.

Senator Sterle: Well, you're getting blamed for it—you may as well!

Senator IAN MACDONALD: I hear Senator Sterle interjecting. Senator Sterle, you should be out helping Tony Sheldon get rid of your leader; you know, the dead corpse that—
The DEPUTY PRESIDENT: Through the chair, Senator Macdonald.

Senator IAN MACDONALD: It is one thing I agree on with Tony Sheldon! I do not want to delay the Senate from the debate before it, but it is important that the thousands of people listening to or watching this debate today—

Senator Hanson-Young: No-one is listening to you!

Senator IAN MACDONALD: Senator Hanson-Young, have a look at your emails when you get back. You will find that—

The DEPUTY PRESIDENT: Order! Senator Macdonald, address your remarks through the chair.

Senator IAN MACDONALD: Thank you, Mr Deputy President. Senator Hanson-Young will find that people do actually take an interest in democracy—and, increasingly, the emails coming through to me are saying how hypocritical the Greens political party are. On the one hand, this morning, they were railing against leave being given to go away and, on the other hand, voting with the Australian Labor Party to shut down this parliament three days early so that they can go on a jaunt to South Africa. I think that is hypocrisy in the extreme on the part of the Greens political party. Their retribution will come at the next election. If they had any principles they would vote with the opposition to facilitate an early election so the people of Australia can have a view on the carbon tax bills and on the Labor Party's propensity to ram bills through this parliament without debate.

Question agreed to.

NOTICES
Presentation

Senator RHIANNON: To move:
That the Senate—
(a) notes that:

(i) 25 November 2011 commemorates the United Nations' International Day for the Elimination of Violence Against Women – White Ribbon Day,

(ii) domestic violence occurs in every geographic area and in all socio-economic and cultural groups in Australia, in particular in regional and rural Australia and Indigenous communities,

(iii) the prevention and elimination of domestic violence is a goal of the Australian Government, and yet the Government has failed to fund the continuation of the pilot Bsafe program, which successfully operated in regional Victoria from 2007 to 2010, providing personal safety alarms to women and children at risk of domestic violence to prevent further violence and enable them to remain in their own homes and communities,

(iv) the cessation of the pilot Bsafe program, which was funded through a 3 year $340 000 federal grant that ended in December 2010, caused distress to the women and children and their families and friends who had come to rely on it,

(v) there is an extraordinary level of support for the Bsafe program from the beneficiaries, community workers, police, women's groups and the broader community across the country,

(vi) the Bsafe program won the national Australian Crime and Violence Prevention Award in 2010,

(vii) the Bsafe program was extremely cost effective, costing approximately $1 000 for the two safety alarms, and provided enormous benefits in reducing the risk and breaking the cycle of domestic violence, giving assurance to vulnerable women and children and allowing them to return to participating fully in society, as detailed in the Bsafe program evaluation report,

(viii) in Victoria the community sector is ready and eager to expand this potentially life-saving resource to women across the state, and

(ix) one woman who was a recipient of a Bsafe alarm asked 'How much does my life cost'; and
(b) calls on the Government to:

(i) urgently fund the continuation of the successful pilot Bsafe program in regional Victoria to allow women and children continued access to the service, and

(ii) fund the extension of the Bsafe program to other regions in Victoria and into other states.

Senator BOB BROWN: To move:

That the Minister for Agriculture, Fisheries and Forestry, on the next day of sitting, report to the Senate on the failure of the Prime Minister (Ms Gillard) to uphold the Tasmanian Forests Intergovernmental Agreement between the Commonwealth of Australia and the State of Tasmania, in particular clauses 25 to 27 which stipulated immediate protection of 430,000 hectares of high conservation value forests where logging, including clear-felling and burning of ancient forests and wildlife habitat, is continuing.

Senator BOB BROWN: To move:

That the President of the Senate report to the Senate on the next day of sitting on whether the Committee of Privileges is endangered with politicisation by 'SLAPP' writ style references, such as that of Senator Kroger on 22 November 2011, which was publicised by the Leader of the Opposition in the Senate (Senator Abetz) before any adjudication was possible.

Senator BOB BROWN: To move:

That the Senate—

(a) notes the growing support for a sovereign wealth fund (SWF); and

(b) calls on the Government to reconsider a SWF for Australia to be funded with the proceeds of an expanded mining tax.

COMMITTEES
Selection of Bills Committee

Senator McEWEN (South Australia—Government Whip in the Senate) (09:56): I present the 17th report of 2011 of the Selection of Bills Committee and I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 17 OF 2011

1. The committee met in private session on Thursday, 24 November 2011 at 3.32 pm.

2. The committee resolved to recommend—

That—

(a) the provisions of the Access to Justice (Federal Jurisdiction) Amendment Bill 2011 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 22 March 2012 (see appendix 1 for a statement of reasons for referral);

(b) the provisions of the Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011 be referred immediately to the Economics Legislation Committee for inquiry and report by 14 March 2012 (see appendix 2 for a statement of reasons for referral);

(c) the Crimes Act Amendment (Fairness of Minors) Bill 2011 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 22 March 2012 (see appendix 3 for a statement of reasons for referral);

(d) the Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011 be referred immediately to the Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 27 February 2012 (see appendix 4 for a statement of reasons for referral);

(e) the provisions of the Illegal Logging Prohibition Bill 2011 be referred immediately to the Rural Affairs and Transport Legislation Committee for inquiry and report by 8 February 2012 (see appendix 5 for a statement of reasons for referral);

(f) the provisions of the Personally Controlled Electronic Health Records Bill 2011 and the provisions of the Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 29 February 2012 (see
appendix 6 for a statement of reasons for referral; and

(g) the provisions of the Social Security Legislation Amendment Bill 2011, Stronger Futures in the Northern Territory Bill 2011 and the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 29 February 2012 (see appendices 7 and 8 for statements of reason for referral).

3. The committee resolved to recommend—

That the following bills not be referred to committees:

- Antarctic Treaty (Environment Protection) Amendment Bill 2011
- Australian Research Council Amendment Bill 2011
- Broadcasting Services Amendment (Regional Commercial Radio) Bill 2011
- Crimes Legislation Amendment (Powers and Offences) Bill 2011
- Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011
- Customs Amendment (Reducing Business Compliance Burden) Bill 2011
- Electoral and Referendum Amendment (Maintaining Address) Bill 2011
- Excise Amendment (Reducing Business Compliance Burden) Bill 2011
- Higher Education Support Amendment (VET FEE-HELP and Other Measures) Bill 2011
- Insurance Contracts Amendment Bill 2011
- Nuclear Terrorism Legislation Amendment Bill 2011
- Road Safety Remuneration Bill 2011
- Road Safety Remuneration (Consequential Amendments and Related Provisions) Bill 2011

The committee considered the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 and,

noting that the bill had passed the Senate on 24 November 2011, resolved to recommend that the bill not be referred to a committee.

The committee recommends accordingly.

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

- Australian Broadcasting Corporation Amendment (International Broadcasting Services) Bill 2011
- National Health Amendment (Fifth Community Pharmacy Agreement Initiatives) Bill 2011
- Protecting Children from Junk Food Advertising (Broadcasting and Telecommunications Amendment) Bill 2011
- Public Accounts and Audit Committee Amendment (Ombudsman) Bill 2011
- Telecommunications Amendment (Mobile Phone Towers) Bill 2011.

(Anne McEwen)
Chair
25 November 2011

Appendix 1

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

Name of bill:
Access to Justice (Federal Jurisdiction) Amendment Bill 2011

Reasons for referral/principal issues for consideration:

- Whether costs orders for discovery will enhance access to justice and to ensure that any potential for abuse is limited;
- Whether further ALRC recommendations on discovery are proposed and likely timing;
- Examination of the provisions relating to suppression orders to ensure that principles of open justice prevail.

Possible submissions or evidence from:
Law Council of Australia
Family Court
Federal Court
Federal Magistrates Courts Attorney-General's Department

Committee to which bill is to be referred:
Legal and Constitutional Affairs

Possible hearing date(s):
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Possible reporting date:
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(signed)
Senator Fifield
Selection of Bills Committee member

APPENDIX 2
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011

Reasons for referral/principal issues for consideration:
To consider the impact of the proposed changes on consumer and financial advisers.

Possible submissions or evidence from:
Financial Services Council; Association of Superannuation Funds of Australia; Financial Planning Association; Association of Financial Advisers; Industry Superannuation Network

Committee to which bill is to be referred:
Senate Economics Committee

Possible hearing date(s):
To be determined by Committee

Possible reporting date:
14 March 2012—the reporting date set for the inquiry into the related Corporations Amendment (Future of Financial Advice) Bill 2011.

(signed)
Senator Fifield
Selection of Bills Committee member

APPENDIX 3
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Crimes Act Amendment (Fairness to Minors) Bill 2011

Reasons for referral/principal issues for consideration:
To examine at the medical and forensic value of wrist and dental x-rays
To scrutinise the legal aspects and merits of placing children in adult prison or remand
To examine the sequence of events which lead to children being charged, or not charged, with people smuggling
To look at evidentiary aspects of age determination process for alleged minors charged with people smuggling

Possible submissions or evidence from:
Victoria Legal Aid
Alliance of Australian Lawyers
Australian Bar Association
Human Rights Commission
State and Territory Children's' Commissioners
Indonesian Consulate
Department of Immigration
Australian Federal Police
Commonwealth Department of Public Prosecutions
Royal Australian College of Physicians, or Australasian Paediatric Endocrine Group, or Australian and New Zealand Society for Paediatric Radiology, or Royal Australian and New Zealand College of Radiologists

Committee to which bill is to be referred:
Legal and Constitutional Affairs

Possible hearing date(s): February/March 2012

Possible reporting date:
22 March 2012

(signed)
Senator Siewert
Whip/Selection of Bills Committee member
APPENDIX 4
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Fair Work Amendment (Textile, Clothing and Footwear Industry) Bill 2011

Reasons for referral/principal issues for consideration:
To ensure the Bill would achieve the objectives of the Bill and has no unintended consequences.

Possible submissions or evidence from:
Australian Chamber of Commerce and Industry Textiles and Footwear Industry Association CCI WA

Committee to which bill is to be referred:
Senate Education, Employment and Workplace Relations Committee

Possible hearing date(s):
Possible reporting date:
March 2012
(signed)
Senator Fifield
Selection of Bills Committee member

APPENDIX 5
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
Illegal Logging Prohibition Bill

Reasons for referral/principal issues for consideration:
Consider the Bill against Committee's recommendations. Possible submissions or evidence from:

Australian Government Department of Agriculture, Fisheries and Forestry Australia
Australian Timber Importers Federation
Australian Forest Products Association
Greenpeace
Uniting Church Social Justice Mission

Committee to which bill is to be referred:
Rural Affairs & Transport Legislation Committee

Possible hearing date(s):
Possible reporting date:
8 February
(signed)
Senator McEwen
Whip/Selection of Bills Committee member

APPENDIX 6
SELECTION OF BILLS COMMITTEE
Proposal to refer a bill to a committee
Name of bill:
- Personally Controlled Electronic Health Records Bill 2011
- Personally Controlled Electronic Health Records (Consequential Amendments) Bill 2011

Reasons for referral/principal issues for consideration:
- Privacy issues/ Privacy Breaches/ Penalties for breaches
- Security of information on the PCEHR
- Questions about the design, functionality, and capability of the PCEHR
- Questions regarding the use of consultants, contractors, and tenders let or hired by NEHTA in regard to the development of the PCEHR
- The level of functionality of the PCEHR at 1 July 2012
- Questions around the continuation of NEHTA after 1 July2012
- The products that NEHTA designed, made, tested, certified for use in the PCEHR
- Any other issues the Committee considers appropriate.

Possible submissions or evidence from:
Any interested parties

Committee to which bill is to be referred:
Senate Community Affairs Committee
Possible reporting date:
- 29 February 2012
  (signed)
  Senator Fifield
  Selection of Bills Committee member

Reasons for referral/principal issues for consideration:
- Effect of measures and implementation plans, evidence of community awareness/acceptance. Assessment of intended and unintended consequences.

Possible submissions or evidence from:
- Northern Territory Government, FaHCSIA, Northern Land Council, Central Land Council, NT Shire Councils, NT Indigenous Advisory Group, Aboriginal Legal Aid, Concerned Australians, Stop The Intervention group, affected individuals.

Committee to which bill is to be referred:
- Community Affairs—Legislation Committee

Possible hearing date(s):
- TBA

Possible reporting date:
- 29 Feb 2012
  (signed)
  Senator Fifield
  Selection of Bills Committee member

Senator McEWEN: by leave—I move:
That the report be adopted.
Question agreed to.

BUSINESS

Days and Hours of Meeting

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (09:57): I move:

That the Senate not meet from Monday, 28 November to Wednesday, 30 November 2011.

I indicate at the outset that I do not intend to speak for very long. We do have bills before the parliament and the opposition, the cross-benchers and the government should be given an opportunity to debate them. I foreshadowed this motion when I spoke on Monday on the motion that established the
program of legislation in the Senate for the following week. This week included extended hours. It is not unusual at the end of a sitting period that we have, firstly, extended hours to provide an opportunity to debate bills, and, secondly, an additional day on Friday to allow debate. Of course, today is Friday. I remind people of that, because it is not a usual day of sitting. The motion does remove the final three sitting days previously scheduled for the Senate, as with the House, where they were scheduled as well. Mr Albanese indicated at the time that those three days in the House were only 'if required'—and the House, as we know, has adjourned to allow members to return to their electorates to do their electorate work.

*Senator Abetz interjecting—*

**Senator Ludwig:** There are no surprises with this motion; it has been on the *Notice Paper*. I do expect the opposition do take the opportunity to express confected outrage in relation to this matter; however, I do think that they will also want to return to their constituencies to do their work, given that we have had a long sitting period over the last three months. I take this opportunity to congratulate the opposition for being part of a parliament that, as of this morning, has passed 226 bills in 175 packages of government legislation. I expect that number to be added to before the Senate adjourns for the year. Since September last year, under the Gillard government, this has been a productive parliament, and I anticipate the productivity of the 43rd Parliament will continue next year. The Senate has made a steady progress through legislation this week.

I realise that many senators of the opposition have rallied and railed against the constraints that have been imposed this week under the procedural motion, but it is not unusual. When those in opposition were in government, they used the same devices; they used the same procedural motions. My recollection is that I rallied a little less than those opposite at this juncture but history will show whether I did or did not. In this way it does allow the constructive work of the Senate to be dealt with this week.

The opposition have had the opportunity to use the time available to them to debate the substantive bills. In many instances, they chose to debate procedural matters, not substantive bills. That was their choice, not mine. They were well aware of the extended hours for the week, which gave them the opportunity to debate the substantive bills and to manage their time accordingly. However, in many instances, they chose to debate procedural motions, as we have seen this morning as well. That, of course, then detracts from their ability to speak on the bills. So, with that, I think in many instances the complaints about not being able to debate bills are in fact crocodile tears from the opposition.

However, I do not want to take any of the time available to the opposition to organise their time today to debate the substantive bills. With the House now adjourned for the 2011 parliament, it is time for the Senate to also conclude its business. This will allow senators to go back to their constituents, finalise the year's work and also finalise the remaining work of the Senate committees. I recommend the motion to the chamber in the knowledge that—

*Senator Ian Macdonald interjecting—*

**Senator Bob Brown:** Mr Deputy President, I rise on a point of order. Again Senator Macdonald has referred to the minister as a 'fraud'. I think he should withdraw that remark.

The DEPUTY PRESIDENT: I did not hear the remark.

**Senator Ian Macdonald:** I withdraw.
The DEPUTY PRESIDENT: Thank you, Senator Macdonald.

Senator LUDWIG: I recommend the motion to the chamber in the knowledge that, despite how senators might vote, I think they will be pleased with the outcome, which does allow them to return to their Senate work in their home states.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (10:03): The Green–ALP government is drunk on its own arrogance and hubris in closing down this parliament three days early. Twenty bills by the end of today will have been guillotined through this place without one single word being allowed to be spoken in relation to those bills and not a single word being allowed to be spoken in relation to amendments to those bills. The reason is that the ALP-Green government alliance is vacating three days from the parliamentary schedule. When the parliamentary calendar was issued at the beginning of this year, it was clearly set out that 28, 29 and 30 November would be three sitting days. If those three sitting days were still available to us, the Green–ALP alliance would not have needed to have done their grubby deal, a terrible deal, which abrogates the responsibility of this parliament and abuses the parliamentary process by forcing through 20 bills, without a single word being spoken in relation to them.

Let us be quite clear: the Australian Greens have always portrayed themselves as the purveyors of political purity, as the sort of people who will always stand up for freedom of speech, who will always allow parliamentary process to be undertaken in a proper, transparent manner, and here they are as duplicitous as one can get in voting for 20 bills to be guillotined without a single word being spoken on them. I do not know how they can look at themselves in the mirror of a morning for the duplicity, the hypocrisy and the double standard. But of course those of us who have observed the Australian Greens in particular know that that is their modus operandi. If they want to debate a bill then it is absolutely essential in the cause of democracy that they be given all the time in the world to debate it, but if other people want to debate a bill then democracy does allow it to be guillotined without a single word being spoken on that bill. Their double standards are now there for all to see.

But what is worse is that the ALP have become complicit in these games, and that is why the conservative Labor voters around Australia are deserting the Australian Labor Party in droves. The Australian Labor Party have sold their political soul to the Australian Greens. Let us make no mistake: why can't we sit for those next three days at the beginning of next week? We know why. The Greens want to get to Durban, increase their carbon dioxide emissions and make fools of Australia. But why doesn't the Australian Labor Party want to sit? They have just had the embarrassment of knifing off their own Speaker to replace him with somebody else. I simply ask this question of the Australian Labor Party and of the Australian people: do you honestly believe that Mr Slipper is a better choice as Speaker than Mr Jenkins?

Answer that question honestly. Every Labor member that I have asked that question of and every political commentator I have asked that question of have not been able to say clearly that Mr Slipper was the better choice. So if you cannot come to that conclusion, why get rid of Mr Jenkins? Why do you want to run away from the parliament for parliamentary scrutiny over the demise of a Speaker?

We also know the chances are that potentially the Mid-Year Economic and
Financial Outlook, known as MYEFO, will come out next week. Oh no! The Green-Labor alliance would not want the parliament to be sitting when the Mid-Year Economic Financial Outlook comes out, because that might allow for some scrutiny. Further, the Green-ALP alliance do not want the parliament to sit so that there can be further exposure of the unravelling of the carbon tax.

Indeed, this running away from the parliament has all the hallmarks of the ALP Sussex Street tactics. Remember how Ms Keneally shut down the New South Wales parliament when things got a bit difficult? Well, Ms Gillard and the Green-Labor alliance are doing exactly the same to this place.

Earlier today we had the Greens seeking detailed explanations as to why certain people were seeking leave. Can I simply remind Senator Brown that in the past he himself has moved leave for Senator Siewert for personal reasons?

Senator Fifield: Shame!

Senator ABETZ: Senator Fifield says 'Shame,' not because Senator Brown moved for that but because of the duplicity and hypocrisy in his contribution this morning. It is similar to his notice of motion in relation to a matter going before the Privileges Committee, saying that my commentary in public about him being referred to the Privileges Committee might somehow prejudice the matter. Excuse me? Who was all over the TV screens, all over the radio airwaves and all over the print media when the ALP-Greens and a few others joined to refer me to the Privileges Committee? None other than Senator Brown himself! But, once again, it is the double standard that we have come to expect from the most duplicitous leader of any political party in this country.

I can understand why Senator Brown would want to leave this place early and not sit for three days, because his own leadership has been surreptitiously undermined day after day this week—three days in a row—by one of his own. Senator Lee Rhiannon has done doorstep after doorstep after doorstep this week, complaining about corporate donations to political parties and saying how that undermines the democratic process at the same time as Senator Helen Kroger has moved to refer Senator Brown to the Privileges Committee about receiving the biggest corporate donation in Australian political history. So here we have Senator Lee Rhiannon in the background, beavering away very busily, undermining her own leader.

So Senator Brown thinks, 'How can we stop doorsteps of a morning?'—and Senator Rhiannon was at it again this morning—'Ah! Stop the parliament from sitting, that way we stop Senator Rhiannon's doorsteps.' So we know that the Greens have certain reasons as well.

But I do suggest that the main reason is this: the ALP want to run from the parliament because they do not want scrutiny. That is why governments run away from the parliament, because they do not want the parliamentary process to keep on exposing their weaknesses. We have had that on display now day after day, week after week, month after month with this hopeless Gillard Labor-Green government—or Gillard-Brown government, as I should call it.

The reason the Greens also want to desert the parliament and cut short the parliamentary year is so that they can go to Durban so that they can, somehow, parade Australia on the world stage as the dunces of Durban. Why on earth would they want to go on the world stage and put up in lights, 'We're mugging our job market, we're
mugging our economy and—what is worse—we're not going to be doing anything for the environment. In fact, we will be making things worse.' So the real reason is that the Greens want to go to Durban and we have this pathetic ALP outfit once again selling out to the Greens and doing that which they ask for.

What will be on display at Durban? The Australian Greens and the ALP saying, 'How smart are we? We have just put in a package second to none in the world that will destroy the Australian economy.' Of course, the example I use is Coogee Chemicals. Coogee Chemicals was the promise of 150 jobs, the promise of a $1 billion investment and the promise of $14 billion in export earnings, to be set up in the Prime Minister's own electorate to be the biggest methanol plant in the Southern Hemisphere. It is now junked to go to China. And in China that plant's carbon footprint will be four times as big as it would have been in a pre-carbon tax Australia.

Everybody in the world knows that, and that is why all the other countries are slapping Australia on the back and saying, 'Good on you, good on you—keep on with it!' I am sure that Canada is there, rootling all the way for the Australian carbon tax. I am sure Brazil is, I am sure Russia is, I am sure India is and I am sure China is. They are all slapping the Green-ALP alliance on the back and saying, 'Great move! This is world leadership at its best.' And then behind their hands they whisper to each other and say, 'Aren't these the dunces of Durban? Why on earth would you do that to your own economy? Are you going to have a carbon tax? Are you going to have a carbon tax this big? Of course not—we wouldn't do something that silly. But we will say how good Australia is doing it, so they keep on with it to give ourselves a market advantage.' This carbon tax will be toxically destructive of our Australian economy. Senator Ludwig, in general terms, just reads out the scripts that are provided to him by his staffers in these debates. I suggest to him that he actually read the script before he comes into the chamber to see if there is a break in logic in that which is put in front of him, because he said to the Senate very generously, very graciously, 'I don't want to debate this for long because I want to give the opposition time to debate issues.' If he is genuine in that belief, in that thought of being generous to us, wanting to give us time to debate the issues of the day, can he explain why this motion is designed to take three days away from the opposition's time to discuss the issues of the day? Do not come in here suggesting that somehow the ALP-Greens alliance is being generous because the minister only spoke for a few minutes in an attempt to shut down the parliament three days early. It is this sort of behaviour by a government drunk on its own arrogance, believing its own propaganda, that has made them slip so badly in the polls. The Australian people see through that nonsense. How can any self-respecting individual come into this place and say, 'I'll only speak for five minutes on this issue so the opposition get more time, but in doing so I'm going to deny them three days of debate'? The logic is not there, nor is the supposed genuineness of that which the Manager of Government Business tried to sell to the Australian people.

It is a matter of great regret that the ALP-Greens alliance in this place is combining day after day, week after week now, to guillotine legislation. They guillotined the carbon tax bills through this place, yet we now have three extra days at the end of the parliamentary sitting. You could make out an argument that you needed to have a time management process, you needed to guillotine certain bills through, because the timetable that had been set for the year was
about to expire. But we have got three extra days that are now being denied to the parliament, three days that were set at the very beginning of this year for parliamentary debate. Why are they being denied to the Senate?

There is no reason, no explanation, that the Manager of Government Business wants to share with us. It was not out of generosity of spirit that he only spoke for five minutes, repeating the one line about five or six times to make it look as though he was providing an explanation. There is no explanation. There is no rationale other than that the ALP-Greens alliance wants to run from the parliament with its tail between its legs after the grubby deal of getting the mining tax through the House of Representatives with the Australian Greens, doing a side deal that the Labor caucus knew nothing about and the so-called 'Independents' in the House of Representatives knew nothing about but, lemming like, voted for. They voted for a deal of which they knew nothing. Where is their self-respect? Where is their personal integrity, especially the Independents? They are the ones who are supposed to, as Don Chipp famously said, 'keep the bastards honest'. Well, excuse me, but how is it keeping the government honest when you deliberately allow them to do a side deal with the most atrocious political party, the Australian Greens? The Independents had no idea, Labor backbenchers had no idea, but lemming like they ran across the chamber to vote in favour of the mining tax.

That was the first grubby deal this week. Then we had the grubby deal in relation to the Speaker, and that will unravel. One thing the Labor Party are good at, I must say, is getting the initial good headline on issues. But then it all starts unravelling very quickly, and I have no doubt that that is what will happen in relation to this grubby deal on the Speakership. I simply ask the question again: is there anybody anywhere in Australia that honestly believes that Mr Slipper is a better choice than Mr Jenkins as Speaker of the House of Representatives? Not a one. Not one person has said, 'Yes, he is.' So one wonders what was behind that grubby deal. Then there is the third, completing the trifecta for this week, and that is what we are debating now—that is, this grubby deal to shut down the Senate three days early.

Senator Ludwig patronisingly told us that we could go back to our electorates and do the people's work. Well, excuse me; I do not know what the ALP do in here, but we in the coalition—and, I am sure, the DLP senator and Senator Xenophon—believe that we are actually doing the people's work when we are in this chamber, and that is why we condemn the ALP-Greens alliance in their attempt to close down the parliament three days early in circumstances where they have deliberately guillotined through, without a single word of debate, 20 bills—20 bills. It is unparalleled in the history of this parliament to so ruthlessly use numbers.

This is indicative of Ms Gillard and Senator Bob Brown being drunk on power, without any consideration of what they are actually here for. It is not for them to play politics. It is not for them to engage in self-aggrandisement. It is about doing their best by the people of Australia. And how can they honestly say to the Australian people that, this week, they have done their best by getting through the sleazy mining tax deal without telling anybody but forcing it through the House of Representatives, doing the sleazy Speaker deal and now doing their sleazy deal to cut short the sitting of the
Senate? How can they claim that all these things are somehow in the best interests of the Australian people, who we are sworn to serve?

Senator Brown and Ms Gillard are simply using this parliament as a plaything for their own personal agendas, often against the express wishes of the Australian people and often against the express commitment made by Ms Gillard to the Australian people. Exhibit A in that list is the carbon tax. We as a coalition are willing to come back next week to serve the interests of the Australian people and to ensure that matters are properly debated in this Senate—as they should be—and the Labor-Green alliance stands condemned. (Time expired)

Senator XENOPHON (South Australia) (10:23): I will make a short contribution to this matter of variation to sitting days. It is fair to say that we as a chamber have not covered ourselves in glory in the last few days. I say this without rancour and without seeking to make any political points. I believe it is completely unsatisfactory that we had a situation where many bills went through without any debate, without any positions being put and—particularly for controversial pieces of legislation such as amendments to the Family Law Act, which will literally affect hundreds of thousands of people in this country in the years to come—without a committee stage. There was no consideration given to fundamental amendments, no opportunity to ask the government key questions about how the new act will operate, no opportunity to properly scrutinise that piece of legislation and no opportunity to deal with a whole range of other legislation relating to issues of crime, corruption, air cargo, air security and pollution of Antarctica—just to name a few. That is unsatisfactory.

I would like to foreshadow—and I will consult with my colleagues, with the government, with the opposition, with the Australian Greens and with the DLP—a reference to the Procedure Committee of the Senate so we do not repeat what occurred. We are meant to be the house of review. We are meant to be the premier legislative body in this country when it comes to reviewing legislation to ensure there is appropriate scrutiny of the laws put up by the executive arm of government. We have not done that. The fact that the coalition may have guillotined debates in previous years when they were in government, to me, is not an excuse for what has occurred this week.

Senator Abetz: We were not as bad!

Senator XENOPHON: That may be the case.

Senator Bernardi interjecting—

Senator XENOPHON: Helpful as always, Senator Bernardi said, 'We were ethical guillotiners.' Maybe there is a line there about Madam Defarge but I won't go there. I am not sure there is such a thing as an ethical guillotine. I cannot imagine Senator Bernardi knitting while the guillotine is being applied.

What has occurred in the last week is completely unsatisfactory. We need to do better as a chamber. We owe it to the people of Australia. I will be putting a reference to the Procedure Committee, but before I do that I will consult with my colleagues from all sides so that we get this right. Let us not repeat the debacle of the last week. I look forward to debating some legislation this morning and asking a series of questions about competition and consumer law.

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (10:26): Mr Deputy President, I know that you are a student of political history and that you would have read many of the words of
former Prime Minister Paul Keating. Like you, I do not agree with much that Paul Keating said, but one thing he said time and again which I absolutely do agree with is that the Australian people expect value from their parliament, and the Australian people are definitely not getting value from this Australian parliament.

We had the farce during the carbon tax debate where the government initially passed through this chamber a guillotine, which was bad enough. That was outrageous in and of itself. Coming on top of the breach of promise to the Australian people not to introduce a carbon tax it was bad enough, but they compounded it by seeking to deny this parliament its rights and prerogatives to properly debate and examine that legislation. So the government put a guillotine in place. But then they one-upped themselves. They put a gag on a gag by bringing forward the date of that guillotine. The Australian public did not get value from the Australian Senate on that occasion with the carbon tax debate.

We have seen the same approach taken to this sitting week. The legislation which we have before us this week, those 33 bills, are of a different magnitude in their impact to the electorate—to the Australian public—on the economy. They are of a different magnitude. In this place, as senators, as members of a house of review, we take the view that every piece of legislation should receive proper scrutiny. Every piece of legislation should be subject to the processes of inquiry, the processes of examination, that this chamber provides. That is regardless of whether a particular piece of legislation has the support of all senators or is a matter of great contention. We have legislation before the chamber this week, some of which we are in heated agreement about and other items which are matters of some controversy. Regardless of which of those two categories it falls into, each piece of legislation does deserve to be properly examined, and we have been denied that opportunity. The government seeks to further compound that by eliminating the three sitting days next week, and that is the subject of this particular motion.

I agree with Senator Xenophon in saying that this chamber has not covered itself in glory in this past week. The situation as the guillotine was applied each night this week was farcical. There is no other way to describe it. If we want an explanation as to why the public are from time to time a little cynical about politicians, a little cynical about the parliament—and I am a great defender of the parliament and of my colleagues in this and the other place—we need look no further than each night of this week. We had an incredible situation—a situation I have not seen in my seven-and-a-bit years in this place—where senators were called to vote upon legislation in a circumstance where there had been no opportunity for debate, no opportunity for speeches on the second reading and no opportunity for amendments to be debated. There was no opportunity of any sort for the legislation to be debated.

As Senator Abetz said, of the 33 bills that were the subject of that guillotine, 20 proceeded to conclusion without any discussion of any sort. When those bills were racked up, when they were stacked at the end of the day, and all stages of the legislation were dealt with one bill after another, with no breaks, no discussion and no examination in between, it is absolutely no surprise that on occasion the government made the wrong call as to which way they were voting. It was extremely difficult for senators to know what the question before the Senate was, what matter we were being asked to cast a vote on. It was no surprise at all. I hope we never see again that farcical situation where senators essentially do not know what they are voting
on. So, if we want a bit of an insight into why the Australian public are a little bit cynical from time to time, we need look no further than each night of this week.

The Manager Of Government Business referred to the three sitting days scheduled for next week as occurring 'if required'. Those three days were part of the motion which established the sitting schedule for this year. I think the House took a different view from the Senate. I think they took the view that they were not real sitting days and would only occur if there was urgent business. But in the Senate we did not take that view. We took the view that the motion that was passed through this chamber was what would happen—that on those days that were scheduled we would sit. Senator Ludwig, in his contribution, said he did not want to speak for long because he did not want to take up the opposition's time to debate the bills today. The reason we do not have time to debate those bills today is—

The ACTING DEPUTY PRESIDENT (Senator Stephens): That we talked for an hour.

Senator Sherry: Because you're talking too long!

Senator FIFIELD: No! You cannot have it both ways. You cannot say, 'We're pulling three days out of the parliamentary sitting schedule next week and we're instituting a guillotine each night of this week on 33 bills, but the reason you don't have enough time to debate is that you're actually debating the motion which is seeking to deny sitting days.' No, the reason we do not have adequate time to debate is that you have instituted a guillotine; the reason we do not have time to debate is that you are axing three sitting days next week. Us being here performing the function of seeking to defeat a motion which is intended to deny the chamber three sitting days next week is not the reason we will not have adequate time to debate. That is perhaps the most pathetic and feeble argument I have heard Senator Sherry put—and Senator Ludwig for that matter. Let us be clear: we want to defeat this motion. We are endeavouring to persuade those opposite to defeat this motion. We are endeavouring to persuade the Australian Greens to defeat this motion. It is this very motion which is denying the Senate the opportunity to apply appropriate scrutiny to bills. The reason we have this truncated debate is that we are being squeezed between a guillotine and an axe intended to do away with the sitting days next week. So Senator Sherry and Senator Ludwig, if you are going to mount an argument, please do a little better than that. It would be appreciated.

We want the Senate to sit as scheduled next week for two reasons. The first reason is that this chamber still has legislation to debate. If we were sitting for three days next week there would be no need for the guillotine which is in place this week. We are a house of review and we should do our job. We should apply scrutiny, we should ask the appropriate questions of government ministers in the committee stage and we should hold the government to account. That is the first reason the Senate should still sit next week.

The second reason is that the government will be releasing very shortly their Mid-Year Economic and Financial Outlook, the MYEFO. But this year the MYEFO is in effect going to be a minibudget. This government has made a lot of its commitment to bring the budget back into surplus in 2012-13. Well, it was a commitment, but it has slipped and slid a bit since then. It became an objective, it became an aim, it became a hope, it became a dream and it became a fantasy—and now it has come back to being an objective. I still
think it will end up being a fantasy, but we will have to wait and see.

The government have placed great emphasis on that commitment to a surplus as being the foundation of their economic credibility. But the deterioration in the state of the budget is not because of revenue shortfalls—although that is what the government always cites—but because of policy decisions by this government. What that means is spending; it means decisions taken by this government to spend more money, more money than they received in taxation revenue. That is why the budget is going pear-shaped. That is why the MYEFO next week is going to be more in the style of a minibudget than a mere economic update. A minibudget of that significance needs to be appropriately examined, and the place for it to be appropriately examined is here in the Australian Senate and over in the other place. The government should do two things. Firstly, they should withdraw this motion and allow the Senate to sit next week, as scheduled, on Monday, Tuesday and Wednesday. Secondly, they should recall the House of Representatives so that it too can examine the MYEFO. There are two reasons that the Australian Senate should sit as scheduled—to allow it to do its job of examining legislation in order that it can do its job of being the house of review and to allow the House of Representatives to re-examine the MYEFO. I add a third reason: to allow us have the question times which were scheduled for next week. Question time in this Senate and in the other place is one of the great accountability mechanisms of the Westminster system. We have a few more accountability mechanisms in the Australian Senate. We have our estimates committee system, which is the envy of parliaments around the world and is a robust and fantastic accountability mechanism, but the centrepiece of government accountability to the parliament under the Westminster system is question time, and we and the Australian public will be denied three question times—on Monday, Tuesday and Wednesday—next week.

It is not as though this is a particularly good government. You might not concede that, Madam Acting Deputy President Stephens, but I think the majority of the Australian public would agree with it. Governments which are this bad need scrutiny. They need the scrutiny of question time and the opportunity it affords to shine the light upon them, and that opportunity will be denied us next week. We need to have those question times next week because this government should go scarcely a day without examination. It is bad enough already that the Australian parliament this year is sitting on fewer days than in almost any non-election year in its history, but this government is seeking to further curtail the number of days that the parliament sits and further curtail the opportunities for scrutiny through question time.

We need to have the opportunity to continue to examine this government for a number of reasons. This government has perfected the crafting of bad policy—they have made an art form of it. You will recall, Madam Acting Deputy President, Fuelwatch and GroceryWatch. One of those got up for a while, and the other never got off the ground. They were very badly crafted policies. This government's border protection policy is a debacle. This government has made an art form of bad policy, and one of the reasons that we need to have the Senate sitting and to have question time is so that we can continue to examine and probe bad policy. Another reason that we need to have those question times is that, although this government's policy crafting is bad, they are even worse at implementing it. So there is bad policy, which is not a great way to start, and then
there is absolute incompetence in administering that bad policy. There is hopelessness on top of bad conception, and it is a really bad combination. We need to have the opportunity in this place, in question time, to find out if there are further administrative blunders—to try to protect the government from themselves and to try to expose some of this bad policy before it goes too far. We need to have the opportunity to ask about badly crafted policy; we need to have the opportunity to inquire about program administration.

Senator Ryan: And programmatic specificity!

Senator FIFIELD: And programmatic specificity! If you could encapsulate the crafting of bad policy in one phrase, it would be Kevin Rudd's—the former Prime Minister's—‘programmatic specificity'. There is an even more important reason, though, that we need to have question time next week, and that is the very basic principle of the accountability of a government to the parliament. This government evade accountability at every opportunity. They evaded it on the carbon tax when they lied to the Australian people—they did not want to be accountable to the Australian people, so they fibbed. They then evaded accountability by curtailing debate in this place on the carbon tax, and they have sought to do that again this week with the 33 bills before us. They take every opportunity to evade accountability.

It is also important to have the parliament sit in order to hold the government to account because we know that they are specialists in deceit. This government promised that they would be better than the coalition. They promised that they would set new standards of accountability and integrity. We have heard Senator Faulkner talk a great deal about that. I do not doubt Senator Faulkner's sincerity on that point, but I tell you: I do not think many of his colleagues share it. This government is characterised by deceit.

Perhaps the most disgusting example of deceit that we have seen in recent times is what happened over the other side of this building yesterday. This outfit really have a taste for guillotines. They guillotine legislation, and yesterday they guillotined a Speaker. That has not happened for centuries. Off with his head! Boom! It came off, it was clean and it was quick—it was a guillotine. His head is gone; he is gone; it is over—we have a new Speaker there. The reason I say that it was one of the most disgusting things I have seen since I have been in this place is that one can only wonder—though I am not going to cast aspersions on anyone—about the circumstances that led to the former Speaker's resignation. I am tempted to take the former Speaker's words at face value, but I can tell you, Madam Acting Deputy President, that there are many who will not, including most members of the Australian public and including the Australian press gallery. I do not think they will take his words at face value. There could be no clearer example of why it is important that the parliament sit every day on which it is scheduled to do so than the events of yesterday. Nothing this government does is straightforward. Nothing this government does is as it seems. This government has perfected deceit. This government has turned it into an art form.

We need to have this Senate sit next week. We need to have it sit so that we can appropriately debate the remainder of the 33 bills which are still before us. We need to have the Senate sit next week so that the MYEFO minibudget can receive appropriate scrutiny. We need to have the Senate sit next week so that we can perform the function of
holding the government to account. We need to sit next week so that the government is answerable to the chamber that the people have elected. We need to sit next week so that the Australian people get value from this chamber.

As Paul Keating always said, the Australian public should get value from their parliament. We need to sit next week so that we can ask this government questions about their badly crafted policies. We need to sit next week so that we can ask the government questions about their administrative competence and about the programs which they are seeking to deliver. We need to sit next week so that we can make sure that this government does not continue in its deceit of the Australian people.

This—the curtailing of the sitting of parliament—is not a minor matter. People have fought for centuries over the rights and prerogatives of parliaments. People die for the opportunity to have their parliaments meet, sit, be elected. We should not be cavalier in dismissing sitting days of the Australian parliament. We are elected to do a job. On this side of the chamber we want to do that job. The government should withdraw this motion. The Australian Greens, if this motion is put, should vote with us. This motion stands condemned.

Senator BERNARDI (South Australia) (10:46): I recognise that there is a great deal of interest in this debate. It goes to the very core of what we, as members of parliament, are doing here. I understand that there are very different motivations for why people come to the Senate—it is a very important house, as has been pointed out—and how they actually get here. I recognise that some get installed in the Senate because they are being pensioned off from the union movement or because they can no longer see the fulfilment of their dreams in other aspects of their lives. I recognise that for some this is just a retirement plan. But for many of us the decision to come to the Senate, and the opportunity to do so, is driven by a real desire to review legislation and to consider the implications for the Australian people of the direction of our nation and the direction of our economy.

I take that responsibility very seriously. I am not from some fringe group that has stumbled into it, as have members of the Greens party. I am someone who came here to make a difference. And I know that many of my colleagues on this side of the chamber actually take this very seriously. In accordance with that it is appropriate that there are times when 'time management', as it is euphemistically called, or the 'guillotine', as it has been referred to in this instance, can be applied, in the interests of the Australian nation. That is something that governments have to use on occasions. They have to use it wisely.

But where this motion put forward by the government rankles—it contradicts the common sense that should be with us all—is in the simple fact that we have scheduled three sitting days for next week in which we could fully explore the plethora of legislation or bills that has been put before this Senate and has been cut off without a single word of debate or discussion. That has effectively neutered the role of all of us in this parliament to critically examine and assess what is going on. We have had an example of some of this with the family law bills, which are very contentious. I know that there are many people in this place who have received numerous emails and communications about problems with the family law bills and how they could be amended. But we did not even have a debate in the committee stage on the legislation. This is an outrage; it is a travesty. The
people in this place have a democratic right to critically examine legislation.

So I am not against time management but I am against the abuse of what I believe is our democratic process. I am against the government being held hostage by a group of fringe dwellers—the fairies at the bottom of the garden known as the Greens party. That is exactly what is happening here. We know that the Greens leader, Senator Bob Brown—who is currently before the Privileges Committee for allegations of misconduct in pursuit of his duties—has basically said to the government, 'My team and I are going to Durban to crow about this great green tax that we have placed upon the Australian people, that we have forced upon the Gillard government, and we are going to trumpet it around the world,' notwithstanding the fact that the rest of the world has said that this is a joke. Just today, and yesterday, there was a release of a stack of emails which highlighted, once again, the folly of the climate change movement and the zealots within it. In the emails they overstate their case—it has been reported by the IPCC—about the climatic effects of carbon dioxide, if any, and also celebrate the deceit they have played out upon people around the world. It is a monumental hoax and a monumental fraud that will be exposed.

But, notwithstanding the facts and the evidence, the Greens movement are going to triumph about their re-engineering of the Australian economy in Durban. They are going to fly there first class, I am sure. I am not sure which one of their sponsors will be paying the way but I will look forward to reading their declarations of interest.

As a result of that, we have to truncate and remove three days of debate in this place. Senator Fifield accurately described why that is a misuse of the parliamentary numbers in this place. Let's not pretend that these three days were annexed last week or earlier this week in case we needed them; they were part of the sitting calendar. We have all prepared for them. We have managed our ability to discuss bills and to deal with the government's requirements according to the parliamentary calendar. But what happens today? Senator Ludwig is told by Senator Bob Brown to come in here and guillotine those three days of the sitting period. This is not time management. This is a government held hostage and playing right into the hands of their greatest enemy and their greatest threat—that is, the great threat to Australia: the radical green movement. Yesterday was the four-year anniversary of perhaps the most belligerent, backbiting, nasty, incompetent and just generally hopeless government that this country has ever seen. We have seen butchery of a scale unprecedented. We saw, of course, the knifing of the first-term Prime Minister, Mr Rudd. He was not a particularly good Prime Minister, but certainly the annals of history now reflect very well upon him given the fact that Ms Gillard is proving to be even worse. So after four years not only are they butchering their own, not only are they now controlled by the Greens party, but they are butchering our right and the right of every Australian to have a critical examination of the bills that are facing us.

Next week is a lost opportunity to examine the 20 or so bills that have been chopped off in this place without any debate or discussion. Can we believe that? I just put that to the Australian people: does it pass the probity test? Does it pass the commonsense test? Does it sit well with you that 20 or so bills in this parliament that affect the future of our nation, that direct our laws and our conduct and behaviour have gone through this place without a single word of debate, without a single word of examination, without a committee period in which we
could ask questions of the government to determine whether this is in the best interests of the Australian nation? I would put to you, Acting Deputy President Stephens—and to the people of Australia—that this sits so uncomfortably with our freedoms and our democracy, which people have fought and lost their lives to defend. And what is happening now? The legacy, the message, the traditions, the conventions of this place have been killed just as surely as the Speaker of the House of Representatives was politically killed yesterday.

This is a time in which the world is facing a number of critical challenges, and Australia is not immune from those challenges. Australians want from their parliamentarians not just a cursory tick and flick, which is the process which has infected Europe and caused such a devastating impact on so many economies there. It has seen the bureaucrats taking control of the legislative agenda and the parliamentarians merely sidelined as puppets on the stage to the bureaucratic bungling. We cannot afford to have that in this country, and yet that is the path we are going down when we have legislation brought into this place and passed through this place without a single word of debate or discussion. Is that the future we see for our nation, where parliamentarians are ineffective, where the brutal numbers of a government are used in deciding what is going to come in and what is not, and what can be talked about and what cannot?

It is the new style totalitarianism on display. It is the social democratic movement which is stifling freedom of speech, stifling the democratic process in this country—all in the name of appeasing a very, very dangerous political movement, and that is the Greens party. We know they have a radical social agenda. By Senator Bob Brown's own admission he would like to see global government and the centralising of bureaucracy, where everyone in the world has one vote and one voice—and, of course, only some voices are allowed to be heard. This is the tragedy of what we experiencing. It is the very first stage of this. Three scheduled parliamentary sitting days are being removed from the calendar by the government's representative, by the mover of this motion, Senator Ludwig.

Ultimately the Australian people will decide whether the conduct of this government is appropriate or not. They will decide whether having a government that is held hostage to a tiny minority extremist movement is in the interests of this country. But in the meantime, before the next election, the very least we should expect is some probity and prudence in our policy making. The problem with this is that, if the government had a track record which was enviable, a track record in which their decisions, their implementation of their policy agenda, had a modicum of success—if they could even highlight three successes—we might give them the benefit of the doubt, but, unfortunately, they have a legacy of waste, a legacy of betrayal, a legacy of butchery, a legacy of failure.

It can be characterised in so many different ways. At the last election, for example, we had the cash-for-clunkers scheme brought in by Minister Carr. That was his suggestion. What a dud that was. It did not even survive the election period. Of course we had, 'There will be no carbon tax under the government I lead,' from a deceptive Prime Minister who did mislead the Australian people, because the carbon tax has been passed—at the insistence of the radical Greens.

Senator Ludlam: Hear, hear!

Senator BERNARDI: I notice, Senator Ludlam, you say, 'Hear, hear!' which is fine. You might well enjoy re-engineering the
Australian economy to satisfy your own bloodlust to take control of the Australian people, but it is not going to actually make any difference to the environment. I think we acknowledge that. The rest of the world is not going down this path. It will disadvantage Australian industry and Australian jobs. You think that is a good piece of policy. I think the Australian people will beg to differ.

So we had this promise by Ms Gillard not to introduce a carbon tax—a broken promise. We had talk of a citizens' assembly on climate change. I still remember that when Minister Penny Wong—who has had such a great track record in this space!—was there, nodding enthusiastically and going around trumpeting the virtues of building a consensus across the Australian people. But, of course, they get into parliament, the Greens tell the government what to do, and the Australian people start saying: 'Hang on, there is no consensus. The science that you have been telling us is settled is not settled at all. You said the rest of the world was going to be going down this path. They are not going down this path at all.' Even their mythical hero, President Obama, is not going down this path. He is taking a direct action plan. In the face of all of that, they ditched their citizens' assembly.

We have any number of other issues that this government has failed to deliver on, and that is building on a track record of failure by the previous government under Mr Rudd and later Ms Gillard in the previous parliament. As Senator Fifield pointed out, we had Fuelwatch, which I do not think managed to even get a start. We had GroceryWatch, in which millions of dollars were invested in a price-monitoring website which did not work. So that the government could do the Pontius Pilate and wash its hands of it, it sent it off to a consumer organisation, but of course that was not sustainable either. Millions of dollars were wasted.

If you examine the stimulus package critically, not only were there aspects of it which were abject failures but the essence of it was grotesque waste. It is as if a billion dollars—that is, $1,000 million—has very little meaning anymore to the government. When they were building school halls, they wasted around $8,000 million of borrowed money. It was not even money they had in the bank. It was not taxpayers' money. It was money they borrowed that future taxpayers will have to pay back. That has mortgaged the future generations of this country. It was not just that $8 billion in waste but a cumulative $150 billion or so in waste in only four years.

We had the $900 payments that were sent out to people. Some would argue that that is taxpayers receiving their money back, but unfortunately it did not go just to taxpayers; it went to people who were living overseas. I am sure that helped to stimulate the Greek economy, the Italian economy or the British economy! It was just wasted. It went to people who were deceased. The $900 stimulus payment went to dead people, if you can believe that. If that does not go against the common sense that means we should be critically examining everything that comes through this place, I do not know what does.

The government is now in a war against gambling and poker machines. That is once again at the behest of an Independent. But I remember when I remarked in this place that sending people $900 so that it could be used simply in poker machines was not really a great use of taxpayers' money, and I remember one senator standing up and saying: 'What have you got against poker machines? It's okay to do it.' Well, I do not have anything against poker machines, but I
think that if governments want to stimulate the economy there are some better things they can do with $10 billion than simply giving it to dead people and people overseas and allowing people to blow it on gaming machines. Honestly, if you have taken the tax from them, you might as well invest it wisely. You could even cut taxes for people so that taxpayers actually got a longstanding benefit. But of course we did not see that happen. We do not see those far-sighted applications from the government because it is always a knee-jerk reaction. It is always, 'How can we get a political bang for our buck?' rather than, 'How can this nation get some nation building or get some long-term benefit for the taxpayers' buck?'

Through all these abject failures, the government has never said, 'The buck stops here.' That is a very important thing. Who has taken responsibility for the failures of this government? Have we seen any minister sacked or held to account for the policy failures? Have we seen Minister Garrett, who reigned over some of the worst decision making we have seen, held to account? The answer is no, he is still in the cabinet. Did we see Ms Gillard, who oversaw Building the Education Revolution, held to account? No, she got promoted. She got promoted for knifing Mr Kevin Rudd and she got promoted for wasting billions of dollars.

Have we seen in this place anyone held to account for the massive broadband blowout, the NBN, that went from $4 billion initially, I think, in the original tender to something like $46 billion today? That is not even included in the debt figures of this government. Did we see Senator Wong held to account for the disgraceful and misleading manner in which the government tried to sell the emissions trading scheme to this parliament—for the fakery, the misleading statements, the abuse and the belittling of anyone who dared to question what was going on?

But it has reached a new low now. It is no longer just asking a question and receiving abuse in response because the government does not like the question. We are now not even allowed to ask the questions. We are not allowed to ask questions about the bills that this government is seeking to implement that will forever change our country—or while this government is in power—because we cannot rescind them.

And why are we not allowed to do this? We are not allowed to do it because (1) the government has very few questions and (2) the Greens party have something better to do than be in this parliament, according to them. According to them, the Australian people are not as important as the global governance movement that will be meeting in Durban, where they will all be able to slap each other on the back and say: 'Look at us; aren't we good? We're saving the world from the nasty people, the people who care about the local people. We only care about centralising bureaucracy and entrenching power and our influence.' We are seeing what happens as a grotesque misuse of that power. That is why those on this side of the chamber like to see full and free debate.

That brings me back to my initial point. I understand perfectly that there are times when time management needs to be implemented by government. I understand that perfectly and, in a cooperative arrangement, those things can be achieved. But it does not pass the common-sense test and it does not pass the scrutiny and the probity test that three scheduled days of this parliament are going to be abolished under this motion by Senator Ludwig, and yet there are 20 bills this week that we are not allowed to talk about, that we have not been allowed to even question or make a contribution to the debate on. That is an indictment not only
of this government. It is an indictment of their Greens masters, and it is a great travesty for the people of Australia. That is why I will be voting against this motion, not in my interests—I would love to go home—but in the interests of the Australian people.

Senator IAN MACDONALD (Queensland) (11:06): I want to add my voice of opposition to this motion by the Greens and the Labor Party to cut three days off the sitting time of this parliament. Heaven knows, this is one of the shortest parliamentary years we have had on record. Clearly the Labor Party and the Greens do not want parliamentary debate because they have no interest in democracy. It is clear as well that one of the reasons is that Labor Party politicians, and particularly the Greens politicians, want to head off to Durban to swan around the stage at the COP17 meeting on climate change. Senator Hanson-Young interjected on me before, indicating that Senator Brown, Senator Milne and whoever else from the Greens are not going on Monday, Tuesday and Wednesday. They are not going until the following week and they are paying their own way.

Well, I look forward to their contribution to this debate so they can put on record their argument against suggestions that I and others have made that cancelling three days of parliament is all about the Greens political party getting ready to head off to Durban to wander the world stage on climate change issues. We know that is going to be a farce. The intergovernmental panel that started this off a few years ago was reported this week as coming back on their forecasts of climate change. In fact, the headlines are saying 'climate forecasts have been overstated'.

What has been said by the Greens and the Labor Party for many years about the importance of the Intergovernmental Panel on Climate Change, which leads to this further junket that we will see next week and the following week, is all based—a bit like the carbon tax itself—on exaggerated comments and on lies in the case of this conference. It is based on what are now said to be exaggerated climate forecasts. I look forward to hearing the Greens tell us when they are going to Durban. Tell us it is not next Monday, Tuesday and Wednesday. Tell us it is not because you want to head off to Durban that you are cutting three days off the parliamentary year.

The debate in the last few weeks has been guillotined by the Labor Party and the Greens political party. The normal debate that we would have on 20 bills has been not only reduced but also cancelled. We passed 20 bills during this week with not one word being said on them—not one word in favour of the bills, not one word in argument, not one question answered, and no scrutiny allowed of a government which, dear me, requires a lot of scrutiny. Not one piece of scrutiny was allowed by the Greens political party and the Australian Labor Party.

Senator Ludlam interjecting—

Senator IAN MACDONALD: I hear 'let's get on to the bill'. Senator Ludlam, why not sit next week so we can discuss these bills?

Senator Hanson-Young interjecting—

Senator IAN MACDONALD: I think Senator Hanson-Young said 'more people should be listening to this debate' and I agree with her. (Quorum formed) While we were waiting for the Labor Party, which prior to this had two people in the chamber listening to this important debate—that shows what an arrogant government we have—I heard the Manager of Government Business berating our manager about curtailing this debate. I heard the Manager of Government Business, Senator Ludwig, issue a threat: 'If you want
to debate this bill, we are going to guillotine it as well.' This is just typical—

Senator Ludwig: Mr Acting Deputy President, on a point of order. I did not say that, you boofhead!

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop): That is no point of order.

Senator IAN MACDONALD: Do you see how sensitive the Australian Labor Party are when their issues are exposed to the Australian public through the medium of telecommunications that we now have? Today, we have to deal with the Competition and Consumer Legislation Amendment Bill, a very important bill; the Human Rights (Parliamentary Scrutiny) Bill, perhaps one of the most significant human rights bills for some time and I know Senator Brandis is very keen to have a full-scale debate on that; the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill; and the Social Security Amendment (Student Income Support Reforms) Bill. That all has to be dealt with by 1 pm today—in two short hours. Why do they have to be dealt with by 1 pm today when there are three days left in the parliamentary sitting calendar? We could be debating those bills at length, as we should in this chamber, on Monday, Tuesday and Wednesday of next week. In addition to that I understand from having a look at the Notice Paper that there is a bill on migration, the Deterring People Smuggling Bill 2011, that needs to be addressed. I guess we are going to do that after 1 pm. We will start getting these pressures: 'People have booked flights and everyone wants to go home.' I have heard interjections saying: 'Why are you speaking? We have heard this all before.' I am speaking in the hope that someone in the media might actually give a front-page focus to the travesty of democracy that the Greens and the Australian Labor Party have imposed upon the people of Australia. I notice this Courier-Mail headline: 'King Rat'. I would like to see a front page that says, 'Travesty of democracy', and details the bills that have been rammed through this parliament without one person speaking on them, without one person being able to raise objections. I have mentioned that there are several bills plus an important migration bill yet to be done. Here we are guillotining them through so that we have only a few minutes to speak on them. I suspect we will not even get to some of them. They will joining the list of 20 bills that have been dealt with without any debate whatsoever.

I finish on this note: when there is so much business for this parliament to do, why are we taking away three days that have been listed for more than six months as part of the parliamentary calendar? That is a disgrace. It is a travesty of democracy that the Greens political party and the Australian Labor Party would shut the parliament down when there is so much business yet to do. I remind senators that they are paid to be in this chamber. They are paid to debate legislation. They are not paid to be jumping on first-class aircraft and slipping over to South Africa for a jolly couple of weeks, as the Greens clearly intend to do and as a number of Labor Party people intend to do as well. I urge senators to vote against this motion and ensure that we have the next three days for parliamentary debate.

Question put:

That the motion (Senator Ludwig's) be agreed to.

The Senate divided. [12:21]

(The President—Senator Hogg)

Ayes ......................35
Noes ......................31
Majority .................4
I rise today with some relief to speak upon the Competition and Consumer Legislation Amendment Bill 2011. Let me say upfront that the coalition does not oppose this package of legislative changes. Indeed, it is the role of the law to facilitate domestic market conditions that are good for business and the community, and competition policy plays a critical part in that role.

The amendments in this bill attempt to strengthen the competition policy regime, which in turn should facilitate a more conducive economic and business environment. That said, the coalition believes that this is an extremely modest bill with modest aims. While we see no damage being caused by this bill, we also see no great cause for celebration. The government's language of accomplishment and achievement does not suit this bill. It is misleading and overstates the impact these changes will make. Yet again we have the Labor Party seeking to create the illusion of reform. Desperate to claim some sort of policy success that assists businesses, and particularly smaller businesses, it makes claims where there are none and overstates the impact of minor changes.

Essentially, this bill has two aims. The first is to clarify the operation of existing provisions—and, I stress, not to create new ones—relating to mergers and acquisitions by addressing a potential uncertainty or ambiguity that may arise in defining what a market is for the purposes of section 50 of the Competition and Consumer Act. It does
this by broadening the language of 'market' so that all markets can be included and so that creeping acquisitions can also be scrutinised. This will ensure that a court or the ACCC can examine mergers in a greater number of markets.

The second aim of the bill is to insert interpretive principles into the unconscionable conduct provisions to assist the courts in applying the law as well as to assist broader community and stakeholder understanding. What the bill does not achieve is that which was described in the government's speeches in the second reading debate, when it claimed great achievements for small business and groundbreaking shifts in competition and consumer law in Australia. It does not do anything of that sort. It is what it is, and we support it for the aims I have just outlined. It is a modest gain to clarify contested and often misunderstood aspects of competition law.

I first want to address the bill's provisions in relation to its amendments to the Competition and Consumer Act 2010 with respect to section 50, which is the key provision relating to mergers and acquisitions. It provides the ACCC with the legislative framework to analyse, consider and address potential competition policy concerns posed by mergers and acquisitions in Australia. Most of us agree that mergers and acquisitions are important for the efficient functioning of the Australian economy. They allow firms to achieve efficiency such as economies of scale and the diversification of risk across a range of activities. Absent some genuine and real concern for the greater community, there is no role for the state or the law in restricting these.

However, the current law does contain a weakness, and this bill addresses the issue of 'creeping acquisitions'. Creeping acquisitions are a series of small-scale acquisitions that individually may not substantially lessen competition in a market but collectively have the potential to do so over time. Each of these small acquisitions may not be in breach of section 50, and therefore the series of acquisitions are permissible by law. However, over a long period of time such transactions may have the cumulative effect of substantially lessening competition in a market. There are currently no provisions in the Competition and Consumer Act to prevent or limit creeping acquisitions.

Over the past decade or so there have been concerns raised about market concentration in a number of key sectors. We have seen it recently in banking, groceries, fuel and a few other areas. As a result, issues have arisen as to how section 50 of the Competition and Consumer Act is applied to these markets, particularly those affected by creeping acquisitions. One just has to look at the supermarket sector to see my point. Just over two decades ago, when Professor Hilmer was doing his work looking at our competition and consumer framework and recommending the reforms which earned a wide degree of support and which have been of significant and undoubted benefit to Australia and Australians, the two major supermarket chains had less than half of the total grocery market. Today, those same two chains have more than two-thirds—approaching three-quarters—of the market. Nothing enormous or transformational happened overnight. Indeed that change in market share may partly simply reflect changing consumer preferences. But we also know that, through a series of acquisitions, new presences and purchases of new properties, the supermarket majors have greatly enhanced their positions. It is only fair to concede that the degree of increase in market share of these two major chains has caused a level of concern in some
areas of our community—amongst consumers, producers and businesses alike.

To start with, these changes to the act remove the word 'substantial' in relation to the ACCC's analysis of mergers and acquisitions, so now even those mergers not considered substantial can be scrutinised by the ACCC. The hope is that this will remove the risk that a court might adopt the view that an acquisition in a geographically confined market is not substantial and therefore does not fall within the scope of section 50.

The bill also amends section 50 to replace references to 'a market' with references to 'any market'. Together, these changes clarify the ability of the ACCC or a court to consider multiple markets when assessing mergers, including smaller mergers which over time may amount to potentially damaging creeping acquisitions. It is important to note, however, that the amendments to section 50 do not oblige the ACCC to examine the competitive impact of an acquisition in a small market. It is simply a clarification that it indeed may do so and that it is a relevant factor where a merger is being considered for other reasons.

So what do we have here? In short and put simply, this is a clarification of the law to reduce an ambiguity that might become a legal basis to challenge the work of the ACCC. On that basis, the coalition supports the bill. But I say again: we do not support the government's claim that this bill is some profound strengthening of the Competition and Consumer Act.

The other aspect of this bill relates to the concept of unconscionable conduct. As with the amendments to section 50, these provisions also reflect work undertaken by the Senate Economics Legislation Committee. The Competition and Consumer Act does not currently include a statutory definition of 'unconscionable conduct'. Let us be very clear: this bill makes no changes to those provisions. Rather, what this bill seeks to do is implement guiding interpretive principles so that there is better understanding of 'unconscionable conduct'. The coalition supports this initiative.

What we really need and what will contribute to the further development of healthy competition policy is a better understanding of the concept of unconscionable behaviour and what it means for businesses—in particular, small, medium-sized and family businesses. While we understand that many people and many small businesses may at times have a negative experience, particularly when dealing with a larger business, and can come to the conclusion that what they have experienced is unconscionable conduct, this is a complex area of law and we need to assist people to understand this area of law in more detail.

This bill does make it a little bit clearer and the way it brings clarity is through establishing these interpretive principles.

It was the recommendation of the Senate Economics Committee that interpretive principles were needed rather than specific examples. This is an important distinction. Examples, it was thought, may create a false sense of expectation. It was also believed that examples may not remain relevant or current as community expectations change—such changes might change the meaning and understanding of 'unconscionable conduct'. Interpretive principles will assist the courts in interpreting the provisions, help stakeholders in understanding them and guide regulators in enforcing them.

But, again, let us be clear about the impact of these interpretive principles. They do not in any way, shape or form offer the agencies new powers in addressing unconscionable conduct. There are no new protections announced for small business and it would
be misleading for anyone to imply in the commentary on this bill that these changes represent substantial new protections for small business. These interpretive principles should give clarity to the court about what was intended by parliament, but they should not be oversold.

These amendments insert new guidelines to assist people, to assist businesses, to assist the regulators and to assist the courts. But by no means are these principles any sort of new measure that will give the greater protection that some have called for. Again, the government has attempted to oversell its limited efforts in order to create the illusion of activity and the illusion of substantial policy reform. Sadly, the constant overselling of its efforts reduces its fatally damaged credibility even further, particularly when dealing with small business.

The government claims that this bill before the Senate today implements a Labor election commitment to introduce a law in relation to creeping acquisitions—they claimed the then regulatory response did not adequately address the problem. They claim great reform. But that is little more than misplaced grandeur. In reality, what we have here is the government applying a dictionary and a thesaurus to the original bill—expanding some definitions and giving us some interpretive guidelines to better understand the sometimes complex language of competition law. That is an important objective. These are all good and necessary changes that the coalition supports. However, they must be understood and explained for what they are—this is a start and a step in the right direction, but many more steps are needed. That is why the coalition has called for a root and branch review of the competition and consumer law. Two decades on, such a review is only appropriate, but for some reason this government seems to think that a few tweaks and a few changes here and there will create the illusion that it is really listening when it is not.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (11:35): In summing up and closing the second reading contributions on the Competition and Consumer Legislation Amendment Bill 2011, I firstly thank Senator Ryan. I will make some remarks in response to a couple of the points Senator Ryan made, but in thanking him I do acknowledge that he did stick substantially to the issue before the chair, unlike some of his colleagues. He made a useful contribution to the consideration of this legislation.

This bill will strengthen and clarify Australia's competition and consumer laws, which are designed to improve the welfare of Australians. The bill makes two important changes. The first general point I would make in response to one of Senator Ryan's arguments is that we do not overstate the consequences of this legislation. The changes are important, but we certainly do not overclaim what the impact of these two changes will be.

Firstly, the bill will enact laws to deal with creeping acquisitions by amending the mergers and acquisitions provisions in section 50 of the Competition and Consumer Act 2010. The bill will remove the requirement that a market in which the competition effects of a merger or acquisition are assessed must be a substantial market. The amendments will also ensure that the courts and the Australian Competition and Consumer Commission, the ACCC, can consider the competitive effects of a merger or acquisition in any market.

Secondly, the bill improves and simplifies the unconscionable conduct provisions of the
Australian Consumer Law and the Australian Securities and Investments Commission Act 2001. The bill will assist consumers, businesses, regulators and the courts through inserting interpretive principles which will clarify the meaning of unconscionable conduct. The bill will also unify the business and consumer related provisions. These amendments clarify the parliament's intention as to how the unconscionable conduct law should apply. They will help the ACCC and the Australian Securities and Investments Commission to take more effective enforcement and compliance action. The bill also makes minor technical amendments to correct a small number of drafting errors which arose in the Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010.

I will make a couple of concluding remarks. Firstly, I do not agree with the level of Senator Ryan's critique. I think it is important to point out that, not just in the context of this legislation, this government over the past four years has taken effective steps in a range of consumer law activity. Not the least of these, of course, is the important legislation known as the Australian Consumer Law. I do not intend to go into that in detail, given the limited time today, but I would point out that this government, for which I have some responsibilities in my deregulatory ministerial capacity, has taken a number of significant steps in moving towards a seamless national economy and in protecting consumers. That is well illustrated by the Australian Consumer Law and by the transfer, with the agreement of the states, of responsibilities in the last significant remaining areas of financial services regulation and supervision. So I would argue that this government has taken a number of effective initiatives with respect to competition and consumer laws in this country, of which this piece of legislation represents a part.

Senator Ryan stated a number of concerns. One in particular was the presence in our marketplace of what are known as the 'big two' retailers and their growth in market share over a long period of time. I note that he expressed some concerns about the trend and also referred to the need to do more with respect to this issue. Senator Ryan, I look forward to a policy contribution from the opposition in this regard. I look forward to any policy announcement from those opposite. I think it should be pointed out, as Senator Ryan's National Party colleagues have pointed out, that over many years, including the almost 12 years they were in government, this trend was rapidly accentuated under the previous Liberal-National Party government. Despite the stated concerns of some in the opposition, particularly those in the National Party, they did nothing about it. So we do look forward to the development of effective policy from the Liberal-National Party in this regard and in other areas of competition. Perhaps in the spirit of Christmas goodwill, as we are approaching that time of the year, the Liberal-National Party will give some consideration to actually coming up with a policy or two over the break, rather than continuing their very negative constant attack and critique and basically saying no to anything the government does.

The final contribution I want to make in this debate is to thank the Senate Economics Legislation Committee. It has done some good work under successive chairs.

**The ACTING DEPUTY PRESIDENT**

(Senator Mark Bishop): A fine job.

**Senator SHERRY:** Mr Acting Deputy President and colleague, you are Chair of the Senate Economics Legislation Committee, and I want to acknowledge and thank you...
and the members of the committee for your good work. I also want to acknowledge the important work that my colleague the Parliamentary Secretary to the Treasurer, Mr Bradbury, has done on this measure and others. This is an important reform. We do not overstate its impact but it is an important reform and should be seen in the context of the total reforms that this government has made to improve competition—effective competition; it is important to add that descriptor—in this area. I commend the legislation to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator XENOPHON (South Australia) (11:44): I have a couple of comments to make on the Competition and Consumer Legislation Amendment Bill 2011. I did not have an opportunity to speak to it during the second reading debate, not through any lack of trying on the part of the minister, who graciously tried to see where I was—I was in another meeting. I will make a couple of short contributions that will lead into the amendments that I will be moving shortly.

I do not oppose this bill, but I believe that it could be improved. That is why I will be moving amendments to omit the word 'substantially' and substitute the word 'materially' when it comes to mergers. It is my view that the ACCC does not have the legislative firepower that it needs to deal with the issue of mergers. Having the word 'materially' rather than 'substantially' with regard to lessening competition would make a very real difference to the highly concentrated markets we have here in Australia. We have a situation where Woolworths and Coles control some 80 per cent of the dry grocery market. We have had too many mergers that have been approved by the ACCC under the current legislation. We have seen the difficulties in the grocery sector with petrol and we have a looming problem with the liquor market, and the word 'substantially' does not do the job that it should—it is too high a test. That is why I am grateful for the work that Associate Professor Frank Zumbo, from the University of New South Wales, has done in relation to this and other competition issues.

I have some questions for the government. I am aware of the time constraints and I will be short and succinct. I am concerned about the amendments to the definition of unconscionable conduct in this regard. My question is as follows: the government is going to include a number of paragraphs in the legislation that set out examples of unconscionable conduct. It is quite prescriptive, but I ask the minister whether what is proposed in the bill is essentially repeating what the courts have said in previous cases? Do these amendments expand the scope of the unconscionable conduct provisions in the legislation? I will start off with that, and I had two or three more questions after that.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (11:47): I will take advice.

Senator XENOPHON (South Australia) (11:47): If I may assist the minister, the legitimate concerns I have about these amendments are about whether they will actually make a difference if what the bill is proposing to do is simply to restate the position of the courts in existing cases. What difference will it make? That is essentially my question, and I have some follow-up questions depending on the minister's answer. I think it is quite material to how effective these changes will be, and what the government believes these changes will
mean to the definition of unconscionable conduct and the practical application of the law.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (11:48): I am conscious of the time, so I will try to deal with your concerns, Senator Xenophon, though I am not necessarily sure I will satisfy them.

Effectively, clarifying the issues you raised, the expert panel that explicitly considered the issue of unconscionable conduct has raised a number of concerns about potential use of examples in the ACL. For example, listing a particular scenario as amounting to unconscionable conduct might be misleading when a court might decide that a scenario with slightly different facts does not involve unconscionable conduct. Examples might be treated as rebuttable presumptions either formally by the courts or in the development of business practices. Examples are unlikely to remain current as business practices and technologies evolve.

The Senate Standing Committee on Economics, which I referred to in my second reading speech, considered whether the definition of ‘unconscionable conduct’ should be inserted in the act in its December 2008 report, The need, scope and content of a definition of unconscionable conduct for the purposes of part IVA of the Trade Practices Act 1974. The committee noted two significant reservations about defining unconscionable conduct in the act. Firstly, terms used in a definition would need to be carefully considered for their judicial meaning, and it would need to be clear to stakeholders how the courts’ interpretation of these terms might encroach on current business practices and how a definition would affect larger businesses’ responsibilities under other statutes. Secondly, agreeing on a suitable definition would be a prolonged and difficult process, and definitions proposed, such as that put forward by Professor Zumbo, to whom Senator Xenophon has referred, were considered too complex and uncertain. Accordingly, the Senate committee considered that a definition of unconscionable conduct should not be adopted, and recommended an alternative process whereby an expert panel should consider whether examples should be inserted in the act. This is the path the government took. The expert panel explicitly considered whether examples would improve the functioning of the law in this area, and instead recommended that principles be inserted in the act.

My only other comment is that it is correct that the principles that are inserted are obviously based on case law.

Senator XENOPHON (South Australia) (11:51): I am grateful to the minister for those answers. I want to go further. I refer my friends in the coalition to the Senate Standing Committee on Economics report, The need, scope and content of a definition of unconscionable conduct for the purposes of part IVA of the Trade Practices Act 1974. It is a December 2008 report—it is amazing to think that three years have passed so quickly. There are additional comments made by both the coalition and myself about the need for a statutory definition of unconscionable conduct. I am pleased that the coalition took that view at that time and I hope it is still their view.

Notwithstanding that, I want to get to the nub of the issues of the specific amendments proposed by the government. Does the government expect that there will be more cases brought to court as a result of these
amendments to the definition of unconscionable conduct?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (11:52): Frankly, it is very difficult to give you an answer to that and to predict the level of disputes, cases et cetera. One of the factors would be the decision of the regulator—the ACCC. I understand why you are interested in an answer but, having taken advice, it is not possible for me to give an answer on that matter. It is a somewhat hypothetical matter of conjecture.

Senator RYAN (Victoria) (11:53): Given Senator Xenophon invited me to make some comments, I thought I should briefly restate our position on this. Senator Xenophon, you and I have spent some quality hours in the Senate Economics References Committee together, particularly on supermarket issues. I was not a member of the committee that reported that. I would state, though, that our commitment to the root-and-branch review of the act encompasses the issue you raise. We do not necessarily have a position on it. We think that, two decades on, it is time to look at it. The events that are necessary to trigger an offence are something we are keen to look at. However, my personal view on the question about whether something should result in a greater number of court cases is that a good act does not necessarily lead to a higher number of court cases because it has an educative function that means that behaviour changes, which does not necessarily lead to a higher number of court cases.

Senator XENOPHON (South Australia) (11:54): I am grateful for Senator Ryan's contribution. I indicate to him that I think that is a fair point. Just because you do not have more court cases does not mean that the legislation is not more effective or broader. But the coalition did state three years ago that there is a need for a statutory definition of unconscionable conduct and that the current law was not adequate. It then set out in the additional comments that there is a need for a statutory list of examples that constitute unconscionable conduct—which is consistent with this bill, I believe—that there is a need for a prohibition against bullying, intimidation, physical force, coercion and undue harassment and that there is a need for a statutory definition of the statutory duty of good faith as well as a legislative framework to deal with unfair contract terms in business relationships involving small businesses. That is something that the coalition signed up to three years ago. Senator Eggleston, Senator Bushby, Senator Joyce and I signed up for that.

Another way to put the question to Senator Sherry is this: will these amendments in terms of unconscionable conduct broaden the operation of the section?

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (11:55): The amendments, as I have mentioned both in the committee stage and in the second reading stage, are intended to provide clarity and are based on case law. You did indicate that you were asking the question in another way—

Senator Xenophon: It's a different question.

Senator SHERRY: Oh, it is a different question? Okay. I cannot add to comments I have stated here in the committee stage and the second reading stage so far.

Senator XENOPHON (South Australia) (11:56): I appreciate the minister's frankness. If the government is unable to say whether this will broaden the operation of
the section, you need to query what the benefit of these amendments will be. If it is simply restating the position of the case law then it is the status quo. It is just a bit of window dressing for the current operation of laws relating to unconscionable conduct. I think the government has set out why it does not accept the need for a statutory definition of unconscionable conduct but, if it cannot say that it will broaden the operation of the section, to what extent does it consider that there may be a gap in the law in the absence of a statutory definition? Isn't it better to have a statutory definition as to what the government is intending to do? I accept that the intentions of the government with respect to this legislation are good ones, but I worry that effectively the status quo will remain as is.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (11:58): I think we are just going to have to do agree to disagree. You have a conceptual approach that I think is best summed up as about the nature of 'broaden'. I have indicated that these amendments will strengthen and clarify. I understand your perspective. I do not necessarily agree with it, but I do understand it. You are seeking far-reaching broadening, if I can add to your descriptor. These changes are meant to strengthen and clarify. I do not think I can add any more to my earlier remarks.

Senator XENOPHON (South Australia) (11:59): by leave—I move the amendments on sheet 7136:

(1) Schedule 1, page 3 (after line 3), before item 1, insert:

1AA Subsection 50(1)  
Omit "substantially", substitute "materially".

(2) Schedule 1, page 3 (after line 5), after item 1, insert:

1A Subsection 50(2)  
Omit "substantially", substitute "materially".

(3) Schedule 1, page 3 (after line 17), after item 3, insert:

3A Subsection 50(1) of Schedule 1  
Omit "substantially", substitute "materially".

These amendments are intended to lower the threshold by which mergers are considered by the ACCC. Under the current threshold a merger is only prohibited if it 'substantially' lessens competition. The use of the word 'substantially' makes the threshold a very high one requiring the merged entity to exercise market power after the merger. Proving the existence of market power requires proof of an ability to raise prices without losing business. Very few businesses would have market power under the definition as it is effectively only a monopolist that would have the power to raise prices without losing business.

Under the existing threshold relatively few mergers or acquisitions are stopped by the ACCC. Mergers and acquisitions reduce competition in the market and lead to higher levels of market concentration. A reduction in competition is detrimental to competition and consumers as it may lead to higher prices and reduced product choices. We need a stricter threshold for assessing mergers. Within this context the concept of materiality is adopted, as that is a commonly understood concept used in the accounting and business world to assess the impact of particular conduct or an event. In this context a merger will substantially lessen competition if it has or would have a noticeably adverse impact on competition by reducing in a material way the number of efficient independent competitors and the range of product choices available to consumers.

That is at the heart of this. We need to do a lot better. In recent years too many mergers have been approved by the ACCC. The
ACCC does not have the legislative firepower to deal with these issues adequately. The threshold is simply too high under 'substantially'; 'materially' would remedy that.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (12:01): I acknowledge and appreciate the concern of Senator Xenophon and the attention he has paid to this issue— as has Senator Ryan. I recall a significant number of discussions about this at Senate estimates. We are dealing with substituting the word 'substantially' with 'materially'. The detailed and principled approach that Senator Xenophon is proposing reflects what is known as his trade practices Richmond amendment bill. I do note we are developing a trend to name amendments in this area after geographic locations based on where proposals are drafted or communicated. But that is by the by. I am not sure which Richmond this is—I know a number of Richmonds.

Senator Xenophon: I can clarify that right now.

Senator SHERRY: Thank you. As I have said, the proposal is to change the test to 'material' lessening of the competition, as reflected in Senator Xenophon's earlier bill. That bill was referred to the Senate Economics Legislation Committee for inquiry. The majority report—both government and opposition—recommended against the passage of the bill with this approach contained in it. The concept of substantially lessening competition has been part of section 50 since 1993. It is well established and understood by the courts, the ACCC, business and consumers.

The concept of 'substantially' is interpreted by the courts to mean 'that the effect of the acquisition be 'meaningful or relevant' to the competitive process'. Australia's SLC test for mergers is consistent with merger laws in many other OECD countries, including the US, Canada, the UK and New Zealand. What is proposed—effectively the Richmond amendment—could have the effect of moving Australia out of line with international practice. It would make significant changes to Australia's merger law that are likely to have substantial and unintended consequences.

Consistent with our previous position, as enunciated in the Senate Economics Legislation Committee and the response to considering what is known as the Richmond bill, the government is unable to support the amendments that Senator Xenophon has presented.

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (12:04): In the interests of time I did not choose to make a second reading contribution so I will quickly sum up where we are coming from with this legislation and Senator Xenophon's amendments. I note that the concluding comments of the Parliamentary Library's Bills Digest say:

Given the history of reviews and the Rudd Government’s commitment to implement a ‘creeping acquisitions’ law ‘as a matter of urgency’, it might seem that the amendments to the merger provisions proposed by the Bill are an anti-climax. Descriptions of the amendments as ‘window dressing’ or ‘pragmatic’ would also appear to be apt. These minor amendments largely reflect the ACCC’s current interpretation of the existing law and are unlikely to have any substantial effect on merger analysis in the future.

Similarly with the unconscionable conduct provisions. The Federal Government has been under pressure for some time to strengthen these prohibitions and the Bill purports to finally address these calls. The changes are, in fact, relatively minor. Their real effect seems likely to be minimal and they are not expected to have a
substantial impact in practice. However there are other reforms happening at this time including the amendments to the Franchising Code of Conduct...

It goes on to say that they might have a collective impact. I think the reality is, as Senator Sherry has just outlined, that the word 'substantially' is understood in case law on this legislation. It is true that it is consistent with legislation in the UK, the US, Canada and New Zealand and it has been part of case history and case law in Australia since 1993. There is a concern that if the word were changed to 'materially' the government would be arguing that 'substantially' and 'materially' are the same. However, if 'substantially' were changed in the legislation, people would come back, in relation to all those cases since 1993, saying, 'Where does that leave us?' The difference between 'substantially' and 'materially' would need to be tested in the courts. We could end up with a bit of a process in the courts, in the making of that determination. Although Senator Xenophon says that 'materially' is understood to be a lesser threshold than 'substantially', there would be a legal argument as to whether that was the case and, if it was the case, at what point would 'materially' kick in as opposed to the stronger definition that is 'substantially'. It is for that reason that the Greens will not support Senator Xenophon's amendments.

However, I say to the government that, while it is says this clarifies things, the Parliamentary Library's assessment suggests it is extremely minor and does not really make any substantial change. The Greens agree with Senator Xenophon that we need substantial change. If the ACCC's attempts to use the law as it currently stands in a more assertive and proactive way fail, because the law turns out to restrict the ACCC's ability to do so, I will be very happy to be back here supporting a much more substantial intervention. At this stage we support the minor amendment that the government is proposing but will not support Senator Xenophon's amendment. I will say that this is a space that we are all going to be watching with a very interested eye so as to see how the ACCC proceeds in the next 12 months.

Senator RYAN (Victoria) (12:10): I rise to outline that the coalition will not be supporting Senator Xenophon's amendments. The consequences of moving from 'substantially' to 'materially' may be significant. It is our view that those issues should be considered as part of the root-and-branch review of the competition act that we have proposed. Senator Xenophon, I know that you have a very good productive relationship with the shadow minister, Mr
Billson, as you do with me. I know that he is keen to continue these discussions with you. But at this stage, that slight change of words needs to come from an evidence based assessment. The coalition will not support the amendments.

Senator SHERRY (Tasmania—Minister Assisting on Deregulation and Public Sector Superannuation, Minister for Small Business and Minister Assisting the Minister for Tourism) (12:11): I thank Senator Milne for her contribution. She makes two very reasonable points. In noting that, I have been present on one occasion when the new head of the ACCC, Mr Sims—this was in the context of franchising law, on which there has been some recent improvement in dispute resolution and a range of other changes—indicated the ACCC's renewed interest in applying the upgraded franchising area of the legislation and devoting more attention to that. I will not go to other issues of franchising reform, but I do note that. I think it is an important consideration. I accept Senator Milne's caveat that, in supporting these amendments today, the Greens will be keeping a close eye on developments as they emerge from the focus of the ACCC.

Senator XENOPHON (South Australia) (12:13): I am grateful for the comments made by my colleagues. In relation to those of Senator Milne: it is fair enough for her to say, by referring to the Bills Digest—the objective analysis of legislation, if you like, that we receive here—that it is about clarification and could be seen to be window dressing. I am disappointed that the Australian Greens cannot support the amendment at this time, but at least they are keeping the door open. I do acknowledge that there has been a change of guard at the ACCC, and that Mr Rod Sims, the new chairman, has taken a different approach. The statements he has made to date have been encouraging. The way in which he has approached evidence at Senate estimates hearings is refreshing. I welcome that, but I still think we are not giving the ACCC the powers it needs to deal with this adequately.

When it comes to issues of mergers and acquisitions, let us put this in perspective. Senator John Williams is in the chamber. I thought his contribution and a question he put to Mr Sims during a Senate estimates hearing not so long ago were telling. Senator Williams basically asked—I am sure he will correct me if I misquote him—how is it that in the last 30 years, the last generation, we have had a situation where Coles and Woolworths have gone from a 40 per cent market share between the two of them to something like an 80 per cent market share? That is an exponential increase. How is that good for competition? How is that good for suppliers down the supply chain? How is that good for wholesalers? How is it good for consumers that they have so little choice in this country? And how is it good that we have two big gorillas in the room when it comes to our grocery sector? You even have multinationals, such as Heinz, saying: 'This is killing us in terms of food processing. This is actually squeezing us out of the marketplace because of the conduct of those two.'

Our current laws are not good enough and that is why we need a change from 'substantially' to 'materially'. I am grateful to the Minister for Small Business for mentioning the Richmond amendment because I was going to get to it. The Richmond amendment is named after the location of the United service station at 128 Marion Road Richmond West in South Australia—a service station run for many years by William and Samira Fares. This is a small family business—a business where they put in hard work, do great mechanical work and serve petrol, and they are salt of...
the earth people. They have worked their guts out to build up that business, and what happens? Woolworths decides to set up an outlet right next door to them—blocking the view of oncoming traffic to their service station—to compete with them in a way that is not fair; to compete with them with their huge buying power in a way that cannot allow a level playing field.

It is an issue that I raised directly with Michael Luscombe, the former CEO of Woolworths, and he was good enough to meet with me in Sydney last year about this. I put to him—I do not think he would mind me saying this—'If you say that they can compete then why don't you let the Fares, in their United service station at 128 Marron Road Richmond West in South Australia, access petrol at the same price you can access petrol?' There are days when the wholesale price that William and Samira Fares pay for their petrol is higher than the price that Woolworths is retailing it for. How can that be fair? We need to remedy that. We need to give small businesses in this country a fighting chance.

I have small businesses—I am not going to do anything to identify them—come to my office, and they are even reluctant to be seen to walking into my office. They tell me, 'If we make a complaint to the ACCC about what Woolworths and Coles are doing to us, about the conditions they sometimes put on us, such as they suddenly want ten tonnes of a particular vegetable at a certain price'—which is below the cost of production for these businesses—and we do not do it, then that will be the end of their relationship with us.' You also have small businesses setting up a business model that is based on having Coles and Woolworths as their main buyer, and they say, 'There's no point going to the ACCC because if we make a complaint we're finished.' If these things are happening then we need to do something about mergers in this country, we need to do something about increasing competition, and we need to do something about small businesses having a fighting chance.

That is why I have moved this amendment. I am grateful to the Greens for at least keeping the door open. Senator Madigan has told me privately, and he may want to make a contribution on behalf of the DLP, that he will be supporting this amendment. So we will be dividing on this amendment. I would urge Senator Williams, if he is able, to at least keep the door open to this and to at least consider supporting this.

We need to do something better. We need to have a situation where the laws of this nation work for the small business sector and, in turn, for consumers. As for the references that have been made to other countries not going to 'materially', in the United States—I am grateful for the work that Senator Williams has done on this—they have got the Robinson-Patman Act where you cannot have anyone having more than 20 per cent of the market. You do not have a situation there where two supermarket chains control 80 per cent of the dry grocery market as in this country. They have got legislative safeguards. They may not have the word 'materially' in some of those jurisdictions, but they have got other pieces of legislation that gives a semblance of protection to small business. That is what the key to this is.

I note that Senator Ryan, on behalf of the coalition, says that he is not supporting this. Senator Ryan and I have disagreements about the marketplace, but I have a genuinely good work relationship with Senator Ryan. I do respect that he has got some intellectual firepower. I do not agree with his position on the $1 milk and the like. I say that genuinely; at least we can have a discussion about it. My plea to Senator Ryan, to the coalition, to the Greens and to the
government is; something has gone seriously wrong in this country when it comes to allowing the level of market concentration in so many industries. Associate Professor Frank Zumbo has assisted me with drafting the Richard amendment. He met the Fares; he spoke to them and he spoke to the Minister for Small Business, the Hon. Tom Koutsantonis, their local member. One good thing that has come out of the meeting that we had at Richmond West a year and a half ago is that there is now a Small Business Commissioner of South Australia, which Associate Professor Zumbo had a key role in creating.

There are some small changes to franchising law—I know that Senator Sherry is not ecstatic about that—where small business, under a Labor government, I might add, will have a fighting chance. It is disappointing that the Liberal Party in South Australia oppose that. Let us do this right. Let us revisit this. I welcome Senator Milne's comments. I would urge my colleagues to think carefully about this amendment. There will be a division on it based on Senator Madigan's gracious support for this amendment. There is something seriously wrong in this country in the way that we have dealt with the big end of town and small businesses.


The TEMPORARY CHAIRMAN (Senator Boyce): The question is that amendments (1) to (3) on sheet 7136 be agreed to.

The Senate divided. [12:26]

(Ayes: 2, Noes: 37, Majority: 35)

AYES

Madigan, JJ
Xenophon, N (teller)

NOES

Adams, J
Bilyk, CL
Boyle, SK
Brown, RJ
Cash, MC
Di Natale, R
Faulkner, J
Feeney, D
Furner, ML
Hanson-Young, SC
Ludwig, JW
McLucas, J
Moore, CM
Polley, H
Rhiannon, L
Sherry, NJ
Sterle, G
Urquhart, AE
Wright, PL

Question negatived.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator SHERRY: I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Human Rights (Parliamentary Scrutiny) Bill 2010

Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010

Second Reading

Debate resumed on the motion:

That these bills be now read a second time.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the
With at most an hour and 20 minutes before the guillotine imposed by the government falls, we are now to proceed to consider the most important piece of human rights legislation before this parliament in 25 years. The Human Rights (Parliamentary Scrutiny) Bill 2010 is the most important human rights bill to be considered by the parliament since parliament passed the Human Rights and Equal Opportunity Commission Act 1986. It tells you everything you need to know about the government's lack of seriousness about human rights that this bill will not get a proper parliamentary debate.

This bill is the ultimate outcome of the process initiated by the Attorney-General in 2008 which led to the National Human Rights Consultation, conducted by Father Frank Brennan. I have with me a copy of the Brennan report, which was published in September 2009. It is a voluminous document running to more than 600 pages, including the appendices. After 10 months of work, more than 35,000 individual submissions by the people of Australia and 66 community roundtables conducted at 52 different locations, many of them in regional and remote Australia, and attended by 5,554 different people, we get an hour and 20 minutes to consider the matter. No Labor Party or Greens senator will ever be able to say, without lying to us, that they care about human rights, after the way in which they have treated with utter contempt the most important piece of human rights legislation in a quarter of a century.

The core provisions of this bill adopt that idea. But unfortunately, because the bill overreaches by defining human rights in terms based not on Australian practice but on international instruments which are not part of Australian domestic law, we could not support the bill in its existing form, and therefore we offer amendments, to which I will return in a moment.

Before I do, let me just say this. For us in the Liberal Party, the protection of human rights is core business. It is why we were formed. It is why we come to parliament every day. It is who we are. We are people dedicated to the promotion and advancement of the rights and freedoms of individual men and women. It was the philosophy espoused by our great founder, Sir Robert Menzies, in his 'The Forgotten People' broadcasts in 1942 and 1943, particularly when he spoke about the four freedoms, following President Roosevelt's identification of them. It was the sentiment which inspired the foundation
document of the Liberal Party, our first federal platform, in 1944 and which inspired the document entitled *We believe*, which set out the core values of the Liberal Party. It was the belief that inspired Sir Robert Menzies when in 1954 he said:

We believe in the individual, in his freedom, in his ambition, in his dignity. If he becomes submerged in the mass, and loses his personal significance, we have tyranny.

And it was the belief that inspired Sir Robert Menzies when, in the last major public speech, to the Liberal Party Federal Council in 1964, in which he addressed broad philosophical themes, he said:

As the etymology of our name "Liberal" indicates, we have stood for freedom. We have realised that men and women are not just ciphers in a calculation …

... … …

We have learned that the right answer is to set the individual free, to aim at equality of opportunity, to protect the individual against oppression, to create a society in which rights and duties are recognized and made effective.

If you go to the Liberal Party's website today you will see in a statement of its beliefs that same sentiment. The opening words of that mission statement are these: 'We believe in the inalienable rights and freedoms of all peoples.'

So that is who we are. That is why we come to parliament. If we were to take them at face value, our Labor Party friends would probably say, 'We believe in a fair Australia. That is what inspires us.' If we were to take them at face value, our Greens colleagues would probably say, 'We got into politics because we wanted to protect the environment.' Our National Party friends would tell us, justly, that what inspires them is to protect the interests of people who live in regional and rural Australia. But for us Liberals, why we are involved in politics is because we want to build a society based on respect for the rights and freedom and dignity of every individual man and woman. So we are the human rights party.

I believe the greatest intellectual failure of my side of politics in the 20th century was to cede the language of human rights to parties of the Left, because parties of the left do not believe in—they are not inspired by a philosophy based on concern for the rights of individual men and women. They are inspired by sectional philosophies. They are inspired by a class based view of society. They are inspired by a view that the interests of the collective prevail over the rights of the individual. We in the Liberal Party are inspired by a belief that the rights and freedoms of the individual prevail, that wherever possible they ought to be maximised. Wherever possible, legislation and government ought not to interfere with them. That is the core philosophical difference between us on the Liberal side of the chamber and those on the Labor side of the chamber and their affiliated parties of the Left.

That was an insight that was shared by many writers in the 20th century. Nobody saw it better, by the way, than the great George Orwell, who saw that the rhetoric of the Left in talking about human rights was denied by the reality of their political practice; that the spirit of authoritarianism, not the concern for the freedom of individual men and women, was what ultimately inspired the so-called progressive parties of the Left.

Given our intellectual lineage, given our proud tradition, given that the core provisions of this bill were actually the product of our minds, we want to support this bill. If the opposition's amendments are to be carried, we will support it. Unfortunately, the way in which the government has drafted the bill makes it
impossible for us to support it in its current form. There is one particular vice in this bill—I know my friend Senator Michaelia Cash is going to have a little bit more to say about this topic in her contribution to this debate—and that is in the definition of human rights in clause 3 of the bill. In the current clause 3 of the bill, human rights are defined in these words:

human rights means the rights and freedoms recognised or declared in the following international instruments—

and then there are seven international treaties listed.

In most cases, we in the opposition have no difficulty with the provisions of, for example, the International Covenant on Civil and Political Rights or the Convention on the Elimination of All Forms of Discrimination against Women. We support them, but there are elements of those treaties that are not part of Australian domestic law. We find it beyond absurd that a government wanting to instate a human rights standard for Australia would have no regard to existing Australian law and the human rights protections contained in Australian law, and base its entire adumbration of human rights standards on international instruments which are not part of Australian law. Not only that, but also for a more technical legal reason, we have a deep concern about it because if these instruments were to be the basis of this very important piece of human rights legislation then, following a line of authorities in the High Court commencing with the infamous Teoh case, it is entirely possible that we could see a result in which these international instruments are incorporated into Australian law by the back door without any parliamentary deliberation or scrutiny whatsoever. That would be an extremely radical change to our law.

So we offer an amendment to replace the definition of human rights in the bill with this definition:

Human rights means the personal rights and liberties which exist under (a) the Australian Constitution, (b) acts of the parliaments of the Commonwealth, states and territories, (c) the common law, and (d) relevant international instruments to which Australia is a party and which have domestic application by Australian law.

Therefore, it recognises every source of human rights that is recognised by the law of Australia, by laws that have either been passed through this parliament or the state and territorial parliaments, or are recognised in an admittedly piecemeal fashion in the Constitution, or which form part of the common law, or which have their source in international instruments which have been given force and effect in Australia by a decision of this parliament. Why would you not do that? Why would you, if you were serious about constructing effective and democratically validated human rights legislation, ignore the entirety of Australian law from the Constitution down and incorporate by reference a variety of international instruments, most of which do not have force and effect in Australian law?

Let me finally say a word about the common law as a source of human rights. I can do no better than refer the Senate to the wonderful Bruce McPherson lecture given by the former Chief Justice of New South Wales, Justice Spigelman, at the University of Queensland on 10 March 2008 called 'The Common Law Bill of Rights', in which His Honour, a man of Labor Party background but one of Australia's most eminent jurists, made the case why so many of the rights that we enjoy today are to be found in the common law. Why would you junk Australian constitutional, statutory and common law and decide to identify and
define human rights exclusively by international instruments? We will be moving an amendment to correct that gross error.

We will also be moving an amendment to remove from the bill the provision that requires ministers to publish with legislation a statement of compatibility so as to in effect certify that the bill is compatible with human rights standards. Since the core work of this bill—that is, part 2, which establishes a parliamentary human rights committee—is to give the parliament the task of deciding for itself whether legislation is human rights compliant and, to the extent to which there may be a departure, whether that departure is in the circumstances justifiable or excusable, why would you allow the executive government the power to certify? Our concern is that by allowing the executive government, through the minister, the power to certify that an individual piece of legislation is human rights compatible, you actually defeat the very purpose of the bill, the very purpose of the idea put to the Brennan committee on behalf of the opposition by myself, to locate at the heart of the legislative process human rights compliance.

As we know, when parliamentary hearings are held it is very commonplace for public servants from the relevant departments to appear as the last witnesses before a hearing so that, if the department has views on these issues, in the ordinary course of events those views will be heard anyway. To allow the minister this in effect bootstrap power to self-certify human rights compliance relocates the power, or at least shares the power, between the legislative arm and the executive arm of government. It should lie exclusively within the province of the legislative branch of government to conduct this inquiry and make these determinations.

In closing, we urge those opposite who piously—and, I am bound to concede, in some cases with sincerity—claim to be supporters and champions of human rights to see the wisdom of our amendments, not to use this bill as in effect a trojan horse for an unlegislated, undemocratic bill of rights by default. Embrace the core principle of the bill—that is, to locate the scrutiny of legislation from a human rights point of view at the heart of the parliamentary process—and by so doing elevate this parliament's capacity to give effect to human rights standards governed not by what other countries say but by what we, through our democratic processes, have recognised as the various sources of the rights we undoubtedly enjoy.

Senator HANSON-YOUNG (South Australia) (12:49): The Australian Greens are committed to Australia fully discharging its international human rights obligations at home and abroad. This means greater international respect for and protection of human rights and a stronger international machinery for the protection of human rights, such as the United Nations Human Rights Council and the United Nations treaty bodies. The Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 are a welcome first step towards human rights protection, but I must also point out that it is disappointing that the government has fallen short of meeting community expectations by failing to introduce a human rights act.

After months and months of consultation in relation to this issue, it was very clear that the majority of community feedback was indeed in support of a human rights act. This was an opportunity to extend to all Australians meaningful and practical protection. Unfortunately it has been missed by this piece of legislation; it is a missed
opportunity. Australia is the only Western democracy that does not guarantee the consideration of our human rights by the government, the parliament or the courts through an effective federal constitution or statutory mechanism such as a human rights act.

More often than not, human rights are inextricably linked to human dignity. In the cases of refugees and their families, those experiencing mental illness and other health issues, the aged or Indigenous peoples, these rights cannot be removed from their basic human dignity. The implementation of a human rights act would substantially enhance our democracy and grant many Australians the human dignity expected in our liberal democracy. We note that the government has committed to reviewing Australia's human rights framework in 2014. We urge that the terms of reference of this review include consideration of a human rights act.

Senator Brandis has just spoken about the coalition's concerns in relation to the definition of human rights outlined in clause 3(1) of this bill. The Greens too have serious concerns in relation to how restrictive this definition is. It is unnecessarily narrow. The definition is restrictive, with rights being clearly limited to only those in the seven international instruments listed. This is a mistake. The definition should be more encompassing than the minimum obligations set out by our international commitments. It should take into consideration the purpose of these protections.

Submissions to the inquiry into this legislation pointed out that there are multiple other international sources of rights which the bill could have been expanded to include—for example, but not limited to, the Convention Relating to the Status of Refugees; conventions of the International Labour Organisation, to which Australia is a party; and the UN Declaration on the Elimination of Intolerance and of Discrimination Based on Religion and Belief. The UN Declaration on the Rights of Indigenous Peoples is not included in this bill's list, nor are the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, which is not yet in force but something we are looking at, the optional protocol to the convention against torture—the list goes on. These are all conventions and treaties which have not been picked up by this legislation, and that is a mistake.

I am particularly concerned, as many of you would not be surprised to hear, that the Convention Relating to the Status of Refugees has been deliberately left out of this list. It seems ludicrous, at a time when legislation in relation to people smugglers, asylum seekers or the idea of dumping vulnerable people offshore—out of sight, out of mind—is coming before this place on a regular basis, that this legislation will not enable these issues to be considered through our obligations under the refugee convention. When the purpose of the proposed joint committee is to assess the human rights compatibility of legislation before it, excluding key international rights from its scope is not only inappropriate but also inconsistent with basic human rights principles. Expanding the list to include human rights treaties to which Australia is already a signatory would allow for consideration of a broader range of human rights issues when developing legislation.

The Australian Greens disagreed with the majority committee report with regard to the definition of human rights. I spoke at various Senate hearings in relation to this and my report into this bill stands as a record. Given
the broad dissatisfaction with the definition amongst submissions, we do not believe the definition is an appropriate initial reference point. It is truly ironic that two years after this legislation was flagged the political climate is such that we have a government currently attempting to dismiss our obligations under protocols and conventions such as the refugee convention. While the Greens recognise that the passage of this legislation is extremely important and will therefore not be opposing it, we remain very concerned that the Convention Relating to the Status of Refugees and the Convention on the Rights of the Child are not explicitly listed.

The role of this bill is to give some direction to the parliamentary joint committee—a broad mandate. In order for the proposed committee to be effective, the bill should provide some guidance in respect of non-absolute or derogable human rights. The Greens agree with the recommendation of the National Human Rights Consultation report that the same limitations with regard to derogable rights set out in the Victorian and ACT human rights statutes should apply federally. Section 7(2) of the Charter of Human Rights and Responsibilities Act 2006 in Victoria states:

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including—

(a) the nature of the right; and
(b) the importance of the purpose of the limitation; and
(c) the nature and extent of the limitation; and
(d) the relationship between the limitation and its purpose; and
(e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

In the absence of a federal human rights act, these limitations should be provided to the joint committee as guidance for their deliberations and reports.

It is desirable for the Australian parliamentary joint committee to have powers comparable to the UK House of Lords and House of Commons Joint Committee on Human Rights. These include, but are not limited to, the power to initiate inquiries into issues raised in findings of United Nations treaty bodies and special procedures of the UN Human Rights Council, such as reports of special rapporteurs, working groups and findings under the universal periodic review process.

If all this committee is going to do is look at legislation that the government deems appropriate then it is missing a big part of the role that it could be playing. In the absence of this government's commitment to introducing a human rights act, at least giving the committee an ability to expand its role is something that many of those who submitted to this long review and consultation process would be happy to see taken on board.

I am pleased that the Attorney-General has agreed to consider, as part of the 2014 review, the ability to grant additional powers of inquiry to the parliamentary joint committee. My point is that this could have been included in the bill before us today. Inquiring into and reporting on any matter relating to human rights referred by either house of parliament and inquiring into and reporting on any matter relating to human rights that it sees fit is something this committee should be doing. Let's not just see this committee as a rubber stamp for the government of the day. It will not achieve the objective of human rights being considered by our parliament in deciding and deliberating on the legislation that comes before it.
The effectiveness of the statements of compatibility will rely on their form and their timeliness. The Australian Greens understand and welcome the Attorney-General's commitment to ensuring that all statements of compatibility are laid on the table around the same time as the EM. We understand the statements of compatibility would have the same weight in statutory interpretation as that currently granted to explanatory memoranda and will provide guidance to the judiciary about the parliament's intent. These statements should be drafted to a minimum standard to ensure they are effective. The Greens welcome the Attorney-General's response to some of the recommendations from the committee process. I would also of course like to hear the minister, or the minister representing the minister, in summing up the second reading debate, confirm the commitments that have been made. While we believe that this bill does not go far enough, we recognise the importance of finally implementing legislation following the long-awaited national consultation on human rights.

The consultation panel received thousands and thousands of submissions and the majority expressed the belief that Australia should have a human rights act. This legislation goes nowhere near developing or initiating a human rights act. The work is not yet done and, I would argue, this is just one very small step. I urge the government not to think that they can tick this off their list and move on. At the next federal election, it would be wonderful to see more than just one party go to the electorate with a policy for a human rights act.

Senator CROSSIN (Northern Territory) (13:01): The Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010, which establish the Parliamentary Joint Committee on Human Rights, came before the Senate Legal and Constitutional Affairs Legislation Committee, which I chair. I will very briefly cover the background to and the two main issues in this legislation.

As Senator Brandis outlined, this legislation arises out of the work of the Brennan committee, chaired by Father Frank Brennan AO. That committee looked at questions such as whether or not we should have a human rights act or a human rights charter in this country and how we should deal with legislation—how we should go about assessing whether it does or does not comply with our human rights obligations. The Brennan committee undertook extensive consultations right around this country. They were tasked with seeking the views of Australians on three key questions: which human rights should be protected and promoted, whether those human rights are currently sufficiently protected and how we might better protect those human rights.

To cut a long story short, the committee presented their report to the government in 2009 and made 31 recommendations. There were three main things the committee said should be done. The first was that there should be a federal human rights act based on the dialogue model. The second was that legislation should be accompanied by statements of compatibility with Australia's human rights obligations. The third was that a joint committee on human rights should be established to review all bills and legislative instruments.

What we have before us is not a human rights act. However, this legislation implements the other two main recommendations—the introduction of statements of compatibility for bills and legislative instruments and the establishment of a new joint parliamentary committee. A fourth leg of the Brennan committee's recom-
mendations was that the functions of the Human Rights Commission should be expanded to include the examination of bills at the request of the proposed joint committee on human rights. That is not included in the legislation before us today, but I think it will become part of the new committee's mandate to pursue that issue.

This will be a new joint parliamentary committee. No doubt it will take some time to find its feet. During the inquiry there was a lot of discussion about, and in our recommendations we have examined a range of issues relating to, whether or not this committee should operate like the Senate Standing Committee for the Scrutiny of Bills. Should it have matters referred to it or should it be able to itself determine what it looks at? Should it just be restricted to legislation that comes before it? Should it have the ability to write to the minister and seek clarification or should it just look at legislation and compile a statement of compatibility and that is it? Should it report to both houses of parliament or to only one house of parliament or should it report only to the minister? All of those issues were discussed by the Senate committee. For those people who are interested, the committee's consideration of those issues is summarised in the committee's report, magnificently put together by the secretariat.

My committee has made a number of recommendations about the way it believes the new joint parliamentary committee should operate. We do not see those recommendations reflected in this legislation because I think that would be too binding on the new committee. I think the new human rights committee has to get itself established, work out exactly how it is going to operate, work out exactly what its role is and start to do the work. What we have suggested is that the committee should, after 12 months, have a look at how it is going and have a look at the definition of human rights—essentially self-assess whether it is achieving what this legislation sets out to achieve. I do not think this legislation sets in stone what this committee should do for ever and a day. It is to be a new committee. We are going into uncharted waters. We are stepping outside the scrutiny of bills and making the terms of reference a lot broader. I think that this committee should be able to—and will, hopefully, if it is performing effectively—undertake what is, in effect, an action research project on itself. It should continually self-assess and modify and improve what it is doing.

There are two contentious issues here, as alluded to by Senator Brandis. I think that Senator Brandis personally does not want to go anywhere near a legislative instrument for human rights in this country and that perhaps his personal judgment has clouded the view of the opposition. There are two essential areas of disagreement that we are dealing with today. One is that this legislation covers seven core United Nations human rights treaties. There was a lot of debate in the committee about whether it should be seven, whether it should more than seven, as Senator Hanson-Young proposed, or whether it should be none at all. I have a lot of time for former senator Barney Cooney and former senator Michael Tate, who gave evidence before our committee. Former senator Barney Cooney was of the view that the committee should have a wide ambit like the Scrutiny of Bills Committee, which looks at reversal of the onus of proof, a Henry VIII clause, retrospectivity. Those are very black and white issues, but he still had the view that you instinctively know what a breach of human rights is and that perhaps senators and members on that committee should have no parameters, no paradigm, and should instinctively know whether or not legislation is right. He had the view that the Scrutiny of
Bills Committee has much more superiority and much more leniency than what was being prescribed for this committee. I think people would find his and former senator Michael Tate's comments, which are in the Hansard, interesting to read.

The other key issue is the definition of human rights, whether it is too prescriptive, whether limiting this committee to the seven core treaties disregards the instincts of members of parliament about what is in breach of a human right and whether the proposed committee should combine with the Scrutiny of Bills Committee or remain separate. Essentially, the question is: what will this new Parliamentary Joint Committee on Human Rights actually do?

The Legal and Constitutional Affairs Legislation Committee's view was that we welcomed the establishment of this committee, that it will provide a platform for Australian human rights discourse and that, at the end of the day, it should provide statements of compatibility. As I said, my committee was of the view that, because this is a new parliamentary committee, it should have the flexibility to develop and mature over the months and years and over the course of its review of legislation. We came to the view that those seven treaties were at least a way to start.

While the establishment of this committee is not a charter or a human rights act, it is recognition of some of the issues and concerns that were raised during the dialogue. I fully understand that this matter has been a source of comprehensive debate in this country and that it polarises people. Do we have a human rights act or do we just set up a parliamentary committee or, somewhere in between, do we have a charter? This government has taken the view that a joint committee of this parliament will be established in the first instance. I hope that is not the end of the discussion and debate. I hope we can move towards at least having a charter of human rights in this country. But I am afraid that, unless we see some change of attitude in the opposition, any charter we establish may well be wound back, as we see the Liberals in coalition in Victoria are trying to do in that state at this time.

I urge people to have a look at this report and the recommendations of our Senate committee, if they are interested in this dialogue. From my point of view I think this is a good place to start and I commend these two pieces of legislation to the parliament.

Senator CASH (Western Australia) (13:11): I too rise to speak on the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010. I will commence my remarks on these two pieces of legislation by confirming what my colleague Senator Brandis has stated to this chamber. The Liberal Party is the party of human rights in Australia. We are the only political party represented in the Senate which was formed for the very purpose of protecting the rights and freedoms of individuals in this country. No other political party in this place can lay claim to that premise. In that regard, the Liberal Party has stated on the record that it agrees with the principal purpose of the legislation that is currently before this chamber, which is to create a parliamentary human rights committee. Indeed, much to the chagrin of the Labor Party, the proposal for such a parliamentary committee was the opposition's principal recommendation, as set out by shadow Attorney-General Senator George Brandis, to the National Human Rights Consultation which considered whether or not Australia should have a bill of rights.

However, the legislation in its current form is completely unacceptable. We say
that it is unacceptable because it contains inappropriate material which would introduce into the consideration of Australian domestic law a variety of international instruments which the Australian parliament has itself not enacted. For the benefit of those people who are listening to today's broadcast, the Labor Party proposes by this legislation to define your human rights as an individual Australian as the rights and freedoms recognised or declared by seven core United Nations human rights treaties which, I reiterate, are not part of Australian domestic law and have not been enacted as such by the Australian parliament.

For the benefit of those listening in, these are the treaties by which the Australian Labor Party says your human rights should be defined: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. That is it.

Notwithstanding that the principal measure of this bill reflects the adoption of coalition policy, the coalition does not accept the definition of human rights in terms of the seven international instruments and the possible introduction by the back door of those instruments into Australian domestic law without the proper scrutiny of the Australian parliament. The government's proposed definition of human rights, in relying upon international instruments as a source of human rights law, overlooks completely—as my colleague Senator George Brandis puts so eloquently—the fact that the Australian Constitution, domestic statutes in this country and the common statutes in this country and the true repositories of human rights in this country but also the rights routinely enforced by our courts.

It is important that we understand the background of the bills we are currently debating. It is Labor Party policy, and it has been confirmed yet again by Senator Hanson-Young in her speech to this legislation that it is also the Greens' policy, to introduce a bill of rights in Australia. Both Labor and the Greens claim this is the best way to recognise and protect the human rights and freedoms enjoyed by all Australians. Senators will recall that in 2007 the Labor Party committed to undertake public consultation on the issue as a precursor to introducing a bill of rights. Whilst this Labor Party policy was confirmed by the current Attorney-General in his speech on 3 October 2008, he changed the policy direction and gave the impression that he was watering it down by stating that this public consultation would focus on but not be limited to a statutory charter of human rights.

The reason for this change in the policy direction of the Australian Labor Party and the impression of watering down the policy was in response to a significant number of ALP luminaries making it clear that a statutory bill of rights was a potential recipe for disaster and would weaken rather than strengthen human rights in Australia. I refer in particular to the former Premier of New South Wales the Hon. Bob Carr, who as long ago as 2001—10 years ago—published an article in the winter 2001 issue of Policy, the journal of the Centre of Independent Studies, setting out his reasons for opposing a bill of rights. In 2008 Mr Carr was again out in the public domain warning the Labor Party of the folly of a statutory bill of rights or a charter of rights. Senators will also recall
that then New South Wales Labor Attorney-General John Hatzistergos was vocal in his opposition to a bill of rights or a charter of rights, and was quoted in the *Sydney Morning Herald* in 2007 under the banner headline 'Attorney-General rejects charter of rights for NSW'.

It is little wonder that the Australian Attorney-General, Mr McClelland, announced on 21 April 2010 that the Australian government would not introduce a charter of rights or a human rights act in the immediate term. However, it is important to recognise that the words 'in the immediate term' are and always will be Labor Party code for: 'We can't achieve a statutory bill of rights at the moment, so we will make some incremental progress by establishing a parliamentary joint committee on human rights. We will also incorporate our own Labor definitions on specific terms such as the meaning of human rights, notwithstanding that our proposed definition of human rights completely ignores the human rights that Australians currently enjoy under our domestic law. And then, having incorporated our own Labor definitions, we will tell the opposition that we are adopting their preferred policy option and we will not be pursuing a statutory bill of rights.'

As senators will know, the Liberal Party has been opposed to a statutory bill of rights or a charter of rights for years. Again, the reasoning for our opposition can be found in the submission by the federal opposition to the National Human Rights Consultation in June 2009, which was authored by the shadow Attorney-General, Senator George Brandis SC. Senator Brandis, as our shadow Attorney-General, has spoken, and has also published a number of informative articles, on the folly of a statutory bill of rights.

The debate to have or not to have a bill of rights enshrined in legislation has been the subject of considerable political, academic and community debate for a number of years. There are strongly held views on both sides of the debate and no consensus has appeared despite a wide-ranging debate over a very long period. I have indicated the views of two Labor luminaries who are opposed to a bill of rights being enshrined in legislation, and there are many more examples of prominent academics, politicians and community leaders who oppose the move. Given that the codification in legislation will have the effect of modifying our constitutional rights in the area of human rights, the Australian community expects and has the right to expect that there be an alignment on the issues between the political parties. This has not occurred, and it would be divisive to impose such a significant change on the Australian community without political alignment on the issue. A statutory bill of rights will require the identification and codification of our existing rights in legislative form. Such codification will identify those rights to which we are presently entitled, but reducing them to legislative form will likely have a limiting effect on the application of those particular rights.

There are many other facets of the argument to have or not to have a statutory bill of rights but, given the limited time available to me, it is sufficient to say that the Liberal Party, like so many in this country, opposes such a proposition. In respect of the legislation before the Senate, the opposition position is clear. We have said to the government that, given that we are opposed to a statutory bill of rights or a charter of rights, we are willing to accept—and it is indeed our policy, as so eloquently stated by Senator Brandis, that we will accept—the current parliamentary committee. However, we will not accept the definition of 'human rights' as proposed by the Labor Party. We
have made it very clear that we do not accept the definition as drafted in part 1 and we will seek to amend the bill in committee to overcome these objections. In respect of part 3 of the bill, we will seek to delete it from the bill. If the government rejects our amendments, we will be opposing the legislation in its present form.

In the event that the bill does fail to achieve majority support before the Senate, I would argue that the Senate in any respect is still able to consider the issue of legislation and instruments adhering to human rights by relying on the terms of reference of the Senate Standing Committee for the Scrutiny of Bills. It should be obvious to senators that the terms of reference of the Senate Standing Committee for the Scrutiny of Bills provide a considerably wider scope of powers than the proposed powers of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. I would argue that the scope of the terms of reference of the Senate Standing Committee for the Scrutiny of Bills as they apply to the issue of human rights enable the committee to traverse far wider considerations than the proposed definition of human rights in clause 3 of the current bill.

I would argue that the proposed definition of human rights in clause 3 directs the work of the Human Rights Subcommittee to a number of specific international instruments and fails to recognise that the source and substance of human rights law in Australia includes the Constitution, federal and state statute law, and the common law emanating from decisions of Australian courts. I would also suggest that the policy intent behind the current bill is based on a conscious decision by the Labor-Greens alliance to elevate UN treaties to the same status as Australian domestic laws, notwithstanding the fact that UN treaties are not the legislated law of any parliament of Australia and in most cases, as has been so eloquently put by Senator Brandis, have not been the subject of robust debate in this parliament.

I would further argue that if this bill is agreed to in its present form it will require future legislation and instruments to be drafted having regard to the provisions of the seven UN treaties, as set out in clause 3, and further require the committee to ensure that future Australian legislation is aligned with the policy objectives and the provisions of those seven UN treaties. The intentional combining and fusing of UN treaties with Australian domestic law is sure to be fertile ground for pro-active human rights lawyers who will seek to exploit any gaps in the expanded area of human rights law which will undoubtedly occur as UN treaties and Australian domestic law are combined into one.

Perhaps we will even see future appeals against ministerial decisions referred to a UN judicial body rather than the Australian High Court. I say that because many in this place will remember when the United Kingdom agreed to join the European Economic Community. It did so for what it believed were justifiable economic reasons. However, later, to the chagrin and alarm of some unsuspecting law-makers in the UK, they found out membership of the European Union brought with it a requirement to accept the supremacy of European law where there was a conflict between the laws of the member states and the European Union laws. The issue of potential supremacy of UN treaties over domestic law and the potential for appeals to be made to a foreign judicial authority is an area of law which should be of concern to all law-makers in Australia.

It is also interesting to note that Labor senators on the Senate Legal and Constitutional Affairs Legislation Committee appeared to recognise that the definition of
human rights contained in the bill was so encompassing in its application and scope that they are leaning towards a review of the bill after a mere 12 months in operation. They also understand that there are flaws in relation to the way clause 3 of the bill is currently drafted. Those laws can only be amended by adopting the coalition’s amendments in relation to the definition of human rights.

The other area of concern for the coalition is part 3, which deals with statements of compatibility. Part 3 of the bill requires statements of compatibility to accompany proposed legislation. The coalition does not see the need for statements of compatibility. Their standing would be, at best, that of an explanatory memorandum or a second reading speech. There is also a risk that a declaration of compatibility, or incompatibility, by the minister might be regarded as conclusive when, in fact, it is merely the expression of the opinion of the executive government. The whole point of enhancing the parliament's ability to scrutinise the human rights impact of legislation is to empower the parliament rather than the executive; it is the opinion of the parliament, not the executive, that matters in deciding whether legislation is human rights compliant. It would also be more appropriate for the committee to inform itself of the opinion of the executive government than to create a procedure in which, in effect, the executive certifies a statute for compliance with human rights obligations and thereby pre-empt the deliberations of the parliamentary committee itself.

In closing, I reiterate that the Liberal Party is the party of human rights in Australia. We are the only political party represented in the Senate, as Senator Brandis has already stated, which was formed for the very purpose of protecting the rights and freedoms of individual Australians in this great country. No other party in this place can lay claim to that.

The bill as it is currently drafted will not enhance the human rights of Australians. In fact, the bill overlooks the fact that the Constitution that Australians hold so dear, domestic statutes and common law are not only the true repositories of human rights in this country but also the rights that are routinely enforced by Australian courts. Human rights in Australia should not be measured in terms of international instruments being a source of human rights law, particularly when those international instruments have not been the source of robust debate in this parliament. For the reasons I have stated, if the coalition's agreements are not accepted we will not be supporting the bill. (Time expired)

Senator PRATT (Western Australia) (13:30): I am pleased to speak on the Human Rights (Parliamentary Scrutiny) Bill 2010 and related bill. The legislation is about a forum for greater parliamentary scrutiny of human rights and will establish a committee that will enable the early and ongoing consideration of human rights issues in policy and legislative development.

The Labor government takes very seriously its obligation to human rights within this nation. On 21 April 2010, we launched Australia's Human Rights Framework and outlined many actions the government will take to protect and advance human rights. Personally, I support a human rights charter and I hope this is something we can look to in the future. While the framework does not include a human rights act or charter, the establishment of a new joint committee is a very significant step forward in protecting and promoting human rights in our nation.

The human rights framework is based on five key principles: reaffirming a
commitment to Australia's human rights obligations; the significance of human rights education so that people can access their human rights; enhancing Australia's domestic and international engagement on human rights issues; improving human rights protections, including greater parliamentary scrutiny; and achieving greater respect for human rights principles within the community.

Australians have a proud record on human rights—but it is a record that can and must be improved. We should recognise that not all people have the full enjoyment of the human rights that should be afforded to them. To advance human rights both here and abroad Australia is committed to a human rights framework. While the human rights of Australians are in part protected by the three principal sources of our law—the Constitution, the common law and the statutes of both Commonwealth and state parliaments—Mr Nicholas Cowdery AM, QC of the Law Council of Australia says:

Australia is the only Western democracy without an effective federal constitutional statutory mechanism to provide comprehensive parliamentary scrutiny of new and existing laws for compliance with human rights. The mechanisms proposed in these bills are, in our submission, an important step towards addressing this gap.

Similarly, the Australian Human Rights Commission submitted that, in its view, the new joint committee 'will form an important mechanism at the parliamentary level to ensure that the human rights impact of legislation and delegated instruments [is] fully considered as part of the policy development process'.

As someone who has been a participant in the Senate Standing Committee for the Scrutiny of Bills and indeed the inquiry carried out by the Senate Legal and Constitutional Affairs Legislation Committee, I do believe that the bill before us, in terms of access to international human rights instruments and debating human rights as opposed to just relying on the common law and law, is a great step forward.

In addition to this important role of examining legislation, the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade will advance participatory democracy through its ability to canvass public views and establish a dialogue between citizens and members of the committee on important human rights questions. I have been very pleased to participate in this through the Joint Standing Committee on Treaties, and I do think we can look to the work of that committee when considering how we might like our human rights parliamentary committee to work. The committee will work with reference to the rights and freedoms recognised or declared in seven core United Nations human rights treaties as they apply to Australia, and the new framework will require all bills to have a ministerial statement of human rights compatibility to ensure they comply with our international obligations. The committee will also be able to examine existing legislation and conduct broad inquiries into matters relating to human rights as referred to it by the Attorney-General. To my mind, broadly speaking, meeting human rights standards is not only an important moral imperative but a material one too. For many people in our nation failure to meet human rights standards prevents them from reaching their potential, accessing justice and making their full contribution to Australian society. This is a test of the way we treat the vulnerable in our community and of the laws that we have before our parliament. So I am pleased that this bill and the Human Rights Framework reaffirm our government's commitment to human rights and community engagement, with a particular focus on ensuring that laws
are consistent with Australia’s international human rights obligations. I note that the opposition senators stated in their dissenting report on this bill:

In our view, not only is it undesirable to recognize international instruments as the exclusive, or even the main, source of rights; it is fraught with danger to attempt to codify rights at all.

In contrast, the Human Rights Council of Australia said:

It is particularly pleasing that the rights to which the Parliamentary Joint Committee must have regard when performing its functions are all of the rights expressed and declared in the relevant international instruments listed in clause 3(1) of the Bill, as distinct from merely a selection of some of these rights. This will serve to remind the federal legislature that, at international law, Australia has an obligation to observe and respect all rights that are the subject of international treaties to which Australia is a party.

Coalition senators have expressed the view that a more effective way for the bill to address these issues would be for it to avoid ruling in and ruling out particular rights, leaving it to members of the committee, informed no doubt by the submissions before them, to consider what are and what are not relevant human rights.

I think that the coalition overstates its concerns. Essentially, we are talking here about a reporting process. Parliamentary committees are at liberty to make their own decisions about what they do with the information before them. It is one of the reasons I like the idea of a charter of rights. Parliamentary committees are not bound in the way a charter might bind a test of these rights. Like any other parliamentary committee, we would have the capacity to make our own decision based on information before us. Likewise, the Australian community will have the opportunity to judge the decisions of the committee against what is reported against international human rights instruments.

It is appropriate to have a reference point for the committee, which will be the rights and freedoms recognised or declared by the seven core United Nations human rights treaties as they apply to Australia. Universal freedoms and human rights cannot be irrelevant one day and relevant the next. Indeed, many submissions to the committee proposed that the definition of human rights should be expanded to include a wider range of international instruments than the seven core UN conventions currently captured, in order to more accurately reflect Australia’s international human rights obligations.

While some provisions of treaties may exist in our national legislation, they do not form part of Australia’s domestic law unless the treaties have been specifically incorporated into Australian law through legislation. I note that we are currently going through a process of combining a range of antidiscrimination laws. I look forward to the outcome of those reforms. This principle reflects the fact that agreeing to be bound by a treaty is the responsibility of the executive in the exercise of its prerogative power, whereas law making is the responsibility of parliament.

Finally, one of the really pleasing things about this legislation is that it establishes a dialogue between the executive, the parliament and, ultimately, the citizens of this nation on the issue of human rights in this country. It enables the active consideration of human rights and the seven core United Nations human rights treaties in the process of law making and in consultation with the Australian people. I commend the bill to the Senate.

Senator MASON (Queensland) (13:42):
The Human Rights (Parliamentary Scrutiny) Bill 2010 is an important bill because human
rights are important. Senator Brandis said today that perhaps at times the coalition has been a bit reluctant in their prosecution. He might be right. We should never forget that the rights of individuals—those rights against the state and against molestation by the state—are what founded the Enlightenment and modern liberal democracy. It is those rights and that revolution that changed the face of our world. We liberals and conservatives, sir, invented human rights; collectivists did not. In the battle between the individual and the state about where the prejudice should lie, liberals and conservatives always go with the individual. That lot opposite do not. If you ever need a better example of how important this battle is, the battle for human rights, to save individuals against the depravity of the state, one need go no further than look at the history of the 20th century. The 20th century was a slaughterhouse, with mechanised brutality, slaughter of individuals by the state and by governments. It was deliberate, it was intentional and it was disgusting. The greatest loss of life in human history happened last century, when everyone in this parliament was born. As the great English historian Paul Johnson said:

We have learnt that the destructive capacity of the individual, however vicious, is small; of the state, however well intentioned, almost limitless.

If anyone wonders why Senator Brandis and Senator Cash and liberals and conservatives take human rights seriously, it is because of that. We have seen with our own eyes, with the history of the 20th century, the depravity and the power of the state to destroy individuals on a scale never seen before in human history. That is why human rights are important. Of course, the Left have changed the conversation. We talk about rights against the state—rights of nonmolestation, freedom of speech, freedom of association, freedom of conscience and freedom of religion, as well as property rights, due process and the rule of law. In effect, they are all rights against the state, but the Left now talks about entitlements. We take our heritage back to the Magna Carta at Runnymede and the Enlightenment. The Left, post-Second World War, talk about economic and social rights—health, education and welfare. I am not saying that is not important, but in the battle of the individual versus the state I side with the barons on the meadow at Runnymede, the Enlightenment and liberal conservatism against the 20th century collectivists.

One of the problems with the language of the Left is that they have debased rights. In the end, all rights are not equal. In the same way, political systems are not equal. I ultimately do not trust the Left with saving and protecting our human rights. Many of us would agree with many of the economic and social rights that the collectivists talk about. But, while the Left was busy promoting economic, social and cultural rights after World War II, it did not care too much that half the world did not enjoy civil and political rights. As a columnist recently said, and I urge the Senate to listen to these words: 'Wherever there is a jack boot stomping on a human face, there is always someone to remind us that at least the face had free health and dental care.' You get this line in Cuba, you had it in the Soviet Union and you would have it in the People's Republic of China: 'We can slaughter people, we can mechanise the slaughter and, in fact, we can make it de rigueur for the state, but it is okay because there is free education.'

When it comes to the battle between collectivists, social rights and individual human rights, we have got it right. All political systems and all rights are not equal, because in the 20th century the worst thing from the Left, particularly after World War II, was not the great economic failings—
though with enforcing socialism on much of the world they impoverished hundreds of millions of people, and that was disgraceful; that was a failure and it was disgusting—but, far worse, that they believed and they prosecuted the case that all political systems and the rights they accord are equal. In a sentence, that says it all. This lot prosecuted the case that all political systems and the rights they accord are morally equal. As for liberal democracy they say, 'That was just one example of government and just one example of human rights.' But human rights differ. We might talk about right to trial, but what does that matter? Apparently, to the Left all rights are equal. They are not, and none of us on this side ever believed that. I do not agree with that. Rights, just like political systems, are not all equal.

In the end—and perhaps I am showing my conservatism—like Senator Cash and like Senator Brandis, I prefer John Locke and Thomas Jefferson to the 20th century collectivists. In the end, I prefer the parliament of Australia and our courts to the international bureaucrats. Hear this, Mr Acting Deputy President: in the end it is the liberals who are the greatest defenders of human rights, and they have been throughout Western history. (Time expired)

Senator HANSON-YOUNG (South Australia) (13:50): I seek leave to incorporate my speech on the Social Security Amendment (Student Income Support Reforms) Bill 2011.

Leave not granted.


Question agreed to.

Bills read a second time.

The ACTING DEPUTY PRESIDENT (Senator Stephens): The question is that amendments (1) to (3) on sheet 7139 in respect of the Human Rights (Parliamentary Scrutiny) Bill 2010 and amendments (1) and (3) on sheet 7140 in respect of the Human Rights Parliamentary Scrutiny (Consequential Provisions) Bill 2010, circulated by the opposition, be agreed to.

Opposition's circulated amendments—

HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) BILL 2010

(1) Clause 2, page 2 (table item 2, 2nd column), omit ", 3".

(2) Clause 3, page 2 (line 14), omit "(1)"

(3) Clause 3, page 2 (line 15) to page 3 (line 15), omit the definition of human rights, substitute:

human rights means the personal rights and liberties which exist under:

(a) the Constitution; and

(b) Acts of the Parliaments of the Commonwealth, States and Territories; and

(c) the common law; and

(d) relevant international instruments to which Australia is a party and which have domestic application by Australian law.

HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) (CONSEQUENTIAL AMENDMENTS) BILL 2010

(1) Clause 2, page 2 (table item 2, 1st column), omit ", items 1, 2 and 3".

(3) Schedule 1, page 3 (line 13), omit the heading.

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CHAMBER
The Senate divided. [13:55]

(The President—Senator Hogg)

Ayes....................30
Noes.....................34
Majority..............4

AYES
Abetz, E
Back, CJ
Bernardi, C
Birmingham, SJ
Brandis, GH
Cash, MC
Colbeck, R
Eggleston, A
Fawcett, DJ
Fierravanti-Wells, C
Fawcett, DJ
Fierravanti-Wells, C
Fifield, MP
Fisher, M
Gallacher, AM
Hanson-Young, SC
Humphries, G
Hogg, JJ
Johnston, D
Lawson, JG
Ludlam, S
McEwen, A
McLachlan, A
McLachlan, AT
Malcolm, B
Mason, B
McKenzie, B
McLucas, J
Milne, C
Morrison, AM
Muir, N
Nash, F
Parry, S
Polley, H (teller)
Pratt, LC
Ryan, SM
Ryan, SM
Tattersall, T
Thistlethwaite, M
Williams, JR
Xenophon, N

NOES
Arbib, MV
Bishop, TM
Brown, RJ
Conroy, SM
Di Natale, R
Faulkner, J
Furner, ML
Hanson-Young, SC
Ludlam, S
Marshall, GM
Mclachlan, AT
McLachlan, A
Mclachlan, AT
Moore, CM
Muir, N
Muir, N
Muir, N
O'Neill, M
O'Neill, M
Parry, S
Paull, C
Polley, S (teller)
Pratt, LC
Rhiannon, L
Singh, LM
Sterle, G
Urquhart, AE
Wright, PL

PAIRS
Cormann, M
Heffernan, W
Joyce, B
Payne, MA
Scullion, NG
Sinodinos, A
Sherry, NJ
Collins, JMA
Wong, P
Farrell, D
Lundy, KA
Carr, KJ

The PRESIDENT: The question is that subclause 3(2) and part 3 of the Human Rights (Parliamentary Scrutiny) Bill 2010 and table item 3 in clause 2 and item 4 of schedule 1 of the Human Rights (Parliamentary Scrutiny) Consequential Provisions) Bill 2010 stand as printed. These are opposition amendments (4) and (5) on sheet 7139 and opposition amendments (2) and (4) on sheet 7140.

Opposition's circulated amendments—

HUMAN RIGHTS (PARLIAMENTARY
SCRUTINY) BILL 2010

(4) Clause 3, page 3 (lines 21 to 24), subclause (2) TO BE OPPOSED.
(5) Part 3, clauses 8 and 9, page 6 (line 1) to page 7 (line 4), Part TO BE OPPOSED.

HUMAN RIGHTS (PARLIAMENTARY
SCRUTINY) (CONSEQUENTIAL
AMENDMENTS) BILL 2010

(2) Clause 2, page 2 (table item 3), clause TO BE OPPOSED.
(4) Schedule 1, item 4, page 3 (lines 14 to 19), item TO BE OPPOSED.

Question agreed to.

Third Reading

The PRESIDENT: The question is that the remaining stages of these bills be agreed to and the bills be now passed.

Question agreed to.

Bills read a third time.

Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011

Social Security Amendment (Student Income Support Reforms) Bill 2011

Second Reading

The PRESIDENT: In respect of the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2011, the question is that item 1 of schedule 2 stand as
printed. That is opposition amendment (1) on sheet 7086.

Opposition's circulated amendment—

(1) Schedule 2, item 1, page 4 (lines 5 to 10), item TO BE OPPOSED.

The Senate divided. [14:01]

(The President—Senator Hogg)

Ayes.......................
Noes.....................
Majority..............

AYES

Arbib, MV
Bilyk, CL
Bishop, TM
Brown, CL
Brown, RJ
Cameron, DN
Conroy, SM
Crossin, P
Di Natale, R
Evans, C
Faulkner, J
Feeney, D
Furner, ML
Gallacher, AM
Hanson-Young, SC
Hogg, JJ
Ludlam, S
Ludwig, JW
Madigan, JJ
Marshall, GM
McEwen, A
McLucas, J
Milne, C
Moore, CM
Polley, H (teller)
Pratt, LC
Rhiannon, L
Siewert, R
Singh, LM
Stephens, U
Sterle, G
Thistlethwaite, M
Urquhart, AE
Waters, LJ
Wright, PL
Xenophon, N

NOES

Abetz, E
Adams, J
Back, CJ
Bernardi, C
Birmingham, SJ
Boswell, RLD
Boyce, SK
Brandis, GH
Bushby, DC (teller)
Cash, MC
Colbeck, R
Edwards, S
Eggleston, A
Fawcett, DJ
Ferravanti-Wells, C
Field, MP
Fisher, M
Humphries, G
Johnston, D
Kroger, H
Macdonald, ID
Mason, B
McKenzie, B
Nash, F
Parry, S
Ronaldson, M
Ryan, SM
Williams, JR

PAIRS

Collins, JMA
Heffernan, W
Farrell, D
Payne, MA
Landy, KA
Scullion, NG
Sherry, NJ
Cormann, M
Wong, P
Joyce, B

Question agreed to.

Senator Ian Macdonald: Mr President, I raise a point of order. On the human rights bill, you said, 'These are Senator Brandis's amendments'—

The PRESIDENT: No—

Senator Ian Macdonald: 'all in favour say aye,' and you called it for the ayes.

The PRESIDENT: I did not use any person's name at all in that. That was the question on opposition to clauses—and I called it for the ayes. That is the correct call. I do not use people's—

Senator Ian Macdonald: If you didn't use 'Senator Brandis', you used 'these are the opposition amendments'.

The PRESIDENT: No, at the end I said they were opposition (4) and (5) on sheet 7139 and opposition (2) and (4) on 7140. I read the sheet as it has been prepared and I did not digress from it.

Senator Ian Macdonald: But didn't you say, 'The ayes have it'? They were passed.

The PRESIDENT: Yes—the amendments were passed? The question was that the clauses stand as printed. When the government vote in favour, the clause stands as printed, and the opposition amendments fail. That has been, since time immemorial, the way in which these questions have been put.

Senator Ian Macdonald: Mr President, could I ask you, then, to check with the Clerk on how you have recorded the vote on the bill itself once you dealt with the amendments?
The PRESIDENT: The question on the bill, Senator Macdonald, was quite different. The question on the bill, once we had disposed of the amendments, was ‘that the remaining stages of these bills be agreed to and the bills be now passed’, so it was a completely different question. I put the question and I called it properly for the ayes.

Senator Ian Macdonald: Didn't it record that I voted against the bills on the failure of the amendments?

Government senators interjecting—

Senator Ian Macdonald: Mr President, for this rabble over on the other side who have no idea about parliamentary procedures: there has been some confusion—

The PRESIDENT: Senator, can I advise you that the questions that have been put have been put in the same way as questions have been put to other meetings of the Senate where similar matters have been considered, since time immemorial. There is no change to the practice. I can assure you of that.

Honourable senators interjecting—

The PRESIDENT: Order! Just excuse me, Senator Macdonald. I am entitled to hear Senator Macdonald. He is entitled to be heard in silence.

Senator Ian Macdonald: Can I ask you to review the video of these hearings because—

Government senators interjecting—

Senator Ian Macdonald: You people have no interest in parliamentary democracy. At least you could shut up. Mr President, can I ask you to review that? As I heard you, I thought you said, 'Senator Brandis's amendment, all those in favour'. That is why I voted yes. I would have voted no had I understood the way you were calling it.

The PRESIDENT: Senator Macdonald, all I can say is you have not understood the way in which these matters have been put previously. I have been consistent with previous practice in this parliament, and I am getting nods on both sides of the chamber. I do not think there is any problem there.

Third Reading

The PRESIDENT: The question now is that the remaining stages of the Safety, Rehabilitation and Compensation and Other Legislation Amendment and the Social Security Amendment (Student Income Support Reforms) Bill 2011 be agreed to and the bills be now passed.

Question agreed to.

Bills read a third time.

Deterring People Smuggling Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (14:09): Can I indicate at the outset that the opposition supports these amendments. As a result of discussions between the Attorney-General and myself and an exchange of letters between the Attorney-General and the Leader of the Opposition, we have undertaken both to support the bill and to expedite its passage through the parliament. I will address it very briefly, although I do not propose to take very long to do so.

Subdivision A of division 12 of the Migration Act 1958 contains certain prohibitions upon the entry into Australia of a noncitizen in circumstances where the noncitizen does not have a valid visa or is not otherwise entitled to enter into Australia. An issue has arisen in which, in certain proceedings in the Supreme Court of Victoria, as I understand, it is alleged that the claim of a right under the refugee convention and the refugee protocol is sufficient to take
a noncitizen beyond the prohibitions in subdivision A of division 12. Therefore, so it is said, on the proper interpretation of those provisions the mere claiming of status under the refugee convention or the refugee protocol is sufficient to enable the noncitizen to escape the operation of those provisions.

That has never been the way in which that subdivision of the Migration Act has been understood. The purpose of these amendments is really out of abundant caution to clarify that meaning. In particular, the proposed section 228B(2) provides that, to avoid doubt, a reference to a noncitizen includes a reference to a noncitizen seeking protection or asylum, however described, whether or not Australia has or may have protection obligations in respect of the noncitizen under the refugees convention as amended by the refugees protocol or for any other reason.

We agree with the government that it is very important to maintain the integrity of the border protection regime. If it were the case that a claim of right under the refugee convention or the refugee protocol was all it took to circumvent the operation of the Migration Act, then it would be beyond the capacity of Australian migration authorities or, indeed, the Australian Federal Police or any domestic Australian authority to deal with the arrival of unauthorised noncitizens.

The effect of these provisions will be to operate from the day on which they receive royal assent, which, I understand, will be sought urgently. They will apply forthwith to all proceedings, including the proceedings to which I have referred in the Supreme Court of Victoria. It has been said, and I anticipate it may be said by the Australian Greens, who I understand oppose these amendments, that they have a retrospective operation. That is not so. It would be a misuse of the term 'retrospective' to say that provisions that apply prospectively but whose commencement applies to existing but yet to be determined proceedings is retrospective in character. In truth, these are clarifying amendments or essentially declaratory amendments which declare the meaning of an existing prohibition in the act to be as it has always been understood to be and, as I said at the start, out of abundant caution to express more fully the legal position to be as it has always been understood to be.

The opposition, as I said, supports the amendments.

Senator HANSON-YOUNG (South Australia) (14:15): I rise to speak on the Deterring People Smuggling Bill 2011. I put it squarely on the record that this bill should not be debated today and should not be passing this parliament. It is a terrible piece of legislation and I want to give an illustration of why. I want to tell a story about a man I will call Wawan, which is not his real name. He is about 35 years old. He lived in a small village of around 50 families on the island of Sumbawa. He lived with his mother and was the sole provider for the home as his father died when he was a small child. He had survived a very impoverished upbringing in which he had worked from a young age to support his mother. As a result, his formal education finished before the end of primary school. The home he shared with his mother was a small one—a one-room bamboo hut with a dirt floor. There was no electricity and the only running water was outside in the village.

Wawan was a fisherman who often travelled for work. His mother suggested that he go to Sumba to fish for octopus. In Sumba, on this occasion, he was sitting in a coffee shop when he was approached by a man called Mohammed, who asked if he would be interested in taking a boatload of passengers to go diving in Kupang. Wawan
agreed, thinking that this was a way to make money, more money than fishing for octopus would bring. When the passengers arrived, Wawan was surprised to see that none of them were Indonesian. However, he did not ask any questions as Mohammed was his boss and he knew to just do what he was told.

When they set off there were about 40 passengers on board the boat as well as another Indonesian man who had been recruited in a similar way. Mohammed followed in a larger boat and after two days he came aboard Wawan's boat and handed him a compass, telling him to continue to sail at 180 degrees. Mohammed then turned around his boat and headed back towards Indonesia. Wawan had never used a compass before; however, he still believed he was heading to Kupang, so he continued to follow Mohammed's instructions. Wawan and the other Indonesian man followed Mohammed's directions for another two days until they were intercepted by the Royal Australian Navy off the coast of Western Australia. This is an illustration of the experiences of people who are currently being held in Australian detention centres and Australian prisons awaiting their court cases because they have been accused of people smuggling.

This bill is referred to as the Deterring People Smuggling Bill. The question is: who is this bill actually deterring? This bill is not about deterring people smuggling; this bill is all about the government's barefaced political strategy of looking tough on boat arrivals. The fact is this bill has been rushed into this place to make it look as though, on the last day of sitting in 2011, the government is actually doing something to stop the boats. It is going to be very difficult and very hard for the opposition not to agree with the government's strategy.

The government has tried to tell the Australian people that this bill is simply about clarifying the crimes under the Migration Act that aim to break the people-smuggling business model. This is nothing but hollow rhetoric. The reason this bill has been brought forward at all is that the Australian government is currently a party to a legal challenge in Victoria. Rather than allowing this legal challenge to go through its proper process, the government, a party to this legal challenge, has decided to bring a bill into the parliament to scuttle the court case.

These are the types of activities that you expect of governments in other places in the world, not in a free, open, transparent democracy like Australia, which has built its reputation around the world because it has a clear division between the courts, the executive and the parliament. An important test case is currently before the Victorian Court of Appeal. By bringing forward this bill in this way the government, which is a party to these proceedings, has spectacularly breached the separation of powers and shows that the government is prepared to do absolutely anything, to go as low as it possibly can, when it comes to legislation to deal with asylum seekers and those who help them to arrive.

It is an amazing coincidence that the government only decided to bring forward this bill to clarify this particular part of the Migration Act when the test case in Victoria was elevated to a superior court. In the Senate inquiry into this bill, which was a very short one, the Attorney-General's Department conceded that they had only been given drafting instructions for these amendments in October, right after the threat of the court case became clear. For a piece of legislation that experts say breaches our international human rights and refugee obligations as well as the separation of
powers and the rule of law, there has been woeful consideration of its merits through the parliamentary process. This bill should not be proceeding in this place and it certainly should not be passing without a proper review of its purpose.

This bill talks about deterring people smugglers, yet it does absolutely nothing to achieve that. The government can provide absolutely no evidence to support its argument that the particular cases currently before the courts or the current status of the crimes under the Migration Act have done anything to deter people arriving by boat. Last year, in 2010, this place dealt with a piece of legislation that set down mandatory minimum sentences, and the government said: 'This will deter people. This will stop the boats.' Yet we have not seen any evidence that that has occurred. What we see are hundreds of crew who have been locked up, detained and charged for these crimes under the Migration Act. Their cases are very similar to the young man's case that I outlined at the beginning of my speech. This bill is all about punishing the small fry and allowing the big fish to escape.

The inquiry, which I have already mentioned was quite short, showed that there is great concern and deep disapproval among the Australian community, particularly among human rights advocates and legal experts, about the amendments contained in this bill. One of the most devastating criticisms of the bill came from the Australian legal community, who remain aghast at the retrospection of this amendment. Even the Senate's own Scrutiny of Bills Committee has condemned this piece of legislation, expressing great concern at the retrospective application of this amendment back to 1999. It notes:

… liberal and democratic legal traditions have long expressed strong criticisms of retrospective laws that impose criminal guilt … persons should not be punished for acts that were not illegal at the time they acted.

The prohibition on retrospective criminal laws is central to the rule of law. It is clearly prohibited by article 15 of the International Covenant on Civil and Political Rights. It is banned in many countries. In Australia, retrospective criminal legislation is used only in the most rare and exceptional circumstances. Such caution is applied to retrospective criminal legislation that it has been used by the Australian parliament only three times prior to this piece of legislation.

There is no moral or legal justification for making this law retrospective. Along with the legal experts who appeared at the inquiry, the Senate's own Scrutiny of Bills Committee has criticised the retrospectivity of this bill. The Scrutiny of Bills Committee demands that the government describe exactly why there are exceptional circumstances for making this legislation retrospective. The truth is that there are no exceptional circumstances that justify the retrospective nature of this bill. It is political necessity rather than great moral need. Let's call that political necessity for what it is: the government do not want to see themselves losing another court case at the end of 2011, a year in which they have already introduced legislation and proposals that the courts have ruled unlawful. The government do not want another case on their hands. Rather than fighting their cause in the courts and allowing that process to continue, they have decided to bring forward this legislation and scuttle the legal process to which they are a party.

Let me touch on what a farce this legislation is, right down to its title's claim of deterring people smuggling. It is notable that the title is the only part of the bill that says anything in relation to deterrence. The bill is not about deterring people. It does nothing to stop desperate people engaging people
smugglers. Any attempt by the government to pretend to the Australian people that this is going to make a difference is an attempt to pull the wool over the Australian public's eyes. Rather than spending precious parliamentary time on a so-called clarification which is clearly in breach of the rule of law, we should be looking at ways to fix our anti-people-smuggling policies so we are catching the big fish, the organisers, the kingpins and deterring them from misleading vulnerable asylum seekers and using and abusing boat crew in order to make a profit.

The Minister for Immigration and Citizenship has been on television telling Australians that the changes to the Migration Act are being made to catch the people smugglers who are 'sitting around in nightclubs in Jakarta'. That could not be further from the truth. The lawyers who are working at the coalface of people-smuggling prosecutions have put clearly on the record that, of the 353 people currently facing people-smuggling charges in Australia, only six are actually accused of being organisers of the industry. Out of 353 people charged, only six are accused of actually organising this business! The government are not being effective at deterring people smugglers. The government are not being effective at charging the kingpins. They would like us all to believe that they are, but it is simply not the truth. The figures tell us that. The deputy commissioner for operations has said that, of the 493 individuals arrested between 2008 and 2011, only 10 were accused of being organisers.

Are we catching the kingpins? Clearly not. Are we locking up vulnerable, tricked, manipulated, impoverished Indonesian fishermen? Yes. Are they the scapegoats of the government's 'get tough on refugees and people smuggling' policy? Yes, they are. How many of those people are children? We know that there are at least 35 people whom the government jailed in adult facilities illegally, because they are children. Mr President, do not be fooled that this legislation is in any way enforcing the government's attempt to smash the people-smuggling business model. Victoria Legal Aid, which is acting for 53 of the accused people smugglers, are running the test case the government is seeking to scuttle. They put it very clearly:

The overwhelming majority of the people charged with people smuggling in Australia are impoverished Indonesian fishermen, the totality of whose involvement is to be recruited on to the boats to steer, crew or cook. They are as dispensable to the organisers of people smuggling as the boats that get burnt off the coast of Christmas Island and Ashmore Reef. The criminal charges which this bill seeks to amend are not deterring anyone. Desperate people will come to Australia to seek asylum as long as the prospect of life in Australia is not as bad as life under tyrannical and violent regimes such as the Taliban. As long as the Australian government refuses to increase our humanitarian intake and resettle more people directly, this is the only option many of them have. Yet rather than putting safer pathways in place, rather than catching the kingpins, the government finds it easier to use young, impoverished Indonesians as its scapegoats to try and prove it is doing something to stop people smugglers.

Rather than bringing this bill forward to interfere with, to scuttle, the Victorian Court of Appeal's ability to hear this case, the government should be heeding the warnings of judges, magistrates and lawyers from around the country. In 2010 the government introduced mandatory minimum sentences and this is where the problem began. The government should be addressing those issues, ensuring that courts can weigh up the seriousness of these offences, rather than using these young Indonesians as its political
and legal scapegoats. The Australian public have a right to know exactly who is bearing the brunt of these five-year mandatory minimum sentences. How many have been children? How many have been adults? How many have been detained and charged? How many cases have fallen over because the government has not concentrated on the right areas or the right people?

The story that I told at the beginning of my contribution highlights exactly how vulnerable these individuals are, how dispensable they are to the kingpins of the people-smuggling trade—just as dispensable as the asylum seekers or the boats themselves. It surprises me that the opposition is willing to push this bill through the parliament and allow the government a free kick and a free goal on something the opposition knows is not working. It surprises me that the opposition is prepared to simply say: 'We will give the government this cover. We will continue to lock up young Indonesian fishermen rather than tackle the real people smugglers.'

But maybe I am not that surprised at all, because perhaps this is exactly the problem in this place—that neither the Labor Party nor the coalition is actually willing to face the realities of displaced people seeking protection and freedom in our region. It is all about the slogan of 'smashing the people smugglers' business model' versus the slogan of 'stop the boats'. They are as hollow as each other, as illegal as each other and as useless and ineffective as each other.

Until we have some true leadership in this place, these issues are not going to go away. It is appalling that this piece of legislation has come forth—retrospective in nature, with no exceptional circumstances provisions—to scuttle a legal challenge which the government is party to. It continues to punish the very same people who have been tricked and manipulated throughout this process simply in order to pretend to the Australian people that the government is doing something. It is a shameful piece of legislation and it should not proceed.

Senator IAN MACDONALD (Queensland) (14:34): I rise to say a few words in support of the Deterring People Smuggling Bill 2010 and the position Senator Brandis indicated. But before I do I will make some comments on the contribution by the previous speaker, Senator Hanson-Young. I remind the previous speaker and the people of Australia that, when Mr Howard was Prime Minister, there were at times a number of illegal entries to Australia—boat people. Through a bit of trial and error, we eventually got a system in place where we had offshore processing in Nauru—and this actually did stop the boats. It worked. So for Senator Hanson-Young to suggest that this did not work, that nothing has worked, is simply incorrect and contrary to the facts. Under the Howard government, this did—

Senator Hanson-Young: Do you actually know anything at all about this legislation? This has nothing to do with the bill.

Senator IAN MACDONALD: I am answering you, Senator Hanson-Young. You were the one who went into this area.

The PRESIDENT: Senator Macdonald, address your comments through the chair. Senator Hanson-Young, you were heard in silence and Senator Macdonald should be as well.

Senator IAN MACDONALD: The previous speaker went into this area and is now interjecting and saying this is not part of the bill. I am simply responding to the arguments she made. If it is not part of the bill when I say it, it must not have been part of the bill when she was speaking.
The Howard government’s approach actually worked. We did stop the boats. We were also able to turn boats around when it was safe to do so. Anyone who was at estimates a few weeks ago would have heard the Chief of Navy—who is an expert on it because he was a more junior officer at the relevant times—explain how the boats were turned around and how this was done safely. He also explained how sometimes it was not possible to do that. Of course, the ABC and some other commentators gave huge preference or exposure to the admiral talking about the one that failed and made no reference whatsoever to the admiral’s original comments, where he went through in quite some detail how you could turn boats around safely and how you could make the policy Mr Abbott has enunciated work—that is, turning boats around when it can be done safely and offshore processing at Nauru.

The Labor government’s border protection policies and migration policies are an absolute shambles. Hence, if this bill will do anything to stop people smugglers, even if in a very minor way, then I am in favour of it. Senator Brandis has indicated why the coalition is supporting this government bill and why we are facilitating its passage through the Senate this afternoon, the last day of sitting, after the Labor Party and the Greens have guillotined 20 pieces of legislation so far this week without so much as one word being spoken on them. We have been voting on bills all week that many people would have little idea about because we were not allowed to speak on them.

In the previous week, 18 of the most complex bills that this parliament has dealt with in the last decade, relating to the carbon tax, were rammed through this parliament with only one or two of the bills in that package being dealt with. Already we have seen what a farce that carbon tax legislation has become. Australia will become, if it is not already, the laughing stock of the world for having a tax of $23 per tonne on carbon dioxide emissions. The rest of the world is standing aside and laughing, rubbing their economic hands together with glee as they think about what business and jobs they can pick up. We have already seen jobs go from Australia to China and India because of that package of bills, which went through because it did not have proper scrutiny by this parliament.

Anything that will help border protection and stop people smugglers, as this bill will do in a way, is something we support, so we will facilitate its passage through the parliament. But before I sit down I want to again make the point to senators and to the people of Australia who might be listening to this debate that the reason why the coalition is so incensed at the Labor Party’s inability to protect our borders and stop the boats is that for every person that comes in illegally by boat someone living in a squalid refugee camp somewhere in the world is put back another year. That seems to be okay as far as the Greens go. If you happen to be a wealthy person, and the Greens have shown quite often in the last few weeks that they are for the big end of town, for the wealthy people, the people who can make donations of $1.6 million—

Senator Edwards: How much?

Senator IAN MACDONALD: You don’t make a donation to the Greens of $1.6 million if you are not the big end of town, the wealthy end of town. Thank you for the interjection, Senator. You remind me that the biggest single donation ever in Australian political—

Senator Hanson-Young: Jealous!

Senator IAN MACDONALD: I’m jealous, am I? After two decades of listening to railing against private donations, somehow when I raise it I am jealous! I tell
you what, Senator: I am embarrassed for you people—and that is a generosity I do not often extend to the Greens. We are talking about $1.6 million, so don't talk to me about who is in the pay of the big end of town. That is quite clear.

These people coming in by boat are not the penniless refugees who have been living in squalid camps around the world for 10 years. They are people who can afford $10,000, $15,000, $20,000 a pop, to pay a people smuggler to bring them in, and that is only what it costs to get from Indonesia to Australia. What they have paid to get from wherever they come from to Indonesia we do not know. Senator Hanson-Young, they are not the poor, the disadvantaged. They are the big end of town, the wealthy end of town, that clearly the Greens support.

What I am concerned about, and I will always make this point, is that Australia has a very proud humanitarian arrangement and we have been at the forefront on a per capita basis of taking genuine refugees for 50 years. We are proud of it, and so we should be, but we have a fixed number. As I have said before, perhaps the number is not right. I am prepared to debate that, as I have with the Refugee Council. We take about 14,000 genuine refugees every year. Maybe it should be 20,000; I do not at this stage enter into that debate. But we do take a fixed number, and for every one of these people that come in, having paid $10,000 or more to get a boat from Indonesia to Christmas Island, someone who has been in an absolutely squalid camp, someone who is a genuine refugee and has been so determined by the UNHCR over many years, has to wait another year for their chance to get to Australia.

That is the sort of policy that the Greens support: forget about those in the squalid refugee camps around the world who are waiting their turn, desperate to get into Australia within the limit of our intake of about 14,000 a year, but let's encourage these people who can pay $10,000 to the people smugglers to come in. You have to put in place an arrangement where those people who would pay the $10,000 see that they are not automatically going to come to Australia, that they are not automatically going to become part of the very generous Australian legal system where they can challenge decisions for years, right through to the High Court if needs be, or that once they get into Australia they will get social security benefits in one form or another from the Australian taxpayer that they would never get overseas. That is why the Gillard government, and the Rudd government before it, supported by the Greens, is simply a beacon, a green light, to the people smugglers who will bring these people here for money.

The issue that disturbs me, and I get very angry about this, is that the Greens and the Labor Party seem to have no interest whatsoever in those genuine refugees living in squalid refugee camps around the world. They are all in favour of the wealthier ones who can pay the $10,000 and who know they will get the support of the Greens political party and the Greens parliamentarians wandering around waving placards at every demonstration they can. It is important for senators and for the people of Australia to understand that, for every refugee who comes illegally into the country and remains here, one genuine refugee from someone else in the world misses out on their chance to come to the very lucky country.

Having said that, I support the reasons that Senator Brandis has given for the coalition's support and, in spite of the Labor government's complete mismanagement and inability to allow debate and the appropriate passage of bills in this chamber over the last
few weeks, we on this side will facilitate the
debate so that this bill can be voted upon. I
note that the Greens say that this should not
be dealt with today. If they had not voted
with the Labor Party to cancel Monday,
Tuesday and Wednesday's sitting next week
we could have debated it more fully then. If
they think they have a point, why did they
not take the next three days to argue it in the
Senate to try to convince us that they are
right and we are wrong? But no, they want to
head off to Durban, so they will do anything.
Then they have the hide to get up here and
complain about not having enough time to
debate this. The hypocrisy of the Greens
knows no ends. I support this bill.

Senator HUMPHRIES (Australian
Capital Territory) (14:47): As Senator
Macdonald and Senator Brandis have
indicated, the coalition supports the
Deterring People Smuggling Bill 2011. We
support it because we believe it is one of
those rare circumstances where retro-
spectivity can and should be applied in an act
of parliament. We believe there is an
urgency to passing this legislation because in
the subproceedings in a court in Victoria an
testment is being made to represent the will of
parliament through earlier legislation as
being different from that which it actually is;
therefore, clarifying what the parliament
intended when it passed earlier legislation in
2010 is an appropriate clarifying exercise in
retrospectivity in this context.

I think it is also true to say that this
legislation illustrates a number of things
which are wrong about the way that this
government works. Firstly, this legislation
has an Orwellian title. This is not a Deterring
People Smuggling Bill at all. This is not a
bill that makes any bold new step towards
preventing people from coming to this
country as refugees. This legislation simply
clarifies the intent of a piece of legislation
passed last year. Last year the parliament
passed the Anti-People Smuggling and Other
Measures Bill 2010, and this current
legislation simply says, 'What we meant to
say in that legislation we actually did say.' It
simply makes clear what had already been
determined by the parliament and, therefore,
there is nothing about this legislation which
changes the landscape at all with respect to
actions to deter people smugglers coming to
this country. I accept that that is necessary
and therefore, notwithstanding its Orwellian
title, it is appropriate to pass the bill.

Secondly, the process around the bill
illustrates the ineptness which is so
characteristic of this government. The reason
parliament needs to consider retrospectivity
is that, at least on one argument, the parlia-
ment appears not to have comprehensively
explained in last year's legislation, and
potentially in earlier legislation in 1999, that
a person who smuggles people to Aus-
tralia—a people smuggler—is not exonerated
from their actions if the person they attempt
to smuggle to Australia turns out to be a
genuine refugee. It has arguably always been
the intention of parliament, and certainly was
as late as the legislation last year, that a
people smuggler commits an offence even if
the person they are smuggling to Australia
turns out to be a genuine refugee. If you
think about it, it is quite logical: you cannot
let the crime be determined by the ultimate
status of the person being smuggled. You
cannot say a boatload of people being
smuggled by a people smuggler somehow
ends up not being an illegal act because, say,
one or two people on the boat turned out to
be genuine refugees. It simply does not
work. The legislation quite appropriately
should say that any attempt to bring people
without a valid visa to Australia is an offence
and should be punishable.

Retrospectivity in that application to
affirm what the parliament has already
decided is, in my opinion and in the opinion
of the opposition, an acceptable use of retrospectivity. It does not change the law as it is understood to be in this nation at the moment. In the course of the Senate Standing Committee on Legal and Constitutional Affairs inquiry this was compared with legislation which some years ago criminalised the behaviour of Nazi operatives during World War II and created retrospective war crimes. It was suggested that, for the reasons that it was contested in the High Court, this ought to be considered an inappropriate use of the Commonwealth's power. But, with respect, that was a misconceived argument because clearly, in the case of the war crimes legislation, the parliament was—admittedly for very good reasons—creating new offences after the offences had been committed. I characterise some things done by certain people during the Second World War as crimes, even though they were possibly not crimes at the time that they were committed. That is generally understood to be an appropriate case where retrospectivity might be used. We can debate that another day. But this is not such a case. This legislation is not about retrospectivity that changes the characterisation of behaviour after the behaviour has occurred. This is about affirming that behaviour which the parliament has intended for at least 12 months and arguably for more than 10 years should be illegal remains illegal, notwithstanding the attempt by parties before a court in Victoria to turn that on its head.

When it came to the officers of the government clearly slotting this legislation under one of those acceptable headings for retrospective legislation, the linkage being made by officers was less than impressive. There is a document that the government publishes called the Guide to framing Commonwealth offences, infringement notices and enforcement powers which sets out the circumstances where, among other things, retrospective legislation can be considered. Officers were asked to link headings or opportunities within that guide to the present circumstances. They were, with great respect, unable to do that in a very convincing way. They pointed to a provision which says that the guide refers to retrospectivity as being justified where the 'moral culpability of those involved means there is no substantive injustice in retrospectivity'.

I have to say—and I, to some extent, agree with Senator Hanson-Young here—that is not a very good basis on which to argue for retrospectivity, because there is some evidence that some of the people involved in people smuggling are not particularly aware of the nature of the offences that they are committing. They are probably small operatives in a process in which they are not fully aware of the implications of what they are doing and the moral culpability might not be very evident for what they are being punished for. I would argue quite separately that we nonetheless need to criminalise such behaviour, but that is an argument for another day.

The lack of an ability to clearly characterise the case for retrospectivity by officers of the Attorney-General's Department was, quite frankly, troubling. I hope that the government fixes this problem. The committee has recommended that the government go back and examine both the legislation handbook of the Department of the Prime Minister and Cabinet and the Attorney-General's Department's Guide to framing Commonwealth offences, infringement notices and enforcement powers to ensure that the articulation of policy is clear in relation to the introduction of retrospective legislation and legislation relevant to ongoing legal proceedings, with an emphasis on ensuring that the principles
of the rule of law and of the separation of powers are respected. Frankly, that is not evident from the documents at the present time. As I say, I think there is a good case for retrospectivity here, but I am not sure the case is being well made by officers of the department that is handling this legislation.

Having settled that, I have to also take issue with some of the arguments that Senator Hanson-Young has run here this afternoon. Senator Hanson-Young will be well aware that the Greens argued strongly and passionately against the Anti-People Smuggling and Other Measures Act when it was before the parliament last year. They said at the time that it was wrong because it would create offences where offences should not exist. Those offences included where people smuggle people to Australia who turn out to be refugees. They argued that the smuggling of people to Australia who turn out to be refugees should not be a criminal offence. They argued that very consistently and cogently before the parliament.

But today they are arguing that it is open to a court in Victoria to find that, in fact, that is not what the parliament intended at all and that the parliament intended that maybe people who smuggled to Australia people who turned out to be refugees were people for whom there should be no moral culpability with respect to the people smuggling and that we should forgive and exonerate people who smuggle people in those circumstances.

Senator Hanson-Young: It's international law.

Senator HUMPHRIES: Whether it is international law or not, with great respect, Senator Hanson-Young, is irrelevant. You argued that the parliament was doing a certain thing by passing the legislation last year. You are now arguing that it is perfectly possible for people to characterise the parliament's actions in a quite different way. You are having your cake and eating it as well, with great respect.

I do not want to delay the Senate any longer. I want to reaffirm that we on this side of the chamber believe that the parliament has decided that people smuggling should be a criminal activity and that that criminality should not be in any way tempered or watered down by virtue of the fact that some of those people being smuggled may transpire to be genuine refugees. It is important for the parliament's will in this respect to be clear because there are presently proceedings before the courts of Australia where that issue is being tested. There should be no doubt that those who smuggle people should be subject to prosecution and, if the facts are found to support the case, convicted of those offences. That is what the parliament ensures by passing this legislation today. But some of the arguments being used both in support of the legislation and in opposition to it are, with the greatest respect, spurious in the extreme.

Senator BACK (Western Australia) (14:58): I rise to speak to the Deterring People Smuggling Bill 2011 and to support the comments by our deputy leader in this place and shadow Attorney-General, Senator Brandis, and comment that the coalition has shown a good deal more courtesy to the government this week than has been shown to the coalition in the legislative process, to which I intend to return. What is so obvious in this whole exercise with the legislation before us, once again, is the failure of the Labor government, the Prime Minister, the current Minister for Immigration and Citizenship and the leader of the government in this place, the previous minister.

This is a circumstance in which, had the Labor government continued the policies of
the Howard government—policies that actually protected those who would otherwise have got on to leaking boats; policies which had effectively cut the people-smuggling industry out—we would not be standing here today debating this issue and, more to the point, we would not have seen the tragic outcomes that have been the case over the last three or four years. I want everybody to be very clear in their understanding of that.

Why is the coalition supporting this legislation? Because there can be no more reprehensible industry or trade than the smuggling of people and the trading of human misery that we see on a day-to-day basis. Anything at all within the law that will put a halt to this trade must be supported. It is regrettable and reprehensible that the coalition has to support a situation which should never have materialised in the first place.

As a Western Australian senator I do want to draw the attention of the Senate to where the costs of most of this people-smuggling fall—and that is in our state of Western Australia. The vast majority of those either found guilty and serving sentences or awaiting trial are in jails in Western Australia. I do not want to comment in this presentation on those associated with the under-age issue, but I have a lot of sympathy for the argument that we need to be able to more accurately determine the age of people who are caught up in this trade. If we can address this issue with a greater degree of clarity, fairness and equity for minors, I would be very keen to pursue that. But that is not a topic for this discussion.

It costs the Western Australian taxpayer $130,000 per year for every people smuggler accused or people smuggler found guilty in our jails. This is an unfair impost on both the judicial system in our state and Western Australian taxpayers. For those who would say there is some equalisation in the annual tradition of GST funds and therefore that figure is picked up on behalf of Western Australia, I need only remind the Senate of the very low proportion of GST funding that returns to Western Australians each year as a result of the inequitable distribution by the Grants Commission. That figure of course is a mere 70c in the dollar, as opposed to a figure in excess of 90c in the states of Queensland, New South Wales and Victoria and well and truly over the dollar per dollar rate in the Northern Territory and South Australia. I do not want this point to be lost. The cost is not equally distributed around the nation.

We are discussing this legislation because of the government's demonstrable failure on border protection. It has been a sad litany, for then Prime Minister Rudd, Prime Minister Gillard and the various immigration ministers who have attempted to solve these issues but have failed miserably. East Timor was never a solution—anybody would just have to visit East Timor to realise that the infrastructure is not in place and that there is not yet stability. We all look forward to the elections in East Timor in March of next year. I applaud the role being played by the Australian Defence Force in trying to stabilise East Timor and assist in the democratic process. But anybody with any sense who visited East Timor would know that they are by no means ready to accept some form of botched and cooked up asylum-seeker solution.

We then had the failed Malaysia solution. Questions from my colleague Senator Cash have been miserably unanswered by Minister Carr. Malaysia was never going to be a solution to this problem. That is evidenced by the fact that originally we were considering 800 asylum seekers being resettled in Malaysia in return for some
4,000 approved refugees coming to this country. We have already vastly exceeded the 800 and so we know it was never going to be a long-term solution. History records that the Malaysia solution did go to the High Court of Australia, and the High Court adjudicated that it was unlawful. Not only was the solution never going to work; Malaysia is not a signatory to the UNHCR and therefore, even had the 800 been approved to go, it was only ever going to be a band-aid solution.

The Prime Minister chose to deliver a vitriolic attack on the High Court judges, and particularly Chief Justice Robert French. I was also on one occasion affected by an adverse judgment by the High Court of Australia, in about 1992-93. I remember being told by Crown Law in Western Australia two things—the first was that I had lost and the second was that I was not to criticise the High Court judges. It is totally irrelevant to this debate that the platform upon which that High Court judgment was made in that case has now been completely dissembled. In the words of the then Governor of Western Australia, a past Chief Justice of the Supreme Court of Western Australia, that particular judgment will go down in history as probably the worst ever in the history of the High Court. Nevertheless, I took the advice of Crown Law—advice which the Prime Minister either did not take or was not given—and did not criticise the Chief Justice.

It is well-known that through our leader, Mr Tony Abbott, we made the offer to the government that we would support their legislation in consideration of the government agreeing that any asylum seekers should be repatriated to countries which were signatories of the UN Convention on the Status of Refugees. Of course Malaysia is not one of those countries, but if my memory serves me correctly I think some 148 countries are signatories. It is obviously a case of pride on the part of the Prime Minister that she chose to not do that. Of course we know from leaked cabinet discussions—and we know that governments of any persuasion are not performing well when cabinet leaks—that clearly it was the solution desired by several in the cabinet, including the poor fellow who actually has to take responsibility for this, and that is Immigration Minister Bowen. I believe that that offer from our leadership still remains. Mr Abbott has invited the Prime Minister to come on board. Every other area has been rejected by the Labor Party, with the exception of this one. They have had to reluctantly accept this and of course it is the last option. It is so gracious of the coalition to support this bill as presented by the Labor government. We do so partially to get the government out of the miserable situation into which it has descended, but more importantly to try to put an end to the despicable trade that is people smuggling. Those of you who have any knowledge of or links with Asia would possibly know of the delight in the people-smuggling world that accompanied the High Court decision and the encouragement which, as we all know, has translated into an increase in the number of boats and people. It was only on Monday or Tuesday, I think, that questions were asked of Minister Carr. At that time, I think 13 boats had arrived since the most recent High Court decision. Of course, that number must now be increased to 16. I remind you that we are now towards the end of November. Anyone who has any knowledge of the geography of the north-west of Australia will know that we are moving quickly into the cyclone season. We are moving quickly to a time of year when it is ridiculously unsafe to be putting to sea in any sort of craft, especially those of the type that we see being used by asylum seekers.
I contrast the courtesy shown by the coalition to the government with that shown by the government and the Australian Greens in this place this week. It would be reasonable to reiterate what has been put to me by some of my constituents. They have said that democracy has gone very close to its death this week. I do not want to talk about what has gone on in the other place, simply because we are not involved in it. Nevertheless, it is an indication of the failure of this grasping government. I will comment on what has gone on in this place this week. I for one am extremely disappointed to have been in the process, part of the process and objecting to a process in which we will have seen more than 20 bills rammed through this place this week without proper debate, without proper scrutiny, without proper consideration of amendments and without the capacity to do what senators are sent to this place to do.

At the start of the week, the Manager of Government Business in the Senate, Senator Ludwig, used the term 'time management'. I am relieved to learn that it was the President who, late yesterday afternoon, used the term that was meant: the guillotine. Legislation that should have been the subject of intense scrutiny and that will have a profound effect on enormous numbers of Australians was guillotined. Contrast those bills with the one on which, yesterday, we had the pleasure of demonstrating the activities of the Senate at its best—at the level that the community would expect. That was the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill, which passed through this chamber with unanimous support and with comments by the chair of the Education, Employment and Workplace Relations Legislation Committee, Senator Marshall, myself, the Greens and the National Party. That to me was the height of this week. I will tell you what the depth, or the trough, of this week was.

The DEPUTY PRESIDENT: Senator Back, I draw your attention to the question before the chair. You have been mostly relevant, but you have strayed in the last minute or so.

Senator BACK: I will, nevertheless, with your concurrence, Deputy President, conclude—from going to the height to the trough. The trough of course was the curtailment of the debate on the Family Law Legislation Amendment (Family Violence and Other Measures) Bill. That debate started out robustly. The contributions from all sides were fantastic on an issue of tremendous importance to Australian families, particularly to children affected in the circumstances of the break-up of a marriage. To see that debate guillotined and to see what may well have been very good amendments moved by Senator Wright, whose area of professional expertise this was before she came into the Senate, will stand for me for a long time as the low point in the democratic process of this place. I will conclude by supporting my own deputy leader, the shadow Attorney-General, Senator Brandis, in supporting the Deterring People Smuggling Bill 2011 and by hoping that the government sees sense, accepts the advice of our leadership and gets on with a proper long-term solution to the people-smuggling and asylum-seeker problem.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:12): I thank senators for their contributions and I commend the bill to the Senate. Question put:

That this bill be now read a second time.
The Senate divided. [15:17]

(The President—Senator Hogg]
Ayes ............................ 46
Noes ............................. 9
Majority ...................... 37

AYES
Abetz, E
Back, CJ
Bilby, CL
Bishop, TM
Brandis, GH
Cameron, DN
Colbeck, R
Edwards, S
Evans, C
Fawcett, DJ
Fifield, MP
Furner, ML
Hogg, JJ
Kroger, H
Lundy, KA
Madigan, JJ
Mason, B
McKenzie, B
Moore, CM
Parry, S
Sherry, NJ
Sterle, G
Williams, JR

Adams, J
Bernardi, C
Birmingham, SJ
Boyce, SK
Brown, CL (teller)
Cash, MC
Crossin, P
Egglesston, A
Faulkner, J
Fierravanti-Wells, C
Fisher, M
Gallacher, AM
Humphries, G
Ludwig, JW
Macdonald, ID
Marshall, GM
McEwen, A
McLucas, J
Nash, F
Ronaldson, M
Stephens, U
Urquhart, AE
Xenophon, N

NOES
Brown, RJ
Hanson-Young, SC
Milne, C
Siewert, R (teller)
Wright, PL
Di Natale, R
Ludlam, S
Rhiannon, L
Waters, LJ

Question agreed to.
Bill read a second time.


In Committee
Bill—by leave—taken as a whole.

Senator HANSON-YOUNG (South Australia) (15:22): I have some questions to the government in relation to the bill. Obviously I outlined the opposition of the Greens to this piece of legislation in my contribution to the second reading debate. I ask the minister how the government justifies the breach of the separation of powers in that this legislation is being introduced to change the current act while this question is before the courts in Victoria.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:22): The question is in error. This is a general power to undertake this act. There is no breach of the separation.

Senator HANSON-YOUNG (South Australia) (15:23): The question for the government in relation to these issues is, I believe, a constitutional one. During the Senate inquiry into this piece of legislation a number of individuals before the committee raised the issue of bringing forward further litigation if indeed this legislation passed. Has the government looked at this possibility? If so, what type of resources would need to be spent on any further litigation as a result of this legislation passing?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:24): There are two things.
Firstly, it would not be appropriate to discuss cases currently before the courts. Secondly, in relation to matters that may be sought into in the future, it would be a hypothetical question. Obviously people are able to bring challenges to legislation, depending on the nature of the facts and circumstances as the cases arise.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:24): Is it therefore the case that this legislation has no relationship whatever to matters before the Australian courts or to the recent High Court decision?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:24): The reason these amendments are necessary is that the words 'no unlawful right to come to Australia' form part of the elements of the people-smuggling offences in section 233A and 233C of the Migration Act 1958 that are not currently defined. The amendments in the bill are necessary to clarify beyond doubt the existing understanding of the laws. The amendments will also ensure that convictions for people-smuggling offences that have already been made, as well as prosecutions underway, are not invalidated.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:25): Is it not the case that a parliament, particularly ministers—who evolve laws for the good running of the country—have to have the foresight to anticipate circumstances so that the prosecution and practice of the law can proceed? But in this situation the government, being found by the High Court not to be able to prosecute certain persons being held on people-smuggling charges, has decided to retrospectively apply a law that may well prove them to be guilty—not in relation to a law that stood when they were arrested but a law that, consequent to cases dealing with their proper judicial handling, has been altered by the passage of the legislation we now have before us in the Senate.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:27): Let me be direct. I asked the minister whether this law and this interpretation that is now being presented to the Senate—which did not exist before that—has retrospective application to existing cases before the Australian courts.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:27): The short answer is no. The law is as it currently stands. There is no court ruling that offends the provision. As I indicated, this is a matter that, regardless of the outcome, provides for the need to clarify beyond doubt the existing understanding of the laws.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (15:27): It took some time, but there we have it. Senator
Hanson-Young is right. What we are dealing with here is a parliament—at the behest of the government, which is prosecuting individuals held in Australian jails—passing a law so that that case can be altered in favour of the government and against the people who are under charges. As Senator Hanson-Young put it so clearly during the second reading debate, this is outrageous. It is appalling. We are a country that believes in the rule of law. But here we effectively have the government saying: 'Our case before the courts is not strong enough. We want to go to the parliament and get it strengthened to have retrospective application.' When you are dealing with the rights of people to be treated properly before the law, that is outrageous. I am surprised that we have people on both sides of this parliament with legal training who are supporting this legislation and that it was not stopped in the House of Representatives. Sure, let the government, in the wake of a High Court decision, have an amendment to the law which applies in future cases so that people tempted to break a law of the Commonwealth of Australia know there is a new law there. But to retrospectively apply a law like this, which effectively is going to mean that people who are unjailable under existing law may be jailed is very close to a perversion of justice. It certainly goes against natural fairness and it breaches the principle that people should be treated as the law stands.

What would happen, might we ask, if defendants were able to come into this place and persuade the parliament that the law should be changed so that they had a better go? There would be pandemonium. But because it is the government doing it the opposition thinks that is okay. I join Senator Hanson-Young in saying to the opposition that there is a very, very important prudential matter being subverted here; that is, you do not have one side or the other of a series of court matters being able to alter the rules after the prosecution gets underway and the defence gets underway. It is, at best, very poor behaviour but, at worst—because it is a serious matter—it breaches the principle of a fair go and natural justice.

Senator BERNARDI (South Australia) (15:13): After listening to that contribution just then from Senator Brown and the one earlier from Senator Hanson-Young, I am distressed by the level of hypocrisy that is being displayed in this chamber. In respect of this bill, it is a serious issue—and we know that—but this chamber has been debating serious bills all week—or, in fact, I should say it has not been debating serious bills because we have not been allowed to even have a word of discussion about them! Why is that? Because the Greens have continually supported the guillotine or the gagging of debate on important bills.

I raise this because I want the people of Australia to know, and I want this chamber to know, about the hypocritical behaviour that is being displayed by the Greens. Earlier today, when a genuine inquiry was made as to how long this committee stage on this bill was going to take, the answer from Senator Hanson-Young was 'until you gag us'. What a shameful display by these appendages to the government who have stifled debate all week on important bills and yet they are insisting upon making spurious points off the minister until they are gagged. This is their attempt to reclaim the high moral ground from which they fell many, many moons ago. The people of Australia need to know this and the government needs to know this as well, that we have been played off a break by a manipulative and deceptive group of people who are seeking to twist and contort things, in their disgraceful application of double standards, in a manner by which to make a complete mockery of democracy in this chamber.
I would say to you, Mr Chairman, and to my colleagues here that we have to make a decision about what is applicable in these circumstances. We have a circumstance whereby a party has stopped us from having debate next week in order to suit themselves, we have a circumstance where a party have gagged debate on important bills because they wanted to get out of here to go to Durban and now we have a circumstance where a genuine filibuster is taking place. There is no merit to this, and I know there is no merit to it because I was told earlier that they are going to stay here until we gag them. That is a filibuster. It does not contribute to the debate. It is once again a demonstration of the rank hypocrisy that is so evident on so many occasions by the party to my left. It is a travesty. We expect others to abide by the rules.

I do not like seeing the gagging of debate—I have to tell you that—but there are other issues about time management which we have to work through. I said earlier today that we had three sitting days next week to explore this, which the Greens did not want because they wanted to take their first-class flights to Durban—and that is the guts of it. It interfered with their travel plans, so they wanted to stop the parliament from having its scheduled days, and now, after a week of being exposed to the despicable actions that have taken place at their behest and their insistence, we now have their attempt to claim the high moral ground by making others gag them. Let me tell you that, as unfortunate as I find it, it is time for these people to be exposed for what they are. It is time to let the Australian people, many of whom are interested in these proceedings, know, so that they can find this out, that the party which purports to represent the interests of parts of Australia and which purports to represent the interests of the environment is only interested in themselves.

It is a party that has self-interest at its very heart and after a week of stopping others from speaking they now want to talk to their heart's content.

This is a travesty. This offers an exposure that needs great ventilation right across this great land because the Greens are now manipulating our democracy and they are silently stifling dissent—anything that they do not agree with. Quite frankly, I agree with this bill. I think this bill is a very important bill that needs to be passed as soon as possible so that the government can get on with their actions. We have unequivocally given our endorsement to this bill. So that is the point that I want to raise: it is the will of this chamber to pass this bill and there is no one more open to free speech than me for other people to explore the issues, but not when they are taking advantage of the Australian people.

The Greens are a party that apply to themselves rules that are different from the rules that they apply to other people. They apply to themselves standards that are different from those that they apply to others. To her credit, I will say that Senator Rhiannon does not want corporate fundraising, but the rest of the Greens Party apply different rules as to fundraising perspectives than for themselves. We know that and we know that Senator Bob Brown has already been referred to Privileges, but we also know that he sought to raise money to alleviate some legal bills under some sort of spurious circumstances, but of course that goes above—

Senator Bob Brown: Mr Chairman, I rise on a point of order. The comment that I sought to raise money under spurious circumstances is similar to the earlier comments about fraudulence and it should be withdrawn.
The CHAIRMAN: Senator Bernardi, it would assist if you withdrew that remark.

Senator BERNARDI: I withdraw that remark, Mr Chairman. But for the sake of the record, let me demonstrate that there was a suggestion that legal bills needed to be paid by Senator Brown and that there was a threat of bankruptcy attached if they were not paid. Now, according to my records—

Senator Ludwig: Mr Chairman, I rise on a point of order. I do not think he can accept the rule of the chair and then decide to state it another way. I did not rise before, but it is also inappropriate to mention the issue around privilege. Privilege is a very important principle in this place. I would remind senators that people do have a presumption of innocence when these issues are raised. It applies to all of us in this place. And it is appropriate that the procedures in this place are followed. They have been followed, and we as senators should be cognisant of that and not say anything further until the Privileges Committee has decided what they want to do and we can read the Privileges Committee report.

Senator Ian Macdonald: On the point of order, Mr Chairman, I support Senator Ludwig’s contention on the matter of privilege, but, in relation to his other point of order, the first one he made, Senator Bernardi withdrew the adjectives and he is now relating a set of facts. You can hardly say that that is contrary to your ruling and you can hardly say that is casting aspersions on Senator Bob Brown. He is simply relating—

The CHAIRMAN: Thank you, Senator Macdonald. There is no further point of order. Senator Ludwig has made some important remarks in relation to privileges, and I would ask all senators to consider those remarks. Senator Bernardi, could I ask that you remember the question before the chair.

Senator BERNARDI: Indeed, I do. I thank you for that suggestion. As a point of clarification, to you, Mr Chairman, the matter I was talking about and the facts attached to that are not a product of privileges; they are not before a privileges inquiry now. It goes towards Senator Bob Brown's fundraising to pay his legal bills. He raised well in excess of that, and by many anonymous donations, and yet he rails against honest donations—

The CHAIRMAN: Senator Bernardi, could I suggest that you come back to the question before the chair.

Senator BERNARDI: and it brings me back to the question, which is one of hypocrisy. All week we have had the gagging of debate on a number of contentious and important bills and yet, despite the importance of that earlier debate, we now know from the Greens that we are going to have a filibuster, because I was told as much. I was told that they were going to stay there and keep talking until they had a filibuster. I want the Australian people to know about the true nature of the Greens party. They are very dangerous. They are dangerous to our democracy, because they want to stop us from debating things in this chamber unless it suits them. I say that is the wrong approach.

We have already had three days withdrawn because of the Greens, and they do not want to wear the consequences of it. So I would say to you, Mr Chairman, that this bill should be passed as soon as possible, and I would like the minister to facilitate that as early as he possibly can, because it is very important that this is enacted so that the Australian border protection system can be stronger than it currently is.

Senator HANSON-YOUNG (South Australia) (15:40): I have some questions for the minister in relation to the issues that I
raised in my speech in the second reading about the mandatory minimum sentences. We know that this is the primary reason that the Victorian court case has been brought forward; because of the complications that that is creating—not catching the kingpins and the big fish but, instead, using the small fry, the Indonesian fishermen who have been tricked onto these boats, as the scapegoats for the government's 'smashing the people smugglers' business model' approach.

What is the government going to do in relation to these genuine concerns raised around the mandatory minimum sentences? It was acknowledged in the Senate inquiry that this was a problem. This bill is being put through the parliament today, with the support of the opposition—this is one issue where 'Dr No' says yes and lines up shoulder to shoulder with the government. What is the government going to do in relation to the mandatory sentencing issues raised sincerely by legal experts as to why they have even brought this case forward in the first place?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:42): As I indicated earlier, the reason for bringing this legislation forward was to put beyond doubt the legal position. I will not reiterate that. In terms of the offences, they apply equally to everyone.

**Senator HANSON-YOUNG** (South Australia) (15:44): I will ask the question again: is the government going to consider amendments to the mandatory sentencing regime?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:44): I have no current indication.

**Senator HANSON-YOUNG** (South Australia) (15:44): Here we have it. The government is not serious about this issue. They are not doing anything that actually addresses this issue, because the whole point of the case before the Victorian courts is the farce of the mandatory sentencing regime. Until the government can see that and moves to address it, these issues are not going to go away. This bill does nothing to address those issues. This bill does nothing to deter people smuggling. This is all so that the government can get out of here today and say, 'We did something to smash the people-smuggling business model', when you have actually done nothing at all.

What about the children who are being held in Australian jails? What is the minister and the government doing to address that issue? Again, we know that these young people are being held in Australian detention facilities, Australian jails, despite the facts that they are not 18 years old and there is no conclusive evidence that the government is able to even charge them. At the end of the day, the courts are going to find that they are not adults and send them home. How much money out of the public purse is being spent because the government will not tackle these issues properly because they are all about spin, they are all about smokescreens, they are all about slogans and they are nothing about substance? What is the minister doing to address the issue of children being detained in Australian jails?

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:44): With respect, Senator
Hanson-Young, you are incorrect. It is the policy that we do not prosecute minors. We return them as soon as possible.

Senator HANSON-YOUNG (South Australia) (15:44): I would like to give the minister an opportunity again to put on the record exactly what evidence the government has that the current legislation has indeed deterred anybody from participating in people smuggling.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:45): Can I put it simply in this way: having an effective offences regime is a deterrent.

Senator HANSON-YOUNG (South Australia) (15:45): I would like to make it very clear for the sake of Hansard, and to anybody listening, that the government have consistently failed to show that there is anything in the current legislation that has acted as a deterrent. This bill is named the Deterring People Smuggling Bill, yet the government cannot provide any evidence that the current act and criminal charges within the Migration Act have deterred anybody, because the figures have not gone down since 2010. In fact they have increased. No-one has been deterred under this legislation because it does not target the right people. The people it targets are the scapegoats for this government's getting tough on people smugglers. It is an absolute farce. The government want the Australian people to believe they are doing something, but they are doing absolutely nothing except punishing vulnerable, impoverished Indonesian fishermen and children. Where is the Labor Party's moral compass on this issue?

The reason the opposition are voting for this legislation is that this is the type of legislation Tony Abbott is proud of. That is why they are voting for it; not because they are doing the right thing and not because they are doing anything that tackles the issue. If Tony Abbott had thought of it, he would have.

I can see that I am not going to get anywhere with getting responses to the genuine questions I have. The whole point of this legislation is not to deliver any substance in relation to the issues being dealt with—and why the court case in Victoria is currently happening; it is all about scuttling the case. It absolutely is a breach of the separation of powers. It will open up the case for further litigation at the cost of Australian taxpayers, and it is all for show and spin. It is so that this government can go home tonight and say, 'Yep, we fought off at least one court case this year.'

I do not have any other questions for the minister because I do not think he has any answers. The government have no idea what they were doing with this bill, except pushing it through so that they do not have to fight their case in the courts. It is an absolute disgrace to be abusing our court system in that way.

Senator RONALDSON (Victoria) (15:48): I would like to point out on the public record that there was no response from Senator Hanson-Young in relation to the matters raised by Senator Bernardi. Clearly those comments were made.

Can the minister confirm that the total number of people arriving since August 2008 is 12,848; that the total number of boats since August 2008 is 250; that the total number of arrivals since polling day at the last election is 95 boats and 5,499 people; and that the total number of arrivals since the Prime Minister knifed the foreign minister,
on 24 June last year, is 109 boats and 6,296 people?

Can the minister also confirm that in the year 2002-03 there were no boats; in 2003-04 there were 82 people and one boat; in 2004-05 there were no arrivals; in 2005-06 there were 61 arrivals on eight boats; in 2006-07 there were 133 on four boats; and in 2007-08 there were 25 people on three boats?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (15:50): In answer to the first part of your question, I generally would indicate that I would not take your figures as given. I would seek to ensure that I had my own figures. Seeing that you already seem to have the figures, though, I will still maintain that position and take it on notice to confirm whether those figures are in fact correct.

In relation to the second part of your question I simply reject it. This government has addressed people smuggling comprehensively. It is a failure on your part that you have not sought to support the legislation we have put forward.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator LUDWIG: I move:

That the bill be now read a third time.

Question put.

The Senate divided. [15:56]

(The President—Senator Hogg)

AYES

Abetz, E
Back, CJ
Bilyk, CL
Bishop, TM
Boyce, SK
Brown, CL
Cameron, DN
Colbeck, R
Edwards, S
Evans, C
Fawcett, DJ
Fifield, MP
Furner, ML
Hogg, JJ
Kroger, H
Lundy, KA
Madigan, JJ
Mason, B
McKenzie, B
Moore, CM
Payne, MA
Pratt, LC
Ryan, SM
Singh, LM
Sterle, G
Urquhart, AE
Xenophon, N

NOES

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

Question agreed to.

Bill read a third time.

PRIVILEGE

The PRESIDENT (15:58): By letter dated 24 November, Senator Bob Brown has raised a matter of privilege: a possible improper relationship between Senator Boswell and Metcash, a listed company in the grocery marketing and distribution business, and the influence of political donations by Metcash on Senator Boswell's instigation of a parliamentary inquiry into
the ACCC’s decision to block the expansion of Metcash. Under standing order 81(2) I am required to:

... determine, as soon as practicable, whether a motion relating to the matter should have precedence of other business, having regard to the criteria set out in any relevant resolution of the Senate.

The relevant criteria are in Privilege resolution 4 as follows:

(a) the principle that the Senate’s power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

(b) the existence of any remedy other than that power for any act which may be held to be a contempt.

Paragraph (a) 'the need to provide reasonable protection for the Senate and its committees against improper acts tending substantially to obstruct them in the performance of their functions' emphasises the purpose of the law of parliamentary privilege as a means of protecting the integrity of the institution and correcting the impact of any improper attempts to interfere with the ability of the institution or one of its members to get on with their work.

The Parliamentary Privileges Act 1987 provides in section 4 that the essential element of a contempt is that it involves: an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

Correction of any improper interference can be sufficient to remove the essential element of the offence. For example, if a witness is suspected of giving false or misleading evidence to a committee and on being confronted by the committee with the allegation clarifies and corrects his evidence then the potential improper interference with the committee that could ensue from its deliberating and drawing conclusions on a false basis is addressed and the potential harm is avoided. The protective or corrective rationale of parliamentary privilege means that, for the most part, matters of privilege will relate to current matters.

Although I am satisfied that the matter raised by Senator Bob Brown addresses criterion (a) on the basis that the need for senators to be seen to be free of any improper external influence is of fundamental importance to the ability of the Senate to carry out its functions, I am mindful that the inquiry instigated by Senator Boswell is 12 months old and was completed in February this year. The committee, in effect, determined not to investigate the matter further after legal proceedings were instituted. Furthermore, as is evident from the material provided by Senator Bob Brown, Senator Boswell made a personal explanation to the Senate on 26 November 2010 in which he clarified allegations about the relationship between political donations and the reference to the committee.

In these circumstances, it is difficult to identify what, if any, other remedy could be provided by invoking the contempt jurisdiction and, in the circumstances, whether the threshold requirement for improper interference continues to be sufficiently apparent. The committee's conclusion and the explanation to the Senate by Senator Boswell both indicate that remedial action has occurred. I therefore determine that I should not give precedence to a motion to refer this matter to the Privileges Committee.
Senator Bob Brown also wrote to me about the presence of journalists in the gallery when I made my statement on a matter of privilege on Wednesday. I do not know if, or why, there were journalists in the gallery and, in any case, there is no question of privilege involved. At most, it is a question of courtesy to the Senate or lack thereof. In accordance with the usual practice, I table the correspondence from and with Senator Bob Brown.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (16:04): Mr President, I dissent from your ruling.

The PRESIDENT: If you are moving a dissent from my ruling, it needs to be in writing.

Senator Abetz interjecting—

Senator BOB BROWN: You are not the President, Senator Abetz, and I will take no direction from you. Furthermore—

The PRESIDENT: It needs to be given to an attendant to be brought up, Senator Brown. We will get an attendant there.

Senator BOB BROWN: I seek leave to give notice of a motion.

Honourable senators interjecting—

The PRESIDENT: Order! Senator Brown, your mike is not working because of the interference. We need to see the motion of dissent. We need the attendant to bring that forward. That is the first thing. Standing order 198(2) says:

Debate on that motion shall be adjourned to the next sitting day, unless the Senate decides on motion, without debate, that the question requires immediate determination.

That is the process to be followed.

Senator BOB BROWN: I am mindful of the hour and will have the matter brought forward on the next day of sitting, Mr President. But I wish to comment on both your ruling and to give notice of a motion.

The PRESIDENT: Senator Brown, I have read the standing order. The standing order says quite clearly:

Debate on that motion shall be adjourned to the next sitting day, unless the Senate decides on motion, without debate, that the question requires immediate determination.

You can give notice of a motion if it is a reference to a committee.

COMMITTEES
Privileges Committee
Reference

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (16:06): I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Standing Committee of Privileges for inquiry and report:

Having regard to Senator Boswell's acceptance of a $30 000 donation from Metcash, and other such donations in previous years and his subsequent request, on 23 November 2010, for a parliamentary inquiry into the Australian Competition and Consumer Commission's decision to block the expansion of Metcash:

(a) whether any person, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator's conduct as a senator, and whether any contempt was committed in that regard; and

(b) whether Senator Boswell received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the senator's independence or freedom of action as a senator, or pursuant to which the senator is in any way to act as the representative of any outside body in the discharge of the senator's duties.

Mr President, that motion—

The PRESIDENT: No, there is no right to speak to—
Senator Bob Brown: I seek leave to make a statement.

Leave not granted.

**MOTIONS**

**Suspension of Standing Orders**

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (16:08): I move:

That so much of standing orders be suspended as would prevent me making a statement.

Mr President, I do that because what we have now before the Senate is a request, which you have granted, from Senator Abetz via Senator Kroger—which of course mentions Senator Milne on the way—to have me referred to the Committee of Privileges regarding a donation which came to the Australian Greens, and which I have stated on the public record was in no way an influence on me or a donation to me as a person. And then consequent to that were matters raised regarding the Triabunna woodchip mill sale five months ago.

The President has ruled that the donation is a matter which should be examined by the Committee of Privileges and that a matter having been raised five months ago makes it a further matter that should be examined by the Committee of Privileges. However, in the case of Senator Boswell, a donation directly to him, on the record, which was 12 months ago, does not receive the same ruling from the President. Here we have a President who is making contradictory rulings when it comes to a National Party senator as against a Greens senator. What we have in the President's ruling—

Senator Ian Macdonald: Mr Deputy President, I rise on a point of order on the basis of that being a reflection on a decision of the President.

The DEPUTY PRESIDENT: I do not think there is a point of order, Senator Macdonald. Senator Brown, you have the call.

Senator BOB BROWN: Thank you, Mr Deputy President. What we have is a double standard coming from the chair—

*Opposition senators interjecting—*

The DEPUTY PRESIDENT: Order on my left!

Senator BOB BROWN: The members opposite do not like that, but the reality is—and let me make this very clear—that we now have a ruling from the chair, directed at me, regarding a donation and a consequent referral to matters in the Senate, which does not apply, according to the President, to Senator Boswell or to a series of other senators who have gained monetary advantage or sought donations and then, in this Senate, prosecuted a case which was in favour, potentially or directly or indirectly, of the donors. So what we have is the Committee of Privileges, which has a time-honoured non-political role in protecting privilege in this place, being politicised by these contrary decisions from the chair.

Senator Birmingham: Mr Deputy President, I rise on a point of order on two grounds: firstly, on the ground of reflection on the chair; and, secondly, on the ground of direct relevance. Senator Brown moved a motion of dissent from the chair, which is to be debated on the next day of sitting. The content of Senator Brown's contribution at present, though, is all about his dissent from the chair and nothing about the suspension of standing orders.

The DEPUTY PRESIDENT: Senator Birmingham, there is no point of order. As in the past, these debates have ranged fairly wide and that has been accepted practice. Senator Brown, you have the call.
Senator BOB BROWN: You are absolutely right, Mr Deputy President. What we have here is a situation in which there is a difference in ruling in very similar cases—and it must go challenged. Otherwise, every senator, including those who have shares—for example, in coalmining corporations—and who have a direct pecuniary benefit flowing from those shares ought not have spoken on the mining tax legislation before this Senate in the last week or ought not have spoken on the matter of the carbon so-called 'tax'—the carbon trading scheme legislation—in recent weeks. The chair has to be very clear about this, because the chair has blocked my application for Senator Boswell's case to be looked at by the Committee of Privileges while fostering Senator Kroger's application to have—

The DEPUTY PRESIDENT: Senator Brown, you are going very close to reflecting upon the President.

Senator BOB BROWN: Yes, but I am not.

The DEPUTY PRESIDENT: I am just warning you, Senator Brown.

Senator BOB BROWN: Mr Deputy President, I simply must put this case before the Senate. Let me be clear about the second matter, which was when Senator Kroger put the reference for me to the committee to the chair, she was informed an hour and a half before that statement was made by the President. Members of the Press Gallery from the Murdoch press were in the gallery then, but we were not told about it. I ask you: is it not a matter of privilege that senators should be left in the situation where the President does not inform them that they are victims of a proposal to go to the privileges committee but the press gets to know about it? That cannot be allowed to stand. That is an infringement of the rights of members of this Senate to be able to freely know that they are not going to be ambushed by the actions, or by the failure to act, of the chair. This is a serious matter; it should go to— (Time expired)

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (16:14): Mr Deputy President, I indicate on behalf of the government that we will not be supporting the motion for the suspension of standing orders. The President made his ruling regarding the precedence of the matter that Senator Bob Brown referred to him regarding Senator Boswell. He refused it precedence, which is a decision that is his alone to make. It is also perfectly appropriate for Senator Brown to disagree with that ruling and to give notice of his disagreement, which he has done—and that will come before the chamber on the next day sitting, as is the normal process. So the proper processes are being followed. The Senate will get a chance to consider Senator Brown's motion on the next day of sitting, and senators will be able to make a judgment as to those matters and whether or not they support his attempt to have that matter referred to the Privileges Committee.

The government support that proper process without expressing any view on the matters contained in the submission from Senator Brown to the President. I have not read it. We make no commentary on that. The President has exercised his duties and we support the President in following the proper process. I will say, though, that I absolutely reject the suggestion that the President has acted somehow in a partisan way. The President is meticulous about following proper process and trying to give fair treatment to all senators. I do not for one minute accept that his motives or his actions in this matter have been anything other than seeking the advice of the clerks and
following the proper process, and I am absolutely confident that that is the case. I think the President and his deputy, Senator Parry, always do their best to reflect the best practices of the Senate and treat all senators equally and make fair and appropriate rulings. So I reject the suggestions in Senator Brown's contribution that call into question the President's motives in this matter. The President has taken advice and made his ruling. Senator Brown disagrees with that, which is his right. The Senate will get to consider that on the next day of sitting. That is the way it should be.

The government will therefore oppose the suspension of standing orders. But I reiterate that we do not accept in any way the criticisms made of the President and I think he has acted perfectly appropriately on this occasion. The merits of the case Senator Brown puts will be considered by the Senate at the appropriate time.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:17): We are witnessing another display of pecksniffian petulance from Senator Bob Brown. If he had not voted to cancel parliament on Monday, Tuesday and Wednesday next week, he would have been able to debate this motion come Monday. But of course he is hoist with his own petard by the fact that he now has to wait until next year.

This wilful and tawdry attempt to defame Senator Boswell is one of the most shameful attempts I have witnessed in my 17 years in this place. Senator Boswell would have to be one of the most honourable and decent senators in this place, and the President himself outlined the huge number of steps that Senator Boswell took. A well-known champion of small business, Senator Boswell seeks to look after them to the very best of his ability and, might I add, he is pretty effective at doing it. Because he is such a decent and honest man, he disclosed exactly what had occurred, that Metcash was supportive of the National Party et cetera. Might I add, he did not handle the money, unlike another senator. But here we have a classic example of somebody wanting to remove a speck of a donation from somebody else's eye when they have a boulder of $1.6 million in donations in their own eye. That is what Senator Bob Brown cannot overcome. The President made a clear and strong ruling against Senator Brown in relation to his donation that he personally sought to negotiate and obtain, and Senator Brown's attempt to get the same ruling applied to Senator Boswell's situation—which was clearly an immature tit-for-tat effort—failed. It fell flat, and now we have this display of petulance.

Let me just make another point. Senator Bob Brown talks about double standards. Well, try this on for size: he moved his notice of motion about the Privileges Committee and said the committee was in danger of politicisation by slap-wrist style references such as Senator Kroger's. Well, guess what? He is out there in the media saying, 'I voted for the reference to the Privileges Committee. We have nothing to hide. It'll be thrown out.' That is out of one side of his mouth. Then, out of the other side of his mouth, he says the whole committee of privileges system is endangered by these types of efforts! Then why did you vote for it? Why did you vote for it? You cannot have it both ways. But that is Senator Brown's political epitaph: he always wants it both ways. He wants a $30,000 donation to be treated as something outrageous, yet he has a $1.6 million donation that he himself has not been able to fully explain. He has asked questions about this matter in the parliament, on behalf of somebody who has given him money, without disclosing that prior to asking those questions. They are the matters
that the Privileges Committee, in due course, will need to look at.

This matter in relation to Senator Boswell dates back some 12 months. So why raise it today? Because it is an immature little tit-for-tat tactic against the coalition for having put together a substantial case against Senator Bob Brown which the President found himself having to rule in favour of to give it precedence. So Senator Brown rushes to his office, digs into the archives, rushes out a motion and the President rules against him. What does he do? He wants to move dissent. Then when that doesn't work he wants to move another motion. I simply say, in the spirit of Christmas, Senator Brown, that this place is not about you; it is about serving the people of Australia and I suggest you get on with it. We as a coalition will be opposing the suspension.

Senator MILNE (Tasmania—Deputy Leader of the Australian Greens) (16:22): I rise this afternoon to support the motion that standing orders be suspended so that the motion may be dealt with now. The reason for that is we need to take a very serious look at what is going on here. There has been a very clear attempt by Senator Abetz through this process to effectively put in place a SLAPP writ, which will stand over the next few months unanswered so that Senator Abetz can do as he did this morning: get on ABC radio in Tasmania and put this out as far and wide as he can. As for a notion about the spirit of Christmas, Senator Brown, that this place is not about you; it is about serving the people of Australia and I suggest you get on with it. We as a coalition will be opposing the suspension.

In relation to procedural fairness, I heard what Senator Evans had to say, but the fact of the matter is Senator Kroger was informed 1½ hours before the President made his statement that he intended to do so. A journalist was notified by somebody, and maybe Senator Kroger would like to explain how that occurred if the President did not allow that to come specifically into the gallery for that particular notice. What is more, having informed Senator Kroger this would occur, neither Senator Brown nor myself were informed by the President that he intended to make a statement in which we would be named.

Opposition senators interjecting—

Senator MILNE: This is the problem with the conservatives. They cannot stand to listen to someone without interjecting. I am just trying to make the point—

Senator Fifield: Mr Deputy President, on a point of order: it looked as though Senator Di Natale was trying to film the chamber on his BlackBerry.

Senator Di Natale interjecting—

Senator Fifield: Maybe he wasn't, but that is certainly how it appeared.

The DEPUTY PRESIDENT: Senator Fifield, thank you for that notation but Senator Di Natale has assured us he has not been taking photographs, and senators know that it is not appropriate.
Senator MILNE: The Senate really needs to think about the fact that we have a Senate chamber of which we should all be proud. It is a real privilege to serve the Australian community in our capacity as senators. However, what we have witnessed in the last few weeks is a level of personal abuse, nastiness and hatred that I have not witnessed in all the years that I have been in the Senate. I have never known the level of personal vitriol that has come across this chamber. There have been many occasions when senators could have, from the other side of the chamber, responded but have chosen not to and have risen above it.

What we have ended up with at the end of the year is a SLAPP suit from Senator Abetz, delivered by Senator Kroger, designed for a political outcome. It is unjust and is, in a serious way, compromising the whole process of privilege. As the Minister for Agriculture, Fisheries and Forestry said a little while ago, 'The Privileges Committee is an incredibly serious thing,' and all we have had since then is an attempt by several senators—ranging from Senator Bernardi to Senator Macdonald to Senator Abetz—to get up in all of their speeches and use this opportunity to maintain a public case. It is wrong and unjust. (Time expired)

Question put:
That the motion (Senator Bob Brown's) be agreed to.

The Senate divided. [16:32]
(The President—Senator Hogg)

Ayes......................10
Noes......................49
Majority..................39

AYES

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

NOES

Abetz, E
Back, CJ
Bilyk, CL
Bishop, TM
Boyce, SK
Brown, CL
Cameron, DN
Conroy, SM
Edwards, S
Faulkner, J
Feeley, D
Fisher, M
Gallacher, AM
Humphries, G
Kroger, H (teller)
Macdonald, ID
Marshall, GM
McKenzie, B
Moore, CM
Parry, S
Pratt, LC
Ryan, SM
Singh, LM
Sterle, G
Urquhart, AE

Question negatived.

COMMITTEES

Australian Commission for Law Enforcement Integrity Committee
Report

Senator IAN MACDONALD (Queensland) (16:35): I present the report of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity on integrity testing, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator IAN MACDONALD: by leave—I move:
That the Senate take note of the report.
Question agreed to.
Senator IAN MACDONALD: I seek leave of the Senate to incorporate in the Hansard my tabling speech, which, although carefully looked at by me, has been prepared by the committee secretariat with my guidance. I want to thank all the people who gave evidence to the inquiry through either written or oral submissions. I also want to thank the secretariat and wish them and their families all the very best for Christmas.

Leave granted.

The incorporated speech read as follows—

On behalf of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, I am happy to present [speak on] the committee's report entitled Inquiry into integrity testing.

Since July this year, the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity has been conducting an inquiry to consider the possible introduction of a law enforcement integrity testing framework at the Commonwealth level. In that context the inquiry addressed issues including types of integrity testing, its effectiveness both in corruption investigations and as a deterrent, the question of requisite safeguards, the nature of any such legislation, and of course the likely role of Australian Commission for Law Enforcement Integrity (ACLEI) under such a framework.

Integrity testing is a term that is used to describe a range of activities that are designed to assess compliance with the governing integrity requirements of an office or agency. In essence, integrity testing involves putting an individual in a simulated situation where corrupt behaviour can occur, and then observing the individual's behaviour. Such a test can be arranged on a targeted basis—as a result of specific intelligence about an individual or group—or on a random basis in order to provide a general deterrent.

A simple example of such a test, in the context of police integrity, might involve the leaving of valuable items at a crime scene in order to watch that the correct procedures for dealing with such property are followed.

Integrity testing of police officers already occurs in a number of jurisdictions, including New York City, Hong Kong, London, and in most Australian states, although not currently at the Commonwealth level. Experience from those places has shown integrity testing to be a very effective tool. The introduction of integrity testing would complement Australia's existing integrity arrangements and would assist the government in its fight against serious and organised crime.

In the final report, which it is my pleasure to present, the committee has recommended that a targeted integrity testing program initially apply to Commonwealth law enforcement agencies within ACLEI's jurisdiction. ACLEI was established in December 2006 to provide anti-corruption oversight of law enforcement at the Commonwealth level and currently oversees the Australian Federal Police, the Australian Crime Commission and the Australian Customs and Border Protection Service.

In making its recommendations, the committee does not allege the existence of widespread or serious corruption in Australian law enforcement agencies. Law enforcement agencies take their governance and accountability requirements very seriously. However, the potential for corruption suggests the need for effective measures to combat corruption, and integrity testing is a useful tool to incorporate into the range of integrity measures that already exist. What's more, integrity testing is in keeping with the basic principle that corruption is best fought through prevention and vigilance. As the committee heard from witnesses to the inquiry, integrity testing can speed up investigations and enhance the ability of agencies to mitigate corruption risks.

The committee gave some consideration to the dangers represented by entrapment and inducement within a poorly structured integrity testing program. It was determined that entrapment and inducement are in effect the same kind of shortcoming, and that the key test for avoiding inducement in integrity testing is to ensure there is clear and straightforward opportunity for any person who is the subject of a test to pass or fail the test. Of equal importance is the need to ensure that law enforcement officers or staff are not
placed in situations that would not be expected to occur as part of their ordinary duties.

The committee acknowledges that integrity testing may use significant law enforcement powers in some circumstances; which is why the committee has recommended appropriate legislation be put in place, with safeguards including:

- the requirement for the Integrity Commissioner to be notified;
- the discretion for the Integrity Commissioner to be involved or take control of integrity tests; and
- oversight by Commonwealth Ombudsman and reporting to the Parliament.

The committee wishes to express its appreciation to all parties who contributed to the conduct of this inquiry, whether by making a written submission, by attending a public hearing or, as in many cases, by making both written and oral submissions.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Education, Employment and Workplace Relations References Committee

Report

Senator BACK (Western Australia) (16:37): On behalf of the Education, Employment and Workplace Relations References Committee, I present the report on the administration and purchasing of Disability Employment Services in Australia together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator BACK: I seek leave to move a motion in relation to the report.

Leave granted.

Senator BACK: I move:

That the Senate take note of the report.
best way to achieve either of these objectives at this time.

Submissions were almost universal in calling for long-term contracts to provide clients and service providers with the necessary security to invest in programs that will deliver sustainable outcomes in the long-term. The Government is proposing a three-year contract term. It is the opinion of the committee, along with the vast majority of stakeholders, that a five-year term would better serve the aims of the program. It would also free the sector from the fear that before they have got up and running after one purchasing process, they'll be called to engage in another process.

The committee also heard evidence that other competitive methods of purchasing were available but had not been adequately explored by the Government such as a licensing model. These models would allow gaps in the market to be filled and improve competition by allowing new providers to enter the market at any time provided that they met the service standards imposed on the sector.

Submissions to the inquiry revealed that staff working in the sector and clients would both be heavily affected during the purchasing process, and that a number of providers were already experiencing a loss of staff.

The committee has welcomed the opportunity to be part of the effort to address concerns voiced by members of the wider community and hopes that the recommendations in this report can ensure that those people in the community with disabilities will get the best help in entering the workforce.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Foreign Affairs, Defence and Trade References Committee

Report

Senator EGGLESTON (Western Australia) (16:41): On behalf of the Senate Foreign Affairs, Defence and Trade References Committee, I present the report titled Held hostage: government's response to kidnappings of Australian citizens overseas together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator EGGLESTON: I seek leave to move a motion in relation to the report.

Leave granted.

Senator EGGLESTON: I move:

That the Senate take note of the report.

Senator EGGLESTON: I seek leave to incorporate an accompanying presentation speech into the Hansard record.

Leave granted.

The speech read as follows—

Committee's report into the government's response to kidnapping of Australians overseas

On 23 June 2011, the Senate referred to the Foreign Affairs, Defence and Trade References Committee an inquiry into the government's response to Australians kidnapped overseas.

The committee received 15 submissions and held two public hearings in Canberra.

From the outset, it was clear to the committee that the situation in the country where an Australian may be held captive limits the government's ability to work toward the victim's release.

For example, kidnappings often occur in areas experiencing economic and political turmoil, where law and order is weak, even non-existent, corruption is endemic and where Australia has little or no diplomatic or official representation.

The avenues for direct intervention may be too dangerous or attempts to exercise diplomatic influence unproductive.

A hostage situation involving an Australian citizen overseas presents many challenges for the government and the committee well aware that past responses should in no way be seen as indicative of that which may occur in the future. Any response will be very much determined by the circumstances of the day.
In this report, the committee looked closely at the government's response to incidents involving Australian citizens who have been kidnapped and held for ransom overseas. Particular attention was paid to three recent cases—

- the kidnappings of Mr John Martinkus (Iraq, 2004), Mr Douglas Wood (Iraq, 2005) and Mr Nigel Brennan (Somalia, 2008-09).

The committee found that although such occurrences are infrequent, the global trend in this type of crime indicates that Australia must be prepared for another event.

One of the most compelling messages coming out of this inquiry was the importance of government agencies, especially the Department of Foreign Affairs and Trade (DFAT), exercising greater care, consideration and diligence in the way they deal with the distressed families of a person kidnapped and held for ransom overseas.

The committee formed the view that DFAT must ensure that while its efforts are being directed toward the safe and expeditious release of a kidnapped victim, the family must also be a primary concern.

It must make every effort to keep families well informed about developments and to make them feel as though they are part of important decision-making.

If a family chooses to engage a private consultant, the department, while adhering to the government's no ransom policy, should continue to provide support to the family and do so in a generous and non-judgemental way.

In this regard, the committee recognised that government officers liaising with, and providing support to, a family require a particular temperament as well as appropriate skills and training.

The support role of this specialist group should continue after the victim returns home in order to facilitate his or her smooth transition back into the Australian community, including assistance locating suitable counselling and medical services.

The committee also found that government officials should refrain from making unsubstantiated statements or comments that could be interpreted as politicising the kidnapping.

A debriefing from the relevant agencies that involves a genuine two-way exchange of information between the family and government officials is a critical aspect of the recovery period for the victim and the family.

In the committee's view, DFAT should offer, as an established practice, to conduct such a meeting and make arrangements for the victim of the kidnapping and family to attend, should they accept the invitation.

The committee has made eight recommendations directed at relevant government agencies with the intention, by and large, of ensuring that their engagement with the victims of kidnapping and their families is better directed at helping them through the ordeal.

These recommendations include:

- The committee supports the establishment of the regular, whole of government coordinating group and recommends that DFAT give close consideration as to how it can maintain the high level of skills members of an interdepartmental emergency task force require to respond effectively to a kidnapping incident overseas.

- The committee recommends that DFAT examine ways to improve its relationship with the media when dealing with a kidnapping situation and how it explains its media strategy to media organisations and family members at the outset of a crisis.

I conclude by reiterating that the way the government responds to the kidnapping of an Australian overseas is affected by a vast number of variables meaning that no standard or 'template' would ever be appropriate.

Any response will very much be dictated by the circumstances of the day.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (16:42): I seek leave to make a brief statement on that matter.

Leave not granted.
Economics References Committee Report
Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (16:42): On behalf of the Economics References Committee I present the report titled *Investing for good: the development of a capital market for the not-for-profit sector in Australia* together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator BUSHBY: I seek leave to move a motion in relation to the report.

Leave not granted.

Publications Joint Committee Report
Senator McEWEN (South Australia—Government Whip in the Senate) (16:43): On behalf of the Chair of the Publications Joint Committee, I present the 12th report of the committee.

Ordered that the report be adopted.

Economics Legislation Committee Additional Information Report
Senator McEWEN (South Australia—Government Whip in the Senate) (16:43): On behalf of the Chair of the Economics Legislation Committee, I present additional information received by committee relating to the 2011-12 supplementary budget estimates, and I present the report of the committee on the Constitutional Corporations (Farm Gate to Plate) Bill 2011 [No. 2] together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Legal and Constitutional Affairs Legislation Committee Report

Ordered that the report be printed.

Senator McEWEN: by leave—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Public Accounts and Audit Committee Report
Senator McEWEN (South Australia—Government Whip in the Senate) (16:44): I present the 426th report of the Joint Committee of Public Accounts and Audit on the Ninth biannual hearing with the Commissioner of Taxation.

Senator McEWEN: I move:

That the Senate take note of the report.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

DELEGATION REPORTS
Parliamentary Delegation to the 124th Interparliamentary Union Assembly to Panama and bilateral visit to Brazil
Senator McEWEN (South Australia—Government Whip in the Senate) (16:45): On behalf of Senator Stephens I present the report of the Australian Parliamentary Delegation to the 124th Interparliamentary Union Assembly to Panama and bilateral visit to Brazil, which took place from 4 to 23
April 2011. I seek leave to move a motion to take note of the document.
Leave granted.

Senator McEWEN: I move:
That the Senate take note of the document.
I seek leave to continue my remarks.
Leave granted; debate adjourned.

COMMITTEES
National Broadband Network Committee
Report
Senator McEWEN (South Australia—Government Whip in the Senate) (16:46): I present the second report of the Joint Standing Committee on the National Broadband Network on the review of the rollout of the National Broadband Network.
Senator McEWEN: by leave—I move:
That the Senate take note of the report.
I seek leave to continue my remarks.
Leave granted; debate adjourned.

Community Affairs Legislation Committee

Legal and Constitutional Affairs Legislation Committee

Rural Affairs and Transport Legislation Committee

Rural Affairs and Transport References Committee

Membership
The PRESIDENT: I have received letters from party leaders requesting changes in the membership of committees.
Senator LUDWIG: by leave—I move:
That senators be discharged from and appointed to committees as follows:

Community Affairs Legislation Committee—
Appointed—
Substitute member: Senator Crossin to replace Senator Carol Brown for the committee’s inquiry into the provisions of the Social Security Legislation Amendment Bill 2011, the Stronger Futures in the Northern Territory Bill 2011 and the Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Bill 2011
Participating member: Senator Carol Brown

Legal and Constitutional Affairs Legislation Committee—
Appointed—
Substitute member: Senator Hanson-Young to replace Senator Wright for the committee’s inquiry into the Crimes Amendment (Fairness for Minors) Bill 2011
Participating member: Senator Wright

Rural Affairs and Transport Legislation Committee—
Appointed—
Substitute member: Senator Colbeck to replace Senator Heffernan for the committee’s inquiry into the provisions of the Illegal Logging Prohibition Bill 2011
Participating member: Senator Heffernan

Rural Affairs and Transport References Committee—
Appointed—
Substitute member: Senator Fisher to replace Senator Nash for the committee’s inquiry into biosecurity and quarantine arrangements on 29 November 2011
Participating member: Senator Nash.
Question agreed to.

Community Affairs References Committee

Additional Information
Senator SIEWERT (Western Australia—Australian Greens Whip) (16:47): I present additional information received by the Community Affairs Reference Committee on
its inquiry into the funding and administration of mental health services.

National Capital and External Territories Committee
Report
Senator PRATT (Western Australia) (16:47): I present the report of the Joint Standing Committee on the National Capital and External Territories, Etched in Stone? inquiry into the administration of the National Memorials Ordinance 1928, together with the Hansard record of proceedings and submissions received by the committee and seek leave to move a motion in relation to the report.

Leave granted.

Senator PRATT: I move:
That the Senate take note of the report.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

Economics Legislation Committee
Reporting Date
Senator McEWEN (South Australia—Government Whip in the Senate) (16:48): On behalf of the chair of the Economics Legislation Committee, Senator Bishop, I seek leave to move a motion relating to the presentation of a report of the committee.

Leave granted.

Senator McEWEN: I move:
That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Consumer Credit and Corporations Legislation Amendment (Enhancements) Bill 2011 be extended to 7 December 2011.

Question agreed to.

BUSINESS
Leave of Absence
Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (16:48): I move:

That leave of absence be granted to every member of the Senate from the end of the sitting today to the day on which the Senate next meets.

Question agreed to.

Days and Hours of Meeting
Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry, Manager of Government Business in the Senate and Minister Assisting the Attorney-General on Queensland Floods Recovery) (16:48): I move:

That the Senate, at its rising, adjourn till Tuesday, 7 February 2012, at 10 am, or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President, and that the time of meeting so determined shall be notified to each senator.

Question agreed to.

COMMITTEES
Legal and Constitutional Affairs References Committee
Report
Senator WRIGHT (South Australia) (16:49): I present the report of the Legal and Constitutional Affairs References Committee on the unauthorised disclosure of proceedings relating to the committee's inquiry into Australia's arrangement with Malaysia on asylum seekers.

Ordered that the report be printed.

Senator WRIGHT: by leave—I move:
That the Senate take note of the report.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

Economics References Committee
Senator STEPHENS (New South Wales) (16:50): I seek leave to move a motion in
relation to the Economics References Committee report.

Leave granted.

Senator STEPHENS: I move:
That the Senate take note of the report.

I seek leave to continue my remarks.

Leave granted; debate adjourned.

PARLIAMENTARY REPRESENTATION

Valedictory

The PRESIDENT (16:50): At the conclusion of yet another very busy parliamentary year, I take this opportunity on the last sitting day for 2011 to acknowledge and express my gratitude to a number of people. Firstly, I thank the Clerk of the Senate, Rosemary Laing. I would like to once again thank her for the dedication and professionalism she consistently displays. I also express my appreciation to Richard Pye—who, in his first year as Deputy Clerk, has shown the same high standard of professionalism and commitment as his predecessors—and to the other clerks at the table. I thank all other senior officers of the Department of the Senate for their ongoing support and advice and I also thank all senators.

I would like to make special note of the Deputy President and Chair of Committees, Senator Stephen Parry. I wish to acknowledge the excellent working relationship we have established since the beginning of the new Senate term—and, Senator Parry, I genuinely mean those words. You have been an absolutely great support to this chamber and to senators in the running of the business of this chamber. I also acknowledge the work of the temporary chairs of committees, who run this chamber on a daily basis.

I wish also to thank the Usher of the Black Rod, Brien Hallett, the Director of Senate Services, John Baczynski, and the staff of the Black Rod's office. I make special mention of and thank both Ian and Peter at the transport office, who look after our transport needs so efficiently. I also express my appreciation to the COMCAR drivers, who are always pleasant and helpful, no matter what hour they drive us home. The chamber support staff, and in particular the chamber attendants here, do a marvellous job for all of us, as do the mail attendants. The Senate IT staff have assisted me and others on more than one occasion in getting the technology we are provided with to work. I thank the staff of the Clerk's office, the Table Office, the Procedure Office and the Committee Office—their hard work and dedication to this great institution and their patience and forbearance ensure that this place runs smoothly.

I also extend my appreciation to the staff of the Department of Parliamentary Services, most of whom work in the background providing the essential services which enable the parliament to function—maintaining the building and the parliamentary precinct and keeping us all safe. In particular, I thank the grounds staff and gardeners who, in looking after the courtyards and gardens, make Parliament House itself such a showpiece for the nation. In addition, there are those who work in security and protective services for the Parliament House itself. There are also the Health and Recreation Centre staff—for those who know where the Health and Recreation Centre is. I noticed that there were a few chuckles there. I presume those chuckles came from the people who do not know where it is.

I thank HRG, who make the travel arrangements, sometimes under great pressure, for all senators and staff. I thank the cleaners who keep this place so immaculately clean and tidy; IHG, who provide the primary catering services to all building occupants and visitors; the
Parliamentary Library and the Research Branch under the direction of the Parliamentary Librarian, Roxanne Missingham; the International and Community Relations Office for their outstanding work with outgoing and incoming delegations and in managing our interparliamentary relations and interparliamentary assistance program; the Parliamentary Education Office, who, here in Parliament House in 2011, taught over 90,000 young Australians from 1,619 schools about our parliament.

I would especially like to thank the former Speaker of the House of Representatives and his staff as well as the Clerk and officers of the Department of the House of Representatives. I welcome the election of the new Speaker, Peter Slipper, and the new Deputy Speaker, Anna Burke, and look forward to working with them. I must also give special mention to the staff of my office as well as my electorate staff in Queensland and I express my thanks to all other people who work in Parliament House and in electorate offices right around Australia.

As you can see, there is an absolutely extensive list of people that we owe our gratitude to, that we owe our thanks to, for the smooth running and operation of this parliament—and it is so often lost, unfortunately. In conclusion, I extend my best wishes to all colleagues and staff for the upcoming festive season and I look forward to seeing everyone back here in a refreshed manner in the new year.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate) (16:55): by leave—Thank you, Mr President. I thank you for your remarks and endorse your thanks to all the various personnel who service the Senate and its senators. I will not attempt to repeat the list because yours was very comprehensive. I guess the best thing to do is to say 'ditto' rather than naming everyone again.

I do want to thank all those who support us, particularly the Clerk. To Rosemary, I apologise once again for our behaviour this year and know that next year I will have to make the same apology, as always. Thank you very much to the clerks—they exhibit the best traditions of the public service here—the attendants and everyone else who supports us.

I wish all senators and their staffs the best for the Christmas period. I hope they have a safe and enjoyable time. This job gives you many opportunities and many privileges. I for one always remember and acknowledge the great opportunities we get. But the one great downside of this job, serving the Senate, is the time away from family and friends. It has always been the bit I have found the hardest about this function and I think all senators probably find it the same. I think people ought to take the opportunity to enjoy the break and to spend time with family and friends. I have certainly ordered government senators to take a break. No-one ever retires saying, 'I wish I had spent more time at work.' They usually say, 'I wish I had spent more time with the family.' So government senators are under instruction to spend some decent time with their families but to come back to work twice as hard in January.

Mr President, thanks to you and to Senator Parry for your work on behalf of the Senate. Best wishes to all senators, to their families and to staff. We will see you back in February—and you have to me to thank for having a slightly longer break. I have argued many times that we have been coming back too early in January. All the best, everybody.

Senator ABETZ (Tasmania—Leader of the Opposition in the Senate) (16:58): by
As we enter the festive season and look to the occasion we celebrate—the birth of Christ—and the new year, as we stop to reconnect with our loved ones, it is good to thank those who have assisted us. Mr President, without you there would be complete chaos. To the Leader of the Government in the Senate, thank you for your professionalism and cooperation—on most occasions! To the clerks, we would be lost without you. One question I do have is: why do you always have to be right? To the Black Rod, the Table Office, the committees, Hansard, the library, Broadcasting, the attendants, the drivers, the cleaners, to all—thank you for what you do to make this place work.

To the listeners of parliamentary broadcasts, we hope that the PBS and you save money on sleeping-pill prescriptions. To reporters and journalists, we wish you a happy new year and hope that you might be able to report more favourably upon us in the future. To the managers and whips of all parties, I thank you for the way you work so professionally to ensure that this place operates as it should. From time to time during question time, as I look across the chamber, my heart goes out to Senator McLucas, with her health issues, as it does when I look behind me and see Senator Judith Adams or when I look across and see Senator Fisher. Their strength and stoicism in difficult circumstances have been truly inspirational.

To my deputy leader, Senator George Brandis, and to the Leader of the Nationals, Barnaby Joyce: thank you for your cooperation and esprit de corps. As a coalition I believe we work exceptionally well. To all my colleagues I say thank you for giving me the privilege of being your leader in this place. It is a privilege to serve as leader of such a great bunch of men and women. I thank our spouses and families for their wonderful support. My wish is that the true spirit of Christmas will be visited upon all of us, with health and happiness for 2012, and God bless.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (17:01): by leave—On behalf of my Greens colleagues, I wish everybody in the Senate and in the parliament and all the people of Australia season’s greetings. I hope they have a safe and happy summer and a bountiful, prosperous and very happy 2012.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (17:01): by leave—On behalf of the National Party, I wish all in this chamber a very, very happy and healthy festive season. I echo the remarks from others before me on the extensive list of people that we need to thank for the smooth running of this place, particularly Dr Laing, Richard Pye and all of those here who ensure that smooth running. This place is a little bit like a duck: it looks very smooth on the top but those paddling feet are going like crazy underneath, and it is all those support staff who make this place run so smoothly. I will not echo all of the list that the President read out. I will just say that we concur in thanking all of those people, who assist all year round in making sure that we in this place can do our job.

I often think that, with more than 20 million people in the country, there are only 76 people sitting here in this chamber. It is for us an honour and a privilege to be here. I thank those people across this nation who have put us all here and wish them a very happy, healthy and safe festive season. Senator Evans and Senator Abetz raised the issue of family and friends. I certainly cannot wait to get home to my husband, David, and my sons, Will and Henry, and I know everybody else in this chamber is looking forward to getting home to family and
friends after what has been a very long year. But there is no doubt, as we move towards Christmas and reflect on the year, that what we do matters and that we are incredibly fortunate in this nation to have such a wonderful democracy.

I thank my colleagues for all their collegiate times and the collegiate work we have done together on this side of the chamber. We are indeed very fortunate to have the collective coalition family that we do. To colleagues right around the chamber—a very merry Christmas and a very happy and safe festive season.

Senator XENOPHON (South Australia) (17:03): by leave—I just echo the positive remarks made by all my colleagues. I think it is fair to say that it has been quite a year and a hell of a week. It has been an ugly week, but I would like to think—in fact, I am sure—that all of us are here for the right reasons. We all want to do the right thing by this wonderful country of ours. We have different views, but I think, whatever differences and disagreements we have had this week, we can learn in the new year to make things a little better, because fundamentally we are a pretty decent bunch. We want to do the right thing. I feel privileged being in a chamber where I think every one of my colleagues works hard and wants to do the right thing by this nation.

To the Senate staff, the messengers and everyone who is involved in the running of this place, and to Hansard: you make us look a lot better than we actually are, so thank you for that. I wish everyone the best for the festive season, and I hope they spend as much time as they can with their loved ones.

ADJOURNMENT

Senator LUDWIG: I move:

That the Senate do now adjourn.

Meredith, Ms Bronwen
Asbestos Awareness Week
Goodwood Primary School

Senator SINGH (Tasmania) (17:05): I pay tribute to Bronwen Meredith, a human rights activist who passed away on 19 November. Born in Hobart in 1919 and raised in a Quaker family, Bronwen Meredith learnt the values of tolerance, peace and justice from an early age. Educated at the Friends' School, she ran a Junior League of Nations as a student, with talks and discussions about the role of the League of Nations in peace making and social justice issues. In 1938, she attended the Philip Smith Teachers College to train as a teacher and also studied for her Bachelor of Arts at the University of Tasmania.

Honourable senators interjecting—

The PRESIDENT: Just wait a minute, Senator Singh. Senators in the chamber, Senator Singh is talking about a very serious matter. I believe she is entitled to be heard in silence regardless of the issue, but it is a sensitive issue.

Senator SINGH: She married her husband, Richard, in 1945 and together they became interested in prison reform, actively working to oppose the death penalty of a young man. In 1956, Bronwen and her husband moved to Papua New Guinea, where they both taught at a mission school. They took their five children, Heather, Stephen, Richard, Timothy and Jillian. They returned to Hobart in 1961, where Bronwen did a library course and worked at New Town High School for 10 years.

I first met Bronwen at a meeting in Hobart of the Women's International League for Peace and Freedom, of which I am a member. Bronwen joined the Women's International League for Peace and Freedom in Tasmania in 1963. One of the first
campaigns she became involved with in WILPF was opposing French nuclear testing in the Pacific and then, during the Vietnam War, she and her husband assisted young men facing the draft. She became the first Secretary of WILPF in 1970 and was also involved in conducting a branch of Amnesty International at that time. In 1967, Bronwen attended an international Quaker conference in North Carolina and spent six weeks at a Quaker office in New York. While there she summarised the attitude to the Vietnam War of members of the United Nations organisation, as expressed by the General Assembly. This summary was printed and presented to the then Prime Minister, Gough Whitlam. In 1973, concern for Indigenous people moved Bronwen and her husband to join the Commonwealth service in the Northern Territory. They taught in government schools in Darwin and Katherine for seven years.

Bronwen and her husband moved to England in 1981, where she became active in both Amnesty International and the UK branch of the Women's International League for Peace and Freedom. In 1986, Bronwen became the National Secretary of WILPF and was President of the Religious Society of Friends in Australia for four years. She joined me in speaking out against the war in Iraq in Hobart on the International Day of Action in 2003, and was regarded as an active and valued member of the Women's International League for Peace and Freedom. I know she will be greatly missed and my thoughts are with her family.

Monday marked the beginning of Asbestos Awareness Week. Australia carries the burden of one of the highest rates of asbestos related disease in the world, with nearly 10,000 recorded cases of mesothelioma since records began in the 1980s. Although the dangers of asbestos have been known for years, the long period between exposure and the onset of symptoms means that the diagnosis of asbestos related disease is expected to increase until at least the year 2018. While the dangers have been known for many years, we will continue to pay the price of exposure all those years ago for some time to come. Sadly, a very real concern now is that this will continue well into the future as we face a third wave of asbestos related disease as people unwittingly expose themselves to asbestos through DIY home renovations and the like.

I was pleased that, as part of Asbestos Awareness Week, both the ABC's 7.30 and Channel 10's The Project featured stories this week on asbestos and the very real risks associated with its exposure. Both these programs tackled the issue of DIY home renovation and the dangers associated with the unsafe removal and disposal of asbestos.

I was particularly saddened to hear the story of the Sager family, who lost their 25-year-old son, Adam, to mesothelioma. His parents, Julie and Don, told of Adam being exposed while they were renovating their family home in the 1980s. Adam would play in the dust that they did not know was dangerous at the time and that they never could have imagined would result in his devastating death.

Sadly, I fear we are at risk of hearing many more stories such as Adam's in the decades to come. I spoke in this place just last sitting about the obligation DIY renovation TV programs have to the Australian public and that they must highlight the dangers of asbestos during the broadcast of these shows. Education is vital, and we must make people who are renovating aware that if their home is more than 30 years old the chances are it will contain asbestos. We must educate people that asbestos can and will kill them, and that due care must be taken.
Given this week is Asbestos Awareness Week, I congratulate all those who are out there doing everything they can to raise awareness of this deadly carcinogen. There are many important groups, researchers, medical professionals, removalists and advocates, all working hard to educate the Australian public and support those living with asbestos related diseases, and seeking to effect change in places such as this. Their work is vital and it is very much appreciated.

I also thank them very much for joining me this Tuesday, here in Parliament House, for the launch of the Parliamentary Group on Asbestos Related Disease by me and my co-chair Russell Broadbent, with guest speaker Matt Peacock, a journalist who has been reporting on asbestos and its effects for the last 30 years.

I also learnt this week that the Cancer Council in Victoria will this week launch an easy-to-read information booklet about mesothelioma, and I have no doubt that it will be appreciated by the many people who may be diagnosed in the years to come.

The Gillard Labor government is also working to ensure people are not needlessly exposed to asbestos. In October last year the Asbestos Management Review was established and it will provide recommendations to government on the development of a national plan to improve asbestos awareness and management. I pass on my thanks to all of those people involved in this area and encourage them to continue their work and their fight to raise awareness and support those with asbestos related disease.

Finally, I was recently fortunate to visit Goodwood Primary School in the electorate of Denison. The school was established in 1955 and currently has around 95 students. What I learnt about Goodwood Primary School during my visit is that 85 of those students have iPads, which are distributed across all of the grades. I hope that soon schools in other parts of Tasmania will also have access to iPads.

These iPads were purchased using the federal government's National Partnership Low SES Plan funding. Goodwood Primary School is the only primary school in Tasmania that has this educational tool—the iPad—available to all its students, and it was just wonderful to see these young students using their iPads in an educational way to make movies, to take photos and to write notes. They used them in a wide range of ways and for a wide range of purposes. We live in a very much technologically focused time, and the advantage these children will have over those who do not have access to such recent technology will no doubt brighten their future.

Not only are the students benefiting but the participation of parents in the school has also increased from five per cent to 25 per cent, and the school believes the sole reason is the introduction of the iPads. Students and their parents are rightly proud that their school is the first and only primary school in Tasmania to have instigated this program. I congratulate Goodwood Primary School on its efforts to equip their students with a bright future and to engage with the parents of their school. I hope to see more Tasmanian schools consider introducing iPads to their classrooms as an educational tool. Finally, I would also just like to wish you, Mr President, the Deputy President, senators, the Clerk and Deputy Clerk, officers and all the Senate staff here a restful Christmas break and a happy new year. Thank you for welcoming me into my beginning term here in the Senate.

**Marine Conservation**

Senator **BOSWELL** (Queensland) (17:14): This morning the Minister for Sustainability, Environment, Water,
Population and Communities, Mr Burke, released the maps of the proposed Coral Sea marine reserve. The completion of that map encircles the whole of Australia with marine reserves, and I would like today to talk about some of the consequences of this. Unfortunately, the release was done in such a way that no debate can take place on it, and we were scrambling to speak on it for 10 minutes in the adjournment debate on the last day of sitting, when everyone else is trying to get on the planes.

All bioregions have been mapped—they have been zoned into green, multi-use and special-purpose areas—but not yet declared. The pressure was on the minister from representatives from America on the Pew foundation, including Imogen Zethoven, as well as dozens of green groups lining up. They heavied the minister to declare the Coral Sea a complete no-take zone. They have lobbied the minister to declare a million square miles of Australian territory, to lock out amateur and professional fishermen and to lock up resources that provide food security for Australia.

The minister was caught between a rock and a hard place. Burke replaced Garrett, who was politically inept, as the environment minister. Burke’s job is to appease the Greens and keep the blue-collar workers on side. If he can bring this off, it will be a miracle—to get the conservative blue-collar recreational fisherman who wants to bond with his family by taking his kids out on his 16-foot tinnie and does not want a bar of gay marriage or a carbon tax to agree with the left-leaning green groups that want to run boycotts on Jewish chocolate shops, lock up the timber industry, bring in a carbon tax and destroy blue-collar workers’ jobs. The two components of the Labor target groups are miles apart, so the minister had to make a choice, and he has made that choice. He has appeased the Greens to a fair extent. He has hurt the recreational fishermen, but he could have done worse for them.

But the industry that has copped it in the neck is the professional fishing industry. They are and always have been the target for the Greens. They do not have a lot of votes. They are becoming fewer in number as the Green and Labor governments, state and federal, continually offer them up at the altar of Green preferences. I have no doubt that the professional industry has borne the brunt of these big regional marine parks that surround Australia. The bioregion plans have not been declared. The interim maps are out and have been printed. The marine parks have been zoned, and in all zones trawling is 100 per cent banned—100 per cent locked out. That is a low blow for the fishing industry. These closures will see more boats leave the industry, more licences cancelled and more buyouts of fishing effort. They have to reduce the fishing effort so that the remaining boats will have somewhere to fish. This is going to cost big.

Minister Ludwig, at question time in the Senate the other day, committed the government to a socioeconomic impact assessment for each marine reserve prior to the declaration. The assessment will be done by ABARES, but ABARES will not be the government department that allocates the compensation. They will be measuring the impact of the zoning and the impact of the lines on the map, but where is the official displacement policy? The displacement policy should be made available. Who is going to make the decisions on how many boats have to be bought out? What is it going to cost to remove the boats and licences from the industry? If you do not have a fishing industry, you do not have a processing industry. They will all have to be compensated. What will be the cost to manage an area of 16 million square kilometres, and who is going to do it? There
will be huge fallout from marine closures. No-one in the government is even mentioning it.

Before any decision is made, the government must come up with a compensation figure. Who is going to handle the compensation claims? Is it going to be done in the bowels of the environment department, with some faceless bureaucrat, with some large accounting firms to handle the compensation? Before the industry is destroyed, livelihoods of people must be maintained. The government must tell people what they are going to do. I appeal to Senator Ludwig and Mr Burke: do not even think about declaring any bioregions or the Coral Sea unless you have worked out compensation. You will end up in a political fight that is going to be very difficult to win.

The winners in this are Pew and the green groups, and the loser is Australian industry: the fishing industry, the charter boat industry, refrigerator mechanics and processors. This is going to cost millions. It is going to cost hundreds of millions. The big winners are Pew, and I think we should look at their tactics. Under the auspices of the Australian Conservation Foundation, the Save Our Marine Life campaign is financially supported by a coalition of Australian and international conservation groups to push the conservation agenda. They include Nature Conservancy, WWF, Pew Environment Group, the Australian Conservation Foundation, the Wilderness Society and a few others. We waited in anticipation of the proposed marine plan for the Coral Sea, which has been put down today. This is the prize for the green groups. The Protect Our Coral Sea-Greens coalition have called on the Australian government to declare the Coral Sea the world's largest ocean reserve.

I visited the website of Save Our Marine Life, and on their homepage was a call for action in large blue letters:

SOS LEAP INTO ACTION
Fishing industry fighting back.
A phone call can Save Our Sanctuaries.

... … … …

Join the BIG BLUE ARMY …

Too right the fishing industry is fighting back! They are fighting for their economic survival. The website goes on to tell us that 42,000 people have called for a network of large marine sanctuaries in Australia's south-west. How many of the 42,000 submissions, however, were from overseas, given that this whole campaign to increase the closures is substantially funded by Pew. Who is Pew? This is an American organisation that seems to wield an enormous amount of influence. Most Australians would be surprised that an American organisation seems to have enormous sway over our environment policy.

Australians have the right to know why an overseas foundation is wielding enormous influence. They fund Greens conservation campaigns such as Save our Marine Life and Protect the Coral Sea. Make no mistake, Pew is all over these proposed marine closures. These campaigns are well funded and well resourced. The Save our Marine Life campaign employs a multistep targeted strategy on how to fight the cause of the 'Big Blue Army'. This is a highly professional campaign deployed for the south-west bioregional plan. Its first step is a Pew funded, beautifully produced, glossy coffee-table quality publication that highlights all the values that are being protected in this particular bioregion. In this case of the south-west it was called *Atlantis found underwater: icons of Australia's unique south-west*. For maximum attention, the book was laminated and launched underwater at
Fremantle, making it Australia's first-ever underwater book launch.

Step 2 is for the Pew Charitable Trust to commission an academic, in this case the University of Queensland's Professor Hugh Possingham, and have him design a reserve system. Of course, in the brief to the professor there is the prescribed level of protection, and finally the professor becomes a spokesman for the cause. We saw it all with the carbon tax debate and we are going to see it again in this Coral Sea debate. The next step is to come up with the economic benefits of such a plan, given that you are delivering the death knell to the fishing industry and destroying the jobs and livelihoods of thousands of fisherman and their families and the related industry. (Time expired)

Meningococcal Disease

Senator FAULKNER (New South Wales) (17:25): I would like to take this opportunity to update the Senate on recent developments in the fight against meningococcal disease. I have spoken previously in this chamber on the frightening risks and devastating consequences of meningococcal, but this afternoon I would like to report on an important initiative which will make the fight against this disease more effective. Last week I had the privilege of opening the 2011 National Meningococcal Disease Conference. It was a significant event because at that conference a number of state based foundations realised a long-held ambition to collaborate and establish a national identity—Meningococcal Australia.

Meningococcal Australia is the result of a collaboration between the Caleb Thorburn Foundation of Victoria, the Amanda Young Foundation of Western Australia, and the Troy Pocock Foundation and the Violet Foundation of New South Wales. In creating a national identity, these groups aim to further promote medical research and development, community awareness and education.

Meningococcal Australia's first national awareness day was held on 2 September this year and involved many awareness-raising activities. One example was participants being asked to wear the colour purple and to stop using their right arm for 15 minutes, a measure aimed at recognising some of the challenges of a life impacted by this deadly disease. There was extensive engagement with the community and substantial media coverage on the day.

The creation of this national body enhances rather than diminishes the importance of the work undertaken by each state based foundation. I have seen some of the work of these state based foundations firsthand and I know they have been vital in assisting so many. I commend their leadership for banding together to form Meningococcal Australia. It is a reflection of a shared vision, a shared determination and a shared commitment to reduce the incidence of meningococcal disease and to improve the health outcomes for survivors.

Many volunteer organisations outside of government and the health profession are contributing magnificently to the fight against meningococcal disease. Media attention on deaths this year in North Queensland and Tasmania and recent outbreaks in the New England region of New South Wales remind us that the fight against this disease is very far from over. The death of a student from Perth at a Townsville university, where at least one other student was also infected with meningococcal disease, highlights not only the severity of the disease but also its ability to spread and cause outbreaks, while the tragedy of the recent death of a seven-day-old baby in New South Wales demonstrates how this disease
does not discriminate in its devastating impact.

Meningococcal disease is a bacterial infection, not caused by a virus but by a bacterial germ with the disturbing ability to mutate and so evade the body's immune system. This is the reason we continue to see new outbreaks of the disease every winter, with even bigger surges of the disease every five to 15 years.

Thankfully, meningococcal disease is a rare disease. But that is of little comfort to the hundreds of ordinary Australians affected by it every year. Children under five years of age and young adults aged 15 to 24 years are most at risk. Although most victims will fully recover, up to one in 10 will die, and one in every five will be left with permanent disabilities.

Vaccines are currently available for four out of the five strains of meningococcal disease, including the deadly C strain. Australia was among the first five countries in the world to introduce a vaccine against group C disease. The results have been more than impressive, with 95 per cent vaccine effectiveness among children, teenagers and young adults. Even unvaccinated people have received a high level of protection, because the vaccine has also reduced transmission of the bacterium between people—the help provided by herd immunity, if you like.

The latest data from Australia's national notifiable neisseria disease network shows a rise of 14 per cent in 2011 of confirmed meningococcal disease cases compared with 2010. This is almost entirely due to meningococcal B disease, the only type we still do not have a vaccine for. Having said that, it is true to say that initial trials of vaccines against meningococcal B have been promising. My hope is that these vaccines may soon be within our grasp.

Both the state based charities and the new national advisory body, Meningococcal Australia, will play a crucial role in educating the public and supporting those who have suffered personally as a result of meningococcal disease. The work undertaken by what is really just a handful of dedicated and committed volunteers in the fight against meningococcal disease is inspirational. That work is essential for the support of meningococcal disease survivors, for the comfort of the bereaved and for the prevention of this disease through raising awareness and undertaking vaccine and other medical research of the highest calibre. What they do is making a real difference. Tonight, in this, the last Senate speech of calendar year 2011, I would like to take the opportunity to acknowledge and applaud their efforts.

Senate adjourned at 17:33

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.]

A New Tax System (Family Assistance) (Administration) Act—Child Care Benefit (Breach of Conditions for Continued Approval) Amendment Determination 2011 (No. 1) [F2011L02393].

Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2011 (No. 2) [F2011L02402].

Business Names Registration (Fees) Act—Select Legislative Instrument 2011 No. 213—Business Names Registration (Fees) Regulations 2011 [F2011L02408].


Civil Aviation Act—Civil Aviation Safety Regulations—
Instrument No. CASA EX123/11—Exemption – carriage of passengers on EADS CASA 212-400 aircraft within Antarctica [F2011L02405].

Part 147 Manual of Standards Amendment Instrument 2011 (No. 2) [F2011L02392].


Environment Protection and Biodiversity Conservation Act—Amendments of lists of exempt native specimens—
EPBC303DC/SFS/2011/43 [F2011L02398].


Health Insurance Act—Select Legislative Instrument 2011 No. 226—Health Insurance (General Medical Services Table) Amendment Regulations 2011 (No. 3) [F2011L02407].

Higher Education Support Act—VET Provider Approval No. 21 of 2011—Community Training Australia Pty Ltd [F2011L02394].

Lands Acquisition Act—Statement describing property acquired by agreement for specified public purposes under section 125.


Personal Property Securities Act—
Personal Property Securities (Migration Security Interests and Effective Registration) Determination 2011 [F2011L02395].

Personal Property Securities (Migration Time and Registration Commencement Time) Determination [F2011L02397].

Select Legislative Instrument 2011 No. 176—Personal Property Securities Amendment Regulations 2011 (No. 1) [F2011L02030]—Explanatory statement [in substitution for explanatory statement tabled with instrument on 11 October 2011].


Veterans' Entitlements Act—
Veterans' Entitlements (Family law affected income stream) Principles 2011 [F2011L02396].
Veterans' Entitlements (Guidelines for determining whether income stream is asset-test exempt) Determination 2011 [F2011L02400].
Veterans' Entitlements (Retention of exemption for asset-test exempt income streams) Principles 2011 [F2011L02401].
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Australian Bureau of Statistics
(Question No. 686)

Senator Ludlam asked the Minister representing the Treasurer, upon notice, on 14 June 2011:

With reference to the proposed changes to the way the Australian Bureau of Statistics (ABS) will conduct the homelessness count in the 2011 Census:

2. How did the ABS consult with the sector before announcing these changes.
3. What kind of resourcing has been devoted to the homelessness count over the past two census in 2001 and 2006, and does this differ from the resources for the 2011 Census.
4. Are the proposed changes due to a budget cut or any kind of resourcing issue.
5. Why was there such a long delay in releasing the discussion paper the ABS promised would be released in December 2009 but was only released in March 2011 about the proposed changes to the methodology.
6. Why does the ABS still believe the Chamberlain and McKenzie methodology, used for the 2001 and 2006 census, led to an over estimation of homelessness figures, even though this view was and continues to be strongly refuted by homelessness services, peak bodies and homelessness researchers.
7. What is the ABS response to our understanding that peak bodies, researchers and service providers still maintain in fact the homeless are being undercounted.
8. Can the ABS confirm it will be doing all the analysis itself using its new methodology and that this will not include:
   a. Chamberlain and McKenzie's analysis of people staying in supported accommodation data;
   b. extensive field work usually carried out by Chamberlain and McKenzie; and
   c. an analysis of the Secondary School Student Survey.
9. Will the ABS form their homelessness estimate predominately on raw census data.
10. How does this overcome the problem that homelessness is 'hidden' and therefore difficult to measure without expert analysis, a sound background in research and an understanding of the complexity of homelessness.

Consultation with sector

11. In regard to the forum that took place on 24 May 2011 with the ABS and key homelessness stakeholders:
   a. did the ABS call this forum;
   b. apart from this forum, how has the ABS tried to engage with the sector since announcing these dramatic changes;
   c. how many submissions did the ABS receive on its discussion paper and how were they incorporated; and
   d. will the ABS be establishing a sector reference group.
12. Does the ABS appreciate that up until now Australia has been in the fortunate and unique position (compared to other countries around the world) of having a consensus on homelessness figures.
(13) Will the ABS guarantee that it works to a consensus on publishing revised figures and introducing a new methodology.

New assumptions reflected in the methodology
(14) Can the Minister confirm some of the more controversial assumptions in the discussion paper including:
(a) all people over 55 years old living in caravan parks will be classed as 'grey nomads' and will not be counted as homeless;
(b) people living in attractive holiday destinations cannot be classed as homeless;
(c) there are only 1 253 people experiencing primary homelessness in the Northern Territory, but this is based on the assumption that 1 million square miles of territory can be covered in one night; and
(d) people staying in improvised dwellings should not be considered homeless if they have an income from employment or are landowners.

Aboriginal and Torres Strait Islander people and homelessness
(15) Given that the revised count of Aboriginal and Torres Strait Islander people who were homeless and staying with friends and relatives across Australia on census night has been revised to 872 (discussion paper, p. 73) which is significantly down from the figure of 5 438 in recently released Australian Institute of Health and Welfare(AIHW) figures of Indigenous people currently experiencing secondary homelessness, how can the significantly revised down figures be reconciled.
(16) How was the AIHW consulted regarding the proposed changes to the methodology.
(17) How will the new ABS methodology incorporate overcrowding experienced in Indigenous households.
(18) What strategies are being considered or employed to improve the accuracy of counting Indigenous people in the census.
(19) Given that the census in the territories is only conducted over one night, yet the Northern Territory spans more than 1 000 000 square km and has the highest number of remote communities in Australia and it is stated that between 2001 and 2006 the number of rough sleepers is said to have declined by 26 per cent—yet no additional services or accommodation were provided in this time and it is unlikely that this number found accommodation; it is therefore likely that significant numbers of undercounting of homeless people occurred in the last census, and will occur again, therefore:
(a) what measures will the ABS have in place to prevent undercounting of homeless people in the Northern Territory in the 2011 and subsequent census; and
(b) has the ABS considered extending the census period to more than one day; if not, will it.

School students, young people and homelessness
In regard to the number of young people experiencing homelessness in 2006 which has been revised by the ABS from approximately 21 000 down to 5 000 nationally:
(20) Given that 35 per cent of Supported Accommodation Assistance Program(SAAP) funding is currently allocated to services providing responses to young people, how will a significant drop for the 2011 figures impact on funding for youth services in the future.
(21) Is the ABS aware that in the north and west Melbourne metropolitan regions alone, current demand data shows that there are 861 young person headed households awaiting assistance.
(22) Does the ABS have confidence in the accuracy of the new figure.
(23) What is the estimated margin of error and how was it calculated.
(24) Given that a strong concern with the revised methodology is the proposal to only gather data from six schools, over 1 day, on youth homelessness, compared with thousands previously.
(a) what was the rationale for this; and
(b) how will the ABS work with the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) regarding any changes to the scope or process for collecting data on youth homelessness through schools.

(25) Can the ABS confirm why the National Census of Homeless School Students is not going ahead.

(26) Does FaHCSIA sit on the Steering Group for the ABS review.

(27) Has the ABS been provided with any advice in making the case that the National Census on Homeless School Students is not required.

Secondary homelessness

(28) In regard to the significant revision down by 58 per cent (or 27,277 people) from the secondary homelessness figures in the 2006 census, can an outline and account be provided for all of the assumptions underlying the removal of these 27,277 people in the secondary homelessness category.

Undercounting of specific and marginalised groups

(29) For each of the following groups, can the ABS provide an explanation on how it intends to better include them and count them more accurately in the next census:

(a) women escaping domestic violence who seek assistance from a homelessness service but are turned away and either sleep in a car in a concealed location or are accommodated by a friend or relative for the night;
(b) Indigenous people in overcrowded households;
(c) rough sleepers in the 'long grass' in the Kimberley and Pilbara in Western Australia and Darwin-Daly district in the Northern Territory;
(d) families in private motels paid for by temporary state housing vouchers; and
(e) single people staying with friends in public housing not named on the lease (due to rules prohibiting sub-letting they often will not identify as residing with the tenant even if this is the case).

New ABS concept of 'rooflessness' rather than homelessness

(30) Does the discussion paper suggest that the ABS is moving towards a view of homelessness that focuses on a person's 'rooflessness', that is, homelessness defined only as rough sleeping or primary homelessness.

(31) How is this definition helpful to the current conceptualization of homelessness, particularly in terms of devising responses to prevent and intervene early before primary ('roofless') and chronic homelessness occurs.

Senator Wong: The Treasurer has provided the following answer to the honourable senator's question:


The discussion paper is available on the ABS website: www.abs.gov.au.

(2) Please refer to the ABS' Position Paper on the Review of the Counting the Homeless methodology. This paper responds to submissions made and feedback received during the ABS' consultation with the sector regarding the review. The ABS has also established a sector reference group to continue its consultation with stakeholders.

(3) While exact numbers are not available for the 2001 Census, the resources were increased in the 2006 Census to over 250 staff. For the 2011 Census, these resources were increased to over 550 specialist field staff.
(4) There are no budget cuts, or any kind of resourcing issue, which are relevant to resourcing the homeless count.

(5) The ABS is an independent statutory authority and questions relating to timing of its reports are a matter for the ABS.

(6) Please refer to the ABS' Position Paper on the Review of the Counting the Homeless methodology. These papers set out the ABS' analysis of previous methodologies.

(7) Please refer to the ABS' Discussion Paper and Position Paper on the Review of the Counting the Homeless methodology. The Position paper responds to submissions made and feedback received during the ABS' consultation with the sector regarding the review.

(8) Please refer to the ABS' Position Paper on the Review of the Counting the Homeless methodology.

(9) Please refer to the ABS' Position Paper on the Review of the Counting the Homeless methodology.

(10) Please refer to the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006, which noted the existence of 'hidden' homelessness in the context of homeless people reporting a usual address on Census night while visiting other private homes.

The ABS has advised that some of the improvements applied for the 2011 Census and planned for future Censuses will address, at least in part, the 'hidden' homelessness when Indigenous people have a usual residence reported for them. The ABS will seek advice, through its new Homelessness Statistics Reference Group, on approaches for addressing the 'hidden' nature of homelessness, and will use its planned focus group work to provide new insights on measurement.

(11) (a) The ABS has advised that it wrote, in advance of the publication of the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006, to offer an ABS funded workshop for Homelessness Australia members after they had had a chance to review the Discussion Paper. This Homelessness Australia workshop was in addition to the discussion forums planned, advertised and held in each capital city. Homelessness Australia accepted the offer and the meeting occurred on 24 May 2011.

(11) (b) The Discussion Paper announced public discussion forums in each capital city and sought submissions. Additional forums were held, on request, with stakeholders across Australia. The ABS has also answered questions received during forums, or in writing or over the telephone.

(11) (c) Please refer to the ABS' Position Paper on the Review of the Counting the Homeless methodology. This paper responds to submissions made and feedback received during the ABS' consultation with the sector regarding the review.

(11) (d) The ABS has advised that it has convened a Homelessness Statistics Reference Group with invitees from the sector, from academia, and from government.

(12) The ABS is an independent statutory authority and has released its Discussion Paper and Position Paper outlining the ABS' assessment of the Counting the Homeless methodology.

(13) The ABS has advised that it is continuing to consult with stakeholders, including through the new Homelessness Statistics Reference Group, to inform its view of whether, and if so how, official estimates of the prevalence of homelessness can be made.

(14) (a) The ABS has advised that the statement in the question is not an assumption made in the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006.

(14) (b) The ABS has advised that the statement in the question is not an assumption made in the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006.

(14) (c) The ABS has advised that the statement in the question is not an assumption made in the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006.
(14) (d) The ABS has advised that the statement in the question is not an assumption made in the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006.

(15) The ABS has advised the following:

The number of 5,438 Aboriginal and Torres Strait Islander people in the question is quoted from Table 1.3 in a May 2011 publication issued by the Australian Institute of Health and Welfare (AIHW) titled Housing and Homeless Services, Access for Aboriginal and Torres Strait Islander People (Cat. No. HOU 237). The data are reported from the Counting the Homeless 2006 state and territory reports and do not represent just Indigenous people who were homeless and staying with friends and relatives across Australia. The 5,438 number from Counting the Homeless 2006 represents homeless Indigenous people staying with friends and relatives (872 in the reviewed ABS estimates) and people staying in SAAP on Census night (2,692 in the reviewed ABS estimates). The 1,874 people difference between the Counting the Homeless 2006 and the reviewed ABS total estimates derives mainly from the Counting the Homeless 2006 use of a SAAP support period estimate, rather than the estimate of the number of people accommodated on Census night.

(16) The ABS has advised that the AIHW was a member of the Steering Committee for the methodological review and participated in all three review workshops.

(17) The ABS has advised that this issue has not been addressed in any former estimates of homelessness and will be the subject of ongoing research by the ABS, including through focus group work following the Census, and in the design and development of culturally appropriate homelessness modules in the ABS’s national surveys of Aboriginal and Torres Strait Islander people.

(18) The ABS has advised that, in consultation with a range of organisations and government departments at all levels, it implemented a range of changes to its Indigenous Enumeration Strategy (IES) for the 2011 Census. The IES drew on the extensive evaluation undertaken of the 2006 Census data and field processes. It incorporated improvements to the enumeration procedures for Indigenous people living in urban areas, as well as remote communities.

The ABS has advised that, at a broad level, the range of improvements in the 2011 IES have provided for:

- more detailed planning of the enumeration process;
- earlier, more detailed and ongoing engagement;
- reorganisation and increased flexibility of the field operation to ensure that for each area the appropriate enumeration methodology is used and documented, including targeted responses in areas where there are significant issues impacting enumeration;
- increases in the number of field staff positions;
- systems and procedures to enhance the collection of management information and to allow for closer management of the field operation and the tracking of progress;
- a greater level of support to Indigenous people who need assistance in completing their form particularly in urban areas; and,
- a reduction in the overall timing of remote Indigenous enumeration, to counter the effects of a longer enumeration period.

(19) (a) The ABS developed an overall national strategy and implemented detailed operational plans at regional levels. These regional plans were developed after close consultation and ongoing engagement with stakeholders and service providers within those regions.

The ABS has advised that these plans included working closely with service and accommodation providers to identify locations of people experiencing homelessness and employing staff from these...
organisations to assist with the homeless count. The ABS will also employed people who have been homeless to assist with the homeless count. Homeless Enumeration Coordinators were also employed in urban areas such as in Darwin, Katherine and Alice Springs.

(19) (b) The ABS has advised that, if possible, the enumeration period for the rough sleeper count in the Northern Territory should be conducted on the one day. A count on the one day provides for a snapshot at a particular point of time and minimises the risks of both under and over counting. However, where circumstances preclude this, the period can be extended to ensure maximum possible coverage.

(20) The Census is not the only data relied on by Governments to ascertain the extent of homelessness or indeed the demand for homelessness services. The Government has committed to strong targets to reduce homelessness across Australia and our record has been to increase funding for services by more than 55 per cent over four years.

It should also be noted that states and territories are responsible for the allocation of supported accommodation funding that is provided by the Commonwealth.

(21) The ABS has advised that it has received a submission in response to the ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006, which states that "...there are 861 young person headed households in crisis and awaiting assistance."

In regard to the revised estimate for the number of people aged 12 to 24 experiencing homelessness on census night which decreased from 32 444 to 13 316(discussion paper, p. 73):

(22) Please refer to the ABS’ Position Paper on the Review of the Counting the Homeless methodology.

(23) Please refer to the ABS Position Paper on the Review of the Counting the Homeless methodology. This paper responds to submissions made and feedback received during the ABS' consultation with the sector regarding the review.

(24) (a) Please refer to the ABS' Position Paper on the Review of the Counting the Homeless methodology.

(24) (b) The Department of Families, Housing, Community Services and Indigenous Affairs(FaHCSIA) is on the steering committee for the methodological review and they will also be on the Homelessness Statistics Reference Group.

In regard to the decision not to use the National Census of Homeless School Students, which in 2006 identified approximately 7 000 young people who were homeless but still at school:

(25) The ABS has advised that it has not had any role in the funding, design, development or conduct of the NCHSS.

(26) Yes.

(27) The ABS is conducting a national survey of secondary school students and it has not received advice that a count is not required.


(29) (a) The ABS has advised that, as well as targeted enumeration of those sleeping rough, such as inner city areas of capital cities and other identified major urban centres, all Census field staff are tasked with identifying rough sleepers in their workloads so that they can be included in the Census.

(29) (b) The ABS has advised that extensive engagement was undertaken with community groups, Non-Government Organisations(NGOs), service providers and Indigenous communities to raise awareness of the Census and the importance of an accurate count.

(29) (c) The ABS has advised that these areas were identified early in fieldwork planning, and local plans were developed to ensure that the rough sleepers in the 'long grass' were counted.
(29) (d) The ABS has advised that these individuals and families were asked, like other residents of private motels, to participate in the census.

(29) (e) The ABS has advised that the Census communications campaign included tailored messages encouraging people who may be staying with friends, but who have no usual address, to report “none” in the usual address question on the Census form.

(30) The ABS advises that this is incorrect. The published ABS Discussion Paper, Methodological Review of Counting the Homeless, 2006, provides details for the various categories of homelessness.

(31) See the answer to Question 30.

Finance and Deregulation
(Question No. 1103)

Senator Cormann asked the Minister for Finance and Deregulation, upon notice, on 9 September 2011:

Has the Commonwealth made or is it planning to make direct payments to local councils for road works, including the construction of bicycle paths with respect to the year ended:

(a) 30 June 2010;
(b) 30 June 2011; and
(c) 30 June 2012.

Senator Wong: The answer to the honourable senator's question is as follows:

Yes.

I refer the Senator to the budget and related documents for the financial years in his question. The Commonwealth has made and is planning to make direct payments to local councils for road works, including the construction of bicycle paths.

The following key programs provide funding directly to local councils exclusively for local roads and bicycle paths.

- Nation Building – Roads to Recovery;
- Nation Building – Off-network projects; and
- Jobs Fund – National Bike Path Projects.

The following programs also provide funding to local councils for local roads and bicycle paths as part of larger community infrastructure projects:

- Better Regions;
- Regional and Local Community Infrastructure Program;
- Community Infrastructure Grants; and
- Regional Development Australia Fund.

Finance and Deregulation: Staffing
(Question No. 1124)

Senator Humphries asked the Minister for Finance and Deregulation, upon notice, on 12 September 2011:

(1) Have staffing numbers in agencies within the Minister's portfolio been reduced as a result of the efficiency dividend and/or other budget cuts; if so, in which areas and at what classification.

(2) Are there any plans for staff reduction in agencies within the Minister's portfolio; if so, can details be provided i.e. reduction target, how this will be achieved, services/programs to be cut etc.
(3) What changes are underway or planned for graduate recruitment, cadetships or similar programs, and if reductions are envisaged can details be provided, including reasons, target numbers etc.

Senator Wong: The answer to the honourable senator's question is as follows:

(1) to (3) For the period of 2011-2012 and the three forward estimates, the Department of Finance and Deregulation, the Australian Electoral Commission, the Future Fund Management Agency and the Commonwealth Superannuation Corporation have a 'nil' response.

The response from ComSuper is as follows:

The 2011-12 Portfolio Budget Statement for ComSuper set out expected staffing numbers for 2011-12. The average staffing level is expected to reduce from 520 in 2010-11 to 440 in 2011-12. The reduction mainly reflects the outsourcing of the administration of the Public Sector Superannuation accumulation plan (PSSap) but also changes in project work and the impact of efficiency savings agreed with government, including through the operation of the efficiency dividend on the calculation of ComSuper's agency fee revenue. The staff reductions will mainly come from the PSSap administration and supporting areas and at the APS classification levels (i.e. APS3-6 levels).

The arrangements noted above will continue to operate over the three forward estimates. ComSuper's staffing level is expected to continue to gradually fall in line with efficiency arrangements. ComSuper expects to deliver these savings through improvements in processes, data quality and systems without a reduction in service levels.

ComSuper is currently in discussion with the Australian Institute of Superannuation Trustees to explore the possibility of engaging one graduate as part of their SuperGrads program in 2012. These discussions are consistent with past practice.

Special Minister of State: Staffing
(Question No. 1149)

Senator Humphries asked the Minister representing the Special Minister of State, upon notice, on 12 September 2011:

(1) Have staffing numbers in agencies within the Minister's portfolio been reduced as a result of the efficiency dividend and/or other budget cuts; if so, in which areas and at what classification.

(2) Are there any plans for staff reduction in agencies within the Minister's portfolio; if so, can details be provided i.e. reduction target, how this will be achieved, services/programs to be cut etc.

(3) What changes are underway or planned for graduate recruitment, cadetships or similar programs, and if reductions are envisaged can details be provided, including reasons, target numbers etc.

Senator Wong: The Special Minister of State has provided the following answer to the honourable Senator's question:

Please refer to the Minister for Finance and Deregulation's response to Question no. 1124.

Climate Change and Energy Efficiency
(Question No. 1179)

Senator Abetz asked the Minister representing the Minister for Climate Change and Energy Efficiency, upon notice, on 13 September 2011:

With reference to the department and all agencies within the Minister's portfolio:

(1) What was the total cost of allowances for government employees or contractors working at sea for the 2010-11 financial year.

(2) What is the daily allowance for working at sea.

(3) How many days in total were spent at sea in the 2010-11 financial year.
Senator Wong: The Minister for Climate Change and Energy Efficiency has provided the following answer to the honourable senator's question:

(1) The total cost of allowances for government employees or contractors of the Department of Climate Change and Energy Efficiency (DCCEE) and its portfolio agencies working at sea for the 2010-11 financial year was $0.

(2) DCCEE and its portfolio agencies do not provide a daily allowance for government employees or contractors of DCCEE or its portfolio agencies for working at sea.

(3) DCCEE and its portfolio agencies did not have any government employees or contractors working at sea for the 2010-11 financial year.

Charitable Organisations

(Question No. 1222)

Senator Ludlam asked the Minister representing the Treasurer, upon notice, on 21 October 2011:

With reference to the High Court of Australia ruling handed down on 3 December 2008, *Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited [2008] HCA55*, and the taxation treatment of not-for-profit or charitable housing organisations:

(1) Since the 'Word' decision which determined that surpluses generated by a charitable organisation were exempt from taxation if they were put back into the charity, have any issues been raised by the department in relation to charitable housing organisations.

(2) Has the department proposed legislation that places a one financial year timeline on the use of a surplus by a charitable organisation; if so, when will this be implemented.

(3) What consultation was undertaken with the not-for-profit housing sector prior to proposing this legislation.

(4) Is the department currently engaged in specific efforts to target the taxation of surpluses raised by charitable or not-for-profit organisations.

(5) Is the department or the Australian Taxation Office currently engaged in any specific effort that targets the activities of affordable housing providers.

(6) What resourcing within the department is currently devoted to charitable organisations.

(7) What resourcing within the department is currently working in the area of affordable housing.

Senator Wong: The Treasurer has provided the following answer to the honourable senator's question:

(1) Since the High Court decision in the *Word Investments* case, the department has raised issues regarding a behavioural shift within the not-for-profit (NFP) sector including, but not limited to, the charitable housing sector. These issues were raised in respect to the growing risk that profits of unrelated commercial activities undertaken by NFP entities may not not be being applied to the entity's charitable or altruistic purpose.

(2) The Government is currently in the process of consulting with the NFP sector on the design and implementation details of the 2011-12 Budget measure to better target NFP tax concessions, including with respect to timing issues.

(3) No targeted consultation was undertaken with representatives of the NFP housing sector prior to the 2011-12 Budget announcement. However, the Government met with NFP sector representatives prior to the Budget announcement.

(4) The Treasury is currently engaged in implementing the Government's 2011-12 Budget measure to better target NFP tax concessions, which will cover the entire NFP sector.
(5) The Treasury and the Australian Taxation Office are currently engaged in implementing the Government’s 2011-12 Budget measure to better target NFP tax concessions, which will cover the entire NFP sector.

(6) The Philanthropy and Exemptions Unit is comprised of ten Full-Time Equivalent (FTE) staff. In addition to other responsibilities, the unit advises the Government on regulation and taxation issues for charitable organisations and the NFP sector.

The considerable expertise of the Interim Taskforce for the Australian Charities and Not-for-profit Commission is also located within Treasury and is comprised of 10 FTE staff at present. This taskforce is advising the Government on the establishment of the Australian Not-for-profits Commission.

(7) The Cities, Housing and Planning Unit is comprised of three Full-Time Equivalent (FTE) staff. In addition to other responsibilities, the unit advises the Government on housing supply and affordable housing issues.

Climate Change and Energy Efficiency
(Question No. 1223)

Senator Ludlam asked the Minister representing the Minister for Climate Change and Energy Efficiency, upon notice, on 20 September 2011:

With reference to the mandatory residential disclosure scheme:

(1) What is the current status of the phase-in of mandatory disclosure of residential building energy, greenhouse and water performance at the time of sale or lease, (the ‘mandatory disclosure scheme’) as agreed to by the Council of Australian Governments (COAG) in April 2009.

(2) When is it due for introduction.

(3) Will the timeline be met.

(4) Can the Minister confirm it was COAG’s intention for a national scheme.

(5) Does the Regulatory Impact Statement (RIS) include the option for a national mandatory disclosure scheme; if not, why not.

(6) Does the RIS include any analysis of the efficacy of ratings tools used across the states and territories.

(7) Does the RIS include recommendations on a single rating tool.

(8) Can an outline be provided of the consultation that has occurred with the property industry and other stakeholders to date, in relation to the mandatory disclosure scheme.

Senator Wong: The Minister for Climate Change and Energy Efficiency has provided the following answer to the honourable senator’s question:

The Commonwealth, state and territory governments released a Consultation Regulation Impact Statement in July 2011 on the proposed Residential Mandatory Disclosure Scheme and undertook a series of public consultations and web-based discussions throughout July and August. The Regulation Impact Statement (RIS) looked at the costs and benefits of various options for the proposed scheme. Submissions closed on 12 September 2011 and 137 submissions were received. Governments are now considering the submissions and will develop a Decision Regulation Impact Statement on the proposed measure to present to the Council of Australian Governments (COAG) in 2012.

Implementation of the scheme was initially intended to be phased in by May 2011; however, due to lengthy inter-jurisdictional consideration of scheme design and implementation options, the Ministerial Council on Energy extended the timeframe and the scheme is now due to be implemented from 2012.
The proposed measure will be implemented by state and territory governments in accordance with applicable state or territory legislation. The timing of implementation will ultimately be a matter for state and territory governments to determine.

The COAG commitment does not specify a national scheme. Governments are working together to identify which elements of the scheme would be most efficiently and effectively delivered within a consistent framework.

The analysis in the RIS considers the benefits and costs of national implementation of the different scheme options. This is consistent with the COAG commitment.

The RIS does not explicitly model the rating tools currently used in the ACT and Queensland, the two jurisdictions that have a version of mandatory disclosure. However, it does draw on judgements and seek comment on the likely impacts of using similar tools when modelling scheme options.

No, the Consultation RIS provides a benefit-cost analysis of different implementation options for mandatory disclosure, and explicit within the description of each of these options are the assumptions around the accuracy and technical complexity of the assessment tool.

Public consultation sessions were held in each capital city and were widely advertised in major and regional newspapers. Ten online discussion sessions were also held to provide a further opportunity for stakeholders to ask questions or raise issues. Meetings were held with Commonwealth and state officials and major stakeholder groups including:

- the Property Council of Australia;
- the Housing Industry Association;
- the Real Estate Institute of Australia;
- the Real Estate Institute of Western Australia;
- the Real Estate Institute of South Australia;
- the Real Estate Institute of Queensland; and
- the Association of Building Sustainability Assessors.


Sustainability, Environment, Water, Population and Communities (Question No. 1266)

Senator Abetz asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, on 4 October 2011:

With reference to the answer provided to question on notice no 909 (Senate, Hansard, 20 September 2011, p. 91):

(1) In relation to (2) of the answer, were the discussions referred to held prior to the importation of fox scats.

(2) Were any fox scats imported into Tasmania without the ‘freezing’ treatment; if so, can the number or weight of that which was imported be listed.

Senator Conroy: The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator's question:

(1) Yes – some discussions occurred prior to the importation of fox scats. Relevant discussions within the state department commenced in October 2007, and the importation commenced November 2007.

QUESTIONS ON NOTICE
There were 945 grams of bulked fox scats imported into Tasmania from November 2007 to May 2008 not treated by freezing. An additional 621 individual fox scats imported for training purposes between June 2008 and February 2010 were also not treated by freezing.

All used scats, including those imported to Tasmania between 2007 and 2010, are disposed of via registered commercial and quarantine waste disposal services after they have been used for training or research purposes, except for those returned to the mainland for further analysis.

Carbon Pricing
(Question No. 1269)

Senator Ian Macdonald asked the Minister representing the Minister for Climate Change and Energy Efficiency, upon notice, on 6 October 2011:

(1) What percentage of the atmosphere is composed of carbon dioxide.
(2) What percentage of the total carbon dioxide is of human-related origin.
(3) What percentage of the human-related carbon dioxide is sourced from Australia.
(4) How much global warming, in degrees Celsius, will be averted should Australia reduce its carbon dioxide emissions by 5 per cent by 2020.
(5) What will be the total cost by 2020, and the cost per family of four persons, the government policies that are intended to effect the 5 per cent reduction.

Senator Wong: The Minister for Climate Change and Energy Efficiency has provided the following answer to the honourable senator's question:

(1) Climate scientists advise that carbon dioxide (CO2) in the atmosphere is currently approximately 390 parts per million (ppm). CO2 levels are now about 40 per cent higher than pre-industrial levels and are well beyond the levels of the last 800,000 years of between 172 and 300 ppm.
(2) Accumulation of human produced CO2 has resulted in humans being responsible for 28 per cent of the CO2 currently in the atmosphere.
(3) Australia is one of the world's major emitters. In 2005 – the most recent year for which comprehensive data is available for both developed and developing countries – Australia's emissions of all greenhouse gases represented around 1.5 per cent of the global total. This places Australia in the top 20 highest emitting countries in the world, with emissions similar to the United Kingdom, Italy, France and Spain. In addition to being one of the world's major emitters, Australia is also one of the highest per capita emitters.
(4) Australia's emissions reduction efforts should be considered in a global context. Australia is committed to playing a full, fair and constructive part in building global solutions to climate change. An effective global solution requires action from all major emitters.

Two countries contribute up to 35 per cent of global emissions: the United States and China. However, 19 countries are responsible for the next 40 per cent of emissions – individually emitting between 1 and 5 per cent of global emissions. Action by these 19 major emitters, including Australia with 1.5 per cent of global emissions, must be part of an effective global response.

The Australian Government's Clean Energy Future plan will cut pollution by at least 5 per cent compared with 2000 levels by 2020. This will require cutting net expected pollution based on business as usual projections by at least 23 per cent in 2020.

Under the United Nations climate change negotiations, countries have agreed the goal to limit global average temperature rise to below 2 degrees celsius above pre industrial levels.

The Government is committed to taking effective action, as part of an overall global effort to reduce greenhouse gas emissions, to meet the 2 degree goal. Without effective action to reduce emissions...
scientists predict we could see temperatures rise up to 6.4 degrees Celsius by the end of this century. This could mean that average sea levels rise by up to a metre and the world's oceans could become too warm and acidic to support coral reefs.

(5) The Government has released detailed tables showing the cost of the scheme over the forward estimates period. They show that there is an upfront cost, but after that the scheme is broadly budget neutral. The Government has not released costings beyond the forward estimates period, which is consistent with Treasury advice and the Charter of Budget Honesty.

The cost of the scheme on a household depends on the household's particular circumstances such as the size of their house, their energy use and how well insulated the house is.

On average, households will see cost increases of $9.90 per week, including $3.30 per week on the average electricity bill and $1.50 per week on the average gas bill.

Nine out of ten households will be provided with assistance to help meet the expected average impact of a carbon price on their cost of living through tax cuts, increases to government payments or a combination of these. On average, households will receive $10.10 per week in assistance.

For example:

- A typical dual income family with two children aged 5-12 and a household income of $70,000 (split 70:30) is expected to have a carbon price impact of around $523 per year. Through tax cuts and increases to their family payments, this family will receive around $1,200 in assistance and will be around $680 better off.

- A family with two teenage children aged 13-17 and earning an income of around $100,000 (split 50:50), is expected to face an average cost of living impact of $653 per year. This family will receive assistance of about $679 per year made up of approximately $73 extra in payments and $606 in tax cuts, which means they are $26 better off.

For further detail on household assistance, including further cameo examples, please see the Clean Energy Future website at: www.cleanenergyfuture.gov.au.

**Austrade**

(Question No. 1280)

**Senator Milne** asked the Minister representing the Minister for Trade, upon notice, on 14 October 2011:

(1) Is the Minister aware of the case history between Austrade Nagoya and Mr Mark Eather formerly of Jolly Roger Exports Pty Ltd, a successful and world renowned sustainable seafood export business that was destroyed following dealings with a phantom company (Yamaichi Tsusho Ltd) introduced to Mr Eather by Austrade Nagoya management, Mr Ian Brazier and Mr Takehiro Yoshimoto.

(2) Is the Minister aware that Mr Eather has been left with substantial debts, the loss of his business and professional reputation, as well as considerable personal difficulties, as a direct result of Austrade Nagoya insisting he do business with a phantom company and person using a false name.

(3) Can an explanation be provided as to why the department is unable to provide any documentation of correspondence between Austrade and Mr Kasamatsu of Yamaichi Tsusho Ltd prior to their endorsement of Mr Kasamatsu.

(4) On what grounds did Austrade Nagoya recommend business dealings with Mr Kasamatsu of Yamaichi Tsusho Ltd, in which it asserted the company is ‘one of our good customers’ and Mr Kasamatsu ‘is [a] trustworthy business man and [Austrade] enjoy good relationship with him [sic]’?

(5) Can an explanation be provided as to why Austrade Nagoya sought basic company information from Mr Kasamatsu (regarding the name and address of his company, his position, year of company
establishment, and the company’s capital stock, turnover and the nature of its business) 2 months after recommending his customer status to Mr Eather.

(6) (a) What was Messrs Brazier and Yoshimoto’s tenure at Austrade Nagoya; and (b) when did they commence and end their management role at Austrade Nagoya.

(7) When and why was the Austrade Nagoya office closed.

(8) Were performance audits of Austrade Nagoya ever conducted; if so, can copies of all the audit results and performance assessments be provided.

(9) Was any investigation conducted of Austrade’s endorsement of Mr Kasamatsu and Yamaichi Tsusho Ltd; if so, can a copy of the investigation report be provided; if not, why not and who made the decision not to investigate.

(10) (a) When was Yamaichi Tsusho Ltd (Suite 405, 0-31, Yamada-cho, Kaga-shi, Ishikawa-ken, Japan 922-0413) registered and consequently deregistered as an Austrade trading partner; and (b) why was it deregistered as an Austrade trading partner.

(11) Who were the directors on Yamaichi Tsusho Ltd’s board.

(12) Is it common practice for Austrade to require Australian business owners and operators to enter into business dealings with companies or persons unknown to Austrade, and can a copy be provided of any guidelines or requirements that govern the activities of Austrade employees regarding their obligation to do due diligence on any company registered as an Austrade business partner.

(13) Given there is no evidence of communication between Mr Kasamatsu and Austrade prior to his endorsement, can the Minister confirm that the Attorney-General’s Legal Services Directions have been followed regarding the 50 per cent Deed of Settlement afforded to Mr Eather, especially since Commonwealth agencies are obliged at all times to act honestly and fairly in handling claims according to section 55ZF of the Judiciary Act 1903.

Senator Conroy: The Minister for Trade has provided the following answer to the honourable senator’s question:

(1) I (Dr Emerson) am aware of the claims made by Mr Eather.

(2) See (1) above.

(3) I am advised that communication between Austrade and Mr Kasamatsu was initially undertaken by telephone.

(4) Austrade provides Australian exporters with introductions to prospective overseas customers. Conducting due diligence, negotiating terms of trade, insurance and securing payment is the responsibility of the exporter.

I am advised that in February 2000, Austrade Nagoya introduced Mr Kasamatsu, of Yamaichi Tsusho, to Mr Eather. Mr Eather dealt directly with Mr Kasamatsu from February 2000 to July 2000. Austrade did not participate in any meetings between the parties.

Austrade Nagoya relied on information provided by Mr Kasamatsu when introducing Mr Kasamatsu to Mr Eather.

(5) I am advised that, at this time, Austrade sought written confirmation of the company information previously provided by Yamaichi Tsusho Ltd in initial telephone conversations. See (3) above.

(6) Mr Brazier was employed at Austrade Nagoya from 4 May 1997 to 14 July 2001. Mr Yoshimoto was employed at Austrade Nagoya from November 1998 to 31 August 2009.

(7) Austrade Nagoya was closed on 31 August 2009 for operational reasons.

(8) Yes. Documents covering this question were provided to your (Senator Milne) office on 26 May 2011 following a Freedom of Information request.
(9) Austrade engaged law firm Mallesons Stephens Jaques to undertake an examination of all the relevant circumstances and available information. This legal advice is privileged.

(10) A search of Austrade’s current and previous database does not reveal any entry, or subsequent deletion, for Yamaichi Tsusho Ltd.

(11) I am advised that Austrade does not have any information about the directors of Yamaichi Tsusho Ltd.

(12) Austrade provides introductions between Australian exporters and prospective overseas customers. It does not, and cannot, ‘require’ any company to trade with another.

Austrade does not undertake due diligence for Australian exporters. Conducting due diligence, negotiating terms of trade, insurance and securing payment is the responsibility of the exporter.

Austrade’s internal client service document Meeting Our Clients’ Needs - A Practical Handbook, dated July 1999, contains the following entry:

Assisting in the selection of a long term strategic export partner: …Clients (i.e. Australian exporters) will need to engage professional financial and legal counsel to complete due diligence tests or other technical assessments of business capacity or capability. Austrade may be able to arrange for a credit/status report on a potential partner, should the client require one.

(13) On 8 July 2010, The Office of Legal Service Co-Ordination (OLSC), which administers the Legal Services Directions 2005 (the Directions), concluded that Austrade had acted in a manner consistent with the Directions after considering the concerns raised by Mr Eather about Austrade’s handling of his claim and events leading to the signing of the Deed of Settlement and Release. Mr Eather was legally represented at the time and the terms of the Deed are confidential.

**Australian Competition and Consumer Commission**

*(Question No. 1281)*

**Senator Abetz** asked the Minister representing the Treasurer, upon notice, on 14 October 2011:

With reference to the answer to question on notice no. 708 (Senate *Hansard*, 17 August 2011, p. 4768):

(1) In relation to paragraphs 2a.(i) and 2a.(ii), can the Australian Competition and Consumer Commission (ACCC) acknowledge that Mr Patrick Crouche, Deputy Regional Director of the ACCC’s Melbourne office, was in fact the author of both items of correspondence.

(2) Is there any reasonable doubt that Mr Crouche was the author of those letters; if so, can an explanation as to why be provided.

(3) What documentary evidence does the ACCC have to ‘establish’ the reason for the bike component failure referred to in that correspondence.

(4) In relation to paragraph 7, did the ACCC fail to answer the question because it could not provide examples where Mr Groombridge’s alleged selective quoting may have been misleading.

(5) Can the ACCC provide any real world example of where the alleged selective quoting may have been misleading.

(6) In relation to the answer provided in paragraph 6, can the ACCC confirm that it is unable to provide any documentary evidence of any consultation with any representative on the Standards Australia Technical Committee for Pedal Bicycles (or staff with technical qualifications including science and engineering) about the assessment of the first of the HRL Technology Pty Ltd reports.

**Senator Wong**: The Treasurer has provided the following answer to the honourable senator's question:

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**QUESTIONS ON NOTICE**
(1) Both items of correspondence were authored by ACCC staff. As noted in the ACCC's response to question on notice no. 708 the letter dated 13 December 2005 is a draft only.

(2) The contributors to the drafting of both items of correspondence cannot be ascertained with certainty. The ACCC's document management system in 2005 did not record contributors to the drafting of documents.

(3) The ACCC does not hold documentary evidence which establishes the precise reason for the component failure on Mr Groombridge's bicycle.

(4) The ACCC did not fail to answer the question.

(5) In its response to Senate Question 156, paragraph 19, the ACCC simply made the general observation that written material which is not in its context can be misleading.

(6) That is correct.

Mr Assange, Julian
(Question No. 1282)

Senator Ludlam asked the Minister representing the Minister for Foreign Affairs, upon notice, on 21 October 2011:

Given the Minister's responsibility for the protection of consular and legal rights of all Australian citizens overseas:

(1) Has the Government maintained communication with Mr Julian Assange and extended consular and legal support while he adheres to bail conditions that include the surrendering of his passport, house arrest, electronic tagging, observation of curfews and daily reporting to police; if so, through what channels, and when and what services have been received.

(2) Has the Government sought assurances from Sweden that, if extradited, Mr Assange will be questioned or face the charges of which he is accused and will not be subject to the temporary surrender mechanism that could see him extradited to the United States of America (US).

(3) Has the Government investigated allegations in The Independent of 8 December 2010 that the US and Sweden have already commenced discussions on Mr Assange's extradition.

(4) Has the Government ascertained whether or not a reported sealed indictment of a US Grand Jury exists for crimes under the Espionage Act of 1917 or other statutes.

(5) Does the Government define the work of Mr Assange in his capacity as Editor in Chief of Wikileaks as 'having implications for Australia's foreign relations', thereby triggering the application of the Intelligence Services Act 2001.

(6) Has the department provided advice to the Australian Security Intelligence Organisation regarding investigations of Wikileaks.

(7) On what date did the Government communicate to the US the results of the Australian Federal Police investigation that indicated that Mr Assange had not committed a crime under Australian law in his capacity as Editor in Chief of Wikileaks.

(8) Has the Government sought clarification from the US Government as to what crimes Mr Assange is being investigated for by the Grand Jury in Alexandria.

(9) Can the Minister confirm that the Government would not extradite Mr Assange to the US should he return home.

(10) Why has the Government failed to or refused to supply an answer to the question taken on notice on 2 June 2011 regarding a public interest immunity ground for a blanket refusal to answer any question arising from information in US cables made public through Wikileaks.

(11) Has the Government reactivated the Wikileaks taskforce on the release of the unredacted cables.
Senator Conroy: The Minister for Foreign Affairs has provided the following answer to the honourable senator's question:

(1) Mr Assange has received high level consular assistance in accordance with the consular charter. Consular officials have attended all eleven of Mr Assange’s court appearances. Consular officers spoke to Mr Assange on the day he was first detained, and the following day, and visited him in detention. Consular officials raised matters of concern with prison authorities while he was detained. Consular officers continue to monitor his case closely and have been in regular touch with his lawyers. Consular officers have also provided assistance to Mr Assange’s mother, including arranging access for her to visit him in detention and offer to brief her on the consular aspects of Mr Assange’s case. In relation to the current extradition proceedings between the UK and Sweden, Australia’s Ambassador to Sweden sought assurances on three occasions from Swedish authorities that Mr Assange’s case would proceed in accordance with due process (7 December 2010, 5 January 2011 and 10 February 2011). Assurances have also been sought from the relevant UK authorities.

(2) The Government sought assurances on three occasions from Sweden that Mr Assange’s case would be handled in accordance with due process (7 December 2010, 5 January 2011 and 10 February 2011).

(3) The Australian Government is closely monitoring all developments in Mr Assange’s case. The Government is not aware of any current extradition request by US authorities.

(4) The Australian Government is not aware of any charges by the US Government against Mr Assange, including under the US Espionage Act.

(5) This is a matter for the Attorney-General.

(6) No.

(7) The Department of Foreign Affairs and Trade has no record of any formal communication to the US Government of the results of the AFP evaluation. The AFP has posted a media release on its website advising the outcome of the evaluation.

(8) The Australian Government has no formal advice of any Grand Jury investigation.

(9) This is a matter for the Attorney-General.

(10) This is a matter for the Attorney-General.

(11) The Department of Foreign Affairs and Trade is not currently involved in any active Wikileaks taskforce work on the release of un-redacted cables.

Sustainability, Environment, Water, Population and Communities

(Question No. 1286)

Senator Abetz asked the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, upon notice, on 27 October 2011:

With reference to the answer to question on notice no. 1020 (Senate Hansard, 12 October 2011, p. 105), why did it take 46 days or thereabouts to have this answer transmitted to the committee.

Senator Conroy: The Minister for Sustainability, Environment, Water, Population and Communities has provided the following answer to the honourable senator’s question:

As per the previous responses provided in Senate Question on Notice 837 and 1020 the answer to question on notice 71 from the Additional Budget Estimates hearing in February 2011 was provided to the Committee on 23 May 2011, immediately after it was approved for tabling and prior to the Department of Sustainability, Environment, Water, Population and Communities appearance at the budget estimates hearing on 24 and 25 May 2011.