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SITTING DAYS—2016

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FORTY-FIFTH PARLIAMENT
FIRST SESSION—FIRST PERIOD

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

Senate Office Holders
President—Senator Hon. Stephen Parry
Deputy President and Chair of Committees—Senator Susan Lines
Temporary Chairs of Committees—Senators Back, Bernardi, Gallacher, Ketter, Marshall, O'Sullivan, Reynolds, Sterle and Whish-Wilson
Leader of the Government in the Senate—Senator Hon. George Henry Brandis QC
Deputy Leader of the Government in the Senate—Senator Hon. Mathias Cormann
Leader of the Opposition in the Senate—Senator Hon. Penny Wong
Deputy Leader of the Opposition in the Senate—Senator Hon. Don Farrell
Manager of Government Business in the Senate—Senator Hon. Mitch Peter Fifield
Manager of Opposition Business in the Senate—Senator KY Gallagher

Senate Party Leaders and Whips
Leader of the Liberal Party in the Senate—Senator Hon. George Henry Brandis QC
Deputy Leader of the Liberal Party in the Senate—Senator Hon. Mathias Cormann
Leader of The Nationals in the Senate—Senator Hon. Nigel Scullion
Deputy Leader of The Nationals in the Senate—Senator Hon. Fiona Nash
Leader of the Opposition in the Senate—Senator Hon. Penny Wong
Deputy Leader of the Opposition in the Senate—Senator Hon. Don Farrell
Leader of The Australian Greens—Senator Richard Di Natale
Co-deputy Leaders of the Australian Greens in the Senate—Senators Scott Ludlam and Larissa Joy Waters
Chief Government Whip—Senator David Christopher Bushby
Deputy Government Whips—Senators David Julian Fawcett and Dean Anthony Smith
The Nationals Whip—Senator Matthew James Canavan
Chief Opposition Whip—Senator Anne Elizabeth Urquhart
Deputy Opposition Whips—Senators Catryna Louise Bilyk and Jennifer McAllister
Australian Greens Whip—Senator Rachel Siewert

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Pursuant to section 42 of the Commonwealth Electoral Act 1918, the terms of service of the following senators representing the Australian Capital Territory and the Northern Territory expire at the close of the day immediately before the polling day for the next general election of members of the House of Representatives.

**Party Abbreviations**

- AG—Australian Greens
- ALP—Australian Labor Party
- CLP—Country Liberal Party
- DHJP—Derryn Hinch's Justice Party
- FFP—Family First Party
- IND—Independent
- JLN—Jacqui Lambie Network
- LDP—Liberal Democratic Party
- LNP—Liberal National Party
- LP—Liberal Party of Australia
- NATS—The Nationals
- NXT—Nick Xenophon Team
- PHON—Pauline Hanson's One Nation

**Heads of Parliamentary Departments**

- Clerk of the Senate—R Laing
- Clerk of the House of Representatives—D Elder
- Secretary, Department of Parliamentary Services—R Stefanic
- Parliamentary Budget Officer—P Bowen

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(1) Chosen by the Parliament of Victoria to fill a casual vacancy (vice S Conroy), pursuant to section 15 of the Constitution.

(2) Vacancy created by the resignation of Senator Bob Day on 01 November 2016.
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<tr>
<td>Minister for Women</td>
<td>Senator the Hon Michaelia Cash</td>
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<tr>
<td>Cabinet Secretary</td>
<td>Senator the Hon Arthur Sinodinos AO</td>
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<tr>
<td>Minister Assisting the Prime Minister for the Public Service</td>
<td>Senator the Hon Michaelia Cash</td>
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<tr>
<td>Minister Assisting the Cabinet Secretary</td>
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<td>Minister Assisting the Prime Minister for Cyber Security</td>
<td>Hon Dan Tehan MP</td>
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<tr>
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<tr>
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<td>Hon Angus Taylor MP</td>
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<tr>
<td>Deputy Prime Minister and Minister for Agriculture and Water Resources</td>
<td>Hon Barnaby Joyce MP</td>
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<td>Assistant Minister for Agriculture and Water Resources</td>
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<td>Hon Luke Hartsuyker MP</td>
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<tr>
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<td>Hon Julie Bishop MP</td>
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<tr>
<td>Minister for Trade, Tourism and Investment</td>
<td>Hon Steve Ciobo MP</td>
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<tr>
<td>Minister for International Development and the Pacific</td>
<td>Senator the Hon Concetta Fierravanti-Wells</td>
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<td>Assistant Minister for Trade, Tourism and Investment</td>
<td>Hon Keith Pitt MP</td>
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<tr>
<td>Attorney-General</td>
<td>Senator the Hon George Brandis QC</td>
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<td><strong>Minister for Education and Training</strong></td>
<td>Senator the Hon Simon Birmingham</td>
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<td><strong>Minister for the Environment and Energy</strong></td>
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Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there is a Department of Human Services in the Social Services portfolio and a Department of Veterans’ Affairs in the Defence portfolio. The title of a department does not necessarily reflect the title of a minister in all cases. Assistant Ministers in italics are designated as Parliamentary Secretaries under the *Ministers of State Act 1952.*
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Each box represents a portfolio except for (1) which is in the Education portfolio, (2) which is in Treasury portfolio and (3) which is in the Health portfolio. Shadow Cabinet Ministers are shown in bold type.
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The PRESIDENT (Senator the Hon. Stephen Parry) took the chair at 10:00, read prayers and made an acknowledgement of country.

DOCUMENTS

Tabling

The Clerk: I table documents pursuant to statute. The list is available from the Table Office or the chamber attendants.

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

COMMITTEES

Meeting

The Clerk: Proposals to meet have been lodged as follows:

Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity—private briefing during the sitting of the Senate on Tuesday, 29 November 2016, from 3.30 pm.

Environment and Communications Legislation Committee—public meeting during the sitting of the Senate today, from 7.10 pm, to take evidence for the committee’s inquiry into the provisions of the Interactive Gambling Amendment Bill 2016.

Parliamentary Joint Committee on Intelligence and Security—private briefing during the sitting of the Senate today, from 12.30 pm.

Joint Standing Committee on the National Broadband Network—private briefing during the sitting of the Senate on Thursday, 1 December 2016, from 11 am.

Rural and Regional Affairs and Transport Legislation Committee—private briefing during the sitting of the Senate on Tuesday, 29 November 2016, from 3.30 pm.

The PRESIDENT: Does any senator wish to have the question put on any of those motions? There being none, I call the Attorney-General, Senator Brandis.

STATEMENTS

Attorney-General

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (10:02): by leave—Can I indicate to the chamber that at approximately noon I will be seeking leave to make a statement in relation to the matter of the Bell liquidation. I should mention that within the last hour I have received a letter from the Leader of the Opposition in the Senate, Senator Wong, foreshadowing a motion to require me to make a statement. It has been my intention, since well before I received Senator Wong's letter, to seek leave to make a statement. Therefore, no such motion is necessary and, in my view, it is not appropriate. However, I had a discussion with Senator Wong and, for reasons that seem satisfactory to her, she has indicated to me that the opposition will nevertheless move the motion requiring me to do that which I had already proposed to do. Given that there is a commonality of view about the desirability of a statement, the government will not oppose that motion.
Senator WONG (South Australia—Leader of the Opposition in the Senate) (10:03): I first seek leave to make a short statement and I foreshadow that I will then be seeking leave to move the motion that Senator Brandis has foreshadowed.

Leave granted.

Senator WONG: In relation to Senator Brandis's contribution, it is the case that the opposition, and I think many senators, believe it is appropriate for the Attorney-General to make a statement in this chamber responding to some allegations which have been made in the West Australian and in other places. I note to date he has not provided any public response. We are of the view that that is required. I note he has agreed to attend the chamber at noon to do so. By way of explanation to the chamber, we believe the motion is required to set up the architecture to ensure that occurs. Obviously we will be in the middle of debate, probably on the ABCC or other legislation, at that time—there will be a motion before the chair—and we would like to ensure that the Senate does what we believe it should do, which is to require an explanation from the minister concerned.

MOTIONS

Attorney-General

Senator WONG (South Australia—Leader of the Opposition in the Senate) (10:04): I seek leave to move a motion requiring the Attorney-General, Senator Brandis, to explain his actions with respect to the Bell Group litigation.

Leave granted.

Senator WONG: Mr President, it has been circulated. Do you wish me to read it?

The PRESIDENT: Is it brief?

Senator WONG: No.

The PRESIDENT: It has been circulated in the chamber, and you have outlined—

Senator WONG: I am happy to read it. I move:

That—

(a) the Senate requires the Attorney-General (Senator Brandis) to attend the Chamber at noon today;

(b) at noon, business be interrupted to enable Senator Brandis to attend the chamber to provide the Senate with a full explanation of his actions with respect to the Bell Group litigation, including:

(i) any discussions he had with the Government of Western Australia relating to this litigation and the Western Australian Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Amendment Bill 2016,

(ii) any discussions he had with the Prime Minister (Mr Turnbull), the former Prime Minister (Mr Abbott), the Treasurer (Mr Morrison), the former Treasurer (Mr Hockey), the Minister for Finance (Senator Cormann), the Minister for Revenue and Financial Services (Ms O’Dwyer), the Minister for Social Services (Mr Porter) or any other minister relating to the litigation or the Western Australian legislation, and

(iii) any directions he gave to the former Solicitor-General in relation to this matter; and

(c) at the conclusion of the explanation any senator may move to take note of the explanation.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (10:05): I just want to put this very clearly on the record because the Journals of the Senate will report the motion, of course.
What Senator Wong is asking that I do, and the Senate, by this motion, is requiring me to do, is the very thing that, as I said in my earlier statement, I was intending to ask the leave of the Senate to do.

Opposition senators interjecting—

The PRESIDENT: Order on my left!

Senator McKIM (Tasmania) (10:06): The Greens will be supporting this motion. We do look forward to the Attorney attempting to explain his actions at midday today. I want to be very clear to the Senate, however, that it is still the view of the Australian Greens that this matter needs to be referred to the Legal and Constitutional Affairs References Committee for an inquiry. We do not believe that the Attorney simply getting up and making a statement ought to be the end of this matter and we will continue to push for that inquiry. We hope that we can achieve the agreement of the Senate for that to occur because we think that there are a number of people who need to give evidence before such an inquiry, including the Attorney but also other senior current and former government ministers as well as people in the Western Australian government and the relevant Commonwealth and Western Australian state government departments. In conclusion, Senator Wong, I think in (3) you said 'minister' not 'senator', so I am just seeking clarification that in fact it is 'senator' there.

The PRESIDENT: Senator Wong, do you want to clarify that?

Senator WONG (South Australia—Leader of the Opposition in the Senate) (10:07): Yes, I am sorry if I misread that. At that conclusion of the explanation any senator may move to take note of the explanation.

The PRESIDENT: And that is clearly in the wording of the motion.

Senator IAN MACDONALD (Queensland) (10:07): I do not want to enter into the substantive debate but just to respond to the musings of Senator McKim—

Senator Whish-Wilson: Did you seek leave?

Senator IAN MACDONALD: I am seeking the same leave that Senator McKim did, which was none.

Honourable senators interjecting—

The PRESIDENT: Order! Order on both sides. There is no need for leave. We are debating a motion. Every senator has a right to speak to the motion. Senator Macdonald, you were speaking to the motion.

Senator IAN MACDONALD: Senator McKim is flagging a referral to the Legal and Constitutional Affairs References Committee. I do not think he said it here, but I am told by others—I did not see it—that he was talking about having the committee meet this week and report by the end of this week. I am not sure if that is what his intention is, but could I simply advise the Senate that that committee, of which I am only the deputy chair, is one that has a number of inquiries going. If there is any suggestion that it be this week, I would venture to say—and I can only speak for myself—that I certainly will not be attending. I suspect my other coalition colleague on this committee is also totally engaged in other matters, including matters in this chamber as well as other important committee matters, so it will end up being a Labor-Greens committee, which of course will have even less relevance and less authority than this committee usually has. I am just indicating that to Senator McKim. If that is his
intention, then it will be a Labor-Greens thing, which will have no relevance, no standing, no reliability.

Opposition senators interjecting—

The PRESIDENT: Order on my left! Order!

Senator IAN MACDONALD: What I am saying—and Labor senators may not understand this—is that coalition senators have a lot of things to do.

Opposition senators interjecting—

The PRESIDENT: On my left!

Senator IAN MACDONALD: When we speak in this chamber we do not read notes that some staffer might have prepared. I am just indicating that it will be a Labor-Greens committee and have no credibility at all. This committee does not have a lot of credibility, I have to say, but any such reference that requires anything more than a reasonable timescale will be completely incredible.

Question agreed to.

STATEMENT BY THE PRESIDENT

Harris, Mr Bernie

The PRESIDENT (10:10): I wish to inform the Senate of the passing of former Chief Hansard Reporter, Mr Bernie Harris. Bernie joined the then Department of the Parliamentary Reporting Staff in 1964 and served the parliament for 38 years until his retirement in 2002. I note Bernie's many years of service to Hansard and the parliament and express my condolences on behalf of the Senate to his family and friends.

BILLS

Building and Construction Industry (Improving Productivity) Bill 2013


Second Reading

Consideration resumed of the motion:

That these bills be now read a second time.

Senator CHISHOLM (Queensland) (10:11): On 6 October this year there was an incident in my home state that shows that safety on a worksite is more than just a political plaything for those opposite. I can remember where I was when I received the news. I was travelling from Townsville to Mackay when they announced that two workers had been killed after being crushed by a 10-tonne concrete slab at Eagle Farm racecourse. Those two gentlemen were Ashley Morris, a 34-year-old, and Humberto Leite, who was 55. I pass on my condolences to their families and friends.

Media reports revealed that several workers walked off that job in the days before the deadly incident, with one worker quoted as saying, 'It is the first time in my working life that I have walked off a project.' A manager of the project has since been charged with two counts of manslaughter. In terms of the media reports of these deaths and what has occurred since, it
sounds like a very, very tragic case. I will read part of the recent media report on the ABC news.

Two construction workers killed at Brisbane's Eagle Farm racecourse managed to escape one falling concrete wall only to be killed by a second, police have alleged, after the builder in charge of the site was arrested at the international airport.

Claudio D'Alessandro, 58, appeared in the Brisbane Magistrates Court on Wednesday on two counts of manslaughter, after being charged on Tuesday.

D'Alessandro was arrested at Brisbane international airport, where he was embarking on a spur-of-the moment, four-day holiday to the Philippines.

The report went on to say:

The court was told the men were helping to install a four-walled "foul water settling tank" consisting of four individual walls, each about four square metres and weighing about 10 tonnes.

The walls were lowered individually onto the floor with a crane, with the first three walls, once in place, being "tied" to each other across the top corner by use of adjustable temporary bracing.

A police affidavit stated that the men were working in a "pit" under D'Alessandro's instructions trying to lower the concrete walls when they began to collapse.

The pair managed to "ride down" one concrete slab as it fell but were crushed after the wall's failure caused a second slab to topple forward.

It sounds like a particularly horrific death for those poor workers. Again, my condolences go to their families and friends.

This was a shocking incident, which was made worse by the documents submitted in court showing that the deceased workers had actually raised significant concerns with their manager about the safety of the work they were doing in lowering the concrete panels into place. Yet those opposite want to reduce the ability of workers to raise these types of concerns, making it more difficult for unions to hold employers accountable for the safety concerns of their workers.

In light of incidents such as this, it is fairly remarkable that the government are still pushing the Building and Construction Industry (Improving Productivity) Bill through in the same form it has been in since 2013. But I think this gives you an understanding of their motivation. This is just the latest plank in their attack on workers. The idea behind this bill, which was what the double dissolution election was fought on, had previously been rejected by this parliament a number of times. The rationale for the double dissolution was barely mentioned during the two-month campaign. It is really no wonder that their campaign was off the rails.

But here we are, almost five months later, and finally they are bringing this legislation into the Senate for debate. What we are seeing from the LNP government is a continued ideological attack on workers. We have already seen reports in the media over recent days that that attack is only just starting and that they are only going to push further and harder next year in a return to a Work Choices style environment. The difference is that they are doing it piece by piece these days, but the outcome is still the same. It is an attack on workers and it is one that Australians are waking up to.
It is also what we see from LNP governments across Australia. In my own state of Queensland we saw, on the election of the Campbell Newman government, a harsh antiworker agenda that targeted unions and did nothing for the workers of that state—and they are still paying the price for. This is an antiworker, anti-union agenda, and they are happy to pit the workers against other people in Australia and really play a divisive game in this country.

We already know what Senator Brandis thinks of his LNP colleagues in Queensland. But this is really following the LNP playbook that we have seen around Australia over a number of years. The mock outrage from the LNP about being on the side of the workers is really nonsense. The public are not buying it, and we will absolutely be exposing that, when we look at the examples that I have already given.

Whilst Labor are focused on listening to workers across the country, the LNP are focused on attacking them. This legislation is a great example of how badly the LNP government are faring. Whilst many people throughout Queensland are suffering economic uncertainty around high unemployment and high youth unemployment and uncertain future employment opportunities, in the last five months I have seen this firsthand in the time I have spent, particularly in regional Queensland. I have made trips to Cairns, Townsville, Mackay and Gladstone over the last couple of months and I have had many meetings with communities, businesses and workers in that time. Not one person has mentioned the ABCC bill as being important in their lives. I think that the focus of those people is on the practical economic opportunities that they want to see in central and regional Queensland, where the future jobs are coming from, improving their local economy and particularly jobs for young people, because they really want to see the next generation of people growing up in regional Queensland getting the opportunity to stay and continue to work in those areas.

It is important to look at the motivations behind this bill and what is driving the LNP. Any resolution on this bill would only be a significant step forward for the government's anti-union, antiworker agenda. The government has said they will come back with further changes in terms of workplace relations laws that this government wants to pursue. It is part of an ideological crusade against workers.

We have all seen what happens when the coalition gets their way in the Senate. Their Work Choices agenda was a relentless ideological attack on working Australians. The Australian people clearly saw through this overreach and were happy to turf them out in 2007. It was through coordinated and effective campaigning that the union movement was able to oppose Work Choices, and those opposite have not forgotten. That is what happens when you try to take on blue-collar and white-collar Australians and attack their rights at work. Now they are trying to nobble these bodies who are best placed to oppose this antiworker agenda. If they can tie up these groups who represent employees in red tape, they can get more of their antiworker reforms through over the next couple of years.

I note that on three separate occasions the government has tried to get this bill through and three times it has failed. This is apparently one of the two bills that needed to be passed so urgently that they called for a double dissolution election. Only now, in late November, is the government bringing this back into the Senate. I also note that the Senate has hardly been overrun in the intervening months.
Last term we saw the absolute beat-up of the Royal Commission into Trade Union Governance and Corruption, conducted by Liberal Party supporter and partisan commissioner, Dyson Heydon. What has changed in this legislation as a result of a royal commission that went for 18 months—

The PRESIDENT: A point of order, Senator Macdonald?

Senator Ian Macdonald: Mr President, is that reference to a distinguished member of the judiciary appropriate in the Senate?

The PRESIDENT: Thank you. He was a former member of the judiciary when he was performing in that capacity. This has come up before and it has not been ruled out of order. Senator Chisholm, you are in order.

Senator CHISHOLM: What has changed in this legislation as a result of a royal commission that went for 18 months and cost almost $60 million? Absolutely nothing. Again, absolutely nothing has changed in this legislation, and no other legislation has been brought forward. But the ideological war continues.

I note with interest that Senator Roberts, when speaking last week on the registered organisations bill in the chamber, showed just how aligned he is with the Turnbull government's misguided views. Senator Roberts even tried to claim that he was the real battler in this scenario, railing against what he called a 'cabal of elites' in the union movement. What an alternate universe he lives in. Perhaps the union movement should feel proud that they have now joined the likes of the United Nations and global banking elites in the cabal that Senator Roberts believes is running the world. I am beginning to suspect that the cabal of elites includes anyone who is not Senator Roberts.

Going back to the government's motivations, let us not pretend that this legislation as it stands is about better workplaces or stronger unions. Those opposite have never wanted that, despite their protests to the contrary. Some examples of this include the fact that this government had to be dragged kicking and screaming to take any interest in the criminal rip-offs occurring at 7-Eleven. Even with new revelations we have seen over recent days with regard to Caltex service stations, I am yet to hear any government members speaking out about this issue in the media. It will be a real test over the coming days as to whether they are prepared to do that. They were happy to stand up and attack unions, but they remained silent while workers in this country were being ripped off, being paid below the minimum wage.

The government have also done nothing to look at the widespread reports of corruption and rorting in the 457 and temporary work visa programs. When you look at the government's actions as a whole, you can clearly see that the only interest they have in the workplace is when they think they can get away with a bit of union bashing and attacking workers. They are apparently opposed to red tape—unless it is red tape that restricts the rights and role of unions in Australian society. Perhaps if they paid as much attention to managing the economy and creating jobs as they do to attacking unions, our country would be whole lot better off. If they were paying attention, maybe we would not have the lowest wage growth since the measure started being recorded in 1998—a figure of 1.9 per cent over the last year. Maybe if they were watching the economy, the participation rate would not have fallen 0.6 percentage points over the past 12 months to 64.4 per cent, the lowest rate in a decade. And maybe if they were paying attention, they would have noticed that the participation rate for young people...
fell 1.5 percentage points over the past 12 months to 65.9 per cent, the lowest rate experienced over a 30-year period and one that is particularly being felt in all sections of Queensland.

The government do not have any long term agenda for our country and do not have any reason for being in government other than attacking and vilifying those who they see as their opponents. The government are asleep at the wheel. They want to attack unions and attack workers until Australia is a low-wage, easy-to-fire society, racing to the bottom on pay and conditions. The government are well on their way to tanking the economy. We heard recently that the government are moving away from their commitment to a 2021 budget surplus. Amidst this growing debt, the government are refusing to scrap their $50 billion worth of tax cuts for big business. This just shows you how wrong their priorities are. Add this to the lowest wage growth in two decades and the lowest participation rate in a decade, and you have a really poor outcome for people looking for jobs and employment opportunities. Trickle-down economics was comprehensively disproved back in the 1980s, but the government seem to be a bit late in learning their lesson.

So what does this bill actually do? It really goes to the ABCC restricting the democratic rights of people. The Law Council says that the ABCC laws are 'contrary to the rule of law', an irony lost on the Prime Minister, who previously claimed that the ABCC is required to 'return the rule of law to the construction industry'. The ABCC breaches the principle of equality before the law as well. Workers in the building and construction industry should be subject to the same laws that apply to other workers. This legislation extends the reach of the ABCC into picketing, offshore construction and the transport and supply of goods to building sites.

The Australian Building and Construction Commission does not deal with criminal behaviour but has criminal justice powers. It does not matter how many times the government refers to criminal conduct in the same sentence as the necessity to revive the construction watchdog. It does not change the fact that it is a civil regulator. The government's bill removes the current protection which requires the director of the Fair Work Building Industry Inspectorate to apply to the Administrative Appeals Tribunal to issue an examination notice. This is equivalent to the police being able to conduct a search without going to a magistrate to justify why they need a warrant.

History shows that when this commission is in place workplace deaths and injuries increase. I mentioned at the start of my speech the tragic deaths of two Queenslanders that occurred only a matter of months ago not far from where I live. If Malcolm Turnbull has his way, construction workers will be hit with a $34,000 fine for acting on safety concerns at work. This is clearly untenable in an industry that is so dangerous. Last time this was the case we saw more workplace deaths and more serious workplace injuries.

During the period of Work Choices and the ABCC under John Howard fatalities for all workers increased by more than 25 per cent, while fatalities for construction workers skyrocketed from an average of 2.5 fatalities per 100,000 to almost five fatalities per 100,000 workers. In 2007, when the ABCC was last in place, worker deaths on construction sites hit a 10-year high, with 51 workers killed. After Labor abolished the ABCC, workplace deaths dropped by 60 per cent. Analysis by the Parliamentary Library shows that when the ABCC
was last in operation between 2004 and 2012 the cost of non-residential building grew faster than the CPI, so it actually cost more to build when the ABCC was around, not less.

Although the government's attack on unions is about driving record low wages even lower, it seems the Prime Minister and the Treasurer cannot get their argument right. The Prime Minister says the ABCC will stop excessive wages, whereas the Treasurer said it will support wages growth. With the lowest wage growth in two decades, you would think the Prime Minister and the Treasurer would at least get their stories straight. It seems this government will use whatever argument they think is most popular in order to desperately pass this bill—and we have seen that applied to other legislation as well, including the backpacker tax.

In addition to the economic argument being wholly repudiated, we oppose this bill because the ABCC restricts democratic rights. There will be a presumption of guilt under the ABCC. Workers will be guilty until proven innocent. This is a shocking reversal of the presumption of innocence. The principle that the prosecution bears the onus of proof against an accused is regarded as a cardinal principle of our system of justice. Criminals such as drug dealers are protected by the presumption of innocence, but under Malcolm Turnbull's ABCC legislation construction workers are not. This is nothing more than an ideological attack on workers and unions.

We on this side of the House recognise the importance of unions. They play a fundamental role in Australia's workplace relations system. They are created and registered for the purpose of representing Australian employers and employees at work. Unions also represent their members before industrial tribunals and courts and work with government on policy matters ranging from employment issues to economic and social policy. Despite the claims of those opposite, Labor supports strong and proportionate regulation of registered organisations and unions.

But it comes as no surprise to anyone that this government is constantly being overly alarmist when it comes to any matters remotely related to unions. We of course understand that Australia's trade union movement plays a critical role in our economy. There is a lot to thank unions for—everything from the eight-hour day to better workplace safety, to pushing for equal pay for women, to superannuation and to fighting for Medicare. The trade union movement has an important role to play in Australia's workplaces promoting productivity. Those opposite would have us go down the path of increasing inequality and increasing the entrenched disadvantage that we see in Australia at the moment. Their goal is not to support stronger unions, representing the interests of working people—their goal is to destroy the link between trade unions and the only political party which acts in the interests of working people, the Australian Labor Party. Their goal is to destroy the capacity of trade unions to organise and to bargain collectively. You can see through their mishandling of current public sector agreements they do not even know how to negotiate effectively and in good faith with unions. You could not see a clearer example of the government's antiworker agenda than that.

This government's workplace agenda of course ignores the range of entities and bodies that we have seen under pressure with various ICAC-related issues in New South Wales. But the government is doing nothing to deal with transparency issues around donations. There needs to be a stronger push by the government in regard to that issue over the next couple of months to ensure a review takes place. To wrap up, there is no doubt that this antiworker assault by this government will only continue. We have seen that over the course of the last week and
we think that will continue. The government has already said that in media reports over recent
days. I oppose the bill.

Senator IAN MACDONALD (Queensland) (10:31): On behalf of the union movement in
Australia, tiny though it is, I want to thank Senator Chisholm for his defence of union bosses
and trying to protect the privileged position that those union bosses enjoy, using the levies of
their workers, given by the workers to the unions for serious matters, but we find those levies
ending up in brothels, being spent on holidays or being used for real estate purchases by union
officials. Senator Chisholm says that this debate on the Building and Construction Industry
(Improving Productivity) Bill is about safety, it is about looking after workers. It is about
neither. It is not about bringing back Work Choices, as Labor speakers would have us
believe—it is about productivity for our nation; it is about giving people a fair go. It is about
helping workers to achieve what they want to achieve in a free, open and bully-free
marketplace.

Senator Chisholm spoke on behalf of the union movement, and well he would—his career
has been as an official of the Australian Labor Party, who are funded entirely by the union
movement. Without the union movement the Labor Party would not exist and Senator
Chisholm would not have been able to be state secretary for a while; he would not have been
able to be the campaign director for the Labor Party. We should always remember when
talking about the union movement—I mentioned it was tiny—that ABS statistics show that no
more than 11 per cent of workers in the private sector choose to join a union. You would
think, listening to Senator Chisholm
and others who will no doubt follow him, that the union
movement is this great body that looks after the interests of workers—but only 11 per cent of
workers in private industry choose to join a union, which means that 89 per cent of workers in
the private sector choose not to join a union, because they see what the unions have done to
our country and they see that people who even used to be members of this parliament, after
they were union officials, have ripped off the workers' money. That is why 89 per cent of
workers in the private sector choose not to be in a union.

If you take it across the board, only 17 per cent of all workers in Australia, including
government sector workers, choose to join their union. That means 83 per cent of workers in
Australia make the decision not to join a union, and they seem to get on okay with their safety
issues. They seem to not be worried about this government bringing in Work Choices again.
When you hear Labor Party people speak, you have to understand that they are wholly-owned
property of the union movement, and they are fighting a life-and-death struggle to maintain
the privileged position of some of the union bosses.

As of October this year, 113 CFMEU officials were before the courts for more than 1,100
suspected contraventions. In recent years the courts have imposed more than $8 million in
fines for the CFMEU's breaches of industrial law—and, if time permits later on, I will go
through some of those particular cases. So I am often absolutely amazed that Senator Wong,
the Leader of the Opposition in the Senate, refuses to condemn the CFMEU's, but then I recall
that she worked for the CFMEU before she came to this parliament.

These cases are not stories; they are court records. These are not political comments. These
are comments of the judiciary, which indicate the sort of notorious category these unions have
for noncompliance with the law. A federal court judge said of the CFMEU that they ought to
be an embarrassment to the trade union movement. They certainly are an embarrassment to most Australians.

But I do want to get on and talk about some aspects of the bill. The important part about this bill is the cost to our economy. When the ABCC was last in power, before the time of the Rudd-Gillard-Rudd government, the rate of industrial disputes was five times the average across all industries—that is, the rate of industrial disputes in the building industry were five times the average across all industries. During the time that the ABCC was in operation, disputes fell to just two times the average. On average since the ABCC's subsequent abolition, disputes have gone back up to five times the average across all disputes.

I am a Queensland senator. We are very proud about the Commonwealth Games coming to the Gold Coast region. But, at the rate industrial disputes are going on the building sites, we will not be ready for the Commonwealth Games when they are due. It disturbs me greatly as an Australian senator and as a Queenslander that this union thuggery is putting at risk the Commonwealth Games. Again, if time permits, I will give you some examples of that later on.

After the ABCC was abolished in 2012—and who do you imagine was in charge of industrial relations at the time? Mr Bill Shorten, the current leader of the Labor Party—the rate of disputes in the construction sector increased by some 40 per cent. You can say what you like about statistics, but that increase of 40 per cent, with the abolition of the ABCC, is just mind-boggling. The rate of industrial action in the construction sector is now nine times higher than the average across all industries for the June quarter. The source of that is the ABS. Currently, two out of every three working days lost are lost due to industrial disputes in the construction industry—again, these are not Liberal Party allegations; these are the Australian Bureau of Statistics' actual figures. Infrastructure like schools and hospitals costs taxpayers up to 30 per cent more because of the extraordinary amount of working days lost due to industrial action at building sites.

Again, figures and statistics run off the tongue easily, but this is taxpayers' money invested by various governments around the country in schools and hospitals, but instead of costing $100 million it is costing $130 million. That is taxpayers' money that is being wasted because of industrial disputes. The economic impact of this lawlessness in the building and construction industry costs every single taxpayer in Australia real money.

I just want to again refer to the previous speaker in this debate, Senator Chisholm, who was making derogatory—and, I thought, unparliamentary—remarks about the royal commission that exposed so much union corruption. He said it cost $60 million. That is a lot of money, but can I just remind senators and those who might be listening to this debate that, thanks to Labor's reckless spending during the six years that we had Labor as a government, we are now paying $30 million a day in interest on money that Labor borrowed overseas. This royal commission was expensive, but it cost two days' interest that we are paying on the debt that Labor ran up in its six years in government. These things need to be kept in perspective.

The purpose of the bill is to restore the Australian Building and Construction Commission that was in place from 2005 to 2012 until such time as the unions imposed upon Mr Shorten to abolish that commission. Why did they impose upon him to abolish it? Because it was interfering with the rorts and rip-offs, that particularly the CFMEU were involved in, in the construction industry. Labor did replace that with a much weaker building regulator, Fair
Work Building and Construction, but their much weaker—and less telling than the ABCC that we are trying to reintroduce—maximum penalties for breaching the laws were cut by two-thirds. The fair work commission has no power to enforce the law when affected parties—for example, a building company and a union—have entered into a settlement. You know what they are about and, if time permits, I will give you some examples of that later. The ABCC’s compulsory powers were retained, but are now subject to a sunset clause and will expire on 30 June next year, and there is no effective building code to regulate employer contact.

The ABCC bill will restore penalties to their former levels. These penalties will still be substantially lower than the equivalent penalties under equivalent legislation such as the Corporations Act and the Competition and Consumer Act, but, still, they are more in line with the seriousness of offences. The new bill will remove the inability of the law to be enforced where private ‘settlements’ occur. Under the current legislation, if an employer and a union settle any related civil dispute between them, even for a nominal sum, the fair work commission has no power to bring the proceedings or to continue any proceedings to enforce the law. This is like the police having no power to prosecute a driver for running a red light and causing a crash if the driver reaches a private settlement with the other driver. It takes away the law and allows these ‘settlements’ to take place.

The bill will also introduce an effective building code to be made as a legislative instrument under the act. This will impose a range of requirements on employers in the building industry. This does not apply to unions or employees; it is totally directed at employers. These requirements must be met by an employer that wishes to tender for Commonwealth funded building work and these include compliance with all relevant laws—workplace, taxation, safety and immigration. It seems from the previous speaker that Labor do not understand this. This building code will have a real enforcement on employers to do the right thing and comply with the law in relation to workplace laws, taxation, safety—I emphasise safety—and immigration; all of those issues. Companies will not get Commonwealth government work if they do not comply with this building code, which sets out very strict relations involving safety, among others. Employers who breach any of these legal requirements—for example, by underpaying employees, breaching safety requirements or employing staff who do not have valid work visas—risk being declared ineligible to work on projects funded by the Commonwealth government. The code will also protect smaller subcontractors from unfair practices by head contractors.

As I said, there are currently 100 or more CFMEU officials before the courts. The courts have imposed more than $8 million in fines for the CFMEU’s law breaking. It does not seem to deter the CFMEU. They just levy their workers a little bit extra, so that they can pay those $8 million in fines. The fines, as they currently are, do not seem to deter the CFMEU at all, and that is why there is a need to increase the penalties.

The previous speaker, Senator Chisholm, spoke at some length on safety. There is not an Australian who does not want to see other Australians safe at their workplaces. This bill does not amend any workplace safety laws—in spite of what Labor speakers would have you believe. The ABCC legislation will not prevent legitimate safety issues being raised or addressed by employees, unions or health and safety regulators. The rate of construction industry deaths has been trending down for the past decade from 5.8 per 100,000 workers in
2003 to three per 100,000 workers in 2014. Even one is one too many. But to suggest that this bill will lessen safety standards is ridiculous and another part of the union scare campaign.

I will conclude with an example of the CFMEU thuggery that this bill is trying to address. In 2014, two Fair Work inspectors attended the Ibis hotel construction site in Adelaide, at the request of the site manager, to investigate possible right-of-entry violations. A number of CFMEU officials were at the Ibis hotel site at the time of the inspection. In the presence of the inspectors, the site manager asked the CFMEU officials to show their right-of-entry permits. No permits were produced by the CFMEU officials. One of the inspectors took photographs of the CFMEU officials and their interactions with the site manager.

A CFMEU official, who has been named in this parliament before, Mr Perkovic, approached the inspector, stood in front of him, pushed him and made a number of threatening comments, including, 'You effing maggot, what are you taking a photo of me for, you piece of S—something something something.' Further: 'You effing coward, I'll effing take you to school. Your a effing piece of—something beginning with S. Further: 'You effing piece of S. You're going to have a heart attack. Look at you, you're excreting yellow, you piece of S.' That is just one example. I have pages, but time is not going to let me go through them.

There is lawlessness in the construction industry and it is costing each and every taxpayer money. It is not about safety; it is about retaining the privileged position of some union leaders. I repeat: the unions only speak for 11 per cent of workers in the Australian industry framework. This bill is essential to bringing law and order back into the building and construction industry and to getting rid of the rorts and rip-offs that are costing taxpayers real money, money that could be diverted to hospitals, schools and other infrastructure. It is essential that this bill be endorsed. I know the Labor Party will never support it, and neither will the Greens, who are recipients of big donations from the unions, but I would hope the crossbenchers understand the absolute importance of having law returned to the building and construction industry.

Senator LINES (Western Australia—Deputy President and Chair of Committees) (10:51): I rise to oppose this bill, the Building and Construction Industry (Improving Productivity) Bill 2013. I have to say that that is the first time I have ever heard a government senator say that one death in the construction industry is not good enough. It is something that we do not hear the government talking about at all. Unfortunately, we then went on to hear about the privileged position of union officials, and certainly—

The ACTING DEPUTY PRESIDENT (Senator Sterle): Senator Macdonald, a point of order?

Senator Ian Macdonald: Mr Deputy President, standing orders require that senators not be verballed. My comment was: 'Even one death is too many.' I think Senator Lines might have meant that but her—

Senator Jacinta Collins: She was commending you.

Senator Ian Macdonald: Yes. Thank you for what you said.

The ACTING DEPUTY PRESIDENT: Thank you, Senator Macdonald. There is no point of order.
Senator LINES: Thank you, Mr Acting Deputy President Sterle. But, Senator Macdonald, to finish your contribution by claiming that, somehow, union officials have some kind of privileged position flies in the face of the number of deaths we have seen in the construction industry and the many times union officials have been prevented from entering sites to talk about safety issues. It is a shame that your contribution ended in that way.

If media reports today are correct we hear that some crossbenchers are prepared to trade human rights for water. Of course I want the best for the Murray-Darling Basin and for the Murray-Darling states, but simply to trade away the rights of workers for, perhaps, a better deal on the Murray basin is obscene. The so-called deals we have seen in this place in support of legislation are poor indeed. Last week we saw a deal made for the sake of a five-year moratorium on a particular aspect of a bill, when anyone who understands the Constitution and how governments work would know that you cannot trade away what a future government might do. So I am appalled to see today that there might be some water deal for support of a bill which absolutely, categorically breaches human rights, in this case the rights of construction workers.

As a former chair of the Senate Education and Employment References Committee and deputy chair of the Senate Education and Employment Legislation Committee, I heard in the many inquiries that we held on this piece of legislation about its impact on human rights and how it breaches the United Nations conventions on the rights of association, the freedom of association and so on. This is what crossbenchers seemed perfectly willing and comfortable to trade away for a completely unrelated deal on water. They traded the human rights of workers for a water deal, which, as we said, may or may not be a good deal. Looking at the record of crossbenchers and their deal making, the winner is always the government—and the loser, in this case, will be the human rights of construction workers.

We need only look back at the disgraceful treatment of Mr Ark Tribe, who was persecuted for years over charges which ended up being dropped, to see how fraught, ill conceived, poorly constructed and unnecessary this legislation is. There are already laws in place to deal with issues when they get out of hand. Of course, I do not stand for that—if someone breaks the law they should be prosecuted—and it is certainly not what Labor stands for. But I too want to focus on safety issues in the construction industry, which are shocking. It is an industry where lawlessness relates to safety—and that is what we should be focused on. I want to talk about the recent tragic deaths of construction workers right across Australia over the last couple of months. These construction workers left home for work, were killed at work and did not return home that evening. Imagine the impact that seeing a death at work has on other workers on the site, the trauma of having to deal with your mate who has lost their life. And then, of course, there is the impact on the family and friends of that worker. Suddenly that worker is taken away from them, is no longer around, because they died at work—in Australia. That is something we should all be saying is completely unacceptable. It is something that we as a parliament should be acting on—but, seemingly, we are not.

I want to talk about the most recent deaths that occurred on construction sites across Australia. On Thursday, 6 October, at around 4 pm, two men were working in a confined evacuation at the Eagle Farm Racecourse in Queensland. They were installing tilt panels for a large drainage pit. There was not any proper access or egress. They had to enter down an embankment to perform the task. The grossly inadequate bracing system that was being used...
failed. This caused the first panel, weighing 10 tonnes, to come tumbling down. The workers managed to scramble out of the way. Tragically, within seconds, the second panel came down on top of them, crushing them to death. There was not any adequate exclusion zone in their work area as a backup and these two workers had nowhere to go.

On Monday, 10 October, while working on Finbar's Concerto Apartments project in Perth, 27-year-old German backpacker Marianka Heumann was applying sealant to speed wall panels surrounding an air duct when she fell 13 floors to her death. She was working for a builder who reputedly refused the CFMEU their legal right of entry to inspect safety concerns and is well-known for employing unskilled backpackers in high-risk construction jobs. As if to add to the heartbreak, builder Gerry Hanssen sent a bizarre email to Marianka's family following the incident in which he implied that it was Marianka's fault and she would have been sorry for letting everyone down. Further, when Marianka, just 27, a person here on a working holiday with full expectations that she would return home, fell to her death it was just business as usual on that Finbar site: the concrete pour continued. A worker fell to her death and a concrete pour continued! Business went on as if nothing had happened. The site was not closed. Blood and strewn work clothing were clearly visible and accessible, and there was no effort to ensure that the scene of the fatality was not contaminated. Finbar did not even call the police, because they were so busy making sure their concrete pour continued. That was left to an ABC journalist. It was as if the fact that Marianka lost her life did not even matter—an issue worth no more attention than a dropped tool or a broken machine.

Further, on Tuesday, 25 October, while working on the Porter Street project in Ryde, 55-year old Mr De Silva died when he fell approximately three metres from formwork deck onto reo bars. The bars were appropriately capped, but the fall was enough to take his life. Twenty-eight per cent of deaths in the industry are caused by falls from heights, and again in this case, just as in the Finbar case, the edge protection was inadequate. Indeed, at the Finbar site there had been five complaints to WorkSafe in Western Australia. Orders had been issued against Finbar, and one of those orders was around edge protection.

On Wednesday, 26 October, while working on the Probuild Melbourne Convention Centre expansion, a 54-year old boilermaker was killed in a crushing incident while operating a knuckle boom. This worker leaves behind a wife and two adult children, both in the construction industry. At the time of the incident, he was working alone, welding amongst steel frames. Workers and the occupational health and safety representatives were the first to attend the scene. These representatives—as you know full well, Mr Acting Deputy President Sterle, but for those who are listening—are people who are elected from among their peers to be safety reps on site. They made an extraordinary effort to rescue the crushed worker and begin first aid. I simply cannot imagine the trauma for that family and their friends, and for those around who witnessed the fall and who began immediate first aid. Where workers leave home in the morning, they should expect to come home again at night without this horrible fear of death or severe injury in the construction industry, but that is what we have in Australia, particularly in Western Australia. These are needless deaths. There should not be any deaths, yet the deaths continue.

Again in Western Australia, at the Bennett Street site, where two temporary visa workers from Ireland lost their lives while they were on their tea break, unions such as the CFMEU had made more complaints to WorkSafe about suspected safety breaches at sites like this.

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CHAMBER
JAXON, which is a big builder in Western Australia and has a lot of the big construction sites—along with Hanssen—is at the top of the CFMEU’s list when it comes to making complaints about safety. The JAXON sites have attracted more complaints than has any other builder in Western Australia, yet we see nothing has happened. Two young Irish backpackers, whose families I met, tragically and shockingly lost their lives whilst at work. I know that union officials have been denied right of access to these sites—particularly from JAXON—at least 16 times, but you will not hear that from those opposite.

We hear a lot from the government, particularly the Prime Minister and the minister, about how this legislation, if passed, will improve productivity in the construction industry. They have not given us any facts or figures on this, and they are not a government who rely on facts and figures; they just make it up and hope their rhetoric gets them the line of the day. The Prime Minister and the minister have said that somehow this legislation in and of itself is going to improve productivity. If you look at the full definition of productivity, measured correctly, it includes fair working conditions, the right of freedom of association and the role of unions, which this legislation will clearly curtail, because that is what it is all about. Good productivity is where workers sit down with their unions and talk about issues with employers.

It is about fair employment and fair working conditions, not the $20 an hour that Marianka was earning on that Finbar site. That is what she was earning, even though the rate should have been higher than that. It seems as if she was being ripped off. After I raised the matter at Senate estimates, the Fair Work Ombudsman raided that site. At that Finbar site they will find, I am told, that, of the around 300 workers on site, about 250 are temporary visa workers. That is not a rare occurrence in the CBD construction industry in Western Australia; it is the norm that we have inexperienced temporary visa workers flooding construction work in the city. Marianka, who tragically lost her life on the ABC Finbar site, after two months—which is about how long she had been employed at the site—was regarded as one of the experienced workers. That does not add to productivity. So, when those opposite talk about productivity, it should also include a good safety record, and we do not see that in Western Australia at all.

You will hear from those opposite about how the number of deaths have gone down. We should not be counting any deaths. Zero should be our target, but they will applaud the fact that the number of deaths have gone down. But, actually, if you look at the period over which the ABCC legislation was in place you will see that the number of workplace deaths grew. That is a fact. As I said, we should be focused on zero deaths, not whether there were three deaths or four deaths. There should be zero deaths. But, of course, you will not hear that from those opposite.

You will hear a lot from the government about the militancy and so on of union officials. But, actually, CFMEU members rank safety as their top priority. They rank safety as something that they want to see improved on building sites. Is it any wonder when we have seen five tragic deaths over the last couple of months on building sites right across Australia? I know that in Western Australia deaths are on the increase in the construction industry. That impacts on productivity.

We hear nothing from those opposite. I have never heard the government say that it wants to act on these workplace deaths—never. It might try to pretend that as the federal government it has nothing to do with safety. Well, it does. Certainly it should be pushing it
through COAG and doing whatever it can to make sure that workers come home from work at night. It is a pretty simple ask. Yet we see in Western Australia shocking things going on in the construction industry being completely ignored by the Turnbull government. There is the use of temporary visa workers. When we raised this as an issue somehow we were accused of being racist and whatever else. But the fact is you cannot have good safety, good productivity and fair working conditions when you have a site that is being run by temporary visa workers.

This is at a time in Western Australia when we have record unemployment levels. They are climbing in WA. I think we are now the stand-out state when it comes to unemployment levels. This is a state where the mate of those opposite Premier Colin Barnett has squandered the mining boom. He has absolutely squandered the mining boom. We now have unemployment at historically high levels in the southern suburbs. We know that in the construction industry in Western Australia there are a lack of apprentices. We know that even the Master Builders association, the government's mates, are calling for something to be done, because we have seen an absolute downturn in apprenticeship numbers.

When you look at the construction industry in the CBD, if it is being run through labour-hire companies and temporary visa workers are being used, is it any wonder we do not have apprentices. Those employers are quick to make a buck. I do not stand in the way of people making a profit, but let's not make a profit on the back of safety. That is wrong. We have seen a downturn in apprentices to the point where the Master Builders association is calling on the government and, indeed, has called on the federal government to do something about it. We have record high unemployment in Western Australia. We have appalling rates of death in the construction industry in the CBD. All of this simply goes unnoticed by the Turnbull government because they have an ideological hatred of trade unions. This is why they want this legislation. It is absolutely clear. If they were really concerned about productivity they would be standing up and demanding we get to zero deaths in the construction industry. But, no. There has been absolute silence from those opposite on the issue of workplace deaths.

I will keep speaking out on this because I have met the families. I have seen that ABC Finbar site on St Georges Terrace in the city. It is a disgrace. It looks like a rubbish tip. Is there any wonder there are safety issues on the site when it looks like a rubbish tip? Yet those opposite do nothing. They bang on about union officials while the death rate in construction continues to climb.

Senator PATERSON (Victoria) (11:12): I am very pleased to rise to continue the debate on the Building and Construction Industry (Improving Productivity) Bill 2013. It is pleasing again for the second week in a row on a Monday morning to begin on a positive note dealing with such a substantive and important piece of legislation. I hope this week proves as successful for the ABCC bill as last week proved for the registered organisations bill. I again commend Senator Cash for her leadership in this area and tireless efforts to secure the government's key election commitments in this area.

I will note up-front that I have listened carefully to the contribution of Senator Lines and particularly her comments about safety. I congratulate her for taking this issue as seriously as she does. I will just flag that later on in my remarks I will address some of the criticisms of the government that she made and respond to some of those issues. But I thought it might be
more helpful to begin this morning by just talking about exactly what this bill seeks to do, what it is seeking to address and why the government sees this is such an important priority.

As I suspect all senators will know, this bill seeks to restore the Australian Building and Construction Commission which previously existed between 2005 and 2012. When the previous Labor government abolished the Australian Building and Construction Commission in 2012 it replaced it with a much weaker building regulator—the Fair Work Building and Construction body known as FWBC. In a couple of key and important areas the FWBC and the laws that Labor put in place are weaker. Firstly, the maximum penalties for breaching the law were cut by two-thirds. That has obviously had a very significant effect on the behaviour of in particular the CFMEU. Secondly, FWBC has no power to enforce the law when affected parties—for example, a building company and a union—have entered into a settlement. So if the union is able to coerce and intimidate a building company into agreeing to a settlement on whatever terms, the FWBC has no power to intervene, even if it is in contravention of the law. Thirdly, the compulsory powers, which the ABCC had, were retained but they are subject to a sunset clause that will expire on 30 June 2017. No doubt, many in the CFMEU are circling that date in their calendars and looking forward to that day, if this Senate does not act upon Senator Cash's bill. Fourthly, there is no effective building code to regulate employer conduct, another important matter that must be regulated.

What this ABCC bill seeks to do is, firstly, to restore the penalties to their former level. They were originally recommended in 2003 by the Cole royal commission, and so this bill is seeking to return to those recommendations. These penalties will be substantially lower than the equivalent penalties in other equivalent legislation—for example, in the Corporations Act and in the Competition and Consumer Act. Secondly, it seeks to remove the inability for the law to be enforced where private settlements occur. As I have mentioned before, if a union is able to coerce a building company into agreeing to a private settlement, the FWBC is not able to enforce the law. That is an extraordinary and unusual circumstance. If any related civil dispute between an employer and a union is settled, even for a nominal sum, FWBC has no power to bring proceedings or to continue any proceedings to enforce the law. This is the equivalent of the police having no power to prosecute a driver for running a red light and causing a crash if the driver reaches a private settlement with the other driver. We would never tolerate this in other areas of law.

Thirdly, this bill seeks to retain the compulsory evidence-gathering powers that Labor retained but which were due to sunset in 2017. That is a very important measure. Fourthly, the bill will introduce an effective building code to be made as a legislative instrument under the act. This will impose a range of requirements on employers in the building industry. It will not apply to unions or employees. These requirements must be met by an employer that wishes to tender for Commonwealth-funded building work. These include compliance with all relevant laws—it does not seem like a shocking or unreasonable requirement to me—such as workplace, taxation, safety, immigration, et cetera. Any employer who breaches any of these legal requirements—for example, by underpaying employees, which is an important issue raised by Senator Lines, or by breaching safety requirements, which is a concern to this government and to those opposite, or by employing staff who do not have valid work visas, which is a problem that all of us agree it needs to be addressed—risk being declared ineligible to work on projects covered by the Commonwealth. I think that is an entirely appropriate
measure, given that taxpayers' money is involved. Importantly, the code will also protect smaller subcontractors from unfair practices by head contractors. That is a worthy and sensible initiative.

I want to commend to the Senate an article that was published in the *Australian Financial Review* last week. It was written by Gerard Phillips, who is a partner in the labour and employment workplace safety group at K&L Gates, which is a global law firm. He has gone through and analysed, in a reasonable and dispassionate way, the key measures of the bill. I wanted to share with the Senate his conclusion about some of the aspects of the bill. I will not read the entirety of the article but some key aspects of it. It appeared on 22 November in the *Financial Review*:

The bill proposes expanding the definition of building work to cover transport and supply to building sites. This is a necessary and desirable measure because as history has shown the Construction, Forestry, Manufacturing and Energy Union (CFMEU) has often pursued suppliers and transport companies to put commercial pressure on the builder. By choking off its supply line and pressuring innocent third parties, the CFMEU's tactic is to cause a collapse in the builder's resistance in enterprise agreement negotiations.

He goes on to say:

How any member of parliament could think that a provision dealing with this deliberate behaviour is a bad thing defies belief.

I agree. Analysing another aspect of the bill, the increased penalties, he refers to a judgement in which Justice Christopher Jessup stated:

…that the CFMEU's "record of non-compliance with legislation of this kind has now become notorious. That record ought to be an embarrassment to the trade union movement ... quite obviously over the years the CFMEU has shown a strong disinclination to modify its business model in order to comply with the law."

As Mr Phillips says:

These are very strong words for a judge and in the clearest terms possible he is making out the case for higher penalties. Quite simply the current regime of penalties, set by the former Labor government, is no deterrent at all to the CFMEU. Breaking the laws of this land has simply been priced by the CFMEU as the cost of doing business. Given that the penalties are obviously no deterrent they need to be increased to a level where observance of the law becomes the more desirable alternative.

That is an entirely reasonable point, and I commend that analysis by Mr Phillips in the *Financial Review* to the Senate.

What this bill seeks to address is the problem in the building and construction industry that has clearly been identified by two royal commissions, by extensive public commentary and by media reporting. As we all know, there are now more than 100 CFMEU officials before the courts. That is an extraordinary number. If any organisation in our society had a hundred of its members before the courts, we would regard that organisation as rogue, totally out of control and in need of action to address it. Clearly, there is something systemically wrong in this industry. The courts have imposed more than $8 million of fines for the CFMEU's lawbreaking—and that is under the revised lower maximum fines introduced by the previous government. Sadly, it is clear and it becomes clearer every day that this does not deter the CFMEU. If the penalties are not enough to deter lawbreaking, then surely the penalties need to be increased. Master Builders Australia has estimated that infrastructure such as schools,
hospitals and roads cost taxpayers up to 30 per cent more because of industrial action and delays at building sites. I will come back to that point later on.

Large building contractors are currently free to lock out smaller contractors in the industry by discriminating against those who do not have a particular type of EBA favoured by the large contractor and/or by the unions. As we know, there is from time to time in this industry a cosy relationship between large unions and large construction companies that is to the detriment of small- and medium-sized firms in this industry. Big unions and big employers do collude and they do lock out smaller players from building sites.

The ABCC was abolished by Mr Shorten in 2012, and the rate of disputes in the construction sector has increased by 40 per cent. In all other industries, the rate of industrial disputes has declined by 33 per cent. So the building and construction industry has become spectacularly less harmonious and a less efficient industry as a result of the change in laws.

One really clear piece of evidence that there is a cultural problem in the industry is that the participation of women in the industry has declined in the last two decades, against the trend in most other industries. How can we attract more women to this industry if we cannot change the culture? This is an issue that I know many senators have genuine and sincere concerns about, and I would encourage them to apply those genuine and sincere concerns in other policy areas, in other spaces of the economy, to the construction industry.

As I foreshadowed, I will address some of Senator Lines' comments. Senator Lines made a number of comments about safety. It was certainly sobering to listen to her and to hear about the cases of workplace deaths that have recently occurred. I can only concur that they are incredibly troubling. I know that they weigh heavily on the minds of all senators—not just on that side of the chamber but on this side too. She is absolutely right to say that we should be pursuing a goal of zero deaths in the construction industry—in fact, in all industries. No worker in any workplace should be injured; no worker on any worksite should be killed. I certainly support the sentiments of Senator Lines' comments.

But this bill, the bill to re-establish the ABCC, does not make any changes to workplace safety law. Nothing in this bill changes workplace safety law in any way. It does not prevent legitimate safety issues being raised or addressed by either employees or unions, or, particularly, by health and safety regulators, who have the most important responsibility to ensure that our workplaces in Australia are safe.

Senator Lines mentioned that one of the encouraging things in recent times has been the decline of construction industry deaths. She is right to say that a decline is only a start, and that we hope to get to zero—and I concur. Nonetheless, I am pleased that there has been a decline. The number of deaths per 100,000 workers in 2003 was 5.8; that had dropped to three per 100,000 workers by 2014, the most recent figures available. That is pleasing and I hope that continues, and I see no reason why and I have heard no evidence that this bill will adversely impact that trend in any way.

What it seems to come down to for those opposite—and I am happy to be corrected if I am wrong—is that anything which reins in the CFMEU at all, anything which seeks to ensure that the CFMEU is compliant with the law, somehow means that workplaces will be less safe. That is tantamount to arguing that the CFMEU cannot do its job without breaking the law and
that it is okay for the CFMEU to break the law because it has a higher end in mind which justifies the means. That is a really strange and unusual logic.

Unfortunately, we know the CFMEU has a track record of misusing safety concerns as a cloak for its other activities. There was a particular case that I think illustrates this very powerfully. Of course, the CFMEU has an important role in ensuring safety, but, any time it uses the thin veil of 'safety' to achieve its own objectives, it undermines its important role in upholding safety. It is understandable that people have become cynical about the CFMEU's statements about safety when it engages in conduct like that.

I quote from a media release from the FWBC on 9 July 2014. It has two important features, quotes from an important court case, by Judge Burnett; and the conduct of the CFMEU in a particular dispute:

Federal Circuit Court Judge Burnett has said the actions of CFMEU officials Kane Pearson, Joseph Myles and Shane Treadaway on a Brisbane construction site represented a 'gross failure of corporate governance on the part of the CFMEU and its affiliates'.

As we have seen in other cases, this is an extraordinarily damning indictment of the CFMEU by a judge.

In February this year, Judge Burnett penalised the CFMEU and the three men a total $38,500 for hindering, obstructing and acting in an improper manner on a Brisbane construction site on 11 February, 2010.

The media release goes on to quote some of the phrases and sentences that Mr Pearson and Mr Myles engaged in on the site. I am not going to even attempt to read them out, because I will have to stand here and bleep myself continuously, such is the nature of the language. But I think it is language which we are all familiar with because we have heard it in so many hearings and courts over the years.

One of the key things that were interesting about this was that Mr Myles, Mr Treadaway and Mr Pearson said that they needed to access this site, using their right-of-entry powers, for safety reasons. But Mr Treadaway brought with him an EFTPOS machine and was seen walking around the worksite with it. I acknowledge I have never worked on a construction site and I am no expert in construction safety. But I am not aware of any purpose that an EFTPOS machine could be used for to assist safety. I am aware of other purposes for EFTPOS machines. It could be used for taking payments, for example. It could be used to sign up on the spot any workers on that site who are not union members and give them a speedy way of doing so. But I cannot see how that relates to safety in any way. That is one of many pieces of evidence that the CFMEU has abused these laws.

I turn now to the important matter of productivity, the economic impact of this bill and the importance of this industry. As I have spoken about before—and other senators have too—the rate of industrial action in the construction sector is far higher than in other industries. In fact, the latest ABS data, from the June quarter, shows that it is nine times higher than the average across all industries. This obviously has an impact on productivity. Currently, of all the days lost in the economy to industrial disputes, two out of three are in the construction industry. That is despite the fact that the construction industry employs only a small proportion of Australians, not the vast majority.
Infrastructure, as I have said before, like schools and hospitals and roads, will cost taxpayers up to 30 per cent more because of the extraordinary amount of working days lost due to industrial action at building sites. This is what the ABCC seeks to address. The construction industry is our third largest industry. It contributes eight per cent of GDP. It employs nearly 1.1 million Australians, and there are more than 300,000 small businesses in the building industry. There was an interesting article published in *The Australian* last week, by Ewin Hannan, which detailed the massive total cost of this disruption and disputation by the CFMEU and the impact it has on our economy. A total of $100 billion worth of projects have, in some way, been delayed or disrupted by CFMEU activity. Some have already been before the courts, where the CFMEU has been found guilty of workplace law breaches, and some will be coming before the courts in the coming months.

The Prime Minister was interviewed by Neil Mitchell about this very topic on Melbourne radio on Friday. Of particular concern to me, as a Victorian senator, he highlighted how serious this impact has been on my home state. He said:

... let me give you some good Victorian examples. There are 270,000 Victorians working in the construction industry. There are 22 Victorian CFMEU representatives before the courts for breaching of industrial law. In Victoria over the last decade the CFMEU has been fined $4.3 million – to the highest level in any state. And they have been found to breach the law on building sites in Victoria on including a project for 58 schools, road and rail projects, Mitcham and Rooks Road rail separation, Southern Link upgrade, the Florey Neuro Science Institute at Heidelberg, the Simpson Army Barracks, Melbourne Institute of Technology.

I mean the CFMEU's lawlessness in Victoria is so well known. Now, if we can get the rule of law reimposed, restored in the building sector, that will increase productivity, it'll increase the ability of people to work in the industry because they won't have to get past the union, being able to dictate which subcontractor, which tiling contractor for example can get a start and of course it will, by reducing that industrial lawlessness, you'll reduce the cost of these union jobs.

That is a very important point by the Prime Minister and, in my remaining minute, I want to highlight a case in my home state of Victoria which has been adversely impacted by the CFMEU—something which I hope, with the restoration of the ABCC, will not be allowed to happen again.

One of the cases which the Prime Minister referred to is the Mitcham Road and Rooks Road rail separation and station upgrade project. A Federal Court judge has condemned the CFMEU for a 'pattern of contravention' of workplace laws. In reviewing a schedule of the CFMEU's previous contraventions, Justice Jessup found it painted 'a depressing picture' which 'bespeaks an organisational culture in which contraventions of the law have become normalised'. Justice Jessup's comments came as he penalised the Victorian CFMEU $48,750 and its official Joseph Myles $6,375 for unlawful conduct at the $140 million Mitcham Road and Rooks Road rail separation and station upgrade project. This is just one of the many examples of the way in which taxpayers and citizens are having good services, good infrastructure, delayed or denied to them because of the militant behaviour of the CFMEU, and it is yet one more example of why the restoration of the ABCC is necessary.

It does not matter whether it is the Liberal Party under Prime Minister Howard, Prime Minister Abbott or Prime Minister Turnbull—those opposite have waged an ideological war against working people and their representatives, the trade union movement. But this ridiculous pretence, this charade, this farce—that the government's anti-worker agenda is actually advancing the interests of working people—would be laughable, almost comical, if the consequences were not so serious. Real people and real lives are at stake. I find it incredible that those opposite would actually think ordinary Australians would fall for their pantomime act when they pretend to stand up for workers. When John Howard as Prime Minister declared, 'This government is the best friend the workers of Australia have ever had,' it was simply farcical. Mr Abbott then took it to ludicrous heights when he declared that he was the best friend workers had ever had. The Liberal Party must take the Australian public for mugs, if they are going to attack the trade union movement and undermine workers' rights and then try to buddy up to workers and pretend to be friends with them. We know that, no matter how hard they try to pretend, attacking workers' rights is in their DNA. What those opposite fail to realise is that Australian workers can see through this facade, because actions speak louder than words.

When it comes to these bills and the Fair Work (Registered Organisations) Amendment Bill 2014, two things are abundantly clear about the government's motives. Firstly, despite being the triggers for the double dissolution, passing these bills was not really the reason for the double dissolution. It has been almost five months since the election, and close to seven months since it was called, yet here we are debating these so-called urgent bills in the last sitting fortnight of the year. It goes to show that Malcolm Turnbull's decision to prorogue parliament and to call a double dissolution election was motivated entirely by politics. It was a blatantly political move, the primary purpose of which was to keep Mr Turnbull and his government in power. He knew that the Australian public were starting to see through his facade and he was rushing to get the election out of the way as soon as possible. But he had to deliver a budget first, to make up for the government's absence of a policy agenda. It is the people of Australia who are now paying the price for this political stunt. For all Mr Turnbull's talk about innovation and agility, this government is limping on, stuck in a quagmire, beset by internal squabbles and a budget deficit that deteriorates every day.

The second thing that is abundantly clear to the Australian public is that the government is continuing the decades-old Liberal tradition of waging an ideological war against the unions. So obsessed is this government with its attack on trade unions that in the last six months of the previous term it had no substantive policy agenda—except for some bizarre thought bubbles about states raising income taxes and the anti-union bills we are dealing with this fortnight. While the parliament should be debating real solutions to the challenges facing Australia, we are being dragged into this government's ideological battles and its obsession with organised labour. At a time when billions of dollars are being sent offshore through dodgy multinational tax avoidance arrangements, when there are reports of workers being exploited and ripped off by big businesses in the way they were at 7-Eleven, when there is widespread misuse of 457 visas and other temporary work visas, and when there are ongoing calls to clean up Australia's banking industry because of the way they are treating customers, this government's priority is going after the union movement.
As I mentioned in this chamber recently, even when the Liberals had a case of misappropriation of funds within their own party in Tasmania, they swept it under the carpet, allowing it to balloon into a much bigger issue. They did not go to the police, which they should have done. They did not bother informing people. They let Mr Damien Mantach get away with misappropriating funds, and every Liberal Tasmanian senator sat quietly over on that side and let it go through. They swept it under the carpet, because they were so concerned with workers' rights that they could not bring themselves to realise that bad things were happening in their own party. They are a disgrace.

Yet this government is obsessed with the trade union movement. Their ideological war has been waged on several fronts. One of those fronts was the Royal Commission into Trade Union Governance and Corruption. That was $60 million of taxpayers' money spent primarily to pursue legitimate industrial activity under the guise of pursuing trade union corruption. This political witch-hunt was exposed as an ideological exercise when the commissioner accepted an invitation to a Liberal Party fundraiser. The best indication yet of the political nature of this exercise is that, now that the royal commission has concluded, not one piece of legislation has been introduced to the parliament and not one piece of legislation has been amended arising from the commission.

When a former Prime Minister told us Work Choices was dead, buried and cremated, this government has instead taken an incremental approach—a sort of boiled-frog approach, so to speak—to stripping away workplace entitlements. In the previous parliament those opposite introduced legislation that will make it more difficult for union representatives to enter workplaces or talk to workers. They attempted to reintroduce Australian workplace agreements via the back door by weakening the better off overall test. The government dumped Labor's Clean Start for Cleaners contracting principles, cutting the wages of cleaners who clean the buildings of government agencies, and their highly centralised approach to bargaining across the Australian Public Service sought to put strict caps on conditions and pay increases.

The government has flagged attempts to cut paid parental leave for thousands of parents, mostly mothers, referring to many of them as 'rorters, double dippers and fraudsters'. While those opposite learnt the hard way that Work Choices was a step too far, they have opted instead for chipping away slowly at the conditions of Australian workers.

Another front in the government's war was the registered organisations bill—the bill which, sadly, passed this place last week and was designed to bury trade unions in red tape in an effort to render them ineffective. Labor's amendments would have led to a bill that genuinely improves union governance, and the government's rejection of those amendments revealed something very sinister about their real agenda. It revealed that the government was not fair dinkum about improving union governance.

The latest front is this bill to restore the Australian Building and Construction Commission. To understand what the ABCC is, we simply need to look at its record when it was previously established. It was a draconian body with extraordinary coercive powers that compromised basic civil liberties. The unfettered coercive powers of the ABCC included conducting secret interviews. Those interviewed had no right to silence, were denied the right to be represented by a lawyer of their choice and faced the prospect of imprisonment if they refused to cooperate. This could happen to any one of you—in the chamber, or in the gallery even—if
you get on the wrong side of what this government wants. As Nicola McGarrity and Professor George Williams from the Faculty of Law at the University of New South Wales observed:

… the ABC Commissioner's investigatory powers have the potential to severely restrict basic democratic rights such as freedom of speech, freedom of association, the privilege against self-incrimination and the right to silence.

This view is backed up by a 2010 report released by the International Labour Organization's Committee of Experts, who said that the ABCC was likely to breach a number of labour standards, including freedom of association, the right to organise, and collective bargaining.

These bills also remove the current protection that requires the director of Fair Work Building and Construction to apply to the Administrative Appeals Tribunal to issue an examination notice. Removing this protection is like allowing the police to conduct a search without applying to a magistrate for a warrant. It means there is no administrative protection against abuse of power by the regulator. These bills extend the reach of the ABCC into picketing, offshore construction and the transport and supply of goods to building sites. In doing so they undermine the principle of equality before the law.

The government has failed to make the case for the ABCC's powers and lack of oversight. The government keeps bringing up examples of alleged criminal conduct to justify the reinstatement of the ABCC. Yet the ABCC, despite having justice powers similar to those of a criminal watchdog, is actually a civil regulator, so any criminal allegations the government brings up to justify these bills are simply a furphy, a red herring, and a distraction from its real agenda.

As with the registered organisations bill which we debated last week, the government's rhetoric on this bill implies that it is filling some kind of policy vacuum—as if the choice we have to make is between the ABCC and no regulator at all. The problem with that rhetoric—and this is what the government will not acknowledge—is that there is already a building regulator in place, and it is called Fair Work Building and Construction. Not only is there a regulator in place, but it is doing a good job. In fact, Fair Work Building and Construction is achieving better outcomes than its predecessor. Fair Work Building and Construction already has coercive powers which, according to its last annual report, were used 14 times in its 124 investigations. With the exception of an aberrant quarter in September 2012, the number of days lost to industrial action were lower under Fair Work Building and Construction than they were under the ABCC.

Since the abolition of the ABCC in 2012, productivity in the building and construction industry has increased every year. Fair Work Building and Construction outperformed the ABCC in many other areas. They undertook more investigations, concluded more investigations and brought matters to court faster. Despite widespread evidence of corruption and malfeasance on the part of employers the ABCC, when previously established, focused almost entirely on pursuing the investigation and prosecution of workers and trade unions. In contrast to the ABCC's record, Labor's Fair Work Building and Construction recovered $1.6 million in wages and entitlements in 2012-13 and closed 63 sham contracting investigations—issues which the ABCC comprehensively failed to address.

In fact, by targeting workers, the ABCC actually made the situation a lot worse for them. They compromised the ability of workers to campaign for workplace safety, which led to an increase in fatalities in the industry. A Safe Work Australia report released last year showed
that there was a 37 percent increase in workplace deaths in the industry and that the rate of deaths dropped again after the ABCC was abolished. We heard from Senator Lines earlier about some of the awful cases of deaths in workplaces and how they were treated by the companies—not even calling the police, and letting concrete pours continue. You do have to stop and wonder what those on that side of the house are happy to support. I am not exaggerating when I say that the evidence of past performance bears this out. More workers may die as a result of these bills. I know those opposite will claim that I am being alarmist when I say this, but I take the issue of workplace safety very seriously indeed. When you compare the performance of the two agencies—the Liberals' ABCC and Labor's Fair Work Building and Construction—the verdict is quite clear. Those opposite are proposing to change a regulator which has proven to be successful, and which is kicking goals, with one whose performance has been thoroughly underwhelming. There can be no argument that these bills should be introduced because the means justify the ends. As history reveals, under the ABCC the ends would not be achieved.

To summarise, here is what the government is proposing: they are seeking to reinstate the ABCC—an institution which trampled on democratic rights and civil liberties and which undermined the principle of equality before the law, an institution which pursued trade unions and workers while ignoring corrupt behaviour by employers, an institution which slowed productivity growth in the building and construction industry and compromised workplace safety, and an institution which has had less success in concluding investigations and bringing matters to court than the current regulator.

I suggest to those opposite that they drop the pretence that this bill has anything to do with stamping out criminal behaviour in the building and construction industry, because I really do not think anyone is buying it. We on this side can see right through it, and so can the Australian people. The government's attempt to reinstate the ABCC is nothing more than a continuation of their ideological attack on the trade union movement. There is no justification for these bills. The only reason the government want these bills in place is to undermine, on behalf of Mr Turnbull's mates in big business, the bargaining power of trade unions. The entire motivation for these bills is the government's seething hatred of the notion that workers in the construction industry can organise together. It offends their sense of free-market ideology. So intense is their hatred of a united workforce that they are willing to replace a highly effective organisation with a dictatorial and ineffective ABCC. The very issues that the ABCC ignored—the rights of workers to safety, proper pay and entitlements, and an end to sham contracting—are the real issues facing the building and construction industry. Labor's Fair Work Building and Construction is dealing with these issues, and this government should get out of the way and leave it to get on with the job that it is doing so well.

Senator Rice (Victoria) (11:47): I rise to speak on the Building and Construction Industry (Improving Productivity) Bill 2013. I comment first on the name of the bill—'improving productivity'. We know that this bill is not tackling the key issues that are required to improve productivity. This bill is basically an attack on unions. The ABCC has been hanging over this parliament for the whole 2½ years that I have been here. It has been the subject of a lot of debate. The Greens have been opposed to it from the very beginning because it is clear that it is setting out to attack people's rights to fair and reasonable employment conditions in the building industry. It was one of the triggers for the double
dissolution election but then hardly rated a mention during the whole election campaign. That is understandable; it is not the key issue in the electorate. Most people are not concerned about supposed corruption in the building industry. But it is the concern, the fixation, of the government because they want to attack their political enemies. It is not about getting rid of corruption. If they were interested in getting rid of corruption, there are a lot of other things that we could be doing. This is a way to attack their political enemies.

Over the 2½ years that I have been here, parliament has exposed this government's supposed concern over corruption and wrongdoing as farcical. If there is criminality in employment in the building industry, if there is criminality by unions, why do we not address that through the criminal justice system? If the law is not strong enough then strengthen the law, but strengthen it so that it applies to all and is not just focused on people working in building and construction. The government is not interested in doing this. It wants one rule for its political enemies and other rules for the rest of business. The Australian people are starkly aware of this truth. It has been made even clearer by the government's refusal to support the Greens' call for a royal commission into the big banks and the financial sector—a sector where we have heard time and time again of alleged misconduct. This white-collar crime has affected the lives of tens of thousands of victims. So why is the focus just on unions? We already have a construction industry watchdog—Fair Work Building and Construction. Again, if there are things that are not working to address criminality then strengthen the controls in that commission. We do not need to set up another commission that is going to make unacceptable, undemocratic attacks on people working in the building and construction industry.

If the government were serious about tackling corruption and wrongdoing overall, it would get behind the Greens' call to set up a royal commission into the financial sector and the Greens' call for a national ICAC—an ICAC that would be a broad-based, national anticorruption watchdog with the power to look at employers as well as employees, not only in the construction industry but in every industry. It would have the power to look at politicians as well as public servants and decision-makers. Instead of supporting the creation of these two important bodies, the government is continuing its attack on unions through the creation of the ABCC. This bill to bring back the ABCC is a linchpin in the government's ongoing attacks on unions.

Let us think about unions and why they have survived and are such a vital part of Australian society. Unions look after workers. Trade unions were founded with the purpose of protecting the rights and interests of the workers they represent. We see time and time again that, when things go wrong in workplaces, it is the union that steps up and looks after affected workers. It is the same in the building construction industry, with the CFMEU stepping up time and time again to defend and to advance the rights of building construction workers. It is not the Office of the Fair Work Building Industry Inspectorate, which is what this government wants to turn into the ABCC.

This bill would give workers in the construction industry fewer rights at work just because of the industry they work in. It would give them fewer rights at work than accused criminals or even accused terrorists. With this bill, the government wants to set up a new secret police in the construction industry that would have the right to take workers off-site and pull them in for questioning. They will not have the right to silence and they will not be able to talk to
others about the fact that they have been pulled in for this secret questioning. This is not the type of Australia that I want to be living in, where we have a secret police that can pull people aside and they cannot even talk to anyone about the fact that they are being accused of these actions. It is a star chamber that they want to set up, without justification.

There are real issues in the construction industry that need to be addressed. There are people being injured and tragically dying on construction sites every week. Construction sites have the potential to be very dangerous places unless you get conditions right, unless you have all the watchdogs, unless you have the safeguards. When we see attacks from the government trying to reduce these safeguards, then we see an increase in injuries and deaths at work.

There are other issues in the construction industry. There are many workers coming in from overseas who are being exploited, who are being employed by labour hire contractors, who are working for $10 or $12 an hour. The government could be working to stamp out that sham contracting, but no. The government come along and say, 'There are problems in the construction industry and we want more powers to deal with them.' Are they coming along and saying, 'There are too many people dying in the construction industry every week'? No. Are they saying, 'We're finding too many exploited workers coming in from overseas, working for $10 or $12 an hour'? Are they dealing with that? No. Are they saying there are not enough locals, not enough apprentices or that there are not enough jobs for them? No. They are coming in and saying, 'We want you to give us more powers so that we can prosecute the very people at workplaces who are looking after the interests of people who turn up to work and who do not come home at the end of the day.'

We could be looking at sham contracting. We could be looking at the practice where subcontractors, who are under a lot of pressure, sometimes from big international developers, say, 'We'll give you a job, but only if you pretend you're an independent business, come along with an ABN and look after your own insurance and holidays.' The government could be tackling sham contracting, but they are not doing it.

Other parts of this bill also deserve attention. I am particularly concerned about the building code that is being set up by this bill and the limitations that that building code is going to put on enterprise agreements. Under this bill, if there is a clause in your local workplace agreement that says, 'We want to make sure that young Australians get a job, so we are going to guarantee that there will be a certain percentage of apprentices on this job so that young people can be trained up,' this building code will say that you cannot do that. If you want a clause in your agreement that says, 'We are going to give a certain number of positions to Indigenous Australians to ensure that they get a step up,' or, 'We are going to have some requirements about local labour to ensure that local workers get some of the spoils of international investment and the mining boom,' this building code will say that that cannot happen. The code will prohibit clauses that require employers to look for local workers first.

It will prohibit clauses that prevent unlimited ordinary working hours, which means that unions will not be able to place restrictions on the number of hours worked. That in itself is going to lead to an increase in worker deaths and work injuries because of fatigue, because of workers being forced to work longer than is safe. Not being able to place limits on the number of ordinary hours worked is going to really challenge the ability of workers to have stable and secure shift arrangements and rosters, which will impact on their family lives. It means the
whole work-life balance of being able to go to work knowing that these are the hours you are working and that you are going to be able to get home to pick up your children from child care is not going to be possible. It means you can say, 'Yes, I can work tomorrow because I know that my children have child care,' and then be told, 'No, you are not working tomorrow,' or that you can suddenly be asked to work on a day when you do not have child care for your children.

This building code is going to prohibit union officials from coming onto the site to assist with dispute settlement processes. It is going to prohibit limits on labour hire and casual work. All of these things that have been included in enterprise agreements and included in workplace practices are there because they lead to much better conditions, lead to much safer and more sociable working conditions, and lead to workers actually having decent rights at work.

The key thing is that, by having this building code, this supposedly free market government are going to have a seat at every negotiating table around the country. They are going to be able to write what is in and out of our enterprise agreements around this country. They are going to be able to say, 'Well, you might have negotiated yourself some good conditions, but we don't think they are good enough, so by force of law we're going to take them away from you.' They are going to impose a code under this legislation that says to a subcontractor or a small company: 'If you ever want to get work on a government job, you'd better not promise to take on more apprentices. You'd better not promise to take on more Indigenous Australians. You'd better not give the union representatives the right to come in and inspect safety, because if you want that we're not going to give you any work.'

The government are claiming that they are improving productivity and cracking down on wrongdoing in unions, yet the Greens and the Australian people see this for what it really is. It is an attack on people's rights at work and it is a distraction from dealing with the very real issues of corruption and wrongdoing that span every industry. The Greens oppose this bill but, even more so, we want to stop the charade of attacking one particular section of society that just happens to be the political opponent of the government. So let's use this as an opportunity to tackle corruption more broadly. The Greens have for many, many years pushed—

The PRESIDENT: Senator Rice, you will be in continuation. The debate is now interrupted, pursuant to an order made earlier today to enable the Attorney-General, Senator Brandis, to make an explanation.

STATEMENTS

Attorney-General

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (12:00): I thank the Senate for giving me the opportunity to make this statement concerning the Bell litigation. Between 1991 and 1993—that is, a quarter of a century ago—members of the Bell Group of companies, a diversified conglomerate based in Western Australia, went into liquidation. That liquidation is still ongoing and nowhere near being completed. It is the most complicated and costly corporate winding-up in Australian history. So far, it has involved some 30 separate legal proceedings in four countries. In Australia, it has involved complex proceedings in the High Court, the Federal Court and the Supreme Court of Western Australia. The hearing of the
main case alone, in the Supreme Court of Western Australia, lasted for 404 days and resulted in a judgement by Justice Owen running to 2,643 pages. There is no reliable figure as to the costs so far incurred in the winding-up, in professional fees paid to insolvency practitioners, solicitors, barristers and others. However, everybody agrees that the costs so far are in the order of hundreds of millions of dollars. And, of course, every dollar spent on professional fees and other costs is a dollar that the creditors will never see.

It is a feature of this winding-up that several of the original creditor companies have long since been taken over by professional litigation funders, whose interest was in prolonging the litigation. Those familiar with corporate insolvency—and this is one of the fields in which I used to specialise when I was in practice—have seen enough examples of administrations in which, after all the costs have been incurred in litigation, there is literally not a cent left over for the creditors. So, in order to avoid that eventuality, in 2015—that is, at a time when the matter had been going on for more than 20 years already—the Parliament of Western Australia passed a special act of parliament, the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015, which I will refer to in these remarks as the Bell act. The purpose of the Bell act was, as was explained in the second reading speech by the Hon. Michael Mischin, the Attorney-General and Minister for Commerce:

That litigation threatens to consume more time and resources of this State, judicial and otherwise, with no prospect of resolution in the short term.

This Government is not prepared to allow the continuation of a third or possibly fourth, decade of expensive Bell litigation consuming the judicial and government resources of this State.

Therefore the Government has introduced the Bell Group Companies (Finalisation of Matters and Distribution of Proceeds) Bill 2015. This Bill ensures a fair and expeditious end to the Bell litigation, providing for an equitable distribution of funds held by the liquidator …

This Bill provides a framework for the dissolution of those Bell Group companies registered in Western Australia, and the administration and distribution of the Bell litigation proceeds to avoid the perpetual litigation that appears to be inevitable on any issue associated with these companies.

So Mr Mischin said in introducing the bill.

The Bell act is complicated, but its intended purpose, in essence, was to use two provisions of the Corporations Act—sections 5F and 5G—to establish a statutory scheme to take control of the winding-up and to establish a single fund from which creditors' claims might be met, with a view to ensuring that the winding-up was brought to completion sooner and that the dividend available for distribution to creditors was maximised.

One of the features of the Bell act was a particular sequence for the prioritisation of creditors. The Commonwealth Corporations Act makes provision, in an ordinary winding-up, for the priority in which proofs of debt are paid so that, for example, secured creditors rank above unsecured creditors. The Bell act made provision for the ranking of creditors which was in some respects different from the ordinary ranking under Commonwealth law. In doing so, Western Australia relied upon particular provisions of the Commonwealth Corporations Act—that is, as I have said, sections 5F and 5G, which provide, in brief, that a state or territory law may declare a matter to be excluded from the operation of the Corporations Act.

The Bell act came into force on 26 November 2015. The following day, some of the Bell group creditors commenced proceedings in the original jurisdiction of the High Court,
challenging its constitutional validity. They did so, primarily, on the ground that insofar as the act dealt with debts due to the Commonwealth in the form of taxation revenue, its provisions were inconsistent with the Income Tax Assessment Act and the Taxation Administration Act, and should therefore be struck down under section 109 of the Constitution. A further argument was based on the validity of the reliance by the Bell act on sections 5F and 5G of the Corporations Act. Neither the Commonwealth of Australia nor the Commissioner of Taxation were defendants to the High Court proceedings.

It is relevant here to point out that I subsequently learnt there had been discussions between the former Commonwealth Treasurer, Mr Hockey, and the Treasurer of Western Australia, Dr Nahan, with a view to settling the Commonwealth's claim in the Bell winding-up. Since the Commonwealth's proof of debt was for some $167 million and a total post-liquidation assessment of some $298 million, it was plainly in the Commonwealth's interests that the matter be settled or otherwise expeditiously finalised.

Ms Kelly O'Dwyer became the Minister for Small Business and Assistant Treasurer on 21 September 2015 and assumed ministerial responsibility for the Australian Taxation Office. Neither she nor I were involved in any of the discussions between Mr Hockey and Dr Nahan and we had no knowledge of them at the time, although we subsequently became aware of them in circumstances that I will explain. In particular, we have both subsequently become aware of an exchange of letters between Dr Nahan and Mr Hockey dated, respectively, 13 April 2015 and 29 April 2015, which I seek leave to table.

Leave granted.

Senator BRANDIS: Senator Xenophon, you were not in the chamber when I was distributing these copies, but I wonder if I may, through the attendant, provide you with a copy of that exchange of correspondence. This, it should be said—that is, the exchange of correspondence between Dr Nahan and Mr Hockey of April 2015—was shortly prior to the introduction into the Western Australian parliament of the Bell Group Act. Mr Hockey's letter provides no basis for the claim than an agreement or understanding had been arrived at between the Commonwealth and Western Australian governments, although it is clear that some ministers of the Western Australian government had a different view.

The first personal involvement I recall having in the matter was on 3 March this year, although my office had been dealing with the matter prior to that time. On that day I had a visit from the honourable Christian Porter, the Minister for Social Services. Mr Porter had, of course, been the Treasurer and Attorney-General in the Western Australian government, and was familiar with its attempts to bring the Bell winding-up to a conclusion. He told me that on 2 March 2016 his office had received an email from the Western Australian State Solicitor containing a summary briefing and slide show of the history of the matter, as well as copies of the exchange of letters between Dr Nahan and Mr Hockey.

Mr Porter explained to me the background of the Western Australian government's attempt to end the Bell winding-up. He offered the view that a statutory scheme to bring the winding-up to a swifter conclusion and with a better return to creditors was, in principle, a good thing. However, he noted that he had not been involved in any discussions between Mr Hockey's office and Western Australian ministers and he had not had the time or resources to form a view on the constitutional or revenue aspects of the legislation. He suggested I speak to the Attorney-General of Western Australia, Mr Mischin, which I subsequently did.
My first conversation with Mr Mischin, which also involved Dr Nahan, was at about midday eastern time the following day, Friday 4 March. They gave me the Western Australian government's perspective of its dealings with Mr Hockey. Apart from the mention made of the matter by Mr Porter the previous evening, this was the first time I became aware of Mr Hockey's dealings with the Western Australian government. Later that day, I spoke to Ms O'Dwyer. I told her about my conversation with Mr Mischin and Dr Nahan. She told me that she had had a similar conversation with Mr Mischin earlier that day. Just as Mr Porter had suggested that I speak to Mr Mischin, he had suggested to Ms O'Dwyer that she speak to Mr Mischin. Ms O'Dwyer told me that her conversation with Mr Mischin was also the first time she had become aware of Mr Hockey's dealings with the Western Australian government.

I spoke to Ms O'Dwyer again over the weekend. On Monday 7 March, I also spoke, at the suggestion of Ms O'Dwyer, to Mr Andrew Mills, a second commissioner of taxation. The purpose of my conversations with Ms O'Dwyer and Mr Mills was to settle the Commonwealth's position in relation to the High Court proceedings—to which the Commonwealth had not been joined as a defendant—in particular in light of the views that had been expressed to us by the Western Australian ministers. At one stage on Friday 4 March, one of the options I considered, having regard to what Mr Mischin and Dr Nahan had put to me, was that the ATO should not intervene. I should stress that that was never a view I arrived at; it was merely one option among several which I wanted to test with Ms O'Dwyer.

In fact, after my discussions with Ms O'Dwyer and Mr Mills, I arrived at the firm conclusion that it was desirable that the ATO should intervene to protect the interests of the Commonwealth, notwithstanding the views that had been expressed by Mr Mischin and Dr Nahan regarding Dr Nahan's discussions with Mr Hockey and the related exchange of correspondence. I was also of the view, at that stage, that it was not necessary for the Commonwealth to intervene in addition to the ATO. Accordingly, the ATO intervened in the Bell litigation on 8 March, which was the final date for the ATO to lodge with the High Court its application for leave.

The position, therefore, from the time of the ATO's intervention on 8 March, was that the Commonwealth, through the ATO, was before the court and the Commonwealth's interests were represented by the ATO, on whose behalf the then Solicitor-General, Mr Gleeson, appeared. Mr Gleeson's client was the ATO. His instructions were given by the Australian Government Solicitor on its behalf. My view, at that time, was that this was a matter between the Western Australian government and the ATO.

Nevertheless, because a constitutional issue had been raised, a notice under section 78B of the Judiciary Act went to the Commonwealth, as well as to the states and territories, asking if the Commonwealth wished to intervene in the proceedings. It is important to point out that although the ATO is an agency of the Commonwealth it is a different legal personality. It nevertheless represents the interests of the Commonwealth in protecting the revenue. It is not automatic that the Commonwealth intervenes in proceedings every time it receives a section 78B notice. Every section 78B notice is assessed according to its own particular facts.

After I indicated that I did not intend to intervene in the proceedings on behalf of the Commonwealth, I was contacted by the Solicitor-General, Mr Gleeson. He gave me certain advice. I do not, by what I am about to say, waive the Commonwealth's privilege in that
advice. It is sufficient to say that Mr Gleeson was strongly of the view that the Commonwealth should intervene, in particular because of the issue of sections 5F and 5G of the Corporations Act, which also arose. Although, as I have said, my view of the litigation is that it primarily involved section 109 issues concerning the Income Tax Assessment Act and the Taxation Administration Act and was likely to be disposed of on that basis, I saw the force of what Mr Gleeson put to me and I accepted his advice.

Accordingly, on 30 March, on my instructions, the Commonwealth gave a notice of intervention in the proceedings. After the Commonwealth's notice of intervention was served, there were several conversations, instigated by Western Australian ministers, in an attempt to resolve the matter. The option put to the Commonwealth by Western Australia was that the Commonwealth make a regulation, under section 5I of the Corporations Act, to provide a carve-out for Western Australia to enable the Bell act to operate. Those conversations included discussions between the Western Australian Solicitor-General, Grant Donaldson SC, and Mr Gleeson.

I am informed by Ms O'Dwyer that she sought advice from her department, which was received on Sunday 3 April. The advice, which included AGS advice, made it clear that even if such a regulation were made under section 5I, the Bell act would nevertheless be inconsistent with the provisions of the Income Tax Assessment Act and would fail under section 109 of the Constitution for that reason.

On Monday 4 April—the day before the High Court hearing commenced—I met with the Solicitor-General. He told me that his discussions with the Western Australian Solicitor-General had not resolved the issues raised by Western Australia. He was of the view that a carve-out under section 5I was not appropriate. Ms O'Dwyer and I then wrote a letter to Mr Mischin, which I seek leave to table.

Leave granted.

Senator BRANDIS: The letter was prepared by Mr Gleeson's assistant, who was present at the meeting, with his input. The High Court proceedings were heard over three days on 5 to 7 April. Mr Gleeson represented both the ATO and the Commonwealth of Australia. In the week following the hearing, I had a meeting in Perth with Dr Nahan and Mr Mischin, who expressed in strong terms their disappointment that I had given instructions for the Commonwealth to intervene and that the ATO had intervened.

The High Court delivered its judgement on 16 May. It upheld the constitutional challenge to the validity of the Bell act on the basis of the revenue question—that is, on the basis that there was an inconsistency between the Bell act and the Income Tax Assessment Act and the Taxation Administration Act—so the former was struck down under section 109 of the Constitution. The court did not find it necessary to decide the issue concerning sections 5F and 5G of the Corporations Act, so the issue was moot. If I may say so, that was what I had anticipated all along—that this was a revenue case and would be decided on the issue of inconsistency with the Commonwealth revenue statutes.

There has been much mention of an asserted agreement between the Commonwealth and the Western Australian Government. If Western Australian ministers considered their dealings with Mr Hockey to constitute some form of agreement, I can only observe that the only written record of those dealings—the exchange of letters between Dr Nahan and Mr
Hockey of April 2015—does not, in my view, constitute or evidence such an agreement. In any event, whatever may have been discussed between Mr Hockey and Dr Nahan, neither I nor Ms O'Dwyer was aware of it at the time; we first became aware of the position asserted by Western Australian ministers after speaking to them on 4 March 2016. Nothing in any of my discussions with Mr Mischin constituted an agreement, as Mr Mischin himself has said.

It has also been suggested by some commentators that there is some relationship between this matter and the question of Western Australia's share of the GST—not so far as I am aware; however, as I have said, I have no knowledge of what passed between Mr Hockey and Dr Nahan other than what is revealed by the April 2015 exchange of letters, which lends no credence to that view.

Finally, it has been asserted, absurdly, by Mr Dreyfus and the opposition that I have somehow failed sufficiently to protect the interests of the Commonwealth. But every decision I made in this matter did protect the interests of the Commonwealth: by supporting the decision of the ATO to intervene in the matter and by deciding to accept Mr Gleeson's advice that the Commonwealth of Australia should also intervene in the matter.

In summary, the position is, firstly, so far as the Commonwealth was concerned, it was my view that this was first and foremost a case about revenue and the operation of taxation laws, which is what in fact it turned out to be. The Commonwealth's interests in that respect were fully and appropriately protected by the decision of the ATO to intervene, which decision I supported. Secondly, I had not initially considered that there was a need for the Commonwealth of Australia to also intervene in the proceedings. However, when subsequent to the ATO intervention Mr Gleeson told me he thought that there were strong reasons for the Commonwealth to also intervene on the Corporations Act point, I accepted his advice and gave instructions for the Commonwealth to intervene.

Thirdly, I was not involved in, and at the time they took place had no knowledge of, the discussions between Mr Hockey and Western Australian ministers, nor did Ms O'Dwyer. Mr Hockey never mentioned them to me. The only Commonwealth ministers with whom I have had discussions about this matter are Ms O'Dwyer and Mr Porter, as set out in this statement. Fourthly, there was never any agreement between me and Mr Mischin in relation to the High Court proceedings, as Mr Mischin himself has acknowledged. Fifthly, the case was disposed of on the basis of the ATO's submissions, supported by the Commonwealth. Had the Commonwealth not also intervened, the result of the case would have been no different.

Ms O'Dwyer and Mr Porter have seen a copy of this statement and they have authorised me to say that it entirely accords with their recollection of these events. I thank the Senate.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (12:24): I move:

That the Senate take note of the statement.

That was a very lengthy and detailed statement. One does wonder why it took a front page of The West Australian before the Attorney-General and the government fronted up on this. Why did it take the front page of the papers before the Attorney-General came into this chamber and told the truth about what happened in relation to the Bell litigation? Let us recall that this is not the first time that this matter has been raised in this parliament. There were questions in question time and questions before the legal and constitutional affairs committee about these
matters and yet it took a weekend, the front page of the papers and, frankly, a lot of media concern about what has occurred to have the Attorney-General come in here.

I also make the point that the Attorney-General declined to comment over the weekend in response to the allegations, telling everybody, 'We don't comment on matters to which the Commonwealth is a party.' Well, he has certainly commented at length today. I wish a few more of his colleagues were in here to listen to his statement today, commenting at length on the litigation. The one thing you can say about that statement is it throws Joe Hockey under a bus. How convenient that you go after the bloke who cannot defend himself. How convenient that somehow it was all the bloke who has left. It was all him. All of this constitutional advice and this kerfuffle that Senator Brandis was involved in—all the discussions with lawyers and the Attorney-General from Western Australia—was actually all Joe's fault. It is very convenient.

I suppose the first question is: are you going to recall him? Are you going to recall him from our most important ally? He is the ambassador to the United States, our most important ally. That is our most important security and defence relationship. If you do not have confidence in him because he did a dirty deal, are you going to recall him? We wait to hear. How convenient.

Senator Cormann interjecting—

Senator WONG: I will take that interjection from Senator Cormann. He said that we have not got much to say. Do not worry, we will be going through this statement very carefully and comparing it with what has been said in the Western Australian parliament because, as always with Senator Brandis, you have to look at what he does not say. You have to look at what he does not say. You have to look at all the careful things he says and does not say.

There were a couple of things he did not tell us about. One of them was why he put in place the direction to the Solicitor-General. If you look at the sequence of events—and I am sure my colleague Senator Watt will go to this—it is very interesting that it appears we have this dispute between ministers. There is discussion about how you put in place this political fix for a few hundred million dollars. What are a few hundred million dollars between friends anyway? It is very interesting that out of that appears the direction that requires Mr Justin Gleeson to get this bloke's permission before he acts for people, before he provides advice. Where was that in the statement? It was all of a sudden. Did it just come out of the ether?

The second point I want to make is in relation to the GST. We do not know yet what relevance the GST debate had to this political fix.

Senator Brandis: None.

Senator WONG: I will take the interjection from Senator Brandis. He said—

Senator Brandis: There is no evidence.

Senator WONG: Senator Brandis says there is no evidence of that. Don't you love it? He is always a lawyer. He said there is no evidence, but he could answer the allegation, couldn't he? Others are very clear that the GST payments to Western Australia were a political issue for the government. We know that. We know that from questions in here—

Senator Cormann interjecting—
Senator WONG: I will take the interjection from Senator Cormann. He said, 'We dealt with it.' How did you deal with it? Was this part of the deal?

Government senators interjecting—

Senator WONG: Oh, the infrastructure. Let us remember what Mr Nahan—I am not sure how one says it—

Senator Brandis: Dr Nahan.

Senator WONG: Thank you for correcting me again, Senator Brandis. I am always pleased to be corrected by you. It is Dr Nahan I am told. Dr Nahan said:

The understanding was that the commonwealth would not use the powers under the Corporations Act with the regulations null and void and it would not take an action to the High Court on the ATO and tax issues. In the end the ATO and the commonwealth Solicitor-General did join the action and they were successful in throwing the issue out.

I think the question here, which no doubt will be considered in detail in the coming weeks and days, is about the difference between what we have just had in the statement and what we know from the parliament of Western Australia, because it is quite clear from what the Western Australians have said that they had a very different understanding of this deal. I think what Senator Brandis is asking the Senate to accept is that somehow they were stupid. They got the wrong end of the stick. They were incompetent. It was never actually something that they were going to agree with. Let us understand: we have the Treasurer and the Attorney-General of the state proceeding on the basis that they had an agreement.

I want to make this point also. The Attorney-General says that he was happy for the Commonwealth to intervene—I am sorry; I am paraphrasing—'It was fine; we didn't have to intervene initially, because the ATO was there, and then I decided, after Mr Gleeson set me straight, that we did actually have to intervene.' I make the point that we are talking about the Constitution. We are talking about a law that sought to override a federal law, and we know that because that is what the High Court decided. I think one of the principles that we ought recall here is this: you do not get to ignore the Constitution just because there is a complex problem. As the first law officer of the country, you do not get to ignore the Constitution just because there is a political problem with one litigation that is before the High Court. The Attorney-General, in his opening to his statement, spent a lot of time explaining to us why the Bell litigation was a problem. Just because it was a political problem, it does not mean that the Commonwealth gets to cut a deal on legislation that is clearly unconstitutional—that is not my opinion; that is the judgement of the High Court.

Can I also make this point in relation to that statement, and, as I said, I think all of us will certainly be going through this in great detail, because it is the first time that Senator Brandis has broken his silence on this issue—

Senator Brandis: It's the first time I've been asked about it.

Senator WONG: He says it is the first time he has been asked about it. That is not true. We actually asked you in question time about it, and, as usual, you avoided the question. I will provide you with the transcript of that—

Senator Watt interjecting—

Senator WONG: I suspect Senator Watt probably asked Mr Gleeson about it in the Legal and Constitutional Affairs References Committee. You were also asked about it, Senator
Brandis, by the media on Friday, when this matter broke, and your spokesperson said the Commonwealth does not comment on litigation matters to which it is a party—a blatantly false statement. So do not come in here and tell us, 'I've never been asked.' You are only doing this because you knew you had to, probably because Mr Turnbull finally asked you to. That is the only reason you are doing this. You are not doing this because you thought it was the right thing to do; you are doing it because you have been forced to do so, dragged kicking and screaming.

*Government senators interjecting—*

**The ACTING DEPUTY PRESIDENT (Senator Whish-Wilson):** Order! Senator Wong has the right to be heard in silence.

**Senator WONG:** I want to go through a couple more matters in relation to what has been said publicly about this. First, Premier Barnett has responded to the report in *The West Australian*. Let us remember that that is a pretty damning report. The report, which ran on Friday of last week, said:

Despite Senator Brandis’ instruction, the ATO's written submission to the High Court — authored by Mr Gleeson — used the precise legal argument that the Attorney-General had assured his State counterpart Michael Mischin would be avoided by the Commonwealth.

There are two ways of understanding that. One is that Senator Brandis has done one of those deals he walks away from. That is always possible. The other is that Mr Mischin got the wrong end of the stick, which, I think, is Senator Brandis's proposition. The point is: that is clearly on the record, and I do not believe it has been answered properly by the statement the Attorney just gave. The Western Australian government's position is very clearly that they had been assured by this minister, this Attorney-General, that that argument would be avoided:

Mr Mischin was infuriated by the ATO's move, not only because its argument in the High Court was on a basis the Commonwealth had promised not to advance, but because he thought the tone of the agency’s submission professed WA's ignorance of the Constitution.

In fact, the Commonwealth was kept well abreast of the State’s intentions, with WA openly discussing the constitutional issues concerning its legislation and even sharing early drafts.

It is not like this is a new thing—they cannot have had an exchange of papers, an early draft here, an early draft there, checking out if this is okay—but Senator Brandis wants us to believe he was not part of it at all; he knew nothing about it; it is all that pesky Mr Hockey's fault. Bring him back from Washington and let him explain to everybody what happened. Then:

WA Treasurer Mike Nahan had received personal and written assurances early last year from then Federal counterpart Joe Hockey that the Commonwealth would not oppose the State Governments move.

“…… …

… five days after the High Court had heard the case, Mr Mischin and Senator Brandis had what witnesses say was a “blazing row” when the two attorneys-general met in Perth. Mr Mischin told Senator Brandis he was unhappy that the Commonwealth intervened in the case on the grounds pursued in court.

Let us remember also the sequence here. This is all happening in March and April, and then:
On May 4, Senator Brandis issued a directive that any department or agency seeking legal opinion from the Solicitor-General must first get Attorney-General approval.

Senator O'Neill: Locking the gate after the horse has bolted.

Senator Wong: Senator O'Neill says, 'locking the gate after the horse has bolted'—I think that is true, but now he wants us to believe, as I infer from his statement—

Senator O'Neill: There's no link.

Senator Wong: there was no link, like it was just happenstance.

Senator Pratt: A happy coincidence.

Senator Wong: It was apparently just a happy coincidence that there was this flaming row. Mr Gleeson did what he should have done, which was to unpick it under constitutional law. He gave advice about that. How dare he actually do his job! Then magically the Attorney-General gave him a direction which said, 'You have to get my permission before you do that again.' There was nothing in the statement today about that, was there, Senator Brandis? There was nothing at all.

In fact, this Attorney-General has never given an adequate explanation for why he sought to muzzle the Solicitor-General in the way he did. We know he was not able to proceed with that because this Senate had the numbers to disallow that direction. Senator Brandis beat a hasty retreat when he realised he did not have the numbers to defend the direction. And then we disallowed it in any event to prevent him making the same direction in six months.

Senator Ian Macdonald: What about a bit of fact?

Senator Wong: I will take the interjection on 'a bit of fact'. A fact is that a direction was made. A fact is that the Attorney-General never explained adequately why the direction was made. A fact is that this direction came shortly after a big blazing row with Western Australia involving the actions of Mr Gleeson.

Senator Ian Macdonald interjecting—

Senator Wong: Those are all facts, Senator Macdonald. They might be inconvenient facts to you, but they are the facts. They are also the reason—

The Acting Deputy President: Senator Wong, please address your comments to the chair.

Senator Wong: I am happy to do that, but Senator Macdonald is yelling at me, so I have to yell back, you know? I expect I was raising my voice! I said that—

The Acting Deputy President: I ask Senator Macdonald to cease his interjections.

Senator Wong: If he would cease interjecting, that would be very helpful.

Senator Ian Macdonald interjecting—

Senator Wong: I do not think he is listening, Mr Acting Deputy President.

The Acting Deputy President: I will ask you again, Senator Macdonald: please do not interject.

Senator Wong: I am very happy to address the chair. There is a gaping hole in the statement that has been provided. Why is it that shortly after these events the Attorney-General moved to muzzle Mr Justin Gleeson?
Senator Brandis: There is no relationship—

Senator WONG: He now says there is no relationship! This is the problem, isn't it? You treat people like mugs, Senator Brandis. You really do. You really treat people like mugs. You expect everyone to believe that the Solicitor-General essentially telling you, 'This political deal contravenes the Constitution and the Commonwealth ought to intervene to uphold the law and the Constitution'—as is your duty—

Senator Brandis interjecting—

Senator WONG: Yes, you followed his advice, but only after it was required. Before that point you were happy to go along with the deal, Senator Brandis, won't you? You were happy to go along with the deal.

The reality is that Senator Brandis is asking everyone—all of this chamber and all of the public—to believe that his direction to Mr Gleeson had nothing to do with this. It just beggar's belief. The time frame just beggars belief. So he just woke up one morning and magically thought, 'I am going to muzzle the Solicitor-General. That is a good idea. I'm going to do that today. Let's muzzle the Solicitor-General today.' He says it has nothing to do with this obviously problematic political circumstance which was arrived at in great part because Mr Gleeson stood up for a proper application of the law and for the right constitutional reading.

I am sure that Senator Brandis was aware that the opposition and the crossbench had sufficient numbers to suspend standing orders this morning in order to move the motion I moved today. I am sure that Senator Brandis knew that he would have to give a statement, not because he wanted to. We all know from observing him in this chamber that he is not someone who likes coming in here to explain himself. He is not someone who likes answering questions. He is not someone who likes to have to give an account of his behaviour. He has been forced to do so because he did not have the numbers in the Senate. I suggest this. I would be happy if he stands up and says I am wrong. I suspect the Prime Minister phoned him and said, 'You've got to do something about this.' I suspect Mr Turnbull finally found a backbone when it came to dealing with Senator Brandis and said, 'You've had a bad week, George. You have called your colleagues "very, very mediocre". You've had a bad week. But you really need to get into the chamber—

Senator Brandis interjecting—

Senator WONG: I am not surprised you are interjecting, Senator Brandis. I suggest the Prime Minister said, 'Get into the chamber and explain yourself.' I do not think this comment of, 'We do not comment on matters to which we have been a party,' is going to cut it. It does not cut it.

We know from the statement that there remain many questions unanswered. We know from the statement that this government is seeking to throw Mr Hockey under a bus. This was a deal which involved Commonwealth taxpayers basically being deprived of money for the Commonwealth budget because it suited a political deal with their mates in Western Australia. We know that that occurred. We know that Mr Hockey was involved. But what is clear is that all the responsibility for that is now being sheeted home to the person who is now the Australian Ambassador to the United States. There are many more questions to answer.

If it is the case that the rest of this government were somehow magically unaware of this, you would have to ask, 'What were they doing?' If hundreds of millions of dollars were to be
provided to the Western Australian government under a political deal, a deal that was contrary to the Constitution, how was it possible that the cabinet was not informed? How was it possible that the Minister for Finance did not know, because it affects the budget he has responsibility for? How is it possible that the Assistant Treasurer did not know until later, because the ATO is her or his agency, depending on who it was at the time? And how is it possible that the Attorney-General did not know that there was some arrangement about how this matter was to be dealt with before the High Court?

The reality is that there was a political deal to seek to circumvent the Constitution, and the Attorney-General's statement today does little to throw any light on the matter. What it does do is seek to blame Mr Hockey for this agreement. It is quite clear what the tactic is, and I look forward to the ambassador making his views clear about this issue.

Senator McKIM (Tasmania) (12:44): It is good to see the Attorney-General out of witness protection and in here today attempting to explain himself to the Senate. It shows that in politics you can run for a while but you cannot hide for ever. The statement we have just heard from the Attorney is instructive more for what it does not contain than for what it did contain. Specifically, there was no rebuttal that I recall hearing in his statement of the most serious allegation made in The West Australian article, dated 25 November this year. For clarity, I will put that allegation now and directly quote from that article. It is this:

A senior Federal source told the West Australian that Attorney-General Brandis verbally instructed Mr Gleeson earlier this year, as counsel for the A-G, not to run a particular argument in the High Court when a Bell creditor and its liquidator challenged the constitutionality of WA's attempt to take control of the group's $1.8 billion.

I presume it meant there are $1.8 billion of debts. The West Australian goes on to say:

The West Australian understands Senator Brandis told Mr Gleeson and understanding had been reached between the Federal and WA governments to finally end more than two decades of litigation stemming from the group's collapse.

Let us be very clear about what that allegation is. That allegation is that the Attorney-General instructed that then Solicitor-General, Mr Gleeson, to effectively run dead on the strongest argument he had at his disposal in the High Court challenge to the Bell Act, which was the section 109 arguments. The statement we have just heard from the Attorney-General did not rebut that allegation. The statement also did not contain a confirmation of precisely what the instructions were that the Attorney-General gave to the then Solicitor-General, Mr Gleeson. It is vague at best on details of precisely how the deal was struck between the Commonwealth and the Western Australian governments; and precisely by whom and when the deal was struck.

It is silent on the nature of the dealings that the Attorney-General's office had on this matter before the Attorney-General became aware of this matter, although he did confess that his office had dealings on this matter before he, Senator Brandis, became aware of it. But we do not know precisely what those dealings were. It does not contain any confirmation at all of exactly who asked the Attorney-General to give effect to the deal by instructing the then Solicitor-General not to run a particular argument in the High Court. It is vague at best in regards as to exactly how the Attorney-General became aware of the conversations and letters between the then Treasurer Hockey and Treasurer Nahan from Western Australia. Can I say: that is as good and as dangerous a hospital handpass as I have seen in my political career to
date—the one that Senator Brandis has just fired out of the pack in front of Joe Hockey; Joe Hockey is running along; he has his eyes on the ball but he cannot see what is coming at him. It is a hospital handpass that Senator Brandis has fired out today. Make no mistake about that! It is Joe Hockey who is going to get crunched here. Make no mistake about that!

The statement is also vague at best on explanations of the precise role of a number of key players in the deal, including former Treasurer Joe Hockey, Western Australian Treasurer Nahan, the Western Australian Attorney-General Mischin, Commonwealth minister Kelly O'Dwyer, Mr Christian Porter, who is, of course, the former Western Australian Attorney-General and, for that matter, finance minister Cormann. It beggars belief that Joe Hockey did not have a chat over a cigar with Senator Cormann about this deal. It beggars belief; and we do not believe it. There is no doubt that during one of their collegial cigars Joe Hockey would have mentioned this to Senator Cormann. All of those people have now got significant and serious questions to answer as a result of Senator Brandis's statement today.

There is no doubt that Senator Brandis has further muddied the waters today, and that is why the Australian Greens remain absolutely firmly of the view that we need a reference to the Senate's Legal and Constitutional Affairs References Committee so that we can get to the bottom of this in good time, with careful consideration and with evidence from the key players.

What we have here is a situation that is murky enough, but when you apply the context of the situation it gets even murkier. Remember the Western Australian government was bleating continually about the fact that their share of GST revenue was not high enough—again and again conveniently ignoring, of course, that as recently as 20 years ago they were a net recipient of GST revenues. In the mid-1990s the Western Australian government was a net recipient of GST revenue. Conveniently ignoring that, they were bleating; they had the begging bowl out to the Commonwealth; they were applying political pressure to their liberal mates here in Canberra. And then suddenly, oh, there is a dodgy deal—a dodgy deal. 'We'll run dead in the High Court on section 109 so that you can prioritise yourself'—that is, the Western Australian government—‘through the Bell act in order to claw back the money that you are owed at the expense of, potentially, the $300 million that the Australian tax office was owed by the Bell Group of Companies.' This is the most serious situation that the Attorney has faced, and he has not by any stretch of the imagination got himself out of trouble with his statement today.

The Attorney-General can say all he likes, as he did in this chamber today. He can say that there was no relationship between the public debate on GST and the deal that was done—no relationship at all. Well, I would say to the Attorney-General: it is well and truly open to the courts to convict on circumstantial evidence—and, boy oh boy, the circumstantial evidence is mounting up here against the Attorney-General, against the Commonwealth government and against their Liberal mates over in Western Australia. Seriously! Did they really think that a state effectively inventing its own version of Commonwealth tax laws would not be an issue for the High Court? Of course it was going to be an issue for the High Court, and, as it turned out, it was an issue for the High Court. There was a seven to zero decision by which the High Court struck down the Bell act. That is as clear cut as it can get. It was a most extraordinary deal that occurred here between the Commonwealth Liberal government and the state Liberal government.
It is worth pointing out that the Attorney-General portfolio is not your average or garden portfolio. It has a responsibility—in fact, a range of responsibilities—that sets it above all other portfolios, because the Attorney-General is the primary law officer of this nation, and as the first law officer of the Commonwealth the Attorney-General is the person who ensures that the rule of law is upheld in Australia. If the Attorney instructed the then Solicitor-General not to run the strongest argument at his disposal, the section 109 argument, against the Bell act in the High Court—and, remember, he did not deny doing that today—the Attorney has no option but to resign, and, if he does not resign, the Prime Minister has no option but to sack him.

To be clear, the Attorney-General's primary responsibility should have been to do everything possible to ensure that the Constitution of Australia was upheld. It is not his job to give effect to murky deals between the Commonwealth government and its Western Australian counterpart. We know there was a deal because Western Australian ministers have said, on the record, that there was a deal. The questions remain: who cooked up the deal; how was it cooked up; and, crucially for Senator Brandis, how was the deal given effect to? Again, the allegation in The West Australian is that Senator Brandis instructed then Solicitor-General Mr Gleeson 'not to run a particular argument in the High Court', and that allegation—the substantive allegation, the one that we have all been talking about over the last three days—was not explicitly denied by the Attorney-General in his statement. That is the biggest hole in the statement just given to this chamber by the Attorney.

The ATO, of course wanted to ensure that it acted in a way that would maximise its opportunity to receive the revenue it believed was due to it—in round figures, $300 million worth of potential revenue. Again unsurprisingly, the ATO thought it should not be in a position where it was bumped down the list of creditors, which was the effect of the Bell act. So of course the ATO was going to take this matter to the High Court, and, of course, as history shows, the Commonwealth, as Senator Brandis has confirmed today, did join that case.

But it does answer a question that has been puzzling many of us for some time, ever since the Attorney just prior to the election tabled the legal services direction, the controversial instrument that he tabled, that set himself up as a gatekeeper to the Solicitor-General: why on earth did he do it? It was never a reasonable response to the concerns raised by the then Solicitor-General, Mr Gleeson, in a letter he wrote to the Attorney-General in November last year. It was never a reasonable response to those concerns. But now we know. Now we know it was because the Attorney-General was annoyed and dissatisfied by the fact that the ATO went directly to the former Solicitor-General, Mr Gleeson, without going through the Attorney-General's office or the Attorney-General himself.

There are a number of questions that remain unanswered here. Did the Attorney really act to prevent agencies like, in this case, the ATO, from recovering potentially $300 million of funds that the ATO believed were owed to it? Remember, if money is owed to the ATO, it is owed to Australian taxpayers. This is taxpayers' money. Remember, the other effect of the Bell act was to prioritise the Western Australian government over and above private sector creditors in Western Australia who collectively were owed over $600 million by the Bell Group of Companies. Remember, in regards to the controversial legal services direction, which thankfully was disallowed by this Senate, the former Solicitor-General said during the
recent inquiry that the Solicitor-General is independent and that independence is protected by statute, and the Solicitor-General has an important role in assisting the government to uphold the rule of law for the benefit of the whole community. Thank goodness someone had the rule of law front of mind during this matter—and that someone was former Solicitor-General Justin Gleeson, who clearly had the rule of law front of mind. What a shame that it does not appear that the Attorney-General had the rule of law front of mind. So it is no wonder that he tabled the controversial legal services direction.

Senator Brandis's statement has not gone anywhere near satisfying the Australian Greens. Notwithstanding Senator Brandis's statement, we still have significant concerns and, having heard that statement, we are even more certain than we were that there needs to be an inquiry into this matter by the Legal and Constitution Affairs References Committee so that we can shine the disinfectant of sunlight on this whole sorry, sordid saga. We need to get to the bottom of how the deal was cooked up and by whom and of how the deal was given effect to and by whom. Specifically, we need to hear not only from Senator Brandis but also from the ambassador to the United States, Joe Hockey, who has been absolutely towelled up by Senator Brandis in the Senate today, given a hospital handpass the likes of which I have never seen in my political career. We need to hear from Mr Mischin. We need to hear from Mr Nahan. We need to hear from Senator Cormann. We need to hear from Ms O'Dwyer. We need to hear from all these players. We need to hear from Commonwealth government officials and we need to hear from Western Australian government officials. There is a lot of work to be done to get to the bottom of this affair. Senator Brandis has come in here to try to clean it up, but he has only made it murkier with what he said today. As I said at the start of my speech, he has made a statement that is more notable for what it did not contain than for what it did. We will not rest until we have got to the bottom of this, and we look forward, we hope, to the concurrence of the Senate with our view that we need to refer to this matter to the Legal and Constitutional Affairs References Committee for an inquiry.

Senator BACK (Western Australia) (13:02): Isn't it amazing how outrage can be confected out of absolutely nothing? I intend to commence my contribution by advising people in this place, and those who might be listening, what the history of this sad saga is. If those who are in the chamber now were listening to this situation, they would think, 'Here is a scenario where a group of Western Australians thought they could grab a few dollars to the exclusion of the wider taxpayer of Australia. How unfair is that! Why the billoy should that be happening?' And then we get the Senator Wongs and the Senator McKims of this world coming in with this confected outrage.

I was in business in Western Australia in the 1980s through to the time I came into this chamber, and the period from about 1987 to about 1993 was characterised by a Labor government led initially by Mr Brian Burke—he got out when the temperature became too hot—and then by Mr Peter Dowding, and then Ms Carmen Lawrence was left holding the baby. Those of you who are not Western Australians might vaguely remember a term that was used: WA Inc. The WA Inc era, led by Mr Brian Burke and his cronies, represented the worst corruption and the worst features of any interaction between government and industry, business and communities. His cronies were the late Mr Laurie Connell and the late Mr Alan Bond—people who, for example, when it came to a diamond mine in the north of WA, were, on the one hand, helping the vendor in selling assets to the Western Australian government
through Mr Burke and who were, on the other hand, with the other hand out, supposedly acting for the people of Western Australia. They were getting a commission on the way in and on the way out.

So we come to 1988 and to the time of the late Mr Robert Holmes a Court, a corporate raider, a very successful businessman and a very successful lawyer. He owned the majority of Bell Group, Bell Resources. And who came on the scene wanting to buy Bell Group but Mr Alan Bond. So, for an inflated price, Bond Corp took over the Bell Group. This happened in 1990, and of course, by 1990, Bell Group and Bond Corp were in significant financial difficulty. So to whom did they turn? They turned to their best mates. Mr Laurie Connell had a company which had been a shirt manufacturing business in Queensland. It became supposedly his bank, an investment bank called Rothwells. If anyone in the chamber or listening might remember Rothwells, it was a men's shirt company in the 1960s. Mr Connell turned it into an investment bank, which became his personal bank. Time does not permit me, in the 24 hours I might have, to tell you the events that took place surrounding it, so I now come to 1991, when Bell is insolvent. To whom did Bond and his mates turn? 'Burkie', the architect of WA Inc. You may have heard all the confected outrage in this chamber today from Senator Wong and Senator McKim, but, until you start to understand the history of this whole event, you will not come to a comprehension of the events.

You have heard Michael Mischin, our Attorney-General in Western Australia, being besmirched. You have heard Dr Mike Nahan, the Treasurer of our state, being besmirched. There is even an attempt to draw Christian Porter into this along with the Attorney-General for cheap political gain. But understand the background to this, because what do you think Burkie did? Mr Acting Deputy President Whish-Wilson, you were probably a kid in school in Perth when all this was happening. My good colleague Senator Siewert, like me, was possibly an agricultural scientist in the service of the Department of Agriculture at that time. I was in business in Western Australia. And how ashamed do you think we all were of the rotten Western Australian Labor government and the possibility that Burke was being talked about as a future federal Labor politician and, dare I say it, even the Prime Minister of this country? Burke was rewarded by getting to be the ambassador to the Holy See and Ireland. He got into strife again for the importation of vehicles and also for a stamp collection—he could not remember whether it was Burke personal assets or the property of the Labor Party or of the poor old taxpayer of WA, so he enjoyed some hospitality at Her Majesty's pleasure during that period.

So basically a liquidator was appointed, and probably the only accurate thing Senator McKim said was that some private sector creditors were associated with the liquidation of Bell. There was the Australian Tax Office—in other words, the Australian taxpayer. But let me tell you who carried the can, and that is the point of the contribution I wish to make before I get on to the disgraceful statements from Senator McKim about Western Australia's share of GST. I will tell you who carried the can, Acting Deputy President, because you were too young. What did the Burke WA Inc. rotten WA Labor government do? They funded the litigation through a levy on compulsory third-party vehicle insurance—people like me, my family, pensioners, older people. We were all levied to the tune of $50 per vehicle per year in what became known as the rotten WA Inc. levy. Let us not forget that, in this proud moment of Senator Wong and Senator McKim getting up here and carrying on in some unctuous way.
The people of Western Australian funded the litigation that became a case between 2003 and 2006 before Justice Owen—404 sitting days. Let me remind you: Bell goes to the wall in 1991; the case comes before Justice Owen, sitting as a judge alone, so excellent was that man's commercial knowledge, between 2003 and 2006. This is the point I want everybody in this place to understand. When the WA government approached the federal government with a view to the federal government contributing to the cost of the litigation, how much did the federal government offer to contribute? Not one cent, not a penny, nothing! So it was funded by the Western Australian community. Every time we paid our insurance on our vehicle registration we paid another 50 bucks to the rotten Western Australian Labor government funded WA Insurance Commission.

When I sit in here now and listen to the nonsense I have heard here this morning about the poor old Australian tax office—I will tell you how much the tax office put into it: nothing. Why? Well, I will lay a shade of odds, not being a gambling man: they reckoned they could not win. So it left itself to us—not Brian Burke, not Peter Dowding. It was the Western Australian community of motor vehicle owners who paid the lot. And I will tell you how much it was between those years. It was in excess of $200 million, in year 2000 dollars, that the Western Australian community paid. The total cost of litigation would appear to have exceeded about $500 million, because the banks—Commonwealth, Westpac, NAB—of course were the defendants. And after 404 days, Justice Owen found in favour of the Western Australian government, found in favour of the creditors. The only one who had paid anything towards that were the WA community.

Let me tell you a little bit about how this legal case was run. It was not just a few solicitors down the road in St Georges Terrace. All the legal advice came over from the eastern states of Australia. Every Monday morning they were flown in; every Friday afternoon they were flown out—not one or two or 10 but hundreds, funded by us. Rooms were secured in the high-rise building in Perth, and nobody was allowed into them. Even the cleaning contractor was excluded from going in to that section. That is how important they regarded this as being. Why did that happen? It was because most of the legal firms in Perth were conflicted or potentially conflicted as a result of all the actions that had gone on—prosecutions and litigation associated with WA Inc. Can anybody who has ever been to a lawyer imagine the hourly costs of flying in lawyers—solicitors, barristers—from the east every week for that number of years? It was massive. Yep, we got a judgement in our favour. Fantastic, wasn't it? It was absolutely fantastic. There was money there. Do you know what the amount was going to be, Acting Deputy President Whish-Wilson? It was in the order of $2 billion. I do not reckon that was a bad return. You put in $200 million, and you might get up to $2 billion—10 to one. Go to the track on Saturday, and 10 to one is not a bad gamble. But what do you think the banks did? They appealed. It went on and on. It went to appeal.

How much do you think at this stage the Commonwealth government was going to contribute to legal costs associated with attacking and then defending the appeal? My right hand is too tired now. It is too sore, so I will not have another go with it. I will leave it to those in the gallery to tell me how much the Commonwealth was willing to contribute. It was nothing. It was not a bad deal for the Commonwealth, was it? They were due for $300 million, those mugs in the West have paid the costs, it looks like there is a judgement, but the banks are appealing it. Do you think the ATO might throw a few bickies in this time? No.
Where do we get to? We get to 2015, and Treasurer Nahan is watching the money going down the gurgler in legal fees. What would you have done, Acting Deputy President Whish-Wilson—you are a person with a high degree of commercial knowledge—if you were up against the three big banks and the bickies were dwindling away? I will tell you what you would have done. You would have used every mechanism at your disposal to try to bring this event to a conclusion on behalf of your community of people who are paying for it.

That was why Treasurer Nahan brought in the legislation in 2015 to try to bring this whole sad, sordid mess—which had its genesis in the Burke Labor WA Inc era—to a close. It was so that there might be a few shekels left to be shared. I am not a party to any conversations or communication between Michael Mischin, Mike Nahan, Joe Hockey, the Queen of England, Freddie the racehorse or anybody else. I am saying to you that it appears to me that this was a very sensible course of action to try to bring this to a conclusion before there was nothing left in the bickie barrel, in which case there would not be anything for any of the creditors. These people on the other side of the chamber can carry on as much as they like about the action of the Attorney-General. He made it very clear in his statement today in terms of actions taken, by whom, when and who knew what.

There is only one state in Australia this year that will declare a deficit. WA's deficit is $3.9 billion. Do you know why that is important? If we were getting dollar for dollar, we would be getting $4.2 billion. We also would be in surplus, but the others would
not. I will tell you about what happened in WA Inc. It is a long story, and today is only its final chapter.

Senator WATT (Queensland) (13:22): I rise to speak on what is a growing scandal that is enveloping the Liberal-National Party government here in Canberra and also in Western Australia. We know that this is a scandal not just from the newspaper reports that we have been reading over the last three days; we also know that this is a true scandal from the incredible efforts the Attorney-General made in his statement to this chamber today to blame one person and one person only for this dodgy deal, and that is the former federal Treasurer, Joe Hockey. It was about 19 times that Senator Brandis named Joe Hockey as the architect of this deal, from the federal point of view. The reason that they have decided to go after Joe is that he is no longer part of this government. Their thinking is that, if they can pin the blame on a former minister—even though he is now Australia's representative to our most important ally, the US—then they can all get away with it.

We had a long, rambling contribution from Senator Back trying to give us the history of this Bell Resources case. What it ultimately got to, I think, was that he felt that the Western Australian government had done the right thing in trying to reach some sort of agreement with the federal government over the payment of taxes and to resolve litigation. I have spent a bit of time working in a state government. I do not mind state governments trying it on in their negotiations with their federal counterparts, to try to get the best deal that they can possibly get, but I do mind it when state governments enter into dodgy deals to try to avoid the payment of taxes which are legitimately owed to the Commonwealth. It is those taxes that the Commonwealth government relies on to fund health services and to fund education services. Those payments should not be subject to dodgy sweetheart deals between one leg of the Liberal Party and another. Senator Back, in his conclusion, admitted that he was not party to any discussions himself but described this deal as 'a sensible course of action'. I think quite the contrary: it is a dodgy deal that was designed to avoid the payment of taxes to the Commonwealth.

Earlier this afternoon we sat through a long statement from the Attorney-General, who tried his best to distance himself from this entire scandal that is enveloping the government. Essentially, the Attorney-General tried to characterise this deal as what might be called a sensible deal between Liberal chaps. The Liberal chaps got on the phone to each other and they had a bit of a chat. They might have had a few cucumber sandwiches to go with it and they worked it out. Rather than having this messy litigation and rather than having the potential for the Commonwealth to take the legitimate taxes that it was owed from this litigation, they came to a deal to hide a payment that was going to be made to the Commonwealth government and say that the Commonwealth would write off a debt and all would be forgiven. They could get on with being the Liberal chaps that they love to be.

This might have been a sensible deal or a sensible course of action, as Senator Back said, but let's have a look at what some other people have said about this deal that was struck between the Western Australian Liberal Party and their counterparts here in Canberra. When the Solicitor-General was finally given permission to draft advice and to act for the Australian tax office in this matter, challenging the Western Australian government's litigation, Mr Gleeson, the then Solicitor-General, said in the concluding remarks of his submission as follows:
The basic problem is that the drafter of the Bell Act has either forgotten the existence of the Tax Legislation, or decided to proceed blithely in disregard of its existence. No mechanism has been provided for in the Bell Act to allow for the continued operation or paramountcy of the Tax Legislation.

So the Solicitor-General of this country, our most senior legal representative, described the legislation that the Western Australian government had put through—the very legislation that federal Liberal ministers did not want to see challenged—as either having forgotten the existence of tax legislation or having decided to proceed blithely in disregard of its existence. I would have thought that was a pretty damning criticism of this deal.

But it is not only that. When the High Court ultimately made its decision on this legislation, it was with a seven-nil result. All seven High Court judges ruled that this Western Australian try-on legislation was invalid and inconsistent with the Commonwealth Constitution. They concluded that the Bell act was invalid in its entirety by the operation of section 109 of the Constitution, because of the inconsistency between provisions of the Bell act and provisions of the tax acts. It does not get a lot clearer than that. The High Court of Australia felt that there were absolutely no grounds whatsoever for this legislation to have been put through. It was invalid in its entirety.

One thing that we have not learnt yet from the statement by Senator Brandis, or any other statements that we have heard so far, is what Senator Brandis's department, some of the other Commonwealth departments and the Australian tax office had to say about this Western Australian legislation. We know what the Solicitor-General's view was and we know what the High Court's view was, but we have not yet heard what the departments who were in charge of collecting Commonwealth revenue thought of this blatant attempt by the Western Australian government—in cahoots with its Liberal Party mates here in Canberra—to avoid the rightful payment of taxes to the Commonwealth.

Senator Brandis did make the claim, and I see that he has repeated this claim in media comments since his statement, that he always supported the Australian tax office's intervention in this case. I really question whether that is actually true. I invite the Attorney-General to reflect on his remarks and to see whether he is still prepared to say to this Senate that he always supported the Australian tax office's intervention. That is not what we have been reading in media reports about this, going back several months now. I ask the Attorney-General to really think very hard about his own conduct in this matter and whether he actually did support the Australian tax office's intervention.

I know that this dispute, as with many disputes involving the Attorney-General, tends to get lost in a lot of legalese and jargon. Putting very simply what this is all about, ordinarily in the liquidation of a company, as occurred here with Bell Resources, there is not enough money to go around to pay all of the creditors. Under federal law, the tax office gets the first priority when it comes to distribution of the proceeds. So the tax office will always get to take the amount that it is owed before other creditors get an opportunity to share in the remaining proceeds. The consequence of this Western Australian legislation was that the tax office's right to be paid back first was relegated below the rights of other taxpayers, including arms of the Western Australian government.

You might ask: why would any federal government sign up to this kind of arrangement? We have had claims made that it was about settling litigation, but we all know the constant refrain we hear from Western Australian governments and Western Australian senators about
Commonwealth-state relations about how they feel duded by GST arrangements. Their view might change now that the Western Australian government and the Western Australian economy are not going so well, but for several years now we have been hearing the bleatings of Western Australian governments about how they are duded by the GST arrangements.

Senator Brandis claimed to not have been aware of any discussions that occurred between the then Treasurer Joe Hockey, other ministers of this government and their Western Australian counterparts which made any connection to GST arrangements. Notice that he did not deny that that occurred. He did the old, 'I don't know about it; nothing to see here'—a bit of wilful blindness. Of course, there are many questions remaining for other current and former ministers of this government. I note that Senator Back of Western Australia, in his contribution to this debate immediately before me, did seem to spend a lot of time complaining yet again about how he feels that Western Australia is duded when it comes to the distribution of GST moneys. I would say there is yet another link here. He was effectively arguing that the deal that was struck between the Western Australian and Commonwealth governments about the taxes owed by the Bell group of companies was okay because in some way it was compensation for the GST arrangements which he feels dud the Western Australian government.

There was another thing that the Attorney-General omitted to mention in his long statement. Over the course of the Attorney-General's statement, he found time to blame Joe Hockey about 19 times, but he did not really go near what we all know is emerging as the real background to the direction that he issued to restrain the actions of the Solicitor-General. I have been involved in this matter now for some months. The Senate committee that I was a part of reported that it was very clear that Senator Brandis had not consulted the Solicitor-General about the direction which restrained his independence and that further on a number of occasions he had misled this Senate about doing so.

What was never very clear was why the Attorney-General had felt it so necessary to make an unprecedented restriction on the independence of the Solicitor-General. Well, we are now understanding what that was all about it. I will refer to a timeline which I have prepared and which goes through some of the key events in the issuing of the direction against the Solicitor-General and this whole sorry saga that we are seeing involving the Western Australian government.

Over the course of the inquiry we held, Senator Brandis continually relied on a meeting that he had with the Solicitor-General on 30 November 2015, where he claimed to have consulted the Solicitor-General about issuing a new legal services direction. Of course, not one other person who was present at that meeting was prepared to back up Senator Brandis, but Senator Brandis stuck to his claim that he had consulted the Solicitor-General on 30 November 2015. What we do know, and everyone agrees, is that over the next few months there were a series of discussions between the Attorney-General's Department, the Solicitor-General and various other people about the process that Commonwealth ministers and departments should use when seeking legal advice from the Solicitor-General. But at no point in those few meetings taking place over a few months was there any discussion about the Attorney-General's intention to issue a direction restraining the independence of the Solicitor-General. So this meeting happened on 30 November and lots more meetings occurred.
We learnt today from the Attorney-General that he claims that he first became aware of this dodgy deal with the Western Australian government on 4 March 2016. On 8 March 2016, the tax office intervened in the litigation. Shortly after that, in early March, the Attorney-General also intervened. So months and months went by during which discussions have been underway about how the Solicitor-General should be briefed and at no point was anyone talking about the Attorney-General issuing a new direction which would restrain the independence of the Solicitor-General. Then things started getting interesting in early March 2016, when the Attorney-General said that he became aware of this dodgy deal involving the Western Australian. The High Court matter proceeded and ultimately the Western Australian legislation went down 7-0 in a ruling of the that court. On 30 March, the Attorney-General himself filed his submissions intervening in this case. Interestingly, at the Senate inquiry that we held into the legal services direction the Attorney-General's Department told us that they first became aware of any new idea about issuing a direction to restrain the Solicitor-General on 20 April 2016—not even a month after the Attorney-General had intervened in this litigation. So for months and months and months people were talking about what the process should be around briefing the Solicitor-General and no-one was talking about issuing any sort of a direction to restrain the Solicitor-General. Then, out of nowhere, on 20 April the Attorney-General's Department first became aware of this idea about a new direction. Of course, shortly after that, on 4 May 2016, the Attorney-General issued that direction.

Senator Brandis in here before, responding to Senator Wong, said there was no connection whatsoever between the dodgy deal with the Western Australian government, him finding about that and him issuing a direction to the Solicitor-General. He says that they are not connected at all. It is kind of like in Muriel's Wedding, which I know Senator McAllister is familiar with as well, and the mayor of Porpoise Spit happens to be in a Chinese restaurant and who should walk in? Deidre Chambers, what a coincidence! George Brandis is now emulating the mayor of Porpoise Spit, by saying we never were talking about this legal services direction for months and months and months, all of a sudden I became aware of a dodgy deal with the Western Australian government and, what a coincidence, I might go out there and issue an unprecedented direction to restrain the independence of the Solicitor-General to make sure that in the future he can never, ever be issue or be requested to issue independent legal advice by a tax office without going through me.

Further reports emerged over the weekend about how unhappy the Prime Minister is with Senator Brandis. We now know from one of Senator Brandis's own senior cabinet colleagues that the Prime Minister is infuriated with him and cannot wait to bring on a reshuffle. We all know that is going to happen by Friday. The only question is whether it is going to happen any sooner than that. In a desperate attempt to cling onto his own job and deflect blame, Senator Brandis decided to throw the former Treasurer Joe Hockey under a bus. Over the course of half an hour, he blamed Joe Hockey 19 times for this dodgy deal, suggesting it was nothing to do with him whatsoever. He named Joe Hockey so many times that I reckon Joe Hockey could hear that all the way across the Pacific over in Washington DC. Right about now, it is about 9.30 pm in Washington DC and poor old Joe was just trying to have a nice, quiet presleep cigar on his own. Well, he is choking on that cigar as he is being thrown under the bus by one of his own colleagues Senator Brandis.
They all think that if they can just pin the blame on Senator Brandis the rest of them can get away with it. Well, unfortunately, that is not going to happen. We know that there are far more people involved in this than just Senator Brandis and just former Treasurer Joe Hockey. We know that Christian Porter, the senior Western Australian minister, was involved in this. The Western Australian government has said so and Senator Brandis had said so; they have said that Christian Porter was involved in this. What exactly was his role?

What was the role of Senator Cormann? He has tried to pretend that he has had nothing to do with it. Do we seriously believe that a finance minister, who is from the state of Western Australia, knows nothing about a deal with the Western Australian Liberal Party that will cost the Commonwealth taxpayer $300 million—really? Do we really believe that he would know nothing about that? We need to know more about what Senator Cormann knew. We need to know more about what Kelly O’Dwyer, the Assistant Treasurer, knew about this arrangement. We really need to know what the former Assistant Treasurer Josh Frydenberg knew about it. Was he involved in discussions with the Western Australian government, and his cabinet colleagues over here, about this dodgy deal?

But the person I most want to know about, as to what he knew about this, is former Prime Minister Tony Abbott. You cannot tell me that a deal that was going to deprive the Commonwealth taxpayers of $300 million did not go through some version of an expenditure review committee that Prime Minister Abbott had in his cabinet at that point in time. What did Prime Minister Abbott know about this? Did he approve this deal or did people go around his back? I think we know what the answer to that is.

This is just the beginning of this saga. We are only just starting to learn what went on here. It is very clear that Senator Brandis was in this up to his neck, along with the former Treasurer Joe Hockey and along with the log list of current and former ministers. We are only beginning to hear the beginning of this. This is going to stretch on over the course of this week and probably into the new year while we get to the bottom of it.

Question agreed to.

BILLS

Building and Construction Industry (Improving Productivity) Bill 2013
Second Reading

Consideration resumed of the motion:

That these bills be now read a second time.

Senator RICE (Victoria) (13:39): We need to stop the charade of attacking one particular section of society that just happens to be the political opponents of the government. Let us use this as an opportunity to tackle corruption more broadly. For many years, the Greens have pushed for a national independent commission against corruption—a national ICAC, a national corruption watchdog—because we know that is what is needed, rather than this ABCC bill that just tackles one part of society. We need a national ICAC because transparency and integrity are fundamentally important.
I urge all members of this house to support our second reading amendment, ditch this bill and get on with establishing a national anticorruption watchdog. I move our second reading amendment:

At the end of the motion, add: "but the Senate calls on the Government to introduce legislation to establish a national independent broad based anti-corruption body that has wide ranging powers, including the power to investigate politicians, and that this bill should not come into effect until such legislation has been passed by the Senate."

I also want to foreshadow amendments that we will be moving in the committee stage if this bill passes through its second reading.

Given that the building industry code is going to regulate, in the smallest detail, what can and cannot be in every building enterprise agreement around the country if this bill is passed, then at the very least we can try to ensure that this highly prescriptive building code at least does some good. When we know that Prime Minister Turnbull desperately wants this bill to be passed before Christmas. He went to an election on this bill and his authority is tied up with getting this bill passed. This is putting the crossbenchers in a very powerful position. Our amendments that we are moving will see whether these crossbenchers are actually willing to stand up to the government or whether they are going to roll over and have their tummies tickled.

The Greens will not be supporting this bill even if it is amended, because we reckon that it is bad legislation. However, if there are crossbenchers who want this bill passed—the One Nation team, the Nick Xenophon Team or Senator Derryn Hinch—then at the very least we think that they should use their power to ensure that this highly prescriptive building code does some good. To that end, in the committee stage, we are going to be moving two sets of amendments: one on local steel and one on local jobs.

The local steel amendments are going to be amending the bill so that the building code must include a requirement for 90 per cent local steel to be used on any project covered by the code, with exemptions for special steel that cannot be obtained here or manufactured here at a reasonable cost. This would be a big boost for steelmaking in this country, especially boosting and really improving the conditions that Arrium are operating under. Senator Xenophon talked big about supporting Arrium in the lead-up to the election. Supporting our amendments will be his chance to do something about that.

On local jobs, we will be moving amendments that will require that, where the building code applies, jobs have to be advertised locally and the employer must demonstrate that there are no suitable local applicants before guest workers can be used. We have been advocating this position for a long time. It will be a test for the crossbenchers—for the One Nation team, the Nick Xenophon Team and Senator Hinch—to put their votes where their rhetoric is and to support local jobs.

We are calling on the crossbenchers, those who profess their commitment to Australian jobs and industry, to do something about it and to support our amendments. Will the crossbenchers be rolling over, having their tummies tickled and giving a Christmas present to the government with very little to show in return? By supporting our amendments, they will be able to do something to support their local community, support local jobs and have a small positive coming out of what is overall very bad legislation.
In conclusion, the Greens would prefer this bill to be rejected in its entirety. We think it is bad legislation, it isscapegoating workers in the construction industry and it is giving them fewer rights than accused criminals. It does not tackle the real issues of corruption in our society. The Greens are calling upon this Senate to reject this bill, to move on tackling corruption across society and to legislate for a national ICAC.

Senator REYNOLDS (Western Australia) (13:44): I too rise today to speak on the Building and Construction Industry (Improving Productivity) Bill 2013. When I worked in the Army I worked for General David Morrison, the Chief of Army. One of the things he said that got a lot of publicity has stuck with me: 'The standard you walk past is the standard you accept'—not just in defence, but in all industries. Certainly that is applicable in this place and it is certainly applicable to the millions of men and women who work in and around the construction industry. From four royal commissions over the last 40 years the facts are absolutely crystal clear. The construction industry has been, and remains, uniquely rife with corruption and bullying. Circumstances exist still, today, for workers that would be totally and utterly unacceptable in this day and age in any other workplace in this country. It is absolutely clear that the ABCC worked. It should never have been gotten rid of by those opposite, and it is desperately needed again.

Despite all of the tummy-tickling rhetoric from those opposite, the bill is all about protecting Australian workers. It is about stopping union thuggery, but it is also about improving productivity and reducing construction costs in our most vital of industries. Ultimately, when you reduce the costs you create more jobs and you create more wealth. The 165,000 sparkies, the 124,000 carpenters, the 87,000 plumbers, the 46,000 painters, the 43,000 civil engineers and the many thousands more concreters, plasterers, brickies, tilers and other very hardworking tradies belong to our third-largest industry and are subject to utterly appalling standards of behaviour and criminal activity in the workplace. As I said, if these workers were in any other industry, and not one protected by those opposite for so many years, it would not happen.

I will go through shortly some of the more egregious and outrageous things that workers in this industry have to put up with, because those opposite walk past it every single day. They are your mates, they are your ex-colleagues, they are your donors—but that is absolutely no excuse for walking past the appalling things that happen in thousands of worksites in the construction industry every single day. These hardworking men—and all too few women—deserve that we stop walking past them and what they have to put up with every single day.

In my home state of Western Australia workers suffer from some of the most horrific circumstances, as they do nationally. The 2015 Federal Court case Director of the Fair Work Building Industry Inspectorate v Upton imposed fines totalling $24,000 on the CFMEU and its official Bradley Upton for racially abusing a site representative on a construction site. The court described the conduct as 'disgraceful behaviour'. Mr Upton made obscene remarks to a site representative and told another to hit the representative after he became agitated about the meeting room assigned for discussion with workers. Mr Upton made the most obscene, abusive and offensive comments—far too revolting for me to repeat here in this chamber today, but I am sure some of my colleagues here know exactly what comments I am referring to. These comments and this behaviour would never, ever be tolerated—and have not been
tolerated for decades—in any other workplace. Justice Gilmour further commented on Mr Upton's comments, stating:

I regard Upton’s conduct as deplorable particularly so for someone acting in his official capacity …

Supposedly on behalf of his workers. Justice Gilmour went on:

The language used as well as being repeatedly obscene, had a particularly nasty racist overtone.

It makes me wonder where the Human Rights Commission was in relation to this matter, but I digress. In relation to the CFMEU, the court said:

The CFMEU has a significant record of noncompliance with the provision of industrial legislation … There is a history over a number of years of contraventions on industrial law by CFMEU officials, for whom the CFMEU is responsible, and which have involved those officials, variously, in using obscene and threatening language, making threats of assaults and in some cases involving scuffles and physical altercation.

In another incident, according to the royal commission the union official Michael Greenfield told female workplace inspectors—again, this is far too obscene for me to read what he actually said—that they were 'f*cking dogs'. He also said to them, 'I hope you brought your kneepads, you are going to be doing expletive expletive on those dogs all day in the workplace.' Can you imagine any other workplace in this nation where female workers would come onto a worksite or into workplace and be told, when they entered, 'Did you bring your kneepads because you are going to have to perform a sexual act on all of us in this workplace'? That is what he said, and it is completely and utterly appalling that those opposite are doing nothing to address this endemic problem.

This is not something new. Four royal commissions in 40 years have found the same thing over and over again about the CFMEU—there are endemic criminal activities within the building and construction industry, and workers are repeatedly and regularly subject to unacceptable behaviour. The impact of this is felt far further than the direct impact on workers—our whole economy suffers, because we are paying up to 30 per cent more for building and construction works in this country. Think about the implications of that. In my own home state, the taxpayers of Western Australia are paying 30 per cent more of their taxes for construction jobs simply because of the corruption and other activities that happen in the unions. We could be building 30 per cent more schools and public infrastructure—but, no, it is going into the coffers and the deals of the trade unions. It is very shameful.

Last Monday night in this chamber, the Senate passed the first tranche of legislation to deal with these issues—the Fair Work (Registered Organisations) Amendment Bill. This will ensure that rogue union officials are subject to the same standards and accountability as corporate and charity organisation directors. But again those opposite fought the government at every turn on this basic level of accountability for union officials. That is absolutely disgraceful. Why should union officials not be accountable to their members for how they use their money? Those opposite should also be working with the government to make sure that the millions of people who work in construction and manufacturing workplaces are treated with respect and are not subject to criminal behaviour.

As I said, the construction industry is an integral part of the Australian economy not only for the approximately one million jobs it directly creates but also for establishing the infrastructure that we need for long-term economic development. It is Australia's third largest industry and actually contributes eight per cent GDP to this nation. Last year in my own
wonderful state of Western Australia the $31 billion construction industry accounted for a full 11 per cent of gross state product. However, the systemic culture of abuse, corruption and bullying that riddles the construction industry in my home state, as it does elsewhere in the nation, makes Australia a less appealing place for both domestic and overseas companies to invest. Why would you invest when you do not have certainty but have corruption and bullying? You do not have certainty. You may as well put your money somewhere else. All of us in Australia suffer because of that.

Mr Shorten abolished the ABCC in 2012. After that the rate of disputes in the construction industry increased by 40 per cent while in other industries the rate of disputes declined by 33 per cent. All other industrial disputes declined nationally by 33 per cent but—surprise, surprise!—with the ABCC gone, again the rate of disputes increased by 40 per cent in the building and construction industry. Unsurprisingly and additionally, the significant cultural problem of bullying and abuse in the workplace has seen decreased participation by women in the building and construction industry. The Productivity Commission notes that, of the 19 industry divisions in our economy, construction has the lowest rate of participation by women, at just over 11 per cent of the workforce, compared to nearly 46 per cent across all other industries. With the conditions that men and women, particularly women, have to put up with in the construction industry, is it any wonder that we have so few women joining and staying in that industry?

For many years it has also been very clear that the commercial building and construction sector provides the worst examples of industrial unlawfulness. Again you do not have to look at just the last royal commission report; all three proceeding royal commission reports said the same thing over and over again. It is a corrupt industry, it is a corrupt union and it is a totally inappropriate workplace for so many men and women to work in. Thirteen years ago the Cole royal commission found:

… an industry which departs from the standards of commercial and industrial conduct exhibited in the rest of the Australian economy. They mark the industry as singular.

This means that this is a unique industry with a uniquely corrupt and inappropriate organisation in the CFMEU. Again this is nothing new but it is unique in this country. Also 13 years ago, the industry was:

… marred by unlawful and inappropriate conduct. Fear, intimidation and coercion are commonplace. Contractors, subcontractors and workers face this culture continuously. At the centre of this culture and much of the unlawful and inappropriate conduct is—

guess who?—
the CFMEU.

The Cole royal commission also said:

The CFMEU exercises a position of dominance and power often disproportionate to its on-site presence, in terms of the number of workers on-site who are members of the CFMEU.

If you took the findings of the Cole royal commission and the most recent royal commission, you would see that they are saying the same thing over and over again about this union.

I am incredibly proud that the Howard government was prepared to step in and make the tough decisions to clean up this sector for all of the men and women who work within it. That I think is great government—taking the tough but necessary decisions. The establishment of
the ABCC in 2005 provided a genuinely strong watchdog for what is a uniquely corrupt and awful workplace for so many men and women to work in. It was a strong specialist regulator that enforced the rule of law to the building and construction sector.

What were the results? Yes, there were results. When the ABCC was introduced there was a decrease in lawlessness in the building and construction sites. It was clearly making a difference, which is why those opposite hated it so much and the now Leader of the Opposition abolished it. Senator Di Natale's assertion that the ABCC did not make any difference is demonstrably and factually wrong. When the ABCC existed the economic and industrial performance of the building and construction sector improved. The figures are very clear. According to the ABS, estimates of industry multifactor productivity showed that in the six years from 2004-05 to 2011-12, its final year of operation, the labour productivity index for the construction industry rose from 83 to 100—a 20 per cent increase in a few short years. This is clear evidence that the ABCC was actually working.

Opposition senators interjecting—

Senator REYNOLDS: It would have been terrible for you to realise that the ABCC was working, just as it will work again when reintroduced by this government. The most recent royal commission findings once again lift the veil on what everybody in this industry has known for over 40 years but previous governments were either unwilling or unable to tackle. The Heydon royal commission again reported that there is still 'a culture of wilful defiance of the law which appears to lie at the core of the CFMEU'. Since 2005 the CFMEU has had to pay $8 million of its members' money in fines—$8 million of the membership dues paid by the CFMEU membership have been paid for wilful breaches by the union officials of legislation. As the royal commission found, they continue to wilfully flout the law and keep using their members' money as a bit of an ATM to pay for their own fines. This systematic and volatile culture of bullying, corruption and harassment that was again identified by the most recent royal commission reinforces the need for active enforcement of workplace laws.

The PRESIDENT: Senator Reynolds, you will be in continuation. It being 2 pm, we now move to questions without notice.

MINISTERIAL ARRANGEMENTS

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:00): I advise of changes to ministerial arrangements this week. Senator Payne will be absent from question time this week due to illness. In Senator Payne's absence, I will represent the Minister for Defence, the Minister for Defence Industry, the Minister for Veterans' Affairs, the Minister Assisting the Prime Minister for the Centenary of Anzac, and the Minister for Defence Personnel.

QUESTIONS WITHOUT NOTICE

Attorney-General

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:00): My question is to the Attorney-General. I refer to the Attorney-General's statement to the Senate earlier today, in which he said, in part:

… one of the options I considered … was that the ATO should not intervene in the proceedings.
Did the Attorney-General discuss his view with anyone other than Mr Mills and Ms O'Dwyer? If so, who? Did the Attorney-General provide to the Solicitor-General, the Australian Government Solicitor or the ATO any instructions consistent with this view?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:01): I have addressed this matter in what Senator Wong herself acknowledged to be a very lengthy and detailed statement which I gave the Senate a short while ago. I have nothing to add to that statement.

The PRESIDENT: Senator Wong, a supplementary question.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:01): I again refer the Attorney-General to his statement, in which the question I ask is not addressed. I further quote from the statement:

I was also of the view, at that stage, that it was not necessary for the Commonwealth to intervene …

With whom did the Attorney-General discuss this view? Did he provide any instructions consistent with this view to the Solicitor-General or the AGS?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:01): Once again, I have nothing to add to the lengthy and detailed statement I have just given.

The PRESIDENT: A final supplementary question, Senator Wong.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:01): I again note the Attorney-General's refusal to answer these questions on a matter which he did not address in his statement. On what basis did the Attorney-General form that view that, firstly, the ATO should not intervene, and, secondly, the Commonwealth should not intervene, given his obligations to both uphold the law and ensure that the interests of Australian taxpayers were protected?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:02): I did explain that in the statement. In particular, I will try to turn it up for you, Senator. I was of the view—

Opposition senators interjecting—

The PRESIDENT: Order on my left.

Senator BRANDIS: I was initially of the view that the interests of the Commonwealth were represented before the High Court by the ATO, and the reason I formed that view, as I said in my statement, was that I was of the view that this was primarily a matter between the state of Western Australia and the ATO, because the main point in the case was the alleged inconsistency between the Income Tax Assessment Act and the Taxation Administration Act of the Commonwealth on the one hand and the Western Australian state act which we have been describing as the Bell act on the other hand. That was my view, but it was a view from which I was dissuaded by the Solicitor-General. (Time expired)

Education

Senator McKENZIE (Victoria) (14:03): My question is to the Minister for Education and Training, Senator Birmingham. Is the minister aware of new research, released by the Grattan Institute, which identifies the importance of teaching quality, not increased funding, in improving student outcomes?
Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:03): I thank Senator McKenzie for yet another thoughtful question on education policy. I am aware of the Grattan report, *Circuit breaker: a new compact on school funding*, released today, and I welcome the fact that the Grattan Institute has released this report—a far more thoughtful contribution to school education policy than what we hear from those opposite, who just run their usual scare tactics, and, frankly, far more thoughtful than some of the hysterical claims we hear from state and territory governments from time to time as well. This report absolutely demonstrates an understanding of the budget pressures Australia faces, and the need to make sure we get the optimal outcomes from our record growing levels of school investment. It does acknowledge that:

In a tight fiscal environment, prudent spending decisions are vital.

The report further notes:

Australian spending on school education increased over the last decade, but student outcomes did not improve. Whatever we did, it didn't work. And doing the same again is likely to have the same outcome.

These are very wise sentiments indeed, highlighting that we need to focus carefully on how record growing funding is invested. In fact, it says:

More money alone will not guarantee better student outcomes. It is not enough to target money to the most disadvantaged schools; each school must then use that money wisely.

And it goes on to say:

Effective teaching is known to have the largest impact on student outcomes outside of the home …

All of these are sentiments that the Turnbull government agree with. It is why we want to make sure that our school funding, which will grow from $16 billion this year to more than $20 billion by 2020—funding above inflation, above enrolment—that the Grattan Institute recognises can absolutely be used to help address disadvantage in schools is also used as effectively as possible, particularly in helping to address teacher quality issues and lifting the quality of teaching right around Australia. (Time expired)

The PRESIDENT: Senator McKenzie, a supplementary question.

Senator MCKENZIE (Victoria) (14:05): Can the minister update the Senate on what the Turnbull government is doing to ensure our school funding contribution leads to improved student outcomes, given the Commonwealth is not the major funder of schools in Australia?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:06): I absolutely can, because we released in the budget this year our *Quality schools, quality outcomes* report, which not only demonstrated our record growing levels of investment in Australian schools, but also, importantly, highlighted the areas in which we want to see that investment focused. We want to see that investment support teacher quality, by ensuring optimal use of the Australian Professional Standards for Teachers; better recognition and reward for highly accomplished and leading teachers; better arrangements for the certification of potential principals; support for boosting literacy, numeracy and STEM performance; earlier identification of problems and challenges that young children may have, so that we can have earlier intervention; minimum standards of literacy and numeracy skills for school leavers to obtain their higher school certificates; and support for increased research into long-term teacher training so that we are helping address not just the changes we are
applying in universities to initial teacher education but also professional development
standards for existing teachers into the future. (Time expired)

The PRESIDENT: A final supplementary question, Senator McKenzie?

Senator McKENZIE (Victoria) (14:07): Can the minister explain what the research
released today finds in relation to the school funding model that the Turnbull government
inherited from Labor?

Senator BIRMINGHAM (South Australia—Minister for Education and Training)
(14:07): This report backed up what we have been saying for some time—that the Turnbull
government inherited 27 different special funding deals that were struck by then education
minister Mr Bill Shorten in the Gillard government and the Rudd government to ensure
schools around Australia have received vastly different sums of federal funding even where
they have identical demographic compositions. So students in schools with the same
demographic composition receive vastly different sums of federal funding in one state versus
another state because of these special deals.

Beyond that, those deals locked in and grandfathered decades of other special deals that
were put in place by the then Rudd-Gillard government and their predecessors, creating a
hotchpotch framework that means that there will be no consistency across school funding in
Australia for another 150 years if existing arrangements are left in place. That is why I am
committed to making sure we have constructive discussions with the states and the non-
government sector to get a fairer deal in the future. (Time expired)

Attorney-General

Senator WATT (Queensland) (14:08): My question is to the Attorney-General, Senator
Brandis. What instructions did the Attorney-General provide to the Solicitor-General, either
directly or through his office or department, in relation to the intervention of the ATO or the
Commonwealth in the Bell Group matter? Given that he has already provided the Senate with
selected documents, will the Attorney-General provide the Senate with all correspondence
between his office, his department and the Solicitor-General's office in relation to the Bell
Group matter?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive
Council and Leader of the Government in the Senate) (14:08): First of all, in relation to the
first part of your question, Senator Watt, I did not instruct the Solicitor-General on behalf of
the ATO. The Solicitor-General's instructions on behalf of the ATO were from the ATO,
delivered by the Australian Government Solicitor. As I said in my very lengthy and detailed
statement, the ATO was the Solicitor-General's client in relation to his appearance on its
behalf before the High Court.

In relation to the second part of your question, Senator Watt, I will take that on notice.
Obviously there are documents that would reveal legal advice, and you would not expect
them to be disclosed as they never are.

The PRESIDENT: A supplementary question, Senator Watt.

Senator WATT (Queensland) (14:09): At any point did the Attorney-General direct the
Solicitor-General, either directly or through his office or department, not to intervene on
behalf of either the ATO or the Commonwealth?
SENATOR BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:10): Senator Watt, you must not have been listening to my first answer. The Solicitor-General did not act on behalf of the ATO on my instructions. He acted on behalf of the ATO on the ATO's instructions. I have no involvement in instructing the Solicitor-General on behalf of the ATO.

The PRESIDENT: A point of order, Senator Wong?

Senator Wong: The point of order is on relevance. The Attorney-General is insisting on using the word 'instruction' in order to avoid the question. The question was, 'At any point did the Attorney-General direct the Solicitor-General, whether personally or through his office or department, not to intervene on behalf of either the ATO or the Commonwealth?' It did not say 'instruct'; it asked about a direction from him.

The PRESIDENT: The Attorney-General did make it very clear in his answer, Senator Wong, that there were no instructions or no involvement in relation to the Australian Taxation Office. The senator is aware of the question. I call the Attorney-General.

Senator BRANDIS: The point I am trying to convey to Senator Watt through you, Mr President, is that the ATO, not the Commonwealth of Australia, was Mr Gleeson's client.

The PRESIDENT: A point of order, Senator Wong?

Senator Wong: Yes, again on relevance. We are not asking who the client was. We are well aware of that. We are asking what this minister directed. What directions did this minister give? He ought to answer that question.

The PRESIDENT: I am assuming from the Attorney-General's answer—it is difficult for me to arbitrate, but I am assuming—that he is answering the question and that he is relevant, because he is indicating that the client, the Australian Taxation Office, was not a client of the Commonwealth and so there would be no direction and no instruction. In any event, the minister is aware of the question.

Senator BRANDIS: Mr President, the point I am trying to explain through you to Senator Watt is that, because the ATO was Mr Gleeson's client in relation to its intervention in the Bell Group proceedings, I had no role in providing instructions on its behalf to the Solicitor-General. (Time expired)

The PRESIDENT: A final supplementary question, Senator Watt.

Senator WATT (Queensland) (14:12): At any point did the Attorney-General direct the Solicitor-General, either directly or through his office or department, to limit—

Honourable senators interjecting—

The PRESIDENT: Order! I have to listen to the question, so I need quiet on both sides. Senator Watt, would you like to commence your question again.

Senator WATT: At any point did the Attorney-General direct the Solicitor-General, either directly or through his office or department, so as to limit the scope of arguments he was to put to the High Court in relation to the Bell Group matter?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:13): Once again, I have dealt with these matters very extensively in a very lengthy and detailed statement. In that statement, one of the points I made was that in discussing these matters I did not waive the Commonwealth's
privilege in relation to legal advice. As Senator Watt knows very well, governments of both political persuasions have always respected the confidentiality of legal advice. For that reason, I do not propose to respond to any question that seeks information as to legal advice provided to the Commonwealth.

Arts

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (14:13): My question is to the Minister for Communications and Minister for the Arts, Senator Fifield. Can the minister inform the Senate what the Turnbull government is doing to promote Australian music on the world stage?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (14:14): I thank Senator Smith for his long and enduring interest in and support for Australian music—something which, I think, we all share. Senator Smith and I are probably of a similar demographic and so I would hazard a guess that Cold Chisel's *Flame Trees* may well be a favourite of Senator Smith. As I look at Senator Cameron, I think it is probably Jimmy Barnes's *Working Class Man* that rings his particular musical fancy.

The Australian music scene is strong and is of world standard. It continues to attract the international audiences it deserves. I was very pleased recently to be able to announce that Sounds Australia, whose funding was to conclude at the end of this year, will have that funding continue. There will be a total of $1.16 million in funding over the next four years, starting in January 2017. The funding complements other Commonwealth funding through the Australia Council for the Arts and funding from the industry body APRA AMCOS. There is good support from state governments as well.

Australian music does matter. I would like to give you one example of the reaction to our funding for Sounds Australia. It comes from Clara, the manager of the Australian band All Our Exes Live in Texas. She leapt to Facebook to say, 'It's a good time for all. An awesome day for Aussie music because Sounds Australia just got their funding back. Yes, Senator Mitch Fifield, you ripper! A good move. Such a worthwhile funding sitch, good on ya, Mitch.' They are all words and sentiments we can embrace.

Honourable senators interjecting—

The PRESIDENT: Order on both sides! Senator Smith, a supplementary question.

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (14:16): Can the minister outline how this funding will benefit the Australian music industry and the Australian economy?

Senator Wong: I bet the Nats are loving this!

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (14:16): I will take the interjection from Senator Wong: I am certain they are, because Senator Canavan could have had the opportunity in Rockhampton last week to listen to All Our Exes Live in Texas playing at the Pilbeam Theatre. No doubt Senator Canavan did that.

Sounds Australia has already participated in 50 international events in 53 cities across 20 countries. These activities promote our Australian music industry to the world, and this new
funding will allow representation in our key overseas markets to continue for another four years. To give you an example as to why this matters, Millie Millgate from Sounds Australia said:

Building relationships is key to Australia's success in these emerging markets over coming years. This trade mission presents a meaningful reconnaissance opportunity that sets a strong foundation for reciprocal business and cultural outcomes.

**The PRESIDENT:** Senator Smith, a final supplementary question.

**Senator SMITH** (Western Australia—Deputy Government Whip in the Senate) (14:17): Can the minister update the Senate on how the statement has been received by the industry?

**Senator FIFIELD** (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (14:17): The industry has responded well and positively. Dean Ormston, head of member services at APRA AMCOS, said:

The Federal Government's commitment to funding SOUNDS AUSTRALIA for the next four years is fantastic news, and will be welcomed by thousands of current and future exporting artists and music businesses. The support from the local and international music industries has been overwhelming— a testament to the work of the SOUNDS AUSTRALIA team, Millie Millgate, Glenn Dickie and Esti Zilber!

So this is good news. In case there are colleagues who are wanting to keep track of All Our Exes Live in Texas and Senator Smith, you have the opportunity in Albany to hear them play. I hope you take that opportunity. Senator Macdonald could have had the opportunity in Townsville last night to catch up with that great Australian band.

**Attorney-General**

**Senator McKIM** (Tasmania) (14:18): My question is to the Attorney-General. Attorney, this question relates to your statement today, regarding the Bell act. I will preface it by saying that you have been very clear that you did not instruct the Solicitor-General on behalf of the ATO, but for the avoidance of doubt this question goes to your instructions to the Solicitor-General on behalf the Commonwealth, which, as you have acknowledged, is a separate legal entity. So, Attorney, did you instruct the Solicitor-General on behalf of the Commonwealth not to run a particular argument in the High Court in regards to the Bell act case?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:19): Senator McKim, you are right. My instructions to the Solicitor-General were on behalf of the Commonwealth of Australia. As I pointed out in what Senator Wong acknowledged to be a very lengthy and detailed statement to the chamber earlier in the day my initial instinct was that the Commonwealth did not need to intervene because, as I said, this was a revenue case between the ATO and the Western Australian government. Nevertheless, I did have a discussion with the Solicitor-General. I do not waive the Commonwealth privilege in relation to what may or may not have passed between us during the course of that discussion. I recall that, in his appearance before the Senate Legal and Constitutional Affairs References Committee last month, the Solicitor-General—if my memory serves me correctly—was also at pains to say that he did not waive the Commonwealth privilege either. Suffice it to say: we had a discussion. We had a discussion about whether or not the Commonwealth of Australia should intervene because of the issue—
The PRESIDENT: A point of order, Senator McKim?

Senator McKim: In regard to relevance and in an attempt to assist the Attorney, the question was not in relation to an intervention or whether the Attorney believed the Commonwealth or anyone else should intervene. The question was about his instructions to the Solicitor-General as to what arguments should be run in the relevant case. It was not around intervention; it was around what arguments should be run, which is a different question.

Senator BRANDIS: Well, Senator McKim, I cannot, nor could the former Solicitor-General, disclose that conversation between us. I cannot, Senator McKim, as you will know, without waiving the Commonwealth's privilege in the confidentiality of its legal advice. You know that—you have been a minister in a government. I am not at liberty to do that and I do not. But, Senator McKim, if you care to examine the Commonwealth's submissions that were settled by Mr Gleeson, they deal with the very issue, which he persuaded me we ought to intervene on, namely the Corporations Act issue.

The PRESIDENT: Senator McKim, a supplementary question.

Senator McKIM (Tasmania) (14:21): No-one is disputing that, Attorney. The question is: what were your instructions to the Solicitor-General? You said you cannot waive legal privilege on this matter. Attorney, given you are actually a serial waiver of legal privilege when it suits you politically to do so, will you now waive legal privilege, as you are entitled and have the right to do, and reveal whether or not you instructed Mr Gleeson not to run a particular argument in the High Court?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:22): Senator McKim, I do not waive the privilege, because I do not think it is appropriate. But I think I can answer your question, Senator McKim. The Solicitor-General was of the view, as I said in my detailed statement, that it was not enough for the ATO to be defending the Commonwealth's interests in relation to what we have called the revenue point, but also that it was necessary for the Commonwealth of Australia to intervene in the event that it became necessary to argue the Corporations Act point. I accepted his advice and I gave him those instructions.

The PRESIDENT: Senator McKim, a final supplementary question.

Senator McKIM (Tasmania) (14:22): That is not the question I asked you, Attorney, but I will couch it in another way, one that is not covered by legal privilege. Did anyone from the Commonwealth or the Western Australian government ask you to give instructions to Solicitor-General Gleeson not to run a particular argument in that High Court case?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:23): Senator McKim, that is just not the way it works. That is just not the way it works. When you instruct a barrister, you have a discussion with the barrister about the case, and of course Mr Gleeson and I had a discussion about the case. Mr Gleeson in particular, as I said in my detailed statement, had a very strong view that the Commonwealth should argue the Corporations Act point, or be in a position—let me express myself more carefully—to argue the—

The PRESIDENT: Senator McKim, a point of order?
Senator McKim: Yes. We have dealt with this issue already in the substantive question I asked—at least, we have dealt with it in the question, not the answer. This particular supplementary question does not go to anything that occurred between Senator Brandis and Mr Gleeson. It goes directly to whether anyone from the Commonwealth or Western Australian governments asked the Attorney-General to instruct the Solicitor-General not to run a particular argument in the High Court.

The President: Senator McKim, on the aspect of relevance, which is what I am here to adjudicate on, the Attorney-General indicated that it does not work like that. That was his opening line, and the Attorney-General is continuing his answer.

Senator Brandis: So, Senator McKim, what Mr Gleeson came to me—and I am paraphrasing, of course—to urge upon me is that he should be instructed to raise the question of sections 5F and 5G of the Corporations Act, which was an issue that was canvassed in the statement of claim, and I gave him the instructions he sought.

Attorney-General

Senator Gallagher (Australian Capital Territory—Manager of Opposition Business in the Senate) (14:25): My question is to Senator Brandis, the Minister representing the Prime Minister. I refer to a senior cabinet minister who says, and I quote: 'He is more than infuriated and truly over having to act like he has confidence in him.' Is the Prime Minister confident that the current controversy was caused by the Attorney-General alone?

Senator Brandis (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:25): Through you, Mr President: Senator Gallagher, when you talk about a 'current controversy', I take it that that is an intended reference to the Bell litigation, which was the subject of my statement to the Senate this morning.

What I have given is a very thorough account of all of the events in relation to that litigation—a statement of over 30 minutes, I might say—in which every step, every detailed step, in the course of this matter was addressed. And, Senator Gallagher, I have nothing to add to that statement.

The President: Senator Gallagher, a supplementary question.

Senator Gallagher (Australian Capital Territory—Manager of Opposition Business in the Senate) (14:26): I refer to the Western Australian Treasurer, Dr Mike Nahan, who has indicated that former Treasurer Hockey, Minister Porter and Minister O'Dwyer were all aware of the agreement between the Liberal and National federal government and the Liberal Western Australian government. Isn't it clear that the Attorney-General is not the only minister guilty of circumventing proper process for partisan political interests?

Senator Brandis (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:26): I reject that entirely in relation to either myself or any of my ministerial colleagues—far from it. What we did, Senator Gallagher, as I pointed out in the detailed statement, was engage with the Western Australian government after it was drawn to Ms O'Dwyer's and my attention that there had been dealings between Mr Hockey and Dr Nahan, which were referred to in their exchange of correspondence in April 2015. Now, Senator Gallagher, when we were made aware of that fact, we engaged with the Western Australian government. I have not seen Dr Nahan's
statement, but I know that the Western Australian ministers had a view as to the effect of their
discussions with Mr Hockey, and that view is their view; it is not the Commonwealth's view.

The PRESIDENT: Senator Gallagher, your final supplementary question.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (14:27): Given that several of his senior ministers knew about this agreement, when and how did the Prime Minister first become aware of the agreement?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:28): I take it that this is an intended reference to the exchange of correspondence between Dr Nahan and Mr Hockey of April 2015. As I was at pains to point out in my lengthy and detailed statement not once but twice, in my view that letter neither constitutes not evidences an agreement. But I do know that Dr Nahan and Western Australian ministers have expressed a different view.

Senator Wong: When did the Prime Minister know? When did the Prime Minister know?

The PRESIDENT: Order!

Senator BRANDIS: Mr President, may I speak on indulgence—

The PRESIDENT: Yes. You have 17 seconds.

Senator BRANDIS: because we know that the opposition lives in the era of post-truth politics and anything may be misrepresented—

Senator Wong interjecting—

Senator BRANDIS: As I said in my statement—

The PRESIDENT: Attorney-General, the time for answering the question has expired.

Fishing Industry

Senator BURSTON (New South Wales) (14:29): My question is to the Minister representing the Minister for Agriculture and Water Resources, Senator Canavan. Your counterparts in the New South Wales government have begun the Commercial Fisheries Business Adjustment Program. This badly-designed program, administered by the coalition government and a National Party minister, will force fisherman to pay through the nose to maintain the catching rights that they currently have and will force many operators out of business. Can you advise what contact you have had with your New South Wales counterparts in regard to this issue and what efforts you have made to dissuade them from this path, which will be so destructive to our local fishing industry?

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (14:29): I thank Senator Burston for his question and for the advance notice of it. Obviously this is an issue that goes to state legislation, and it is a state matter. I have been informed, however, that the New South Wales parliament has just announced an inquiry into commercial fishing. That is due to report in February next year. As part of that inquiry, the Parliament of New South Wales will report on the business adjustment program, including on the relevance of a draft Productivity Commission report into marine fisheries and aquaculture. That Productivity Commission report, instituted by this government, recommended that New South Wales:
... move each of their fisheries to an individual transferable quota management system unless it is demonstrated that this is technically impractical or not cost effective. If individual transferable quotas are not used, fisheries should be managed using individual transferable effort systems.

That inquiry was established by this government, from terms of reference provided to the Productivity Commission. That inquiry and outcome came out of the consultations the government did in its agricultural white paper. We have a proud record of standing up for the commercial fishing sector, including through the measures in that white paper. Other measures we have taken in recent times include support to establish a commercial fishing body and funding to eradicate carp in our river systems. These are measures that we are taking to make sure that we support commercial fishing in this country. We have been longstanding supporters of the industry and we stand up, where necessary, for the rights of commercial fishing in this country, because it is such an important issue for our nation.

The PRESIDENT: Senator Burston, a supplementary question.

Senator BURSTON (New South Wales) (14:31): The Structural Adjustment Review Committee overseeing this program has praised programs in other locations for sharply reducing the number of fishing endorsements available. Does your government share the New South Wales government's view that we have too many commercial fishermen and that some need to go?

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (14:32): I will not share your characterisation of the New South Wales government, Senator Burston—through you, Mr President. I do not believe it is an accurate interpretation of their view. From our perspective and in my view, we have a strong commercial fishing industry, which we support. Indeed, just last week, the National Party put on a barbecue for our commercial fishing industry, where we had people from all around the country and our sector. It is an annual event that we have run in this parliament since 1988. As long as this parliament has existed, we have run this barbecue at Christmas time. They say it is the event of the year, because it has beautiful fresh seafood from around our country and it attracts people from all political parties. I saw some of your colleagues there last week, Senator Burston. It is a very important sector for our country. People like Nick Schulz from up at Urangan Fisheries were there. He has been a long-term supporter of this program. Austral Fisheries has been a long-term supporter as well. All of these industries are very important. We support them, we back them and we want to see more of them.

The PRESIDENT: Senator Burston, a final supplementary question.

Senator BURSTON (New South Wales) (14:33): Already 87 per cent of the seafood eaten in New South Wales is imported. We live in the country with the longest coastline in the world. How small and how crippled does our domestic fishing industry have to become before the Liberal and National parties acknowledge that there is a problem?

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (14:33): As I was saying in my answer to the earlier questions, we are proud supporters of the commercial fishing sector. From where I am in Queensland, the Liberal National Party is a sole voice, a lone voice, campaigning against some of the ill-thought-through net-free fishing bans introduced by the Labor government up there. Unfortunately, other parties, such as Katter's Australian Party, deserted us on that fight, and we lost that fight thanks to that desertion.
We are proud supporters of the commercial fishing sector. We have provided $550,000 to establish the National Seafood Industry Alliance. It will be a representative industry body that can be the one voice for the sector in this country—a very important development. We have also done the same by providing grants to the Australian Recreational Fishing Foundation. They had an event here last week that I was at. We put $15 million into the National Carp Control Plan. These are the rabbits of our rivers. They need to go. We need to deal with them. It will improve our water quality and our environment, and it will improve opportunities for inland fishing as well. These are all positive steps we are taking to defend our commercial fishing sector.

Indigenous Employment

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:34): I have a cracking question for the Minister for Indigenous Affairs, Senator Scullion. Can the minister update the Senate on the government's Community Development Program and how it is supporting Indigenous Australians from welfare to work?

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:34): I would like to acknowledge the great work that Senator Williams does in engaging, and in assisting me in engaging, Indigenous Australians in and around his electorates. When people think about jobs and the creation of jobs, it should not only be a number. This is about being able to engage so much in their own lives—economic independence, moving from poverty in many of these circumstances, is just so important. The Community Development Employment Program and the program that took over from that, the Remote Jobs and Communities Program, tragically ended up as an end place. People used to go into that to go and get a job, but they would end up in that program. I know people who were in that program for 16 years as a training program, and that was the element, I suppose, that we had so much difficulty in shifting. The other issue, of course, was ensuring that people were actually at that program. We have taken the attendance from five per cent when we took it over to 62 per cent now.

But, to move them out of that program, we needed to move them into jobs. We had a 10,000 target 12 months ago; we pushed straight through that target and we are now at 11,200, of which 3,600 have now been there for more than six months. This is a fantastic story, but it is all about the activities that people are involved in. We are not telling the communities; we are working with the communities. They are picking their own tasks. At Manyallaluk they said, 'We'd like to build a church.' I said, 'It's a big task,' but off they went about it and they built their own church at Manyallaluk. You can see that the steelworkers and the carpenters that came from that are feeling really, really proud, and they are now moving into real jobs. They are moving away from a training program. I would like to acknowledge and to thank many others across parliament for their work assisting us in this very successful program.

The PRESIDENT: Senator Williams, a supplementary question?

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:37): Can the minister explain how the coalition government's approach of working with Indigenous Australians is delivering better outcomes through the Community Development Program?
 Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:37): As I have indicated, we have been delivering real results, because one of the fundamentals that has changed is that this is based on a proper partnership. So, a community not only creates the activities but also works out exactly who is doing what in the program, so the community is right at the centre of this program, and it is all about doing things. I heard the Prime Minister again say something in the other place—and I know it is across politics—that we know that part of the solution to these challenges is doing things with Indigenous Australians rather than to them. Identifying the activities is certainly very important. I know that Senator Williams will know the commercial nurseries that are working so well in Cobar and the furniture-making places in Goodooga. These are examples of how we are not only moving people into work but moving people into enterprises. It is just so easy to move from an enterprise into a real job.

 The PRESIDENT: Senator Williams, a final supplementary question?

 Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (14:38): I thank the minister for his answer and his commitment to our First Australians and I ask: can the minister outline any other measures the government is progressing to support Indigenous Australians into work?

 Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:38): From the day I was sworn in—from 18 September 2013—we have moved people and created 45,000 jobs. That is 60 jobs a day. Some of the bigger chunks have been done through the Vocational Training and Employment scheme. As I have indicated here before, that was the GenerationOne model. It is really successful because we are not just training; we actually start with the job. We have reverse-engineered it so that people are moving into real work.

 The Indigenous Procurement Policy, which most people now know about, has been very successful. We have increased by 46 times what other iterations have achieved, and we know that an Indigenous business is 100 times as likely to employ an Indigenous person. This is another one of our principal planks in ensuring that we are engaging our First Australians in employment.

 Western Australian Government

 Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (14:39): My question is to the Minister for Finance, Senator Cormann. The minister, in relation to the Liberal Western Australian government's legislation—giving it priority over other Bell Group creditors, found to be inconsistent with Commonwealth legislation—said, 'Certainly the Australian government was aware through the Treasurer Joe Hockey.' When did the minister and senator for Western Australia first become aware of the Liberal-Nationals federal government's arrangement not to challenge the validity of the legislation?

 Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (14:40): I thank Senator McAllister for that question. In relation to that latter assertion, I never became aware of that, because never was such an arrangement entered into. I think Senator Brandis has made very clear that there is no arrangement. What there is is a notification in a letter that has been well-publicised, in the letter of 13 April 2015 by WA Treasurer Nahan, of the intention of introducing certain legislation and notifying the
then Treasurer, Joe Hockey, that the Western Australian government would—and I am quoting here—rely on the power of the state to displace certain provisions of the Corporations Act, which, as you will recall from when you negotiated the referral of corporations law powers from the states, was explicitly preserved in the Corporations Act. And then the Treasurer, responding on 29 April, thanking him for that notification and also noting, acknowledging, that this is what they are proposing to do and making this important point: 'It is important that the ensuing process result in, to as great an extent as possible, fair outcomes for creditors, consistent with their legal positions before the legislation takes effect,' et cetera.

Now, it is interesting: I am not surprised that no WA Labor senator asked me that question, Mr President, because the WA Labor Party is at the heart of this shameful, most shameful, episode in Western Australian political history, because the taxpayers of Western Australia and the taxpayers of Australia are still paying the price for the corruption, the deep-seated corruption, in Labor's WA Inc period. Most of the business partners of the Burke Labor government, the Peter Dowding Labor government, are no longer with us, but this was a period of deep-seated corruption between the WA Labor state government at the time and sections of the business community in Western Australia at the time. Taxpayers in Western Australia and taxpayers in Australia are still paying the price for it.

The PRESIDENT: Senator McAllister, a supplementary question?

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (14:42): Notwithstanding these assertions and the semantics around arrangements and agreements, I am going to continue to ask about these circumstances. Did the minister have any contact with his colleagues either in the Liberal Western Australian government or in the Liberal-Nationals federal government in relation to the arrangement? If so, when and with whom did this contact occur?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (14:42): I am not aware of any arrangement. There is no evidence of any arrangement. I have not had any contact with anyone in relation to a non-existing arrangement.

The PRESIDENT: Senator McAllister, a final supplementary question?

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (14:43): Why did the finance minister consider it appropriate for Commonwealth taxpayers to forgo the $300 million owed to the Australia Taxation Office? And did he consider it a reasonable cost to serve the Liberal Party's political benefit?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (14:43): I appreciate that you did not write that question, Senator McAllister. But if you had listened to any of my previous answers you would actually not have asked that supplementary. I completely reject the premise of that question. The Australian Taxation Office did what the Australian Taxation Office had a responsibility to do. The Australian Taxation Office, acting independently, enforced the Australian taxation laws as it saw fit and, of course, the Commonwealth 100 per cent supports the actions taken by the Australian Taxation Office.
Disaster Risk Reduction

Senator DUNIAM (Tasmania) (14:44): My question is to the Minister for International Development and the Pacific, Senator Fierravanti-Wells. Can the minister advise the Senate of what the government is doing to build on Australia's disaster risk reduction effort in the Asia-Pacific region?

Senator FIERRAVANTI-WELLS (New South Wales—Minister for International Development and the Pacific) (14:44): I thank Senator Duniam for the question. The government is focused on building climate and disaster resilience in our immediate neighbourhood because this is important to our objective of a strong and stable Indo-Pacific area. Seven out of 10 of the most disaster-prone countries are in the Asia-Pacific region. At the Paris UN climate change conference, Prime Minister Turnbull announced that at least $1 billion of overseas development assistance will be spent on climate resilience over the five years starting this year. At the Pacific Island Forum leaders' meeting in September, Mr Turnbull announced we would increase resilience expenditure to $300 million from 2016 to 2020, leveraging climate finance and private sector investment.

In addition, we are increasing support to Pacific governments, the Red Cross and NGOs, focusing on preventing disasters and reducing disaster losses. This includes deploying Australian Civilian Corps specialists into Pacific national disaster management offices to strengthen disaster preparedness. We are using our leadership role on the Green Climate Fund to ensure that the fund supports disaster risk reduction projects, particularly in the Pacific. Australia effectively doubles the recommended international target of ensuring at least one per cent of overseas development aid is directed to disaster reduction activities. Disaster risk reduction expenditure was estimated at 2.9 per cent last financial year and has consistently been around or over two per cent over the last six years. In fact, in 2012-13—the last year that those opposite were in government—it was $111 million or only 2.3 per cent compared to—

(Time expired)

The PRESIDENT: Senator Duniam, a supplementary question.

Senator DUNIAM (Tasmania) (14:46): I thank the minister for the answer. I ask the minister if she is aware of claims that Australia is providing less support for disaster risk reduction in the region.

Senator FIERRAVANTI-WELLS (New South Wales—Minister for International Development and the Pacific) (14:46): I am aware of ill-informed claims by those who should know better that Australia is now less committed to disaster risk reduction than previously. As I was saying last year, it was $116 million—2.9 per cent. Senator Moore's recent claim that disaster risk reduction expenditure has fallen to 1.4 per cent is not correct. I am shocked, Senator Moore, that you would seek to undermine the confidence of countries who are partners in managing risk reduction and, by implication, in managing disasters in our region. The Turnbull government has not deprioritised disaster risk reduction in our overseas development assistance program. On the contrary, we are building resilience, and resilience has been elevated to one of the six priority areas in the government's aid policy. Integrating disaster risk reduction into Australian aid investments—

(Time expired)

The PRESIDENT: Senator Duniam, a final supplementary question.
Senator DUNIAM (Tasmania) (14:47): Finally, I ask: is the minister aware of any alternative approaches to disaster risk reduction?

Senator FIERRAVANTI-WELLS (New South Wales—Minister for International Development and the Pacific) (14:48): I am certainly aware that the previous Labor government provided a lower level of support than this government for disaster risk reduction. In the 15 months prior to the 2013 election, the former Labor government cut $5.7 billion from the aid budget. It also diverted $750 million from the aid budget to pay for its border protection blowout, making the Gillard government the third-largest recipient of its own overseas international development assistance. This also resulted in aid being cut to 25 developing countries, including Tuvalu and the Marshall Islands in the Pacific. When in government, Labor used overseas development assistance to fund its campaign to win a seat on the United Nations Security Council, including millions of dollars to rebuild Grenada’s parliament house and $150,000 to build an anti-slavery statue at the United Nations. *(Time expired)*

Disability Support Pension

Senator SIEWERT (Western Australia—Australian Greens Whip) (14:49): My question is to the Attorney-General, Senator George Brandis. The government have already reassessed the eligibility of 28,000 people with disability under the age of 35 for the disability support pension and are currently reassessing the eligibility of 90,000 people with disability over the age of 35 for the DSP, dropping many of these people with disability onto the lower Newstart payment. In addition, they are making it harder for people with disability to access the DSP. Has there been an increase in the number of disability support pension cases at the Administrative Appeals Tribunal over the last two years, how many cases have been reviewed by the AAT and how many have been successfully appealed?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:50): Thank you, Senator Siewert. You raise a very important issue, and I want to thank you for raising it. As to the latter part of your question, you asked for particular numbers of cases before the AAT. I will take that part of the question on notice so I can get you a precise answer. On the broader question of the review of disability support pension changes, it is the case that since 1 July 2014 the eligibility of disability support pension recipients under 35 who were granted the pension between 1 January 2008 and 31 December 2011 has been being reviewed. Recipients in that group have a comprehensive review of their qualification for DSP using the revised impairment tables and have an assessment of their work capacity. The revised impairment tables were introduced on 1 January 2012, and they apply to all new applicants for the DSP and existing DSP recipients selected for a medical review. The tables were reviewed to bring them up to date with current medical and rehabilitation practice.

Why is this review taking place? The impairment tables were reviewed not only, as I said a moment ago, to bring them up to date but because we know that the longer people stay on welfare the harder it is to transition to the workforce, making it more likely that they will stay on income support for the rest of their lives. Nobody wants to see that kind of welfare dependency. The earlier we can help young people to develop the skills they need to enter the workforce, the better the outcome—not just for the economy but for the individuals concerned as well.
The PRESIDENT: Senator Siewert, a supplementary question?

Senator SIEWERT (Western Australia—Australian Greens Whip) (14:52): I thank the Attorney-General for taking the question about the numbers on notice. I would like to ask: is it correct that the demand for legal aid support for people with disability at the AAT has increased over the last two years? If so, by how much? How many people have had to appear before the AAT without legal aid advice due to a lack of resources or access?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:52): Senator Siewert, you asked for specific numbers, so I think the best course is once again for me to take that question on notice so I can give you a full and detailed response.

The PRESIDENT: Senator Siewert, a final supplementary question.

Senator SIEWERT (Western Australia—Australian Greens Whip) (14:52): If you cannot give me the precise figures, surely you will have a bit of an understanding about whether there has been an increase in demand for legal aid for the number of people who are having to appear before the AAT to appeal against being kicked off DSP or dropped onto Newstart. You must have an idea about whether that demand has increased, because I have been told anecdotally that there has been an increase.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:53): Senator Siewert—through you, Mr President—I do not doubt that for a moment. You would not be saying that unless you had heard that anecdotal evidence. That is not something that I have been advised, I must say, and I had a meeting with the President of the AAT as recently as last Friday afternoon. He did not raise the matter with me. But, nevertheless, I think the best thing for me to do is to find the specific numbers about which you asked, and the numbers will tell their own story.

Attorney-General

Senator McCARTHY (Northern Territory) (14:54): My question is to the Minister representing the Minister for Revenue and Financial Services, Senator Cormann. What communications did the minister or the minister's office have with the Australian tax office in relation to its decision to seek independent legal advice about the WA government's Bell Group legislation or its decision to intervene in the High Court litigation concerning that legislation?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (14:54): The first point I would make is that my good friend and colleague Senator Brandis actually addressed this matter in his very lengthy and detailed statement. That is No. 1. No. 2: I will of course consult with my other good friend and colleague the Minister for Revenue and Financial Services to see whether there is anything else she wants to add to that answer. And the final point I would make is that my understanding is that Minister O'Dwyer became aware of public reports of the WA Treasurer asserting that a deal had been reached with the Commonwealth. She sought advice. The ATO explained and briefed Minister O'Dwyer on the legal position and Minister O'Dwyer gave the ATO full support—full support—in pursuing the interests of the Commonwealth through the High Court.

The PRESIDENT: Senator McCarthy, a supplementary question.
Senator McCARTHY (Northern Territory) (14:55): I refer to the Liberal WA Treasurer, Dr Mike Nahan, who told the WA parliament that the ATO acted 'contrary to the direction or advice of the Assistant Treasurer, Kelly O'Dwyer'. Why did the minister advise or direct the ATO not to pursue $300 million owed to Australian taxpayers?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (14:56): If WA Treasurer Nahan said what was quoted, then that is wrong. As we have said on the public record for a long time—and indeed I answered questions to this effect in Senate estimates—the Australian Taxation Office is an independent statutory agency which enforces our tax laws independently, as they must. It is not a matter for the government to interfere with.

But we went from New South Wales to the Northern Territory. I see no WA Labor senator is courageous enough to touch these questions, because they know the terrible history that the WA Labor Party has when it comes to deep-seated corruption between the then WA Labor state government and some business leaders in the WA community at the time. Western Australian taxpayers are still paying hundreds of millions of dollars in legal fees—so far—to sort out the mess that the Burke and Dowding Labor governments created. (Time expired)

The PRESIDENT: Senator McCarthy, a final supplementary question.

Senator McCARTHY (Northern Territory) (14:57): All senators, and indeed all Australians, are very keen to know what is happening in WA. I refer to evidence by an ATO officer to the Economics Legislation Committee that, following the ATO's intervention, the government:

... had representations made to them by the Western Australian government, as I recall, and they made inquiries of us.

Can the minister please provide details of these representations?

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (14:57): Again, these matters are dealt with in the very lengthy and detailed statement made by the Attorney-General earlier today, and I refer you to that statement.

Space Exploration

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (14:58): My question is to the Cabinet Secretary, representing the Minister for Industry, Innovation and Science, Senator Sinodinos. Can the Cabinet Secretary outline Australia's important role in the National Aeronautics and Space Administration's deep space exploration program and how this creates jobs and growth?

Senator SINODINOS (New South Wales—Cabinet Secretary) (14:58): I thank the honourable senator from Tasmania, Senator Bushby, for his question and his ongoing interest in all things space, and indeed also his commitment to the Antarctic work being done in Tasmania. He is a man who appreciates science and he knows the importance of science to Australia's future.

Australia's partnership with NASA spans 50 years, with NASA investing more than $800 million in space-tracking operations in Australia, primarily at the Canberra Deep Space Communication Complex at Tidbinbilla. Australian scientists at the 'Dish' in Parkes and at the complex in Tidbinbilla played an integral role in tracking the Apollo missions, including

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Apollo 11, in which Mr Buzz Aldrin, who was recently in this parliament, was second man to walk on the moon.

Today that complex is helping NASA with Cassini, which is a 20-year project sending a spacecraft 1.2 billion kilometres to Saturn, which over the coming days will plunge through the rings of gas around that entity which have puzzled and excited astronomers since the days of Galileo. It will be our Australians scientists in Tidbinbilla tracking Cassini as it answers questions which have been left unanswered for 400 years.

Today, that partnership is stronger than ever. It was great to see my colleague the Assistant Minister for Industry, Innovation and Science, Mr Laundy, welcome officials from NASA to the Tidbinbilla complex recently to officially open NASA's two new 34-metre deep space tracking antennae. This was the culmination of a $120 million investment by NASA over the last six years in new infrastructure at Tidbinbilla. It will enable Australia's ongoing partnership with NASA for many years to come, and it will contribute to its future plans, including sending humans to Mars in the 2030s.

The PRESIDENT: Senator Bushby, a supplementary question.

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (15:00): Can the Cabinet Secretary outline the role Australia will play in the development of other groundbreaking space science projects and how that will benefit the Australian economy?

Senator SINODINOS (New South Wales—Cabinet Secretary) (15:00): Earlier this month, the Minister for Industry, Innovation and Science announced that Australia will host the world's largest space conference, in 2020, with thousands of international experts set to join local scientists and astronomers to explore future space missions and investigate trade, research and development opportunities. This is known as the Scientific Assembly of the Committee on Space Research and Associated Events, and this is only the second time this conference has been hosted in the Southern Hemisphere since 1974. It is a ringing endorsement of our people, our infrastructure and the high regard in which we are held in the global space community.

This week, it was announced that Australia will have a role in the $100 million Breakthrough Listen initiative funded by the US based entrepreneur Yuri Milner, which has yielded its first results, achieving observations of an Earth sized planet orbiting the nearest star to our sun, Proxima Centauri. Australia is also taking a lead role in the development of the Square Kilometre Array, the world's largest and most sensitive radio telescope. (Time expired)

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (15:01): Mr President, I have a further supplementary question. I also note that the global space economy is a growing sector, a driver of innovation and a creator of jobs. What else is the Australian government doing to help grow this important sector?

Senator SINODINOS (New South Wales—Cabinet Secretary) (15:02): A recent report by the Department of Industry, Innovation and Science found that our space industry employs between 9,500 and 11,500 people and is growing. Almost 90 per cent of companies are expected to grow their staff by more than 25 per cent over the next three years. To support this growing sector, in October 2015 the government announced a review of the Space Activities Act. The act establishes a licensing and safety regime for the regulation of space
activities carried out either from Australia or by Australian nationals overseas. New developments are driving change, including reducing many of the traditional barriers to entry into the space industry, which creates new opportunities for Australian firms. This review will ensure our civil space regulations do not curtail development opportunities for Australian businesses in the sector. There have been public submissions and consultations already, and the government will announce its intentions for possible reform of the legislation in due course.

Senator Brandis: On that celestial note, I ask that further questions be placed upon the Notice Paper.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Attorney-General

Senator FARRELL (South Australia—Deputy Leader of the Opposition in the Senate) (15:03): I move:

That the Senate take note of the answers given by the Attorney-General (Senator Brandis) to questions without notice asked by Opposition senators today relating to the Bell Group litigation.

I had the pleasure the weekend before last of attending the 40th anniversary of my law school class. It was a reunion. We got together with all of those people who had been there on the day I graduated all those years ago. There were some people I had not seen for 40 years. Amongst them were some very distinguished jurists around the country. One of them, of course, was Jeffrey Goldsworthy, a professor of constitutional law at Monash University. At law school you learnt constitutional law, which was generally a first year subject. The first thing you learnt in constitutional law was about section 109 of the Australian Constitution. This is the section of the Constitution that refers to inconsistency between state and federal law. You may find circumstances where a state government might pass a law and the Commonwealth has an inconsistent law. How do you determine the issue between those two laws? The answer is section 109 of the Constitution. It says that if there is an inconsistency between a state law and a federal law, the federal law overrides the state law. I notice Senator Brandis is nodding at that assertion.

So the question I ask in relation to that lengthy and detailed statement, in Senator Brandis's words—

Senator Brandis: That is what Senator Wong said.

Senator FARRELL: She has obviously heard the statement too. The first question I would ask Senator Brandis is, if he understood section 109—and I believe he did—why would he have said in his lengthy and detailed statement today:

... one of the options I considered ... was that the ATO should not intervene in the proceedings.

If Senator Brandis understood section 109, he would have known automatically that the legislation that the Western Australian government purported to pass to overturn the ATO's entitlement to recover money from creditors was in breach of section 109 of the Constitution. So the question I would ask is: why did the chief law officer of this country, Senator Brandis, even contemplate not intervening in those proceedings?

Of course, we asked some questions of Senator Brandis in question time. We asked:
Did the Attorney-General discuss his view with anyone other than Mr Mills and Ms O’Dwyer? If so, who?

We did not get any answers to that question in question time, and we certainly got no answers in the lengthy and detailed response that Senator Brandis gave us earlier in the day. We want some answers to that question. I think the Australian people need the answers to that question.

Senator Bilyk: We do.

Senator Farrell: Yes, Senator Bilyk is just right. We do need the answers to those questions. Then we asked another question of Senator Brandis: did the Attorney-General provide any instructions to the Solicitor-General, this Australian Government Solicitor or the ATO consistent with his view? Again, we got no answers to that question. Again, I say that we need some answers to these questions. We never got them in the lengthy and detailed response that Senator Brandis gave.

We know that the Western Australian government purported to pass these laws. They obviously thought they had a deal with the Australian government. As we now know, Ambassador Hockey had lengthy and detailed discussions with these people. But he is now in America; he is now our ambassador. We are asking sensible and straightforward questions of the Attorney-General as to what he knew and what discussions he had with particular individuals. I think the minimum this parliament owes to the people of Australia is to answer those questions. Those questions have been asked, they are on notice and we want some answers. (Time expired)

Senator Reynolds (Western Australia) (15:08): What absolute hypocrisy and much ado about nothing from those opposite. I listened very carefully to the Attorney-General this morning and clearly, unlike those opposite, I have actually read the material that the Attorney-General has tabled. As a Western Australian who has had more than a passing interest in looking at the Bell liquidation over the past 20-plus years, I actually fully applaud the Western Australian state government for taking action to finally finish this whole sad, sorry legacy of WA Labor’s WA Inc. I see absolutely no reason whatsoever why the Western Australian government should not seek to get the money back to the taxpayers of Western Australia in a deal that I understand would have involved the ATO also getting money back.

But the issue is this: after 20 years, who are the only people who have benefited from this? It has cost the WA taxpayers over $200 million through the Insurance Commission of Western Australia. It was a $200 million cost to the Australian taxpayers. The only people to date who have benefited from this are the lawyers. Over 20 years, the lawyers have been paid hundreds and hundreds of millions of dollars. Of course, this is an intractably difficult case that is highly likely never to be solved, so the only people who will keep benefiting from this are not the taxpayers of Western Australia and not the Australian Tax Office but instead the lawyers involved in this case. That is the first thing. I absolutely applaud the state government’s initiative to get the money back for the people of Western Australia.

Listening to the Attorney-General’s statement and also to the letters that were tabled today, I think the Attorney-General has actually answer the questions next door. Let us actually have a look at the facts and not the straw men that those opposite are now trying to build pretty much out of nothing. The evidence that has been tabled so far suggests this: on 13 April last year, Mike Nahan wrote to the federal Treasurer providing advice, advising the federal
Treasurer that they were going to take this course of action in the High Court and the reasons for it. On 29 April, the federal Treasurer wrote back to Dr Nahan noting the advice and the Western Australian position. There was absolutely no hint of a deal whatsoever in either of those letters and, in fact, the letter from Mike Nahan seems almost pleading, saying that the officials stand ready to provide further information.

In the last paragraph of the federal Treasurer’s letter, if anyone actually bothers to read the letter that was tabled, Mr Hockey says this:

Given the significant nature of the proposed course of action, I urge the Western Australian government to ensure that the utmost probity is evidenced throughout the process so as to ensure that Australia remains and continues to be seen as an attractive destination for foreign investment.

That is hardly a nod and a wink for a secret deal, which appears in none of the correspondence at all.

What was the next action? On 26 November, the WA Bell Act came into force. The next day, on 27 November, Bell creditors commenced proceedings in the High Court to challenge the constitutionality. Neither the Commonwealth nor the ATO were defendants in this High Court action. Then what happened? On 16 March, the Attorney-General had formed the view that it was not necessary for the Commonwealth to intervene in this matter because the ATO had already indicated that they were going to intervene in the matter. Guess what? The Solicitor-General of this country was actually representing the ATO. So in March the ATO intervened and the Commonwealth, as I said, decided not to have a representative because they believed the Solicitor-General representing the ATO was sufficient representation.

The High Court issued a notice to the Commonwealth and states inviting the Commonwealth to intervene formally, because it was not automatic. The Attorney-General, as he said, did not initially think it was necessary because the Solicitor-General was already representing the ATO and the Commonwealth in that matter. However, a fact that those opposite have conveniently forgotten and not commented on is that the Solicitor-General provided advice to the Attorney-General to say that the Commonwealth should join in addition to the ATO. The Attorney-General accepted the advice of the Solicitor-General, Mr Gleeson. So the Solicitor-General then represented both the Commonwealth and the ATO.

This was at the Solicitor-General’s advice that he could represent both and the Attorney-General agreed. On 30 March, the Commonwealth then gave notice that they would be intervening in the proceedings. On 4 April, the Solicitor-General advised the Attorney-General that there would be no resolution. There would be no resolution with the state of Western Australia, with the government or with the WA solicitor. Far from being a conspiracy of secrets, there are none here to be had. (Time expired)

**Senator WATT** (Queensland) (15:13): I spoke earlier this afternoon about the growing scandal that we see enveloping the Attorney-General, Senator Macdonald and various other ministers within this government. It really is a sign of how big this scandal is that the best Senator Brandis can do is rely on Senator Macdonald to run protection for him. If there was anyone you would ever want to run protection for you, I think Senator Macdonald would be at the bottom of the queue. It was very noticeable during question time that there was only one person speaking up in defence of Senator Brandis and that was Senator Macdonald. The most disgraced and ridiculous senator that this chamber has ever seen was the only person who was prepared to stand up for Senator Brandis.
The DEPUTY PRESIDENT: Senator Brandis?

Senator Brandis: Madam Deputy President, if I may say so, for a new senator who has been in this chamber for a matter of a couple of months to reflect in that insulting and personal way on the Father of the Senate is surely out of order. Senator Watt ought be brought up and taught, frankly, how to behave like a senator.

Senator Wong: On the point of order, the so-called Father of the Senate behaves in the most insulting manner in this chamber and elsewhere. Senator Macdonald is not deserving of the title.

The DEPUTY PRESIDENT: Senator Watt, I remind you and all other senators that personal reflections are disorderly.

Senator Watt: Thank you, Madam Deputy President—I am certainly someone who respects their elders, and I was only following the lead of Senator Macdonald in the way that I referred to other senators in this chamber. I am sorry the Attorney-General took offence at that.

What we saw in the Attorney-General's statement earlier today was an unbelievable act of throwing former Treasurer Joe Hockey under the bus. The Attorney-General did it not once, not twice, not three times—he did it 19 times over the course of half an hour. The name 'Hockey' was mentioned on average about once every 60 seconds, in a desperate attempt by the Attorney-General to distance himself and others serving ministers of this government from this terrible scandal. Not only has Senator Brandis thrown a former trusted colleague under the bus, but we then, in one of the last questions of question time, also had Senator Cormann, a Western Australian senator and the Minister for Finance, who must have known about this deal, desperately trying to distance himself from this deal. Not content with throwing Joe Hockey under the bus, Senator Cormann decided to throw his Western Australian Liberal colleague Mike Nahan, the Treasurer, under the bus.

Mike Nahan has previously been on the record in the Western Australian parliament saying that the Assistant Treasurer, Kelly O'Dwyer, gave direction or advice to the Australian Taxation Office. Unfortunately, he was interrupted midway through that answer, but it was very clear that he was talking about Ms O'Dwyer giving direction or advice to the ATO to not get involved in this legal action, and that the ATO acted 'contrary to that direction or advice'. The finance minister, Senator Cormann, was quite happy to throw Mike Nahan under the bus, and it will be very interesting to see what Mike Nahan has to say about that. You would wonder why a Western Australian Treasurer would be willing to go on the record and say what arrangements existed between the Assistant Treasurer and the ATO. Now we have Senator Cormann saying, effectively, that Mike Nahan made that up. I would be very interested to hear from Mike Nahan about what actually happened and what discussions actually occurred between ministers in this government and statutory agencies, because it is very clear that we are not going to get answers from the senators and ministers who appear in this chamber.

The other thing that has been very notable over the course of the debate on this matter today is the enthusiasm that Western Australian senators have for jumping up and defending this deal. This demonstrates, so obviously, that this deal was about an arrangement to try to overcome the ongoing complaints that Western Australia has about GST distribution. We
have had Western Australian senator after Western Australian senator get to their feet and defend this deal as recognising the fact that—in their minds—Western Australia gets a bad deal through GST distribution, and this was a way of rectifying that. As a senator from Queensland, I would be very interested in knowing what kind of arrangements are being made with the Queensland government to recognise its GST needs. What arrangements are being made with New South Wales, with Tasmania, with South Australia—or is it only Western Australia that gets a special deal from the—

Senator Brandis: Nothing to do with GST.

Senator WATT: You said that you were not aware of whether it had anything to do with GST. Now you are telling us that it does not. It would be very good if you could make up your mind, Senator Brandis, which one it is. Yet again, we see you shifting your position constantly.

The other thing that the Attorney-General has never been very keen to talk about here is the growing evidence that this is clearly linked to his direction given to the Solicitor-General. We have known all along that this was a fishy situation. We now know that 4 March this year is when, the Attorney-General tells us, he was made aware of the intention of the ATO to challenge this litigation and he was made aware that the Solicitor-General was involved. At no point up until 4 March had there been any discussion about the need to issue a direction constraining the Solicitor-General, and—what do you know?—a few weeks later the Attorney-General decides to issue a direction. It is very clearly connected.

Senator IAN MACDONALD (Queensland) (15:19): I have to compose myself after that comedy speech. It was curiously humorous. Madam Deputy President, do not worry about defending me from that vicious personal attack from the previous speaker. It does not worry me at all. I guess the fact that I pointed out in my last speech that he was just a failed union hack, thrown out of the state parliament by the good voters of Queensland—

Senator Brandis: He's an ambulance chaser.

Senator IAN MACDONALD: I do not want to say 'ambulance chaser', Senator Brandis. He was an adviser to the Bligh government, which just shows what little regard the previous speaker had. But I do not want to enter into personalities. The things he throws at me just roll off my back.

What is humorous about this debate is that it has two origins that I think are important for the Senate to understand. Senator Brandis has been through it in a very detailed fashion—a fashion that was uncontested in all of the silly questions that were asked by the Labor Party at question time. The genesis of this attack on Senator Brandis comes from back in the days of the crook—the Labor Party criminal, the Labor Party Premier of Western Australia, a criminal who ended up in jail—who oversaw the Bond WA Inc. disaster. There are four senators in this chamber from Western Australia from the Labor side, and not one of them was prepared to ask a question or speak on this debate. By contrast, two of the Liberal senators from Western Australia have participated. I think the Labor Party senators do not want to be reminded of the crook, the Labor Party Premier of Western Australia, who ended up in jail. He was a bit like Gordon Nuttall, the Labor Party minister from Queensland—no doubt known to the previous speaker in his time as an adviser to the Bligh government—who ended up in jail for bribery. He is still there, as far as I know. He is in jail in Queensland with
two or three other Labor Party luminaries serving sentences. That is one of the things. Western Australian Labor senators do not want to raise it, because it draws attention to the criminal Mr Burke, the Labor Party Premier who ruled in Western Australia in conjunction with Mr Bond all of those years ago.

This wet lettuce leaf attack on Senator Brandis that the Labor Party is fixated about all comes about by this inquiry into the Solicitor-General, Mr Gleeson, which the Labor Party and Greens set up with the pure intention of getting rid of Senator Brandis. That was never going to happen. What happened? How did it end up? The Labor Party and Greens initiated this inquiry and as a result of it they oversaw the resignation of the Solicitor-General, the man that Mr Dreyfus, the Labor Party Attorney-General, in the dying days of the Rudd-Gillard-Rudd government appointed as the Solicitor-General. We know from the evidence at the inquiry that the Solicitor-General was speaking with Labor Party politicians during the caretaker period and not reporting that, as he is required to. We wonder about that. Labor had an attack on the Attorney-General but they succeeded in destroying the career of their mate the Solicitor-General.

The Labor Party continue the same problem. They have confected this issue over the Bell case. The Attorney-General in a very clear and detailed statement explained that fully, clearly and without any serious question by the Labor Party this afternoon or at question time. I say to the Labor Party: forget your fixation on the Attorney-General. He is going to be here for a long period of time. I know you do not like him, because he is so good—he handles questions so well and he leads the government in the Senate so well—but give it up because every time you confect these problems you end up killing your own people. Take the lesson from that and remember Western Australia Inc. (Time expired)

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (15:25): Like a TV sitcom that has gone on for far too long, Senator Brandis keeps coming up with storylines that are barely credible. This government has now jumped the shark. It is not credible, for example, that there was no arrangement between the Western Australian government and the Commonwealth government. It flies in the face of the voices in the Western Australian government that were quoted in The West Australian newspaper over the weekend. What did we hear from Mike Nahan? He believed he had won Commonwealth support for the Western Australian legislation in a verbal and written agreement. That is what the paper on the weekend quoted him as saying. Those are the facts that are on the table. I have not heard anyone repudiate that that was the belief of the Western Australian government.

It seems awfully convenient that the only person who could possibly have been a party to this agreement is the former Treasurer, who happens to be in the United States. It is very convenient. Mr Hockey was the one who did it all apparently, if we are to believe the statements made this morning, but he is not here to defend himself. The Minister for Finance was asked questions about this in question time and he claimed he was unaware of this agreement. I find those claims extraordinary. We have become quite used to seeing the Attorney-General play the pedant but we had the unedifying sight this afternoon of the finance minister forced to split hairs about the definition of an 'arrangement' to cover for the incompetence of 'Calamity' George.
He keeps pointing to the evidence that is on the record rather than commenting on what actually happened. These are not the same things. The letters that have been tabled in this place are not the extent of the arrangement if we are to believe the evidence of the Liberal Party in Western Australia. What did Colin Barnett say? What was he quoted in the paper last weekend as saying? He said:

We always knew it was a fairly high-risk strategy, but we needed to have a go and we were relying on the Federal Government to be supportive, which they were, but then the ATO went their own way …

Those are the facts that need to be addressed, not the facts laid out in a letter drafted in appropriate language to cover the situation by members of the government. What needs to be addressed are the claims that have been put on record in *The West Australian* by some very good investigative journalists doing their job.

I come back to the finance minister. There are really only two options for Senator Cormann: either he was involved in this tricky plan cooked up by members of the government or—and this is perhaps even more extraordinary—he was left out of the loop on a decision that was worth $300 million to the Commonwealth budget. So the evidence this afternoon from the finance minister that he knew nothing about it or indeed that there was no arrangement at all does not stand up. It does not stand up because there are facts other than the letters that have been tabled here that suggest that there was an arrangement. There most certainly was an arrangement between members of this government and members of the Western Australian government. What remains to be examined is: who was aware of it and who was involved? These are questions that members in this place have refused to answer during the time allocated to questions.

The Attorney-General has also continued to refuse to answer basic questions. The address this morning raises many more issues than it settles. I note the Attorney-General's attempts in question time this afternoon to draw a very careful distinction between instruction and direction. I am sure it suits the Attorney to talk about instruction rather than direction because instruction is a narrow process provided from a client to counsel. The Attorney is able, as I understand it, to say that, because the client in this case was the ATO and because the Solicitor-General was the counsel, then there was no logical way that the Attorney-General could have instructed the Solicitor-General to do anything. However, that is not what the questioning was about. The questioning was in fact about what the Attorney asked the Solicitor-General to do, what other members of the government asked the Solicitor-General to do and what other members of the government asked the Attorney-General to ask the Solicitor-General to do. We want to understand what it is that took place in trying to direct individuals in the conduct of this case before the High Court. These questions are all outstanding and they need to be answered in this chamber.

Question agreed to.

**Disability Support Pension**

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:29): I move:

That the Senate take note of the answer given by the Attorney-General (Senator Brandis) to a question without notice asked by Senator Siewert today relating to the Disability Support Pension.

The reason I ask is because of the large number of people on the disability support pension who are being reviewed and either moved off the DSP altogether and, more particularly,
moved on to Newstart. I am sure everybody in this chamber is aware that Newstart is a significantly less amount of money than the disability support pension.

I would like to put this in context: if you look at ACOSS's latest poverty report, which is October 2016, it talks about the large number of people with disability who are living below the poverty line. The figures are 510,900 adults with a disability and a further 328,100 people with a disability that included a core activity limitation who are living below the poverty line. When you kick people with a disability off a disability support pension and on to Newstart, you provide yet another barrier to employment because you are kicking them even further into poverty.

A number of people have been appealing the decision to kick them off the disability support pension to the Administrative Appeals Tribunal—the AAT, as it is commonly called. I am told there are an escalating number of people who are appealing and an escalating number of people who need legal aid to deal with the process. I am told there is a growing demand—which is why I asked the question today—from people requiring legal aid to help them and support them through the AAT process. I will be waiting with eagerness for the answers from Senator Brandis to the questions I asked today about the number of people appealing through the AAT. Hopefully, that will contain both tier 1 and tier 2 level appeals and also the figures around legal aid. When you bear in mind the decline in funding for legal aid and the increase in the number of people who are appealing being dropped off the disability support pension and put on to Newstart, you will have an idea about whether they are being adequately represented.

To go back to the issue in the broader context: we already know we are seeing an increase in inequality in this country. If you look at the figures, we are getting up to nearly one million people with a disability who are living below the poverty line. Poverty is clearly a barrier to employment. But then if you look at the number of people with disability who can find employment, Australia is one of the worst performers in the OECD in terms of people with a disability finding work. At the same time that the government is seeking to cut back on the mobility allowance—for example, for people with disability trying to do Jobsearch—you will see that that is even further hurting people with disability. If you look at the number of complaints that the Australia Human Rights Commission gets—I ask this question regularly—disability complaints continue to be the highest number of complaints. And guess what tops the list in the form of disability discrimination complaints that the Human Rights Commission gets? You guessed it: complaints around employment and discrimination for people either trying to find work or those in the workplace.

So if the government says that they are trying to kick people off the disability support pension because they are trying to encourage them into the workforce, those people are already trying to find work. They face huge barriers to work. By kicking them off, the government is increasing inequality in this country when we know that Newstart itself is already way below the poverty line and that people on Newstart are living in poverty, and people on the disability support pension are also living in poverty. The government is worsening that situation by kicking people off the disability support pension and putting them on to Newstart.

It is time this government stopped picking on people who are trying to survive on our 'safety net' and started looking elsewhere to raise funds, which will not increase inequality. If
they looked elsewhere, at the wealthy end of our community, they would actually decrease inequality in a number of ways and, at the moment, they are intent on increasing it. *(Time expired)*

Question agreed to.

**NOTICES**

**Presentation**

Senator Lambie to move:

That the Senate—

a) notes that:
   i) Retired General David Morrison, AO, was appointed Australian of the Year for 2016,
   ii) Australian of the Year has traditionally demonstrated: excellence in their field, a significant contribution to the Australian community and nation, and been an inspirational role model for the Australian community,
   iii) a recently uncovered New South Wales Police Force investigation into the "Jedi Council", the Strike Force Civet report, which investigated sex assaults and other related crimes involving members of the Australian Defence Force (ADF) during General Morrison's command of the Army, indicated a sophisticated, high-level, military cover-up, including deliberate lies, withholding of evidence, fabrication of information, and supported the conduct of criminal and serious internal offences,
   iv) sworn testimony from a subordinate of General Morrison, retired Lieutenant Colonel Karel Dubsky, indicates that General Morrison and others deliberately ignored the facts as stated in the Strike Force Civet report, and allowed Lieutenant Colonel Dubsky and others to be wrongly accused of being members of a group of sex offenders, and/or demeaners of women, and
   v) General Morrison's behaviour caused exceptional and undue harm to retired Lieutenant Colonel Dubsky, his family, and other innocent members of the ADF, and demonstrated behaviour that was the opposite required of the Australian of the Year; and

b) calls on the Government to make a recommendation to remove General Morrison as Australian of the Year, and replace him with a person worthy of the title.

Senator Siewert to move:

That the Senate—

a) notes that this week is Disability Awareness Week, and that 3 December 2016 is International Day of People with Disability;

b) acknowledges the report of the Community Affairs References Committee into the violence, abuse and neglect suffered by people with disability in institutional and residential settings which was tabled on 25 November 2015;

c) notes that disability abuse continues to be an issue of national shame; and

d) calls on the Government to respond to the report and to commit to implementing the 30 recommendations of the report, including the recommendation for a royal commission.

Senators Brown and O'Neill to move:

That the Senate—

a) recognises that:
   i) Saturday, 3 December 2016, is International Day of People with Disability,
ii) the United Nations proclaimed International Day of People with Disability for the first time in 1992 as a way of promoting better understanding of disability issues, and as a sign of support for the dignity, rights and well-being of people with disabilities, and

iii) each year, the United Nations chooses a theme for International Day of People with Disability, and this year's theme is 'Achieving 17 Goals for the Future We Want', which draws attention to how the 17 Sustainable Development Goals can create a more inclusive and equitable world for people with disabilities;

b) acknowledges that:
   i) December 2016 also marks the 10 year anniversary of the United Nations General Assembly's adoption of the Convention on the Rights of Persons with Disabilities (the Convention), and
   ii) the Convention's purpose is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity";

c) urges all levels of government to take action to remove barriers to employment, education and full community participation of people with disability through the long overdue Second Action Plan under the National Disability Strategy;

d) urges the Government to take action to fix the problems with the National Disability Insurance Scheme roll-out, and ensure that people with disability get the care and support they need to improve their lives; and

e) encourages all Australians to get involved in celebrations in their local communities.

Senator Smith to move:
That the Joint Committee of Public Accounts and Audit be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, from 9.30 am, as follows:

a) Wednesday, 8 February 2017; and


Senator Hanson-Young to move:
That the time for the presentation of the report of the Select Committee into the Resilience of Electricity Infrastructure in a Warming World be extended to 30 March 2017.

Senator Di Natale to move:
1) That a select committee, to be known as the Select Committee on Strengthening Multiculturalism, be established on 3 March 2017, to inquire into and report on, by 14 August 2017, ways of protecting and strengthening Australia's multiculturalism and social inclusion, with particular reference to the views and experiences of people from culturally and linguistically diverse, and new and emerging communities, and with particular reference to:

   a) the adequacy and accessibility of settlement and social inclusion services and resources available to individuals and communities,
   b) the adequacy of existing data collection and social research on racially motivated crimes,
   c) the impact of discrimination, vilification and other forms of exclusion and bigotry on the basis of "race", colour, national or ethnic origin, culture or religious belief,
   d) the impact of political leadership and media representation on the prevalence of vilification and other forms of exclusion and bigotry on the basis of "race", colour, national or ethnic origin, culture or religious belief,
(e) how to improve the expected standards of public discourse about matters of "race", colour, national or ethnic origin, culture or religious belief,

(f) how to better recognise and value the contribution that diverse communities bring to Australian social and community life,

(g) the potential benefits and disadvantages of enshrining principles of multiculturalism in legislation,

(h) the potential benefits and disadvantages of establishing a legislative basis for the Multicultural Advisory Council, or for an ongoing Multicultural Commission, and

(i) any related matters.

2) That the committee consist of 7 senators, 2 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, 1 nominated by the Leader of the Australian Greens and 1 nominated by minority groups and independent senators.

3) That:

(a) participating members may be appointed to the committee on the nomination of the Leader of the Opposition in the Senate, the Leader of the Australian Greens or any minority party or independent senator,

(b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee, and

(c) a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.

4) That the committee may proceed to the dispatch of business notwithstanding that all members have not been duly nominated and appointed and notwithstanding any vacancy.

5) That the committee elect as chair a member nominated by the Leader of the Australian Greens and, as deputy chair, a member nominated by the Leader of the Opposition in the Senate.

6) That the deputy chair shall act as chair when the chair is absent from a meeting of the committee or the position of chair is temporarily vacant.

7) That, in the event of an equally divided vote, the chair, or the deputy chair when acting as chair, have a casting vote.

8) That the committee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings, the evidence taken and such interim recommendations as it may deem fit.

9) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

10) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of proceedings which take place in public.

Senator Rice to move:

That—

(a) the Senate notes:

   (i) the grave concerns of the wider agricultural and agribusiness community that the Australian Pesticides and Veterinary Medicines Authority's (APVMA) relocation will irreversibly damage the capacity of APVMA to carry out its core responsibilities,
ii) the recently released Ernst and Young independent analysis of the APVMA relocation which identified the following key risks:
   (A) the APVMA is unable to effectively relocate or recruit key APVMA executive management and technical assessment staff within the first two years,
   (B) during transition and in the short term, the APVMA is unable to sustain its rate of effort for registration of new agricultural and veterinary chemical products,
   (C) the APVMA is unable to maintain and grow its capability in the medium term, and
   (D) The APVMA has reduced access to stakeholders, and

iii) the recommendation in the independent analysis calling for the carrying out of the following critical next tasks for risk mitigation:
   (A) an analysis of supply (and demand) for regulatory scientists,
   (B) an analysis of connectivity between APVMA business groups,
   (C) the development of recruitment, retention and training strategies, and
   (D) the development of a transition plan; and

b) there be laid on the table, by the Minister representing the Minister for Agriculture and Water Resources, by no later than 9.30 am on 1 December 2016, the following documents held or prepared by the Department of Agriculture and Water Resources and/or the Australian Pesticides and Veterinary Medicines Authority:
   i) an analysis of supply (and demand) for regulatory scientists,
   ii) an analysis of connectivity between APVMA business groups,
   iii) any APVMA recruitment, retention and training strategies, and
   iv) any APVMA transition plans.

Senator Rice to move:
That—

a) the Senate notes:
   i) the adverse effect of Red Imported Fire Ant (RIFA) populations on ecosystems, native species, agricultural communities and human health,
   ii) the ongoing program since 2001 to eradicate Red Imported Fire Ants,
   iii) the communiqué of the Agriculture Ministers Forum held in Auckland, New Zealand on 20 May 2016, which indicated that:
      (A) it remains in the national interest to eradicate the ants and that it is technically feasible and cost beneficial to do so,
      (B) ministers agreed to continue to cost share the RIFA South East Queensland eradication program in 2016-17, in accordance with the nationally agreed 2013-18 Response Plan, and
      (C) funding of a 10-year eradication plan or transition to a management plan for the SEQ Programme will be considered at the next AGMIN meeting, and
   iv) the right of all Australians to sufficient information to understand the important decision that the agriculture ministers will be making at their next meeting in 2017 on whether the eradication program should continue, the implications of proceeding and not proceeding, the costs involved and the lessons learnt from the program so far; and
b) there be laid on the table, by the Minister representing the Minister for Agriculture and Water Resources, by no later than 9.30 am on 1 December 2016, the Independent Review of the National Red Imported Fire Ant Eradication Program: Report of the independent review panel.

**Senator Waters** to move:

That there be laid on the table, by the Minister representing the Minister for the Environment and Energy, by no later than 9.30 am on 1 December 2016, the cost-benefit analysis undertaken by Marsden Jacob Associates of Australia ratifying Minamata Convention on Mercury commissioned by the Department of the Environment and Energy.

**Senator Rhiannon** to move:

That the Senate—

a) notes that:
   i) since 1989, the New South Wales Independent Commission Against Corruption (ICAC) has investigated New South Wales (NSW) politicians and public officials and exposed a range of corrupt activities,
   ii) the NSW Liberal-National Government, with the support of Christian Democrats and the Shooters, Fishers and Farmers Party, have voted to replace the ICAC Commissioner with a three-commissioner model,
   iii) this change will mean that the power to conduct public inquiries initiated by the ICAC Commissioner will be severely weakened,
   iv) former Assistant ICAC Commissioner, Mr Anthony Whealy, stated the changes have a perception of payback, and former ICAC Commissioner Mr David Ipp has described the changes as scandalous, and
   v) all Australian states and territories have some form of an anti-corruption commission; and
b) calls on the federal government to support current and sound future research into potential anti-corruption systems appropriate for Australia, including the research led by Griffith University, in partnership with Transparency International Australia.

**Senator Bilyk** to move:

1) That a select committee, to be known as the Select Committee into Funding for Research into Cancers with Low Survival Rates, be established to inquire into and report on, by 28 November 2017, the impact of health research funding models on the availability of funding for research into cancers with low survival rates, with particular reference to:
   a) the current National Health and Medical Research Council (NHMRC) funding model, which favours funding for types of cancer that attract more non-government funding, and the need to ensure the funding model enables the provision of funding research into brain cancers and other low survival rate cancers;
   b) the obstacles to running clinical trials for brain cancers and other cancers with relatively lower rates of incidence, with regard to:
      i) funding models that could better support much-needed clinical trials, and
      ii) funding support for campaigns designed to raise awareness of the need for further research, including clinical trials;
   c) the low survival rate for brain cancers, lack of significant improvement in survival rates, and strategies that could be implemented to improve survival rates and;
   d) other relevant matters.
2) That the committee consist of 7 senators, 2 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate and 2 nominated by minority groups and independent senators.

3) That:
   a) participating members may be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate or any minority party or independent senator; and
   b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee.

4) That the provisions of standing order 29 apply with respect to quorum.

5) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

6) That the committee elect as chair one of the members nominated by the Leader of the Opposition in the Senate and, as deputy chair, one of the members nominated by the Leader of the Government in the Senate.

7) That the deputy chair shall act as chair when the chair is absent from a meeting of the committee or the position of chair is temporarily vacant.

8) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, have a casting vote.

9) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings and the evidence taken and such interim recommendations as it may deem fit.

10) That the committee have power to appoint subcommittees consisting of 3 or more of its members, and to refer to any such subcommittee any of the matters which the committee is empowered to consider.

11) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

12) That the committee be empowered to print from day to day such papers and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public.

**Senator Brown** to move:

That the following matter be referred to the Community Affairs References Committee for inquiry and report by 13 September 2017:

The delivery of outcomes under the National Disability Strategy 2010-2020 to build inclusive and accessible communities, with reference to:

- the planning, design, management, and regulation of:
  - the built and natural environment, including commercial premises, housing, public spaces and amenities,
  - transport services and infrastructure, and
  - communication and information systems, including Australian electronic media and the emerging Internet of things;
b) potential barriers to progress or innovation and how these might be addressed;
c) the impact of restricted access for people with disability on inclusion and participation in economic, cultural, social, civil and political life; and
d) any other related matters.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (15:35): I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs 5 to 8 of standing order 111 not apply to the Civil Nuclear Transfers to India Bill 2016, allowing it to be considered during this period of sittings.

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

Leave granted.

The statement read as follows—

STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE IN THE 2016 SPRING SITTINGS

CIVIL NUCLEAR TRANSFERS TO INDIA BILL

Purpose of the Bill

The Civil Nuclear Transfers to India Bill will clarify for Australian Government decision-makers the legal basis for the transfer of nuclear material and nuclear-related items to India and provide guidance on the exercise of their powers to approve such transfers.

Reasons for Urgency

The bill is required urgently to provide certainty to Australian industry and to Australian Government decision-makers on Australia's international legal obligations in respect of exports of uranium (or other nuclear material and nuclear-related items) to India. Exports of uranium are expected to commence in the coming months.

BUSINESS

Leave of Absence

Senator Urquhart (Tasmania—Opposition Whip in the Senate) (15:38): by leave—I move:

That leave of absence be granted to Senator Polley for 28 and 29 November 2016, for personal reasons.

Question agreed to.

Senator Bushby (Tasmania—Chief Government Whip in the Senate) (15:38): by leave—I move:

That leave of absence be granted to Senator Payne from 28 November to 1 December 2016, for personal reasons.

Question agreed to.

NOTICES

Postponement

The Clerk: Postponement notifications have been lodged in respect of the following:

Business of the Senate notice of motion no. 2 standing in the name of Senator Gallagher for today, proposing a reference to the Economics References Committee, postponed till 29 November 2016.
General business notice of motion no. 128 standing in the name of Senator Burston for 1 December 2016, proposing the introduction of the Australian Human Rights Commission Amendment (Preliminary Merits Assessment) Bill 2016, postponed till 7 February 2017.

General business notice of motion no. 129 standing in the name of Senator Hanson-Young for today, relating to the Australian Broadcasting Corporation, postponed till 29 November 2016.

The DEPUTY PRESIDENT (15:37): I remind senators that the question may be put on any proposal at the request of any senators. I shall now proceed to the discovery of formal business.

COMMITTEES

Privileges Committee
Reference

Senator XENOPHON (South Australia) (15:37): I seek leave to amend business of the Senate notice of motion No. 1, standing in my name and in the names of Senators Griff and Kakoschke-Moore, for today concerning a reference to the Senate Standing Committee on Privileges, before asking that it be taken as formal.

Leave granted.

Senator XENOPHON: I amend the motion by omitting in subparagraph (a) the words 'domestic preservation orders' and substituting 'domestic preservation notices'. I move:

That the following matters be referred to the Standing Committee of Privileges for inquiry and report by 14 August 2017:

(a) the implications of the use of intrusive powers by law enforcement and intelligence agencies, including in relation to electronic surveillance and metadata domestic preservation notices, on the privileges and immunities of members of Parliament;

(b) whether current oversight and reporting regimes on the use of intrusive powers are adequate to protect the capacity of members of Parliament to carry out their functions, including whether the requirements of parliamentary privilege are sufficiently acknowledged;

(c) the need for specific protocols to be developed on any or all of the following matters:

(i) access by law enforcement or intelligence agencies to information held by parliamentary departments or departments of state (or portfolio agencies) in relation to members of Parliament or their staff,

(ii) access in accordance with the provisions of the Telecommunications (Interception and Access) Act 1979 by law enforcement or intelligence agencies to metadata or other electronic material in relation to members of Parliament or their staff, held by carriers or carriage service providers, and

(iii) activities of intelligence agencies in relation to members of Parliament or their staff (with reference to the agreement between the Speaker of the New Zealand House of Representatives and the New Zealand Security Intelligence Service); and

(d) any related matters.

Senator JACINTA COLLINS (Victoria) (15:39): by leave—I move:

That the following matters be referred to the Standing Committee of Privileges for inquiry and report by 14 August 2017:

(aa) whether protocols for the execution of search warrants in the premises of members of Parliament, or where parliamentary privilege may be raised, sufficiently protect the capacity of members to carry out their functions without improper interference;
(a) the implications of the use of intrusive powers by law enforcement and intelligence agencies, including telecommunications interception, electronic surveillance and metadata domestic preservation orders, on the privileges and immunities of members of Parliament;

(b) whether current oversight and reporting regimes on the use of intrusive powers are adequate to protect the capacity of members of Parliament to carry out their functions, including whether the requirements of parliamentary privilege are sufficiently acknowledged;

(c) whether specific protocols should be developed on any or all of the following:

(i) access by law enforcement or intelligence agencies to information held by parliamentary departments, departments of state (or portfolio agencies) or private agencies in relation to members of Parliament or their staff,

(ii) access in accordance with the provisions of the Telecommunications (Interception and Access) Act 1979 by law enforcement or intelligence agencies to metadata or other electronic material in relation to members of Parliament or their staff, held by carriers or carriage service providers, and

(iii) activities of intelligence agencies in relation to members of Parliament or their staff (with reference to the agreement between the Speaker of the New Zealand House of Representatives and the New Zealand Security Intelligence Service); and

(d) any related matters, including competing public interest considerations.

Question agreed to.

Senator McGRATH (Queensland—Assistant Minister to the Prime Minister) (15:40): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator McGRATH: The government opposes this motion. The matters proposed to be referred to the Senate Standing Committee of Privileges are excessively broad in scope and extend to matters of intelligence and law enforcement oversight that are more properly dealt with in other contexts, including the Parliamentary Joint Committee on Intelligence and Security. Not only are our intelligence and law enforcement agencies already subject to robust oversight of legislation in operations; but shortly our intelligence agencies will be subject to further scrutiny in the context of the independent review into Australia's intelligence community announced by the Prime Minister on Monday, 7 November.

Senator JACINTA COLLINS (Victoria) (15:41): I seek leave to make a brief statement.

The DEPUTY PRESIDENT: You have been given one minute.

Senator JACINTA COLLINS: The opposition supports this motion as amended and thanks Senator Xenophon for putting these matters before the Senate. The amendments that I have moved are on behalf of the Senate Standing Committee on Privileges. Let me say briefly that there are some matters before the committee arising out of matters we are currently considering. With the courtesy of Senator Xenophon, we have discussed those issues and amended the motion so that they fit with current work before the privileges committee.

Senator XENOPHON (South Australia) (15:41): I seek leave to make a short statement of no longer than one minute.

Leave granted.

Senator XENOPHON: To put this on the record: this reference to the Senate Standing Committee on Privileges is about the issue of metadata domestic preservation orders and the chilling effect that such orders can have on the provision of information to members of
parliament in order to enable them to carry out their functions. This is not about the executive arm of government. The issue of privilege and the work of parliamentarians ought to be a matter for the Senate to determine, and that is why this reference to the privileges committee is so important.

The DEPUTY PRESIDENT: The question is that business of the Senate notice of motion No. 1, as amended, be agreed to.

The Senate divided. [15:46]

(The Deputy President—Senator Lines)

Ayes ......................37
Noes ......................24
Majority ...................13

AYES

Bilyk, CL
Cameron, DN
Chisholm, A
Culleton, RN
Di Natale, R
Farrell, D
Gallagher, KR
Hanson-Young, SC
Kakoschke-Moore, S
Kitching, K
Leyonhjelm, DE
McAllister, J
McKim, NJ
O’Neill, DM
Rhiannon, L
Siewert, R
Urquhart, AE (teller)
Watt, M
Xenophon, N

Noes

Abetz, E
Birmingham, SJ
Canavan, MJ
Duniam, J
Fierravanti-Wells, C
Hume, J
McGrath, J
Nash, F
Paterson, J
Ruston, A
Scullion, NG
Smith, D

Brown, CL
Carr, KJ
Collins, JMA
Dastyari, S
Dodson, P
Gallacher, AM
Griff, S
Hinch, D
Ketter, CR
Lambie, J
Marshall, GM
McCarthy, M
Moore, CM
Pratt, LC
Rice, J
Sterle, G
Waters, LJ
Whish-Wilson, PS

Question agreed to.
BILLS
Commonwealth Electoral Amendment (Donation Reform and Transparency)
Bill 2016
First Reading
Senator FARRELL (South Australia—Deputy Leader of the Opposition in the Senate) (15:49): I move:
That the following bill be introduced:
A Bill for an Act to amend the Commonwealth Electoral Act 1918 to improve donation transparency and accountability, and for related purposes.
Question agreed to.
Senator FARRELL: I present the bill and move:
That this bill may proceed without formalities and be now read a first time.
Question agreed to.
Bill read a first time.

Second Reading
Senator FARRELL (South Australia—Deputy Leader of the Opposition in the Senate) (15:50): I move:
That this bill be now read a second time.
I seek leave to table an explanatory memorandum relating to the bill.
Leave granted.
Senator FARRELL: I table an explanatory memorandum and seek leave to have the second reading speech incorporated in Hansard.
Leave granted.
The speech read as follows—
I am pleased to introduce this legislation, which demonstrates the commitment by the Australian Labor Party to vital reforms in the area of political donations, disclosure, and election funding. On behalf of the Opposition, I have presented these changes to amend the Commonwealth Electoral Act 1918 (the Electoral Act) and reform Australia's electoral laws in line with clear and unambiguous public expectation.

The measures contained in the presented Bill seek to deal with four key issues surrounding the conduct of electoral fundraising and expenditure.

Primarily, the Bill seeks to address the intricate issue of receipt of gifts and donations from foreign entities. This has been an issue that has attracted widespread public attention, and it is clear the public want this Parliament to act. The amendments presented in this Bill seek to make it unlawful for candidates, registered political parties, and members of Senate groups to accept donations or gifts identified as foreign property.

The amendments presented in this Bill also make it unlawful for persons or entities to receive overseas or foreign gifts that are used solely or substantially to incur political expenditure. In addition, this Bill seeks to extend the prohibition on anonymous gifts to associated entities and third parties, with the intent of ensuring disclosure is not avoided through such entities.
This Bill seeks to ensure the source of all political donations which could affect political decision-making are clearly identified, the public in turn can scrutinise the receipt of such donations and any possible effect on decision-making, and the Australian Electoral Commission has authority and jurisdiction over all such matters.

Secondly, this Bill addresses the long overdue need to reduce the amount of donations where the identity of the donor remains anonymous from a threshold of "more than $10,000" (indexed annually to CPI) just down to $1,000. The Opposition believe that once an organisation is paying more than $1,000 their identity should no longer remain anonymous.

Thirdly, this Bill seeks to close a loophole in the current Electoral Act, where entities may be avoiding disclosure regulations by making donations to various branches and divisions of the same political party in an effort to remain under the disclosure threshold for each donation. This Bill would ensure those branches and divisions are considered as the same political entity for the purpose of the disclosure requirements.

The fourth and final key issue addressed in this Bill is the prevention of the current possibility of candidates and groups obtaining windfall payments of electoral funding as a result of standing for election or political office. The intention of these measures is to link the payment of electoral funding to the political expenditure incurred by that party, candidate, or group. This therefore would seek to ensure that election funding is used for its intended purpose of communicating with the public and the Australian electorate.

To ensure that these four issues can be addressed to the satisfaction and confidence of the public, this Bill seeks to extend penalties and offences under the Electoral Act to encourage compliance. This reflects the need to demonstrate to the public and political entities the very serious nature of political integrity, and to inspire faith and confidence in our democratic institutions.

The Labor Opposition is committed to ensuring transparency and accountability throughout our political system, and the measures outlined in this Bill address those matters which undermine public confidence in our great democracy.

I commend the Bill.

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

Leave granted; debate adjourned.

DOCUMENTS
Community Affairs References Committee
Order for the Production of Documents

Senator URQUHART (Tasmania—Opposition Whip in the Senate) (15:51): At the request of Senator Brown, I move:

That there be laid on the table by the Minister representing the Treasurer, by no later than 3.30 pm on Tuesday, 29 November 2016, the government's response to the report of the Community Affairs References Committee entitled Extent of income inequality in Australia—Bridging our growing divide: inequality in Australia.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (15:51): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator McGrath: The government intends to provide a response to the committee's report by the end of December. In order to give the report the attention it deserves, it would be
premature to provide a response in the time frame indicated by the motion. As a result, we oppose the motion.

Question agreed to.

**MATTERS OF PUBLIC IMPORTANCE**

**Great Barrier Reef**

The DEPUTY PRESIDENT (15:52): I inform the Senate that, at 8.30 am today, Senators Gallagher and Roberts each submitted a letter, in accordance with standing order 75, proposing a matter of public importance. The question of which proposal would be submitted to the Senate was determined by lot. As a result, I inform the Senate that the following letter has been received from Senator Roberts:

Pursuant to standing order 75, I propose that the following matter of public importance be submitted to the Senate for discussion:

The policy position of the Australian Government towards the continuing robust health of the Great Barrier Reef and the threat of environmental alarmism.

Is the proposal supported?

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

Senator ROBERTS (Queensland) (15:53): I rise on this matter of public importance, as a servant to Queensland and Australia, to discuss Queensland’s Great Barrier Reef. The onus is on honourable senators gathered here to expose the truth about our reef and repudiate the lies being told by extreme left-wingers hell-bent on control.

As widely reported in the media, last Friday Pauline Hanson’s One Nation Party visited Yeppoon in Central Queensland and travelled to Great Keppel Island to inspect a reef—a small part of a wondrous, interconnected, living and robust organism. In telling the story of our beautiful reef we were assisted by Dr Alison Jones, who provided a realist’s scientific perspective on coral bleaching. Coral science is Dr Jones’s specific expertise. Dr Jones, a great Queenslander, told us that the part of the reef we visited had suffered a bleaching episode in 2006 and recovered just 12 months later. We visited the reef to draw attention to the fact, firstly, that bleaching of the reef has occurred over time many times; secondly, that the reef has always recovered; and, finally, that despite Green alarmism the reef is not dead. It is in fact robust and beautiful, and it should be visited. Why travel overseas when we can come to our own backyard and see this natural wonder?

The story of the reef is a uniquely Queensland story. It is our reef. We choose to share it with all Australians. It is an affront to Queensland that some Australians want to destroy the reputation of our most prominent icon, and it is an affront to decency that those Australians would destroy the reputation through fake science and lies. The destruction of the reef’s reputation is being done to buttress the Greens’ agenda of falsely claiming the world is warming through carbon dioxide and that humans are the cause. The casualty of the theory is hardworking Aussies. We do not get a dividend from the Greens’ extreme theories. Queensland and Australia just lose jobs and prosperity. The Great Barrier Reef is visited by approximately 2.6 million people each year, but the numbers are falling. Max Allen, a tourism operator who was kind enough to ferry us to the reef in his Freedom Fast Cat, told us he used to have 200 visitors each day on his boat but now he is lucky to have 17—200 down to 17.
That affects motels, service stations, supermarkets, services, businesses and even travel agents in the cities. Mr Allen, a proud and wonderful Queenslander, works on a part of the reef that is beautiful and full of natural wonders. The primary reason he has witnessed a drop in tourists visiting is the lies told by the Australian Greens and their mates.

Allow me to turn the Senate's attention to the cost of the Greens' lies. What is at stake if we allow this terrible invasion of lies onto our reef? It is true to say that a significant amount of the approximately $13 billion per annum in tourism expenditure and 115,000 ongoing tourism jobs, about three quarters of which are Queenslanders', are at high risk due to reckless Green alarmism. The Greens are happy to risk these jobs because, firstly, their highest vote is in the inner city, not regional Queensland; secondly, pretty signs that say, 'I love the reef and I vote,' are more important than facts; and, finally, they think the loss of jobs is mere collateral damage. Queenslanders reject the Greens' terrible foreign intervention in our reef. Today we reclaim our reef, our prosperity and our future. We reclaim our narrative.

The Great Barrier Reef is a total of 2,900 coral reefs and it stretches 2,300 kilometres along the Queensland coast, covering an area of 344,400 square kilometres. It has been World Heritage listed since 1981. Every part of it is beautiful and diverse, and visitors must show our reef respect. It is true that parts of the wonderful Great Barrier Reef face challenges. Some of those challenges are significant. Those challenges include natural bleaching, sedimentary run-off and crown-of-thorns outbreaks. In fact, one of the most significant bleaching episodes on the reef occurred in 2008, caused by record cold temperatures. Dr Alison Jones told those assembled in Yeppoon last Friday that coral is highly sensitive to changes in its environment. Inclement weather can trigger a bleaching episode; so, too, can any slight changes in water temperatures. Dr Jones informed us, on our research and promotional tour, that the coral almost always recovers from a bleaching event. Bleaching events are natural and, as mentioned, occur when the water warms or cools naturally.

Dr Jones is not the only courageous Queenslander to speak out against Green alarmism. We think of the courageous views of scientists who whistleblow on the doomsday scenarios—people such as Professor Peter Ridd of James Cook University. Professor Ridd pointed out that his research questioned the propaganda photographs of the reef paraded by the Centre of Excellence for Coral Reef Studies and the marine park authority, which purported to show long-term collapse of the reef's health, as being potentially misleading and wrong. James Cook University responded earlier this year in an anti-science way by censoring and threatening to fire him. Pre-eminent minds and everyday Aussies—people who speak out—are ridiculed and attacked. Pauline Hanson's One Nation Party says to these people: 'We are here for you to give you and your realism a voice.'

Misrepresentations, exaggerations and personal attacks are natural to the Greens. I think of Senator McKim, who said last week in reference to another matter: 'These comments may be accurate, but just because something is accurate does not mean it is reasonable or productive to talk about it.' Let those words sink in, Madame Acting Deputy President: even if something is accurate, Greens party spokesman Senator McKim thinks it is better we hide the truth, do not talk about it and shelter those not sensible enough to assess the information. Queenslanders are not mugs. Queenslanders are onto Senator McKim, the Greens and their lies. The Greens recently went on their own tour of the reef, so I am told. Up and down the coast they trudged. They begged tour operators to take them out but everyone rejected their
advances. They were rejected, I am told, because Queenslanders do not like being lied to or lied about.

What Queenslanders do not like one tiny bit is when one of their own turns on them, like Senator Waters. An August 2016 synthesis by Jim Steele, in one of the most recent peer-reviewed journals Science, demonstrated coral reefs can be very resilient, are very resilient, and the gloom and doom claim of Green alarmists is based on unfounded fearmongering. I quote naturalist and essayist, Eric Worrall, who said:

Given Coral originated 540 million years ago, has survived numerous catastrophic extinction events such as the Permian-Triassic Extinction, which killed around 96% of all marine species, and has effortlessly survived hundreds of millions of years of abrupt natural changes in global temperature, I would suggest the burden of proof—is on green alarmists—to demonstrate why a few degrees gentle anthropogenic warming is such a threat … if … warming actually occurs.

Put simply, coral bleaching cannot occur from human-released carbon dioxide because empirical evidence exists to prove that humans are not causing an increase in global temperatures. The Greens are using control-oriented, elitist media to push their purposeful destruction of the reef's reputation. They are mendacious, destructive and out of order.

Their lies have infiltrated the international media. A US Forbes headline earlier this year stated, '50 per cent of the Great Barrier Reef is dead or dying'. A mock obituary by Outside went viral in October 2016, claiming that the Great Barrier Reef had passed away after a long illness. The Forbes statement is untrue. The Outsider is dangerous and outrageous. I wonder if the Greens are proud of themselves for perpetuating this worldwide lie. Then we have that bastion of left-wing tripe, the BBC. In 1999, it made the prediction the Great Barrier Reef is dying—blatant lies, most likely concocted to have tourists spend money in Nice, France, to advance the BBC's now destroyed pet project, the EU.

These international media outlets are not only aided and abetted in destroying our tourism sector by the reprehensible Greens policies; they are pushed along by headlines from Australia's own Sydney Morning Herald with headlines like, 'Is this the end of our Great Barrier Reef?' That article goes on to highlight the various levels of bleaching on the reef. It is sheer hate speech: job-destroying, reef-hating, Queensland-bashing Greens and their cousins in select media—disgraceful. No wonder Fairfax Media's circulation is falling. Then get a load of this: one recent ABC article was headed, 'Great Barrier Reef coral bleaching could cost $1 billion in lost tourism, research suggests'. No wonder there are calls from Queenslanders to sell the city aspects of the ABC—what drivel, what lies. Today, we mark the end of the elites' lies. We reclaim our reef.

All of this total ignorance of science is backed by liar-in-chief, Tim Flannery, the greatest clown to ever grace any Australian stage. He emotionally perpetuated this outrageous lie about the reef by saying:

This is one of the saddest days of my life. This great organism, the size of Germany and arguably the most diverse place on earth, is dying before our eyes.

Having watched my father die two years ago, I know what the signs of slipping away are. This is death, which ever-rising temperatures will allow no recovery from unless we act now.
What puke.

The Green's ignorance is laid bare in Senator Larissa Waters's campaign entitled 'Coal or the reef' in which she states: 'Global warming is the No. 1 one threat facing the reef and exporting millions of tonnes of coal through the reef will make it even worse. Without serious, immediate action, we are going to lose our natural wonder.' I say through the chair, at the next election Queenslanders will remind her of her betrayal of our home state. They will recall her party's bold new mantra articulated by Senator McKim, 'At all costs, hide the truth because to tell the truth is inconvenient.' Let us make Australia great again for everyone by protecting our Barrier Reef.

Senator WATERS (Queensland—Co-Deputy Leader of the Australian Greens) (16:03): It is hard to know, really, where to start with that interesting contribution from the previous speaker. But can I assure the chamber that in the six years that I have been discussing the health of the reef with relevant coral reef scientists, with the Great Barrier Reef Marine Park Authority, with the Institute of Marine Science, they are speaking with one voice in saying that the reef is under serious threat and that the biggest threat to the reef is human-induced global warming. There are a whole lot of other threats to the reef as well, many of which centre around water quality which, of course, has implications for how we manage our land and how we support farmers to adopt more sustainable practices and reduce sediment and pesticide run-off. But they are united in accepting that global warming is the biggest threat to the reef.

This is not some conspiracy. This is not some notion that has been cooked up by me or my party. This is something that the UN World Heritage Committee, the government's own Great Barrier Reef Marine Park Authority, the actual experts are begging government to listen to. Instead, what we see from government is an agenda to increase coal exports, to do more dredging and more dumping of that dredge spoil to expand coal export ports, more coal seam gas wells and unconventional gas wells to be sunk—often in our best farmland—again much of which is for export out through our reef. So our reef is under threat from global warming, but it is also under threat from those water quality issues, as well as those issues of industrialisation and increased shipping.

What has been really difficult for the tourism industry is the tricky position that they have been placed in. These people get to swim and be near and on the reef every day—they have perhaps got the best job in the world—and it is a very difficult position for them to be in to acknowledge that actually their product is seriously being changed by human activity. That is, of course, why some of them have been reticent to go public on this issue. I have had many of them talk to me privately and say: 'Look, we can't even take the tourists to the same place anymore because it doesn't look good anymore. We've had to change our location.' But when I urge them to speak out to increase the pressure on government so that we can change these policies and save the reef, you can understand their reluctance to deter potential tourists from coming to see the reef. This has been one of the most vexed issues—how do we ensure that the policies can change so that we can save what is left of the reef in the time that we have before we cook this planet, and how do we make sure that we can keep those jobs alive? Seventy thousand people and their livelihoods depend on the reef staying healthy.

This government has been shamelessly prioritising the needs of multinational fossil fuel companies in letting them open new coalmines, expand ports and send yet more ships out
through the reef to further worsen global warming. Of course, the Queensland state Labor
government has been no better and many of those approvals have been ticked off by them as
well. So we have seen a full-on onslaught of the fossil fuel sector on the reef. It is why it has
led eminent scientists like Professor Terry Hughes, who is in fact the world expert in
the health of the reef, to say that we need to choose between new coal and the reef, and that we
cannot have both. They have been his words on many an occasion; they have been his words
before Senate inquiries that I have instigated into the management of the reef and how we can
do better to try and protect it, and they have been his words to the media in the last two or
three years. This is not some conspiracy to try to further some cooked-up agenda—if only it
were. Sadly, this is the reality of what we are facing.

The reef has just seen the worst coral bleaching in its entire history. As the previous
speaker said, sometimes corals can recover from bleaching. You need the conditions to be
right: you need no more spikes in water temperatures, and you need to make sure that they
have enough fresh water; that there are not other pressures like sediment or pesticides which
are inhibiting that regrowth. So, if everything remains equal, they can sometimes regrow. Of
course, it is not the same species that regrow, so the composition of the reefs still change. But
they can regrow. What happened earlier this year, though, was that the bleaching was so
severe and the water temperature remained high for so long that they lost that potential to
regrow. The scientists at GBRMPA and at AIMS—all of the relevant people who actually
study this—have said that, in fact, 22 per cent of all of the corals in the entirety of the reef—
concentrated in the northern end, but 22 per cent of the whole reef—those corals have now
died. The bleaching was so bad that they are now dead. So we now have to wait for the
appropriate conditions for new corals to start to regrow, assuming that there is a proper
substrate for them to take onto.

Senator Di Natale and I went and looked at some of these reefs that had been so severely
bleached. It was truly heartbreaking to see fields of, effectively, brown rubble. I did not think
it could look that bad. I thought that maybe the corals might just look a bit white, but actually
the algae had come in and smothered them and they were starting to disintegrate. It was a sea
of brown. And there was a lone clam in the middle, which obviously had no food source, and
it was not going to last long either. It was extremely distressing to me. The scientists that were
on that trip with us were shedding tears about the future of the reef.

This is not scaremongering. This is a desperate plea for a change in policy—to do
everything we can to try to save the reef, as much as possible, given that we know how much
global warming has already been locked into the system. Some of the scientists have lost
hope, and they do not think that it is possible to save the reef. I refuse to accept that. I still
think that we must do everything we can, and that we must work together in this chamber to
change those policies that are seriously threatening the reef. We must do everything we can to
save what is left of it, and whatever is savable. So I will continue to try to raise awareness of
the peril that the reef is in, with the intention of getting a change in policy from the big
parties—who are, sadly, beholden to the donations that they get from the fossil fuel sector,
whether it is the coal-mining companies or whether it is the coal-seam gas companies, who
simply want to get more and more of their product out through the reef—products which,
when burnt, worsen climate change and make it harder for the reef to thrive.
I want to take issue with the comments by One Nation senators after a visit to the reef which they undertook at the end of last week. They went to an area that was in the south of the reef, off Great Keppel Island, assuming the reporting was correct. And they say that, because bleaching happened there ten years ago and the reef came back, therefore the whole reef is fine. Well, if only that were the case—if only you could stand in the streets of Brisbane and say: 'Sydney doesn't have a traffic problem, because look—there are no cars here in Brisbane.' That kind of misguided logic is not only looking in the wrong place but is mixing up and confusing the difference between the bleaching of corals and when it gets so bad that they actually die. Unfortunately, 22 per cent of the reef has gotten that bad: it has died. That is an incontrovertible fact. It is not a UN hoax. It is not some bizarre Greens conspiracy. It is actually what the science has found. But we have the ability to change direction. Rather than simply jumping on the climate-change-is-a-hoax bandwagon—which, sadly, many of their backbench want to do—I would urge the government to stop sacking those scientists and to stop cutting funding to those bodies, and to actually listen to the advice. Let us collectively put our shoulders to the wheel, because this is an organism that is ancient; it is the largest living thing that can be seen from space; it is bigger than all of us, in both the literal and the metaphorical sense. We can do so much better for them. If we are talking about a changing economy, and bailing out companies that go bust—well, that is 70,000 people. I do not see any outrage from the Labor opposition or the government about the fact that those jobs are under threat; they are simply propping up the profits of those multinational coal and gas corporations, who then make very generous donations to the government.

I want to finish by saying that I welcome the attention on the reef. It is something that I and many folk in my party have continued to raise for many years now. We have had multiple Senate inquiries. We have had some very good work done by the Great Barrier Reef Marine Park Authority, despite the funding cuts that this government has brought down upon them. We have some excellent work being done by our coral reef scientists, and they are speaking with one voice, begging for us to listen and begging for this government and the opposition to change policies—so that we can save what is left of the reef. As a Queenslander who grew up visiting the reef, it affects me deeply. I will fight like hell to protect this beautiful place, and all of the 70,000 people whose jobs rely upon the reef remaining healthy. That should be a job for all of us in this chamber, rather than simply dismissing it as some cooked-up, bizarre frolic. I think that that is a real abrogation of our duty as senators to get across the facts, to listen to the people, to listen to the scientists and to then take good decisions where we can actually make a difference, not just to the future of those peoples' jobs but also to the future of this amazing organism.

Senator PATERSON (Victoria) (16:13): I find myself in the slightly unusual position of being in the centre or the middle of this debate. But perhaps that is something that we will all have to start to get used to in this wonderful new Senate that we have. I find myself disagreeing with the alarmist language used by Senator Waters. I was particularly caught by the phrase in her speech just then, 'in the time that we have got left before we cook this planet'. I am a bit more optimistic than Senator Waters on that; I do not think we are on the way to cooking our planet, and I think we have got quite a bit of time left—I certainly hope we do. On the other hand, the One Nation senators, including Senator Roberts, probably do not give due weight to the threat that the reef faces. The Turnbull government certainly
acknowledges that there has been damage done in recent years to the reef. We also acknowledge that climate change and warming water is a factor in that damage. We are absolutely keen to address that damage, to limit it and to help restore the health of the reef, and we have significant programs which are designed to address that, which I will come to in a minute.

I should commend our One Nation colleagues for their direct action initiative of going to the healthy parts of the reef to demonstrate that the reef is still open for business, that it is still a great tourist destination, and that international visitors who might have seen negative headlines about the reef should not be discouraged from visiting. I took it to be an audition for the next Tourism Australia advertising campaign. I think the One Nation senators in their wetsuits would make quite a spectacular advertisement and attract international visitors.

As Senator Roberts said, there have been some exaggerations in this debate. There have been some instances where people have been a bit inflammatory with their language, where people have gone over the top and been fatalistic about the health of the reef when they should not be and when there is good reason to believe that it will recover and is on the way to recovering from the damage that has been done, and that the government is taking the necessary steps to achieve that. Senator Roberts referred to the work of Professor Ridd at James Cook University, and I think his work is certainly worth paying attention to, as is the work of his former colleague the late Professor Bob Carter, also at James Cook University—someone who I was very privileged to know in my professional life before coming here, someone who was very passionate about the health of the reef. Because he was so passionate about the health of the reef, he found it very frustrating when people would be unnecessarily pessimistic and overly dramatic about its future.

There is another perspective that I want to highlight in this debate before I get to the government's initiatives in this area, and that is comments made in a recent media article—and I apologise in advance if I am mispronouncing his surname; I am sure Senator Macdonald will correct me if I get it wrong—by the chairman of the Great Barrier Reef Marine Park Authority, Russell—

Senator Ian Macdonald: Reichelt.

Senator PATERSO: Thank you, Senator Macdonald; I appreciate that. He made some very interesting comments in an article by Graham Lloyd published in The Australian in June this year, in which he absolutely acknowledged some damage done to the reef but also condemned the alarmist language being used by some in this debate. The article states:

"This is a frightening enough story with the facts, you don't need to dress them up. We don't want to be seen as saying there is no problem out there but we do want people to understand there is a lot of reef that is unscathed."

Dr Reichelt said there had been widespread misinterpretation of how much of the reef had died.

"We've seen headlines stating that 93 per cent of the reef is practically dead."

"We've also seen reports that 35 per cent, or even 50 per cent, of the entire reef is now gone."

"However, based on our combined results so far, the overall mortality rate is 22 per cent — and about 85 per cent of that die-off has occurred in the far north between the tip of Cape York and just north of Lizard Island, 250km north of Cairns. Seventy-five per cent of the reef will come out in a few months time as recovered."
He was particularly critical of Dr Flannery's language in this debate, as Senator Roberts has been. He characterised it as 'dramatic' and 'theatrical', and said:

… his prognosis, although of concern, was "speculative".

I think that is an important middle-ground recognition that, although we have issues in this area, it is not something that should be over dramatised.

As I highlighted earlier in my remarks, climate change is one important factor which does affect the health of the reef, and water temperature is one important contributor, but, as we all acknowledge and understand, it is not the only one. The other ones which affect the reef are ones which the government is able to have more direct impact on than on climate change. The Australian government on its own certainly cannot halt global average temperature increases. If we shut down Australian industry tomorrow, we would not be able to do it on our own. But one thing which we can do is influence the important issue of water quality and how that affects the reef. I refer to an article written by Josh Frydenberg, my friend from the other place, only a few weeks ago in The Courier-Mail, where he talked about some of the important initiatives that the Turnbull government has undertaken to address this issue:

For example, in the area of water quality, we are working with farmers to reduce nitrogen and sediment run off into the Reef. Adopting a market-based, competitive tender process, farmers are being financially incentivised to develop their own nitrogen targets and implement them.

In just the last year, trials in the wet tropics have prevented 86 tonnes of nitrogen from otherwise flowing into the Reef and this is just the start, as the goal is to reduce nitrogen run off by 80 per cent in the catchment area by 2025.

Reducing this run-off is important because the crown of thorns starfish, a coral-eating predator, has been breeding in rapid numbers as increased nitrogen flows into the water. During spawning, large females can produce up to 65 million eggs each as plankton blooms from more nutrients in the water, providing food for the starfish.

Indeed, the Institute of Marine Science documented how more than half the cover on coral reefs has been lost to crown of thorns outbreaks. While additional efforts have been taken to tackle the crown of thorns, including the commissioning of a new vessel staffed with indigenous rangers, minimising nitrogen run off is also key.

He goes on to outline a range of initiatives introduced by the government to address this, which I will also talk about now.

It is important to recognise how important the Great Barrier Reef is, how unique it is in the world and how important it is to Queensland and its tourism industry. I think the tourism industry, along with the 70,000 jobs it supports, is reason enough why we should both take this issue seriously and speak in a measure, responsible and mature way about this, not over dramatis it and send signals to the rest of the world that there is no Great Barrier Reef for them to come here and see; of course there is, and there are many parts of the reef that are very healthy. The Turnbull government has already invested $461 million in reef funding, which is part of a broader $2 billion 10-year plan focused on three key priorities: (1) reducing nitrogen run off by working with farmers, (2) reducing gully erosion through landscape restoration and better grazing practices, and (3), as I mentioned, culling crown-of-thorns starfish.

This stands in contrast to the record of our predecessors. In their six years in office, part of which was almost in coalition with our friends from the Greens, there were five massive
dredge disposal projects planned in the Great Barrier Reef Marine Park. During that time the World Heritage Committee put the reef on their in-danger watchlist. When the coalition came to office in 2013, we were determined to improve the health of the reef and get it off that list, and that is why we took unprecedented action to address that. For a start, we ended all five dredge disposals and put in place a ban on future capital dredge disposal projects in the Great Barrier Reef Marine Park. Thankfully, as a result of this government's actions, the World Heritage Committee removed the reef from the in-danger watchlist and praised Australia as a global leader in reef management.

I particularly recognise the work of another colleague of mine from Victoria, the former environment minister Greg Hunt, who is incredibly passionate about this issue and worked very diligently on this issue for many years in his previous portfolio. He needs to be credited for that important development.

We have our Reef 2050 Long-Term Sustainability Plan, which has been endorsed by the World Heritage Committee. It guides the work of our community, scientists, industry, farmers and others to boost the reef's resilience. A more resilient reef will be better equipped to deal with stressors such as climate change, the recent coral bleaching and cyclones. The reef 2050 plan brings together for the first time all of the work, expertise and investment necessary to manage the reef into the future and is based on the best available science.

We are already in the process of implementing the reef 2050 plan and we have established an independent expert panel, chaired by Australia's former Chief Scientist, and a cross-sectoral reef advisory committee. Importantly—and I suspect my Senate colleague Senator Macdonald will address this in a moment—we have created a new $1 billion Reef Fund which will support progress in tackling two of these biggest challenges, which are climate change, as I mentioned, and water quality.

In conclusion, the Turnbull government takes the health of the reef very seriously. We also take very seriously the need to not overly dramatise and be negative about the health of the reef as well because of the important role it plays in the Queensland tourism industry.

Senator KETTER (Queensland) (16:23): As a Queensland senator, I am very pleased to participate in this debate in relation to the health of the Great Barrier Reef and the threats that are posed to it. The records for February 2016 indicate that it was the warmest month ever measured globally, at 1.35 degrees Celsius above the long-term average. Even more concerning, February 2016 was more than 0.2 Celsius degrees warmer than January 2016, which held the previous monthly temperature record.

Climate change is indeed the greatest challenge we as a society face. The costs of doing nothing are incalculable. In my own state of Queensland, some regions have been suffering the worst drought in their history. Drought conditions have affected farm production and incomes, leading to reductions in agricultural employment and a reduction in the standard of living. Currently, around 80 per cent of Queensland is drought declared, and the agricultural sector is in serious trouble. Worse still, these conditions impacting on Queensland's agricultural industry are expected to be sustained by the current El Nino weather pattern. It is not the Prime Minister who worries about life in the bush; he does not have to live the struggle. It is the farmers who suffer, the very people who produce the grain for our bread and the sugar for our tea. They are the ones who are living through climate change.

This issue does not stop with the agricultural sector; it trickles down and flows through the veins of the Australian landscape. Our Great Barrier Reef is also under threat. The reef alone... 
contributes billions of dollars to the Australian economy and provides employment for more than 70,000 people, yet it is being destroyed as a result of climate change. Climate change, and its associated impacts, poses the greatest threat to the long-term sustainability of coral reefs worldwide, primarily via mass coral-bleaching events. Rapid increases in atmospheric carbon dioxide are consequently warming ocean temperatures beyond thresholds in which corals can thrive. As corals form the foundation of the reef and provide essential habitat to reef fish and invertebrates, the loss of coral can cause reductions in the populations of other reef inhabitants.

While I am saying these words I am looking at the interim report of the Great Barrier Reef Marine Park Authority. The authority has handed down an interim report which says the first phase of its surveys shows that:

… 22 per cent of coral on the Reef died due to the worst mass bleaching event on record.

Eighty-five per cent of this mortality occurred in the 600 kilometre stretch between the tip of Cape York and just north of Lizard Island.

Overall, the area south of Cairns escaped significant mortality.

Many different stressors can cause coral bleaching, including freshwater inundation and poor water quality from run-off. However, heat stress from above-average temperatures is the only known cause of mass coral bleaching.

This is not just a problem for the future; we are already experiencing the extremes of climate change that threaten the future of our country. Given the scale and imminent threat that we face, I am alarmed that the Turnbull government continues to uphold its do-nothing stance on climate change. In the past two years, the Abbott-Turnbull government has: abolished a price on pollution; abandoned an emissions trading scheme; slashed the renewable energy target; cut funding to carbon capture and storage; tried to abolish the Climate Change Authority and the Clean Energy Finance Corporation; and imposed massive cuts on the CSIRO.

We all remember when Malcolm Turnbull was a champion of climate change action and was prepared to join with Labor in a bipartisan approach to introducing an emissions trading scheme. But now we can see Mr Turnbull's true colours as leader—rather than taking on one of the greatest challenges this country faces, Mr Turnbull has traded up for the cheap thrill of policy-free leadership. This government has slashed CSIRO's budget by $115 million, with 350 CSIRO staff targeted for redundancy—it seems to be the entire climate monitoring capacity. Here we have a government that pays lip service to innovation. Is it true that Malcolm Turnbull does not understand the critical role of basic science as the bedrock of an innovation nation? Of course he does; he only has to read the paper. His policies on climate change are as cynical as his ambitions to get rid of a Senate that disagrees with him.

Labor are prepared to fix things. Only Labor have a policy to strengthen the renewable energy sector and to commit to more ambitious CO2 reduction targets. We will create jobs and drive investment to support the re-emergence of the renewable energy sector—a sector which was doing well but is sadly faltering under the current government's policies.

I am certain that the majority of Australians would agree that the CSIRO needs to be supported as one of Australia's few world-class scientific organisations. Cutting Australia's climate research capacity and damaging its reputation for quality science not only brings into
question Turnbull's commitment to innovation; it is a blatant attempt to silence the work that holds the government to account on its climate change policies.

I would like to turn now to Senator Roberts' contribution and would make the comment that this seems to be one of the stranger MPIs to be discussed since I have been in the Senate. I know that the good senator and his One Nation colleagues have had a trip to Great Keppel Island. I commend them for shining a light on this issue and for highlighting the Great Barrier Reef. It is a beautiful part of the world and the place they visited is one of the healthiest parts of the reef. However, their trip seems to have been one that departed from reality. As a senator who has been around for a couple of years, I have seen a few stunts, but on this particular occasion this stunt does not appear to have been very effective. If they wanted to look at the issues affecting the Great Barrier Reef, their trip should have been to Lizard Island; their trip should have been to parts of the reef north of Port Douglas. I note the contribution by the Climate Council's Professor Lesley Hughes that their trip was 'like taking journalists reporting on a conflict to a five-star holiday resort miles away from the actual war zone'.

The claims by Senator Roberts that climate change is not real and that it is in fact a conspiracy are somewhat embarrassing to our country. They are embarrassing for Australians and they are damaging Queensland's standing in the Australian and international science community. Embarrassing as this may be, we need to get back to the facts and to rely on the evidence.

In that regard, I point to recent research by the University of Central Queensland which undertook a survey of 1242 visitors departing the domestic terminal at Cairns International Airport between October 2015 and September 2016. It was part of a larger study of visitors to the Cairns region. It looked in particular at the experiences respondents had of the Great Barrier Reef. In fact, 71 per cent of the sample had visited the Great Barrier Reef during their trip. The survey touches on the issue of the coral-bleaching event of 2016. One of the findings was that, although pre-trip expectations were met in the majority or 59 per cent of cases, there was a gradual decline in expectations being met during and after the event. The critical point I would like to make is that, when asked if they would still have made the trip to Cairns if the Great Barrier Reef was affected by a major coral-bleaching event, those indicating 'yes' rose during and after the coral bleaching event. We know that visitors to the reef did their research; they were aware of the reports on coral bleaching; two-thirds of respondents indicated having read or seen reports on coral bleaching on the Great Barrier Reef. The majority of these respondents were concerned as a result, with 42 per cent indicating a lot of concern and 43 per cent a little concern. As a result, 45 per cent indicated their information search influenced their decision to visit Cairns.

The argument that green alarmism has been a threat to the reef or has had a negative impact on the marine tourism industry does not hold any water. Senator Roberts, I strongly encourage you and your colleagues to have another look at the research and have another look at the facts. There is a lot at stake in this matter; we need to consider and respect the work of the scientists.

Senator IAN MACDONALD (Queensland) (16:33): Senator Ketter's last point is really what this debate is all about. Thanks to the scaremongering of the Greens political party, some elements of the Labor Party and one or two so-called scientists, the word is getting
around the world that the reef is dead. As a result of that, people are thinking twice about visiting the Great Barrier Reef. That is why Jenny Hill, the Labor mayor of Townsville, was absolutely incensed when she heard Professor Hughes going out on her own with that false report about the coral coverage on the Great Barrier Reef.

That leads me to Senator Waters' campaign to denigrate the reef, as she always does. She talked about the northern section. The results from that survey, which involved the Great Barrier Reef Marine Park Authority, the Australian Institute of Marine Science and one or two scientists from James Cook University, said that the other three sections of the Barrier Reef had increased their coral coverage during the time of the survey. The only one that was in issue was the northern section, but they said it started from a very high base and there had been some loss of coral coverage, but most of the reef was growing. You would not have heard that from Professor Hughes or from the Greens political party. As a result of that, people overseas are worried.

I thank the One Nation Party for raising this particularly important matter for discussion again today. I appreciate them doing it. It is not new; it is something I have been talking about for 26 years in this parliament. But it has been hard to get your voice heard above the screaming from the Greens and the Labor Party about 'All is dead', 'Woe is me' and 'The world is coming to an end'.

It is always important to have some facts. I repeat that last major assessment, which involved the Australian Institute of Marine Science, the Great Barrier Reef Marine Park Authority and several university professors, one of whom broke ranks and went out and announced her findings before the rest were able to deliver the accurate findings. I remember when that came out. It was the night that the AIMS board had met in Townsville and they were having cocktails in the evening. The Mayor of Townsville was there, and they were all incensed when this unusual view of the research findings news came out from Professor Hughes.

I congratulate Dr Reichelt, whom my colleague has mentioned, who has been a wonderful advocate for the Reef over many years, in many different roles; and Mr John Gunn, who is head of the Australian Institute Of Marine Science. They do a hell of a lot of work all the time to ensure the protection of the Reef.

The Australian Reef, the Great Barrier Reef, is one of the best managed reefs anywhere in the world. Don't take my word for it. Take the word of the Save Our Marine Life alliance, who published this document that I keep trying to give to Senator Waters but never seem to be able to hand to her. It is called The big blue legacy, and it sets out in a wonderfully colourful booklet all of the positive things that Australian governments have done—and it is always Liberal governments that have done anything for our marine park establishments and protecting our Reef.

Indeed, you will recall that the Great Barrier Reef Marine Park itself was set up in 1979 by the then Prime Minister, the Hon. Malcolm Fraser. You would recall that all positive initiatives with our marine activities anywhere throughout Australia's history have been done by Liberal governments, either federal or in the various states. Time will not permit me to go through them all, but the new marine park arrangements were introduced by Robert Hill when he was the environment minister, and then David Kemp as minister oversaw the introduction of the south-east marine park. We will have, I think, Mr Frydenberg presiding over the Coral
Sea marine park, providing he gets it right. It was going off track under the previous, Labor government, but I am hopeful that when that comes out it will be a credit to Australia but also allow fishermen and tourist operators to continue to access parts of those areas in a sustainable and sensible way.

The Greens and those in the Labor Party who are always scaremongering about the Reef do not seem to understand the importance of jobs on the Great Barrier Reef. It is okay for people like Senator Waters who might visit the Reef every now and again. I have lived most of my life on the edge of the Great Barrier Reef. I associate with people who go out there fishing, people who go out there diving, tourist operators, and fishermen, and we understand what the Reef is all about. The Reef is a very resilient organism. It has been there for hundreds of thousands of years. It is a bit like climate change. I do not deny that the climate is changing; I accept that it has. I always give the rather exaggerated example that once the world was covered in ice and now it is not. So, clearly, the climate has changed over hundreds of thousands of years.

It is the same with the Great Barrier Reef. It adapts. It is a series of organisms that do adapt to whatever the situation is. I was talking to Mr Gunn on the aeroplane coming down here yesterday, and AIMS are doing a lot of work on coral bleaching, in a really scientific way—not in an over-the-top political way, making announcements that chase away tourists from Europe and America.

I have a friend who has a resort up that way, and he tells me that one of the greatest tourist attractions near his part of the Great Barrier Reef is a piece of white coral that the boats go over and have been going over for, I think he said, 20 years. But the Greens or one of those environment groups went out there and they said, 'Look; here's an example of coral bleaching,' and it was anything but. It was an outstanding piece of white coral.

I mention all these things because they demonstrate how there are a group of people in this country who seem hell-bent on destroying all of the jobs, activities and pleasures that the Reef provides to not only Australians but mankind.

Thanks to the One Nation party for raising this important issue. I think it is good that the parliament can discuss these sorts of issues in a sensible way, and bring some facts and truth and actual situations to the debate. Too often in this place we hear these negatives being thrown around by the Greens and their mates in the Labor Party. I had to smile at Senator Ketter's survey that he was talking about. He said 59 people saw a reduction in the Reef. But I think he was talking about visitors who have probably only ever been there once, so how would they know there has been a reduction? It would only be because the Greens political party and their mates keep telling the world that the Reef is dying—when, quite frankly, it is not.

It is still a magnificent spectacle. It is a coral reef that is teeming with wildlife of all sorts. The response to and the praise you get from, in particular, foreign tourists about our Great Barrier Reef are just remarkable, and it is continuous. We have something to be very proud of, and AIMS, GBRMPA and CSIRO, who do a wonderful job there and are very much contributing to these areas, will continue to properly manage our Great Barrier Reef and continue to keep it in the wonderful condition it is in now and forever.
Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (16:43): The One Nation family holiday to the Great Barrier Reef is a joke.

Senator Hanson interjecting—

Senator McALLISTER: You can laugh. I would be laughing too, actually, if the situation were not so very, very serious for the Reef. Because the truth is it is pretty hilarious!

Senator Ian Macdonald: Have you ever been there?

Senator McALLISTER: I will take that interjection, Senator Macdonald: I most certainly have been to the Great Barrier Reef. It is hilarious that Senator Roberts, who is so keen to insist on—so keen to demand—empirical evidence from others, is happy to conclude that the Reef is healthy based on a single dive. Now, where was that dive? That dive, according to media reports, was off Yeppoon, hundreds of kilometres away from the more serious bleaching at places like Port Douglas and Lizard Island. Diving where Senator Hanson did and concluding that the reef is fine is a little bit like auditing the Prime Minister's harbour-side electorate and coming to the conclusion that the economy is doing just great. Some parts of the reef are healthy—yes, of course they are—but some parts are not. The issue is that more parts are unhealthy now than they were 30 years ago, because the system is deteriorating. The cause, in part, is climate change.

We need to look at the empirical evidence about the reef. Over the last 30 years, hard coral cover has declined from 28 per cent to 13 per cent. That comes from the strategic assessment undertaken by the Great Barrier Reef Marine Park Authority, the government authority. What did they say? They said:

Even with the recent management initiatives to reduce threats and improve resilience, the overall outlook for the Great Barrier Reef is poor, has worsened since 2009 and is expected to further deteriorate in the future. Greater reductions of all threats at all levels, Reef-wide, regional and local, are required to prevent the projected declines in the Great Barrier Reef and to improve its capacity to recover.

The Great Barrier Reef Marine Park Authority undertakes actual surveys of the reef, and they are far more rigorous than four senators in wetsuits having a splash. The surveys for this year are yet to be completed, but it is suspected that the rate of bleaching is going to be higher than the initial estimate of 22 per cent, due to higher ocean temperatures. The director of reef recovery, Dr David Wachenfeld, has said, 'Essentially, this is confirming that this is the worst bleaching event that the reef has seen by a very, very long way.' A few months ago, the ARC Centre of Excellence for Coral Reef Studies conducted extensive aerial and underwater surveys about how much coral has been killed. They found that 35 per cent of coral in central and northern parts of the Great Barrier Reef have died. We know and, of course, we accept that parts of the reef that have been affected in this way will recover, but the problem is that, over time, placed under greater and greater stress by a range of interventions from humans, the reef's ability to recover is deteriorating. There will be very real consequences for our kids and for future generations who might want to go and try scuba diving on the Great Barrier Reef.

The underlying issue which I suspect One Nation senators are trying to suggest—because they tell us about it fairly regularly—is that they consider that climate change is not real. I hesitate on the need to repeat this here in this chamber, but climate change is real, and that is accepted by all those on this side of the chamber. It is also accepted, as it happens, by 97 per
cent of climate scientists. It is reinforced by the IPCC reports. The truth is that this is not an open question. Climate change is real; the question that we are now trying to answer, that scientists are trying to answer, is: how bad is it going to get? On the other hand, media stunts are not science. Senator Roberts's flirtation with the American far right is no substitute—no substitute at all—for the peer review process.

We have heard coalition senators stand up and say that they take climate change seriously. Senator Paterson talked about the government's actions to protect the reef and to take the references to it out of the UN's climate change report. That is more a triumph of lobbying than a triumph of environmental policy. More seriously, the only remaining pieces of the coalition's climate change policy lie in tatters. We will be able to make our 2020 climate change targets only because of reductions in land clearing. In Queensland and New South Wales, laws that were introduced in Queensland and that were sought to be introduced in New South Wales to halt land clearing threaten that outcome. The Direct Action carbon reduction policy is running out of steam. The Clean Energy Regulator announced this month that it would pay a further $367 million to polluting industries, in return for them to commit to reducing carbon emissions by 34.4 million tonnes. It is the smallest of four auctions held by the regulator, and it leaves about $440 million in the Emissions Reduction Fund for further carbon abatement contracts. About 83 per cent of that fund has now been spent. The federal government's climate policy is pretty much exhausted. There is no further funding committed to the program and there is no signal from government about what they intend to do to put Australia on a pathway toward decarbonisation. The very sad thing is that climate change is very real. It is very real, it is affecting the reef and it is affecting other ecosystems, but, unfortunately, on the government side, there is no credible policy to tackle it.

Senator Roberts said in his remarks, 'The casualties of the theory of global warming are hardworking Aussies.' Actually, One Nation's climate change policy is going to hurt the very people that they claim to represent. We do not help the tourism industry by pretending that there is not a problem. Senator Macdonald likes to say that the senators on this side who do not agree with him in some way do not care about jobs. I can tell him that that is not true. That is not true at all for me or for many of the other senators in this chamber who regularly speak about the impacts of climate change on our economy.

Tourism is our largest services export and employs more than one million Australians. There are more than 276,000 tourism businesses in Australia. Our pitch to tourists is, more often than not: 'Come to Australia. Come and see our amazing natural environment.' The problem is that it is threatened by global warming. In many of our ecosystems—in the alpine area, in the southern forests, in the wetlands, in the Wet Tropics, in Kakadu and on the reef—unless we take action, we will start to see ecological decline. In some instances we are already seeing it. It is up to us as parliamentarians, as people in this place, to deal with this honestly. Putting our heads in the sand and pretending that it is not happening, pretending that it is somehow un-Australian to refer to these threats, is not the way we should be approaching a very serious problem.

Senator Burston asked a question of Senator Canavan today about fisheries in New South Wales—concerned, I think, about the families and communities that rely on fishing. Well, global warming threatens the very ecosystems that these families and these fishing communities rely on. Oysters and other shellfish, for example, are harmed by the acidification
of the ocean that is caused by global warming. In other examples, the Climate Change Council has recently taken a look at the exposure of rural and regional Australia to climate change. And what do they find? They find that far from this being a problem that preoccupies only inner-city dwellers, rural and regional Australians are particularly vulnerable to climate change at an economic level because of the increased risks of severe weather events, because of the deepening of El Nino cycles, because of the intensification and frequency of drought and because of the warmer oceans, which causes more tropical storms and more hurricanes. The consequence of this is that agricultural businesses and farming families have used up their financial reserves or are taking on more debt in response to extreme weather events.

Climate change has real consequences for communities and it is time this chamber started taking them seriously. It is not enough to pigeonhole this as some ideological crusade that you can use to please some small group of preselectors. This is an issue that deserves our most serious attention. One Nation is perpetrating a fraud on the Australians who believe in them when it comes to climate change. Senator Roberts's flirtation with the far Right of Australian politics is no reason to jeopardise the livelihoods of thousands of Australians.

The ACTING DEPUTY PRESIDENT (Senator Reynolds): The time for discussion has now expired.

DOCUMENTS

Consideration

Australian National Audit Office

Senator WHISH-WILSON (Tasmania) (16:54): I move:

That the Senate take note of the document.

It is extraordinary that in a week where we are still squabbling over tens of millions of dollars in revenue raising from backpackers, some of the lowest-paid workers in this country, the Australian National Audit Office releases a bombshell report—and I do recommend that all senators read it—saying that oil and gas companies may have wrongly claimed billions of dollars in tax deductions and therefore robbed the Australian people and this government, in its obsession with balancing budgets and deficit repair, of hundreds of millions if not billions of dollars in revenue.

Report No. 28 of 2016-17—Performance audit: collection of North West Shelf royalty revenue: Department of Industry, Innovation and Science—finds that oil and gas companies using loopholes may have wrongly claimed up to $5 billion in deductions. It has found that the royalty formula has not been reviewed on these deductions for nearly 17 years and that a number of deductions, worth billions of dollars, claimed by companies, are not allowable under the act. This is something I have asked the Australian Taxation Office and the Treasury about several times. In fact, at the last three estimates I have asked about exactly these issues—about what is and is not allowable. It really shows you where this government's priorities are. The government is not prepared to look at this low-hanging fruit—what is essentially multinational tax avoidance. Instead, it wants to chase some of the lowest-paid workers in this country, foreign backpackers, who are here to have a holiday and pitch in and help our local agricultural producers, who desperately need their labour. The government is prepared to put our local agricultural production at risk to save a few pennies for Scott
Morrison's obsession with budget repair. The issues raised in this report have been raised so many times, yet nothing is ever done about it.

The report shows that more than $5 billion worth of deductions were claimed against petroleum revenues just in the 18 months to December 2015. These deductions were claimed under the broad categories of operating costs, depreciation, costs of capital, depreciated asset disposal, crude oil excise, condensate excise, processing tariffs and joint venture participation costs. Any costs that are claimed as deductions—for example, by North West Shelf operators—reduce the amount of royalty that is payable to the Australian people. The federal Department of Industry, Innovation and Science relies on the Western Australian Department of Mines and Petroleum's, or DMP's, compliance work and does not undertake any further activities to gain assurance that only eligible deductions have been claimed. So, in this instance we rely on the Western Australian government to do limited audits, and the Australian government has provided no oversight.

The royalty scheme does not permit all the deductions currently being claimed. On this basis, ANAO has doubts about the eligibility of deductions claimed for the costs of debt- and equity-funded capital, excise paid on crude oil and excise paid on condensate. The ANAO also found that there has not been adequate scrutiny of claimed deductions. Specifically, as I mentioned before, it has been 17 years since there has been an audit of North West Shelf operators and how they can actually pay a royalty and do their calculations. There have been recent reviews by DMP of cost reductions, but this work has involved quite limited testing, and there has been no major comprehensive examination since 2006. The limited work that has been undertaken has nevertheless highlighted potential problem areas, which I would urge senators to consider, but little action has been taken in response to these findings.

More recently, the Western Australian government commissioned consultants to undertake some data analysis procedures on capital and operating expenditure by North West Shelf producers that were also quite limited in scope has also provided some valuable insights. The report's findings indicate that there is a risk of significant errors in the claiming of deductions. To date there has been an agreement that a net amount of $8.6 million in royalties has been underpaid, requiring adjustments, but this is just the tip of the iceberg.

To put it in a nutshell, to finish off, I question our priorities. We are going after backpackers, who earn on average $14,000 a year. The companies in this report earn billions of dollars. They are some of the biggest companies in the world, operating in the North West Shelf. And it is clear that the rules, the way they are written at the moment, allow these companies to make tax deductions that they should not be making. That is money we need for schools, hospitals and policing in this country. The Greens will be taking this a lot further and putting this issue under the microscope.

Senator IAN MACDONALD (Queensland) (16:59): I am glad Senator Whish-Wilson raised this issue. It is an important issue. If his interpretation of the Auditor-General's report is correct then it is something the government should very closely look into, and I am sure the government will. I would be very interested to read the government's response to the Auditor-General's report. Senators may recall that, after years of doing nothing and six years of the Rudd-Gillard-Rudd Labor government, supported entirely by the Greens political party, there was no move at all to try to get foreign companies to pay the tax that they should pay in Australia. There was not one skerrick of movement from the Labor-Greens administration in
six years. Fortunately, the government changed, and we had treasurers who seriously looked into these issues, who took a lead role in the G20 meeting in Brisbane and who started work on this on a worldwide basis—work that will help in not only Australia but many other developing countries experiencing the same sorts of problems. I give all credit to Mr Hockey, who was then the Treasurer, for the work he did in getting foreign multinational companies to pay their fair share of tax. The Greens and the Labor Party talked about it a lot but did not do one thing to address the problem. So I look forward to the government's response to the Auditor-General's report.

I also want to comment on Senator Whish-Wilson's throwaway line: Mr Morrison is just trying to get a few tens of millions of dollars—actually, it is hundreds of millions of dollars—from the foreign workers, the backpackers. I could never understand why Senator Whish-Wilson, Senator Lambie and the Labor Party seem to think that foreign workers should pay less tax than Australian workers. The great workers' party, the Australian Labor Party, want to charge backpackers 10½ per cent and Australians much more than that. We know that, at the 19 per cent rate proposed by the government, backpackers will still get a better deal working in Australia than they would get anywhere else.

Senator Whish-Wilson's throwaway line is that Mr Morrison wants to get a few tens of millions of dollars. As I said, it is hundreds of millions of dollars. You know why we need that? You know why we need to look at the budget bottom line, Senator Whish-Wilson? It is because you supported the Labor Party, who ran up a debt approaching $700 billion, which means Australian taxpayers are paying something like $30 million a day in interest on money borrowed by the Labor-Greens government to fund their outrageously lavish projects in that six years of the Rudd-Gillard-Rudd government. When you say it is about trying to recoup a few tens of thousands dollars, we have to do that because—these figures just roll off everyone's tongue, even mine these days—it comes down to money that Australian taxpayers have to pay. They have to pay $30 million a day—$300 million a week—in interest on the money that was borrowed by the Labor-Greens government in those horrible six years.

That is why we have to try to address the budget problem. It is not just a problem of governments. I always say to people who ask me to get the government to give them some money: 'The government doesn't have any money. It just uses your money—taxpayers' money.' When we talk about paying $30 million a day in interest, it is not the government's money, it is the taxpayers of Australia who have to fork out that. Imagine what we could do with $300 million a week in new hospitals, new roads and new schools if we were not paying off the interest on Labor's debt to foreign lenders. While this is an important report, my final judgement will wait until I see the government response.

Question agreed to.

DOCUMENTS

Consideration

The following document tabled earlier today was considered:

Order for the Production of Documents

A document was tabled pursuant to the order of the Senate of 21 November 2016 for the production of documents relating to the Australian Defence Force’s Resistance to Interrogation Training Programs.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Back) (17:06): Order! The President has received a letter requesting changes in memberships of committees.

Senator FIERRAVANTI-WELLS (New South Wales—Minister for International Development and the Pacific) (17:06): I seek leave to move a motion to vary the membership of committees.

Leave granted.

Senator FIERRAVANTI-WELLS: I move:

That senators be discharged from and appointed to committees, as follows, with effect from 5 December 2016.

Economics Legislation and References Committees—

Discharged—
Senator Macdonald
Participating member: Senator Bernardi

Appointed—
Senator Bernardi
Participating member: Senator Macdonald

Environment and Communications Legislation and References Committees—

Discharged—
Senator Bushby
Participating member: Senator Paterson

Appointed—
Senator Paterson
Participating member: Senator Bushby

Finance and Public Administration Legislation and References Committees—

Discharged—
Senator Paterson
Participating member: Senator Bernardi

Appointed—
Senator Bernardi
Participating member: Senator Paterson

Public Accounts and Audit—Joint Statutory Committee—

Discharged—Senator Duniam

Appointed—Senator Bernardi
Scrutiny of Bills—Standing Committee—
Discharged—Senator Hume
Appointed—Senator Bernardi

Senators' Interests—Standing Committee—
Discharged—Senator Abetz 634 No. 20—28 November 2016
Appointed—Senator Bernardi.

Question agreed to.

BILLs

Civil Nuclear Transfers to India Bill 2016

First Reading

Bill received from the House of Representatives.

Senator FIERRAVANTI-WELLS (New South Wales—Minister for International Development and the Pacific) (17:07): I move:
That this bill may proceed without formalities and be now read a first time.

Question agreed to.

Bill read a first time.

Second Reading

Senator FIERRAVANTI-WELLS (New South Wales—Minister for International Development and the Pacific) (17:07): I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

India is the world's largest democracy, an emerging Asian superpower, an influential regional power and a strategic partner for Australia. Australia's growing collaboration with India on energy security and trade is an investment in the future of both countries.

Links between the Australian and Indian people have never been stronger, with over 450,000 people of Indian origin living in Australia. The 2011 census indicated Punjabi was the fastest growing language in Australia. The Indian diaspora in Australia remains engaged in developments in India, shown by the reception Prime Minister Modi received when he visited Australia in November 2014. The Nuclear Cooperation Agreement has delivered on a key priority for both our governments and, I know is an important symbol to the Indian origin community here reflecting the great strides made in our bilateral relationship.

Nuclear power is an important part of India's energy mix. It will help India reduce its carbon emissions and provide it with the secure supply of power it needs to underpin its ongoing economic development. The opportunity for Australia to supply uranium to India and to help to fuel that development is a significant one. Uranium mining companies in Australia are already negotiating the first contracts for what promises to be a significant trade.

As the fastest growing major economy in the world, with GDP growth rates consistently above seven per cent, India has a substantial and growing need for energy to sustain its development, and nuclear power will play a key role. Around 300 million Indians live without access to power. By 2050, when India's population is expected to reach 1.7 billion, India aims to provide 25% of its energy from nuclear
power. Completion of the reactors already under construction will add substantially to India's existing nuclear power generation capacity. To fuel that capacity, India will need up to 2,000 tonnes of uranium each year.

Negotiations on a bilateral nuclear cooperation agreement, to enable uranium sales to India, began under Labor in 2013 and were brought to a conclusion by the Coalition the following year. In 2015, members of the Joint Standing Committee on Treaties from across the Parliament indicated their support for bringing the bilateral agreement into force.

The Australia-India nuclear cooperation agreement is underpinned by a robust safeguards regime applied by the International Atomic Energy Agency (the IAEA). IAEA safeguards apply to the civil part of India's fuel cycle, where Australian uranium and any nuclear material derived from it will exclusively remain. The measures in place to prevent the diversion of Australian uranium from the civil part of India's fuel cycle are at least as strong as those in place for other export destinations. These include explicit commitments by India in a binding bilateral agreement with Australia, and robust inspection and accounting procedures enforced by the IAEA.

Successive Australian Governments have pursued a nuclear cooperation agreement with India with attention to the fact that it is not a Party to the Treaty on the Non-Proliferation of Nuclear Weapons (the NPT), including how the special case of India relates to Australia's commitments under that treaty and the South Pacific Nuclear Free Zone Treaty. Thus, when I introduced the Australia-India Nuclear Cooperation Agreement to this House in October 2014, I noted that trade in uranium with India had only become possible in light of changes to international guidelines on nuclear supply to India in 2008, agreed by the 48 members of the Nuclear Suppliers Group (the NSG), including Australia. The NSG includes all of the major nuclear supplier countries and others that are active in non-proliferation efforts. The National Interest Analysis document that I tabled alongside the Nuclear Cooperation Agreement noted that "in light of the unique framework within which nuclear cooperation with India is proposed, the Government is considering legislation to clarify the legal basis for uranium transfers to India". The Civil Nuclear Transfers to India Bill is the result of that consideration.

The Bill provides that decisions approving civil nuclear transfers to India are taken not to be inconsistent with Australia's obligations relating to nuclear safeguards under the NPT and the South Pacific Nuclear Free Zone Treaty, if particular conditions are met. Those conditions relate to the application of nuclear safeguards under India's agreement with the IAEA as well as the Australia-India Agreement on civil nuclear cooperation.

Although it remains outside the NPT, bringing India into the non-proliferation mainstream has cemented its commitment to key non-proliferation initiatives. It has also paved the way for India to deepen its strategic relationship with the US, Australia and other Indo-Pacific democracies. An India, keen to work closely with likeminded countries, is clearly in Australia's security and economic interests.

The evolution of international policies to enable nuclear cooperation with India and to draw it more fully into the non-proliferation mainstream was led by the United States between 2005 and 2008 with the support of Australia, and other countries. In 2008, the NSG accepted that, on the basis of commitments and actions by India in support of nuclear non-proliferation, nuclear trade with India would be possible. As part of that deal, the NSG recognised that there is no practical way for IAEA safeguards to apply comprehensively to nuclear activities in India while India retains nuclear weapons. Rather, India would negotiate a new safeguards agreement with the IAEA to apply safeguards to India's civilian nuclear facilities, including those fuelled with imported uranium.

The NSG decision recognised India's commitments to support international non-proliferation efforts, including continuing its moratorium on nuclear testing, to separate its civil and military nuclear activities and to accept IAEA safeguards on the former. In the years since 2008, India has met these commitments. India has brought its Additional Protocol with the IAEA into force. India has maintained its moratorium on nuclear testing and it is working with Australia and others to promote negotiations on
a Fissile Material Cut-off Treaty. As part of its separation of civil and military activities, India committed to designate 22 civil facilities for the application of safeguards by the IAEA. All 22 are now under safeguards.

The Civil Nuclear Transfers to India Bill reflects Australia's decision to supply uranium to India on the basis of the NSG decision and the safeguards that India and the IAEA have put in place to implement it, as well as the conditions in the Australia-India agreement on civil nuclear cooperation. This will give legal and commercial certainty to uranium mining companies in Australia so that they may fulfil contracts to supply Australian uranium to India with confidence that exports would not be hindered by domestic legal action relating to the scope of the nuclear safeguards that the IAEA applies in India.

Australia has a hard won reputation as a reliable, cost-effective supplier of energy and India is a large and growing market. A number of Australian uranium companies are actively pursuing the new market opportunity that India presents.

Given that nuclear energy is a zero-emissions source of baseload power, I said in October 2014 that I expected support for the Australia-India Nuclear Cooperation Agreement from across the political divide. Trade under that agreement, together with the growing dialogue we have with India on nuclear non-proliferation and disarmament, will further reinforce the non-proliferation commitments that India has made in recent years, and will help Australia and India to build an enduring bilateral relationship.

**The ACTING DEPUTY PRESIDENT (Senator Back):** In accordance with standing order 111, further consideration of this bill is now adjourned to 7 February 2017.

**Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016**

**Consideration of House of Representatives Message**

Message received from the House of Representatives returning the Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 and informing the Senate that the House has not made the amendments requested by the Senate.

Ordered that consideration of the message in Committee of the Whole be made an order of the day for the next day of sitting.

**Fair Work (Registered Organisations) Amendment Bill 2014**

**Assent**

Message from the Governor-General reported informing the Senate of assent to the bill.

**COMMITTEES**

**Education and Employment Legislation Committee**

**Legal and Constitutional Affairs Legislation Committee**

**Report**

**Senator FAWCETT** (South Australia—Deputy Government Whip in the Senate) (17:08): Pursuant to order and at the request of the chairs of the respective committees, I present reports on legislation as listed at item 16 Nos 1 and 4 on today's *Order of Business* together with the documents presented to the committees.

Ordered that the reports be printed.
Finance and Public Administration References Committee

Report

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (17:09): On behalf of the Chair of the Finance and Public Administration References Committee, I present the report on the Commonwealth funding of Indigenous Tasmanians together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Environment and Communications References Committee

Report

Senator WATERS (Queensland—Co-Deputy Leader of the Australian Greens) (17:09): I present the interim report on closures of electricity generators.

Ordered that the report be printed.

Ordered that consideration of the report be made an order of the day for the next day of sitting.

BILLS

Building and Construction Industry (Improving Productivity) Bill 2013


Second Reading

Consideration resumed of the motion:

That these bills be now read a second time.

to which the following amendment was moved:

At the end of the motion, add:

"but the Senate calls on the Government to introduce legislation to establish a national independent broad based anti-corruption body that has wide ranging powers, including the power to investigate politicians, and that this bill should not come into effect until such legislation has been passed by the Senate."

Senator WATT (Queensland) (17:10): I rise to strongly oppose the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013. Over the course of this debate and, in fact, over the last three years, as this government has pursued their ideological agenda to cripple trade unions in this country, we have heard a lot from the government about why these bills are allegedly necessary. We have heard that they are the key to unlocking productivity in the construction sector and the economy more broadly. We have heard that they will drive down industrial disputes. We might as well have heard that they would cause world peace! You would think that every problem in the world is going to be solved by the passage of these two bills, when in fact what they really are this government's only agenda for this country—their ideological crusade to cripple the trade union movement, which will undoubtedly further entrench inequality in our society.
These bills will not help the economy one iota. They will not help the community and they will not help working people. Instead, they are just a cynical, politically-motivated attack on hardworking Australians that will, tragically, put construction workers' lives at risk. These bills are a continuation of the $80 million political witch-hunt established by the then Prime Minister, Tony Abbott, in the form of the Heydon royal commission. That was the failed royal commission that has resulted in prosecution after prosecution falling over for lack of evidence. That royal commission, as we would all be familiar, was going to expose what was alleged to be endemic corruption within the trade union movement. It was going to line up all sorts of prosecutions of people within the trade union movement. To date, to my knowledge, it has resulted in an only one conviction and led to prosecution after prosecution falling over for lack of evidence.

Time and time again we see this Liberal Party government using taxpayers' money to pursue their own agenda to support their mates from the big end of town and appease their backbench. This is just like their $50 billion company tax cut, which will not deliver jobs and growth to ordinary Australians but will deliver a windfall gain to multinational corporations, who do not need a leg-up from the Australian people. Similarly, the Prime Minister, Mr Turnbull, has been pursuing his own agenda—and the Liberal Party's own agenda—through the $150 million plebiscite on marriage equality. We know that the only reason that is being done is to appease his backbench.

This government likes to moan about not having any money, about deficits—while, of course, the deficit is rising under their leadership—but they always find the money to deliver to their mates at the top end of town, with a company tax cut, a political witch-hunt in the guise of a royal commission and with things like a wasteful, divisive plebiscite. So I am proud to stand against this ideologically-driven government and these ideologically-driven bills, and I will oppose the changes to legislation, which are proposed here, that will seriously harm the economy and working people.

It is ironic that we should be talking about bills that are attempting to cripple the union movement because, if there is one organisation that would benefit from collectivism and sticking together, it is this very government. Instead, this government is completely divided. Last week we saw the ongoing civil war that is the federal Liberal party room come to Queensland. Senator Brandis was caught on camera calling his Queensland state colleagues very, very mediocre. Within an hour, the Queensland LNP member for Ryan, Ms Jane Prentice, was on Brisbane radio asking people to look at Senator Brandis's own performance and then later that very day every single Queensland National Party senator refused to support the Prime Minister's gun laws. Even just last night, we had former Prime Minister Tony Abbott yet again begging for a return to the front bench while, at the very same time, digging the knife further into his replacement, the Prime Minister, Mr Turnbull.

Who could ignore the war that Senator Cash, the Minister for Employment, seems to be waging against her own LNP staff members in their ongoing enterprise bargaining dispute? If only there were some sort of organising body that those staff members could join that could advocate on their behalf. Of course, there is such a body, and that body is the trade union movement of Australia. Trade unions are terribly important to our society and to our democracy. They are the single biggest roadblock to the deepening inequality we are seeing in our society.
What a joke to see the government try to portray themselves as the defenders of working people. They would like to think that we have not been witness to their repeated attempts to undermine and dismantle trade unions and workplace protections that apply to everyday Australians. They would like to think that we were not witness to their disgraceful introduction of Work Choices under the Howard government—one of the largest and most ruthlessly coordinated attacks that we have ever seen on Australian working families. Of course, the government do not just attack the rights of working people and working Australians via their workplace rights. At the very same time, they impose cut after cut on social security benefits and services like education and health. In every part of their agenda—whether it be these kinds of bills to take away workplace rights or whether it be their other legislative proposals around social security benefits, health and education cuts—they are absolutely unforgiving in taking away the rights and entitlements of Australians, which have been hard won over generations.

So the government are not the protector of Australian workers. They never have been and they never will be. They do not speak for workers or their families, and they do not represent them. In fact, they do the very opposite by taking away rights and entitlements that have been won over generations.

I hate to break it to the government, but it was not them that gave Australians rights within the workplace. It was trade unions and Labor governments working together to ensure that the average working person does have some rights, does have some ability to stand up for their own pay and conditions, and does have the right to combine with other people that they work with to take on the power that their employer might have. Unions and Labor governments continue to play a pivotal role in advocating for the rights of Australians within the workplace.

Even now, unions are pushing for paid domestic violence leave so that victims of domestic violence can take leave to attend court hearings, to move house to escape a dangerous situation, and to attend medical and psychologist appointments. It would be good for the government to recognise the need for those kinds of rights in its own enterprise bargaining with its own employees.

Just last week, this government took its first step in its antiworker agenda when, without notice, it suspended standing orders to push through the registered organisations legislation in the dead of night. This, of course, was one of those bills that were held up as the reason that we needed to have a double dissolution election. Then we promptly never heard anything about it again through the election campaign. But, finally, this government pushed that legislation through in the dead of night. And what a triumph it considered that to be! I suppose if I were in the most unproductive government that Australia has ever seen, I would be pretty thrilled to pass a bill as well! Not that long ago, when Labor was in power, passing legislation used to be simply called governing. That was the daily business of government. But this government is so unproductive, so divided and so hapless that merely passing a bill is something that it considers worthy of celebration.

Now, in the following week, the government has decided to move on to the second step in this package of unfair and antidemocratic bills, through what has become known as the ABCC bill. This is just another unjustified attempt by this government to demonise Australian workers and dismantle the trade union movement that protects them. Unfortunately, it seems
that this government has learnt absolutely nothing from the election, which saw it just squeeze back into government after launching a range of policies that were going to hurt everyday Australians. Unfortunately for this government, everyday Australians are not interested in policies that attack everyday people, and that is what this bill will do.

One of the government's main excuses for why it says we need the ABCC back is that it will improve productivity on construction sites. But, sadly for this government, the evidence is very clear on this front and it completely contradicts what the government argues. We do not need to just rely on modelling, theories or speculation about what will happen under the ABCC. We can turn to recent history, because it was not that long ago that the Howard government introduced the ABCC. The proof is in the pudding there about what actually happens in construction workplaces when this kind of authority is brought into existence. When we look back at what happened last time we had the ABCC, the facts are indisputable. They show that, without doubt, reintroducing the ABCC will be an absolute jobs killer. Again, this is an example of the Turnbull government putting its own ideological antiunion agenda above productivity and above economic growth that all Australians can share in.

This government has been caught out misrepresenting the supposed improved productivity that the ABCC will generate. The Prime Minister has claimed on occasions that ABCC, when it was introduced last time, improved productivity by 20 per cent. But journalists such as Bernard Keane have pointed out that there is no source that can be found to explain this alleged 20 per cent rise in productivity that apparently occurred the last time we had an ABCC. This statistic has been called out as being wildly inaccurate, but nevertheless the government insists on continuing to use outdated and wildly discredited data to push their agenda.

The government continues to cite a report published by Independent Economics, formerly Econtech, which claimed that the impact of workplaces practices, including the ABCC last time around, on productivity was an improvement of 9.4 per cent. As we know from this government, it does not let facts get in the way of a good yarn. On this occasion, again, its facts do not really stack up. It is not just me saying this. Former Federal Court judge Murray Wilcox said of the 2007 Econtech report that the government relies on 'is deeply flawed and it should be widely discredited,' yet this government continues to wheel out this figure as an argument for why we need the ABCC back. But, of course, we do have an institution within government that is fairly reliable when it comes to statistics. It is not a reliable when it comes to running a census, but on the provision of statistics like workplace—

Senator Bilyk: Due to staff cuts.

Senator WATT: I take the interjection from Senator Bilyk. Unfortunately, the ABS has been crippled by staff cuts and funding cuts. Let us not worry about these dodgy reports that are being held up by the government to justify their actions and let us look at what the Australian Bureau of Statistics says. They say that in the seven years before the introduction of the ABCC, construction industry productivity increased more than it did in the seven years that the ABCC existed. Last time around, far from the ABCC lifting productivity in the construction industry—which is what we are continually told by government ministers is what happened and will happen again if these bills are passed—the evidence shows that, last time we had ABCC, construction industry productivity fell. It only turned the corner and only
started improving once Labor, upon its election, got rid of the ABCC. In fact, productivity has been higher every year since the abolition of the ABCC in 2012.

I say to the crossbenchers, as they are making up their minds about how to vote on this legislation, do not believe the government when they say to you that this is the key to unlocking construction industry productivity. The evidence is there. We do not need the dodgy reports that have been put together by consultants to tell us what may or may not happen. Let us just look at what happened last time we had this ABCC. The Australian Bureau of Statistics very clearly says, and it has the statistics to back it up, that productivity fell the last time we had an ABCC and construction industry productivity improved when the ABCC was gotten rid of by the Labor government. If anyone is actually serious about lifting productivity and the construction industry, then the best way to do that is to make sure that we do not have an ABCC.

Not only does this legislation damage Australia economically but it also increases the safety risks for the men and women working in the construction industry. In my former life as a lawyer, at one of Australia's leading law firms that acts for working people and their unions, I heard too many stories about everyday working Australians who went to work and then never came home. That was the daily bread and butter of the law firm that I acted for. It was representing people who had either been horrifically injured or killed in workplace accidents. Unfortunately, again, the evidence shows that this ABCC, if reintroduced, will actually lead to an increase in workplace accidents. Ordinary working people in Australia will suffer the consequences if this bill goes through.

Let us look at what happened last time. From 2003 to 2013, 401 construction workers died from workplace injuries. Prior to the introduction of the ABCC, the fatality rate for workers within the construction industry was falling. When the ABCC was introduced in 2005, the fatality rate was 3.51 fatalities per 100,000 workers. In 2006, one year after the ABCC was introduced, the fatality rate increased to 4.7 and it again increased to 4.73 in 2007. Two years running after the ABCC was introduced, workplace accidents increased. Again, the evidence is there. The ABCC, last time around, drove down productivity in the construction industry and drove up accidents in the workplace, which actually affects people's lives.

The fatality rate exceeded the 2005 rate every year until 2012, when the ABCC was replaced. Every year that we had the ABCC in existence, the fatality rate of construction workers on the worksite increased. It was only when the ABCC was taken away in 2012 that that fatality rate decreased. Anyone who wants to hold themselves out as being a guardian of the rights of working people, have a think about that: when we did not have an ABCC, people were actually safer in the workplace than they were when we did. That is very easy to explain: it is because the ABCC inevitably will be used to restrict the rights of unions to enter workplaces, to stand up for safety breaches and to take action against employers who are not doing the right thing on safety. If we take where unions' rights to do that, then the people who will suffer are the average working people on those construction sites. I think that is shameful.

The safety of workers will also be compromised by the building code that is going to accompany this bill. That building code will apply to construction sites that receive government funding. I will not go into detail about the effects of that because of lack of time. But there will be all sorts of restrictions placed around building projects that are being funded by the government, which will make it even harder to force companies to hire local workers.
and to invest in training local people. It will, as I say, lead to very big changes to people's working hours, extending their working weeks, in industries that are inherently dangerous and it will expose people to unsafe working conditions.

One of the other arguments that we hear often from government ministers, as to why we need an ABCC, is that it is the only way to rein in the big, bad unions that are disrupting workplaces all around the country. Again, the facts do not support what the government is saying. Apart from one quarter in September 2012, which was a bit of an aberration, working days lost to industrial action per 1,000 workers are now lower than they were in the time of the ABCC. Again, let us look at the facts and let us look at what happened last time. Last time when we had an ABCC, productivity went down, workplace accidents went up and industrial disputation went up as well. On every ground that this government puts forward for why we need the ABCC, the facts do not back them up. I can only assume this is because we really have entered the era of post-fact politics. This government does not really seem to care too much about what the facts demonstrate as long as it fits their ideological obsession with taking away the rights of trade unions and working people.

The last point I would like to make is that this legislation is not only economically counterproductive, dangerous to working people and dangerous to the economy in the sense of increased industrial disputes but it is downright undemocratic. If the ABCC is re-established, it will have coercive powers that will compel workers to be subject to secret interviews and workers will be denied legal representation. What other situation is there in this country where we have legislation that denies working people their legal rights in this way—that makes them subject to secret interviews and denies them legal representation? Many unions have pointed out that people charged with serious criminal offences sometimes have more rights and more legal representation than union members and union officials will have if this ABCC is re-established. Nicola McGarrity and Professor George Williams, from the Faculty of Law at the University of New South Wales, say:

... the ABC Commissioner's investigatory powers have the potential to severely restrict basic democratic rights such as freedom of speech, freedom of association, the privilege against self-incrimination and the right to silence.

I remember the days when we had a Liberal Party in this country which stood up for those kinds of values of liberal democracy and those sorts of basic rights, but, unfortunately, those values have gone out the window under this government.

In conclusion, let us not pretend that this legislation is anything but what it is—thinly veiled union bashing. It is an attack on the organising bodies that working people have long relied on to protect themselves from governments like this. This government has form. Every time it gets into power it tries to take away union rights and working rights, and it is doing it again now. (Time expired)

Senator HANSON-YOUNG (South Australia) (17:30): I rise tonight to speak to the Australian Building and Construction Commission legislation and put on record my opposition to it, along with that of my fellow Greens colleagues—a number of whom have already spoken about the legislation. We need to be absolutely up-front right from the get-go. This legislation is designed simply as a union bashing exercise. It was the baby of former Prime Minister Tony Abbott, and you have to wonder what on earth is going on in the current Prime Minister's office when he continues to skip and whistle to the tune of Tony Abbott
week after week, despite the fact that Tony Abbott, one of the most unpopular prime ministers the country has ever seen, was booted out a year ago—was dumped by his own colleagues. Now he stands in the shadows puppeteering every action of Prime Minister Turnbull. This legislation is one of the best examples of that.

This legislation is the whole reason that we went to an extraordinary election earlier this year—the double dissolution election—and the infamous eight-week election campaign. It was to give the Prime Minister the numbers that he would need in order to pass this bill. He did not get them. Even in his own perhaps frayed wisdom he realised that the Australian people were not going to be voting for a Prime Minister on the basis of a public campaign against some of the hardest working members of our workforce in the country—our building and construction workers. Every day they are out there on building sites; every day they are working hard to make sure that Australians have homes and that there are buildings for people to work in, and they do so under extremely difficult circumstances. In fact, fatality rates in relation to construction workers soared, sadly, last time the ABCC existed. There were more deaths on building sites when the last piece of legislation was enacted that made it more difficult for unions to represent workers to ensure that workplaces were safe and to give individual workers the protection to stick their head up and say, 'Hang on, I'm not going to do that, because that's unsafe.' It is extraordinary that the spike in the death rate on working sites correlated so clearly with the last introduction of the ABCC—you would wonder why any government would want to do that again. But this government is obsessed—absolutely obsessed—with union bashing. That is what all of this is about. It is being fanned by some of the more ultra-right members of the crossbench, who are seeing this as a brilliant opportunity for them to use this desperation from the government as their bargaining chip to get their agendas up.

I want to go to the issues relating to Senator Leyonhjelm, who has been out crowing for the last week about the list he has demanded from the government in order to secure his vote for the ABCC legislation. It is an ever-growing list. We even had more things added to it this morning. Firstly, I want to point out how extraordinary the reports are in relation to the Prime Minister declaring and demanding that his own Liberal Party administration drop the legal challenge to Senator Leyonhjelm and his party, the Liberal Democrats, over the use of the name. The Prime Minister himself has requested that the Liberal Party of Australia stop their legal challenge and withdraw from the courts, in order to satisfy Senator Leyonhjelm. If that is not an inducement, what is? This government is so desperate to get this legislation through that they are now willing to, effectively, not just trade on their name but give their name away—sell their own name in order to secure a vote for this piece of legislation. It is extraordinary. If we had a federal anti-corruption body like an ICAC in this country, that is exactly the type of thing that would be referred to it. How on earth can a Prime Minister put an inducement like that on the table and nobody bats an eyelid? It is extraordinary.

We know that Senator Leyonhjelm's shopping list is growing longer day by day. Today, we heard about his obsession with attacking and beating up the ABC and SBS broadcasters—they are now in Senator Leyonhjelm's firing line. He did not get the importation of the Adler and more firearms into the country, so he has decided to have a go at shooting the ABC and SBS. What an extraordinary precedent for this Prime Minister and his frontbench to suggest that our national broadcasters can become bargaining chips in this type of policy and vote
negotiation only minutes before midnight. It is extraordinary. It sets a very dangerous precedent.

At a time when journalism is under pressure in this country, when we need robust, independent, well-funded journalism more than ever to scrutinise the government of the day and other interested groups and when the ABC and SBS in this country are held so dearly in the hearts and minds of the Australian people we see the Prime Minister so desperate to get his Tony Abbott legislation through this chamber that he is going to trade away the rights and protections for the ABC. I do not know exactly what the deals are—none of us do, and that is precisely the point. We do not know the details of these deals but we do know that Prime Minister Turnbull and his ministers are prepared to sell anything in order to get this legislation through this place before Christmas. It sets a very dangerous precedent.

We know that the ABC and SBS need to be strengthened and funded properly. We need them more than ever when we have such alarmist and crazy propositions being promoted by the ultraright wing in this country. The last thing we want is these public institutions caught up in the clutches of the ultraright in this place and on the crossbench. It sets a very dangerous precedent. While we have Senator Leyonhjelm negotiating this you can bet your bottom dollar that Senator 'Wackiest', also known as Senator Roberts, will be looking at this and taking inspiration from this—

The DEPUTY PRESIDENT: Senator Hanson-Young, I remind you that personal remarks are disorderly. I invite you to reframe your comments.

Senator HANSON-YOUNG: I believe the wackiest senator in this place is Senator Roberts. I believe he will be taking inspiration from this deal struck by Senator Leyonhjelm today. We know that the ultraright who sit here on the crossbench would love nothing more than to take pot shots every day at our national broadcaster. They desperately want in their clutches the possibility of dismantling the ABC. Of course there are members of Malcolm Turnbull's own frontbench and backbench who want to do the same. Tony Abbott could not be prouder of a deal that both gets through his union-bashing legislation and gives a good kick to our national broadcaster on the way through. Tony Abbott would be very proud of this deal indeed. It shows how desperate this government is to get this through before the end of the year.

This legislation is incredibly undemocratic in that it attacks a select group of the Australian community, some of the hardest-working Australians that this nation has. It treats them as second-class citizens under the law. This is not good enough. That is not how we should be treating Australian workers at a time when unemployment is rising, particularly amongst our young people. We need our construction sites to be safe and good places to work. We know we need young people in this sector more than ever. Treating them as second-class citizens just is not okay. I do not care how much Tony Abbott wants to thump his chest when it comes to beating up on the unions or how desperate—

Senator Fawcett: Madam Deputy President, I have a point of order. I remind the senator to address members from the other chamber by their correct title.

The DEPUTY PRESIDENT: Thank you, Senator Fawcett. Yes, I do remind Senator Hanson-Young and other senators that it is appropriate to use proper titles when referring to members in the other place and of course in here.
Senator HANSON-YOUNG: Mr Tony Abbott is so prevalent in this debate that it is hard not to use his name so casually when referring to the drafting of this legislation. Mr Abbott's whole persona is in this legislation. It is Mr Abbott's legislation that is now being prosecuted desperately by the Prime Minister, Malcolm Turnbull.

However, let me return to how undemocratic this legislation is. It undermines the basic rights of construction workers to be treated equally under the law. It does things like take away their right to silence. Heavens above, why is that needed? We have the common law in this country that everybody has to abide by. If somebody is not abiding by it then you tell the police and they will go in, investigate, charge, arrest and prosecute. Why are we making a particular group in the Australian community suffer more than other ordinary everyday Australians? It is beyond me. The government has not provided the evidence or a clear case at all of why this is needed.

One thing the Greens will do throughout this debate has been spoken about several times by my colleagues already, but I want to reiterate. We oppose this legislation—we always have and we always will—however, if it gets through to the committee stage, we will move some amendments to try to make things at least a little bit better. One of those things is really important for my home state of South Australia. That of course is the code to mandate the use of Australian steel. We know the steelworks in Whyalla are under immense pressure. We have construction projects right across the country, many of which are commissioned by state and federal governments and relevant agencies. If we are going to go so far as to implement particular building codes then let us ensure that it is mandated that 90 per cent of construction uses Australian steel. That would keep our steelworks in business and ensure that we do not see further deterioration of our steel industry. That would keep our steelworks in business and ensure that we do not see further deterioration of our steel industry. It is something that would be very important for South Australia—in particular, for Whyalla—but it would also have positive knock-on effects across the country. We know there are also steelworks under pressure in New South Wales, and it would go some way towards dealing with those issues as well.

The reality is that this legislation is one of the cruddiest, nastiest and most pathetic pieces of legislation that this parliament has had to deal with in a long time. We have debated it before. This issue has been hanging around since Tony Abbott was desperate to bring it back when he was Prime Minister, but it did not pass this parliament previously; it was rejected strongly by this chamber previously. Now, because there is some change in the make-up of the membership and the various voices being represented here, Malcolm Turnbull wishes to bring it back. The bill itself has not changed. It has not got any better—in fact, you would almost argue it has worsened, because the government's arguments and position for why we need this little piece of legislation have gotten weaker and weaker as the days, weeks and months have gone on.

I am not just concerned about the elements of this legislation that treat construction workers as second-class citizens and second-class workers in this country; I am very concerned for the safety and livelihoods of young workers on these construction sites. I was in Adelaide only a few months ago when there was another death on the construction site of the new Adelaide Hospital. It is not okay that we see workers, young or old, with families, sons and daughters of everyday Australians, going off to work in the morning and not coming back at night because an accident on the worksite which could have been avoided has cost them their life. What are we going to do when young people on these sites are too intimidated to
speak up and confront their boss when their boss says: 'Nah, don't worry about it, mate, it'll be fine. She'll be right'? What are you going to say to the mother or the father of a young worker who dies on a construction site because the safety checks and balances are just not there?

It is about building a culture that promotes advocacy and safety. It is about trying to ensure that our young people, who we desperately need in this sector and in this industry, know that they are going to be looked after when they get there, that they are not going to be abused and treated appallingly, and that there are people who will listen to them when they say: 'No, I don't want to get up that high. I don't think that scaffolding is safe.' Who is going to stand up for these overtired and delirious young workers, pushed to work extraordinary hours in order to finish the job, with the pressures of deadlines, if the government has stripped away their ability to speak for themselves? If their unions are beaten up and kept off site, who will they turn to then? We are setting up a recipe for disaster for young construction workers right across this country, the moment this piece of legislation enters the parliament.

While Senator Leyonhjelm might want to trade off his vote for the ABCC, thinking it is a bill on the ABC—his chance to get stuck into the national broadcaster—and Mr Abbott is rubbing his hands together in glee because he cannot believe his luck that his two favourite things are going to happen at once, the young workers on our construction sites are the ones who are going to suffer. It is their parents and their loved ones—perhaps their young children—who will wake up the next day and realise that the deaths on our building sites could have been avoided if the culture had been different and if people could have spoken up and refused to work in dangerous circumstances, and if there had been independent inspection and analysis about how safe things really were on those sites.

The Building and Construction Industry (Improving Productivity) Bill 2013 is about union-bashing for the government, but for the rest of us it is about protecting the rights of workers, particularly those young people who we desperately need to give an opportunity to get back into the workforce, and about the protection of proper safety regulation and implementation so that they can do their job properly. I do not want to see this setting a precedent, where every time a government cannot argue their case, they start to trade away basic elements in other areas, whether it is our national broadcaster; the importation of guns, for heaven's sake; or, indeed, dropping legal challenges outside of the parliament in order to secure people's vote. This is inducement at its most sickening level, and if we had a national ICAC—which we should—this type of carry-on and deal-making would not cut it.

Senator RUSTON (South Australia—Assistant Minister for Agriculture and Water Resources) (17:51): Can I just say, before I start my remarks, that I am not the minister summing up; I am merely a senator making a contribution to the debate.

After listening to the previous contribution, I am really quite astounded to hear this kind of thing in this place from a member of a party that has traded their votes on numerous things when they were part of the government. It is quite extraordinary, when the boot is on the other foot, that Senator Leyonhjelm, Senator Xenophon and a number of others seeking to get good outcomes for their states by suggesting that some other legislation might be looked at are somehow seen as doing something that is outrageous and never been done before. If you have a look at the track record of people in this place, apart from the two major parties, you will see this is an age-old tradition that has been going on since any parliament ever started. So I
will just put that little piece of hypocrisy on the record before I start my contribution on the Building and Construction Industry (Improving Productivity) Bill 2013 and a related bill.

The reality is that this bill was brought in in 2013. It was one of the things that the coalition government said that they were intending to pursue when they were first elected to government in September 2013. It was to reinstate the Australian Building and Construction Commission because we believed that the Fair Work Building and Construction commission was a weaker regulator and that we needed to get back to a position where we had strengthened this particular industry.

It seems really quite extraordinary that in much of the comment that has gone before us you can have one side of parliament saying one thing and the other saying something completely different. If you research and have a look at the statistics, it seems quite bizarre. But the other side seem to be able to rummage around and come up with a whole heap of weird and wondrous numbers.

But there is nothing weird and wondrous in the numbers. As of October 2016, there were 113 CFMEU officials before the courts for more than 1,100 suspected contraventions in relation to building laws. It does strike me that that statistic is a matter of fact. If anybody can go out and find evidence to suggest that that is not the case then please do. But it is very hard to move away from something that is quite clearly available in the public domain. Yes, 113 CFMEU officials were before the courts last month. In recent years more than $8 million in fines have been imposed for breaches of those laws. Once again, these are matters of fact. They are not matters of supposition. We did not just make them up; they are on the public record. The reality is that we need to do something about that. No business, no union and no individual should be allowed to continue to break the law at the kind of rate that we have seen the law being broken on construction sites and to get away with it.

Probably the most distressing thing about this is the cost to our economy. We in this country are trying very hard to deal with the debt and deficit problem to ensure that we are going to have a prosperous economy so that our children into the future are going to be able to live the lives that we expect for them and that we are living at the moment. But unless we do something about the productivity of this nation we are not going to achieve that. We really have two choices in dealing with our debt and deficit. We either increase the productivity within Australia or we focus on our export market. This government would like to do both so that we can move to a more prosperous nation where we can afford all those wonderful things that we would like our children to have without continuing to go deeper and deeper into debt.

It is really quite disturbing when you find that the rate of industrial action in the construction sector is now nine times higher than the average across all other industries. That is a pretty serious statistic. Currently two out of three working days lost to industrial disputes are in the construction industry. We in this place all sit and debate time and time again about absolutely essential infrastructure for education and health care. Our schools and our hospitals cost 30 per cent more than they need to because of the number of days that are lost due to industrial action and other activities that occur on building sites. So it does not take terribly long to start painting a picture about why it is so important that we put these reforms in place.

I must admit that I have always been a great believer that if you are doing the right thing you should never fear anybody having a look at what you are doing. It is a little bit like complaining about getting a speeding fine if you were speeding. If you are not speeding then
you are not going to get a speeding fine. If you are not doing anything wrong on a construction site, the ABCC is not likely to interfere in any way with what you are doing.

To once again reinforce the importance of this particular piece of legislation, the construction sector is the third largest industry in Australia and it contributes eight per cent to our GDP. It employs nearly 1.1 million Australians, and there are more than 300,000 small businesses that rely on this sector for their very existence. You would have to say that it is a tremendously important industry.

One of the things that we have heard time and time again in the contributions that have been made in this place since the debate commenced is about the issue of safety. I would just like to put on the record that I find it quite extraordinary that anybody would use safety as an issue to try to scaremonger, because there can be nothing more important than the safety of Australian workers. I do not think there is any deviation between any of the parties in this chamber or in the other chamber on the importance of safety. But we have to be real and we have to tell the truth about safety. The ABCC bill does not amend any workplace safety laws. I think that is extraordinarily important to mention.

We saw the same kind of hysteria occur prior to the election over the debate about owner-drivers and the Road Safety Remuneration Tribunal. We saw the TWU trying to prosecute the issue that the changes they were proposing would deliver safety. One of the most despicable things I saw occur during that particular debate actually occurred in my home state and Senator Hanson-Young's home state of South Australia when the TWU wheeled out a lady who had lost somebody due to trucking accident. She was particularly upset, as you would imagine, having lost a very close member of her family in a trucking accident. The union was yelling and screaming that their owner-driver changes would have assisted this particular lady's loved one to not be involved in an accident. But it was not an owner-driver accident that caused that death. So I think when we start talking about the very important issue of safety we need to make sure that we back it up with the truth and do not just use scaremongering. I can assure you that the distress that was occurring because of this particular instance is something that I never want to witness again.

The ABCC legislation will not prevent legitimate safety issues being raised or addressed by employees, unions or health and safety officers. The rate of construction industry deaths has been trending down for the past decade, and we should all be very proud of that fact. It really does strike me as somewhat mischievous, to say the least, to use the safety of workers as a method or tool by which to try and wedge a particular situation. The reality is, if you look at some of the comments that have been made before, that it does not seem an unreasonable thing for a government to be seeking to legislate to stamp out thuggery, lawlessness and bad behaviour in any industry. I cannot understand why anyone in this place would not see the desire to do that, together with the desire to return productivity to an industry sector, which has so much capacity to have a positive benefit on the Australian economy, as a positive thing. Even the royal commission suggested that it was absolutely essential that we combat an industry that was characterised as experiencing lawlessness. What other industry in Australia would believe that lawlessness, thuggery, bad behaviour, physical abuse, discrimination and the like were acceptable ways to conduct yourself in any work environment? It does a disservice to every other industry sector which abides by the law and the rules to think that there could be as sector which thinks that because of their might and their power that they can
behave beyond the law and do not have to meet the same requirements as every other worker and industry in Australia.

The reality is there is a toxic culture in the CFMEU, and it causes big problems. We intend to fix it. The ABCC, in its previous existence, had a proven track record of dealing with many of these issues. It tackled the lawlessness and thuggery in our building industry. It was the tough cop that enforced the law. As I said, if you are not breaking the law, you do not need to have the law enforced. If everybody is out there doing the right thing and not being lawless, then nobody should be even remotely concerned about any watchdog on the beat. By ensuring unlawful action could be appropriately investigated, dealt with and penalised, the ABCC got the results and the productivity that the building industry so desperately needed in this country.

Before the ABCC was introduced by the Howard government, the rate of industrial disputes was about five times the average across all industries. During the reign of the ABCC's operations, disputes fell to just twice the national average. On average, since the ABCC's abolition, disputes have gone back to five times the average. It does not take a rocket scientist to realise that the very presence of the ABCC created a much better culture on building sites and, commensurate with that, an increase in productivity, which benefited all Australians—and not just those people who were the beneficiaries of building site activities. We all benefit when the productivity of any industry rises, and especially one as important as the construction industry. Since the ABCC was abolished in 2012 by Mr Shorten, the rates of dispute in the construction sector have increased by 40 per cent. This is against a trend in all other industries, where the rate of industrial dispute has declined by 33 per cent. It makes it that much worse when you consider that not only is it going up but it is going up against a downward trend in every other sector.

When the ABCC was in force, the productivity in the construction sector grew by 20 per cent; since the ABCC was abolished productivity has flat lined. There are some pretty significant statistics on the public record; they are not something that can be disputed or made up; and they point to the need to restore a level of lawfulness to our building sites to ensure that we deliver the kind of productivity to the construction sector that is expected from such a major sector in our economy. If any other sector of the economy was not lifting its weight to the same degree that this one was, I am sure there would be an absolute outcry.

I am sure there are many others in this place who would like to make a contribution on this bill, but suffice to say I, along with my coalition colleagues, commend this bill to the Senate. We see it as such a fundamentally important reform to enable all the businesses associated with the construction sector to feel that they are playing in fair and reasonable environment but most particularly so that we can return productivity to a sector that is so tremendously important to the future of Australia.

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (18:05): Before turning to the substance of the Building and Construction Industry (Improving Productivity) Bill 2013, I would like to take a moment to look at the path it has taken to get here. When the Prime Minister used this bill as a trigger for a double dissolution election, he talked about how important and urgent the bill was. That is not borne out in any way by the path that the bill has taken. The first time it came to the Senate was in February 2014. It was in March 2015 that we had the second reading debate. We had constant delays; it
sat on the backburner for months at a time; and, suddenly, it became very important when the Prime Minister dipped in the polls and started having difficulty in negotiating in the Senate. This bill has never been about policy for all of the window dressing. This is simply a bill about politics and about tactics.

The double dissolution election was four months ago. There have been seven clear sitting weeks since then. If the bill was so important, why are we only getting to it now? The answer is of course: just tactics. The government were holding off because they were worried it would not pass. Now the Prime Minister thinks that he might get a win, and he desperately needs a win—because this is a Prime Minister that desperately needs a win to keep him going over the summer break. But the problem is that this would be a win that only helps the Prime Minister and does absolutely nothing to address the issues that we as a nation are actually facing.

Way back when, in the Prime Minister's letter to the Governor-General, he said that the ABCC bills 'represent important elements of the government's economic plan for jobs and growth, and of its reform agenda'. If what the Prime Minister said in that letter is true, if that is the plan for jobs and growth, and its reform agenda, then that is very disappointing and we should be very, very worried. I understand that the Prime Minister needs to throw some red meat from time to time to the right wing of his party. His hold on his leadership is tenuous, and they ask more and more of him. But he did promise economic leadership—that was his pitch. That was his reason for displacing Mr Abbott as leader of the coalition. He did that because he said that Mr Abbott had failed to deliver economic leadership. But we are not seeing much economic leadership here. Instead, the Prime Minister is going back to basics, back to what is always trotted out when the Liberal Party are in trouble, and that is some pretty unproductive union-bashing.

There are real economic issues that we should be talking about instead of this. In the last fortnight, the ABS issued its labour force figures, and we see that employment growth has slowed to 0.9 per cent, down from 1.9 per cent months ago. There are now 1.8 million Australians who are unemployed or underemployed. We know what that means for those families and we know what that means for the long-term ability of those people to contribute to the economy. Wage growth has hit a fresh low—below two per cent. Workers across all industries are seeing pay increases that barely match the cost of living.

The deficit continues to blow out. We have had a report which projects a further $24 billion deterioration of the Commonwealth budget under Mr Morrison and Mr Turnbull. That follows a deficit for 2015-16 that blew out by eight times what had been projected at the 2013 election. But the only plan that is ever presented by those opposite is cuts to services, and an unfunded corporate tax cut that will blow out the budget even further.

We could talk about housing—the fact that a fraction of rental and share house accommodation is affordable for people who live on government payments, that young people's rate of property acquisition is falling or that older people are trapped in inappropriate rental accommodation. In the last year, we had a committee inquiry into women's economic security in retirement, and people told us that the single biggest predictor of whether or not an older woman will live in poverty in retirement is whether or not she owns her own home. Do we see any comment about that, any action on that? We see nothing—absolutely nothing. All
we see is a bill which claims to support jobs and growth but which has a very, very tenuous relationship indeed with that agenda. There are no plans.

In the Prime Minister's letter to the Governor-General, he also said:
The ABCC Bills relate to one of the largest sectors of our economy, which employs over a million Australians and is responsible for around 8 per cent of GDP. The re-establishment of the ABCC aims to improve productivity in this crucial sector, protecting and promoting employment.

But the thing is the ABCC did not lift productivity last time. The Productivity Commission looked into it and said that the evidence for aggregate productivity increases and cost savings was 'weak'. The Prime Minister has claimed that re-establishing the ABCC will increase productivity by 20 per cent. Nobody knows where that figure comes from. What is clear is that the introduction of the ABCC saw the number of workers' deaths climb. The truth is that, if you want to lift productivity in the Australian economy, there are better places to start.

The finance sector is much bigger than the construction sector, and much more systemically important. You have to remember that it was not industrial relations in the construction sector that jeopardised the entire global economy eight years ago. Hundreds of thousands of Australians did not lose their retirement savings because of misconduct on building sites. It is the finance sector, isn't it, that has been embarrassed by all these financial scandals decorating the front pages of our newspapers, and that has been examined in this place and in Senate committees, with calls for a royal commission? But we do not see a special institution being created to oversee that sector, do we? No. In fact, we see a repudiation by the government of any need to examine in any serious way the shortcomings in that industry that are holding back productivity not just in that sector but across the economy. There is no response—nothing meaningful. We do not see anything about that.

What we see instead is this bill, a Trojan Horse of a bill, the effect of which is excessive and unfair regulation that is out of step with the needs of workers and the needs of the construction industry. At the heart of this is simply union-bashing and an antiworker ideology.

Senator BURSTON (New South Wales) (18:13): I rise to speak in support of the Building and Construction Industry (Improving Productivity) Bill 2013. This bill would re-establish the Australian Building and Construction Commission. I believe this legislation is in the national interest because it will boost the productivity of our building and construction industry, which employs more than one million Australians. It will also increase the natural justice, fairness and decency of workplaces around Australia, and all Australians have a stake in that.

When I was a boilermaker, I belonged to the metalworkers union. Subsequently, I was a teacher and belonged to the New South Wales Teachers Federation. So I have extensive experience of unions and unionised workplaces. I have seen the good work they do, protecting workers rights, but I have also seen things that are bad for the economy and for fair play.

Following my five-year boilermaker apprenticeship—and I served that at BHP Newcastle, probably one of the most dangerous sites at that time, where up to eight people a year, on average, were killed in industrial accidents—I worked at the Liddell power station in the Hunter Valley in 1969, during its construction. Following that time, I worked at Kurri Engineering, where I witnessed vexatious strikes by the union. They called strikes on the flimsiest of excuses. Unfortunately, the company operated on a strict timetable. The union knew this but nevertheless persisted in what amounted to guerrilla industrial relations.
'Wildcat strike' does not really describe the systematic sabotage I saw. As a result, Kurri Engineering went bust. Everyone lost their job. That was a blow to economic productivity and to jobs, and it was a blow to natural justice. Everyone at that business witnessed the cynicism and the ruthlessness of the union officials and saw them get away with it. Their members suffered, as did the company—and nothing has changed. The rule of law must not only be returned to building sites; it must also be seen to be returned. Let us hope that the passing of this legislation symbolises in the public mind that justice has at last been done.

The arguments against the bills ignore these realities. Consider the opposition's argument that the proposed legislation would reduce workplace safety. They complain that the legislation would reduce flexibility for union safety officials entering worksites. In particular, the legislation reverses the onus of proof onto employees who cite safety concerns as justification for unilaterally stopping work or taking other measures that disrupt their work group's functioning. The legislation would require employees to prove that they were not motivated by any reason other than safety. The opposition make their argument out of context. They do not admit to the sorry history, the sorry reality, of union disruption. If the onus of proof remains with employers, worksites can continue to be disrupted by unscheduled stop-work meetings and walk-offs. The legislation will in no way diminish existing safety regulations and procedures, but it will reduce the hooliganism of some unions and the class-warfare group culture that inhabits them.

At the last election, the government campaigned on these bills. It promised to re-establish the ABCC and it was returned to office. One Nation disagrees with the government on a range of issues, but it is right on this one. The Australian people are sick and tired of misbehaviour on worksites. They want the rule of law returned to the building and construction industry. They want an end to thuggery. One Nation supports this bill.

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (18:17): It is a pleasure to make a contribution to the debate on these important pieces of legislation, the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013. In name, this legislation is about the building and construction industry, but it is also important to the strength of our economy as a whole. Of course, this is a debate which has long been running. In my view, it is a debate which has gone on for much too long. This really should not be an issue of great controversy. After all, this legislation merely seeks to ensure that those who work in the construction sector are able to go about their work day to day without experiencing harassment and without experiencing threats and intimidation at the hands of rogue union officials. This legislation does nothing more than make certain that the rule of law is respected on construction sites across the nation—just as we expect the rule of law to be observed and respected everywhere else across our country.

I find it absolutely extraordinary that, in effect, we have been having a debate on this legislation for more than three years and through the life of two parliaments. It is really quite incredible that, for the life of two parliaments now, senators opposite have come into this chamber and sought to explain away and to make excuses for thuggish and intimidatory behaviour on the part of the Construction, Forestry, Mining and Energy Union, the CFMEU. The people of Australia have now voted for this legislation twice. It was a key element of the coalition's industrial relations platform that was taken to the 2013 federal election, and, of
course, the Building and Construction Industry (Improving Productivity) Bill 2013, which is now before us, was one of two bills that led to the double dissolution election in July this year, at which the coalition government was re-elected.

I say to the Labor Party: there comes a point at which you have to accept that the game is over, that the game is up. The people of Australia long ago woke up to the real reason for the Labor Party's stubborn attitude to what is a sensible, prudent piece of legislation. It is unfortunate that the Australian Labor Party cannot survive without the rivers of cash that flow to it from the CFMEU. In fact, I and many Australians find it tragic. Of course, I disagree with the Australian Labor Party on a great many policy issues, but, despite those disagreements, I acknowledge that their party has a proud history and genuine policy achievements to which it can point. That is why I find it tragic that, after more than a century of existence, the Labor Party now finds itself dependent on donations from a discredited and corrupt organisation like the CFMEU merely to survive.

However, the Labor Party's financial problems should not become the nation's problem. In particular, they should be not used as an excuse to hold our economy's third largest sector to ransom, because problems in the construction industry are problems which ultimately affect every Australian. In day-to-day life, all of us are dependent on services delivered by the building and construction sector, in the sense that we simply cannot survive without the infrastructure it creates. The houses and apartments we live in, the offices we work in, the shopping centres in which we purchase our essential goods and services, the roads and public transport systems which we use to reach them, the schools and universities we send the next generation of Australians to learn in and the hospitals we need, which deal with the health challenges of an ageing population, all have to be constructed. So we need to be very clear about the fact that, when we talk about issues in the construction industry, we are very much talking about issues that impact our daily lives.

Putting aside those practicalities, there is also the fact that the building and construction industry is the nation's third largest industry, responsible for generating around eight per cent of Australia's gross domestic product. It is responsible for employing around 1.1 million of our fellow Australians. Within the industry, there are around 300,000 registered small businesses, many of them family-run and operated. Accordingly, maintaining the health of our building and construction industry is critical to Australia's overall economic wellbeing, and it is the view of this coalition government that the construction sector cannot be healthy so long as it remains host to the toxic culture of lawlessness that permeates the CFMEU.

This bill will finally re-establish the Australian Building and Construction Commission, a genuinely strong and independent watchdog that will maintain the rule of law to protect workers and constructors and improve productivity on building sites and construction projects, whether they be onshore or offshore. This legislation will at long last reverse some of Labor's changes to the nation's workplace laws which underpinned the Australian Building and Construction Commission before it was abolished by the Gillard government in 2012, when the now Leader of the Opposition was the responsible minister.

The bill will reassert the rule of law on Australia's construction sites, preventing unlawful industrial action, unlawful picketing and coercion and discrimination. I think it is worth noting just how widespread the problem has become across our country. If you accepted the word of Labor senators who have participated in this debate, you would think we were
discussing a very minor problem, but that is far from the truth. As of October this year there were 113 officials of the CFMEU appearing in courtrooms around the nation, between them charged with over 1,100 breaches of the law. Over recent years penalties totalling around $8 million have been imposed on the CFMEU for breaching the law.

Then there is the question of productivity in the sector. The current rate of industrial action in the construction sector is nine times higher than the average across all other industries in the economy. Two out of every three days lost to an industrial dispute in this country are lost within the construction industry. Since Bill Shorten abolished the ABCC as industrial relations minister in 2012 there has been a 40 per cent increase in the rate of disputes in the construction industry, while the rate of disputation across other industries has declined by 33 per cent on average. When the ABCC was still in existence, productivity growth in our construction industry was around 20 per cent. Today, it is flat.

By any measure, these are not inconsequential statistics. They tell a clear and compelling story—a story that needs to be corrected. Can you imagine if we were talking about any sort of organisation other than an Australian union? If it was a major company—dare I say a major bank—and 113 of that organisation's officials were appearing in courtrooms across the country, charged with breaching the law, do you think for a moment that the Labor Party's attitude would be, 'There's nothing to see here; please move on'? Yet because it is the CFMEU, without whom today's modern Labor Party cannot survive, we have been subjected to the sorry sight of Labor senators trooping into this chamber to try to defend the indefensible and in the process destroying a once proud Labor legacy.

What is most staggering in all of this is the Labor Party's refusal to learn from history, because we have been through this sorry exercise before. In 2001, when the Howard government was in office, the Cole Royal Commission into the Building and Construction Industry found serious and systemic breaches of the law on the part of the CFMEU. In relation to my own state of Western Australia, that royal commission found that 'the rule of law has little or no currency in the building and construction industry in Western Australia', that the building and construction industry in Western Australia is 'marred by unlawful and inappropriate conduct' and that 'Fear, intimidation and coercion are commonplace.'

It was this type of behaviour that the ABCC was designed to address—a strong specialist regulator that would tackle the problem head-on and enforce the rule of law in the building and construction sector, and from the time the Howard government established the ABCC until such time as Bill Shorten abolished it in 2012 it managed to do this very effectively. In fact, research undertaken by Independent Economics found that, because of the cost and efficiency improvements that flowed through the construction sector as a result of having the ABCC in place, consumers were better off by around $7½ billion every year. Any responsible political party would look at that and concede that the ABCC was of enormous benefit to the Australian economy.

You might have thought that instead of putting so much time and energy into first abolishing the ABCC and, since 2013, fighting efforts to re-establish it every inch of the way the Labor Party would have been better served by convincing its CFMEU allies to operate within the confines of the law. Yet so weak has the modern Labor Party leadership become that instead of working with decent unionists—and, of course, there are plenty of them—to
clean up the situation, Labor has capitulated to those thugs who run the CFMEU. Again, this demonstrates an utter failure to learn the lessons of history.

Again, I turn to a living, breathing example from my own state of Western Australia. Notorious CFMEU boss Joe McDonald’s history of criminal thuggery is well known to Western Australians. It became a source of national embarrassment for then Labor leader Kevin Rudd in the lead-up to the 2007 federal election. To give Mr Rudd his due, he was unwilling to have a thug like Joe McDonald in the upper echelons of the Labor Party that he led. He subsequently ordered Mr McDonald's expulsion from the party. Julia Gillard, former Labor Prime Minister, was right onboard at the time, saying, 'Kevin Rudd and I have made it clear that under our leadership of the Labor Party there will be zero tolerance for unlawful behaviour and thuggish behaviour in Australian workplaces.'

Yet, as was often the case, Ms Gillard’s principles came a distant second to the political imperatives of her party. During her time as Labor leader, Joe McDonald was readmitted to the ranks of the Australian Labor Party and he has systemically worked his way back into the heart of its internal affairs in Western Australia. And less than one month ago we had a powerful demonstration of just how tight a grip Joe McDonald now exerts over the Western Australian Labor Party when a video emerged of him boasting to a meeting of workers about just how far-reaching his influence is within the Australian Labor Party in Western Australia, reaching all the way to its leadership here in Canberra.

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

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (19:30): I move:

That the debate be adjourned.

**The PRESIDENT:** The question is that the debate now be adjourned.

The Senate divided. [17:34]

(The Senate—Senator Parry)

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SENATE
Monday, 28 November 2016

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Smith, D
Xenophon, N

NOES
Bilyk, CL
Cameron, DN
Chisholm, A
Dastyari, S
Dodson, P
Gallacher, AM
Hanson-Young, SC
Kitching, K
Marshall, GM
McCarthy, M
Moore, CM
Pratt, LC
Rice, J
Sterle, G
Waters, LJ
Whish-Wilson, PS

NOES
Brown, CL
Carr, KJ
Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lines, S
McAllister, J (teller)
McKim, NJ
O’Neill, DM
Rhiannon, L
Siewert, R
Urquhart, AE
Watt, M

PAIRS
Bernardi, C
Payne, MA
Ryan, SM
Sinodinos, A

Singh, LM
Wong, P
Ludlam, S
Polley, H

Question agreed to.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (19:37): I move:

That resumption of the debate be made an order of the day for a later hour.

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

The Senate divided. [19:38]

(The President—Senator Parry)

Ayes .................... 35
Noes ................... 31
Majority ............... 4

AYES
Abetz, E
Birmingham, SJ
Burston, B
Canavan, MJ
Cormann, M
Duniam, J
Fierravanti-Wells, C
Griff, S

Back, CJ
Brandis, GH
Bushby, DC (teller)
Cash, MC
Culleton, RN
Fawcett, DJ
Fifield, MP
Hanson, P
AYES

Hinch, D
Kakoschke-Moore, S
Macdonald, ID
McKenzie, B
O'Sullivan, B
Paterson, J
Roberts, M
Scullion, NG
Smith, D
Xenophon, N

Hume, J
Leyonhjelm, DE
McGrath, J
Nash, F
Parry, S
Reynolds, L
Ruston, A
Seselja, Z
Williams, JR

NOES

Bilyk, CL
Cameron, DN
Chisholm, A
Dastyari, S
Dodson, P
Gallacher, AM
Hanson-Young, SC
Kitching, K
Marshall, GM
McCartby, M
Moore, CM
Pratt, LC
Rice, J
Sterle, G
Waters, LJ
Whish-Wilson, PS

Brown, CL
Carr, KJ
Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lines, S
McAllister, J (teller)
McKim, NJ
O'Neil, DM
Rhiannon, L
Siewert, R
Urquhart, AE
Watt, M

PAIRS

Bernardi, C
Payne, MA
Ryan, SM
Sinodinos, A

Singh, LM
Wong, P
Ludlam, S
Polley, H

Question agreed to.

BUSINESS

Rearrangement

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (19:41): I seek leave to move a motion to vary the hours of meeting and routine of business for today and tomorrow.

Leave not granted.

Senator BRANDIS: Pursuant to contingent notice standing in my name, I move:

That so much of the standing orders be suspended as would prevent a minister moving a motion to provide for the consideration of a matter, namely a motion to provide for the determination of a motion relating to the hours of meeting and routine of business for today and 29 November 2016 without amendment or debate.
The purpose of this motion is to enable the Senate to get on with the business the people sent us here to do. We are in the course of the debate on the Building and Construction Industry (Improving Productivity) Bill and a related bill—the so-called ABCC bills. We have known from day one that the Australian Labor Party and their allies the Greens would do everything they possibly could to frustrate this debate to prevent the debate from being conducted and coming to a resolution this week. Why, one wonders?

Let it not be forgotten that this is one of the two bills that the government took to the people at the election on 2 July. This is one of the two bills that were the famous trigger bills for the double dissolution. We took advantage of the mechanism provided for by section 57 of the Constitution. We won the election and now we seek the passage through the parliament of the two bills which justified the double dissolution election and on which the public voted in voting on that election.

We know that the Australian Labor Party, with its shrinking base, is more and more, these days, the captive slave of a dwindling number of militant trade unions. We know, in particular, that there are Labor senators in this chamber, led by Senator Penny Wong, who owe their position here, as does Senator Wong herself, to the patronage and political support of the CFMEU. Those who do not owe their position to the patronage and the support of the CFMEU owe it—every last man and woman among them—to other trade unions.

Senator Brandis: You may be proud, Senator Bilyk, to represent a dwindling number of people in the Australian workforce who represent organised labour. We on our side of the chamber have no problem with organised labour, but we do say that organised labour ought to be the subject of the same rule of law and accountability principles as business and other industrial organisations.

For all of this year and before, you have heard my colleague Senator Michaelia Cash in question time and in debate describe, time and time again, the thuggery, the savagery, the disgusting behaviour which is the routine of the CFMEU. We know that the Heydon royal commission, which sat for over two years, concluded that the CFMEU and other militant trade unions were responsible for serial law-breaking and a culture of absolute contempt for the rule of law. So what does this bill seek to do? It seeks to restore the rule of law to the building industry, and industry which represents, according to some estimates, 11 per cent of Australia's GDP. Why would you stand against that? Why would you stand against a bill that does nothing more than try to restore the rule of law to what, on any view, is a culture and an area of the economy where the rule of law is not respected?

You have to wonder, Mr President, why it is that those opposite are so desperate to stop the restoration of the rule of law to the workplace and particularly to the building industry. I answered that question earlier in my remarks: because so many of them come into this place not as servants of the Australian people but as servants of trade union bosses. As servants of trade union bosses, some of them—not all of them—represent no-one and no interests but the interests of trade unions, including militant, lawless, savage and thug-like trade unions like the CFMEU. So let us get on with this debate.

Senator Gallagher (Australian Capital Territory—Manager of Opposition Business in the Senate) (19:46): The opposition will not be supporting the suspension of standing
orders nor the substantive motion tonight. It is interesting to get a lecture from the Leader of the Government in the Senate, Senator Brandis, today of all days in this place about appropriate conduct and behaviour.

As far as the opposition goes—and I will stick to the substantive issue rather than debate the bill, which we will return to later tonight, it appears—the opposition have tried to assist as much as we can with the business of this place, and we are constantly treated with disrespect by the government. Tonight is a classic example of that. Rumours circulated in this place earlier this afternoon about potentially late sittings or motions being moved, and there was silence from the government until just before the bells rang, when they landed this motion into this place. This motion tonight signifies the dysfunction and chaos of the government, which do not seem to know minute by minute what is happening with their legislation, whether they have the numbers or how to organise their business.

Here we are tonight and before this adjournment by Senator Brandis debating one of the double dissolution bills—such a priority that it never even featured in the election campaign and it has taken four months to bring to this place! It has taken four months while they have scrambled around trying to do backroom deals to get the numbers locked in. We have been ready to debate this bill since we returned for this 45th Parliament. It has been the government that have refused to bring it on. Here we are facing extensive hours tonight, with a lot of speakers. We actually look forward to the debate on this bill. We look forward to defending working people's rights to organise. We do not fear the content of organised labour in this place. But what a joke from the government! Contrary to what Senator Brandis is saying—that we are not ready to debate this bill—we look forward to the debate and we look forward to putting forward the arguments as to why this is a bad law and why the Labor Party will oppose it.

We have seen in the last few days, as have the rest of the country, this sort of unseemly desperation from the government as they race around trading off whatever they can—whether it is water, guns or today the ABC board meetings that are now up for grabs. We will wait and see what other deals are being done in the pursuit of taking away working people's rights, because that is what this bill is about. We will remember this debate, because the government are seeking the mandate of this place for their ideological, irrational pursuit of unions.

On the broader procedural point, I would say this: last week we watched government senators filibuster in this place, like they do every sitting week. It does not appear that the government actually have a plan about how they organise their program. Last week, we had government senator after government senator speaking extensively on reports and committees and taking any opportunity they could to filibuster. Now we find out that we all have to pay the price for their lack of organisation of their program. Because the government cannot organise themselves, we are now facing the situation where we will have extended hours for two of the nights of this week, at least. Perhaps we will wait and see what desperate deal they do on Wednesday if they have not managed to get other parts of their legislation through.

The government do not ever seem to control their program. They do not control their speakers list and they do not control their speakers. Last week, for example, we gave up general business so that the government could get through some noncontroversial legislation, because they had failed to do that themselves. The opposition had to provide our time to allow
the noncontroversial bills to go through, because government speakers had filibustered and thwarted, apparently, the government's program of getting legislation through.

I got a call from the Manager of Government Business in the Senate tonight at about 20 past 7, once the deal was done, saying that this was going to be moved at 7.30. We did not see the motion until after Senator Brandis was on his feet. This is no way to run a chamber, it is no way to run a government and it is no way to have a serious debate on a bill that is going to have a significant impact on so many people, particularly working people in this country. Sadly, we have come to expect this behaviour from the government.

Senator CAMERON (New South Wales) (19:51): I also stand to oppose this proposition that is before the Senate. This is an absolute rabble of a government. This is a government who say that they went to a double dissolution on this bill; yet during the election campaign, did we hear the bill debated? Did we hear any of the arguments that have been put up by Senator Brandis tonight? No, we did not. We did not hear those.

Senator Brandis interjecting—

Senator CAMERON: Senator Brandis says, 'Yes, yes.' Well, we did not, Senator Brandis.

Senator Brandis: You might not have been listening.

Senator CAMERON: Senator Brandis, these issues were not debated or ventilated during the election campaign because you were too busy on the backfoot. You were too busy carving each other up, as you have constantly been carving each other up ever since you have come to government. This is another example of where you cannot control and you cannot manage the processes of the Senate. We have had a continuous speakers up here filibustering for weeks. We have had statements-in-reply to the Governor-General for a whole week last session. Opposition senators were getting up and actually waffling on about nothing of any import to this bill.

They were not prepared to bring this on because the numbers had not been put in place. That is fundamentally what it was: the numbers had not been put in place. The trade-offs were still going on. Who knows what sort of trade-offs are in there? I have seen one amendment that is supposed to be coming up. I tell you, it does not really fill me with any enthusiasm that there is going to any looking after of working people when this goes through. But this is not something that we should be surprised about, because this is an anti-worker government. This is a government who have WorkChoices in their DNA. They have WorkChoices in every bone of their body.

This is just another way they are trying to diminish working people's capacity to bargain and negotiate with their employer in some kind of level playing field. It is never to level the union movement, given the power of the people who put brown paper bags in the back seats of their Bentleys and then hand them over to the Liberals in New South Wales. They the people who are calling the shots: the developers in the building and construct industry and the big business in the construction industry. They bankroll the coalition day in and day out for election campaigns around this country.

If you want to talk about thuggery, just look at what you are doing to the democratic process tonight. The democratic process is clear. There have always been processes that are followed in this place. When you see an opportunity to disrupt the democratic process so that you can have another shot at working people's capacity to bargain, working people's wages
and conditions and working people's penalty rates, that is what you will do. This is not about the rule of law. It is about handing over more power to the people who bankroll the Liberal Party and National Party.

If you really had some control over yourself, Senator Brandis, you would not have ended up having to make embarrassing statements to the Senate today that show your incompetence and your lack of capacity to handle your job day in and day out. You may laugh, Senator Brandis; but I can tell you that when you were making those statements, there was nobody behind you laughing. They all had their heads buried. You did not have much support. There was no rah-rahing in support of Senator Brandis when he was making that statement. Senator Brandis, you are an absolute embarrassment to what is really a poor government. Because you are such an embarrassment, it really says a lot about where you are.

This is a poor government, a bad government, an incompetent government. Senator Brandis, I think you also fit every one of those adjectives. You are not in command of your portfolio. You have got an absolute hide to come here and try to do what you are doing tonight to take wages and conditions away from ordinary Australians.

Senator DI NATALE (Victoria—Leader of the Australian Greens) (19:56): I just want you to cast your minds back to three weeks ago. The Senate was sitting around with nothing to do. Three weeks ago, we were in this place trying to work out what we were doing here. I think we have this nonsense of an address-in-reply that was going on for days. There was about a week where we just had people standing up and basically speaking nonsense. That was for a week.

Here we are, a couple of days away from ending the sitting schedule, and we are being forced now to sit until midnight tomorrow night and god knows what time tonight. How on earth do you explain that? How do you explain that? The only way to explain it is that basically this place is being run by a bunch of incompetents. There is no other way to explain it. Three weeks ago, we had nothing to do. We had speech after speech after speech. It was like an episode of Seinfeld: it was a show about nothing. Here we are, with a few days to go, and we are being told this business is so important that we have got to sit here until midnight tomorrow night. God knows what time we are going to sit until to tonight. It is unbelievable.

We have come to expect that from the government. These guys are bumbling around. They are a government in search of an agenda at the moment. They finally stumbled on the ABCC. They did it in the election to the lead-up to the election campaign. They thought they had the two very important issues, but they did not mention them—not once—during the election campaign. They were the issues that dare not speak their name. Then we come back here and they are not mentioned at all. With a few days to go, then suddenly they are the most important issues facing the nation—for goodness sake! We have come to expect it from this mob over here. They have got the reverse Midas touch. Everything they touch turns to crap!

But these motions do not get up with just the government on their own. These are motions that require the support of the crossbench. I was reading through reporting today that said, in return for Senator Leyonhjelm's support, he is guaranteed to have open board meetings within the ABC and SBS. You explain to me how on earth those two things are vaguely related. Maybe he got ABC and ABCC mixed up—he forgot a 'C'. But really—you are entering into a deal with Senator Leyonhjelm on an issue, completely unrelated to this bill, that somehow
stipulates that the public broadcaster needs to have open meetings? This place has descended into farce—absolute farce.

Look at Senator Xenophon. I have lost track of the number of speeches that Senator Xenophon has given in this place talking to us about due process and how we cannot afford to gag debate and how we have to give all of these issues their due consideration and here he is supporting a motion that forces us to stay here till midnight—on the back of last week, when we were here till 2.30 in the morning debating the registered organisations bill, a bill no-one even cares about except for this mob over here. It was so urgent that we had to be here till 2.30 in the morning to sort it out. So that is Senator Xenophon—a man who thinks process is so important and that the Senate is the house of review. And now we have been told that a bunch of amendments have been stitched up in secret and we are going to be forced to consider those in the early hours of the morning. Please, give us a break. Senator Xenophon is the champion for South Australia, a man who believes it is so important that we ensure the Murray-Darling gets looked after. What has been agreed to on that front? Five hundred gigalitres have been ripped out of the Murray-Darling. We already know that that river system is dying—3,200 gigalitres is the bare threshold to keep those rivers alive—and now we are led to believe that somehow there is some agreement that is going to make sure that the Murray gets its flows.

Then we have the issue of steel procurement. One of the Greens amendments that we will be putting forward through this bill is to ensure that Australian steel is used in Australian projects. Again, this is an opportunity for Senator Xenophon to back up his rhetoric with reality—with his vote. We do not know what this bill does. We do not know what has been agreed to. This is a farce. You should be ashamed of yourself for putting this through at this hour.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (20:01): I want to take a few minutes to support the suspension motion moved by Senator Brandis. Our purpose in seeking to suspend standing orders is to allow a motion to be moved which will see the Senate sit this evening until speeches in the second reading debate are concluded and sit tomorrow night until midnight. The purpose is to ensure that we can make good progress through this bill.

This package of legislation was one of the triggers for the double dissolution election, and, contrary to what Senator Cameron said when he asserted that this was not something that had been mentioned by the government during the campaign, I am happy to advise that that is completely incorrect. The Prime Minister spoke about the need for the ABCC at the National Press Club in his final address before the election, the Prime Minister spoke about the need for the ABCC at the coalition's campaign launch and the Prime Minister spoke about the need for an Australian Building and Construction Commission in the national campaign debates. The Prime Minister spoke in many, many interviews during the course of the campaign about the need for the ABCC. So, this contention from those opposite that it was not something that was mentioned is just wrong. The ABCC is an important reform that this nation needs. It is one that those opposite have sought to thwart, time and again.

What we are seeking to do through our request of the chamber to suspend standing orders and agree to Senator Brandis's substantive motion is merely to facilitate the orderly conduct of the people's business in this place. This is not an unusual motion. It is not seeking to put a
guillotine in place. As those of us on this side who have spent a bit of time on the other side of the chamber recall, the Australian Labor Party, when in government, sought to guillotine 54 bills in one evening without any debate. Guillotine 54 bills without any debate—that was the motion moved by the Australian Labor Party when in government. We are not seeking to guillotine here. We are not seeking to curtail opportunity for debate. To the contrary, we are seeking to facilitate debate. We are seeking to provide the opportunity for anyone who wants to contribute in the second reading debate to do so. We think it is a good objective to seek to conclude the second reading debates, but that will happen naturally. It will happen organically. When there is no longer a colleague who wants to speak, then the second reading question will be put. We are proposing that tomorrow we sit until midnight so that we can make some good progress on the legislation. That is our objective.

As the Manager of Opposition Business noted, sometimes agreements on procedural motions, with different groupings in the parliament, are reached only a relatively short period of time before the opportunity to seek to move a motion. That is what occurred tonight. I often say in this place that, in a chamber where the government of the day does not have a majority in its own right, the management of the chamber and the management of the legislative agenda is a shared responsibility of all colleagues in this place, because no one grouping can determine what happens. That responsibility is, from time to time, picked up by different groupings. I certainly acknowledge the Manager of Opposition Business and the assistance that she provided last week to facilitate the passage of some non-controversial legislation, and I appreciate that. On other occasions, there will be crossbench senators who will seek to facilitate the good running of this place. I acknowledge the crossbench senators for their cooperation and for their willingness to accept that the management of the program is a shared responsibility when the government of the day does not have the numbers in its own right. We are, of course, always reliant upon and need to work with different groupings in this place—sometimes it is the crossbench; sometimes it is the opposition; sometimes it is the Australian Greens. I acknowledge those colleagues who are helping us on this occasion to ensure that the Senate chamber can operate effectively and that we can transact the people's business.

Senator JACINTA COLLINS (Victoria) (20:06): I agree with Senator Gallagher, Senator Cameron and Senator Di Natale that this exercise is a farce. Senator Fifield stood up and sought to explain what he described as a shared process. My message to the crossbench here is that shared processes only work until you exhaust your friends. Let me remind senators of some of the exhaustion that has previously occurred in this place. Senator Fifield said that this is an organic process. Senators need to remember the organic process that I described as a gag by attrition, which was the electoral reform matters. Senators should recall the electoral reform matters that enabled this government to call a double dissolution election where they barely referred to the significant legislation that they thought was required—and it has now taken close to five months to bring that forward to the Senate.

One senator said to me: why would you bother speaking on the suspension debate? The response I gave them was to point out in this hours motion the bottom line, which says that Senator Brandis is also to move that the question be now put. At 7.20 pm the opposition were informed that when we returned from the dinner break at 7.30 pm there would be an hours motion to be debated, so with 10-minutes notice the government brought forward a motion
and expected no debate on it at all. That is what would have happened if Senator Brandis had been given leave to move the motion. Instead, he was forced to seek to suspend the standing orders so that we would have a mere half an hour to address this hours motion. Some of that time should be addressed to the crossbench because they need to understand what they are doing, because the next time it happens it will be one of them carved off for one reason or another because the shared responsibility that Senator Fifield refers to will not involve them on that occasion. So piece by piece process in this place is being destroyed.

The main senator I direct this point to is Senator Xenophon because I heard Senator Xenophon recently describe his distinction between a process gag and a content gag. As Senator Di Natale made the point, Senator Xenophon in the past has upheld a range of important process issues in this chamber but somehow he has been convinced that there is this niche distinction between process and content. Someone describe to me how fair process is encapsulated in 10-minutes notice of a motion that includes closure—I move: 'That the question be now put.' That is not fair process under any consideration.

Again, if this opposition had not denied Senator Brandis leave then there would have been no discussion of how this Senate now operates. How we operate is 10-minutes notice from the government that a deal has been stitched together and we are going to continue debate in this fashion. Let us look at what that continuation also means. It means second readers until we are all exhausted. If you are unfortunate to be lower down on the list, you might be unlucky to be giving your speech at midnight or 1 am. It could be 1 am when you are giving your speech and who knows what time you started in the morning. If you are like me and you like to spend as much time at home with your family as possible, you might have gotten up at 4 am to come to this place.

Senator Brandis: Oh, spare us.

Senator JACINTA COLLINS: Senator Brandis says I should spare him. He might like to spend his time in the Savage Club, but I, frankly, have better things to do. A better thing I have to do is to devote sensible time when we are coherent to the management of the issues before us, which includes issues such as electoral reform—but look what you did then—and includes issues such as registered organisations, and people were sitting until 2.30 am last Monday. Now it includes this.

The ACTING DEPUTY PRESIDENT (Senator O'Sullivan): The time for this debate has expired.

The PRESIDENT: The question is that the motion moved by Senator Brandis to suspend standing orders be agreed to.

The Senate divided. [20:16]

(The President—Senator Parry)

Ayes ....................33
Noes ....................29
Majority ..............4

AYES

Abetz, E
Brandis, GH
Bushby, DC

Back, CJ
Burston, B
Canavan, MJ

CHAMBER
Question agreed to.

**BUSINESS**

**Rearrangement**

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (20:18): I move:

That a motion relating to the hours of meeting and routine of business for today and 29 November 2016 may be moved immediately and determined without amendment or debate.

I also move:
That the question be now put.

The **PRESIDENT**: The question is that the question be now put.

The Senate divided. [20:20]

(The President—Senator Parry)

Ayes .......................33
Noes .......................29
Majority .................4

**AYES**

Abetz, E  
Brandis, GH  
Bushby, DC  
Cash, MC  
Duniam, J  
Ferravanti-Wells, C  
Griff, S  
Hinch, D  
Kakoschke-Moore, S  
Macdonald, ID  
McKenzie, B  
O'Sullivan, B  
Paterson, J  
Roberts, M  
Scullion, NG  
Smith, D  
Xenophon, N  

Back, CJ  
Burston, B  
Canavan, MJ  
Culleton, RN  
Fawcett, DJ (teller)  
Fifield, MP  
Hanson, P  
Hume, J  
Leyonhjelm, DE  
McGrath, J  
Nash, F  
Parry, S  
Reynolds, L  
Ruston, A  
Williams, JR

**NOES**

Bilyk, CL  
Cameron, DN  
Collins, JMA  
Di Natale, R  
Farrell, D  
Gallagher, KR  
Ketter, CR  
Lines, S  
McAllister, J (teller)  
McKim, NJ  
O'Neil, DM  
Rhiamon, L  
Siewert, R  
Waters, LJ  
Whish-Wilson, PS  

Brown, CL  
Chisholm, A  
Dastyari, S  
Dodson, P  
Gallacher, AM  
Hanson-Young, SC  
Kitching, K  
Marshall, GM  
McCarthy, M  
Moore, CM  
Pratt, LC  
Rice, J  
Sterle, G  
Wait, M

**PAIRS**

Bernardi, C  
Birmingham, SJ  
Cormann, M  
Payne, MA  
Ryan, SM  

Singh, LM  
Urquhart, AE  
Ludlam, S  
Polley, H  
Carr, KJ
The question now is that the precedence motion moved by Senator Brandis be agreed to.

The Senate divided. [20:23]

The President—Senator Parry)

Ayes .................33
Noes ...................29
Majority ...............4

AYES

Abetz, E
Brandis, GH
Bushby, DC
Cash, MC
Duniam, J
Fierravanti-Wells, C
Griff, S
Hinch, D
Kakoschke-Moore, S
Macdonald, ID
McKenzie, B
O’Sullivan, B
Paterson, J
Roberts, M
Sesselja, Z
Smith, D
Xenophon, N

NOES

Bilyk, CL
Cameron, DN
Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lines, S
McAllister, J (teller)
McKim, NJ
O’Neill, DM
Rhiannon, L
Siewert, R
Waters, LJ
Whish-Wilson, PS
Question agreed to.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (20:25): I move:

That—

(1) On, Monday, 28 November 2016:

(a) the hours of meeting shall be 10 am to 6.30 pm and 7.30 pm to adjournment;

(b) government business order of the day no. 1 (Building and Construction Industry (Improving Productivity) Bill 2013 and a related bill) be called on immediately and have precedence over all other business; and

(c) the Senate shall adjourn after the question on the motion that the bills be now read a second time is put, or a motion for the adjournment is moved by a minister, whichever is the earlier;

(2) On, Tuesday, 29 November 2016:

(a) the hours of meeting shall be 12.30 pm to midnight;

(b) the routine of business from not later than 7.20 pm to midnight shall be government business only;

(c) the government business order of the day relating to the Building and Construction Industry (Improving Productivity) Bill 2013 and a related bill shall be considered; and

(d) the Senate shall adjourn without debate at midnight.

The PRESIDENT: The question is that the motion moved by Senator Brandis to vary the routine of business be agreed to.

The Senate divided. [20:28]

(The President—Senator Parry)

Ayes ...................33
Noes ...................29
Majority..............4

AYES

Abetz, E
Brandis, GH
Bushby, DC
Cash, MC
Duniain, J
Fierravanti-Wells, C
Griff, S
Hinch, D
Kakoschke-Moore, S
Macdonald, ID
McKenzie, B
O’Sullivan, B
Back, CJ
Burston, B
Canavan, MJ
Culleton, RN
Fawcett, DJ (teller)
Fifield, MP
Hanson, P
Hume, J
Leyonhjelm, DE
McGrath, J
Nash, F
Parry, S
AYES
Paterson, J
Roberts, M
Scullion, NG
Smith, D
Xenophon, N

Reynolds, L
Ruston, A
Seselja, Z
Williams, JR

NOES
Bilyk, CL
Brown, CL
Cameron, DN
Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lines, S
McAllister, J (teller)
McKim, NJ
O’Neill, DM
Rhiannon, L
Siewert, R
Waters, LJ
Whish-Wilson, PS

Brown, CL
Chisholm, A
Dastyari, S
Dodson, P
Gallacher, AM
Hanson-Young, SC
Kitching, K
Marshall, GM
McCarthy, M
Moore, CM
Pratt, LC
Rice, J
Sterle, G
Watt, M

PAIRS
Bernardi, C
Birmingham, SJ
Cormann, M
Payne, MA
Ryan, SM
Sinodinos, A

Singh, LM
Urquhart, AE
Ludlam, S
Polley, H
Carr, KJ
Wong, P

Question agreed to.

BILLS
Building and Construction Industry (Improving Productivity) Bill 2013
Second Reading

Consideration resumed of the motion:
That these bills be now read a second time.

to which the following amendment was moved:

At the end of the motion, add:

"but the Senate calls on the Government to introduce legislation to establish a national independent broad based anti-corruption body that has wide ranging powers, including the power to investigate politicians, and that this bill should not come into effect until such legislation has been passed by the Senate."

__________________________________________________________
CHAMBER
Senator PRATT (Western Australia) (20:31): In rising tonight I want to remind this place of the history of this particular piece of legislation. This bill was introduced into the 44th Parliament on 14 November 2013. Indeed, it was introduced by the former Minister for Employment, Senator Eric Abetz. The bill in fact sat idle until 17 August 2015, when it was defeated in the Senate. The same bill was reintroduced in February 2016 before being defeated again in April 2016. As we know, the government used it as a trigger for the double dissolution. If the bill were the cause of the double dissolution which resulted in an election, you would have thought this bill would have been of the utmost importance to the maintenance and direction of our nation. However, the Prime Minister, Mr Turnbull, mentioned the ABCC legislation on only four days of what was a very long election campaign of some 55 days—four out of 55 days. Why so little mention of it? Quite frankly, the Prime Minister and this government know that this legislation is unpopular; it is not a vote winner; and its basis is completely unfounded and unjustified. It is, in fact, a political witch-hunt.

The government established an $80 million political witch-hunt royal commission in an attempt to justify it unsuccessfully. The royal commission report weakened, rather than strengthened, the case for the re-establishment of the ABCC, and that re-establishment in this legislation is completely and utterly unnecessary. As we know, we already have a building industry regulator in place and therefore the choice before this parliament today is not whether to establish a regulator, because we already have one—the fair work building commission which already has coercive powers. In its last annual report the FWBC had 124 investigations and used its coercive powers on 14 occasions. So, clearly, we have a regulator, and it is working. There is, in my view, no need to replace it, particularly when we know exactly what the legislation before us will do—we have seen it before.

What of the ABCC last time? Ironically, the bill before us is named 'improving productivity', but this, my friends, is so far from the truth that it is most laughable. The last time the ABCC was established, it did not bring in a new era of productivity; rather we saw productivity decrease in this country. Construction industry productivity increased more in the seven years before the introduction of the ABCC than it did in the seven years of the ABCC's existence. Productivity has been higher every year since its abolition in 2012. The ABCC did not reduce industrial disputes last time, either. Apart from an aberrant quarter in September 2012, working days lost per thousand workers due to industrial action under the FWBI were nine days lower than they were from the start of the series under the ABCC of some 10 days. In fact, there was less industrial action without the ABCC. The total number of days lost each year is similar on average under the FWBI—29,866—to under the ABCC at 29,950.

What could be the possible justification for this legislation? What did the legislation do last time? It in fact increased the number of tragic workplace deaths in our nation. We saw under John Howard's WorkChoices and the ABCC, workplace deaths increase by more than 25 per cent. This is a tragic and unnecessary statistic. These were the lives of workers who did not go home to their families. Deaths of construction workers specifically increased from 2.5 per hundred thousand to almost five per hundred thousand. That is five deaths per 100,000 workers, and that is a terrible statistic. Because of the ABCC, we had more families suffering what is an unthinkable tragedy—their loved one not coming home from work at the end of the day. After Labor abolished the ABCC, workplace deaths dropped by 60 per cent.
But, since Mr Abbott appointed Nigel Hadgkiss to the Fair Work Building and Construction Commission, workplace deaths have again started to climb, and I think there is an easy explanation for that. It is because, with Nigel Hadgkiss's modus operandi, the ABCC have sought to make it more difficult for our nation's unions to do their job of calling out on site the day-to-day health and safety concerns in the workplaces that members and officials see before them. The statistics demonstrate the importance of unions in protecting the health and safety of workers and, indeed, their vital role in preventing workplace deaths in our nation.

Last time, under the Howard government and the ABCC, union officials were prosecuted by the ABCC for taking action on health and safety breaches. A good example of this was in 2008, when the ABCC commenced legal proceedings against rigger Ark Tribe, following his attendance of a meeting related to safety breaches on a site in South Australia. At this meeting attended by Ark Tribe, workers were discussing various concerns they had relating to the lack of proper safety on their site. A list was drawn up of breaches that needed attending to. Tribe was called to a secret interview by the ABCC to discuss the meeting; and, when he refused, he was prosecuted over an 18-month period—simply for raising safety concerns in his workplace.

The right to a safe workplace, senators, is internationally recognised and enshrined in law in many countries. The ABCC undermines what is a fundamental right in this nation. It will make workers fearful of speaking out, because of the harsh penalties they will face. This bill means the safety of those in the construction industry will suffer. The bill mean more workers will be subjected to unsafe and possibly deadly working environments.

The ABCC restricts democratic rights and equality before the law. The re-establishment of the ABCC not only poses a significant risk to the safety of workers but also restricts, in my view, their most basic democratic and human rights. It restricts the rights to freedom speech and freedom of association, the privilege against self-incrimination and the right to silence, over basic industrial matters. In that sense, under this ABCC legislation, workers will be guilty until proven innocent for simple things like raising breaches of workplace safety.

The principle that the prosecution bears the onus of proof against an accused should be regarded, in my view, as the golden thread of the criminal law and a cardinal principle of our system of justice, and this bill removes that for workers in our nation.

These are rights that we in a democratic country hold very dear. They are rights that we must protect. Under this bill, the ABCC will have coercive powers that can compel everyday workers to be subject to things like secret interviews, deny them legal representation or threaten them with imprisonment if the person subject to such coercive powers refuses to cooperate. The powers are excessive, undemocratic and unwarranted. I know that from speaking to workers who were affected firsthand by the first iteration of these laws, when they were previously in place.

The International Labour Organization condemned the ABCC for being contrary to our nation's obligations as a signatory to international labour conventions. Shame on us. This legislation targets construction workers in our nation. It extends the reach of the ABCC into picketing and offshore construction. It extends the ABCC's jurisdiction offshore to as far as Australia's exclusive economic zone or waters above the continental shelf. It will also encompass the transport and supply of goods to building sites, including resource platforms.
These extensions of the ABCC's powers demonstrate the government's very clear agenda of attacking construction workers, wherever they may be working. This bill targets one group of workers and not others. They are being singled out for special treatment in a way that is completely unprincipled and undemocratic. It is a targeted attack on construction workers—an attack on workers in some of the most dangerous industries in our country. Why the government would want to paper over the risks that workers take in this industry, by silencing their right to raise concerns, completely baffles me. These are workers we should be protecting, not attacking. We should be protecting and supporting them, and valuing the contribution they make to our country in doing dangerous jobs, building our infrastructure, our homes, our ports, and our offshore oil and gas facilities. Construction can be dangerous and dirty work, and we need the protection of unions to help keep workers safe, because everybody has a role to play in that.

The ABCC has no protections from abuse of power by the regulator that oversees it. The government's bill removes the current protection which requires the director of the Fair Work Building and Construction Commission to apply to the Administrative Appeals Tribunal to issue an examination notice. This is akin to the police being able to conduct a search without having to go to a magistrate to justify why they need a warrant. There was a similar principle in the previous iteration of the legislation and it had a terrible effect on the workers that it was used against. This means that workers that may be affected by this legislation will have no protection from an abuse of power by the regulator. It is quite a scary concept indeed. It is part of a very strong anti-union agenda coming from the government, and I wish I could say I was surprised by this. Sadly, I am not. We have seen it from the government time and time again. Workers have fought it time and time again, and they will continue to. We on this side of the chamber will continue to fight with workers, arm in arm with them, against this agenda. It is part of an ongoing agenda from the coalition to undermine the union movement and to undermine the workers we represent.

The Building and Construction Industry (Improving Productivity) Bill 2013 seeks to create criminal penalties for actions that are not criminal—industrial disputes are civil disputes, and this bill does not change that. Despite what the government tries to tell us, the ABCC will not stamp out criminality in the construction industry. The explanatory memorandum to the bill refers to violence and thuggery as reasons why this bill should be passed, but these are criminal matters, properly dealt with by existing laws and criminal law enforcement agencies. Fair Work Building and Construction can and does make referrals to prosecuting authorities, where necessary. It is completely untrue that this bill will deal with criminality, because it does not. It is a lie. It does not even attack corruption. This bill cannot adequately address corruption either. This bill is about the unnecessary and harsh industrial regulation of workers in the construction industry. Make no mistake, senators: this legislation is an attack. It is a nasty, pathetic, politically-motivated attack on construction workers in our nation. It is an attack based on lies.

The Liberal government is again trying to demonise Australian workers and make them out to be criminals, which they are not. This government talks about industrial action, strikes and pickets, and under this bill it wants to introduce harsher penalties for taking what is simply industrial action. The reality is that levels of industrial action in our nation are at an all-time low and have been for many years now. I am sick and tired of this government, and other
Liberal governments before them, attacking unions. They have attacked unions unfairly, harshly and completely unjustifiably. I am particularly sick of them attacking unions like the CFMEU, a union which has fought long and hard battles, to the betterment of its members. It is a union which has had to deal with some of the most abhorrent cases of workplace health and safety breaches. It is a union which has had to deal with the most tragic of workplace deaths. Indeed, an old friend and comrade of mine, Mark Allen—who was a union organiser in Western Australia—died more than 20 years ago. It is a union which has had to fight with employers who undermine workers' pay and conditions time and time again.

On that note, I remember a very bright sunny day in November last year. I was walking through East Perth on my way to a meeting and I saw a street closed off. There were ambulances and flashing lights right next to a JAXON construction site that I have often walked past. Indeed, my old office was a couple of houses down. It looked like something pretty serious was going on—and it was. I hurriedly looked on internet to find out what was going on. Media was swarming around. I was incredibly upset and alarmed to find that two Irish workers had been killed that morning by a falling concrete panel. These deaths were tragic and utterly avoidable. The CFMEU had attempted to visit this site to inspect for safety breaches and were prevented from doing so by JAXON. They were prevented from accessing that site and other JAXON sites a total number of 18 times. These two deaths and others like them—like the German woman that was tragically killed quite recently in Western Australia—were utterly and completely preventable. It is exceedingly alarming to me that construction deaths make up 15 per cent of all workplace deaths, despite the industry making up only nine per cent of our workforce. We rely on unions like the CFMEU to ensure that workers in the construction industry are safe at work. We rely on unions like the AMWU to ensure that workers are safe at work so that they can return home safely to their families.

The right to take industrial action on the basis of safety concerns is absolutely fundamental to workplace safety and to our democracy. Workers should have the right to withdraw their labour when their employer is not treating them fairly or when their workplaces are not safe. The right to withdraw your labour under those circumstances is absolutely fundamental. Labor has repealed this horrible legislation before. This place has, more recently, rejected this legislation. (Time expired)

**Senator DASTYARI** (New South Wales) (20:51): I want to thank Senator Pratt for what I thought was a fantastic contribution to this debate on the Building and Construction Industry (Improving Productivity) Bill 2013. This is nothing more than a desperate try-on from a desperate government that has no agenda, has no direction and is searching for anything it can cling onto to be part of some kind of a legacy. This is a bill that was supposedly so important that we had to have a double dissolution election on it.

**Senator Bilyk**: I was disillusioned!

**Senator DASTYARI**: I will take that interjection. Senator Bilyk talks about how disillusioned she has been by this entire process. Senator Bilyk, you have been around longer than I have. Can you imagine my shock and horror, as a young migrant in this place, to see where this government will stoop to? A bill that we went to an election on, a bill that was meant to be a priority: in the last week of parliament, a half-arsed attempt to ram it through—and I am sure that is parliamentary language!
Let's be clear. I am comfortable with the hours motion insofar as I am comfortable to stay in this chamber to participate in debates. I will let the chamber in on a little secret: hanging out with Senator McCarthy is actually the highlight of my social calendar. But on a bill that was so important that we needed to bring it forward and debate it in this way—where are the conservative senators? Where are they all? Where is everybody? I believe there are a few Christmas drinks going on around the place. That is the only place I can assume they are, because they are certainly not here in the chamber.

Senator Cameron: The building developers' Christmas party!

Senator DASTYARI: Yes, the building developers' Christmas party. I will take that interjection and I will nod as though I know whether or not it is true. But where is everybody—this debate that was so important? As Senator Di Natale pointed out earlier, the government is still trying to stitch together its own desperate deals to get this piece of legislation passed.

I have a lot of respect for Senator Xenophon. Senator Xenophon is very passionate about water issues as they relate to South Australia. Look, the water debate is worthy of debate in this chamber and in this parliament. But what does it have to do with the ABCC? And Senator Leyonhjelm—again, I do not necessarily agree with a lot of what Senator Leyonhjelm stands for, but I respect him as a senator, I respect him as a policy maker and I respect him as someone who has grown to become a friend. But what does the ABC have to do with the ABCC? I am not quite sure that the question of whether or not the ABCC is worthy of being passed as legislation has anything to do with whether or not public meetings are going to be held for the ABC board. Again, if that is something the Senate wants to look at—have committee inquiries into and look at improving the ABC and have a debate about exposure and public consultation—then let's have that debate. I suspect I may end up on a different side than Senator Leyonhjelm, and that is fine. But none of that has to do with this bill.

This is another plank in a relentless attack on the trade union movement, because what we have opposite is a divided government that can only barely agree on what they hate. And they hate the trade union movement. They hate collectivism. They hate workers' rights. That is the tiny bit of glue that is holding together a government that has, for all intents and purposes, already fallen apart.

I will let you in on a bit of a secret. I mentioned a little earlier the lacking elements of my social life. Yesterday morning I did get up quite early to have the chance to see the member for Warringah, a backbencher, on television. Being a recently joined backbencher myself, I feel that we have a bit in common. The member for Warringah was giving some advice to the government about having a bit of backbone, about actually standing up, about sticking up for the important principles they believe in, like the 2014 budget. I will be honest: I do not necessarily agree with what the member for Warringah believes in. I do not agree with what he stands up for. I do not agree with him on what he sees as priorities. But—and I never thought I would say this—at least he stood up for something.

This is really Seinfeld now: this is a government about nothing. Senator Cash runs around and revs up these union issues to try to hold the party together, to try to stick their movement together, and says, 'We're conservatives and we can do this and we can do that and we can all hate together.' But if you scratch the surface you realise there is nothing there. You realise that
there is actually no basis. There is a desperation here that has resulted in them trying to ram this legislation through.

I have to say: put up or shut up. You went to a double-D election; bring on the double D. We are not afraid. We are not afraid of having this debate. The only people who are afraid of an election right now are the conservatives, who know that any support they may have had a little while ago has already fallen apart. Let's not pussyfoot around this issue. There is not a genuine need for the ABCC if the real goal here is about improving union governance. This bill has nothing to do with productivity. The government's own industry monitor has shown that construction sector labour productivity over the past five years has actually been increasing. So, the industry itself is getting more productive. It is nothing more than an ideologically based attack, a politically motivated attempt to crack down on the ability of unions to advocate for workers' rights. And productivity, as this government tries to phrase it, is not about improving the sector. The sector has been improving. There are measures that can be taken and that we can actually debate that are about making better use of workers' skills.

No: productivity, the way this government is talking about it, is only through the restricted frame of taking away workers' rights, because real productivity is about making the most of our workers, not the productivity this government has gone around talking about. This bill will treat construction workers as second-class citizens by singling out the industry for particular oversight and regulation. At the heart of that, there is a condescending arrogance that this government believes they are somehow better than these construction workers, that they should somehow be treated differently and that a different set of rules should somehow apply to them and not everyone else. Where is the focus in this bill on the things that matter—safety and the fact that people are dying in the construction industry in this country and that workers are being ripped off?

Senator Cameron has done an incredible job in exposing the phoenixing behaviour that has gone on. I was fortunate enough to chair an inquiry last year looking at the act of phoenixing—an inquiry in which Senator Cameron really led the work. Phoenixing is where a construction company will not pay subcontractors, will force itself into faux liquidation and will then reappear a few days later under a different name or as a different organisation with a different set of directors, be they relatives—for example, cousins—or whatnot. They reappear under a different banner and go about doing the same thing—ripping off workers, taking advantage of them and hanging them out to dry. After all the work that Senator Cameron did in that space, after the committee report and after the recommendations, what does the government do in a space that is affecting workers' lives, causing workers to be ripped off and—as the inquiry uncovered—helping drive some of the poor behaviour in the industry. Subcontractors in the industry were so desperate to get paid that they were resorting to tactics which none of us would encourage or support but which we would perhaps recognise as the actions—in some cases, the misguided actions—of desperate people trying to make sure they got paid. This was the tragic outcome of a set of circumstances that should never have been allowed—even though none of us would ever condone that type of activity.

Where is the focus in this bill on the use of temporary visa holder workers to undermine Australian jobs, security and conditions? Where is the focus in this bill on the use of nonconforming building products? The Senate Standing Committees on Economics has looked at this area time and time again and highlighted these issues. The insolvency of
builders keeps going on and on and has led to phoenixing. This is another attempt by this government, through the back door, to rip away workers' rights and conditions. We saw them do it with Work Choices. We saw them try to do it again. I am not a fan of former Prime Minister Mr Howard. His policy and his politics were obviously different to mine, but at least he had the decency to be up-front with what he was trying to achieve, and he allowed a public debate—a debate that people like me did not support and fought against. But this is Work Choices by stealth; it is Work Choices through the back door. It is not even an attempt to bring it through the back door—it is through the neighbour's fence; it is through the garage!

Clause 34 this bill allows the minister to issue a building code which is to be complied with by persons in respect of building work. On 17 April 2014, the government published an advance release of the Building and Construction Industry (Fair and Lawful Building Sites) Code 2014. A revised advance release was announced on 28 November that year. This new building code will come into effect when the Building and Construction Industry (Improving Productivity) Bill—the bill we are talking about today—commences as an act. The code itself is outrageous. It is a rort. Under the 2014 code, enterprise agreements will not be able to contain customs and practices that are lawful in any other context. In other words, in any context other than in the code that this bill will activate, these practices would be lawful. In fact, when it commences, the provisions of the code will apply retrospectively to any enterprise agreements made on or after 24 April 2014. I want to stress that point to some of the crossbenchers—in the unlikely event they are listening to this. The idea of activating retrospective legislation should be worrying to everybody who believes in the fundamental rule of law.

Businesses with agreements that are already in force at that time but that do not meet the code's content requirements will not be eligible to tender for, or be awarded, Commonwealth funded building work. The code prohibits clauses in workplace agreements ensuring that employees have security of employment. The code prohibits clauses against casualisation. The code itself bans clauses that prohibit sham contracting. Let us just be clear about that: you cannot have a clause that bans sham contracting. Somehow this is meant to improve the situation! The code outlaws clauses that place limits on weekly hours of work. The code outlaws clauses requiring employers who want to employ overseas workers to ensure they are in Australia legally and able to work legally. I want to touch on that for a moment. What logic could be behind the existence of a code that does not allow you to stipulate that illegal workers cannot be used? How can that have the purpose of improving the legislation? The code prohibits clauses that mandate that employees can take public holiday long weekends off work to be with their families. In other words, this is a code that can cancel Christmas! But do not take my word for it—I am sure some of you will not. In October 2016, the McKell Institute published a report entitled Unfounded and unfair: an analysis of the building and construction code (2014). The report highlighted that the code is a fundamental change to the existing code of practice and will effect a significant detrimental impact on the Australian construction industry. The code of conduct seeks to undermine the ability of employers to make enterprise bargains directly with their own workforce. The code, which is heavy with prescriptive red tape, is specifically designed to limit the ability of employers to manage their own staff. It is deliberately designed to limit their ability to agree on conditions that are commercially right for that business. This significantly changes the enterprise-based
workplace relations system that has underpinned productivity growth in Australia since the 1990s.

Employment law expert and Adelaide law school professor Andrew Stewart has told The Guardian the code is a source of significant concern in the construction industry. He said that 'virtually every major builder will be non-compliant.' He said that the code could be changed to only bar agreements struck after it was passed, in which case it would have 'minimal practical effect', or it would apply retrospectively and 'force building companies to renegotiate their enterprise agreements simultaneously causing industrial mayhem.' Stewart said that the code barred any clause with any impact on productivity, or the right of companies to manage their own businesses. He said that it essentially gives Fair Work Building and Construction director Nigel Hadgkiss, or whoever is the director of the ABCC, discretion to object to any union agreement on a wide number of bases.

This is bad legislation that has been handled poorly. The fact that this legislation, which the government pushed and said was going to be such an urgent and important piece of legislation, is being handled in this manner demonstrates that this is a government that has lost touch, lost focus and has no agenda. The notion that we will be here till the end of everyone having their second reading speech and that we will be returning tomorrow until midnight as part of a desperate bid to try and ram through some kind of last-minute deals—sneaky agreements—to get this legislation passed says so much about what this government, after a few short years, has become. The fact that, after all this time, it is running around stitching weekend deals with crossbenchers, promising whatever it can promise, getting whatever it can get and horsetrading on any other piece of legislation, with the sole focus or emphasis on getting a dirty deal done on this bill, says a lot about it. It says a lot about this government that it has got to this stage this early.

It is hardly surprising that, when we look at the sitting schedule for next year, so few weeks have actually been planned, because this is how the government appears to be wanting to do its business. It wants to create artificial emergencies, to try to ram legislation through, rather than handling it in a sensible, methodical way. If you shine a light on the details of this piece of legislation, it does not stand up to the scrutiny. It is a bad bill. It is a bad bill that does not warrant how it has been treated. More importantly, it does not warrant being passed by the Australian Senate. I urge my colleagues, crossbench senators and the minor parties to have a close look at the detail of this legislation, because this is and remains a bad bill. (Time expired)

Senator URQUHART (Tasmania—Opposition Whip in the Senate) (21:11): I rise to speak against the Building and Construction Industry (Improving Productivity) Bill and the Building and Construction Industry (Consequential and Transitional Provisions) Bill. With these bills, Prime Minister Malcolm Turnbull shows that he is no different to his predecessors Mr Tony Abbott and Mr John Howard. Despite his attempt to be an agile and innovative Prime Minister, which he said he was going to be, all he has at his disposal are the failed ideas of the past. All he can propose to improve productivity are tax cuts for big businesses and the removal of workers' rights. All he has are the failed ideological and politically-motivated attacks of years past.

These bills will take us back to the dark old days of the Work Choices era, where the Australian Building and Construction Commission, or the ABCC, will be brought back from
the dead. These bills present a plan to restore a failed body that was built on flawed premises and that will demonise construction industry workers and those who represent them and do nothing—absolutely nothing—to improve productivity or safety on building sites.

Under this legislation, the ABCC will have extreme and unnecessary powers—powers that fundamentally compromise basic civil liberties. The new ABCC could compel ordinary workers to attend secret meetings. Not only that, they could be threatened with imprisonment in order to get information. They would have no access to legal representation and they would have no right to remain silent. They would have no right to protection from self-incrimination and no right to even tell their family. These are people who would not have committed a crime, but who would be treated worse than criminals. Let's be clear: there is no other worker in the federal system that will have this sort of draconian regime imposed on them. It is fundamentally undemocratic to impose this only on workers in the building and construction industry.

These bills will restrict freedom of association, expression and privacy. The bills will give inspectors the power to enter residential premises without consent or warrant. This would be reasonable in situations of emergency, serious danger to public health, or where there is a serious threat to national security. However, there is no evidence that entering the homes of building and construction workers and union officials would constitute such a reasonable situation.

While the stripping of these rights is terrible, it is nothing on the move within these bills to reverse the onus of proof. Under these bills, a legal burden of proof is placed on workers to prove that any action they are involved in is not industrial action but based on health and safety concerns. This can have huge implications for the reporting of safety issues, as it is often very difficult to prove a safety issue. As a result, workers may avoid discussing health and safety issues out of fear of slipping up when reporting their concerns and facing the full face of the law for simply raising a safety issue to try to protect their colleagues.

It is clear that this Prime Minister does not care about safety on work sites. It is clear that this Prime Minister does not care about fundamental rights—rights of freedom of association, expression and privacy; the right to a fair hearing; and the right to a fair go. This Prime Minister only cares about appeasing those in industry who do not value workers and who want to strip away basic protections and basic rights in their quest to accumulate more and more wealth while their workers are killed and injured and their projects are not built to the standards the community expects.

I note that there is already an organisation called the Fair Work Building and Construction inspectorate. The inspectorate regulates the workplace laws that govern the building and construction industry, regulations which those opposite seem to ignore in their ideological and politically-motivated attacks on construction trade unions in this country. They would have the public believe that there are currently no regulations in place to oversee the management of construction trade unions in this country. In doing so, they present a false argument that their proposal is the only way to improve governance of construction trade unions, when in actual fact their agenda is clearly to undermine and attack the ability of construction trade unions to advocate on behalf of Australian workers.

It is clear that the ABCC's building code will discourage the employment of apprentices and local workers and prevent unions from ensuring workers are safe. The code, which sits
beside the legislation, not only applies to construction sites but also to all employees working in the private sector for the organisation tendering for government work and all organisations that supply prefabricated materials. The code prevents an employer and unions from including certain clauses in an enterprise bargaining agreement.

The code will limit the employment of apprentices. This will prevent many young Australians from taking up a trade. The code will not require employers look for local workers first. This will allow employers to bring in and exploit cheap overseas labour instead of employing young Australians. The code will allow for unlimited ordinary working hours. This will lead to fatigue, lead to the exploitation of workers, lead to workers missing important family events and lead to more deaths and injuries as a result of worker fatigue. The code will prohibit clauses that permit union officials from visiting a site to assist with a dispute settlement process at the request of an employer. This is despite the property owner's right to invite whomever they want onto their premises. The code will prevent site inductions by union members and delegates, despite general occupational health and safety requirements that all persons are inducted. The code will prevent limits on labour hire and casual work, which will disrupt the lives of many construction workers as they are pushed from permanent to casual work.

It is no coincidence that the Prime Minister sat this bill with the registered organisations bill as double dissolution triggers—bills that will do tremendous damage to collectivism in this country, that will make workplaces less safe, that will make organising workers to bargain together for fair a pay rise even harder, that will put at risk hard-won working conditions, and that will add a layer of stress to workers around their ability, or lack thereof, to speak up at work.

The Australian people can see the damage these bills will do to our society. They are not fools. That is why the Prime Minister and those opposite did not talk about these bills at all during the election campaign. The bills were used as a trigger for a double dissolution and quietly placed in the top drawer. The election was set up as a debate on the merits of these bills. The double dissolution was used by the Prime Minister so that he would not have to negotiate with the opposition and minor parties. Yet, the only days these bills were mentioned during the election campaign were day one and day 55. It is disgraceful! Despite the Prime Minister's assurances of their importance to the future of the nation, the bills were not mentioned by those opposite during the bulk of the eight-week election campaign.

But, all of a sudden, these so-called vital reforms were pushed aside. The Prime Minister knows the Australian people do not support these bills. That is why they were tucked away for the winter, so desperate were those opposite to have these bills passed without amendment. There is a lot of talk by those opposite of misleading campaign tactics by their opponents, yet what is more misleading than to call an election on a specific issue only to never mention that issue during the election campaign? What is more misleading than to hold a politically-motivated, ideologically-driven belief that these changes are vital for the future of this country and yet not spend the time explaining the changes to the Australian people?

The bills have been available for the Prime Minister to pass unamended through a joint sitting of the Senate and the House of Representatives for over four months—a unique event that would garner much attention across the community. So, of course, it is an event that the Prime Minister is avoiding at all costs. Here we are, months after the election, debating the
bills which the Prime Minister used to trigger the double dissolution. But we are not doing it in a joint sitting. No, we are back in the Senate for the fourth time in four years. This situation of public silence but parliamentary uproar is a tremendous irony. If these bills are so important, Prime Minister, why don’t you explain them to the Australian people? Why doesn’t your government take the Australian people through the current regulations and how the amendments will supposedly improve governance and accountability? Because, to do so would be to recognise that there are regulations in place that are reasonable. They are already there.

There is always room for improvement, but, on the whole, the regulations are working. Why? It is clear that the regulations must be working, because the bill before us today does not incorporate any findings from the government's wasteful $80 million royal commission into trade unions. This bill includes the same set of amendments to the act that those opposite had proposed before the establishment of the royal commission. How could such an expensive exercise yield so little in a policy sense? And if the royal commission did point to necessary changes, then where are they? Why is this bill identical to that proposed in the last parliament and why is it being debated in the Senate and not in a joint sitting?

Despite this bill being the trigger used to call the early election, an election in which the Prime Minister lost a large number of members and senators, it is rarely raised by members opposite in the community. It is even rarer for a member of the community to raise their support of this bill with me. When people are angry, we hear them. We hear them when we are door knocking and when we are walking down the street. We receive phone calls, emails and petitions. Yet, the only interactions I receive on this issue are from people saying that the Prime Minister and his government are overreaching with this bill. Instead of praising this bill, people tell me that it will have drastic implications for construction workers, it will decimate their ability to raise basic issues of safety, it will destroy protections for their current working conditions and it will hang a cloud over all workers in the construction industry, as they could be treated worse than criminals if they speak up.

I can assure the Senate that Labor will do everything it can to support and protect Australian jobs and workplace entitlements. Labor will not support politically motivated witch-hunts that are designed to kill off workers' rights. While those opposite like to talk about jobs and growth, when context is added, it is clear that their latest three-word slogan is code for less secure jobs and less equal growth. In comparison, Labor has placed inclusive prosperity at the core of our agenda. It is a positive agenda, which focuses on improving job security, addressing the challenges of the changing world, taking steps to ensure growth at all levels of the income scale and ensuring adequate support for those not in the workforce.

Almost two million Australians are members of trade unions, organisations that have for over a century advocated for positive social change and organisations that are managed by members, for members. They are not for profit and not for personal gain, but to ensure that their members are safe at work, receive appropriate remuneration for their labour and return home to their families safely after each shift. Those opposite like to ridicule unions and use the actions of a few to mock the millions of Australians who are union members. The conservatives of Australian politics seek to push an agenda where collectivism is admonished. They fail to recognise many of the very best parts of the fabric of Australian society were created because of the collective spirit of Australian workers, through trade unions.
Whether they belong to a union or not, Australians know and appreciate the benefits of collectivism, beginning with a generous social compact comprised of: decent conditions at work; occupational health and safety, and workers compensation; the weekend itself and penalty rates for working on it or at other unsociable hours; annual leave and sick pay; parental, carers and domestic violence leave; Medicare and the foregone wage increases to pay for it; a good education and support for children; and universal superannuation that provides for a good retirement. Instead of increasing the barriers to collectivism in Australia, we need governments that place a greater emphasis on how together we can solve the big challenges of today. Instead of attacking all volunteers and members of trade unions, we need governments to get on with creating an environment where unions are protected and can shine. Instead, we have the Turnbull government and this bill, which is just an attack on the members and officials of construction trade unions.

People in the community see this bill for what it is: a direct attack on working Australians and their ability to collectively organise. It is an attack that seeks to further divide this country. This attack on workers' rights will undermine opportunities for Australians to collectively bargain and be represented by a union. It will see management get richer and workers faced with lower wages, worse conditions and unsafe workplaces. It is clear that the Prime Minister and his government seek to foster an environment where work continues to become less secure and where inequality continues to increase. We hear it in the rhetoric from the Prime Minister and in his blatant disregard for the welfare of many Australian workers who, through no fault of their own, are losing their jobs in this rapidly changing world.

Instead of being that agile, innovative leader, this bill demonstrates that the Prime Minister represents nothing more than the tired ideological arguments of years past. Prime Minister, the reforms you espouse do not guarantee enduring economic success for Australian workers. Prime Minister, the trickle-down economics of tax cuts for business and reduced workplace rights that you wish to push on the Australian people will not miraculously increase our nation's wealth. But Prime Minister, you are correct in one assertion: your policies will create winners and losers in the near term.

This bill is just one in the suite of measures that form part of the Prime Minister's jobs and growth plan. It is a plan that works well as a three-word slogan. But if it is passed without amendments, we will see any increased economic growth further concentrated in the hands of the few at the top and we will see wages stagnate, working conditions continue to slide and productivity failing to improve. This government's recipe for improving the Australian economy is to undermine unions, remove workers' rights, remove workers' ability to collectively organise and provide massive tax cuts for big businesses, while cutting skills, training and research programs.

Together, these measures will only ensure one thing: that the Australia of tomorrow is not a land of opportunity for all, but a land of opportunity for those with means. It will be a land where the extra profits from lower taxes will go to higher dividends and share buybacks and the only employees set for wage rises are those in executive positions. Prime Minister, the losers from your policies will be Australian workers and their families. Asserting that the Australian people must accept being losers in your agile, innovative economy and that the Australian people must accept reduced living standards and reduced rights at work so that you can provide tax cuts and more power to big businesses demonstrates that you are no different from your predecessors, Mr Abbott and Mr Howard. Prime Minister, you continually demonstrate that you have no appreciation of the hard labour and sacrifice of Australian workers, and no inclusive plan for the future of work and life in this country. Your philosophy
of letting the market rip, by the magic touch of an invisible hand, will not solve our challenges and it will not absolve your responsibility for those left behind. The poor and the marginalised cannot be set aside as collateral damage in your pursuit of economic growth. And it is not a matter of accepting your false dichotomy that we must follow your plan or face deteriorating living standings. Australians are smarter than that. They deserve better leadership, particularly from a Prime Minister who, in challenging for the role, said:

We need advocacy, not slogans. We need to respect the intelligence of the Australian people.

How quickly the mighty can fall. The bill before us today is exactly the same as that which was negatived on numerous occasions by the previous Senate. Yet, instead of taking that identical bill to a joint sitting, which was the key point for the double dissolution election, the bill before us was rammed through the House of Representatives. Senators then took advantage of our committee processes, and a short inquiry into the bills was conducted. The committee reported over six weeks ago, and since that time the government has had a number of different positions on how it would proceed—so much for the stable government the Prime Minister promised in September last year. I urge senators to vote against the bills.

**Senator HANSON** (Queensland) (21:31): When I was elected to this parliament I made a commitment to the people that I would speak with honesty and accountability. So I stand here and support the ABCC, as put forward by the Turnbull government. I have listened to the other side—I have listened to the Labor Party and their comments. They say that this will destroy Australian jobs, but that is not the case. I wish we were having a truthful debate about this. It is not about Australian workers. It is not about taking their jobs. It is about the CFMEU, who are throwing their weight around this country and destroying jobs and who think they can go onto building sites with their bullying and their thuggery.

Since my election, I have had meetings with businesses from the first and second tier, who are at their wits end and fed up with the building and construction industry. Demands are being put on them. They are being asked to pay union fees and wages before a job can go ahead. They are told, 'You must sign a cheque for $5,000.' Then money must go into union superannuation funds. If businesses do not comply, then the tactics start. If they are pouring a concrete slab it is shut down, because, the unions say, 'It's unsafe for work.' Businesses have no-one to turn to.

The ABCC was replaced in 2012. It has not been not around since then, so for the other side to say that this is about safety and deaths on building and construction sites is not the truth. The ABCC has not been around for the last four years, but there have still been deaths—they are not because of the ABCC. No-one wants to see deaths on building sites, and, yes, we must make sure there is decent work health and safety, but the fact is this is about reining in delegates who are obstructionists. Their obstructions add costs of anywhere between 25 to 30 per cent to building and construction projects—it can cost the taxpayer that much. This is going to destroy jobs in Australia.

I have listened to the other side say, 'We are going to have 457 visa holders come and take jobs.' That is a totally different issue to the ABCC. Reining in 457 visas holders in Australia is another issue for this government and the Labor side to deal with—it is not under the ABCC. Then the other side says, 'You are denying apprenticeships.' That has nothing to do with it either. That is all under enterprise bargaining; it has nothing to do with the ABCC. Yes, I would dearly love to see more apprenticeship schemes in Australia, and I do have a policy for
that, but not under this bill. If a company has five workers, you cannot say to them, 'You must put on an apprentice.' You cannot tell subcontractors they have to have workers, because a lot of them are struggling. They do not have apprentices, and you cannot force them to put on apprentices, because it is not just for a few weeks—the time period is years. We have to start looking after businesses and subcontractors, because if we do not they will fold and shut up shop. Then we will have international interests in this country doing the jobs and bringing in their own workers. Unless we get smart, we will not have Australians doing the jobs. That is why this legislation is here, and I do support it.

Even judges comment on how uncouth the CFMEU has been. You have coercion of employers to enter into enterprise agreements, you have denial of the right of employees to not join unions, you have blackmail of subcontractors who do not agree to the union's demands—these things are happening. I cannot understand why the Labor Party will not be up-front and honest. Tell the Australian people what is happening. Explain to them why we need these changes in this legislation. The whole thing is because the Labor side is funded by the unions. That is why they will not come out against them and be honest with the Australian people and the Australian workers.

This goes far beyond just jobs. We have to look at future generations here, so that we will have businesses and industries and growth in this country and will not be shutting businesses down. I will not stand by and watch the thuggery that goes on in this country and see anyone, it does not matter who they are, being bullied. This is Australia. We are not like other countries around the world. We must stand up and fight against this. That is why I support the government. Minister Cash has done a very good job in drafting this legislation on behalf of the government, and I support it fully.

Senator XENOPHON (South Australia) (21:37): There has been no shortage of debate and scrutiny of this ABCC legislation. During the 44th Parliament a total of six separate Senate committee inquiries were held into the two bills. On two separate occasions both bills were previously inquired into and reported on by a committee. On both occasions the committee recommended that the Senate pass the bills—not surprisingly, because it was a government dominated committee. In addition, the Senate Education and Employment References Committee has considered both bills in depth. Aspects of the bills have also been considered by the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights. Over the course of the current and previous inquiries there have been no fewer than six public hearings in relation to this legislation. It was the failure of the Senate to pass these bills that led to the Prime Minister in May 2015 to request the dissolution of both houses of parliament prior to the 2 July federal election.

When I spoke on this legislation on 18 April 2016 I supported the second reading stage of the bills, which would have allowed for amendments to be considered in the committee stage. Those amendments were important in order to make the bills fairer, to make them more effective in terms of job creation in this country and to deal with issues of productivity, which I will address shortly. That opportunity did not arise. However, we do have that opportunity in this parliament and there are some important issues to be debated.

The industrial relations framework in the building and construction industry has a long, complex and, some would say, vexed history. There was the Winneke royal commission in 1982, the Gyles royal commission in 1992, the Cole royal commission in 2003 and, most
recently, the Heydon royal commission in 2015. There was also the Wilcox report, which was an initiative of the then federal Labor government in 2008. The final report was handed to the then Deputy Prime Minister, the Hon. Julia Gillard, in April 2009 in relation to the operations of the office of the Fair Work Building and Construction inspectorate.

As part of the review Justice Wilcox was asked to investigate and report on some of the following issues: the operational structure of the specialist division, the independence and accountability of the specialist division, the scope of investigations and compliance activities to be undertaken by the specialist division, the powers required by the specialist division and its inspectors for the purpose of conducting investigations and compliance activities, and the best manner of ensuring an orderly transition between the ABCC and a specialist division.

Following an intensive and, some would say, extensive consultation period, Justice Wilcox found that there was still a significant level of industrial unlawfulness in the building and construction industry, particularly in Victoria and Western Australia. While His Honour 'accepts that there has been a big improvement in building industry behaviour in recent years, some problems remain'. That was in section 3.23. Justice Wilcox found that the current levels of investigation and penalties held by the ABCC were justifiable because of the poor conduct that has been, and continues to be, displayed by many building industry participants. I emphasise that this is not just about singling out the union; it also relates to some employers.

His Honour stated:
I am satisfied there is still such a level of industrial unlawfulness in the building and construction industry, especially in Victoria and Western Australia, that it would be inadvisable not to empower the BCD—
the building and construction division—
to undertake compulsory interrogation. The reality is that, without such a power, some types of contravention would be almost impossible to prove.

While Justice Wilcox reported that 'the ABCC has made a significant contribution to improve conduct and harmony in the building and construction industry', the view of the then Labor government was to downgrade it to an inspectorate.

The more recent inquiry of former High Court Justice Dyson Heydon gathered a great deal of evidence—some of which I found quite compelling—about serious issues: allegations of corruption, bullying and harassment. In his interim report Commissioner Heydon found that some CFMEU members had acted in wilful defiance of the law and there were allegations of corruption, death threats, extortion, gross neglect and other serious criminal matters. In his final report, released last December, the royal commissioner confirmed his finding that corruption was widespread and deep-seated. The union officials allegedly involved ranged in seniority from the most junior to the most senior, although I hasten to add that Michael O'Connor, National Secretary of the CFMEU, and Dave Noonan, another very senior officer, have not been tainted by any of these allegations.

It should be noted that there has been agreement in the past from the opposition that the building and construction sector needs a strong regulator. These were some of the comments made when the ABCC was replaced by the FWBC. There was acknowledgement that there was a need for a specialist division to deal with these issues. The Hon. Bill Shorten, on 16 February 2012, said:
The government understand that the industry contains unique challenges for both employees and employers. As a result, we have always supported a strong building industry regulator to ensure lawful conduct by all participants and a strong set of compliance arrangements for the building industry.

Dr Andrew Leigh, on 15 February 2012, said:

We know the industry can be difficult. Because of the unique challenges faced by the industry, it is important to make sure everyone applies the right conduct and continues to be lawful. As is so often the case in industrial relations, that is a tough balancing act—but this is a decision we are not afraid to make.

Simon Crean, on 3 November 2011, said:

The government believes that the safeguards in the bill for the coercive examination powers achieve the balance required to ensure compliance with the law and the fair treatment of individuals. Law-abiding industry participants who have nothing to fear from the existence of these strong laws will be so accorded. Ultimately, whether or not the powers are used remains in the hands of all building industry participants.

They are some of the comments by the ALP. I hasten to add that that was in the context of the FWBC about the need for a specialist division. I accept and respect that the opposition's position is one of trenchant opposition to this bill and to the powers contained in it, but it does acknowledge some of the unique challenges faced by this industry.

Commissioner Heydon recommended a new national regulator with the same powers as ASIC be established. I note that former Senator Muir made reference in his contribution earlier this year to the huge number of court cases in which the CFMEU has been found to have broken the law, or admitted to have broken the law, and the more than S8 million in penalties over the last decade that have been issued against that union. That was an observation but I also note that this is a very large sector with very large turnover in terms of the scope and size of the industry. Last year, in South Australia, the courts issued fines against the union and its representatives with $949,100 in fines, which was a significant amount.

The opposition and others have tried to label the Heydon royal commission—which was not perfect—as a political witch-hunt, but its finding and the large body of evidence presented and the evidence in numerous court proceedings cannot be lightly dismissed, neither can the previous royal commissions. They certainly raise the question of whether our existing legislative framework is strong enough to properly address these issues. I notice Senator Cameron has been a trenchant critic of the current director of the FWBC, Mr Hadgkiss, but I do have concerns about the way that office has been run, its impartiality and whether it has also adequately pursued employers who have not done the right thing and contravened the current legislative framework. That is an observation I make and I do not believe that it is a unfair one in terms of the conduct of the current director of that inspectorate.

One of the key issues, perhaps the key issue, relates to section 11 of the Building Code. This section prohibits code-covered entities from being covered by an enterprise agreement in respect of building work, which includes certain clauses, or from engaging in certain conduct. This section is the centrepiece of the Building Code and its aim, as essentially stated, is to change the culture in the building and construction industry. The long history of royal commissions together with the Wilcox report recommends that there is an issue with the culture in the building and construction industry. It is a difficult issue because the argument from those who are opposed to this bill is that it ought to be within the framework of the Fair
Work Act and not derogate away from that framework. That, to me, seems to be the key debate and the key ideological debate in respect of this bill. Others say that those in favour of it say that if cultural change is needed then the Building Code will be the most effective tool. I expect that there will be a furious debate in relation to these issues.

I have continued to speak with the CFMEU and I will continue to speak with them on this issue. I have listened to their concerns and I do take their concerns seriously. There is the conduct of Mr Hadgkiss, where, for instance, a number of months ago Mr O'Connor was charged, and details of those charges were leaked, only to have those charges dropped. That is something that raises particular concern. On the part of Mr O'Connor, I thought that that was most unfair conduct and I do have concerns in relation to the way that the FWBC inspectorate has been operating.

I support the second reading of this bill, as do my colleagues, in order to debate this issue and the amendments that I will move. Some have already been circulated and I will speak in more detail to those during the committee stage. One of the key issues that concerns me is security of payments. What Senator Cameron did—and I am sure we will have fierce debates in the context of the committee stage of this bill—in terms of instigating the Senate Economics References Committee report on Insolvency in the Australian construction industry, is to be absolutely commended. It reported in December 2015. If we are to be serious about the issue of productivity and bad behaviour in the construction sector, the issue of security of payments is fundamental to that. We cannot simply talk about the behaviour of some in the union. We also need to talk about the behaviour of a number of principal contractors and the way that people have been left in the lurch, the way that many thousands of subcontractors have not been paid and have not been treated fairly and that many have been driven to either the brink of bankruptcy or actual bankruptcy.

The recommendations of that report are to be commended—I participated in that inquiry. I have an amendment—it is something I worked on with Senator Hinch as well, who also shares my concerns—that there will be a security-of-payments working group that is designed to complement the new section 11D of the Building Code. It will be made up of employee, employer and contractor representatives. It will be required to meet at least four times a year, and it will monitor the impact that the ABCC has on the conduct and practices of building industry participants in relation to security-of-payments legislation.

We must have a uniform, national system. What we have at the moment is woefully inadequate. We do have a system in place and it does work from time to time. We have rapid adjudication in some states, but not in others. In Queensland, prior to 2014, they had a pretty good system in place and then the then Newman government in their wisdom, or rather lack thereof, scuttled it and destroyed the essence and the effectiveness of that piece of legislation, and we went back to square 1. But occurred in Queensland pre-2014 made a lot of sense, and it meant that a lot of contractors could have rapid adjudication to have their matters dealt with. If all of us are fair dinkum about productivity in the building sector, we need some fundamental reforms of security-of-payments legislation and the framework. I believe that these amendments will advance that in a very realistic way. I will have more to say about that in the committee stage of this bill.

In terms of the functions of the ABC commissioner, the annual report and the appointment and the termination, there are issues there that must be raised to ensure that the functions of
the commissioner are carried out in an impartial manner across all building industry participants because I am not satisfied that they have been carried out impartially in recent times. There must be additional reporting requirements to the annual report to increase transparency and accountability. It must ensure that the commissioner upholds the APS values set out in section 10 of the Public Service Act, and expressly state that the commissioner will perform his or her functions in an apolitical manner and act impartially and professionally. The bill should be amended to include an additional ground of failing to act impartially between all categories of building industry participants.

There is also the issue of judicial review. There ought to be an amendment that will mean that decisions made under this legislation—for example, the issuing of a compliance notice—are subject to judicial review. This is the first time in industrial relations law, if passed, that it will be subject to judicial review. It is a significant amendment which will add a layer of review and improve accountability.

In relation to examination notices and AAT oversight, it is important that we maintain the current administrative oversight for the use of coercive powers. The government seeks to overturn that. I believe we need to keep that. It is important that an Administrative Appeals Tribunal presidential member rather than the ABC commissioner will be required to issue the examination notice, as the bill in its current form provides. This is a safeguard against any misuse of the coercive power. There is also the issue of procurement. It is something that I am still having discussions with the government about.

The Building Code can play a powerful role to ensure that procurement is carried out in a way that is fair; that is robust; that takes into account that materials used on building sites with Commonwealth funds comply with the Australian standard, are certified to comply with the Australian standard, are subject to an auditing process—and I suggest that the federal safety commissioner has an important role in respect of that—and that has a consideration and a weighting given in terms of the economic impacts of making a procurement decision in terms of the impact that it has on jobs, the economy and particular industries. These are not novel concepts. It is an approach that has been taken overseas by the UK, by the Netherlands, by an increasing number of European countries, by the United States and by Canada, and I think it is something that would be very positive in terms of productivity in this sector more broadly and in terms of ensuring that there is a more level playing field that will, in effect, mean more Australian jobs rather than using substandard building materials. As you are aware, Acting Deputy President Sterle, as you have a great interest in this, having building materials with asbestos in them is strictly unacceptable, and we need to make sure that the Australian standard is kept.

There will be, no doubt, a very comprehensive committee stage of this bill. There needs to be so that amendments can be considered, questions asked and this bill subjected, along with its amendments, to sufficiently robust examination. Along with my colleagues Senators Griff and Kakoschke-Moore, I will support the second reading stage of this bill. In the event that it does pass the second reading stages, I look forward to the committee stage.

Senator GALLACHER (South Australia) (21:55): I rise to oppose this bill. In doing so, I went back a couple of years and read a couple of speeches. In those speeches were the terms 'Labor's payback to union masters', 'union control of Labor' and 'the unions are now running policy'. There was a very old speech by the Hon. Kim Beazley, and in that speech he quoted
Peter Reith: 'Never forget the history of politics and never forget which side we're on.' This bill, this agenda has its origins way back when Work Choices roamed the land.

The best character analysis of Peter Reith I have ever read—and this is a direct quote from the Hon. Kim Beazley's speech—was actually written about 70 years ago by George Orwell in the famous novel Animal Farm. Another George, the Hon. George Brandis, likes his books. Anyway, he introduces one of the farmyard animals:

The best known among them was a pig named Squealer, with very round cheeks, twinkling eyes, nimble movement, and a shrill voice. He was a brilliant talker and, when he was arguing some difficult point, he had a way of skipping from side to side and whisking his tail which was somehow very persuasive. The others said of Squealer that he could turn black into white.

I think we have a character very much the same as the one described by the Hon. Kim Beazley moving this legislation in this suspension of standing orders in the chamber. Very clearly the Hon. George Brandis believes he is invincible, believes he is very persuasive and believes that, if he repeats allegations of corruption—yet, strangely, the bill does not deal with corruption. But he repeats that allegation time and time again.

Then he repeats the allegation of foul language. My goodness, Acting Deputy President Sterle! You and I have both worked in a number of workplaces in Australia where the language is foul. That is the nature of hard physical work: people often have an intemperate use of language. I heard Senator Reynolds from Western Australia saying you have not to walk past bad activity. Well, Senator Reynolds, I am sure in your career in the Army you walked past some bad activity. I know from some of the references that have been put to the Senate Foreign Affairs, Defence and Trade Committee that there are very unsavoury allegations of activity in the Army, in the Navy and in the Air Force. If you look at the Defence Abuse Response Taskforce, it was proven, so don't lecture us about an industry which you don't know anything about.

I have driven trucks in and out of building sites on many occasions. I have even worked on building sites as a brickies labourer. I know the induction process now is a hundred times better than what it was in the past. I know the difficulty of building industry contractors in securing long-term access to work. That is why we have the portable long-service scheme in the building industry in Victoria: because people do not get continuity of work. The concreters will go in and do the concreting. That part of the job is gone, they go to the next building site and on it goes. And the competitive pressures in there are intense.

What the union tries to do is organise safe, well-paid workplaces, and those people are elected. Believe it or not, they are not just found around the corner, waiting to sign on. They are elected by the members they represent and, if they do not deliver safe, well-paid workplaces for their membership, they will not be elected at the next union election. That might seem exceedingly strange to those on the other side.

But I suppose my point is this: this is a well-worn path of all coalition governments to take and try to smash a segment of the workforce—particularly one that may not be meeting their standards of wage outcomes. If they want to be able to achieve a five per cent increase and they do not think they will be able to, they will take whatever action they need—a $50 million or $60 million royal commission; they will put in place Mr Hadgkiss. A lot of the evidence that you see is digging up old ground, seeking evidence about what someone said and encouraging people to tape-record, heaven forbid, bad language. In the 42 years I have been a
member of the Transport Workers Union, if I worried about bad language, Mr Acting Deputy President O'Sullivan, much the same as you, I would have no hair at all—not just grey hair; I would be completely bald if I worried about a bit of bad language.

I do not ever support intimidation and I do not ever support bullying or harassment of people. People line up on the other side and talk about an industry they have no knowledge about. They have probably never even been at a building site and have certainly never worked on one. They have certainly never worked at a poor building site where you have to worry about whether you will get out alive at the end of the day, where you really have to worry about the safety and conditions, because everybody is competing for their jobs and their space on a building site; they are competing for their trade to get the job finished, make their money and get out; and the boss and the developer are hoping it all happens as quickly as possible because that is where the money is. Less time spent on building a building is efficient. It makes money.

We have a coalition vendetta. It was the MUA. Peter Reith set the dogs on the MUA. He went down there and tried to smash that activity. Now the CFMEU are in the spotlight. Exceedingly strange, the bill does not deal with corruption. Can anybody on the other side point out what it actually does about corruption? My understanding of corruption is that something has to change hands—some pecuniary interest or some actual money. What is going on? Senator Hanson, in her contribution, said people have to pay superannuation. That is a legal entitlement. Every worker is entitled to superannuation. There was a case just recently in Western Australia which may be of interest to some senators where a worker had no superannuation paid for 12 months and died. His estate said, 'That's not his fault. His employer should have paid it,' but the court case found that, because the worker had a letter saying his insurance premiums had not been paid and therefore his policy may stop, they threw the case out. So, despite the fact that the employer never paid the contributions, there was no liability determined on the employer.

I support the right of an appropriate organisation to make sure that workers on building sites have insurance and they have superannuation. We saw two very classic cases in recent times—one in Adelaide and one in Brisbane—where two workers were killed. They paid the ultimate price. Why should their family pay another price because no superannuation had been paid on the site? Who is going to police that? Is the ABCC going to go around and check employers' records and see that superannuation is paid up and all the insurance is there in case something untoward happens? No, they will not. That is left, quite appropriately, in most states to unions and their members. They look after themselves. If they do not have their superannuation paid, they tap on the boss's door and they say, 'Pay it.' When that person pays it and he is six months behind and he goes to see One Nation or the Xenophon party and says, 'I was stood over. I had to pay $50,000 worth of superannuation,' that is only because they had paid it late. It is quite common. In the transport industry people do not always pay their bills on time. They do not always pay the legal entitlements on time. In the case in Western Australia, the mining company did not pay for 12 months and the worker had no insurance. You cannot lambaste the union for actually doing their job. They are elected to provide safe, well-paid workplaces. They go about it in a very vigorous and very successful way.

A number of times senators have stood up on the other side and complained about the language. Oh my goodness. I think they ought to get out a bit more. My local pub on a Friday
night is not for people who just say, 'And how are you, George?' They get stuck in. Workers do that. It is no great surprise. And our representatives do it as well. It is no great surprise. In all the time that I have driven trucks on and off building sites, they have been a lot safer for the presence of the CFMEU. There will be an induction. You will make sure you have your hard hat, your safety glasses, your earmuffs if required and your steel capped boots, and if you do not have them you do not get on, and that is not always policed by the employers. A lot of contractors moving from job to job do not police it either. They send out their workers in the morning. Plenty of companies with electricians in Melbourne would work a 60-hour week and 12-hour shifts. You get a van, you take it home and you go to the job. You go to the job, you do the work and you go home. But, if you go to a CFMEU job and you do not have your safety gear, you probably will not be operating, and rightly so. That is not corruption, that is not extortion; that is rightly so. You should not risk yourself or anybody else on a building site. But it does cost money and people need to charge for the appropriate training, induction, licensing and provision of that safety gear.

The reality is that this is the same old agenda of the coalition government. It will not benefit them. They might win this argument tonight, but what we will have is a less safe and less well-paid segment of the building industry. We will have, despite Senator Hanson's proliferations, probably an increase in exploited immigrant labour or 457 visa labour. We will see that because of the challenges with languages. We have seen it in the trucking industry where people of an ethnic origin have been given 600 licences without doing the test. Do not think it cannot happen in the building industry. If you dismantle the CFMEU's safety-conscious activity in the building industry, you will make it less safe. Importantly, from the boss's perspective, you will make it cheaper. People will come in and bid on less safe equipment, less safe standards and will probably spin their super out for a bit. There will be more rip-offs. Senator Xenophon's attempt is honourable—to make sure people get paid on time—but I do not think it is going to be all that successful because, when you deregulate and you get the CFMEU out of all of the useful activity that they are involved in, it will be less well-paid and less safe. Unfortunately, there will be more deaths and more people not paid correctly.

Ark Tribe, a building worker in Adelaide, was one of the first people charged under the legislation. He went to a meeting as an occupational health and safety officer. He was called in and was not given the right to silence. A drug dealer has the right to silence, but a delegate in this circumstance must make a disclosure: who was at the meeting and what did they say? He refused. Through a number of court cases—it went on for quite a period of time until eventually he was acquitted—he refused to contribute under the coercion powers of this legislation. I am not sure what anybody in the building industry has done to be treated less favourably under the law than someone dealing drugs. You must tell them who was at the meeting, what you said and what was discussed. That is not Australian. That is most definitely un-Australian.

The reality is that workplace deaths and injuries will increase. If the Hon. Malcolm Turnbull has his way and construction workers are hit with a $36,000 fine for acting on safety concerns at work, fewer of them will act on safety concerns. There is no doubt about that. I come from a vintage where when a worker was killed on a building site everybody used to donate a day's pay. That was the only compensation really. A day's pay would be collected.
from everybody on the site. If you are going to fine a worker $36,000 for identifying and acting on safety concerns, that is really a serious problem. Essentially, it will be a $36,000 fine for saying, 'That's not safe and I don't think I can do it.'

Joe McDermott and Gerry Bradley, the two workers who were killed at Jaxon Construction in the Bennett Street project, died because their company had not set up an exclusion zone. Both were crushed to death by falling concrete. CFMEU organisers were restricted from carrying out their rights on that site. Because the company had been advised about right-of-entry provisions, no-one was able to go in and say: 'Look, that's not safe. We shouldn't organise that work that way.' Two men are dead because of the application of the current act, and those opposite want to go on to make it stronger.

There was the case at the Royal Adelaide Hospital of two workers who were both tragically killed on-site, both in a scissor lift accident. Both were crushed. There were multiple complaints about fatigue, schedules and disorganised sites, and consistently calculated blocking of legitimate OH&S initiatives from unions at the hospital site, all to no avail. But if the workers took action there would be a $36,000 fine. It is a volatile industry. It is not always as easy as it looks from the perspective of someone sitting in a Senate office. In a lot of cases these sites are multistorey and multifaceted. There are a lot of people going in different directions doing different jobs. You need vigilance in safety on any multistorey or multifaceted project. Who is going to provide it? The employer is conflicted. The employer or the major contractor needs to get things done in full and on time to get the work done, get the payment in and get reimbursed. Quite clearly, in those circumstances safety is not at the forefront of their mind. There are some very good companies with very good policies, but who enforces them? It has to be the workers. The workers have got to be able to say, 'That's unsafe.' If they risk a $36,000 fine, not too many workers are going to be saying that. They are more likely to say, 'It's not my job; I hope nothing happens,' which is not the right attitude to have.

We know that there have been deaths in the building industry for a long, long time, but I can tell you from my lived experience that building sites are safer than they were five years ago, much safer than they were 10 years ago and dramatically safer than they were 20 years ago. The only common denominator in those 30 years or thereabouts has been an active building union. They follow through not because they retire as millionaires, as property developers. They retire richer in a much broader sense because they have contributed to people's working lives. People have survived and worked longer—without losing a limb, without paying the ultimate price—and they have got a decent wage out of it. That is what union delegates and organisers retire with: the knowledge that they have fought hard for their fellow worker, been as collective as they could, had good outcomes and contributed to the fabric of Australian society.

If you want to go down this path, chop up what is a very good industry and make it less safe, less well paid and more fragmented, it is not where Australians want to go. Australians have rejected your well-worn path of Work Choices and AWAs and dog-eat-dog industrial relations. Peter Reith knew which side he was on and he was not afraid to say it: 'I'm on the side of big business.' That lot over there are on the side of big business. They are doing the job for big business. They are not looking after the small and medium sized contractors in the industry. They could not care less about them. They are looking after their big end of town.
That is the be-all and end-all of their campaign. They come in here screeching about someone using bad language on a building site. Well, go and visit one at lunchtime and see what happens. You will probably be treated with absolute courtesy. When things get a bit willing, people do tend to swear—that is, in the world I live in. I have four sons. They tend to turn the air a bit blue occasionally. I know from someone in the other chamber who has a couple of young lads in the building industry that they come home and are a bit robust. They are great people, they work hard, they want to get home every day safely and they want to earn a good quid. And they are members of a union, heaven forbid! They are members of the CFMEU, a great union doing good work for safe workplaces and better paid Australian workers. Long may they continue and more power to their arm.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (22:15): I rise to join this debate on the government's Building and Construction Industry (Improving Productivity) Bill. Labor opposes this bill for several reasons. First, because far from improving productivity in the building and construction industry, the bill will lead, again, to a deterioration in productivity in this industry. Second, this bill will undermine efforts to improve safety on building sites in this country. There are already far too many workers injured at work—or worse, in Australia's building and construction industry. Rather than improving workplace safety in this industry, this bill will simply increase the risks to the safety of building workers. Third, this bill represents an attack on the legal rights of individual building workers. It has rightly been said that under this proposed legislation, workers in the construction industry will have fewer legal rights and lesser legal rights than criminals such as drug dealers. Finally, Labor opposes this bill because it is the latest phase in the Turnbull government's policies to undermine and to attack the Australian trade union movement.

As I said in debate on the registered organisations bill last week, the Liberal Party have never accepted that trade unions play a legitimate and important role in our workplaces and in our society. The fact is that Liberals always want to attack the trade unions. It is in their DNA. They always want to deregulate the Australian Labor market and they always want to cut wages and conditions and reduce rights and protections for working people. So we know what this bill is: it is another instalment in the Liberal Party's pursuit of that hardline, anti-union, anti-worker agenda—a bill motivated by ideology not by evidence. Because, what the evidence shows is that the changes proposed under the bill will be bad for productivity, bad for workplace safety and bad for workers' legal rights. That is why this Senate has previously rejected this legislation and why Labor will continue to oppose the bill. No amount of tinkering by the government to garner crossbench support can fix the fundamental flaws at the heart of this bill, and no amount of cross-trading that this government is prepared to engage in will alter the fundamentally flawed nature of the legislation.

It is a bill that will introduce a draconian system of regulation for more than a million workers in Australia's construction industry, a draconian system of regulation which has already been put to the test under the former Liberal government and found to be deeply unfair and a resounding failure, even on its own terms. At the core of this bill is the establishment of a new regulator for the construction industry: the Australian Building and Construction Commission. What would this be? This would represent a return to the failed regulatory system that was in place under the former Howard government. The government, as is its want, has given this bill another Orwellian title; this time it is the Building and
Construction Industry (Improving Productivity) Bill. I say it is Orwellian because we know from past experience that the bill's key changes will reduce productivity, not improve it.

The Australian Building and Construction Commission was established by the former Howard government in 2005. It operated for nearly seven years from late 2005 to 2012, when it was replaced by the Fair Work Building Inspectorate. That means we do have something which is rare in public policy debates—we have a before and after experiment, which would allow us to assess the real world impact this bill would have. And what we know from that real world impact is the ABCC was a negative. When it comes to productivity, the evidence is clear: the ABCC was a negative when it was last in place.

The Australian Bureau of Statistics figures show that productivity in the construction industry increased at a faster pace in the seven years prior to the ABCC being established than it did in the seven years after it was established. And the data shows productivity in the construction industry has been higher every year since 2012, when the former Labor government replaced the ABCC with the Fair Work Building Inspectorate. The government's rhetoric is that productivity is low in the Australian construction industry, and they persist in telling all and sundry that it is all the fault of the workforce, it is all the fault of the workers and it is all the fault of the unions. This rhetoric is belied by the government's own export and investment agency, Austrade.

Austrade has produced figures for international investors which show the Australian construction sector is 19 per cent more productive than global competitors. In fact, Austrade's analysis shows that the Australian construction industry, when measured against global competitors, is more productive than several other industry sectors, including banking, media and retail. So the government has singled out for an attack an industry which actually has a better relative productivity performance than many other industries, an industry that has a better productivity performance relative to global peers than many other industries. And the government have also attacked construction workers and their unions over the issues of costs, and claim that the ABCC is needed to stem excessive labour costs. Again, this is not borne out by the evidence. Analysis by the Parliamentary Library shows that between 2004, when the ABCC was last in place, non-residential building costs increased faster than CPI. So the system this government are promoting with this bill, the re-establishment of the ABCC, has already been associated with construction costs rising at a faster pace than inflation.

Now I want to turn to workplace safety. This is a government that talks a lot about productivity and costs—even though its facts are wrong—and attacks trade unions and the building industry, a lot. You know what it talks a lot less about and what this minister talks a lot less about? The welfare and safety of workers. We know from tragic experience, safety is a critical issue in this industry. It is an industry where too many families have seen their loved ones go to work, only to come home with serious injuries, and some have not come home at all. Safe Work Australia's figures show that over the 11 years, from 2003 to 2013, there were 401 work-related fatalities in the construction industry. That is an average of 36 workers a year losing their lives on building sites or on building jobs. Over the 13 years from 2000-01 to 2012-13, an average of 12,600 workers were seriously injured every year—that is an average of 35 serious injuries every day. We know from Safe Work Australia figures that construction has one of the highest incidences of serious workplace injuries in the Australian economy—17 serious workers compensation claims for every 1,000 workers in the construction industry.
in 2012-13, and the fourth-highest serious injury incidence rate amongst all industries in Australia.

We on this side of the chamber take occupational health and safety seriously. We recognise that this is a particular challenge for the construction industry, a challenge which requires commitment by all: by workers, by unions, by employers—both head contractors and subcontractors—and by governments and regulators. This is another reason why we oppose this bill and oppose the re-establishment of the ABCC. Under this bill, workplace meetings over safety issues would be made illegal, and individual construction workers could be fined $36,000 for attending such meetings to deal with safety issues. The ABCC has a track record of prosecuting union officials and workers for taking action on safety. The case of the Adelaide rigger, Ark Tribe, is well known. In 2008, Mr Tribe attended a meeting on an Adelaide building site, where workers discussed safety problems and drew up a list of safety issues that needed attending to. The ABCC used its powers to call him to a secret interview. It then prosecuted him when he refused to attend. Our concern is that this system and the re-establishment of the ABCC would simply lead to an increase workplace injuries. Those concerns are not based on a fantasy; they are based on the conduct of the ABCC the last time it was in place, and on the safety outcomes during that period. When the ABCC was last in place, fatality rates for construction workers doubled from an average of 2.5 per 100,000 workers to five per 100,000 workers. In 2007, when the ABCC was last in place, worker deaths on construction sites hit a 10-year high with 51 workers killed. After the former Labor government replaced the ABCC, workplace deaths declined by 60 per cent.

Mr Acting Deputy President O’Sullivan, we should never forget the real-world tragedies that statistics like the ones I have outlined represent. They are about workers losing their lives, and the suffering of their families and loved ones. One of these tragic cases was the death of Ben Catanzariti, whose mother, Kay, has contacted the offices of many senators, including mine, to raise her concerns about workplace safety on building sites. Her son was killed when a 39-metre concrete boom collapsed onto him at an ACT building site on 21 July 2012, when he was just 21 years of age. Four years later, the whole family is still dealing with the legal processes arising as a result of this incident. Kay says she thought she was sending her son off to a workplace, not to a war zone. To her great credit, in the face of this personal tragedy, Kay has been working to raise awareness of the issues of workplace safety in the building industry. She has called for better communication and cooperation between unions, master builders, governments and workers. She has also said that she is concerned about this proposed legislation and its impact on workplace safety. For the reasons I have outlined, these are concerns that Labor shares.

We also oppose this bill because it gives excessive powers to the proposed new ABCC, powers which override the legal rights of workers in the construction industry. The ABCC’s proposed powers include unfettered coercive powers, secretive interviews and penalties including potential jail terms for those who do not cooperate. The government wants to arm the ABCC with powers to deny people the right to be represented by a lawyer of their choice and to remove lawyer-client privilege. The ABCC will be empowered to interview people in secret with no right to silence. It will interfere with freedom of speech and freedom of association. As Nicola McGarrity and Professor George Williams from the Faculty of Law at UNSW say:
The ABCC Commissioner's investigatory powers have the potential to severely restrict basic democratic rights such as freedom of speech, freedom of association, the privilege against self-incrimination and the right to silence.

Both the Parliamentary Joint Committee on Human Rights and the Law Council of Australia say this legislation breaches fundamental human and legal rights. Under this legislation, ABCC inspectors will be able to search private property without a warrant, including, in some cases, a person's home. The legislation will erode fundamental common law rights like the privilege against self-incrimination. If this bill is passed into law, the ABCC will be able to enter private premises and seize property, question witnesses, and order the production of documents without regard to the privilege against self-incrimination. These aspects of this bill have been strongly criticised by the Law Council. In a submission to the Senate Education and Employment Legislation Committee, the Law Council said:

A number of features of the Bill are contrary to rule of law principles and traditional common law rights and privileges such as those relating to the burden of proof, the privilege against self-incrimination, the right to silence, freedom from retrospective laws and the delegation of law-making power to the executive.

These are draconian powers in the hands of the ABCC. They will allow excessive intrusion by the executive government into the construction industry and into the lives and livelihoods of construction workers, and they will erode the civil liberties of such workers. It will mean that the Turnbull government will give fewer legal rights to Australia's 1.2 million hardworking construction industry workers than it does to criminals like suspected drug dealers. And you have to ask, Mr Acting Deputy President, what is the public policy benefit in giving some people who are the subject of much greater criminal allegations a privilege against self-incrimination, but not giving that privilege to a building worker? The government has never advanced a justification for that proposition.

All parties in Australia's workplace relations system must abide by the law, and allegations of breaches of workplace law must be investigated and, where the law is found to have been breached, relevant sanctions and penalties should be imposed. That is why Labor established the Fair Work Building Inspectorate, a tough regulator for the building and construction industry. It operates under legislation and regulations which get the balance right between policing and enforcing workplace law, whilst recognising basic civil liberties and workplace rights. The inspectorate is empowered to investigate compliance with the Fair Work Act, the Independent Contractors Act and the Building Code. It is authorised to take legal action to respond to breaches of the Fair Work Act, particularly in relation to coercion, industrial action, discrimination, workplace rights, strike, pay and right of entry. It is also able to intervene in court proceedings that involve a building industry participant or building work and to make submissions to the Fair Work Commission in proceedings that involve a building industry participant or building work.

The inspectorate is also empowered to refer matters to either Commonwealth, state or territory agencies, including the AFP, Director of Public Prosecutions, the Australian Taxation Office, the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Fair Work Ombudsman. So there is already a strong and effective regulator in place with adequate powers to ensure compliance with the relevant laws, including workplace laws in Australia's construction industry.
These facts give lie to the government’s rhetoric, because the government continues to assert falsely that this industry is somehow unregulated or unpolicied. What these facts show is that the government’s real agenda is actually not law enforcement. It is not enforcement of workplace laws. We all know what their real agenda is: it is about attacking the trade union movement. That is what their agenda has always been about.

This bill is not about improving productivity; it is about intimidating construction workers and putting downward pressure on pay and conditions. This is the Liberal Party under Malcolm Turnbull, embracing the hardline industrial relations policies of Abbott and Howard—a return to the ideology which inspired John Howard’s Work Choices legislation.

I was in the chamber the night Work Choices was passed after many days of debate. I can tell you: one thing has changed and one thing has not. What has changed is those on the other side have got a little bit smarter about how to try to dismantle a fair system of wages and conditions, and the trade union movement. They no longer simply go after unfair individual workplace contracts; now, instead, they try to attack the trade union movement. But one thing has not changed, and that is their agenda and their ideology, because their agenda and their ideology has always been, and always will be, about attacking working people’s wages and conditions, and the organisations into which working people form the trade union movement.

What this government is doing with this legislation is laying the ground for a re-run of Work Choices—laying the ground for Work Choices mark 2 with bills like this, which undermine the role of the trade union movement which has been one of the great forces for fairness and justice in our society. That is why Labor will be voting against this bill.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (22:32): I rise to make a contribution tonight to the debate on the Building and Construction Industry (Improving Productivity) Bill and the Building and Construction Industry (Consequential and Transitional Provisions) Bill. This bill was originally introduced in November 2013 where it sat idle for almost two years until 2015. In 2015 and early 2016, these bills were defeated twice in the Senate and for very good reasons.

As senators have already outlined through the course of this debate, these bills tonight are the ones that sent the country to a double dissolution election. So important were these bills that the Senate was dissolved in its entirety, and yet, strangely enough, these bills did not feature anywhere in the campaign. I think, as previous speakers have said, they were perhaps mentioned four times in the 55 long days of that campaign.

There have been a number of concerns outlined by previous speakers that have prompted not one, not two but three committees of this parliament and previous parliaments to all express grave reservations about the legislation after very considered assessment. I think is it fair to say that, in some cases, they have been scathing in their criticism of particular elements the bills contain. For these reasons and others, I will outline that the Senate was right to reject these bills in the past just as previous Senate committees were right to be critical of them as well. At their core, the measures contained in this legislation are excessive and discriminatory. They violate our democratic ideal of equal treatment before the law and infringe on fundamental rights. These are both unnecessary and unjustifiable.

Fundamentally, these bills must be viewed within the context of the government’s poorly concealed industrial relations agenda. While these bills masquerade under the guise of
improving productivity, in reality they are merely the thin end of the wedge of an agenda that is aimed at weakening some of the most basic labour rights enjoyed by Australians—those that allow workers to organise and to bargain collectively, to negotiate adequate minimum standards of employment and to ensure that they are protected by strong occupational health and safety provisions in their place of work.

There is no doubt in my mind that the passage of these bills would be the starters pistol for the broader effort on the part of this government to exhume and reanimate the corpse of Work Choices—in doing so, allowing the conservatives to crudely impose their 19th century view of industrial relations onto our modern 21st century economy and society and to achieve their long held goal of permanently curtailing the hard-won workplace protections and conditions achieved by Australian workers through their unions. Make no mistake: after the debacle of the Howard government's approach, the coalition has been deliberately coy with the Australian people over recent years about its real future intentions in the industrial relations space. But their ideological and at times pathological campaign against trade unions certainly is not hidden in this chamber.

Former Prime Minister Abbott promised prior to the 2013 election that there would be no significant changes to industrial relations laws during his term. However, during that term and since, this government has been unable to hide its true intent. In every instance where the government has had the opportunity to wind back wages and conditions or assail workers who choose to organise collectively, it has chosen to do so. There has not been a real wage or a package of conditions it has not sought to cut, and we have seen the government use this lever at its disposal every time.

For example, the government has pursued legislation to frustrate union representatives from talking to workers at their place of employment; maintained an outrageous bargaining position with our world-class Public Service, including demonising new parents as double dippers and rorters for accessing their negotiated paid parental leave precisely as it was intended to be used; and abandoned both the Early Years Quality Fund and the Clean Start principles designed to boost the pay of childcare workers and cleaners. I think the cleaners who will clean our offices in this building even tonight, after we go home, probably still have not had a pay rise in more than three years. That government has also conducted a concerted campaign against penalty rates, and of course who can forget the $60 million witch-hunt that was the trade union royal commission?

Beyond these more transparent actions, we have also seen the full machinery of government quietly deployed behind the scenes in an effort to soften the ground for wholesale changes to our industrial relations system that will eviscerate workers' pay and conditions. You only have to look at the recommendations of the Commission of Audit, the politically compromised trade union royal commission and the referral of penalty rates to the Productivity Commission to be clear about the intent of this government: it is to build a case to manufacture any justification, however flimsy, that will provide cover for pushing their agenda, and the ABCC is just one part of that.

With this radical and regressive workplace relations agenda in mind, it is also critically important to examine exactly what the government is proposing with the ABCC bills. Eminent academics, peak legal and civil liberties groups, along with the multiple parliamentary committees that have examined this legislation in detail, have been of one voice
when raising concerns about the extraordinary legal powers being proposed for a resurrected ABCC. Considered together, the committee reports and expert submissions note that these bills would involve the limitation, curtailment and extinguishment of a wide range of civil, human and political rights of people working or advocating for workers in the affected industries—even going so far as to raise questions of whether we would remain compliant with our international treaty obligations should these bills be enacted.

These bills do not simply reconstitute the ABCC, as we are so often told, as it operated in the Howard era. The bills also significantly enlarge its jurisdiction and provide for a raft of new coercive powers, including some with retrospectivity, and introduce a new civil offence for what the government has resolved to be unlawful picketing. It is worth acknowledging too that the prescribed penalties available to the ABCC would be several times higher than those allowed under the Fair Work Act. The Parliamentary Joint Committee on Human Rights report tabled in February 2014 noted its uneasiness with these sweeping powers. It said:

The bills give rise to a number of human rights concerns. The introduction of a separate legislative regime applying only to some workers and employers raises issues of equality and non-discrimination, both in relation to equal protection under the law and the right to non-discrimination …

The Law Council of Australia's submission expressed deep concern on the issue of substantive rights. Their submission implicated numerous provisions within the legislation as likely to have negative impacts on fundamental democratic rights. They caution the parliament to have:

… regard to the previous findings of the Parliamentary Joint Committee on Human Rights that the measures in the Bill are incompatible with Australia’s voluntarily assumed human rights obligations relating to the: right to freedom of association, the right to form and join trade unions—<br/>—it is a right; it is legal—<br/>the right to freedom of assembly; the right to freedom of expression and the right to privacy.

A useful foil for exposing the excessive and disproportionate powers these bills would grant to the ABCC is to compare and contrast them with those currently afforded to the Australian Securities and Investments Commission—the cop on the beat, so to speak, in the banking and financial services sector. And isn't it interesting to see how this government treats the misconduct, malfeasance, dishonesty and illegal conduct in banks compared to how they treat, or say they want to treat, some of the similar issues in relation to trade unions? The banks get called to Canberra once a year for a sandwich and a cup of tea, and a quiet chat behind the scenes; and the government get this special purpose commission with extreme powers, which significantly affects the civil liberties of ordinary workers.

In interactions with ASIC, for example, you will have to right to choose your own counsel; however, the ABCC is able to select your legal representation on your behalf. In dealings with ASIC, you are not restricted in your ability to tell people you have been interrogated; however, the ABCC can gag you in this regard. While legal expenses can be claimed when assisting an ASIC investigation, this is not the case with the ABCC. The ABCC would have the power to compel people to disclose issues that are covered by legal professional privilege or public interest immunity and universal protections when dealing with nearly all other statutory authorities such as ASIC.

Perhaps the power that most clearly exposes the excessive nature of all those the government is seeking to grant the ABCC is the power to compel witnesses to appear and
answer questions—something denied to both courts and the Australian Security Intelligence Organisation. The fact that Ron McCallum, the emeritus professor in the Faculty of Law of the University of Sydney, considers the ABCC's proposed powers comparable to those contained within anti-terror legislation should give everyone in this chamber pause for thought. Surely there is another more measured way that respects and treats employers, workers and their advocates fairly.

There is, and it was the approach Labor took in government. Let us be clear: Labor did not shy away from confronting tough issues in industrial relations; however, we worked cooperatively with business and unions to rebalance the excesses of the Howard era while promoting industrial harmony and improving productivity across the economy, including in the building and construction industry.

Our policy commitment at the 2007 election was to abolish the previous incarnation of the ABCC and to work with interested parties to establish a more even-handed approach, and we delivered. After commissioning expert advice through the Wilcox report, we accepted its recommendation to establish a specialist inspectorate within the Fair Work framework with a mandated focus on issues within the building and construction industry. But our approach was improved and guided by the desire to restore proper procedural oversight, reporting and fairness for workers and advocates.

Labor harmonised the laws so the normal provisions of the Fair Work Act governing conduct and penalties would apply to the building and construction industry, ensuring that no matter which industry someone works in or advocates for they are equal in their responsibilities before the law. Surely these are the principles that should inform any government's approach to dealing fairly with both employers and employees.

That brings us to considering the outcomes of the Fair Work Commission versus those of the former ABCC. In seeking to justify why the building and construction industry and its workers should be singled out for the extraordinary legal conditions I have previously described, the government uses two main claims—firstly that productivity surged after the Howard government established the ABCC and, secondly, that industrial disputes have risen massively since the abolition of the ABCC. There is merit in judging those claims against the available evidence, turning firstly to the issue of productivity.

In a speech on this legislation in the House of Representatives, Christopher Pyne MP, representing the minister, claimed that the establishment of the ABCC had improved productivity in the building and construction industry by nine per cent. Both former Prime Minister Abbott and the current Prime Minister have predicated much of their argument on this very same claim, with the figures sourced from research conducted by Independent Economics, then called Econtech. But, as Peter Martin in the Fairfax papers succinctly put it:

The Prime Minister uses discredited analysis to exaggerate reasons to reinstate the Australian Building and Construction Commission.

The methodology and the data in that report, used when arriving at this figure, have been repeatedly shown to be flawed. The 2009 Wilcox review, having examined the report, was unequivocal, instructing that 'it ought to be totally disregarded'. The Productivity Commission, which I think it is fair to say is hardly a bastion of left-leaning economic thought, examined the report in 2014 and arrived at effectively the same conclusion, stating: … when scrutinised meticulously, the quantitative results provided by IE—
Independent Economics—
or others do not provide credible evidence that the BIT/ABCC regime—
BIT refers to the Building Industry Taskforce—
created a resurgence in aggregate construction productivity …

Broadly speaking, according to ABS figures, productivity growth in the construction industry has more or less tracked the gains achieved in the wider economy over recent decades. Indeed, the period of most significant gain in the past decade was in 2011-12, after the abolition of the ABCC and under Labor’s Fair Work regime. In short, the case for radical changes to the rights of workers in a single industry based on productivity is baseless.

I will turn to the issue of industrial disputes. The ABS again provides less than comforting reading for the coalition. The long-term trend data shows an incontestable decline in the rate of industrial disputation—again, not just in the building and construction industry but across the economy. Under the Fair Work legislation both the economy at large and the construction industry have seen significantly lower rates of industrial action than under the Howard government, which in the case of the building and construction industry has been supported by more than 10 successive quarters of increasing labour productivity.

Fundamentally, the government and the ministers responsible for the carriage of this legislation have repeatedly failed to demonstrate why these bills deserve the support of the Senate. The government has instead sought to use tricky constitutional tactics and a double dissolution election to bully all of the crossbench into passing a law that would seriously erode the fundamental rights of affected workers in the building and construction industry.

The government have failed to present a compelling justification, either economic or productivity based, for re-establishing the harsh and oppressive ABCC. Nor have they attempted to address the litany of legitimate concerns raised through previous debates, through previous committee processes, regarding the diminution of basic human, labour and common-law rights and protections enjoyed by ordinary Australian workers that these measures would cause. They have failed to establish that the building and construction industry faces such radically different and substantial challenges that draconian powers and the power to impose unreasonable penalties should be granted to a special commission that has inadequate independent oversight. They have failed to make the case that the Fair Work Commission has not proved to be superior at fostering industrial cooperation.

Finally, while we understand that several independent deals have been done to woo the crossbench over to the government’s side, despite this Senate previously rejecting these bills on two occasions, we have not heard how or why a re-established ABCC would improve occupational health and safety in the building and construction industry—probably the most significant issue that that sector faces. It is a sector that historically and globally continues to be one of the most dangerous vocations for workers, where the risk of death or grievous injury remains all too commonplace and where the union is usually the only one standing up on behalf of workers to continue to fight for safe workplaces that ensure workers go home to their families every night.

Senator Wong mentioned the case of Ben Catanzariti and his mother, Kay. I have sat across the table from Kay. I have sat alongside her at various meetings. Ben was a young man who died in this city, aged about 21, from memory. I have listened to her campaign to make sure
that no mother goes through what she has gone through with the loss of her son. I wonder how many senators in this place have done so—have sat down with somebody who has lost someone on a building site suddenly, without notice, in the most horrific of circumstances, somebody who has taken that call to find out that the son who went to work that morning is never going to be seen again. I can tell you the only people who have stood by those families—and, in this case, alongside Kay—have been the CFMEU. They were there from the moment Ben died. The last time I saw Kay, which was several years after Ben passed away, the union was still there supporting her, making sure she was okay, making sure she had access to everything she needed. Whilst we hear a lot in this chamber about all the terrible things that allegedly go on, we rarely stop and acknowledge the times when the union is the only voice standing up on behalf of the workers and making sure that, as much as they can, those workers get good pay, good conditions and, importantly, get to go home to their families at night.

This bill should be seen for what it is. It is about pursuing the trade union movement, because this government has a pathological hatred of trade unions, of their ability to organise ordinary working people to collectively bargain and to collectively fight for improvements to their working conditions. That is what this bill is about, pure and simple, and it should not be dressed up as anything else.

**Senator KETTER** (Queensland) (22:52): I rise tonight proudly to speak against the Building and Construction Industry (Improving Productivity) Bill 2013. I do so initially making the admission that I am a former trade union official and I believe that the importance of trade unions to our society is not talked about often enough in this place. In fact, in my first speech in this place I talked about the role of trade unions, the importance to our society and the importance to democracy of having a strong trade union movement. So my view, the presumption that I make, is that governments of all persuasions should understand that. Government should be working to foster the role of trade unions in our society, to nurture them and to assist them because of the very positive work that trade unions do, not only on behalf of their members but on behalf of all workers.

One only has to look at historical campaigns in relation to the eight-hour day, the introduction of paid annual leave, paid sick leave and paid parental leave, and superannuation. These were all campaigns of the union movement. I could go on quite a lot longer. All of these things were campaigns of the trade union movement which have not only benefited members but gone on to benefit all workers in Australia, as a result of the nature of our industrial relations system and the flow-on effects of the work that the trade unions do.

So my view is that, far from working out ways in which the government can seek to undermine and destroy the trade union movement, the government should be looking at ways to foster the union movement. We note that the membership of trade unions generally has been declining, and there are a whole range of factors for that. I want to maintain the point that the work of trade unions benefits all in society. It is an important institution for democracy, and responsible governments should be doing what they can to support the trade union movement.

Here we have evidence that this government is pursuing an anti-worker agenda. When we look at this legislation, we often hear the government saying that this is about attacking corruption within a particular union in the construction industry. The CFMEU is not the only
union that operates in the construction industry; there are a range of unions that apply, but we often hear that this particular union as being the reason for this legislation.

When I look at this legislation—this bill—I do not see the fact that it is targeted against a particular union; I see that the potential victims of this bill are in fact the workers in the construction industry, irrespective of whether they are members of the CFMEU or any other union that operates in the construction industry. The workers will be the poorer for the impact of this legislation, and I will go on to detail my reasons for that.

I want to start by looking at the report of the Law Council into the re-establishment of the Australian Building and Construction Commission and, in particular, its submission to the Senate Education and Economics Legislation Committee of February this year. The Law Council could hardly be said to be in the pocket of the trade union movement. I think it is relatively respected—in fact, it is a respected organisation; it is well known as providing submissions on a regular basis to various government inquiries in relation to changes to legislation and how they affect the rule of law in Australia.

It is very instructive to note that the Law Council, in its submission, indicated that its primary recommendation was that the bill not be passed in its current form. The Law Council went on to detail the reasons for their view in relation to the ABCC bill. They pointed out, firstly, that there were inappropriate delegations of legislative power in the bill, which have been previously identified by the Senate Standing Committee for the Selection of Bills. They said:

Provisions that enable the determination of important matters by regulation are an inappropriate delegation of legislative power and are inconsistent with the rule of law. They also then went on to look at other issues, including the issue of coercive powers, and they pointed out in their submission that:

... the Bill would invest the ABC Commissioner (or his or her delegate) with coercive powers, including powers to require a person to: give information or produce documents to the ABC Commissioner; attend an examination before the ABC Commissioner and answer questions or provide information under oath or affirmation. These powers can be exercised when the ABC Commissioner reasonably believes that the person has information or documents relevant to an investigation by an inspector into a suspected contravention, by a building industry participant, of the Bill or a designated building law; or is capable of giving evidence that is relevant to such an investigation.

In addition, coercive questioning powers can be exercised by an ABC Commissioner … if s/he reasonably believes that the person is capable of giving evidence that is relevant to an investigation into a breach of a law delegated by regulation.

They point out that:

It is an offence to fail to comply with requirements … by an examination notice to produce documents or information, or attend to answer questions. … The penalty for these offences is a maximum of 6 months imprisonment—

a quite extraordinary punitive response.

They go on to point out that there is:

an implied power to exclude a particular legal practitioner from an examination if they conclude, on reasonable grounds, and in good faith, that the representative either will, or may, prejudice the investigation.
So it strikes at the rights of a person to be represented by a lawyer of their choice. They continue:

Unlike the existing *Fair Work (Building Industry) Act 2012* (Cth), the Bill does not require the ABC Commissioner to apply to the Administrative Appeals Tribunal (AAT) for an examination notice. So they point out that there is an absence of independent oversight in the process of authorising the use of extraordinary coercive information-gathering powers prior to their exercise.

They go on to refer to—and I know other speakers have discussed these issues—entry onto premises without consent or warrant. There are provisions in the bill which authorise:

Australian Building and Construction Inspectors and Federal Safety Officers (FSOs), (who together are called authorised officers) and invests them with powers to enter premises, ask a person’s name and address, and require persons to produce records or documents if s/he reasonably believes that the Act … is being breached.

This power to enter premises under clause 72 of the bill is without consent or warrant and, extraordinarily, the powers also authorise entry into residential premises.

The Law Council’s Rule of Law Principles provide that the use of executive powers should be subject to meaningful parliamentary and judicial oversight particularly, powers to, for example, enter private premises…

If there is any reason why there should be entry into private premises, this should be subject to adequate oversight and reporting requirements.

They go on to make the point that:

These coercive powers are proposed to be granted to persons who are not trained law enforcement officers.

And it is not clear what level of training is going to be provided to these particular officers.

On the issue of self-incrimination:

The common law privilege against self-incrimination and against penalty is a substantive right of long standing—

the Law Council points out.

It is deeply ingrained in the common law and is not to be … abrogated by statute except in the clearest terms.

In fact, they point to Australia's obligations under the International Covenant on Civil and Political Rights and that it is protected under Australia’s legislative framework.

But:

Clause 102(1) of the Bill abrogates the common law privilege against self-incrimination.

So these are extraordinary powers which are being introduced without appropriate safeguards.

The Law Council also said:

The Explanatory Memorandum to the Bill notes that the abrogation of the privilege was ‘considered necessary by the Royal Commission’—

that is the Commonwealth Royal Commission into the Building and Construction Industry of 2001.
In response to this, the Senate Select Standing Committee for the Selection of bills noted that the report relied upon to justify the necessity of the approach based on factual claims about the ‘closed nature of the industry’…

This report was written in 2003—now more than 10 years ago.

So the justification for the removal of this important privilege is based on factual circumstances from a decade or so ago.

I continue to quote from the Law Council’s very worthwhile submission. It states:

The Law Council considers that the guiding principle for legislators should be that privilege is not to be abrogated except:

(a) in circumstances where there is a real and foreseeable risk to public health and safety;
(b) by clear, express statutory provisions;
(c) where both use and derivative-use immunity are provided; and
(d) where it is restored when the immediate danger, the subject of the investigation or enforcement activity which triggered the abrogation, has been averted or downgraded.

I think the Law Council make some very powerful arguments against the abrogation of that principle. They also talk about the reversal of the onus of proof. This is another important principle of the rule of law, which should only be amended under particular circumstances. They point out in their submission:

A reversal of the onus of proof to an evidentiary standard may be justified where a matter is peculiarly within the knowledge of the affected individual.

So there are some grave concerns expressed there about that reversal of the onus of proof.

Another point which I believe has already been touched on, which I will just very briefly refer to, is retrospectivity where these new coercive powers, including the power to obtain information, apply in relation to any contravention or alleged contravention of the bill that occurs before the transition time. To this extent, the transition bill provides for retrospective operation of coercive investigatory powers. It always surprises me that those on the other side who say that they are conservatives and are opposed to retrospective legislation are, unfortunately, often advancing legislation which has a retrospective aspect to it. I think that is quite extraordinary. Retrospectivity is something that we should avoid, particularly in a situation where workers are affected by it.

The exclusion of judicial review is another area where the Law Council have expressed concern. They indicated that decisions made under the bill would be excluded from the application of the Administrative Decisions (Judicial Review) Act 1977. They propose that that exemption should be removed from the bill.

Senator Gallagher has already touched on the issue of incompatibility with human rights, and this is something which I am particularly concerned about. The Parliamentary Joint Committee on Human Rights has, as the Law Council points out:

… previously formed the view that the:

• prohibition on picketing, and the further restrictions on industrial action, are incompatible with the right to freedom of association and the right to form and join trade unions;
• prohibition on picketing is likely to be incompatible with the right to freedom of assembly and the right to freedom of expression; and
• proposed sections—
of the bill—
… are incompatible with the right to privacy.

The submission of the Law Council is, I believe, an indictment of this government. It is an indictment of the legislation which is before us. As I indicated, the Law Council is not an organisation which one would say is in the pocket of the trade union movement. It is a bastion of advocacy for proper application of the rule of law in Australia.

One of the things which I think needs to be taken into account in consideration of this bill is the nature of the industry which is affected by it—the nature of the building and construction industry. In this regard, I pay my respects to the work of Senator Cameron in the Economics References Committee and his inquiry into the insolvency in the Australian construction industry. I was involved in and was the chair of that committee from 22 October, but Senator Cameron played a very, very important part in that work.

The report of that particular committee notes that 'more needs to be done to protect honest industry participants from unscrupulous individuals'. The report notes that the nature of the industry is such that it:
… accounts for an unacceptably high proportion of total alleged criminal and civil contraventions of the Corporations Act.

The report indicates:

This is indicative of a culture that has developed in sections of the industry in which some company directors consider compliance with the Corporations Act to be optional.

In an environment such as this, where you have directors of companies operating this way in the building and construction industry, it is not good enough to have a union which operates by the Marquess of Queensberry rules. There are companies led by people who do not consider that they need to comply with the Corporations Act. This is an explanation as to why there is a need for a union which is quite strong and a union which in this industry is of necessity going to be militant in nature so it can protect the workers from the abuse of the law by the company directors operating in it.

The report goes on to talk about the structure of the Australian construction industry. The industry has, in the words of the CFMEU:
… transformed from an industry dominated by construction companies with large, directly employed skilled workforces to a pyramid of contractual relationships involving a head contractor at the top and multiple layers of smaller specialist subcontractors underneath.

This is an environment which is ripe for exploitation, and it is necessary to have a strong union operating in this area.

For all of these reasons—the importance of the rule of law, the need for the legislation to be amended and the fact that we need to have a union operating in this area which is capable of dealing with what I would argue is lawlessness on the part of the employers in the industry—I think this bill needs to be reviewed. The protection of workers in the industry should be this government's prime concern. Unfortunately, we are seeing that this is an attack on the rights of workers.

**Senator KIM CARR** (Victoria) (23:12): I would like to join with Labor senators in opposing this legislation. It has been said that doing the same thing over and over again and
expecting a different result is the classic definition of insanity. Of course, I think the government would have to agree that that is precisely what they are doing here. This bill, the Building and Construction Industry (Improving Productivity) Bill 2013, restores a tribunal that existed under the Howard government—a tribunal that achieved nothing. There were no criminal convictions and there were no improvements in productivity. There were measurable improvements in productivity that came about as a result of Fair Work Building and Construction, an agency that was established under the Labor government. This bill actually shuts down that capacity.

So what we have here is a government that is intent on destroying something that actually works in order to revive something that did not. I would have thought that, on the face of it, that is a pretty mad suggestion. However, because of what we have seen in this chamber tonight and what we have seen in repeated examples, I think we have now reached a point where there is very little real dialogue going on around these measures. We understand that the government knows that the new ABCC will not do any better at increasing productivity, despite the title of this bill, than the old one did. It also knows that there is substantial evidence of extensive misbehaviour and all the rest of it that are matters that are already—and ought be—the subject of proper legal proceedings involving the established powers of the police and the courts and the powers that they already have.

This does not seek to actually clean up the building industry as the government presents it. The new ABCC, like its predecessor, in fact is not designed to do that. It is in fact a political exercise which is to demonise unions in the hope of garnering support for the Liberal Party. This is a program of institutionalisation of fear in Australian workplaces so, of course, the government can claim that it has had some success in its attempt to intimidate workers in their ability to actually represent and defend their interests in terms of their living conditions.

We have just had a double dissolution six months ago—or thereabouts—where this was supposed to be the core issue. It was hardly mentioned throughout those proceedings, because the government knew that the measures that this bill contained were not going to attract popular support. They are not there to attract popular support; they are there to actually smash the industrial conditions of workers in the building industry. What we know is that this is essentially a program driven by ideology, a political strategy, and it is not based on the evidence of fact. This is a government that has followed in the long tradition of conservative governments—in fact going back to the 1920s—where there have been measures that have sought to cripple the trade union movement and cripple the capacity of workers to defend themselves.

The whole issue here is one where the government makes great claims about the importance of the rule of law, the importance of civil liberties and questions about the judicial process, but is quite prepared to scrub all of that, if it can pursue a political advantage. Senator Ketter has, I thought, made a very, very strong case as to why this new regime that the government is seeking to establish is fundamentally in breach of what we have understood to be human rights in this country.

I take the view that the Law Council, which was quoted extensively by Senator Ketter, has made a point. I am struck by their position, which was that there are a number of features of this bill that are contradictory to the rule of law principles and the traditional common law rights and privileges, such as those relating to the burden of proof; the privileges against self-
incrimination, the right to silence, freedom from retrospective laws and a delegation of lawmaking power to the executive. It is also unclear as to whether the aspects, which will infringe upon rights and freedoms, are necessary and a proportionate response to the allegations of corruption and illegal activity within the building and construction industry.

That is from a body of lawyers. It is a body that is known—in fact, I think—for its conservative response to these issues, not one that is identified directly with the labour movement. This is a body that has a reputation for the defence of human rights and the defence of our legal system, so when they talk about the fact that these measures provide for no right to silence or protection from self-incrimination, they are affecting the rights of Australians not just in the building industry—and this legislation affects, with the new investigative powers that are proposed in this legislation, any person, including construction workers, workers in transport, in warehousing and in manufacturing and even bystanders. They can be forced to provide information and documents to the ABCC. People must answer questions without the ability to refuse on the grounds of self-incrimination, a protection required by the International Covenant on Civil and Political Rights. So this legislation seeks to remove an individual's right to silence and to render legal representation a mere nicety. Of course that is backed up with the threat of six months jail.

In this legislation, there is not even a right for you to talk to your family about these measures. These are quite serious propositions that have been contested when applied to our security agencies when dealing with acts of terrorism—'contested' I say. Yet these are measures provided to an industrial policeman, and they are accepted by a considerable number of people on the other side. I would have expected, given the tradition of liberalism in this country, that they would be saying that this is not an appropriate use of state power in a country like this. It goes to the point where there is the power to enter private premises, without a warrant, without consent.

There are also provisions in the legislation for the reversal of the onus of proof. We are told that there will be amendments which will pick up all these sorts of things—but let's see if that actually happens. The fact that a Liberal government would propose such legislation raises, I would have thought, serious concerns in itself. Then, of course, we have to think about what it is about Liberal governments in the way that they see the rights and responsibilities of citizenship, because it is quite clear that those rights and responsibilities do not apply to working people. They do not apply to people who actually work for a living. They do not apply to people coming together to defend their industrial rights. That is why I think these measures are very concerning, and that is a pattern that we have seen for some time with conservative governments.

This is a government that has sought to restore the ABCC for a number of years now. It has sought to justify this on the basis of spurious claims about productivity. The modelling firm Econtech has been brought to brook over this arrangement. The evidence is just not there to sustain the claims. Of course, the minister likes to draw attention to the ABS figures on that, but what we see on close examination is that the claims made by the government about these measures are not borne out by the facts. It is a simplistic and misleading argument to suggest that there have been changes in industrial bargaining and industrial disputation which have anything to do with the former ABCC. Judge Murray Wilcox, in his 2009 report entitled Transition to Fair Work Australia for the Building and Construction Industry, made the point:
I believe most of the improvement in days lost in the building and construction industry would have occurred anyway, even if the BCII Act had never been enacted.

We have similar propositions being developed by the Productivity Commission and various analysts associated with the conservative side of politics. There is an acknowledgment that the government's own claims about the ABCC have never been borne out in fact.

What I am concerned about here is that we have a government that is intent on pursuing this matter to the point where it would now appear that it is prepared to accept amendments on a whole range of issues not even directly related to the bill. So the question now becomes whether or not the government can secure any legislation, no matter what content remains, so that it can claim at the end of the parliamentary session its great success. The reality is that with the cross-trading that is now occurring, whether it be on water, whether it be on guns or whether it be on a whole range of matters, bears no relationship to the actual measures that the government originally sought to present through this legislation. What I think is happening is that the government is just so desperate to make an assertion of success that it is prepared to fundamentally alter the way in which these measures are considered; it is prepared to accept just about anything. I do not know what the bill will look like by tomorrow. The way I hear the news reports it strikes me that it is becoming ever increasingly the case that the propositions being advanced by the crossbenchers are more and more bizarre. This is the government's desperate attempt to get anything through so that it can claim success.

Now we know that, when it comes to the building industry, the government has a particular hostility to the CFMEU. Of course we know that the CFMEU is an organisation that is particularly hated by this government. It is hated, because of it success. It is hated, because this is the harbinger of things to come for so many other unions, if this government is successful.

It may well be that we will end up with a bill that will not do any of the things that I am actually suggesting is this bill, because it may well be an entirely different bill. I am prepared to acknowledge that that is a distinct possibility—not that we have seen these amendments, I might add However, given what we know is being discussed through the various media reports, it is apparent to me that it is possible that this government is quite prepared to trade away quite a number of the fundamentals of this bill just so it can have a bill of the title that of course it started with so many years ago.

I do not think most Australians will actually be fooled by this. They will not be fooled by this, because they understand the real issues with regard to wages, the fact that there are real wages in this country that have not effectively frozen, that the participation rates in terms of employment are the lowest we have had in a generation, that the level of casualisation and the great insecurities about work—these are the things that concern Australians, and they know that this government's attempts to cripple workers' ability to actually enforce their industrial rights will actually make all of those things worse.

Ordinary Australians are also worried that, if you rip out money from their social wages, whether it be in education, whether it be in health, then all of the struggles that they face at work become more acute. That is why I am suggesting that this government may well have a pyrrhic victory when it goes through its various amendments tomorrow. However, it will not change the fundamental problem that this government is seeking to pursue an ideological
agenda and a desperate bid to undermine the capacity of the Australian labour movement to actually defend workers' living conditions and the social wages of ordinary Australians.

Of course we know that a number of industrial disputes around this country have highlighted what is happening. I know, for instance—I had representation just this week from workers who are engaged at Griffin Coal in Western Australia. This is in the town of Collie, which is in south-west part of Western Australia, where there are in fact two coalmines operating: Premier Coal and Griffin Coal. Premier Coal is run, I understand, by a Chinese interest; and Griffin Coal is a subsidiary of Lanco Infratech Limited, which is based in India.

I understand that at Griffin Coal there is a dispute where 270 blue-collar production and maintenance workers have been faced with very substantial reductions in wages and conditions—in fact, there has been a proposal by the company there to reduce pay by 40 per cent under the black coal award in terms of the hourly rate. This is a group of workers in a town which is dependent upon the coal industry, where they will, in fact, face acute hardship. There is grave concern in that community about the social cost of the industrial dispute and the reduction in wages for workers in that particular town.

The effect is running not just through the coalmine but through the sporting clubs. We have seen the effect on people's capacity to buy and sell their house. We have had questions about whether or not small businesses will be able to operate in circumstances where the economic activity of the town has been reduced so dramatically. In that case, you have got unions trying to defend the lifeblood of the town itself against a company that is actually seeking to reduce wages and conditions quite dramatically.

What we have are the circumstances whereby we have heard from those opposite, 'Well, of course, the Labor Party would say that, wouldn't they, because the Labor Party is closely aligned with the trade union movement.' It is true: we are and we are quite proud of it. The Australia Labor Party arose in this country because of the gross injustices that existed and the fact that the trade union movement by itself was not able to secure the social and economic advances that were needed for workers in this country without the need for political action. So we have had a long association with the trade union movement and we are very proud of that association.

Of course it is that association that has led to this country having some of the most advanced social and economic conditions in the world, something we should be very, very proud of. This is a country which, in the early part of the 20th century, was regarded as a social laboratory for the world. This is a country that throughout the 20th century has been able to maintain living standards that were the envy of many others around the world. Today, when economic conditions for working people have become so much more adverse, it is even more important that we maintain the capacity of the trade union movement and the Labor Party to represent the working people of this country. So we make no apologies for our association with the trade union movement. We have had an association which has been of enormous benefit to the prosperity of this nation and to the levelling of social justice in this country. I fully acknowledge that there is a lot more to be done, given the levels of inequality and injustice in this country.

Many of these problems can only be attended to by Labor governments because they will not be attended to by conservative governments. Conservative governments are creatures of town and country capitals. They have historically been that and nothing has changed in that
regard. Just today, we have seen Senator Brandis only too happy to be embroiled in quite a
dispute in Western Australia dealing with this very issue about their association with the
corporate sector. I heard Senator Hanson earlier this evening telling us that we really cannot
have a situation of anything other than a bill such as this, which seeks to actually restrict the
ingredients of delegates on the job. She was saying they are obstructive. She said that we cannot
force companies to employ more apprentices, and that we have to be there to look after
business interests. One Nation is becoming a pale imitation of the Liberal Party— (Time
expired)

Senator KITCHING (Victoria) (23:32): I want to go straight to the heart of this Building
and Construction Industry (Improving Productivity) Bill 2016. The heart of it is that the
history of Australia is littered with examples of the Liberal Party pretending to be the party of
free enterprise, yet rigging the system in favour of the big end of town; pretending to be the
party of the individual, yet willing to trample on human rights; and claiming to be the party of
freedom, yet willing to remove the right to silence to reverse the onus of proof in favour of
bureaucrats and government officials. It has said it is the party of equality of opportunity, yet
its minister for immigration is allowed to say an entire nationality is no good, and it has said it
believes in the rule of law, yet it has been caught out trying to use legal proceedings to deliver
favours to the Western Australian government, dudding other creditors of the Bell Group.

Those who believed in liberal values were concerned that Labor would use the wartime
powers of government to establish a socialist society in which government would seek to
control people's private lives and run the economy for the benefit of special interests. What
would those liberals of the 1940s make of those trading under their name today? What would
those liberals make of a legal framework devised for one industry
and one alone that stripped
all of the basic civil rights we once took for granted? If one looks at the Liberal Party's
websites, it says things like, 'The Liberal Party is a party standing for the values of liberty and
human dignity.' That is what their website promises.

And do you know, Mr Acting Deputy President, this reminds me of a trip I once made to
Cuba. Like many others recently, I have turned my mind to Fidel Castro and his passing.
While we were in Cuba—and it was a very interesting trip—we had a very nice fellow as our
tour guide, a man called Julio, who was originally from the Cuban foreign ministry, a former
Cuban representative at the United Nations and the best propagandist I have ever met.

In amongst the questions with which we peppered him—including if they had the right of
habeas corpus—we asked him, 'Julio, are there strikes in Cuba?' Of course, we knew the
answer to the question before it was asked. Julio said: 'Si. There was a strike once, but Fidel,
he moved among the people and then there was no strike.' I realise today that the Liberal Party
is the Liberal Party in name only. It has an authoritarian streak that not even Malcolm
Turnbull's abundant tie collection can hide. Who would have thought that Malcolm Turnbull
was much like Fidel Castro?

The Cuban authorities only recognise a single national trade union centre—the Central de
Trabajadores de Cuba—the CTC. It is heavily controlled by the state and the Communist
Party, which appoints its leaders—there are some similarities there. Membership is
compulsory for all workers. Before a worker can be hired they must sign a contract in which
they promise to support the Communist Party and everything it represents. The government
explicitly prohibits independent trade unions. There is systematic harassment and detention of
labour activists, and the leaders of attempted independent unions have been imprisoned. The right to strike is not recognised in law. I say again: the right to strike is not recognised in law. What regime does this remind us of? Let's take a guess—that would be the government. This government.

The Liberal Party is lost. It is broken. It is obsessed with union-bashing, even though the level of industrial action is at historic lows. Where do I get this from? From the Australian Bureau of Statistics; from figures released in March 2015 showing that just 1.6 days for every 1,000 employees were lost in that quarter. What was the government doing at this time? Preaching gloom and doom for its cynical electoral purposes, and well into their reprehensible waste of $60 million on a royal commission. But the joke is on the coalition. The truth is that the working people know what the government's agenda is. They hear loud and clear what the government means when they hear certain buzzwords—'innovation' from a Liberal means job losses; 'ideas boom' from a Liberal means, 'We're really determined to make it easier to sack you lot.'

Labor opposes unions or individual unionists acting outside the law, but we equally oppose the fraud of using sham royal commissions to fabricate threats to our national security that do not exist. We equally oppose star chambers. The Institute of Public Affairs, dear to the hearts of some of those opposite and certainly not a bastion of pro-Labor thinking, points out that four fundamental legal rights are abrogated in current federal laws in 262 separate provisions—14 that remove or undermine the right to silence; 92 laws that eliminate natural justice, the right to a fair legal process; 108 that remove the privilege of self-incrimination; 262—

An honourable senator interjecting—

Senator KITCHING: I can go back to Fidel, believe me! There are 262 Australian legal provisions in breach of the basic legal rights we think Australia is all about, and that the Liberal Party would pretend that it advocates. And this is from Simon Breheny, a former Victorian Young Liberal president and probably a friend of some of those opposite. These figures were as it stood in December 2014; no doubt, there are now more. This legislation will make a bad situation worse, and it turns one of our most important industries into a political football that is subject to the whims of a meddling bureaucracy and prattling politicians.

What has been most banal in the speeches given by the coalition today has been the referencing en masse of the recommendations from the trade union royal commission—that is, of course, very easy to do. One only has to read through the pages at the end. I would not want to damn anyone by comparing them to the trade union royal commission, but the listing of recommendations, which many contributors from the government have done during this debate, are from an entirely politicised commission of inquiry. Even worse: it was a body that had absolutely no understanding of the organisations they were tasked to investigate. It is something that can be compared to the—

The ACTING DEPUTY PRESIDENT (Senator Back): Resume your seat, Senator Kitching. Point of order, Attorney-General.

Senator Brandis: On a point of order—

The ACTING DEPUTY PRESIDENT: On what topic?
Senator Brandis: On the offensive language in relation to a royal commission. It is actually a crime under the Royal Commissions Act to reflect upon a royal commission or the integrity thereof.

The ACTING DEPUTY PRESIDENT: Thank you. You have made your point, Attorney-General. Can I invite you to remove the word 'politicised', Senator Kitching, and then we can move on—to the royal commission as being 'politicised'.

Senator KITCHING: I think, Deputy President, under the standing orders, it was only parliamentarians and members of the judiciary that were caught by that standing order, not commissioners of royal commissions.

The ACTING DEPUTY PRESIDENT: Thank you. You can continue, Senator Kitching, but I do ask you to remain respectful of the system. Thank you, Senator Kitching.

Senator KITCHING: Let me explain this analogy—or one of the analogies that I can make with the royal commission. Dyson Heydon was appointed by the Abbott government—so far, so good, one might think. A former High Court justice, he gave a number of speeches talking about his credentials as a royal commissioner. One might say: good luck to him. He then looks around for counsel assisting. Instead of choosing someone with any familiarity with industrial relations, he chooses his stablemate, a barrister from his own chambers, Jeremy Stoljar.

Now that might be understandable, if a little cosy, but Mr Stoljar, of course does not list his areas of practice, not even after being counsel assisting in a royal commission looking at trade unions, as including industrial relations. These are the areas of practice he lists as of today: commercial, corporations law, equity, property. Of course this was made all the more ironic at the royal commission when Mr Stoljar asked witnesses about cronyism and even more so when other junior counsels assisting were also from the same chambers—that would be Eight Selborne.

Mr Stoljar, of course, was paid around $3.3 million for his efforts at the trade union royal commission. Why is this important? It is important, because various members of the government keep referring to this commission as being an all-important source of why the ABCC legislation needs to pass. Let me assure you: the union movement and the Labor Party did not need to wait until a conservative government came along, who, at that point, needed to say: don't look at us; look over there. I will give you two examples—and let me start with the Leader of the Opposition. It was the Leader of the Opposition, as the workplace relations minister, as he then was, who intervened in the Federal Court of Australia hearing into the HSU East. He realised that action needed to be taken then—well before this government. While members of the coalition were having secret meetings with Kathy Jackson, calling her the 'lion of the trade union movement', the former Prime Minister calling her 'a decent woman of the trade union movement', the Leader of the Opposition—or the workplace relations minister, as he then was—was acting.

Again, I will go to the HSU as an example: after the Minister for Workplace Relations intervened, the Federal Court ordered the three branches of the HSU to be demerged, to appoint an administrator and for new elections to be held. The elections were bitterly contested, but new leadership was mostly chosen. The new leadership started with 12 big black rubbish bags in Kathy Jackson's office in which she had thrown torn-up documents,
sometimes torn up into tiny little pieces, sometimes only into halves, that had HSU mugs full of cigarette butts in them and torn-up membership forms—the ultimate insult to members.

We set about putting those documents back together. Where appropriate and where it was obvious that those documents belonged to another branch or to the national office, we handed those documents back to them, as they are the rightful custodians of those documents. With our help and encouragement, for example, we suggested those branches contact their relevant banks to check various accounts mentioned and they were able to put those documents to good use.

The Heydon royal commission was not necessary for any of this, and they did an appalling job. Not only was the commissioner himself biased and then wrote a judgement about himself stating he was not biased—a truth ipse dixit, if I have ever heard one. Another similarity—

Senator Brandis interjecting—

Senator KITCHING: I am sure this Attorney-General is able to illuminate you.

The ACTING DEPUTY PRESIDENT: Just ignore the distractions, Senator Kitching, and refer your remarks through the chair.

Senator KITCHING: Much like the trade union royal commission was extended, throwing good money after bad, this government is attempting to have this bill passed because it too feels that it cannot abandon the faulty course it has set for itself.

I want to turn to particular parts of the proposed legislation, and I want to look particularly at chapter 3, which deals with the Building Code. I will read the outline of this chapter:

The Minister may issue a Building Code under this chapter. The Building Code is a code of practice that certain persons...must comply with in respect of building work.

The ABC Commissioner can require a person to report on his or her compliance with the Building Code.

I will go to particular matters. I am now currently looking at the enterprise agreement between an employer and the CFMEU of Victoria. The agreement is between 2016 and 2018, so it is a current agreement. I will refer you to 14.8(a), which is the clause in the enterprise agreement which relates to training and related matters. Why is this in here? Obviously we want to train people, we want apprentices, we want people to be able to be in that industry and to be good participants in that industry. Let me read you the clause as it currently stands:

a) If the Company employs five (5) or more tradespersons in any one classification it undertakes to employ at least one (1) apprentice or make arrangements to host an apprentice from an agreed accredited group apprenticeship scheme.

b) If the Company does not currently have an apprentice as provided for in paragraph a), reasonable time shall be allowed to enable the Company to comply with this clause. Further, the parties are committed to a strong ratio of apprentices in the industry.

c) All apprentices must attend their official off-site apprenticeship training at a Registered Training Organisation ("RTO") that is acceptable to the apprentice and the Company. The preferred RTOs are the established TAFE college network, but private RTOs may be used if agreed by the parties.

d) The Company will use agreed accredited training providers to provide training as contemplated by this clause to employees.
Now that sounds to me like a pretty reasonable clause. Let's now go to references to the code which is envisaged by the legislation—that would be, particularly, 11(3)(a) and 11(3)(d). Relevant comments are:

This clause mandates a ratio of apprentices to tradespersons.

This clause is inconsistent with section 11(3)(d) of the advance release Fair and Lawful Building Sites Code 2014 to the extent that the engagement of apprentices from certain accredited group apprenticeship schemes requires the agreement of the union.

Sham contracting—

**The ACTING DEPUTY PRESIDENT:** Senator Kitching, resume your seat for a moment. Senator Macdonald, on a point of order?

**Senator Ian Macdonald:** Mr Acting Deputy President, I have been watching the debate on TV—

**The ACTING DEPUTY PRESIDENT:** Can you tell me the point of order, Senator Macdonald?

**Senator Ian Macdonald:** The point of order is standing order 79(6), which says that senators may not read their speeches, and this senator has read every single word. I know she is new, but the standing orders provide you cannot read speeches.

**The ACTING DEPUTY PRESIDENT:** Senator Macdonald, resume your seat. Senator Kitching is actually quoting from clauses in the act and in industrial agreements that exist at the moment. Senator Kitching, please resume.

**Senator KITCHING:** I will turn to sham contracting. I would think that most people in this chamber would actually think that sham contracting was a bad thing. If I turn to the clause in the enterprise agreement:

The Parties agree that the practice of paying "all-in" rates, including the practice of paying such rates to a corporation nominated by the Employee to receive such remuneration on his or her behalf constitutes a serious breach of this agreement.

That to me sounds pretty reasonable. Let's go to the code as it is envisaged by the legislation; the comment on reference 11(3)(i) is:

This clause prohibits the employer from paying a loaded rate of pay.

Visa compliance is another issue:

The Employer will ensure all Employees are lawfully entitled to work in Australia performing work under the Agreement.

Sounds pretty good. Sounds pretty reasonable. It goes on:

Before employing overseas workers no any temporary visa, the Parties will confer to ensure that all parties are satisfied that all laws in relation to sponsorship, engagement and employment of a person who is not an Australian citizen.

That sounds to me to be reasonable and lawful. Nos. 11(1)(a) and 11(3)(d) change this. No. 11(1)(a) 'limits the ability of the employer to manage its business or to improve productivity.' No. 11(3)(d) would alter it thus:

This clause requires the employer to consult with, or seek the approval of the union (which is referred to as a party throughout the agreement), in relation to the source of employees.
I could go on with others such as offer and acceptance of weekend overtime, work on Fridays, and Easter and Christmas shutdowns. These are all things that most Australians would consider to be normal leave entitlements. For example, Victoria has just had a change of heart over its Christmas shutdown.

What I do want to go on to say is that it is the construction companies and the CFMEU for whom this legislation is trying to limit, and it is trying to enter into arrangements which will not actually suit the workers who work on those sites. It is a piece of legislation that is overly restrictive and it will be unhelpful to the Australian building industry.

Senator FARRELL (South Australia—Deputy Leader of the Opposition in the Senate) (23:51): I rise to speak in this debate on the Building and Construction Industry (Improving Productivity) Bill 2013. I appreciate that it is late in the evening. As we saw in South Australia recently, there was a very long debate on the subject of euthanasia.

An honourable senator interjecting—

Senator FARRELL: Will you please protect me, Acting Deputy President, from these interjections?

The ACTING DEPUTY PRESIDENT (Senator Back): Just ignore those interjections, Senator Farrell, and address yourself to the chair. Order on my right!

Senator Farrell: At your behest, Acting Deputy President, I will ignore them. I will do the very best to ignore them—particularly Senator Macdonald, because he is a very ignorable character in this place. He is a very ignorable character.

I rise to speak in this debate. I appreciate it is very late in the evening. I am not sure that this parliament does its best late in the evening. I think more civilised—

Senator Cash: We don't look our best!

The ACTING DEPUTY PRESIDENT: Order on my right! The speaker will be heard uninterrupted.

Senator Farrell: You do, Senator Cash, I have to say. I cannot say the same for Senator Brandis! Please do not take offence at that.

Senator Ian Macdonald: Don, you shouldn't have stood aside for Penny three years ago!

Senator Farrell: Please protect me, Acting Deputy President.

The ACTING DEPUTY PRESIDENT: Senator Farrell, stick to the topic and I am sure the interruptions will cease.

Senator Farrell: I am sticking to the topic. On the topic, I rise to oppose the legislation. That is the reason. I am opposing this legislation because this is very bad legislation.

Government senators interjecting—

The ACTING DEPUTY PRESIDENT: Order on my right! Senator Farrell, resume your seat. The speaker will be heard in silence. Thank you.

Senator Farrell: Thank you for that protection. That is what I have been waiting for all evening, Acting Deputy President.

Senator Ian Macdonald: The Deputy President is your colleague Senator Lines!
Senator FARRELL: No, I called him Acting Deputy President. I used the correct nomenclature, Senator Macdonald.

Senator Ian Macdonald: We want to hear him speak on what he thinks of the CFMEU.

Senator FARRELL: I think this is a terrific union, I have to say. I think this union, the CFMEU, is a terrific union.

An honourable senator: What about the SDA?

Senator FARRELL: They are an even better union. Let me tell you about the CFMEU, the reason you are keeping us here so late tonight when most of the Australian people have gone to bed. They are not listening to this debate, but what they should understand is this is a terrific union. The reason your side of politics—

The ACTING DEPUTY PRESIDENT: Through the chair, Senator Farrell.

Senator FARRELL: Thank you for keeping me on the straight and narrow there, Acting Deputy President. Tonight we are talking about the building industry and that terrific union, the CFMEU. The reason the people on the other side are seeking to attack this union, and the people who work in the building industry, is very simple: they do a good job; they protect the wages and conditions of people who work in the building industry, one of the toughest industries in this country. They have managed to raise the wages of those workers and they have managed to protect those workers. Very often, because of the action they have taken, serious accidents on building sites have been avoided. Everybody opposite knows exactly what I am saying is true. They are looking at me and none of them can deny what I am saying about this terrific union.

I will go back to how this all started. It all started because Malcolm Turnbull, just over six months ago, said that he was going to have a double-dissolution because this legislation had not previously passed the parliament.

Senator Ian Macdonald interjecting—

Senator FARRELL: I did come back, Senator Macdonald.

Senator Macdonald interjecting—

The ACTING DEPUTY PRESIDENT: Order, Senator Macdonald.

Senator FARRELL: In one sense I cannot criticise this, because—

Government senators interjecting—

Senator FARRELL: There has been only on resurrection, and that was Jesus Christ!

Government senators interjecting—

Senator FARRELL: I do not know about Lazarus! There has been only on resurrection! But last night I heard with my own ears Prime Minister Turnbull say, in a large group of people, that he would never again have an eight-week election campaign—’It is a solemn promise.’ I do not know whether or not to believe him, because he has said so many other things that you cannot believe. But he said last night that he would never again have an eight-week election campaign. I do not know whether the reason he said that was that he realised he made a mistake calling a double-dissolution election over this issue. Perhaps he did. Perhaps he realised that he made a fundamental error. But he has made a mistake.

Senator Macdonald interjecting—
The ACTING DEPUTY PRESIDENT: Order, Senator Macdonald.

Senator FARRELL: Thank you, Acting Deputy President. I got very little support from the previous Acting Deputy President. I am expecting a better result here.

Government senators interjecting—

Senator FARRELL: Oh, yes. And we are even in the same party.

Government senators interjecting—

The ACTING DEPUTY PRESIDENT: Order on my right.

Senator FARRELL: This legislation is simply bad legislation. In this country how do we single out one section of the workforce for special treatment?

Senator O'Sullivan interjecting—

Senator FARRELL: That is a threat—I take that as a threat, Senator O'Sullivan. You might carry that out. Based on what I heard from the Prime Minister last night I do not think he will. I do not think he will be calling any more double-dissolution elections. He certainly will not be calling any more eight-week elections, because even he I think now realises that he has made a mistake.

But there is no mistaking that this legislation is not about industry or the economy. It is simply an attack on those hardworking people who work in one of the toughest industries in this nation. Not only is it an attack on their industrial rights but it is also an attack on the safety of the workers across this industry.

Senator Ian Macdonald interjecting—

Senator FARRELL: Senator Macdonald, that is exactly what it is. It is all about making it easier to reduce hard-won standards that have improved the safety of this industry. It is not perfectly safe, but it is a damned sight safer than it ever was, and it is a damned sight safer than it ever would have been without the work of the construction union.

Honourable senators interjecting—

Senator FARRELL: No, they are good. They are a very good organisation, but the CFMEU is also a very good organisation.

A government senator: Not as good!

Senator FARRELL: Eh?

A government senator: Not as good!

The ACTING DEPUTY PRESIDENT (Senator Gallacher): Order on my right!

Senator FARRELL: Well, they are on a par. I do not want to start that sort of division, but I have been urged—

Honourable senators interjecting—

Senator FARRELL: I am not sure that they would let you. One of your members tried to join many years ago, as I recall, and we would not accept him.

An honourable senator: Name them!

Senator FARRELL: Tony Abbott.

An honourable senator: No surprise there!
An honourable senator: Could you explain that a little bit more.

Senator FARRELL: Oh, there are a number of books on that subject, so I do not need to explain it.

I finish on this point: this is bad law. A whole lot of hardworking people in the building industry will be adversely affected if this legislation is passed. I strongly urge the other side to reconsider. You do not have to do this to these workers, and I strongly urge you not to do it.

Tuesday, 29 November 2016

Senator ROBERTS (Queensland) (00:01): As a servant to the people of Queensland and Australia, I rise in the chamber to discuss the Australian Building and Construction Commission legislation to end the unlawful monopoly control of the building industry by a few large companies. There will be a lot said during this debate. We have already heard a lot of Chicken Littles. Indeed, a lot has already been said. One can understand why both sides are passionate. When the dust settles, let us all remember we live in a robust democracy renowned for these types of national discussions. We are a mature nation, and debates like this should serve to remind us that, although we have many differences, we are all one nation.

We have mentioned before that Pauline Hanson's One Nation party comes to this industrial relations debate with a very large volume of information garnered from listening to various people in the Australian community, from the North of Queensland to rural Victoria. Australians tell us that they expected an industrial relations landscape free from coercion and intimidation, producing better outcomes for our economy and safer workplaces. If senators were to listen, there are lots of people ready to tell us their stories. Instead of agitating within this great chamber, how about we turn this debate over to everyday Australians—you know, the people that pay our wages? We need to hear the stories Australians have to tell—stories about people's needs and hopes for our country. Let's hear from them how they envisage delivering a safe workplace free from union boss intimidation and with participants that adhere to the rule of law. Australians not only cherish a robust democracy free from intimidation; we cherish a robust economy with opportunity for prosperity shared among us all. How blessed am I to have heard so many of those stories from across Australia about the needs of everyday Australians.

Before I turn to the stories of fellow Australians, I seek the indulgence of the Senate to reveal a personal secret. Are you ready? Senators may well know that I am a former coalminer. Coal is in my blood and is a heritage I inherited from my father and my grandfather, who also worked as underground coalminers. What fellow senators might not know is that at various points in my coalmining career I was a member of the CFMEU. In the mining industry, just like most construction sites, you cannot get a job unless you are a CFMEU member. I was told this directly by union bosses and mine managers: 'Join the union, young fella, or you can't work in the industry of your father and your grandfather.' One day in my chosen career, however, I experienced an epiphany. I realised that we humans are at our very best when people are free—when we are free from union boss coercion and restrictions that rob workers of security, satisfaction and pride. I realised that, for whatever good some unions do in some circumstances, if they are led by belligerent, radical or corrupt union bosses, they transform from the defenders of workers into the workers' enemy.
I believe that my desire to work towards total human freedom makes me fiercely pro-human. I have faith that humans can best make choices for themselves. Making individual choices is the bedrock of our robust democracy. Those who live in our democracy must respect freedom. The personal stories I am about to share with you come from rich experience, and I can verify them. As a miner and then a mine manager, I can proudly say I come to this debate, like all debates in which I participate, well informed and having researched well.

Of course, I accept this legislation does not specifically refer to the industry I was in before I entered the Senate, but the union involved in most of the issues concerning this construction industry is the same, the CFMEU. Although the ABCC may seem like it targets the CFMEU, it really does not; it just targets the mess they cause and the havoc they wreak on the economy. In *The Australian* newspaper on 22 October and 26 November 2016, regular columnist and industrial relation consultant Grace Collier, a former union delegate, gave the best explanation of why this bill is less to do with unions and more to do with the break-up of the terrible cartels affecting Australian businesses.

So let's have a conversation about cartels. Recently I heard a harrowing story of intimidation. The person relaying the situation has begged I not reveal his or her state of origin, specific type of construction business, or name. This person is black-banned by the CFMEU because the agreement his or her workers have chosen to enter is not a union agreement. They were called to quote on work in a residential high site. The work was for a Saturday morning. The builder could not find another subbie at a good price to do the work. The builder and the subbie agreed to a price, shook hands and correctly exchanged paperwork. The work was set for that Saturday morning. All the gear was prepared. The workers changed their weekend plans, and the blokes were enthused they would get some work and would end up getting some cash flow to feed their families ready for Christmas. The job was worth $15,000 to the subbie.

On the Friday, though, the CFMEU got wind of the work, marched onto the building site and told the builder that, if the particular subbie came on site, they would shut the whole job down. The builder knew that if the site was shut down when a concrete slab was being poured at a crucial stage, for example, it would need to be removed at a cost of $50,000. This kind of abuse of power has crippled the building industry. Of course, the builder backed out of the contract with the subbie on that fateful day, and it hurt me just hearing of his or her heartache and that of his or her family and employees. The subbie then took the matter to the Fair Work Commission, but I am told that, because the CFMEU bosses bullied another subbie into doing the work on a Saturday, they had limited power at the commission, as it was completed on the same day as originally planned. Who do these elites think they are? Just where does this industry-crippling power come from? The union bosses cannot be allowed to continue castrating our economy. They have to realise that ours is a free society where people can choose to belong to a union or not, as we wish.

How would the ABCC react to a case such as this? Firstly, the builder would not be able to preference non-union subcontractors. Secondly, the target of the ABCC is the business itself—in fact, the big business bosses who have become far too cosy with the union bosses and who jointly control the industry. This legislation is not just about union thuggery; it is about weak or corrupt employers that enable this anticompetitive, anti-freedom industrial
environment. Earlier in my speech I said Australians expected an industrial relations landscape that produced better outcomes for our economy and safer workplaces. Breaking the back of business monopolies' control mechanisms like secondary boycotts and union boss thuggery will all benefit our economy.

If Labor and the honourable Leader of the Opposition do not accept this legislation, I ask: why are they more interested in protecting the right of CFMEU bosses to jack up prices of homes than in standing up for everyday Australians and housing affordability? Why does the Leader of the Opposition choose corrupt union bosses, and their control of cartels, over young families trying to get a head start in life? Across Australia, Aussie families, union members and long-suffering small businesses want to know what it will take for the Labor boss to realise he has made a mistake and must now support attempts to bring honesty and order to our construction industry.

Ms Collier, in The Australian newspaper story I mentioned earlier, said that at the core of the ABCC is an anticorruption building code of conduct that acts as a 'mechanism by which the government will clean up the building sector'. The building code 'does not apply to unions. It applies only to companies.' Both Ms Collier and I are perplexed about why so few in the government talk about that, but they should, because it is vital.

Ms Collier's experience in this sector is rich and varied. Her wealth of experience is certainly worth acknowledging and listening to. To paraphrase Ms Collier further, the ABCC legislation gives the commission power to investigate the enterprise agreements of companies and ensure they are not colluding on price-fixing of construction projects balloonning due to unproductive union controls. She said big businesses ensure the operation of an anticompetitive business model, a model that relies on price-fixing the subcontractors' input costs to maximise profit for all of those involved. And who pays? The taxpayers and the workers.

This so-called level playing field is at its core price-fixing. Construction industry price-fixing has given us the reputation as the most expensive construction destination on our planet. Ms Collier tells this story further by saying that union boss interference and involvement is trashing our economy as business seeks to avoid union trouble by acquiescing to union boss demands. At any local pub in Australia—be it the Logan Village Hotel, the Sexchange Hotel in Coen, with its interesting name change, or the Aussie at Shepparton—one of the main things people talk about is how much the cost of a house is for young people these days. The story of our younger generation not being able to buy a house is directly attributable to the high cost of construction, very ably identified by Ms Collier and others.

Earlier on I told the story of a subbie who was in fear for his employees and family. He fears that his personal details will be revealed. The Senate should consider the stories of amazing Australians who are willing to put their names to stories, like CFMEU veteran Mr Brian Fitzpatrick. He has been a member of the CFMEU for many years. The CFMEU rose from the BLF grave. Mr Fitzpatrick told his story in The Australian Financial Review on Thursday, 20 October. I am very proud to say that Mr Fitzpatrick now is a true Australian patriot. For telling his story he deserves a bravery award.

Mr Fitzpatrick revealed the union was, in his words, 'corrupt'. He said it was still as militant as ever and that union members who talked to him were desperate for a change. Disillusioned union members tell their stories of despair at the way the union bosses are
destroying their union and industry. They are speaking out. They want their union back. Mr Fitzpatrick said that when he was younger and working as an organiser for the union it was a fair dinkum responsible industrial organisation—he must have been very young—however, as the current corrupt leadership gradually took control it progressively metamorphosed. It was revealed by *The Australian Financial Review* in telling Mr Fitzpatrick's story that he believes the only way things can change is with tighter laws being introduced to curtail the power of corrupt union bosses, laws that would set union workers free.

It was interesting to also read alongside Mr Fitzpatrick's comments those of Professor Anthony Forsyth of RMIT University, who said the CFMEU 'tends to run the gauntlet of whatever laws are in place'. The legal fraternity have long said the CFMEU is lawless. Dealing with lawless and vicious organisations is not new to Queenslanders. Folks are tough where we come from. Queenslanders do not back down, just ask Senator Pauline Hanson. The only exception to being tough in our state is the current Labor Party, whose members are weak on lawlessness. Imagine what the situation would be if we continued to allow a Labor government in Queensland to have control over the industrial relations landscape, a government universally accepted as being unable to punch its way out of a wet paper bag. The answer of course is to change the government in Queensland.

On Friday, 18 November 2016 *The Courier-Mail* revealed that the CFMEU lobbied the state government to give it power to bring health and safety contraventions against business under a new legal body replacing the Queensland Industrial Relations Commission. Senators, this revelation came about through a freedom of information request looking at correspondence within the office of Grace Grace, the industrial relations minister. Minister Grace said the matters were not considered because they were outside the scope of her current review—for now.

I suggest to the chamber that militant union bosses are the least equipped to keep workplaces safe, especially when we consider the evidence provided by Mr Fitzpatrick, many judges and the Dyson Heydon royal commission. Minister Grace should know this, but we all live in fear of her ominous prediction that changes to give union bosses more power are on the backburner only for now.

On all accounts, the CFMEU bosses are more interested in the money they can glean or skim are a result of maintaining the cartel. In another story published in *The Courier Mail* on Friday, 18 November 2016, it was revealed that Queensland's largest construction companies, including Hutchinson Builders, Multiplex and Probuild, have all been strongarmed into signing new enterprise agreements ahead of the introduction of the ABCC legislation. These EAs give excessive control of building sites to the CFMEU.

At the core of that particular *Courier Mail* story are demands in the EA that make it impossible for the employer to have any employee who does not exercise their choice not to be a union member. Australians are wary of the rising power of militant union bosses. From Federation Australians have wanted the right to be or not to be a member of a union, and that is the core question: does this law protect the freedom of association and enshrine that right? Australians never accept a situation where the balance of power is tipped too far in one group's favour over the other. The Australian public is smarter than the elites give them credit for. Power imbalance is always corrected by the public, and I firmly believe that that is why the election result turned out the way it did with an endorsement of these bills by the people.
Everyday Aussies want to see balance and freedom returned to our building industry. People want to pay a fair price for the products we all buy. People do not want added cost because union bosses are rorting the system and taking kickbacks. Aussie taxpayers want to stop paying 30 per cent more for government infrastructure just because union bosses run a cartel and corral business into unethical and economy-destroying practices. Taxpayers would welcome four hospitals for the price of three, four schools for the price of there, four roads for the price of three. Workers would welcome a return to safe working conditions under the previous ABCC's jurisdiction. Workers would welcome the benefits of freedom from tyrannical union bosses.

Last month, as a speaker in Melbourne, I proudly followed Senator Abetz at the HR Nichols Society, where he quite clearly called for a stronger, harder and bolder approach by the Liberal Party’s leadership toward reforming industrial relations, and the ABCC is a very good start. One Nation is pleased to strongly support Senator Abetz's call. In fact, we are pleased to see that finally so many of our bold policies, including industrial relations reform for higher accountability of union bosses together with a fair go for workers and taxpayers, are finally being accepted by the mainstream and being so eagerly talked about.

Last Monday, many of us spoke about the scandalous behaviour of the leaders of the HSU. However, this pales into insignificance in comparison to the CFMEU's systematic and institutional criminality. Because I committed in writing, in accordance with the wishes of Commissioner Dyson Heydon, not to further disclose the nature of the material covered in a confidential volume, I cannot go into details. Suffice to say that I am troubled that such behaviours as those discussed are occurring in our country.

Many judges have raised the matter of abhorrent and unlawful behaviour in CFMEU bosses. As I speak, around 100 CFMEU thugs have been prosecuted or are facing prosecution for wreaking havoc on the nation's building sites and are accused of more than 1,000 industrial breaches. The CFMEU and its officials have also been fined a total of around $7 million for industrial breaches which have been dealt with by the courts since 2002. Those brought before the courts have included the CFMEU's national secretary, Michael O'Connor; construction division head Dave Noonan; and New South Wales and Queensland secretaries Brian Parker and Michael Ravbar. Violence, extortion, blackmail, intimidation—court case after court case has shown that this union is so corrupt that it makes the Teamsters union under Jimmy Hoffa look like the Sisters of Mercy.

In search of mercy, I have held discussions with the Chairman of the Australian Competition and Consumer Commission, Mr Rod Sims, and then written to the Treasurer and Minister for Employment, requesting a review and narrowing of the IR carve-out that is currently being abused by large building companies and the CFMEU. Further, as discussed in my speech on the CFA legislation, we need to work in the longer term to remove federal government involvement in industrial relations, because centralisation has enabled union bosses to hide their activities behind complexities in legislation. First, though, we need to end union boss lawlessness.

The evidence from people we have listened to, read about or had tell their stories privately show how the corrupt tentacles of this organisation have spread to non-labour organisations that the CFMEU has bribed and co-opted to its cause. The Greens, for example, received hundreds of thousands of dollars from the CFMEU and other left-wing unions despite the fact
that their fanatical antidevelopment policies would slash both mining and forestry jobs. However, the reach of the CFMEU tentacles does not stop there. In 2010 alone, the CFMEU donated $1.2 million to left-wing activist group GetUp! in its campaign to destroy our nation's second-largest export industry—coalmining—yet the CFMEU purports to represent coalminers while it actively supports that industry's destruction. And they are succeeding widely. The CFMEU has bought many votes in this chamber. They have bribed and cheated—and these are not my words, they are the words and stories of everyday Australians who are sick of our democracy, our traditions, our heritage, our economy being trashed by these elites. Just who do these elites think they are?

I stand here to say that we, the everyday people—the decent, honest workers in the construction, forestry and mining industries—have had enough. Despite all the intimidation and the corruption of workers, employers and even politicians, we, the people, finally have the opportunity to give people a voice in our nation's parliament. Those of us who have called for the criminal and economy-wrecking activities of the CFMEU and its building company cronies to be brought to book can finally ensure that everyday Australians have our hour. Ask not for whom the Senate bells toll, CFMEU bosses. They toll for thee, and for the colluding company bosses.

Australia was once called 'the lucky country', but now this only true for a few powerful elites. For everyday Australians it is no longer the great country it once was. We must pass this ABCC bill to make Australia great again, for everyone.

Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (00:21): I rise to conclude debate on this very important legislation, the Building and Construction Industry (Improving Productivity) Bill 2013 and a related bill, and, in doing so, I thank all senators for participating in what has been a very extensive second reading debate.

This legislation is important for the more than one million workers who work in the construction industry. We need to ensure that they are provided with a work environment that is cooperative, productive and, just as importantly, where the rule of law applies. This piece of legislation is important to the more than 300,000 small businesses in the industry. Those small businessmen need an industry that is fair and free from bullying, intimidation and dodgy deals that prevent them from competing for work. And it is important to all Australians who rely on our building industry for the schools, hospitals, roads and other infrastructure we use every day and, of course, for the taxpayers who pay for it.

This legislation is important for the Australian economy. The construction industry is the third-largest industry in Australia. It accounts for approximately eight per cent of our gross domestic product and provides the foundation upon which the rest of the Australian economy is built. When there is a problem with the construction industry, it flows through to the rest of our economy, and we know there is a problem with our construction industry. As two royal commissions have shown, the construction industry in Australia is held back by coercion, intimidation and unlawful industrial action. As at October 2016 there were 113 representatives of the CFMEU before the courts, which, as we know, in recent years have imposed fines of in excess of $8 million. However, it is a fact that these fines are clearly not enough for a union that treats lawbreaking as standard procedure and fines as merely the cost of doing business. In the words of one Federal Court justice:
The CFMEU is a ‘repeat offender’ which generally appears indifferent to imposition of penalties for contraventions of the Fair Work Act.

In the words of another justice:

The CFMEU’s record of noncompliance with legislation of this kind has now become notorious.

According to the most recent ABS industrial disputes data, in the June quarter two out of three working days lost to industrial action across our whole economy were in the construction industry. The rate of industrial action in the construction sector was nine times higher than the average across all industries.

We simply cannot let, as a country, this lawlessness and intimidation continue. Australians cannot afford it. It is estimated that the cost of infrastructure in Australia is up to 30 per cent higher due to the high level of industrial disputes in the construction industry. All Australians pay the price for this lawlessness and intimidation through higher costs or lost economic opportunities.

The legislation that the Senate is currently debating will do a number of positive things to address the issues that have been raised. It will restore penalties to their former level. It will remove the inability to apply the law in the event of a settlement. Currently, if the law is broken nothing can be done if the parties reach a settlement. This is wrong and does nothing to deter future law breaking. Our legislation will retain the compulsory evidence-gathering powers that the Labor Party retained in their own legislation but that, as we know, are due to sunset in 2017.

It will also introduce an effective building code for employers wishing to tender for Commonwealth-funded building work. The building code will give small businesses a fair go. It will protect subcontractors by ending the cartel between the big builders and the unions which, as we know, attempts to lock out small builders into costly pattern agreements which they simply cannot afford. It will provide stronger protection against actions designed to force builders to engage only union-preferred contractors, which again often excludes smaller contractors with lower costs. It will allow small subcontractors to negotiate genuine enterprise agreements directly in a way that suits the circumstances of their company and their workers. And it requires compliance with all relevant laws.

More importantly, the legislation will restore a tough cop on the beat with a proven track record in enforcing the law and ensuring unlawful action is properly investigated, dealt with and penalised. The facts speak for themselves. Prior to the ABCC, the rate of industrial disputes was five times the average across all industries. During the operation of the ABCC, it fell to just twice the average. On average since the abolition of the ABCC, disputes have gone back up to five times the average.

In the debate in the chamber we have heard a lot from those on the other side in relation to safety. It is a fact that the building and construction industry is an industry which can be dangerous, but not one person in this chamber—and indeed Australia—would dispute that safety in relation to the work environment, regardless of the industry in which you work, is paramount. Over the past decade the rate of construction industry fatalities has been trending down from 5.8 deaths per 100,000 workers in 2003 to three deaths per 100,000 workers in 2014. But I am sure that every single person in this chamber would agree that, while we still have one death in the workplace, it is one death too many, and I would hope that we are all committed and united to ensure that those statistics continue to trend down until we reach
zero, and we are united in that effort. It is a fact, despite what those on the other side have said, that the legislation to reintroduce the ABCC does not amend any workplace safety laws. It will not prevent legitimate safety issues being raised or addressed by employees, unions or health and safety regulators. The legislation continues the successful scheme overseen by the Federal Safety Commissioner, under which accredited companies have better safety records, including fewer fatalities and lower injury rates.

In closing, restoring the Office of the Australian Building and Construction Commissioner is not a leap into the unknown. It has been tested and we know it works. Restoring law and order to the building and construction industry is a commitment that the government made to the Australian people at the last election. It is a sensible solution to what we know is a clear problem. I commend the bill to the Senate.

The PRESIDENT: The question is that the second reading amendment moved by Senator Rice be agreed to.

The Senate divided. [00:35]

(The President—Senator Parry)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>8</th>
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<tbody>
<tr>
<td>Noes</td>
<td>52</td>
</tr>
<tr>
<td>Majority</td>
<td>44</td>
</tr>
</tbody>
</table>

**AYES**
- Di Natale, R
- McKim, NJ
- Rice, J
- Waters, LJ
- Hanson-Young, SC
- Rhiannon, L
- Siewert, R (teller)
- Whish-Wilson, PS

**NOES**
- Abetz, E
- Bilyk, CL
- Brown, CL
- Bushby, DC
- Carr, KJ
- Chisholm, A
- Dodson, P
- Farrell, D
- Fierravanti-Wells, C
- Gallacher, AM
- Griff, S
- Hinch, D
- Kakoschke-Moore, S
- Kitching, K
- Lines, S
- McAllister, J
- McGrath, J
- Moore, CM
- O'Neill, DM
- Parry, S
- Pratt, LC
- Roberts, M
- Scullion, NG
- Back, CJ
- Brandis, GH
- Burston, B
- Canavan, MJ
- Cash, MC
- Cleton, RN
- Duniam, J
- Fawcett, DJ (teller)
- Fifield, MP
- Gallacher, KR
- Hanson, P
- Hume, J
- Ketter, CR
- Leyonhjelm, DE
- Macdonald, ID
- McCarthy, M
- McKenzie, B
- Nash, F
- O'Sullivan, B
- Paterson, J
- Reynolds, L
- Ruston, A
- Seselja, Z
NOES

Smith, D
Urquhart, AE
Williams, JR
Sterle, G
Watt, M
Xenophon, N

Question negatived.

The PRESIDENT (00:42): The question is that the bills be now read a second time.

The Senate divided. [00:42]

The President—Senator Parry)

Ayes ......................33
Noes ......................29
Majority ..............4

AYES

Abetz, E
Brandis, GH
Bushby, DC
Cash, MC
Duniam, J
Fierravanti-Wells, C
Griff, S
Hinch, D
Kakoschke-Moore, S
Macdonald, ID
McKenzie, B
O'Sullivan, B
Paterson, J
Roberts, M
Sculion, NG
Smith, D
Xenophon, N
Back, CJ
Burston, B
Canavan, MJ
Culleton, RN
Fawcett, DJ (teller)
Fifield, MP
Hanson, P
Hume, J
Leyonhjelm, DE
McGrath, J
Nash, F
Parry, S
Reynolds, L
Ruston, A
Seselja, Z
Williams, JR

NOES

Bilyk, CL
Cameron, DN
Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lines, S
McAllister, J (teller)
McKim, NJ
O'Neil, DM
Rhiannon, L
Siewert, R
Waters, LJ
Whish-Wilson, PS
Brown, CL
Chisholm, A
Dastyari, S
Dodson, P
Gallacher, AM
Hanson-Young, SC
Kitching, K
Marshall, GM
McCarthy, M
Moore, CM
Pratt, LC
Rice, J
Sterle, G
Watt, M

CHAMBER
Tuesday, 28 November 2016

SENATE

3501

PAIRS

Bernardi, C
Birmingham, SJ
Cormann, M
Payne, MA
Ryan, SM
Sinodinos, A
Singh, LM
Urquhart, AE
Ludlam, S
Polley, H
Carr, KJ
Wong, P

Question agreed to.

Bills read a second time.

Senate adjourned at 00:45 (Tuesday)

DOCUMENTS

Tabling

The following documents were tabled by the Clerk pursuant to statute:

Australian Research Council Act 2001—Approval of ARC Discovery Early Career Researcher Award Scheme for funding commencing in 2017—Determination No. 149.

Approval of ARC Discovery Indigenous Scheme for funding commencing in 2017—Determination No. 151.

Approval of ARC Discovery Projects Scheme for funding commencing in 2017—Determination No. 153.

Approval of ARC Future Fellowships Scheme for funding commencing in 2016—Determination No. 150.

Approval of ARC Linkage Infrastructure, Equipment and Facilities Scheme for funding commencing in 2017—Determination No. 152.

Civil Aviation Act 1988—Civil Aviation Safety Regulations 1998—Exemption — use of radiocommunication system in firefighting operations (Victoria)—CASA EX166/16 [F2016L01793].


Export Control (Plants and Plant Products—Norfolk Island) Order 2016 [F2016L01796].

Higher Education Support Act 2003—Higher Education Support (Impel Solutions Pty Ltd as Trustee for the Hall Investment Trust) VET Provider Approval Revocation 2016 [F2016L01794].


Visas Attracting a Subsequent Temporary Application Charge Amendment Instrument 2016/120—IMMI 16/120 [F2016L01791].

Tabling

The following documents were tabbed pursuant to standing order 61(1) (b):

Department of Agriculture and Water Resources
Rural Industries Research and Development Corporation – Annual Report 2015-2016 – Section 46 of the Public Governance, Performance and Accountability Act 2013
(14 October 2016 / 17 October 2016)

Department of the Prime Minister and Cabinet
(14 October 2016 / 19 October 2016)

Department of the Prime Minister and Cabinet
Review of the Events Surrounding the 2016 eCensus – Improving institutional cyber security culture and practices across the Australian government – Alastair MacGibbon, Special Adviser to the Prime Minister on Cyber Security
(14 October 2016 / 20 October 2016)

Department of Infrastructure and Regional Development

Department of Defence

Department of Defence

Department of Defence
The AAF Company – Annual Report 2015-16 – Section 46 of the Public Governance, Performance and Accountability Act 2013(10 October 2016 / 10 October 2016)

Department of Defence

Australian Public Service Commission

Attorney-General’s Department