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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. Mitchell Peter Fifield
Manager of Opposition Business in the Senate—Senator Katy 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

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

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

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(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.

**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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<td>Prime Minister</td>
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<tr>
<td>Minister for Indigenous Affairs</td>
<td>Senator the Hon Nigel Scullion</td>
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<tr>
<td>Minister for Women</td>
<td>Senator the Hon Michaelia Cash</td>
</tr>
<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>
</tr>
<tr>
<td>Minister Assisting the Prime Minister for Counter-Terrorism</td>
<td>Hon Michael Keenan MP</td>
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<tr>
<td>Minister Assisting the Cabinet Secretary</td>
<td>Senator the Hon Scott Ryan</td>
</tr>
<tr>
<td>Minister Assisting the Prime Minister for Cyber Security</td>
<td>Hon Dan Tehan MP</td>
</tr>
<tr>
<td>Assistant Minister to the Prime Minister</td>
<td>Senator the Hon James McGrath</td>
</tr>
<tr>
<td>Assistant Minister for Cities and Digital Transformation</td>
<td>Hon Angus Taylor MP</td>
</tr>
<tr>
<td>Deputy Prime Minister and Minister for Agriculture and Water Resources</td>
<td>Hon Barnaby Joyce MP</td>
</tr>
<tr>
<td>Assistant Minister for Agriculture and Water Resources</td>
<td>Senator the Hon Anne Ruston</td>
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<tr>
<td>Assistant Minister to the Deputy Prime Minister</td>
<td>Hon Luke Hartsuyker MP</td>
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<tr>
<td>Minister for Foreign Affairs</td>
<td>Hon Julie Bishop MP</td>
</tr>
<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 Fieravanti-Wells</td>
</tr>
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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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<tr>
<td>(Vice-President of the Executive Council)</td>
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<tr>
<td>(Leader of the Government in the Senate)</td>
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<tr>
<td>Minister for Justice</td>
<td>Hon Michael Keenan MP</td>
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<tr>
<td>Treasurer</td>
<td>Hon Scott Morrison MP</td>
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<tr>
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<td>Hon Kelly O'Dwyer MP</td>
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<td>Minister for Small Business</td>
<td>Hon Michael McCormack MP</td>
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<td>Minister for Local Government and Territories</td>
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<td><strong>Minister Assisting the Prime Minister for the Centenary of ANZAC</strong></td>
<td><strong>Hon Dan Tehan MP</strong></td>
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<td>Minister for Health and Aged Care</td>
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<tr>
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<td><strong>Hon Dr David Gillespie MP</strong></td>
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<td>Senator the Hon Mitch Fifield</td>
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<tr>
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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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Thursday, 24 November 2016

The PRESIDENT (Senator the Hon. Stephen Parry) took the chair at 09:30, 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.

BILLS

Racial Discrimination Law Amendment (Free Speech) Bill 2016

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator LEYONHJELM (New South Wales) (09:31): I speak in support of my Racial Discrimination Law Amendment (Free Speech) Bill 2016, co-sponsored by senators Hinch, Hanson, Roberts, Culleton, Burston and former Senator Day to repeal section 18C of the Racial Discrimination Act. I am also a co-sponsor of the bill initiated by Senator Bernardi to remove ‘insult’ and ‘offend’ from section 18C. My bill would also remove the other two prohibitions, ‘humiliate’ and ‘intimidate’, leaving nothing remaining. This extra step is important. The articles by Andrew Bolt discussing affirmative action policies were ruled unlawful not just because they were considered to insult and offend; they were also considered to humiliate. And we should remember that state and territory laws already prevent intimidation, so there is no need for a federal prohibition on race based intimidation.

In the debate about the origin of our rights I am on the side of John Locke, not Thomas Hobbes. I believe we are born with rights and do not derive them from governments. Governments can protect our rights, and that is their proper role, but, when governments attempt to limit or remove a right such as free speech, the onus is on them to provide sufficient justification. It is not legitimate to ask, ‘Why do you need it?’ on the ground that you do not have it unless you can justify it. You have it whether you use it or not, the same as you have rights such as a right to life, association, justice and equality before the law.

In the case of 18C of the Racial Discrimination Act the government has provided no good reason for it at all. It is a misdirected law, ineffective and illegitimate. It inhibits free speech without achieving any offsetting benefits. It should go.

In an ideal world, none of us would entertain racist thoughts, but some of us do, and some also make racist statements that echo those thoughts. What 18C seeks to do is discourage racist speech in the hope that it will somehow change racist thoughts. It will not. In fact, it makes them more likely. Racists are prone to conspiratorial thoughts. Suppressing their speech is like suppressing flatulence. It might not make itself known in the same way, but it is still there and will erupt somewhere.
Far better to allow racist speech and to attack it with more speech. There is no shortage of people willing and able to do this. Racists are vastly outnumbered by non-racists, and it is incredibly easy to refute racist speech, which essentially relies on the idea that all people of a certain race think and act the same way. It is collectivist nonsense, not unlike the idea that all gay people think and act a certain way, or all women, or all disabled people.

We should remember that Weimar Germany had hate speech laws protecting Jews. Joseph Goebbels, Hitler's propaganda minister, was taken to court because of anti-Semitic remarks, and Julius Streicher, editor of the Nazi publication Der Stuermer, was imprisoned twice. The laws made minor heroes of Goebbels and Streicher. Every time Streicher's magazine was sued—36 times in about a decade—he got media attention. A young Hitler even waited for him outside jail. Even worse, while hate speech cases were prosecuted, the majority of assaults on Jews were not: a clear abdication of state responsibility. And with what came next, there is no clearer example of the futility of laws like 18C.

Section 18C also purports to protect the feelings of those who hear racist speech. You can insult, offend, humiliate or intimidate someone about their lack of wealth, education, class, intelligence, morals, strength or beauty. But if you try to do that on the grounds of race, the law leaps to their defence. What is it about feelings about race that makes them so different that they warrant the protection of the law? Are we really such delicate little daffodils that we are fine if we are insulted, humiliated or intimidated when it comes to our ugly children, our choice of partner, our IQ or where we live, but we cannot handle offence when it comes to race? What complete and utter claptrap; ridiculous and obnoxious. And for those who think 18C is primarily there to save non-white people from insults made by white people, that is also quite racist. The implication that non-whites particularly need their feelings protected is reprehensible. In fact, the law should never be used to protect us from hurt feelings of any kind. The law has a legitimate role to save us from physical harm—sticks and stones. But, just as we learn in school, if we go running off to the teacher when the rude boy calls us nasty names, and we are told to toughen up and deal with it, so should we not go running off to the law when the same thing occurs to us as adults. It is not only childish but a misuse of the law.

Some say this is not the time to be removing section 18C, because it will compromise national unity. Actually, free speech does not have a timetable. You either believe that we are entitled to say what we think or you don't. You either believe this is a free country or you don't. You either get the first line of our national anthem or you don't. There is no such thing as a bad time for free speech.

In fact, I think it is incredibly dangerous that immigrant groups in this country are being told they will face hate and vilification if 18C is repealed. There is no reason to believe that might be true. But in any case, we are talking about speech not actions. We should not be encouraging people to believe that views and opinions they do not like and do not want to hear should be suppressed by the state. When immigrants come to Australia, we expect them to adopt our liberal democratic values. That includes support for free speech. They come to Australia, at least in part, because it is a free country. We expect them to not only enjoy but also defend that freedom. We are not going to introduce the death penalty on the basis that they had it in their former home country, and neither should we compromise on free speech just because some people are not used to the idea of hearing things they do not like. Rather
than endorse suppression of that speech, they need to learn that, first, there is no obligation to
listen and, second, free speech also means they have a right of reply.

Liberal democracies were never meant to be places of unity. That is a feature of fascist and
Communist regimes and, dare I say it, Islamist regimes. What characterises a democracy is
that propositions are put to the test of public deliberation. People who make national unity
arguments in a democracy probably do not understand democracy at all. We cannot believe in
freedom but make exceptions for when someone might have their feelings hurt. I—and along with
a lot of other people, I suspect—I am sick of hearing about exceptions to freedom.

Questions of Aboriginality and Australian identity are matters of great public importance.
They should be debated on the basis of evidence, without fear of being unlawful. Likewise,
the Palestinian question is a matter that should also be debated and assessed on its merits. I
lived in South Africa for a time during the apartheid era and I saw racism up close and
personal. I hated it. I also have no time for other types of vilification. But we cannot have a
situation where important matters are closed off from debate because of the potential for
someone to claim they have hurt feelings. In short, it is not a bad time to repeal section 18C in
the name of national unity; rather, it is a good time to repeal section 18C in the name of
national diversity.

In any case, there is no evidence that to offend, insult, humiliate or intimidate someone is
to incite violence against that person. Indeed, what evidence we have shows the opposite
effect, because words often serve to replace violence. As the law stands currently, instead of
issues being debated and ideas criticised, toxic attitudes are driven underground or through
the wires of the internet. This implicitly justifies handing over increased powers to Australian
security agencies so that the speakers of various nasty words can be watched over by the
powers that be. If people were free to speak, there would be less need for such surveillance.

Sir Robert Menzies once declared that the whole essence of freedom of speech is:
that it is freedom for others as well as for ourselves … Most of us have no instinct at all to preserve the
right of the other fellow to think what he likes about our beliefs and say what he likes about our
opinions.

… if truth is to emerge and in the long run be triumphant, the process of free debate—the untrammelled
clash of opinion—must go on.

Shutting down free speech by claiming you are offended or that something should not be said
or by inhibiting speech by criminalising journalism is an admission of failure to understand
the whole concept of free speech. And if you do not understand free speech, you do not
understand freedom.

Unfortunately, there are quite a few people in that category who do not understand free
speech. I became aware of just how many when The Chaser team decided to make fun of me
because of my support for the free speech of Wicked Campers, a company which has slogans
on its vans that some people find offensive. The Chaser team waited outside my house in
Sydney at 7.30 in the morning with a van painted with slogans based on those of Wicked
Campers. They told me not to be a wowser and thought it was very funny that I did not find it
terribly amusing. They also suggested that my lack of amusement made me hypocritical in
relation to my support for free speech.
A few details are relevant. They did not identify themselves, which led me to advise a Daily Telegraph journalist that I had been the subject of a protest outside my house. I told them to eff off, as I was not amused at being accosted outside my home, and one of their slogans was homophobic. It appeared to me they were going to follow me into my front garden, which is why I said I would call the police.

What my critics have overlooked is that at no stage did I say they had no right to say what they did. At no time did I suggest they should be prevented by law from saying it. I did not think they were terribly smart, and what they did was in poor taste and upset my wife, but that is where it ends. Free speech does not require me to find them amusing or to appreciate what they said or even to remain and listen. All it requires is that I do not invoke the law. And can I say to Nina Oyama, Craig Reucassell, Zoe Norton Lodge, Kirsten Drysdale and the others: it would not require a lot of effort by me to find out where you live and to set up a sign outside your place which said rude things about you. If your response was to tell me to eff off and that is all, then perhaps there might be some hope for you and your understanding of the concept of free speech. But I doubt if that is how you would react. I suspect you would act like crybabies and go running off to nanny government asking for the nasty man to be shut up. And that is why I say I do not believe you understand freedom, let alone free speech, and that is a shame.

Freedom of speech is the paramount freedom. Without it, we struggle to exercise our other freedoms. With it, we can fight for those freedoms. It may be offensive, insulting and make governments and people uncomfortable, but, if this is the price to be paid for living in a society where all claims are open to question, then it is a price worth paying.

Senator PATERSON (Victoria) (09:44): It is a pleasure to be here this morning to speak on the Racial Discrimination Law Amendment (Free Speech) Bill 2016. I thank my colleague and friend Senator Leyonhjelm and his co-sponsors for putting this important bill before the Senate. It is a bill which very closely reflects my own view on this issue, but senators will note that I am not a co-sponsor of this bill. Instead, I am a co-sponsor of the other bill seeking to address this matter, put forward by Senator Cory Bernardi. I want to spend a little bit of time this morning explaining why I have made a decision not to support Senator Leyonhjelm's bill—or, rather, not to co-sponsor Senator Leyonhjelm's bill—and why I have instead decided to support and co-sponsor the other bill.

First, I want to explain why I think that what Senator Leyonhjelm proposes is very important and in many ways best addresses this issue. As Senator Leyonhjelm pointed out in his speech, only his bill offers a guarantee that cases such as the Andrew Bolt case—but also the other cases that we have seen before the courts in recent times, including the QUT case, including the Bill Leak case and including his own case against the journalist Mark Kenny—could not proceed again in the future. Only by repealing the provisions of the act in their entirety can we rest assured that these cases will never be repeated in the future.

Having said that, I cannot see any prospect of this bill passing this parliament. I think one of the lessons from the previous attempt at reform under the previous Prime Minister was that there is no point going through another symbolic loss. If we are able to find a path through this parliament, and particularly this chamber, for a reform which does not go as far as Senator Leyonhjelm's bill but will go some way to addressing this issue, then I think we should focus our attention and our energy on that.
But there are other reasons why I think Senator Bernardi's bill, of which I am a co-sponsor with 20 senators in this place, has merit. This act and this matter are very important to those of us who believe in freedom of speech. It is important because it has affected people's lives, but it is also important because it is a symbol for us of what it means to live in a free society, in a pluralistic society, in a tolerant society, in a liberal society. For us, while ever this act exists in its current form, we feel that we do not live in a free society and that our freedom is not protected. That is why it is important to us.

On the other side, though, there are people who see it as a symbol in a different way. They see it as a symbol of what it is like to live in a multicultural society, in a harmonious society, in a community which is safe for them and their families. They very clearly told us during the previous reform process that getting rid of all of 18C, or almost all of 18C, would make them feel unsafe in Australia and make them feel like they do not have protections against hate speech. Nobody who is proposing reform in this area wants any fellow Australian to feel unsafe or to feel unprotected.

My own view is that 18C is a very imperfect protection against racist hate speech. I would much prefer to rely on, as Senator Leyonhjelm said earlier today, the goodwill and good nature of Australians to call out racism, to identify those who peddle it and to hold them responsible for it. I would much prefer we used that process. I also believe that there are extensive protections against vilification, particularly at the state level, in this country. In some ways, those laws are much better targeted against the kind of abuse that no-one wants to see, the kind of abuse we hear about from time to time in the street or on public transport—the awful, vile abuse that some people have experienced. I think our state anti-vilification laws better target that kind of behaviour and in many ways offer better remedies, including in some cases, in some states, potential criminal penalties for the behaviour, which 18C does not.

Nonetheless, we have heard that 18C is regarded as an important symbol of the protection of living in a harmonious society and feeling safe in our community. I understand and I respect people who put that view, and that is why I have come to the view that a compromise option is the most reasonable path forward. It is a path forward which will offer no perfect protection of free speech but certainly an enhancement and an improvement regarding free speech. At the same time, it will retain some important limitations on free speech which will help make some members of our community feel that they are safe.

I want to go through some of the most prominent cases involving this law in recent years, because I think they help show us a path forward and show what kind of reform in this area will work, could work and may not work. The case which has brought this to the widest public attention in recent times is obviously the Queensland University of Technology students case, recently resolved in the Federal Circuit Court with a judgement by Judge Jarrett. I commend the judgement to all senators and others interested in this case; it is a very interesting, thoughtful and quite extensive judgement.

There are a couple of important things about the judgement. One is that this was not a close call. This was not one of those cases where there were reasonable arguments on either side and where it came close, with the judge ultimately coming narrowly down on one side. It was comprehensively dismissed. It was found—I am using my own words and not the judge's—to basically have no merit at all. That was the right decision. I am pleased that the court made
the decision, although I am troubled by media reports this week that there may be an appeal in this case and that it may not yet be over. But we must allow the legal process to flow through and see what comes of that.

There are other really important things about this case. As every senator and as many in the community who have followed this would know, this is a case which took 3 ½ years to resolve—3 ½ years elapsed between the alleged instance of racial discrimination and the court handing down its decision exonerating the students who were accused of discrimination. Under anyone's measure, that is a torturous and long legal process—a legal process which served neither the applicant nor the defendants well in this case. The person who made this complaint is as entitled to have it speedily resolved as the people who are subject to this complaint, but I am particularly concerned and particularly sympathetic to what the students in this case endured.

They endured having their reputations smeared and damaged in the media. Many of them feel that their career prospects have been damaged by this case, even though they have been exonerated. It was an incredibly stressful time for them and their families and, frankly, I think it has not reflected very well on the university or on the Human Rights Commission, which I will come to in a moment. A particular failing of the Human Rights Commission in this case was that 14 months elapsed between the case complaint being made and the students being notified. I am pleased that the Human Rights Commission President, Gillian Triggs, has appointed an external lawyer to review the Human Rights Commission's conduct in this case, because I think it will reveal that they have failed both the applicant and the respondents and, particularly, that the students were grievously harmed by the handling by the Human Rights Commission in this case.

They were given three days notice that they had to attend a compulsory conciliation. Because of that short notice, many of the students were unable to attend, many of them were unable to arrange legal representation, as they are entitled to, and many of them felt completely railroaded by the process, with little prospect of successfully defending themselves. That is incredibly regrettable. It is fortunate that these students had the benefit of independent pro bono legal representation—excellent legal representation. Had it not been pro bono, as their lawyers have offered, then they would have been up for an estimated $600,000 to $700,000 of legal fees to defend themselves. No student has the capacity to defend themselves to that tune. As we know, some of the students did not even have the capacity to reach a confidential financial settlement with the applicant, as was requested by their lawyers.

That is worth reflecting on too. We have heard about Kyran Findlater, one of the students in the case, who ultimately agreed to pay $5,000 to the applicant in the case to be removed from the action so that he would not have to go to court. Seeing what the other three students who decided to contest the case went through, it is hard to question Kyran's judgement in that. That seems like an entirely reasonable thing. He did not want to go through the pain and suffering that the others did. It was a terribly difficult financial decision for him and a huge burden. It is particularly sad, given that we now know that the case was dismissed so comprehensively—that he might very well have been able to successfully defend himself in that case.

One of the reforms that has been suggested, as either an alternative or a complementary measure to reforming section 18C, is to reform the processes of the Human Rights
Commission. A very sensible and thoughtful proposal has been put forward by my colleague in the other place, Julian Leeser. Mr Leeser's proposal seeks to address the appalling way in which the Human Rights Commission handled this case, to ensure that future cases are much more speedily resolved. While I support that, I do not support it in isolation—because the efficient administration of a bad law is still the administration of a bad law. I believe the law itself needs to change.

Comments that Gillian Triggs has made really underscore why that is important. On 7.30 a couple of weeks ago, when she was interviewed by Leigh Sales, Professor Triggs was asked why she did not use the commission's existing powers to dismiss the QUT case immediately when the complaint was made. The Human Rights Commission does have the power to terminate a case that is without merit, that is vexatious, that does not raise human rights concerns. It did not do so, even though a court subsequently found it to be a case lacking in merit. The reason it did not do so, we know now, is that Gillian Triggs believed it was a case of substance. Her answer to Leigh Sale's question was that she did think it was a case of substance. If it is the view of the Human Rights Commission, its president and her delegates, that a case as flawed and as weak as the QUT case has substance, and is worthy of proceeding first to conciliation and ultimately to the courts, then I am not confident that any power given to the Human Rights Commission to more efficiently administer this law would ensure that cases like the QUT case never happen again.

Another case which has brought this law to public attention is the Bill Leak case. This is a particularly troubling case as well. I am pleased that media reports suggest that the complainants in this case intend to withdraw or are in the process of withdrawing their complaints, but that does not mean that Bill Leak has not suffered because of this law. Bill Leak and his employer have had to engage lawyers to defend him, all because he drew a cartoon. It was a cartoon which challenged many people, which upset many people and which maybe even offended or insulted some people. But, in a free country, do we really think that a cartoonist drawing for one of our major newspapers should be required to go to a government body—in this case, the Human Rights Commission—and justify what he meant by his cartoon, why it was not racist, and why he was not engaging in discrimination? Do we really think it is appropriate for other public servants—the Race Discrimination Commissioner, Tim Soutphommasane— to be actively touting for and soliciting complaints, effectively prejudicing the case of Bill Leak? But I am pleased that that case has been dismissed.

Perhaps the case that is most famous of all is the 2011 case against Andrew Bolt. It is the one which, in the view of many people, activated this law, brought it to public attention and allowed it to be used as it has been subsequently used in further cases. There are so many things to talk about in the Bolt case. I will not bore the Senate by going over all of that old history, except for one really important point about this case. It is said by many that section 18D provides an effective defence for freedom of speech. It is also said that those of us who want reform to 18C ignore 18D, or are unwilling to talk about 18D. Can I tell you, Acting Deputy President Reynolds, that that is not the case for me. I have talked about it dozens of times, and I know many of my colleagues have too. I have debated it in many interviews with journalists, and I am going to talk about it here today.

Defenders of this law often say that 18D is a sufficient defence for free speech and that the Andrew Bolt case proves that. They say that Andrew Bolt was found not to be eligible for the
defence listed in 18D—in other words, he was not able to have his freedom of speech protected by the law—for a very good reason. That reason is that he made errors of fact in his article. And it is true, Andrew Bolt did make errors of fact in his article. We can debate another time whether it is a good thing in a free society to have a judge deciding that errors of fact mean you are not entitled to free speech. But that was not the only reason the judge found that Andrew Bolt was not eligible to use the defence of 18D. I encourage anyone who has not read the judgement in the Bolt case to do so, because there is an extended and fascinating discussion about the tone of Andrew Bolt’s article.

The second reason that the judge found that Andrew Bolt was not eligible for free speech was the tone in which he wrote his article, including the fact that he used sarcasm, including the fact that he used gratuitous asides, including the fact that he had written things, allegedly, between the lines. So we have an instance in this country where, if a judge does not like your tone, does not like your use of sarcasm or gratuitous asides and believes you have written things between the lines—which, of course, you cannot do—you are not eligible for free speech. Even if Andrew Bolt had made no errors of fact in his articles, it is entirely possible that he still would have been found not to have been eligible for the defence of free speech under 18D because of his tone. That is an incredibly troubling thing.

I think the Andrew Bolt judgement will be interesting if Senator Leyonhjelm’s case against Mark Kenny at The Sydney Morning Herald proceeds, because it could be said that Mark Kenny in his article used sarcasm, it could be said that he used gratuitous asides and it could even be said that he had written things between the lines about Senator Leyonhjelm and others. My view is that cases like the Mark Kenny case should not be able to proceed, should not be heard by the Human Rights Commission, should not make their way to court, but it may well be. A complaint has been made, the process is underway and it is yet to be determined where that case will go. It is clear that 18C allows that to happen and it is not clear that 18D would be a sufficient defence for Mark Kenny in this case, just as it is not clear it would have been a sufficient defence for Bill Leak. Many say that it would have been, but that is unknowable. The case did not get to court, and we do not know what the judge would have found.

Another senator in this place—our new colleague from Victoria, Senator Kitching—recently said when she was interviewed on The Bolt Report that she thought the judge that presided over the Bolt case was a relevant factor in the way in which the law was interpreted. That is an incredibly worrying thing. The quality of justice and the outcome of the decision that you receive in our courts should not depend on the judge that you receive; it should depend on the law as it is written. If it is the case that Labor senators opposite believe that all we need to ensure that laws are properly upheld is the right judges sitting on the right cases, we have a very serious problem indeed.

Another challenge to those of us who believe in reform is the question of what it is that we cannot say today that we would like to say. I would really like to respond to this because there are a couple of important points. One thing is I would like students such as those at QUT to be able to vent steam on Facebook and not spend 3½ years defending themselves in court for having done so. I would like cartoonists to be able to draw cartoons without having to go to a government body and justify why they drew their cartoons. I would like journalists to be able to express opinions and write articles on controversial issues of public debate without having
to defend themselves in court. But the truth is we actually do not know what it is that cannot be said by this law, because we cannot be confident what will and will not offend, insult, humiliate or intimidate someone.

There is no way of knowing that Mark Kenny, in writing his article about David Leyonhjelm, could have reasonably understood or expected to be taken to court as a result. There are others here today and Australians out in the community who do not know what they can and cannot say because this law is not clear what would achieve the measure of 'offend' or 'insult'.

Finally, even things which are unpleasant and awful to hear are worth hearing because we live in a society where people do have different views and there is value in hearing what others have to say even when we disagree with it. I personally would much rather know what people's beliefs are than have them hold onto them and keep them in a dark and deep place in our society. We will have no opportunity to challenge them if that is the case.

I want to end on one note. Reform of 18C is something which has attracted support from across the political spectrum, from people including David Marr, Julian Burnside, Paul Howes, Jonathan Holmes and Jim Spigelman. It has attracted support this time around from people who opposed it previously such as Warren Mundine. It has attracted support from people who have been affected by discrimination and who have been victims of racism such as Robert Magid, the publisher of The Australian Jewish News. The accusation made in this debate that the only people in favour of reform are people of a certain age, a certain ethnicity or even a certain gender is utterly false. Support comes from across the spectrum, and ignoring those people who have suffered discrimination and who do support reform is an awful thing to do. They have just as much right to participate in this debate. Their opinion is worth just as much as everyone else's. I commend them for their courage and their advocacy in this instance. Even Gillian Triggs has agreed that we have a problem with not just the Human Rights Commission processes but also the law. I commend this reform process to the parliament.

Senator DODSON (Western Australia) (10:04): It is interesting that bigotry is back in favour. Back in 2014, the Abbott government sought to repeal section 18C of the Racial Discrimination Act to allow for all sorts of things to travel under the guise of free speech, and it was defeated. Labor will also be opposed to this particular amendment that has been proposed by Senator Leyonhjelm and others. At least Senator Leyonhjelm, as a libertarian, appears to be committing himself to a push because of principle, but I am not sure whether that is the case in relation to the Turnbull government. To me, it represents some weakness. The bill put forward by the members goes even further than the Abbott government ever did, in trying to repeal part IIA of the Racial Discrimination Act in its entirety. This is something the Labor Party could never support. We created this part of the act and we are proud of it. We will continue to defend it. Labor opposed the changes to the Racial Discrimination Act in 2014, and again we will oppose them in 2016.

We will stand shoulder to shoulder with the communities across this country, which is something that those on the other side seem to forget. This is about human beings—people of different cultures who are Australians and who have all sorts of different ways of interpreting English. English has its own form of tyranny, and that tyranny is what causes wars, assaults, arguments and violence. The speakers who grow up with English have to understand that that
is not the only frame of reference through which the world is interpreted. There is no clear
definition, it seems to me, of what constitutes whiteness and the culture of whiteness. We talk
of all sorts of other people who make up the Australian nation—Chinese, Indians, Lebanese
and Africans; all sorts of people—who are part of the Australian population and who bring
with their cultures a richness to this nation. Instead of us moving in a way to accept and
appropriate the better things of their cultures, we seek to continuously divide and to create
ways to sustain divisions and sustain the denigration of our fellow Australians.

There is nothing wrong with freedom, particularly if you are from the ruling
class. There is a hell of a lot wrong with freedom if you have to battle to experience it—if you have to fight
for it. I was born before the 1967 referendum, when we as Aboriginal people were not even
counted in the census of this country, when this government did not have any power to make
laws for Aboriginal people because it was excluded by the drafters of our Constitution in
1901. The whole battle for recognition—for freedom to enjoy the basics of being a citizen—in
this nation had to be fought for by black and white Australians: Jessie Street, Faith Bandler
and many others.

What I see today is the ideological creep back to bigotry and to racism. It is fine if you sit
in some leafy suburb and never rub shoulders with people who are battling to interpret and
navigate their way through modernity in this land of Australia, with its highly-sophisticated
culture and its complexities of protocols and procedures and social ethos. We have to
understand that today is not the day to be changing this section of the Racial Discrimination
Act. It is not the day. We see every night on the news the bigotry, the racism, the hatred and
the killings that take place in the Middle East, borne out by different interpretations that
people extract from words. We only have to look to Indonesia—just recently, the President
was coming here to Australia and he had to curtail his trip because of the alleged words used
by one of the governors that offended sections of the community. And that matter is still
afoot.

So words do matter, and how we use words is critical in the way we go about our business
and in the way we communicate. Have no doubt that racism is something that
is not growing wild out there in the fields; it is actually tended in a flower box sitting on the
window sills of flats and houses. That matter is something that we as all Australians should be
working to get rid of so that the freedom that is spoken about by Senator Leyonhjelm can in
fact be enjoyed by all citizens.

We have not seen that. If we watched the news last night, our colleague Anne Aly, in the
other place, was receiving death threats because of the stupidity of language used by one of
our ministers to excite some lunatic in this society to threaten violence and death to her and
her family. This is what words do. It is all very well in a debating class in the university; there
is no freedom out there in the mainstream when you do not understand and comprehend the
difference between debate and prejudice—when you do not understand being subjugated to
racist taunts and denigration.

As I said, we do not debate the definition of 'whiteness' or the culture of whiteness—and
nor should we. But there is something that we need to pull ourselves up on, and that is the
age-old reality of what it is like to walk in the shoes of someone else who is different, who is
diverse and who has the richness of their own culture—when we talk about them, when we
write about them and when we print things in relation to them.
Freedom is a very treasured thing, and it starts with defending, as has been said in an ideological sense, the rights of people. But with rights come responsibilities, and in a complex, multicultural society let's stress also the responsibility to note that other Australians do not see things entirely the way that we might from a Eurocentric position, or from an Anglo-Celtic background or from a sense of tradition and culture and politics.

So it is important, when we are debating these matters, to understand that many Australians are not sitting in the chamber. They are listening to this chamber and they are taking the leadership of this chamber as the litmus test of what this nation stands for. If this nation cannot stand up for the weakest, the poorest and those who are most vulnerable because of their race, their ethnicity or their beliefs, then we have become a very sad replication of what democracy is about. There is no need for this particular amendment. There has been a more than 20-year period where this has operated substantially to the benefit of our nation. The defences available under 18D are clear and are there not only to facilitate the freedom of speech and freedom of expression that people wish to exercise, but also to give an indication of what is not permissible and how it may be adjudicated by a court if it has to go to court and cannot be dealt with in conciliation. Labor is not going to be supporting this amendment and, certainly, any future amendments to this particular section of the Racial Discrimination Act.

Senator HINCH (Victoria) (10:17): I rise to speak on the Racial Discrimination Law Amendment (Free Speech) Bill 2016. When the proverbial hit the fan in the wake of the brilliant Bill Leak cartoon in The Australian, and the orchestrated protests against him started to grow, I took to Twitter for a seven word tweet: 'Je suis Charlie, but bugger Bill Leak.' It was the height of hypocrisy from the opponents. They marched in the streets to support freedom of speech and freedom of expression and to honour the brave staff of Charlie Hebdo, who had been slaughtered in their Paris office because of a cartoon. But a telling, sad but true, other cartoon in The Australian showing an indigenous policeman, an indigenous father and an indigenous boy was racist. Leak must be sacked. The newspaper editor must be hauled before the Press Council. Leak must be charged by the Race Discrimination Commissioner. In fact, to his shame, the commish actually publicly touted for business—pleaded for affronted citizens offended and insulted by a cartoonist's pen to lodge a complaint. Look at the way his office staff trolled around the Northern Territory to find a couple of compliant signatories. Leak was ordered to appear and justify his work. So bugger Bill Leak, bugger artistic freedom, bugger freedom of speech, to which I will add 'bugger 18C'.

Luckily sanity prevailed and the demands against Bill Leak were dropped—unlike the equally ludicrous case involving the Queensland University of Technology students and the computer room scandal, which, disgustingly, went on for years before a judge tossed it out. And, as mentioned before by Senator Paterson, Andrew Bolt, who is no friend of mine but deserves defence, should never have been charged and should never have been convicted. The people that he supposedly offended and insulted should and could have sued him for defamation. Because of his errors of fact, maybe they would have won.

Going back to the racial vilification law, where it says—

It is unlawful for a person to you there will do an act, otherwise than in private, if: (a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and (b) the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group—
I am offended and insulted that we have any legislation, any law in this country which is bad law. I am offended and insulted that such emotive and subjective words as 'offend' and 'insult' can be on our law books. Take the case of freedom of speech. You have to stand alongside people with opinions that you do not share. The Hansonites? You do not share their opinions, but it is freedom of speech. When you try to block it, when you try to make martyrs and shut down people who try to use it, it is bad and it is dangerous. I remember the case of David Irving, the Holocaust denier, to me a despicable person who spouted the most offensive and revolting stuff about Jewish people. He was banned from coming to Australia because of the words he uttered. I remember the case, because when he was banned I interviewed him on television by satellite for the *Hinch* program. Instead of him being made a martyr because he had been denied his freedom of speech, we let him have his freedom of speech and I spent the whole interview attacking him and deriding him, taking him down, making arguments against his puerile, offensive and insulting arguments. It was the same with Ian Paisley, that rabid man with his collar back-to-front. I think he was banned from Australia or told not to come.

Don't turn them into martyrs—don't ever do that. Go after them. Let them come and make their speeches. Freedom of speech has to be there for journalists, for cartoonists, for protesters and even for bigots. Take them on. An extension of this principle of freedom of speech is the reason I stood up here in the Senate and demanded that the photographic restrictions be removed for photographers—because, it is freedom of expression. They are doing their job. And if they take awful pictures of you, well, we have to wear it.

There are protections. I know Senator Dobson and I appreciate some of his remarks, but there are protections. You cannot and should not shout 'fire' in a crowded theatre. That is dangerous and could end up with deaths or injuries. And there are criminal offences. If you verbally threaten the president of the United States of America you will have the secret service on your door within 10 minutes, because that is an offence. And freedom of speech was born in the United States; it is enshrined in their constitution.

In this country you see so-called journalists, media people, 150 of them from Fairfax, who signed a document protesting against Bill Leak and demanding that he be fired. I think they are a disgrace to their profession. I recall a personal case. When I was young journalist in Sydney the then editor of the august *Sydney Morning Herald*, Guy Harriett, referred to me in the most insulting manner—and I apologise to Senator Dobson—as a 'white boong', because I had been born in New Zealand. Things have changed, and rightly changed. Hate speech must be talked down and fought all the time.

I want to wrap up by saying that it is not in me to the light-hearted, but I wonder if John O'Grady—who wrote *They're A Weird Mob* under the name Nino Culotta—would have been charged under 18C, because it depicted Italian people as dagos. In *The Wog Boy* movie, in which I played myself, I depicted the character played by Nick Giannopoulos as a shiftless, dole-bludging dago. That, I presume, would have been a breach of 18C. So, I say that this is a bad law. I will be supporting Senator Leyonhjelm on this and I hope that the Senate listens.

**Senator IAN MACDONALD** (Queensland) (10:23): I appreciate the Racial Discrimination Law Amendment (Free Speech) Bill 2016 being brought forward by Senators Leyonhjelm, Day, Hanson, Burston, Culleton, Hinch and Roberts. I have some sympathy with the bill, although I think it perhaps does go a little too far. As you know, I am a co-sponsor of the other bill before this chamber, in much the same terms as this one except that it seeks to
remove only the words 'insult' and 'offend' and leave the words 'humiliate' and 'intimidate' in 18C. I have thought about this a bit. I do think having 'insult' and 'offend' is just ridiculous in today's day and age, and the cases quoted by Senator Paterson and others in this debate show just how ridiculous this particular provision is in its entirety. I would certainly support any move to remove 'offend' and 'insult', but I think removing 'humiliate' and 'intimidate' is perhaps a step too far.

I might say that my thoughts in this view are supported by my political party, the Liberal-National Party of Queensland, which at the last state convention—I think there were over 500 delegates there—resolved that the federal government should be urged to amend 18C to remove 'offend' and 'insult'. As recently as last month, my own federal divisional council of the LNP, meeting in my home town of Ayr—it is George Christensen's FDC but it is the FDC in which I live, so it is the one I go to—also moved a resolution along the lines of amending 18C by removing 'offend' and 'insult'. So my position on this is well supported by my own political party.

Perhaps both our bill, which is before the parliament, and this bill are a fraction premature. As I understand it, the Attorney-General has referred to the Parliamentary Joint Committee on Human Rights an inquiry to report into all issues relating to freedom of speech in Australia. The Attorney has asked the committee specifically to inquire into and report to parliament by 28 February 2017 on the following matters:

1. Whether the operation of Part IIA of the Racial Discrimination Act … imposes unreasonable restrictions upon freedom of speech, and in particular whether, and if so how, ss. 18C and 18D should be reformed.

2. Whether the handling of complaints made to the Australian Human Rights Commission … under the Australian Human Rights Commission Act … should be reformed, in particular, in relation to:
   a. the appropriate treatment of:
      i. trivial or vexatious complaints; and
      ii. complaints which have no reasonable prospect of ultimate success;
   b. ensuring that persons who are the subject of such complaints are afforded natural justice;
   c. ensuring that such complaints are dealt with in an open and transparent manner;
   d. ensuring that such complaints are dealt with without unreasonable delay;
   e. ensuring that such complaints are dealt with fairly and without unreasonable cost being incurred either by the Commission or by persons who are the subject of such complaints;
   f. the relationship between the Commission's complaint handling processes and applications to the Court arising from the same facts.

The committee has also been asked to inquire into:

3. Whether the practice of soliciting complaints to the Commission … has had an adverse impact upon freedom of speech or constituted an abuse of the powers and functions of the Commission, and whether any such practice should be prohibited or limited.

4. Whether the operation of the Commission should be otherwise reformed in order better to protect freedom of speech and, if so, what those reforms should be.

That reference will look into these issues. It is joint parliamentary committee chaired by Mr Ian Goodenough. Naturally, because it is joint, it contains members of all parties. It is a good committee to seriously look into all of these issues. Those who have spoken in this debate
who have a particular view should make sure that their views are known to this committee if they are not members of the committee. Of course, as we senators know, we can all put ourselves on that committee as participating members, so we can all participate directly should we want to.

It is curious that the terms of reference make a not very veiled reference to some of the atrocious procedures and actions we have seen in this country in recent times. Senator Paterson rightly referred at length to the QUT case, the Bolt case and the Leak cartoon case. The way that the process has been handled by the Human Rights Commission is nothing short of scandalous. Those who follow parliamentary debates will know that I do not have a high regard for the commission in its present form. I have very grave concerns about the president of the commission and the way she and the race relations commissioner have handled some of these issues.

The case of the Queensland University of Technology, which is a major and significant university in my home state of Queensland, was appallingly handled. All credit to the three students that when they were told 15 months after the event that they were the subject of the complaint they stood up to the Human Rights Commission and the complainant. Their position was ultimately justified by the Federal Circuit Court. I also should thank Mr Tony Morris who, I understand, at his own expense assisted those three students in their hour of need. There were other students who were also subjects of the complaint who just paid up. They paid 'go away' money so they would not have to be involved in a court case and possibly subjected to fines of $250,000, which had been sought by the complainant. It was just appalling behaviour by the commission, by the complainant and by the whole system.

To Professor Triggs's credit, she did tell me at the last estimates committee hearing—it was one of the things she did interact with us on; there were some other things where she denied having said certain things, but we will follow that up later—that, 'I would be very happy indeed to work with you and others who might consider amendments that would meet your concern.' So I think it would be very helpful to open up a discussion to examine the powers of the commission in this regard. Professor Triggs was indicating perhaps a fair point—that if the laws are wrong it is not up to her to fix them; it is up to parliament to fix them. In that regard, I do agree with her. But, having said that, the way the Australian Human Rights Commission acted in that particular instance was a disgrace.

In the subsequent instance of the Leak cartoon, the commissioner was out there touting for business almost and encouraging people to complain. As I read in the paper, there were a couple of complainants in Western Australia who did complain only because they had been encouraged to by the commissioner and then, after they thought about it, they withdrew their complaint. I think that clearly shows that they were neither insulted nor offended by the issue until they were egged on by a commissioner. That, to me, is unfortunate. I am pleased that the committee will be having a look into this issue.

As I say, I would not support this bill at the present time. The bill that I give preference to is the one that just seeks to remove 'insult' and 'offend' from 18C. I think this one goes a little bit too far. But I think both of them are perhaps a bit premature. I think we should wait for the report from the Parliamentary Joint Committee on Human Rights to see what they think about this whole issue. I am aware that there are other senators who want to speak on this important debate, so I will conclude my remarks there. But I again thank the proponents for at least
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brining this forward so that we can legitimately, maturely, sensibly and like adults discuss these issues which are of great importance to the freedoms we expect and enjoy in Australia.

Senator McKIM (Tasmania) (10:34): Well, here we go again. People watching this debate could be forgiven if they thought that reform of the Racial Discrimination Act was the most important issue facing Australia today. Obviously it is not. Freedom of speech is not under threat from section 18C of the Racial Discrimination Act; in fact, there are a number of laws in this country that impose far more draconian restrictions on freedom of speech than does 18C. I want to mention again section 18D of the Racial Discrimination Act, which provides sweeping protections for freedom of speech. I will come to that in more detail later in my contribution today.

For people who want reform of 18C to style themselves as self-appointed warriors for freedom of speech in this country is simply dishonest. They are not campaigning for freedom of speech; they are campaigning for freedom from consequence. They are campaigning to be able to say racist things without consequence in this country. That is unacceptable in a modern, multicultural society. And make no mistake: this campaign—which is being driven by a confused rabble of fundamentalist right-wingers in the coalition parties and media bullies, led by The Australian newspaper—is designed with only one end in mind—that is, to allow people to make racist comment without consequence in this country.

Section 18C currently makes it unlawful to offend, insult, humiliate or intimidate another person on the basis of their race, their colour or their national or ethnic origin. It is crucial that 18C be retained in its current form, because the campaign against 18C is part of a broader attack on multiculturalism in this country. We are seeing it in proposed amendments to the Migration Act. We are seeing it in comments made by people like the Minister for Immigration and Border Protection, Mr Dutton, in comments he made targeting Lebanese Muslim Australians recently.

Multiculturalism is under sustained attack and threat, and it is only going to get worse when Senator Bernardi appears back in this chamber, re-energised by the election of President-elect Trump in the United States. And make no mistake, we are going to see politicians including Senator Macdonald, who is grumbling over there like Bill the Steam Shovel, Senator Bernardi, Mr Abbott, Senator Abetz and Senator Paterson, the representative of the IPA in this parliament—the right-wing fundamentalist cabal—take play after play from the Donald Trump playbook and try to apply it in Australian politics. The Greens will stand up against them at every turn. And we will, with others in the political spectrum in this place, defend multiculturalism in this country.

Most of the conjecture around 18C centres on the words 'offend and insult'. Opponents of 18C say that the words are vague or that they set too low a bar or too low a standard, but there are clear legal precedents, jurisprudence, which interpret 18C. As Justice Susan Kiefel said in a 2001 case, and I will quote directly from the judgement:

… to "offend, insult, humiliate or intimidate" are profound and serious effects, not to be likened to mere slights …

In other words, it is not enough for someone to feel offended or intimidated, and that is one of the big lies in this debate that is rolled out by people who want to weaken or, in the case of Senator Leyonhjelm's legislation, remove entirely section 18C—that it provides a foundation for people to access the justice system on the basis that they feel offended or insulted. Well,
judgements and jurisprudence set the bar much higher than simply feeling offended and insulted. As I mentioned briefly earlier, section 18D creates widespread exemptions for artistic, political, scientific or academic communication, provided that those communications were done reasonably and in good faith. In other words, 18D, which is ignored in this debate almost as much as the second verse of *Advance Australia Fair*, provides sweeping freedom-of-speech exemptions, but you do not hear much about that from people who want to gut the Racial Discrimination Act in this country.

There is a lot a cherry-picking of cases going on here; Senator Paterson indulged in it in his speech and we have heard others indulge in it. They cherry-pick a handful of cases and make it seem like the world has gone crazy and that they are the only voice of sanity in this debate. I want to go to the Andrew Bolt case, which has received an airing in the chamber this morning. It is worth pointing out that Andrew Bolt lost the case, not because what he said was edgy or controversial but in fact because Justice Mordy Bromberg found his articles:

… contained erroneous facts, distortions of the truth and inflammatory and provocative language.

That is why the judgement was made against Andrew—

**Senator Ian Macdonald:** You've been pulling the chain. You would be convicted every time!

**Senator McKIM:** I do not remember pulling the chain, Senator Macdonald, so if you would just keep quiet that would be a benefit to the chamber.

**The ACTING DEPUTY PRESIDENT (Senator Reynolds):** Senator McKim, you should address your comments through the chair.

**Senator McKIM:** Well, it is also disorderly to interject, Madam Acting Deputy President, so I would just ask you to inform Senator Macdonald that that is the case.

**The ACTING DEPUTY PRESIDENT:** Senator McKim, please continue.

**Senator McKIM:** On a point of order, then, Madam Acting Deputy President: would you please ask Senator Macdonald to refrain from interjecting?

**The ACTING DEPUTY PRESIDENT:** This is now a debating point. I have been listening to Senator Macdonald. There is no point of order, Senator McKim.

**Senator Whish-Wilson:** Madam Acting Deputy President, I rise on a point of order. Interjections are disorderly, and it is a point of order.

**The ACTING DEPUTY PRESIDENT:** I just remind the chamber that senators should be heard in silence.

**Senator Ian Macdonald:** I take a point of order about Senator Whish-Wilson interjecting on my interjection—you should call him to order as well!

**The ACTING DEPUTY PRESIDENT:** Senator Macdonald I have already reminded the chamber that senators should be heard in silence.

**Senator McKIM:** As I was saying, Bolt lost the case because his articles, according to Justice Bromberg:

… contained erroneous facts, distortions of the truth and inflammatory and provocative language.

Justice Bromberg also found that Bolt's articles were
... reasonably likely to have an intimidatory effect on some fair-skinned Aboriginal people and in particular young Aboriginal persons or others with vulnerability in relation to their identity.

I think the latter part of the judgement was one of the points that Senator Dodson was making in his excellent contribution to this debate earlier, and that is that those of us who are debating this issue in the parliament need to think about how it might feel to be in other people's shoes. I am a 50-something white man of some means and from an Anglo-Celtic background, and it is very difficult for us—

**Senator Whish-Wilson:** You're not 52 yet!

**Senator McKIM:** Thank you, Senator Whish-Wilson, I appreciate that. It is very difficult for us to imagine what it might be like to be in a persecuted minority in this country. But we owe it to everyone involved in this debate to at least try to put ourselves in their shoes and at least try to reflect on what that experience—that lived experience—might be like. I have tried to do that—I have genuinely tried to do that, and that reinforces my fervent belief that we need to protect section 18C of the Racial Discrimination Act.

Those who are suggesting that freedom of speech is under threat in this country because of 18C—the self-styled freedom warriors of this debate—apparently have never read a Facebook comment thread. I would invite them to look at a comment thread on Senator Hanson's Facebook page or a number of other Facebook pages and then come in here and try, with a straight face, to suggest that freedom of speech, as it relates to speech based on racial grounds, is under any serious threat at all in this country. It is not.

If the people who want this reform were genuinely concerned about freedom of speech they would be campaigning for defamation law reform in this country. They would be campaigning for a bill of rights in this country. They would be campaigning to remove section 42—the draconian secrecy provisions—of the Australian Border Force Act in this country. They would be campaigning against SLAPP suits in this country. There are a range of genuine freedom-of-speech issues that exist in this country. But we do not hear from these people about those because they are not doing this because they believe in genuine freedom of speech. They are doing it because they believe in freedom from consequence for racist speech. That is the motivation here. They want to make it easier to say racist things in Australia.

Senator Paterson, to his credit, at least attempted to engage with the question I have continually asked the Attorney-General in this place, which is: what exactly does the government want people to say that they would be able to say if 18C were removed or weakened that they cannot currently say without offending that section of the Racial Discrimination Act? But, unfortunately for Senator Paterson, all the examples he gave were based on the cherry-picked cases that proponents of reform of 18C love to use. I will translate what Senator Paterson said. I congratulate him for attempting to respond to the question, but I will translate what he said. The translation is: he wants it to be easier for Australians to say racist things with no consequence in this country. That is an accurate, reasonable and direct translation of what Senator Paterson said.

**Senator Paterson:** Point of order: I have been grievously mistranscribed there by the speaker and I ask that he accurately reflect on what I said. That is not what I said. I do not want people to be able to say racist things.
The ACTING DEPUTY PRESIDENT (Senator Reynolds): Senator Paterson, I think that is a debating point. Perhaps take it up with Senator McKim after this.

Senator McKIM: Just for clarity, I was not suggesting that those were the words Senator Paterson used. I was translating his words, to put them into a more accurate frame. The issues here are too lengthy for me to canvass fully and I am already slightly over my time to speak, given the informal arrangements that have been made. But I want to say, in concluding my contribution today, that I challenge those who want to weaken or abolish section 18C to accurately state the actual things that they would like to be able to say, or would like to allow others to be able to say, that they cannot say now but could if the reform came in. Let's hear what racist things they would like Australians to be able to say. I want to know how much further they want to poison Australia's political conversation with speech made in bad faith. As I have said before, the only plausible answer is that they want to unleash more racism and bigotry at this time, when around the world we are seeing an incredibly disturbing rise in racism and bigotry. You only have to look at the spike in race-based attacks since Donald Trump was elected as President-elect of the United States to see how threatening times are becoming.

Protections against hate speech and intimidation are fundamental parts of pluralist Australia and one of the reasons we have largely been a very successful multicultural nation. So let's not wind the clock back now. Let's not go back towards white Australia. Let's stand firmly in support of, in defence of and for the enhancement of the beautiful multicultural society that Australia is. Let's stand strong against weakening section 18C or abolishing it, which would simply provide more opportunities for racist hate speech in this country.

Senator HANSON (Queensland) (10:48): I have listened to some comments in this chamber today and all I hear about is racism. Let me make my point very clear. When I first came into parliament I stood on the ground of equality for all Australians—equality regardless of race, colour or creed. Also, what I have tried to make quite clear is that, yes, Aboriginal and Torres Strait Island people were the first peoples of this land here. Yes, Australia was colonised and people came here. Since then, many migrants from around the world have sought to make Australia their home. They have come here to join us and to be one of us, and I welcome that. My first husband was actually Polish. He was a migrant after the Second World War who came to Australia for a new life with his mother.

I have had involvement with people of all different cultural backgrounds. The manager of my shop—my fish and chip shop—was also a refugee from Laos. I had the highest regard for her and we worked very well together. I had properties that I actually rented out to an Aboriginal lady and her child. My children grew up in the same street with Aboriginal children. My association will all different cultures has been one that I have cherished. My parents were people that welcomed anyone into their homes, and that is how I was taught. I have respect for so many different cultures and the people. Respect is earned by the person, not purely based on who they are or their race. It must be earned.

People say, 'Why are we standing up here and speaking out against the words "to offend, insult, humiliate or intimidate"?' Today times have changed greatly. People have come to our country. I remember most, years ago when they came, there were the Greeks, the Italians and different ones. They were called wogs. They keep telling me, 'My god, we actually had everything thrown at us. We were abused, but we said no. We got on with it.' Because when
the Aussies had a go at them in that Aussie way they became part of the community—they assimilated. I remember all the guys at the fish markets—the Greeks and the Italians. We all had jokes together and it was taken in a good sense of humour. I think we have lost that in Australia. I think people have become so precious that you cannot say or do anything anymore. Otherwise, you will be dragged off to the law courts.

You talk about racism. Let's define the word 'racism'. A racist is a person who believes their race to be superior to another. Understand the meaning. When you criticise or you have a point of difference, do not counteract that by saying it is a racist comment. I am fed up with people in this parliament and even outside this place calling me a racist, yet they cannot define one word that I have ever said in policy or anything that is racist.

I remember years ago, when I was first elected, I went to have a meeting with the Aboriginal elders. It was set up with the media. I remember they came out and called me a pig in mud and white trash. The media actually printed it. Then, when I actually spoke to them about it, they said, ‘Well, what's wrong with that?’ I can well imagine if I had reversed the words, but I never did. What I am hearing now is all one way—it is one-sided. Let's have a debate on this.

Senator McKim says here, 'If we change it and get rid of 18C, what do you want to say that you can't say now?' I will say, through you, Madam Deputy President, a case in point is those students. What did they say on the Facebook page? They said it is 'segregation with segregation'. So they were shut down. What is that? That is not an insult. It was pure fact. They actually went to the university and they wanted to go into a room and use computers that were purely marked for Aboriginals only. That is racist in itself. Why didn't they go and complain about 18C? Why wasn't something done about it? It is not; they are protected because we have laws in this country now that protect anyone who is not of a colour or anyone from another race criticising the Australians. It has become now, in Australia, reverse racism. That is why Australians are fed up with it. That is why they are saying they want change. It has gotten to a point where you cannot have a say anymore. I am okay; I am in this chamber. I am protected. I can say what I want to say here, but not if I go outside this chamber and say it outside, like many Australians. We cannot have an opinion. We cannot say anything anymore.

Senator Dodson made a comment. He said up until 1967 he was not included in the census, and that was true, but the Aboriginal people did have the vote prior to that. I believe it was Western Australia; please correct me if I am wrong. The whole fact is that Australians believed at the time of the referendum in treating Aboriginal people equally. That is why the majority of Australians—around 97 or 98 per cent—voted for that: they wanted equality and they did not want the separation anymore. Senator Dodson says that Aboriginal people were not included in the Constitution. Actually, section 51(xxvi) of the Australian Constitution, in the time before the referendum, said that the Commonwealth shall make specific laws for any race other than Aboriginal and Torres Strait Islanders. The framers of that Constitution, our leaders who drew up the Constitution in the 1890s, put in that ability to make specific laws for any race other than Aboriginal and Torres Strait Islanders, and that was because of the Chinese and Afghans in this country—mainly the Chinese—because of opium and the immigration. That is why it was put in. It was not put in for any reason to do with Aboriginal people at all. It was to do with that.
Senator Dodson talks about words—they can be hurtful and words are what are happening in Syria and the fighting around the world. I do not believe it is just about words. I think it is about hatred of a religion that is casting their hate and their political ideology onto the rest of the world. That is what is behind this. I do believe that we will have the same problem in Australia if we do not address it and have the right to debate it to find the answers so that each and every one of us can live in peace and harmony on our streets and not live in fear of being dragged before the courts. I am pleased to hear that Senator McKim is following my Facebook page. He made a mention of it. Maybe he will learn a lot more from how the Australian people really feel.

What I am saying here today is: is it really going too far to have an opinion that we offend, insult, humiliate or intimidate someone? Maybe the people in Australia should start looking at others of a different religious background to us, so that they may start to think twice before they make their comments on the streets towards our young ladies who wish to not cover themselves up or dress in the fashion of a short skirt and who are then told they are nothing but the meat market. There are women on our beaches who cannot go swimming, because others are offensive towards them. There is a lot of this going on this country, yet there are people in this chamber who will not acknowledge it, and I am sick and tired of seeing them stand up for one race or other people in this country, who do not see themselves as Australians and who have no intentions of ever assimilating. We are told constantly, time and time again, that we must be tolerant. Well, I have had it up to here with my tolerance. I believe that we have a right to have an opinion, have a say and debate it.

I will go back to the point: I welcome anyone who has come to this country to join us, to assimilate and to respect our culture and way of life. I stand by that. It is a shame that we have come to the point where we need to debate this issue, but that is where our country is headed. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**Landholders' Right to Refuse (Gas and Coal) Bill 2015**

**Second Reading**

Consideration resumed of the motion:

That this bill be now read a second time.

**Senator WATERS** (Queensland—Co-Deputy Leader of the Australian Greens) (10:59): I rise with great pleasure to speak on my bill, the Landholders' Right to Refuse (Gas and Coal) Bill. Sadly, this is the third time in the last five years that we Greens have introduced a bill to give landholders some rights against huge fossil fuel companies, whether they are multinational coal mining companies or whether they are multinational coal seam gas or unconventional gas fracking companies. It is about time that landholders had some rights to refuse damaging activities on their land—particularly on their productive farmland, which we know we have very little of in this arid nation.

This bill would also ban the dangerous and risky process of fracking—an experiment with our land, with our geology, with our water; an experiment that we do not well understand and indeed that has been banned in many other countries. This bill would give landholders some rights to protect their land, their water, their communities, their health, and of course the
climate, from the ravages of coal seam gas, shale gas and tight gas. It would ban the
dangerous process of fracking.

This is not the first time we have had this debate—2011 was the first time I introduced this
bill. Sadly, five years on, we see very little progress in this chamber. What I am pleased about
is that we have seen some progress in state jurisdictions. I want to start by congratulating the
Victorian state Labor government for their ban on fracking. They have just introduced
legislation for that in their parliament this week. Of course many of their Labor colleagues
around the country, most of whom are in opposition, have adopted similar policy positions to
either ban fracking or, at the very least, have a moratorium on it. It seems that the tide is
finally turning, and it is not a moment too soon because right around this country
communities are being ravaged by this unfair balance of power—effectively David and
Goliath battles with the gas and coal companies.

I am from Queensland, of course, where we have been at the epicentre of this destructive
industry, where communities in the Darling Downs, in the west, right throughout our state,
have been the test bunnies for this dangerous industry. Some of our best food producing land
has been turned into open-cut coalmines. Some of our best food producing land and some of
our well-settled regional communities have been turned into fracking pads, where
communities' health is worsening, where local GPs have been silenced by coal seam gas
companies and where the state government continues to turn a blind eye to the community
impacts while utterly ignoring risks to our groundwater and hence to our future food
productivity. It is an abominable situation in Queensland, and the one good thing that has
come out of this is that other states have learned from our mistakes.

We have seen an amazing and inspirational community movement spring up, led by the
Lock the Gate alliance, uniting many community members who feel that no-one is listening to
them. The National Party in this place used to claim to represent the bush but now they just
take the mining donations, and the two big parties also take generous donations from the
fossil fuel companies. They have been deaf to the calls of those regional communities who are
saying, 'We don't want to be test bunnies, we don't want the health of our children risked, we
don't want our water stuffed up so that we can't keep producing the food that you eat and that
this nation exports.' I do not know what it is going to take for those voices to finally be heard.
We have been trying for five years to give voice to those concerns and give those people a
voice in this chamber.

Sadly, every time this bill has come on for debate I have received no support. The last time
we brought this bill to a vote we had the Labor, Liberal and National parties join to vote it
down. They did not want to give landholders the right to protect their land and their water and
the climate and their health—they wanted to let the gas and mining companies rip, because
they keep getting those very generous donations. It seems we have had some progress at the
state level, but unfortunately there is very little progress at this national level. I note the
speaking list for today—we Greens are speaking in favour of the bill, and there are speakers
from the Liberal Party and the Labor Party. No-one else on the crossbench is speaking up for
residents against coal seam gas and unconventional gas. I think people around the country
would be very disappointed that this issue is one on which the Greens have basically been
alone in championing the community's voice. It is about time representatives in both this
house and the other house started to represent the people again and not just the vested interests that make very generous donations to their re-election campaigns.

This bill, if passed, would use the constitutional abilities of this parliament to give landholders the right to refuse gas exploration, fracking or massive coal mines eating up their land; land that in some cases they have been on for generations and that they wish to pass on to their family. The bill would also ban fracking. I have talked a little bit about why that is such a dangerous process, and I have mentioned that many other nations have actually banned it. It is a process whereby billions of litres of water and chemicals and a proppant, usually sand, are blasted down through wells which go through aquifers, in order to get to where gas is held in either coal seams, shale or tight rock. Those fracking fluids are blasted down at high pressure to create fractures in those seams or in that rock, so that the gas can then be released and sucked back up. This is effectively an experiment with our geology which pierces our aquifers on the way down. If you can think of a more dangerous process in the driest inhabited continent on the planet, then you are doing better than I can, Madam Acting Deputy President. I cannot think of a riskier experiment to take with our most precious resource—which is, of course, fresh water.

It is no wonder that Canada and many other nations have banned this process. It is also why many of the state administrations, some in government—and I congratulate them—and others in opposition, have said that they do not want take the risk with our most precious resource. I would like to see federal Labor follow the lead of the Victorian state Labor government, and finally endorse this bill after five years of opposing it. I commend our state colleagues, with the exception of Queensland, for the progress that they have made. It is now time for some consistency. If the Victorian Andrews government can see that fracking is dangerous, and Premier Andrews does not want it in his state, then surely the federal Labor opposition can look at the same evidence and—ideally—reach the same conclusion. I would urge them to do so.

As for the National Party; sadly, we know that they have abandoned the bush and that they now represent the big miners and the gas companies who make those generous donations. We do not even have any Nationals in the chamber at this time when we are talking about giving landholders rights to protect their land against coal-seam gas and coal. What an absolutely tragic falling from grace that party has had on this issue—and they know it, because people in the bush are not voting for them anymore. If they know what is good for them, and if they actually care about land and water, then I would hope for their support on this bill, the Landholders’ Right to Refuse (Gas and Coal) Bill. But—sadly—usually either they do not show up or they leave before the vote. It seems that that will happen again today.

I have talked a little bit about Queensland, and I want to again express my disappointment that, whilst some of the Labor oppositions or administrations around the country have listened to the community, it is a real crying shame that the Queensland Labor government has not. In fact, they have enthusiastically opened up our state to even more fracking, right as the evidence is mounting that this is a dangerous practice, and one which we do not fully understand the health or water consequences of. Labor continues to approve hundreds of new CSG wells across the Darling Downs, like at Wandoan where they have just approved about 400 new wells on some of our best grain-growing country. Now, you cannot have coal-seam gas well pads, and the Swiss-cheese effect of well pads, pipelines, roads, diesel generators,
and trucks in and out—you cannot have those things coexisting with food production. Indeed, some of the farmers have recently invested in precision agriculture for irrigation techniques. I commend them for that. But the CSG well pads interfere with the GPS technology on those pieces of equipment. It is impossible for those farmers to continue to farm in a sustainable manner—to farm at all—when their farm is pockmarked with CSG wells, pipelines, diesel generators and people crawling over the land at all hours of the day and night.

A couple of years ago, the resources minister in Queensland opened up 11,000 square kilometres of new land to explore for shale gas, threatening the Great Artesian Basin and the Channel Country. Clearly, when we are talking about the Great Artesian Basin, this is not just a problem for Queensland. This is a problem for the nation’s water supply. We know that basin underpins much of our surface water supply. We also know that we have job-rich alternatives that can supply energy and do not risk—our land, our water, our communities, their health, the climate or the Great Barrier Reef—in the way that coal seam gas and other unconventional gas mining does.

The communities at Tara and Hopeland on the Darling Downs are still waiting for strategic air quality monitoring studies that were promised and then scrapped by the LNP government. They have not had a response or any action from the Queensland Labor government. Instead we hear statements from the Labor resources minister in Queensland that gas is the fuel of the future. Well, I have news for you: there is something that comes up every morning, goes down every night, does not cost a thing and does not make communities sick. That is where we should be investing our money. The new, exciting storage technologies for solar—whether they be molten salt, whether they be granite or whether they be batteries—can provide baseload clean power which is job rich and does not stuff up our industries or the health of our communities.

In terms of the climate, we know that the fugitive emissions from coal seam gas make it basically as dirty as coal. Many of the studies that have been done on shale gas in the US prove this point. Australia is quite early on in the studies that it has done into this issue, which is kind of alarming because you would think you would do those studies before you let the industry rip. But no, they are now belatedly looking at a small slice of that a good 10 years into the approvals that have flooded out from this government and the Queensland state government.

Fugitive emissions is the gas that leaks from those wells and pipes and in the course of the production and transport process for coal seam and other unconventional gas, and we have seen that those fugitive emissions have been estimated to be far lower than they should have been. A recent report by the Australia Institute shows that Australia’s guesstimate—because that is all it is—of the climate impacts of those fugitive emissions is in fact far less than those of other nations. So our emissions factor is far lower than it should be, according to the science and according to the approach that many other nations take.

We have been waiting for four years now for the CSIRO research into fugitive emissions to properly study this. There has been one study that they have managed to complete so far, and they looked at 43 wells. We have about 6,000 wells in Queensland, and, of course, there are between 20,000 and 40,000 wells slated, according to international gas markets. It is unclear how many of those will go ahead, according to the strength of the community’s opposition to those. So this single study looked at just 43 wells, and it did not even look at all stages of
production. It looked at some highly prescribed parts of the production process, and the study itself concluded, 'Look, we have actually got to do more work before we can be confident in these conclusions. Don't extrapolate from this.' So we are still looking and we are still waiting.

GISERA—a geological body that is effectively a partnership between government and industry, because government underfunds it and so they need to go to industry for funding—have some interesting work underway, but they also have some coal and gas representatives that have effectively stacked their board. When you have research budgets that have five industry reps, three CSIRO reps and one government rep, with voting rights split 50-50 between industry and CSIRO as to who gets to decide on research, then, again, I find it very unhelpful and you can hardly call that an independent analysis.

I want to draw my remarks to a close, because we have some other speakers who would like to speak on this bill. I welcome that. It is great that we are getting some engagement. Let us hope that they speak in support of the bill, but I will not hold my breath. But I would like to take my chance just to congratulate the local campaigners in a handful of areas that have been resisting the might of these big, well-funded, cashed-up, politically-influential gas and mining companies—the little mobs of communities around the country that have the strength and courage to band together and say, 'No way. You are not coming on here to wreck my land. I want to keep growing food for this country, and I want my kids to have that option. I do not want you to poison our water.' I want to commend all of the campaigners in Victoria that led to the state Victorian government banning fracking this week. I want to shout out to the Northern Territory campaigners, many of whom are the traditional owners of the land. We have 80 per cent of the Northern Territory that is currently covered in oil and gas exploration licences. Much of that, of course, is Aboriginal land, and the campaign from those traditional owners, who have been joined by the graziers and other residents, has been absolutely inspirational. In the recent election this was a key issue, and the new Labor administration was forced, by the strength of that community voice and community opposition to gas and coal, to adopt a strong position for a moratorium, which we intend to hold them to now that they are forming government.

Unfortunately, the moratorium applies to fracking only during the production process, not during the exploration process, and we know that our groundwater does not make a distinction between production and exploration. So, we still have a way to go. And of course there is a proposal that is still on foot for the Northern Territory gas pipeline, which will plough through into Queensland and send more of our gas offshore to export markets, increasing the gas squeeze domestically and increasing the pressure on communities to be opened up for this dangerous process. So, I want to commend the Wakaya Aboriginal Land Trust for the resistance they have shown and let them know that we stand with them, that we have seen these campaigns win around Australia and that together we can win this one as well.

In the short time I have left I want to finish by commending the Queensland communities who have faced the brunt of this industry from the outset, with no support from government and with very little scientific information—because of course the government does not want us to know; if you do not look, then you can say, 'Oh, we're not really sure about the dangers; let's just push on anyway'. So much for the precautionary principle. I want to pay tribute to
Helen Bender and her family, who lost their father, George Bender, a man I met on several occasions when he came and gave evidence at various Senate inquiries that I had often instigated or participated in. I want to pay tribute to their bravery and to their emblematic struggle, which represents the struggle that so many Queensland regional communities have had—whether they be at Tara, whether they be in the north drifts—who have stood up against the Queensland Gas Company and won and had fines for breaches of environmental conditions imposed. The health impacts on that family are devastating. Again, they represent just one family of so many that are facing the brunt of the inconsideration of this industry—the carelessness and the profit motive once again overriding communities.

It is time we gave these communities the right to say no to this dangerous experiment on their land and to stand up for their health, to stand up for our climate and to stand up for food production and the sanctity of water supply—that most crucial resource. So it is with great pleasure that I speak on this bill again today, and I would urge, again, the larger political parties not to just do what your donors want you to do. Just because they give you money does not mean the science is on their side. Please listen to the community and stand with them, protect their health, protect our land and our water and the climate from these dangerous fossil fuel industries. We have clean alternatives that can generate jobs and generate clean energy and they will not stuff up our agriculture, our reef or the health of our communities.

Senator IAN MACDONALD (Queensland) (11:17): We have just heard another typical Greens political party campaign full of conspiracy theories, scare rhetoric and very, very few facts. But that is typical. I do want to get onto the bill before us, the Landholders' Right to Refuse (Gas and Coal) Bill 2015. But, before I do, this is a debate, and I want to comment on a couple of things Senator Waters said in her 18-minute address. I have 20 minutes, but I understand that Senator Siewert wants to speak, so I am going to restrict my 20 minutes to allow her to do so, because I believe in free speech and believe that everyone should have an opportunity—although I suspect that by giving way to Senator Siewert we will hear entirely different views on the subject. Nevertheless, I believe that all views should be put.

Senator Waters made some comments about the 'National Party'. Well, as people know, there is no National Party in Queensland anymore, and neither is there a Liberal Party; there is the Liberal National Party of Queensland. Senator Waters said—wrongly—that the Nationals are losing their sway in these country areas. I will again point out to Senator Waters—as I did to then Senator Lazarus, who, with Senator Waters, was going to make his career out of coal seam gas scares and conspiracies, but we know what the people of Queensland thought about that former Senator—that in the last state election the LNP was clearly in favour of the sustainable use of coal seam gas, subject to all the right conditions and concessions, which there clearly were. Before the election, all of the electorates in the Queensland state parliament in the south-west were not held by the LNP. There were two held by other parties. As a result of the election, every single seat in south-west Queensland, this area of the coal seam gas where Senator Waters says the LNP are losing sway, was won by the Liberal National Party. That is the No. 1 issue where Senator Waters's facts are not correct.

Senator Waters says this is a threat to the Great Artesian Basin. For several years I was the minister in charge of the Great Artesian Basin. I know how important it is to Queensland. I
know that no government—Liberal, Labor, Callithumpian—would do anything that would in any way impact on the Great Artesian Basin.

I rarely agree with state Labor governments in Queensland, but I do give credit where credit is due, and the Bligh Labor government in Queensland and the Beattie Labor government before that were very cautious about coal seam gas but eventually came to a conclusion that it could be mined sustainably and safely. They put in a lot of processes that ensured that the gas could be extracted but in a very careful way. The Newman government continued that process. As I said, I do not think the Palaszczuk government has done much at all, but again I give credit where credit is due, and they have again encouraged coal seam gas exploration and extraction because they know it can be done safely and they know what an important element it is to the economy of Queensland and to the creation of jobs in our country.

Senator Waters also raised the issue of fugitive emissions and again, as the Greens do, tried to scare Australians that even a fugitive emission—a small amount of gas escaping—is going to change the climate of the world. As I keep saying to the Greens political party, the climate of the world has been changing since it was formed. I often mention that once it was covered in ice and now not much of it is covered in ice. The climate always changes. I believe in climate change; it has always changed. Has man done it? I do not know. I never get involved in that. But I do know that, naturally, over the years the climate has changed. But, even accepting Senator Waters's view on man's emissions, I again emphasise that Australia emits less than 1.2 per cent of the world's carbon emissions. If carbon emissions are what is wrong then Australia contributes less than 1.2 per cent of it. The Greens would have us cut our emissions by 50 per cent, 100 per cent or whatever figure happens to be popular with the Greens these days, but, even if you cut our emissions by 100 per cent—even if we stopped every motor vehicle, shut off every light, closed down every factory in Australia—it would still not make one iota of difference to the changing climate of the world.

I have always said that, once Russia, China, America and India restrict their emissions, so should Australia. But, of course, we know that China is building new coal fired power stations. Probably they will have built one by the time I have finished speaking. Authoritative independent studies around the world from the OECD show that coal use around the world is again on the rise because it is being done in a careful way. It is being done because it is the cheapest form of power for the very poor around the world who currently do not have power. We in Australia have as much power as we like and we can make all these rules for other countries who have never seen electricity. But coal will continue to be used as the main source of power around the world, particularly in the Subcontinent and in South-East Asia, and it will happen because it is available, it is clean these days and it is cheap. It puts poverty-stricken countries in a situation that we in Australia accept as normal—that you will be able to get some electricity.

On the scare campaign of the Greens, if you need a scare campaign—no matter what it is—you somehow have to wind the Great Barrier Reef into it. The Great Barrier Reef is a resilient organism. It has been there for hundreds of thousands of years and it will continue to be there for hundreds of thousands of years. Governments—Queensland governments of all political persuasions, and, particularly, the federal government—have assisted in stopping run-off to the Barrier Reef—not the real cause of the damage up there. But sensible scientists,
reasonable scientist, who monitor the Great Barrier Reef with federal government money and
do a wonderful job, carefully understand what is happening, carefully manage it and carefully
maintain it. But you will get a few scientists, who the Greens always promote, who have
views on this that most of their peers find outlandish.

But, whether it is coal-seam gas or blowing your nose, if it is a problem to the Greens—and
everything is a problem to the Greens—you somehow have to wind the Barrier Reef into it. I
am not quite sure how the Barrier Reef gets into coal-seam gas mining on the west of the
range, but that does not matter with the Greens. You just have to put the words into it anyhow
and try to scare the people in Melbourne and Sydney who do not know better.

I have diverted a bit from the bill and I do want to give Senator Siewert an opportunity to
speak. But having just briefly commented on some of the conspiracy theories and
misinformation that Senator Waters presented in her speech, I just want to go to the bill. This
is the third iteration of the same bill. I think Senator Waters introduced both bills in the 43rd
and 44th Parliaments. They were exactly the same ideas. They did not attract the support of
parliament then and I doubt that they will this time, because they are just not right. I have
been to a number of presentations where you understand how this fracking occurs and you
understand the care that governments require. But, more importantly, you understand the care
and safety that major companies, which are good corporate citizens, put into it. I do not have
time to describe it, but they put down two or three steel casing, fill them up with cement and
leave them there forever. They have as much scientific evidence as you need that that is safe.

More importantly, you have farmers there and I have heard so many presentations by
farmers from that area who think that this is all the best thing since sliced bread. I accept that
Senator Waters was right that in the early days there were some cowboy operations out there
looking for a gas and South-West Queensland. They are all gone, fortunately, and the people
who are there now do it the right way. They work very cooperatively with the farmers. In fact,
a lot of farmers have made a lot of money from compensation agreements they have reached
with the responsible mining companies. You only have to listen to some of these people, and I
have said several of them—farmers who have been there for five or six generations who think
that coal-seam gas operations are the best thing that has happened to their area and to
Australia. Not only does it produce jobs but it keeps the towns going. Their kids, who in the
past have had to go to university in Brisbane and stay there because there were never any jobs
in country areas of Queensland, now have jobs. So the kids are staying at home. The kids
have the capital backing to be able to buy other farms and they welcome coal-seam gas, in the
right way, with the right compensation, and they grow.

I am sorry I do not have them with me, but we have some wonderful photographs of grain
crops growing up to about three metres away from, and completely surrounding, these coal
seam gas wells. The best people to talk to—if you want to seriously get into this debate—are
the farmers on whose land these wells are. You will find that the majority of them are
concerned. In fact, there is a joke going around: the only farmers who are against it are the
ones next door, the ones who did not get a well on their land and, therefore, did not get the
compensation! It is only a joke—I am sure it is not accurate—but you hear that said often. So
ask the real farmers, ask those out there, ask the townsfolk and ask the kids who get jobs.
More importantly, ask the governments and the regulators who are in charge about the safety
of these things and the enormous strides that have been taken to make absolutely sure that
wells going in are safe and will always be safe. I have a lot more to say, but I will leave it there so that other speakers have the opportunity to contribute.

Senator MOORE (Queensland) (11:30): As Senator Waters said, the Landholders’ Right to Refuse (Gas and Coal) Bill is the most recent bill in a series of bills that she has brought forward on this issue. I think it is important, particularly after the last contribution, to indicate that the Senate has taken the bill extremely seriously. The Environment and Communications Legislation Committee—I am sorry I was not on this particular legislation committee—looked into the Landholders’ Right to Refuse (Gas and Coal) Bill 2015 over several months in 2015. There were a wide range of submissions received by this committee, as well as individual statements by many people. I think well over 200 people contacted the Senate to talk about their views on the bill. It is fair to say that there are widely conflicting views about this bill. Nonetheless, I think it is absolutely critical to understand that this discussion is important, it is valuable and it is serious.

Senator Waters, you will not be happy with the contribution that I am going to make, because Labor does not support the bill in its current form. In the 10 minutes that I am going to talk about it, I want to focus on two of the clear areas where there are differences of opinion. One issue is the use of Commonwealth laws in this space. This took up a degree of debate during the Senate committee inquiry. A number of organisations and people talked about whether using a Commonwealth act was the right approach to an issue which is very personal and very important. I know people hate to hear politicians at the federal level say this, but we do believe it is the jurisdiction of the states to look at these issues. It is a problem when parliamentarians at different levels say, 'It is not us. Go to someone else,' but in this case we strongly believe that the issues around access to land in this space should be appropriately looked at by the states.

In fact, many states made this point very strongly in their submissions to the inquiry. South Australia came forward and questioned whether the bill would be constitutionally valid. They explained that, although there were laws in their jurisdiction that enabled landholders to object to unreasonable access and that provided compensation for economic loss, this must be owned at the South Australian government level. The Northern Territory government also spoke out very strongly in its submission, saying that the proposal in this bill would be:

… undesirable and impractical because it would impact significantly on State and Territory budgets, and potentially remove primary producer families whose ongoing stewardship of the land is essential to its productivity.

You would be unsurprised to know, Deputy President, that the department of agriculture made a very strong statement about where the jurisdiction should lie in this space. They said: The Bill is not an appropriate use of the Commonwealth's constitutional powers.

Importantly, they went on to say:

While the department supports better land access arrangements for landholders, we believe that this should be progressed at the state level.

A consistent theme in the arguments that the committee heard at the time was the need to enshrine very strong relationships between the landholders and the different organisations that were seeking to mine their lands for any purpose. The department of agriculture said that creating strong relationships between landholders and gas companies will help to not only
address many concerns of agricultural stakeholders but also promote responsible development of gas resources in a way that can benefit regional communities. They talked about gas because this legislation is looking most clearly at gas. I want to restate the Labor Party position that we believe that strong relationships, open communication and, most importantly, respect for different points of view should be the basis of discussions about any use of land for mining.

Certainly, it is very clear that in the past there have been difficulties with the interaction between landholders and people who are wanting to mine on their land. Senator Macdonald talked about the people with whom he met who were so happy about the use of their land for mining and how they welcomed people into that process. It is clear that that welcome is not shared by everyone. Some of the submissions received by the Senate committee were very strong in their belief that they should have the opportunity to say no to anyone coming onto their land to access it for any purpose other than what the landowner wanted. This has been a longstanding and vexed point. It is clear that this is the situation that we have been facing in the Constitution from the start.

The effect of this bill is to change the basic premise of the way that we define resources in the country, and that is that resources below the ground belong to the nation, not to any individual landowner. By forcing companies, as this bill would expect, to seek the written permission of landholders to explore changes that dynamic. The implication that landowners own what is underneath the ground and not just what is on top could have unintended consequences in terms of the royalties paid to state and Commonwealth governments. The economic profits—and I know that Senator Waters referred to it in her contribution—in this process are very real. As we can see from the point that was made in the committee, the idea of unintended consequences in terms of royalties to governments was raised. There was significant evidence about the economic value of mining in our country. There was a quote from Deloitte Access Economics estimating that the minerals industry contributed $165 billion in company tax and royalties to Australian governments between 2004-05 and 2014-15. The argument around the impact on jobs in this area—and I know this, coming from Queensland—is very often quoted and the figures vary. And I am not always sure that they are accurate. The resources industry estimates that they employ around 200,000 people in Australia. Certainly, the mining industry is absolutely essential to our economy and the way it operates, and we need to be aware of that when we are looking at any legislation which would impact on that process into the future.

The committee accepted that this was a vexed issue, and I will not go into it any further because of the time for the discussion around fracking. Again, this has been played out in the community over very many years. The submissions tended to go down two paths. One group, which rejected the use of fracking completely, pointed out the environmental loss and, in particular, the threat to our water. Another group, which was in favour of the legislation, talked about environmental safety, the scientific advances, the strong restrictions around the usage and the differences between the way that fracking operates in Australia and the way that it operates in parts of America. That has been the subject of a lot of film commentary, which I think has caused a lot of fear and concern in the community.

Labor continues to support mining as it operates now. We put on record our concerns about the environment and the fact that any proposal needs to have the full environmental regulation
and investigation process around it. We do understand the strength of feeling in some parts of the community about the fear that there could be longstanding causes of concern, but we believe that at the current stage there has been an effective balance established, and as long as the scrutiny continues we support access, with communication, to landholders' land. As such, we will again disappoint Senator Waters and not support her bill.

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:40): I rise to support the Landholders’ Right to Refuse (Gas and Coal) Bill 2015. I am sure that will come as no shock to people in this place. The Greens have been calling for a ban on fracking nationwide and for the right of landholders and traditional owners to say no to coal and unconventional gas on their land for a long time. We seek to legislate this in this bill. We believe they should have the right to refuse the rampant expansion of what is a dinosaur industry across the landscape and across Australia. A large number of farmers and citizens across this country are extremely concerned about the impact that exploration and production of unconventional gas is having. Fracking threatens our land, landscape, wildlife, clean air, clean water, clean drinking water supplies, not to mention, of course, the impact on climate change.

Coming from Western Australia, and having been involved in leading an environmental organisation in Western Australia for a long time, I am well aware of the impacts of the oil and gas industry on our landscape and environment. It is important that we note in this debate that in Western Australia we are talking not about coal seam gas but about shale gas, much of which lies below the wildflower and key farming area in the midwest. If anyone has not been to Western Australia to look at our wildflower region, I would strongly advise people to do that. Our Deputy President will be well aware of the beauty of that landscape.

Our world famous wine region in the south-west of Western Australia is currently facing the onslaught of onshore gas, with some fracking in the mix there as well. I can tell you what—that is the biggest threat to tourism and production in the south-west. People do not want to be driving down to the south-west of WA to see a gas rig cutting up the landscape. They also do not want to be seeing seismic lines and our bush being hacked up any more than it already is in the south-west. Then there is the area around our truly beloved Ningaloo Reef in Western Australia, and the Canning Basin that sits on top of hotspots in the West Kimberley. Not only is this very important land to the Aboriginal community, obviously—they have control over much of that area—but it is also growing in tourism value as well.

The Greens would hate to see these areas damaged or destroyed. Onshore gas development involves extensive land clearing, contrary to the myths that are perpetrated by the industry that the impacts are minimal. I myself have been there several times, most recently up into the midwest, and have seen the destruction that has been wrought in some of the most beautiful bushland in the midwest. There are seismic lines through Beekeepers Reserve and just north of Beekeepers Reserve. There are grids of clearing through that area, rampant destruction through creek lines, which is unrepaired, and spread of dieback. I have spoken at length in this place about the impact of dieback on our native vegetation in Western Australia and how there is the potential there for a large amount of destruction.

There is exploration with people wanting to produce and frack right near the Lesueur National Park. It is an area where the community—local farmers, environment groups and unions—combined successfully to campaign on in the 1990s to protect and stop a coalmine—
a dirty, polluting coal-fired power station shock, horror!—which we did stop and got that area put into a national park. Now everybody up there would never even think of having a coalmine.

This is what we are saying: think of the future. Do not destroy this area that is so important. In fact, because of the Kwongan heath vegetation, there is talk by scientists and community of needing to list that area, for example, in a future World Heritage listing, because it is such an important vegetation type and landscape. That is for a significant period down the track, but that is how important that vegetation is.

The process of fracking uses an excessive amount of water, particularly for the shale gas that we are talking about in Western Australia. Each frack in just one well requires between nine million and 29 million litres of water. Let me tell you: in Western Australia that is a significant amount of water. With one well having the potential to be fracked up to 10 times in its lifetime and with the potential for there to be tens of thousands of wells spread across Western Australia, it is obvious that, in a state as dry as ours, you cannot sustain such a water-intensive industry. Fracking also has an impact on our air and has been linked to increased risks of cancer, asthma, headaches and nosebleeds. Air close to fracking sites can contain an alphabet soup of toxins, including benzene, toluene, hydrocarbons, methane, ground-level ozone and other elements. There is also the risk of groundwater contamination by radioactive mutagenic and carcinogenic materials. Even tiny amounts of these chemicals can make water toxic and can result in our critical and crucial groundwater resources becoming unstable. I repeat: in such a dry state as Western Australia, that is particularly important.

Some argue that unconventional gas can be a replacement energy for dirtier fossil fuels such as coal. That is a flawed argument. We are now moving ahead in leaps and bounds in terms of renewable energy. In fact, in April this year the Western Australian Minister for Energy, Mike Nahan, acknowledged that there is 100,000 megawatts of overcapacity in the south-west interconnected grid and that household PV would meet daytime energy demand within a decade. This is really, really important in WA. As I said, I used to be the coordinator of the Conservation Council. We worked for years on renewable energy. When the government in the 1990s was trying to build its next fossil fuel dinosaur electricity generator, we were saying: 'This is a flawed investment. PV is just taking off. It will go ahead in leaps and bounds.' The government of the day ignored that and went ahead and built a new power station. Shock and horror, now they seem to be shocked that in fact household PV will generate—I will say it again—enough energy for daytime use within a decade.

So why would you go ahead and continue to invest in more fossil fuel? Unconventional gas is a fossil fuel. The reason they want to rush this through is that they think they have a tiny window to make a little bit of money before renewables clean out fossil fuel energy. That is why they want to rush this through—they want to stampede landholders' concerns for climate change, because they want to squeeze every last dollar they can out of fossil fuel before renewable energy takes over the market completely, like it will in Western Australia within a decade. Given the evolution of photovoltaics, it could well be even before a decade is out.

The effects of climate change are already highly visible in my home state of Western Australia. We have always been the state that knew that climate change was going to hit us first and very hard. The models have been predicting that for a long time, and that has not changed. In Western Australia we are already experiencing extremely long, hot summers,
more devastating bushfires, ocean warming and acidification, and changing rainfall patterns, which are accelerating. We are already seeing that in Western Australia.

The Paris agreement signed by Australia commits to holding the increase in global average temperature to well below two degrees centigrade above pre-industrial levels and pursuing efforts to limit temperature increases. By facilitating—and this is what this government does and so do some state governments—unconventional gas and more production of other fossil fuels they are impacting on our ability to meet that commitment. Recent analysis indicates that most of the fossil fuel reserves must be kept in the ground to meet a two-degree target. They need to stay in the ground, which is also why we need this bill.

Farmers are deeply concerned about the impacts of this destructive industry on their operation. It is agriculture as an industry that we need to prioritise because we are going to need that into the future, whereas the fossil fuel industry will not be there into the future. This bill gives farmers the right to say no, and it bans fracking in Western Australia. It will stop our mid-west from being fracked. It will protect the Kimberley. It will stop areas in the southwest being fracked. It will give farmers and landholders right to stop oil and gas exploration. Committing resources to explore for more gas resources is nonsensical and should no longer be considered an option.

We should be investing in new infrastructure to ensure transition from coal and gas to renewable energy. The Greens in Western Australia have a plan. We call it Energy 2029. We can achieve 100 per cent renewable energy in Western Australia by 2029. We have costed it. It will work. It needs a commitment to achieve it.

The DEPUTY PRESIDENT: The time for the debate has expired.

COMMITTEES
Selection of Bills Committee
Report


Ordered that the report be adopted.

Senator BUSHBY: I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 9 OF 2016
1. The committee met in private session on Wednesday, 23 November 2016 at 7.26 pm.
2. The committee resolved to recommend—that—
   (a) the provisions of the Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016 be referred immediately to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 7 February 2017 (see appendix 1 for a statement of reasons for referral).
3. The committee resolved to recommend—that the following bills not be referred to committees:

CHAMBER
• Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill 2016
• Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2016 Hazardous Waste (Regulation of Exports and Imports) Levy Bill 2016
• Racial Discrimination Law Amendment (Free Speech) Bill 2016
• Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Bill 2016.

The committee recommends accordingly.
4. The committee considered the following bill but was unable to reach agreement:
• Veterans’ Affairs Legislation Amendment (Budget and Other Measures) Bill 2016
5. The committee deferred consideration of the following bills to its next meeting:
• Corporations Amendment (Crowd-sourced Funding) Bill 2016
• Corporations Amendment (Professional Standards of Financial Advisers) Bill 2016
• Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016
• End Cruel Cosmetics Bill 2014
• National Health Amendment (Pharmaceutical Benefits) Bill 2016
• National Integrity Commission Bill 2013
• Racial Discrimination Amendment Bill 2016
• Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Bill 2016
• Telecommunications and Other Legislation Amendment Bill 2016
• Veterans’ Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016.

(David Bushby)
Chair
24 November 2016

APPENDIX 1
Proposal to refer a bill to a committee:
Name of bill:
Export Finance and Insurance Corporation Amendment (Support for Commonwealth Entities) Bill 2016

Reasons for referral/principal issues for consideration:
• To investigate whether there are unintended negative consequences of allowing EFIC to provide loans to projects which are not located in Australia.
• To establish whether accompanying checks and balances should be legislated.

Possible submissions or evidence from:
• Export Finance and Insurance Corporation
• Department of Foreign Affairs and Trade
• AusTrade
• Australian Fair Trade and Investment Network (AFTINET)
ACTU

Committee to which bill is to be referred:
Senate Foreign Affairs, Defence and Trade Legislation Committee.

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

Possible reporting date:
7 February 2017
Senator Anne Urquhart

NOTICES

Presentation

Senator Brown to 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 Hinch to move:
That the Senate notes the wide ranging problems with Australia's justice system, including access to justice.

Senator Burston to move:

Senator Hanson-Young to move:
That the Senate—

(a) opposes recent cuts to the Australian Broadcasting Corporation (ABC) that have resulted in:

(i) the loss of almost 500 Australian jobs,
(ii) the closure of all 50 ABC retail outlets around Australia,
(iii) a substantial reduction in Australian made children's content,
(iv) a substantive reduction in local regional content, and
(v) a reduction in government funding totalling 29.2 per cent over 30 years;

(b) opposes the severe cuts to the Australian Broadcasting Corporation outlined in the 2016 Budget paper totalling almost $50 million over the forward estimates; and

(c) supports the ongoing strengthening of the Australian Broadcasting Corporation as a bold, vital and well-funded national broadcaster with strong local and regional content for all Australians.

Postponement

Senator KAKOSCHKE-MOORE (South Australia) (11:53): by leave—I move:
That business of the Senate notice of motion no. 1 standing in the names of Senators Xenophon, Griff and Kkoschke-Moore for today, proposing a reference to the Standing Committee of Privileges, be postponed till the next day of sitting.
Question agreed to.
Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (11:54): by leave—I move:

That business of the Senate notice of motion no. 2 standing in her name for today, proposing a reference to the Economics References Committee, be postponed till the next day of sitting.

Question agreed to.

B U S I N E S S

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (11:54): by leave—I move:

That—
(a) consideration of general business shall not be proceeded with;
(b) the routine of business from not later than 4.30 pm till 6 pm shall be government business only; and
(c) the following government business orders of the day shall be considered:

No. 7 Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Bill 2016

No. 8 Law Enforcement Legislation Amendment (State Bodies and Other Measures) Bill 2016

No. 9 Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill 2016

No. 10 Customs Tariff Amendment (Expanded Information Technology Agreement Implementation and Other Measures) Bill 2016

No. 2 VET Student Loans Bill 2016 and two related bills.

I have often said that in a chamber where the government of the day does not have a majority in its own right management of the chamber is a shared responsibility of colleagues, and I acknowledge that the opposition has offered to forgo their general business time this afternoon so that government business can be transacted. I appreciate that cooperation and offer from the opposition. This motion proposes that, in the period that would ordinarily be general business time, we seek to deal with five government bills. As colleagues know, general business time goes from 4.30 till 6 pm, and this motion reflects that government business will be within that time frame. This motion does not propose to change the practice of having no divisions after 4.30 pm.

The first four bills listed are bills that would ordinarily be dealt with as noncontroversial legislation in that timeslot but the offer of the opposition is that by dealing with that in their general business time that would facilitate smoother arrangements in the course of next week. The fifth bill listed is the VET Student Loans Bill which, if we do have time remaining in what would ordinarily be general business time, we would seek to proceed with as far as we can. I thought, given there was a relatively short period of time between the circulation of this motion and it actually being moved by me here, that those comments may assist colleagues.

Senator SIEWERT (Western Australia—Australian Greens Whip) (11:58): I am disappointed that this is coming at this time, nearly Thursday afternoon. It has caught people unawares. They are largely noncontroversial bills, but No. 2, the VET Student Loans Bill, is not noncontro. I appreciate that there will be no divisions, because you are not seeking to
change the practice of not having divisions after 4.30 pm, but that is an important bill and it is controversial so I am concerned about that particular bill being there. I know that the government already has the opposition on side, giving up general business, but I would like to lodge our strong concern about the timing of this and the fact that this proposal is too cute by half—the government took noncontro bills out of where you do noncontro and put in backpackers, because they have not been able to manage their legislative agenda, and then put them in general business time and added on a bill that is controversial. I realise we will not be doing any divisions, but it is too cute by half to be putting that on near six o’clock on a Thursday night when senators were not expecting it to be brought on at that time.

I am disappointed to be receiving notice of this so late, on a Thursday afternoon, when everybody knows that people have travel arrangements et cetera to take care of. The government did not mention this in ‘whips’ last night, which is the forum where we organise the management of the chamber. They gave up the non-controversial spot to address backpackers. We do need to. There has been a lot of effort in this chamber to get backpackers on the agenda. So they gave up their non-controversial time and now are seeking to use general business time, which is non-government time, to pursue these bills, because they have not been able to manage their legislative agenda.

Senator FIFIELD: If no other colleagues are contributing I will sum up. Senator Siewert, I acknowledge that this motion has come late in the piece. It does on occasion happen that there are changes that are agreed to only very shortly before the appropriate time to move the relevant motions. I do acknowledge what you have said about the short notice, but nothing was intended by that. It was simply a function of the fact that it is only very recently that this agreement has been reached. In terms of whips not mentioning anything at cross-party ‘whips’ last night, this was not a live proposition at that time. So there was no withholding of anything by whips.

In terms of the law enforcement legislation amendment bill, my understanding is that the bill is non-controversial, from consultations with groupings in the Senate, but, Senator Siewert, I obviously will take it at face value that there are issues the Greens have—

Senator Siewert: I didn't saying anything just then about that; I said the VET bill.

Senator FIFIELD: I misheard you. It was only the first four bills that I referred to as non-controversial.

Senator Siewert: I know that.

Senator FIFIELD: Thank you. So we are where we are. I thank my colleagues for their forbearance here.

The DEPUTY PRESIDENT: Just for clarity, Senator Siewert said 'bill No. 2'. I certainly understood.

Senator Fifield interjecting—

The DEPUTY PRESIDENT: Yes. The question now is that the motion, as moved by the minister, which I understand has been circulated in the chamber, which substitutes government business for general business, between 4:30 and 6:00 pm, with the no-divisions rule still applying.

Question agreed to.
SENATE

Rearrangement

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (12:03): I move:

That the general business order of the day relating to the Commonwealth Electoral Amendment (Donation Reform and Transparency) Bill 2016, subject to introduction, be considered on Thursday, 1 December 2016 under Consideration of Private Senators' Bills.

Question agreed to.

MOTIONS

Disability Services

Senator SIEWERT (Western Australia—Australian Greens Whip) (12:03): I ask that general business notice of motion No. 125 standing in my name be taken as formal and I also seek leave to add Senator Brown as having joined with me in moving the motion.

Leave granted.

Senator SIEWERT: I, and also on behalf of Senator Brown, move:

That the Senate—

(a) notes that the National Disability Insurance Scheme (NDIS) was introduced to improve the supports, choice and accessibility for people with disability;
(b) notes reports that blind and vision-impaired Australians have been unable to access the NDIS because materials such as the application form and pamphlets are not available in braille or large print;
(c) acknowledges that blind and vision-impaired Australians continue to face barriers to joining the NDIS; and
(d) calls on the Minister for Social Services to commit to addressing these barriers and to work with the National Disability Insurance Agency to ensure that all information and documentation for the NDIS is accessible for the vision-impaired.


The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator GALLAGHER: Labor will be supporting this motion and in doing so highlights the need for the Minister for Social Services and the National Disability Insurance Agency to act swiftly to address accessibility barriers hindering blind and vision impaired Australians' participation in the NDIS. We know that the NDIS is already transforming the lives of thousands of Australians with a disability. Blind and vision impaired Australians who are entitled to receive care and support as part of the NDIS should not be prevented from becoming a part of this. The NDIS cannot afford any more mistakes and missteps from Mr Porter and the Turnbull government. Each and every stuff-up is undermining confidence in this critical social reform. It is time for Mr Porter to fix the problems of the NDIS rollout.

Thousands of people with a disability, their families and their carers are relying on the scheme to improve their lives.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:05): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.
Senator McGRATH: The government supports the motion. The government acknowledges the importance of making the National Disability Insurance Scheme accessible for all people with disability and is already working with the National Disability Insurance Agency to improve accessibility for the blind and vision impaired.

Question agreed to.

Australian Federal Police Funding

Senator LAMBIE (Tasmania) (12:05): I move:

That the Senate—

(a) notes that the Australian Federal Police Association warns that:

(i) the 2015-16 Budget Papers indicate the Australian Federal Police's (AFP) fiscal position through the forward estimates will deteriorate to the tune of $112 million,

(ii) as an operational agency, the brunt of this deterioration will be borne within employee ranks, with funds available for employee benefits reducing by $61 million,

(iii) by straight division, this represents a reduction of 450 staff, though the actual number will be higher,

(iv) enterprise bargaining is currently underway in the AFP, with employees being unable to sacrifice sufficient terms and conditions to fully offset the $94 million cost of delivering a two per cent per annum salary increase over a three-year agreement,

(v) the consequence of this will be a further reduction in staffing numbers, by perhaps as many as an additional 400 to offset the cost, and

(vi) in total, the AFP is confronting a situation where up to 1,000 employees could be lost through budgetary deterioration and enterprise bargaining; and

(b) calls on the Government to identify which operational outcomes will no longer be required as the AFP cannot deliver business as usual into the future in this environment.

Senator McGRATH (Queensland—Assistant Minister to the Prime Minister) (12:06): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator McGRATH: It is incorrect that staffing numbers have reduced in the AFP. This government has for three budgets in a row forecast a steady average staffing level for the AFP between 6,200 and 6,300. Following our successes in stopping the boats and peacekeeping missions in Timor Leste and the Solomon Islands, fewer staffing resources are required for these functions, allowing them to be redirected to other priorities. The government has also invested $164 million in new money since the 2015-16 MYEFO in several priority areas, including resources for the AFP to enhance the protection of its staff, the new cyber strategy and the expansion of fraud and anticorruption operational capacity. This demonstrates the government's commitment to supporting the AFP and its operational responsibilities.

Question agreed to.

Organ Procurement in Foreign Countries

Senator RICE (Victoria) (12:07): I, and also on behalf of Senator Abetz, move:

That the Senate—

(a) notes:
(i) deeply concerning reports of unethical organ procurement procedures in foreign countries, including forced organ procurement from executed prisoners and prisoners of conscience in state-led processes,

(ii) that a number of countries including Israel, Spain and Taiwan have banned organ tourism, and the United States and the European Union have passed strong resolutions against it, and

(iii) that limited data is available on Australians receiving organ transplants overseas; and

(b) invites the Australian Government to consider:

(i) making it an offence to travel overseas to receive an organ acquired from a non-consensual donor, and

(ii) establishing a register of Australians travelling overseas to receive organ transplants, including details on the country in which they receive them.

Question agreed to.

Ellerton Drive Extension, Queanbeyan

Senator RHIANNON (New South Wales) (12:08): I seek leave to amend general business notice of motion No. 119 standing in my name.

Leave granted.

Senator RHIANNON: I move the motion as amended:

That the Senate—

(a) notes that:

(i) the Federal Government intends to grant $25 million towards building the proposed Ellerton Drive Extension (EDE) in Queanbeyan, New South Wales,

(ii) the EDE would not provide a real solution to the community's transport needs,

(iii) the EDE would result in the destruction of 55 hollow-bearing trees and a loss of White Box-Yellow Box-Blakely's Red Gum Grassy Woodland, listed nationally as a critically endangered ecological community, and

(iv) the EDE would involve destroying 44 termite mounds, habitat for Rosenberg's Goanna, which is listed as a threatened species in New South Wales; and

(b) calls on:

(i) the Minister for the Environment and Energy (Mr Frydenberg) to decline approval for the EDE using all his legal powers, and

(ii) the Government to support the Queanbeyan Palerang Regional Council to develop more sustainable transport solutions with a focus on reducing dependence on cars by improving public transport services and facilities for cycling and walking.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:09): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator McGrath: Any consideration of the Ellerton Drive Extension project will be undertaken in accordance with the Environment Protection and Biodiversity Conservation Act 1999.

Question agreed to.
White Ribbon Day

Senator KAKOSCHKE-MOORE (South Australia) (12:09): I, and also on behalf of Senators Moore and Waters, move:

That the Senate—
(a) notes that 25 November:
(i) is the International Day for Elimination of Violence Against Women which is also White Ribbon Day, and
(ii) marks the start of the United Nations, 16 Days of Activism against Gender-Based Violence Campaign, a time to galvanize action to end violence against women and girls around the world, leading to 10 December, Human Rights Day;
(b) acknowledges the important work of women's organisations to respond to family violence, to provide frontline services like housing and legal assistance, and the work of other organisations who are part of the nation's response to family violence, like Our Watch;
(c) recognises that:
(i) the White Ribbon campaign is a national male-led campaign to end men's violence against women and is now active in over 60 countries around the world,
(ii) the work of White Ribbon is strongly linked with the National Action Plan to reduce violence against women and their children and build collaborative partnerships stemming from initiatives under the Plan,
(iii) one in three women have experienced physical and/or sexual abuse perpetrated by someone known to them, and on average, one woman is killed every week in Australia as a result of domestic violence,
(iv) across the world, violence against women and girls remains one of the most serious, and the most tolerated, human rights violations, both a cause and a consequence of gender inequality and discrimination,
(v) prevention strategies have a proven effect on levels of violence, and if we engage the whole community in prevention and give them skills for respectful relationships, we will reduce the costs associated with violence, and
(vi) social policy initiatives and law reform addressing gender inequality are central to reducing attitudes that support violence against women; and
(d) reinforces the need for broad community support, as well as support across at all levels of government, in the response to end the scourge of family violence.

Question agreed to.

Disaster Risk Reduction

Senator URQUHART (Tasmania—Opposition Whip in the Senate) (12:10): At the request of Senator Moore, I move:

That the Senate—
(a) notes that:
(i) from 2009-2013, Australia was one of the world leaders in Disaster Risk Reduction, and
(ii) in 2013, the Organisation for Economic Co-operation and Development (OECD) praised Australia as a 'lead donor and potential role model in Disaster Risk Reduction';
(b) recognises that Disaster Risk Reduction protects lives and livelihoods, protects development gains, and is cost-effective, in that the World Bank estimates that every $1 invested in Disaster Risk Reduction saves $7 in disaster response and recovery costs; and

(c) acknowledges that:

(i) Australia's investment in Disaster Risk Reduction has decreased; so that; between 2014 and 2016, Disaster Risk Reduction spending was reduced from around 3 per cent of the total aid program to less than 1.4 per cent of a dramatically reduced aid program, and

(ii) with the severity of natural disasters increasing in the Asia-Pacific region, it has never been more important to help our neighbours build resilience to disasters.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:10): I seek leave to make a short statement.

The DEPUTY PRESIDENT: Is leave granted? Leave is granted for one minute.

Senator McGrath: Australia remains a leader in disaster risk reduction. Building resilience has been elevated to one of the six priority areas under the government's aid policy. The government is providing around two per cent of the official development assistance budget to disaster risk reduction activities—the same level it has been for the last five years. Australia effectively doubles the accepted international target of at least one per cent of official development assistance directed to disaster risk reduction activities. The government is focused on building climate and disaster resilience in our immediate neighbourhood, and is spending $1 billion on climate resilience over the next five years.

The DEPUTY PRESIDENT: The question is that general business motion No. 124, moved by Senator Urquhart in the name of Senator Moore, be agreed to.

The Senate divided. [12:15]

(The Deputy President—Senator Lines)

Ayes .................... 34
Noes .................... 29
Majority ............. 5

AYES

Bilyk, CL
Brown, CL
Carr, KJ
Chisholm, A
Collins, JMA
Dastyari, S
Di Natale, R
Dodson, P
Farrell, D
Gallacher, AM
Gallagher, KR
Griff, S
Hanson-Young, SC
Hinch, D
Kakoschke-Moore, S
Ketter, CR
Kitching, K
Marshall, GM
McAllister, J
McCarthy, M
McKim, NJ
Moore, CM
O'Neil, DM
Polley, H
Pratt, LC
Rhiannon, L
Rice, J
Siewert, R
Sterle, G
Urqhart, AE (teller)
Waters, LJ
Watt, M
Whish-Wilson, PS
Xenophon, N
The DEPUTY PRESIDENT (12:18): The President has received letters requesting changes in the membership of committees.

Senator McGRATH (Queensland—Assistant Minister to the Prime Minister) (12:18): by leave—I move:

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

Environment and Communications Legislation Committee—
Appointed—Substitute member: Senator McKenzie to replace Senator Hume for the consideration of the 2016-17 supplementary Budget estimates on 25 November 2016

Red Tape—Select Committee—
Appointed—
Senators Paterson and Smith

Participating members: Senators Abetz, Back, Bernardi, Bushby, Duniam, Fawcett, Hume, Macdonald, McKenzie, O'Sullivan, Reynolds and Williams

Resilience of Electricity Infrastructure in a Warming World—Select Committee—
Appointed—
Senators Back and Duniam


Question agreed to.
BILLS
Criminal Code Amendment (War Crimes) Bill 2016

First Reading

Bill received from the House of Representatives.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:19): 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 McGrath (Queensland—Assistant Minister to the Prime Minister) (12:19): 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—

The Criminal Code Amendment (War Crimes) Bill aligns Australian domestic law with international law in relation to the treatment of members of organised armed groups in non-international armed conflict.

Crucially, these amendments do not alter the protections from attack afforded to civilians and other protected persons under international humanitarian law, including medical and religious personnel, and persons who are hors de combat.

The amendments will provide the Australian Defence Force (ADF) with the legal certainty needed to target members of organised armed groups with lethal force, including in the context of current ADF operations against Daesh in Iraq and Syria. They also reflect the reality that such groups are akin to regular armed forces, and their members should therefore receive treatment equivalent to members of regular armed forces under Australian domestic law.

Summary of amendments

Members of organised armed groups do not benefit from the protections accorded to civilians and other protected persons under international humanitarian law. The Bill amends Division 268 of the Criminal Code Act to provide express recognition of this fact under Australian domestic law.

The Bill will also align Australian domestic law with the requirements of the international humanitarian law principle of proportionality in relation to attacks on military objectives in non-international armed conflict.

Finally, the Bill makes a minor technical amendment (to section 268.65) to exclude military personnel from the list of protected persons who may not be used to shield or impede military operations.

This minor correction reflects the position at international humanitarian law, under which military personnel are not protected persons. It reflects the intent of the provision at the time it was enacted in 2002.

Members of organised armed groups – Schedule 1, Part 1
Members of organised armed groups are recognised as a category distinct from civilians under international law. As stated by the International Committee of the Red Cross (ICRC) in its *Interpretive Guidance on the Notion of Direct Participation in Hostilities*, 'all persons who are not members of State armed forces or organised armed groups… are civilians.'

Once a person is identified as a member of an organised armed group, he or she may be targeted with lethal force subject to the ordinary rules of international humanitarian law.

This is recognised in the ICRC's Commentary to article 13 of Protocol II Additional to the Geneva Conventions, which expressly confirms that those who belong to armed forces or armed groups may be attacked at any time.

Aligning Australia's domestic legislation with international law in this respect will ensure that our military forces are able to conduct more effective operations against members of organised armed groups.

Accordingly, Part 1 of Schedule 1 of the Bill contains amendments to clarify that certain war crimes offences applicable in non-international armed conflict (sections 268.70, 268.71 and 268.72) do not apply to protect members of organised armed groups.

Consistent with the principles outlined in article 41 of Additional Protocol I, a member of an organised armed group will not be targetable when they are *hors de combat*. According to paragraph 2 of article 41, a person is *hors de combat* where he or she has clearly expressed an intention to surrender, or is unconscious or otherwise incapacitated by wounds or sickness, and therefore incapable of defending himself or herself.

Whether a particular non-State armed group qualifies as an 'organised armed group' for the purposes of international humanitarian law, such that its members may lawfully be targeted in a non-international armed conflict, is a question of fact to be determined in light of the circumstances prevailing at the time.

Key indicia that a particular group is an 'organised armed group' will include: evidence of a command structure or hierarchy; at least a minimal degree of organisation; and a collective purpose that is related to the broader hostilities and involves the use of force. Analogous indicia have been elaborated by international courts such as the International Criminal Tribunal for the Former Yugoslavia (ICTY), which has discussed the issue in a number of judgments, including its April 2008 judgment in *Prosecutor v Haradinaj* and its November 2005 judgment in *Prosecutor v Limaj*.

Importantly, under international humanitarian law, an organised armed group may exist within a larger entity. For example, an entity may have a political wing, an armed wing, an administrative wing and/or a religious wing. In that case, only a subgroup that actually engages in hostilities will qualify as an 'organised armed group'.

The question of whether a particular individual is a 'member' of an organised armed group such that he or she may lawfully be targeted will also be a question of fact, to be answered on the basis of available information and intelligence. As to the degree of certainty that a decision-maker must have, the standard adopted by international tribunals has been a 'reasonable belief'. This was referred to by the ICTY in *Prosecutor v Galić*, for instance.

The functions a person carries out can be a strong indicator as to whether or not that individual is a 'member' of the relevant group. In this respect, it is appropriate to consider whether the person is involved in combat, combat support, or combat service support functions similar to those functions in a State's armed forces.

*Proportionality in non-international armed conflict – Schedule 1, Part 2*

Separately, Part 2 of Schedule 1 of the Bill also amends Division 268 of the Criminal Code to reflect the requirements of the international law principle of proportionality in relation to attacks on military objectives in non-international armed conflict.
The principle of proportionality is codified in article 51(5) (b) of Additional Protocol I to the Geneva Conventions, which applies in international armed conflict, and has also been recognised by the ICTY, for example in Prosecutor v Kupreškić, as a customary rule applicable in non-international armed conflict.

The principle prohibits attacks which are expected to cause incidental loss of life or injury to civilians that would be excessive in relation to the concrete and direct military advantage anticipated.

Accordingly, the Bill will amend sections 268.70, 268.71 and 268.72 to make it clear that it is not an offence under those provisions for a person to conduct a proportionate attack against a military objective. This is consistent with the protections afforded to civilians under international humanitarian law.

Conclusion

This Bill will align Australian domestic law with the position at international law in relation to targeting operations against members of organised armed groups in non-international armed conflict.

These amendments will ensure that ADF personnel are empowered to target organised armed groups at their core, to the extent permitted by international law, and that they will be supported by our domestic laws in doing so.

Debate adjourned.

Social Security Legislation Amendment (Youth Jobs Path: Prepare, Trial, Hire) Bill 2016

First Reading

Bill received from the House of Representatives.

Senator McGrath (Queensland—Assistant Minister to the Prime Minister) (12:20): 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 McGrath (Queensland—Assistant Minister to the Prime Minister) (12:20): 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 incorporated speech read as follows—

SOCIAL SECURITY LEGISLATION AMENDMENT (YOUTH JOBS PATH: PREPARE, TRIAL, HIRE) BILL 2016

This Bill will help give effect to the Youth Jobs PaTH Programme announced in the 2016-17 Budget as part of the Youth Employment Package.

From April 1 2017, the Prepare-Trial-Hire Programme will increase young people's employability and provide them with real work experience to get the start they need in the work force.

It will do this by providing a three-stage pathway to work for young job seekers:
Prepare: Feedback from employers indicates that young people often do not have a good understanding of the values and behaviours that are expected in the workplace and in the recruitment process.

Employability Skills Training will ensure that young people have the right attitude and approach to work, are reliable and well presented, so that employers who give them a chance will be rewarded with employees who are enthusiastic and willing to work.

Young job seekers who need to boost their job-readiness, will receive intensive pre-employment skills training within five months of registering with jobactive.

The first three weeks of training will help build practical industry skills with a focus on concepts like working in a team, presentation, and communication. A further three weeks of training will centre on advanced job preparation and job hunting skills;

Trial: voluntary internships of four to 12 weeks will give young job seekers a chance to show what they can do in a real workplace. We will provide an extra $200 on top of the welfare payment they already receive. Up to 120,000 placements over four years will help young job seekers who have been in employment services for six months or more to gain valuable work experience within a real business; and

Hire: a new Youth Bonus wage subsidy of between $6,500 and $10,000 will support the employment of young people. The Youth Bonus is a smarter way of leveraging what the community would otherwise spend on welfare payments.

The Youth Jobs PaTH will encourage employers to hire young people by enhancing their employability, providing them with real work experience, and providing incentives for employers to take them on.

The program will also help to instil confidence among young people and incentivise their transition into employment.

This is truly helping young Australians by getting them ready, giving them a go and getting them a job.

This Bill will enhance the internship and wage subsidy elements of Youth Jobs PaTH.

The amendments mean fortnightly incentive payments to eligible young job seekers placed in internships under Youth Jobs PaTH are not 'income' for social security and veterans' entitlements purposes. This ensures that the incentive payments do not affect participants' social security payments or veterans' entitlements.

For young job seekers, these incentive payments will go further if this Bill is passed.

The amendments also aim to ensure that eligible young people in particular circumstances will be able to have their social security payments restored without having to make a new claim.

Young people will have their payments restored if they lose their job (through no fault of their own) with an eligible employer within 26 weeks of ceasing to receive income support because of that employment.

Early intervention can mean the difference between a young person taking their first steps into a productive working life or entering a cycle of long-term welfare dependency. Australia cannot afford to leave thousands of young Australians to a lifetime of welfare dependency. We know once a young person is long-term unemployed their chances of successfully finding employment decline drastically.

In addition to the financial cost, the social and human cost is too great for our country to ignore.

CHAMBER
The Government is therefore committed to ensuring that young job seekers find work as quickly as possible and avoid moving on to income support and the welfare trap. The Australian community rightly expects that young people should participate in the workforce to the full extent of their capacity.

The Youth Path Programme seeks to meet these expectations by helping job ready young people to fully engage in the labour market to maximise their chances of finding work and avoid moving onto welfare.

Regardless of any of their political or ideological views in relation to the overall Youth Jobs PaTH Programme, I call upon those opposite to support this Bill. It advantages young job seekers and provides them with an added incentive, encouraging participants and increasing their income support.

The Youth Jobs PaTH complements the significant measures for young job seekers announced last year in the 2015-16 Budget. This includes:

- the new Transition to Work service, which supports young people aged 15-21 through intensive, pre-employment support to improve work-readiness and help them into work or education;
- ParentsNext, which helps eligible parents to identify their education and employment goals, develop a pathway to achieve their goals and link them to activities and services in the local community; and
- Empowering YOUth Initiatives which support innovative approaches to help unemployed young people improve their skills and move toward sustainable employment.

These measures are giving young people, and in particular disadvantaged young job seekers, opportunities to succeed in the world of work. The Youth Jobs PaTH represents a scaling up of efforts to improve the employment prospects of a much larger number of young job seekers.

Complementing these measures is the Government's reforms to employment services. On 1 July 2015, jobactive commenced, reinvigorating employment services by reducing red tape so that providers can spend more time doing what they do best – helping all job seekers find and keep a job.

The Government believes that the best form of welfare is a job. These measures will strengthen the business environment and ensure that young job seekers have the capacity, support and incentives to take advantage of new opportunities as they emerge and helping them to realise their potential.

The ACTING DEPUTY PRESIDENT (Senator Lines): In accordance with standing order 115(3), further consideration of this bill is now adjourned to 28 November 2016.

Water Legislation Amendment (Sustainable Diversion Limit Adjustment) Bill 2016
Broadcasting Legislation Amendment (Television and Radio Licence Fees) Bill 2016
Narcotic Drugs (Licence Charges) Bill 2016
Narcotic Drugs Legislation Amendment Bill 2016
Customs Amendment (2017 Harmonized System Changes) Bill 2016
Customs Tariff Amendment (2017 Harmonized System Changes) Bill 2016
Assent

Messages from the Governor-General reported informing the Senate of assent to the bills.
Civil Nuclear Transfers to India Bill 2016
Report of Legislation Committee

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (12:21): Pursuant to order and at the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee, I present the committee's report on the Civil Nuclear Transfers to India Bill 2016, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016
Report of Legislation Committee

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (12:21): Pursuant to order and at the request of the Chair of the Community Affairs Legislation Committee, I present the committee's report on the Social Services Legislation Amendment (Transition Mobility Allowance to the National Disability Insurance Scheme) Bill 2016, together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016
Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016
Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016

In Committee

Bills—by leave—taken together and as a whole.

Senator LEYONHJELM (New South Wales) (12:23): Last evening, as a result of some rearrangements in speaking orders and some confusion over quorums and so forth, I failed to deliver my contribution to the second reading debate on this package of bills. Before getting into amendments, I would like to deliver my speech in order to have it on the record.

The bills before us today propose to introduce a new tax regime for backpackers, whereby they are taxed at 19 per cent from the first dollar they earn. This begs the question, how are these backpackers taxed under current law? And how would they be taxed if the bills fail to pass?

That depends on what you read, who you listen to, and when. Suppose you listened to the government in 2015 when they first announced special backpacker tax arrangements. In its budget of that year, the government said it was changing:

…the tax residency rules to treat most people who are temporarily in Australia for a working holiday as non-residents … Currently, a working holiday maker can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically that they are in Australia for more than six months. … This measure is estimated to have a gain to revenue of $540.0 million over the forward estimates period.

From this, you would think that a lot of backpackers are treated as residents and enjoy a tax-free threshold like other residents, paying zero tax until they reach the threshold. After all, the government thought it would raise $540 million over the three years to June 2019 by
changing tax law to treat most backpackers as non-residents. This would not be possible if they were already non-residents.

This estimate was not just a guess from the Treasurer. It was produced by Treasury in intimate consultation with the Australian Taxation Office, which regularly deals with these backpackers. If you want to know how backpackers are taxed under current law, you could also read the Treasurer's media release in September this year, when he watered down the government's proposal to tax at 32.5 per cent from the first dollar. He announced instead that a 19 per cent tax from the first dollar earned would apply where the employer is registered to employ backpackers and a 32.5 per cent tax on the first dollar earned would apply where the employer is not registered. The media release indicated that this watering down would reduce the expected revenue gain in the three years to June 2019 by $200 million, so the Treasurer still expects his special backpacker tax arrangements to raise $340 million in extra revenue over the three years to June 2019. Again, such a boost to revenue is only possible if a lot of backpackers are currently treated as residents and enjoy a tax-free threshold.

If you want to know how backpackers are taxed under current law, you could also read the tax office's statement on its website in September after the Treasurer watered down the government's proposal. In that statement the tax office said working holiday-makers 'will no longer be entitled to claim the tax-free threshold.' That sounds a lot like the tax office suggesting that working holiday-makers are currently entitled to claim the tax-free threshold.

All of this suggests that the bills before us today represent a substantial tax increase. The funny thing is that, once Labor signalled that they would not wave through these bills, crossbenchers being wooed to vote for the bills started being told that the bills actually represent a tax reduction. We were told that, if the bills before us today did not pass, from January 2017 the tax office would treat backpackers as non-residents even though the age-old definition of 'resident' in tax law remains untouched. Lo and behold, the tax office put out a media release in November offering the view that most working holiday-makers are non-residents.

This threat to treat backpackers as non-residents under the current law seems flimsy. It is true that the Administrative Appeals Tribunal decided last year that three particular backpackers should be considered to be non-residents, but these three backpackers are in no way representative of most backpackers that come to Australia, so there is no basis for the tax office to say now that all or even most backpackers are non-residents. The law says you are a resident if you meet just one of four criteria, but each of the three backpackers agreed they had no claim to residency under three of the four criteria. Each claimed residency solely on the basis of being present in Australia for six months and not having a usual place of abode in a particular place overseas. But each of them lived in their parents' houses before and after coming to Australia. They only stayed in Australia for between six and 10 months, in line with their prior intentions. Each had minimal assets in Australia. They spent no more than half their time in Australia in employment. They each seemed to have stayed in 20 or more places while in Australia. One even claimed to be a non-resident in correspondence with the tax office, and the other two used their parents' address for at least some correspondence. Because of all this, each of the three backpackers was found to have a usual place of abode in a particular place overseas: their parents' home.
In contrast, many and perhaps most backpackers will not so clearly have a usual place of abode in a particular place overseas, or they will claim residency under one of the other criteria. Given the unrepresentative nature of the three backpackers deemed to be non-residents by the Administrative Appeals Tribunal and given that the government is banking on its bill significantly increasing revenue, it seems clear that many and perhaps most backpackers are residents for tax purposes and will pay considerably more tax if the bills before us today pass.

This would not necessarily mean I would vote against the bills. It may come as a surprise, but I do not mind the imposition of extra taxes on foreigners. After all, the Liberal Democrats’ immigration policy is to limit immigration by imposing tariffs on migrants who meet our character, criminal and health requirements. This will allow us to do away with bureaucratic quotas and selection criteria under the family reunion and skilled programs. No tariff would be imposed on refugees, for whom a generous tariff would remain.

What I do mind is imposing extra taxes on foreigners to such an extent that it ends up hurting Australians. I am concerned that a 19 per cent tax from the first dollar may encourage backpackers to take their working holidays in lower-taxing jurisdictions like New Zealand. This will be bad because Australians are better off when backpackers come here. More work gets done, and backpackers impose a negligible cost on taxpayers because they do not have access to services like public schools and hospitals.

The government argues that increasing tax on backpackers will not discourage them because the jobs on offer in Australia pay a high wage. The problem is that there are not enough jobs. Our minimum wage laws mean that, yes, our employers are forced to offer high wages for menial tasks, but they respond to this by not offering many jobs. If this parliament can resist the temptation to increase tax on backpackers, and if we also reduced our minimum wage, then we would see more backpackers come to Australia to work in menial tasks for the benefit of Australians. If we combined a reduction in our minimum wage with a reduction in the availability of welfare, we could see many currently unemployed Australians take up these menial tasks as well. In summary, I believe that the bills before us today are likely to discourage backpackers from coming here for our benefit, particularly if we are able to constrain our minimum wage. As such, I will oppose these bills.

There are other reasons why I oppose these bills. These bills also increase the tax on the superannuation of backpackers to a whopping 95 per cent. They increase the passenger movement charge, giving us one of the highest, most anti-tourist departure taxes in the world. And they do the bidding of unions. The bills deliberately set out to make the hiring of backpackers markedly harder than the hiring of locals. If a farmer wants to hire a backpacker he or she will have to demonstrate a genuine business requirement to hire backpackers. They will have to promise to examine the visas of backpackers and confirm that the visa allows the work to be done. They and any associates will have to pass a vague fit-and-proper-person test. If the farmer fails to navigate this bureaucracy, he faces a fine of up to $10,800. Unsurprisingly, the government admits that this may dis-incentivise the employment of working holiday-makers.

What is worse, the bills set the unions on any farmer brave enough to hire backpackers. The bills mean the government will publicly disclose the name and location of any farmer who has successfully navigated the bureaucracy and intends to hire backpackers. These
details will appear on the Australian Business Register. The government says that this will make it easy for working holiday-makers and others to check the registration status of a potential employer. Given that backpackers are not known to regularly peruse the Australian Business Register, this outing of farmers who plan to hire backpackers will mainly help the Australian Workers Union to wage a campaign of harassment and intimidation. Some farmers support these pro-union provisions. Rather than continue to resist union harassment and intimidation, they now just want to make sure that their competitors face union harassment too. In effect, the farmers who support these provisions are happy to see fruit go to rot as long as everyone else is in the same boat.

Why the Liberal and National parties are instigating such pro-union provisions is anyone's guess. Perhaps they think the farmers who support them are representative. Perhaps they have fallen for the Labor claims that when backpackers work hard at agreed rates they are being exploited instead of offering a shining example for others. Or perhaps the Liberal and National parties are asleep at the wheel and letting the red-tape-loving bureaucrats draw up laws without oversight.

But perhaps the strangest pro-union provision in these backpacker tax bills has nothing to do with backpackers at all. For the first time in Australia's history, these bills will authorise the tax office to divulge the private financial details of employers who are fully compliant with the tax laws to the Fair Work Ombudsman, so that she can enforce government decrees on wages, including minimum wages, award wages and penalty rates. It is well known that government wage setting is ignored by a number of employers and employees. This is a good thing because it gets more people into jobs and benefits the economy. But now this new provision will ensure government wage setting is enforced with an iron fist, with terrible consequences for employment.

That the tax office coercively extracts the financial information of taxpayers is a concern, but at least it has always kept this information secret. Divulging the information to more and more tentacles of government is a huge breach of trust that will substantially undermine taxpayer cooperation with the tax office. With their backpacker tax bills, the Liberal and National parties are raising revenue, discouraging backpackers to the detriment of Australians and doing the bidding of the unions. Accordingly, I oppose each of these bills and I hope the government's efforts to pass them into law fail miserably.

**Senator DI NATALE** (Victoria—Leader of the Australian Greens) (12:35): I rise to speak to the working holiday-maker reform bills. Firstly let me say the government has made another mess of this. They have the reverse Midas touch at the moment. They are inept and misguided at handling anything that comes their way, and that is what happens when you are obsessed with all of these penny-pinching revenue measures. The problem here is that while the government is ignoring risks to Australian businesses that rely on working holiday-makers, and particularly agricultural producers, they are creating huge uncertainty within this industry. I speak about this now because I was denied the opportunity to do it during the second reading debate.

I just want to talk a little bit about the history of what happened here, and that was that the government first had this thought bubble of a backpacker tax in the 2015-16 budget. They did not talk to anybody about it. It came out of the blue, and of course the agricultural sector were outraged when they were confronted with this. The government did nothing about the tax for
the duration of 2015-16. It was absent from the 2016-17 budget. Then, under pressure during an election campaign about what they were going to do with all of the uncertainty created, they announced a review and pushed the issue off into this parliament. Now we are here, being asked to mop up the mess.

What they have come up with is a revised backpacker tax at 19 per cent. We have sort of entered this dutch auction when it comes to the tax rate for backpackers. But what it does not do is answer the fundamental question of why backpackers should not be afforded access to the tax-free threshold in the same way as Australian residents. We have had people like the Deputy Prime Minister, Barnaby Joyce, running around the country saying we should not have backpackers taxed less than Australians. Well, there is a very simple response to that: let's just tax them like Australian residents. If you do that, everybody plays by the same set of rules.

If we were to give backpackers the same opportunity to be taxed as Australian residents, they would be afforded access to the tax-free threshold. What that would enable us to do is to maintain our competitiveness with other countries, which means that backpackers will choose Australia instead of other countries. If we do not do that, if we do not remain competitive in this area, then Australian agricultural businesses are going to lose out.

The story of Timothy Reid, the Managing Director of Reid Fruits in Tassie, was an interesting one when he presented to the Senate Economics Legislation Committee earlier in November. His view was:

Those kids come here at the moment and go away as ambassadors for our product.

Senator McKenzie interjecting—

Senator DI NATALE: Senator McKenzie might not care about Tasmania. The government might not care about Tasmania after they were—

Senator McKenzie interjecting—

Senator DI NATALE: I will take that interjection from Senator McKenzie. This is why the coalition were booted out of Tasmania, given a right royal boot up the rump. People said, 'Unless you actually start speaking out on behalf of Tasmania, we don't want you here.' If you listened a little bit more to people from Tasmania, Senator McKenzie, you would not have got the resounding electoral kick up the rump that you got.

This is what Mr Timothy Reid, the Managing Director of Reid Fruits in Tasmania, said to the Economics Legislation Committee:

Those kids come here at the moment and go away as ambassadors for our product. It is really word-of-mouth overseas from those backpackers that brings the backpackers back to us year, on year, on year. Up until now we have been getting increasing numbers of people applying for work in our businesses …

In the case of Reid Fruits we have seen a decline by 50 per cent this year in the number of backpackers who have applied for positions with us. We will scrape through this season; we have enough people to fill our positions so far. But I must say that a lot of those backpackers were already in Australia when this tax was announced, some of them on second-year visas. It is the next wave of applicants that we are worried about.

That echoes the concerns of many, many businesses right around the country.
The simple solution here is to treat backpackers like other Australian workers. Do not run this misleading campaign that somehow backpackers are getting an advantage over Australian workers—just treat them like Australian residents. Everyone is in then working on a level playing field. That way they get access to, basically, a tax rate of zero for earnings up to $18,200, just Australian residents, and then they are taxed at a higher rate thereafter. It would provide Australia with a competitive advantage and it would make sure that we have an essential source of seasonal labour for the agricultural industry.

The Treasurer himself said it: 'One of the great virtues of backpackers when they come to Australia is they leave with their pockets empty because they spend what they earn here.' This is money that is coming back into the Australian economy. It is money that helps farmers and that is spent on the Australian economy. Every dollar that a backpacker spends on meals or drinks at a pub includes the GST, so working holiday-makers are paying tax along the way, just like other Australians. Proposals from, for example, the Labor Party and Senator Lambie for a 10.5 per cent tax rate will charge backpackers at a lower marginal rate than residents for earnings between $18,000 and $37,000. On that point, we think the superior solution is to just treat backpackers as you would Australian residents.

I live in a rural community and I speak to farmers all the time. They are bloody angry. They are angry at the mess that this government has made of what should have been something that Australia should be trying to encourage. Instead, we are sending a message—and it is particularly galling that the party that says they represent farmers, that says they work in the interests of the agricultural sector, the National Party, are the biggest advocates of slugging a big tax on these workers, who help keep these farms going. Understandably, the farmers are angry, because this reform process is hurting their business. We are in very dangerous territory for some of these farmers, who face a great risk at harvest time.

And, of course, a whole lot of people who would be coming here as workers and as tourists are scratching their heads with confusion. You can see the conversations going on online. This is a community that speaks to each other through online forums saying, 'Look, we were thinking of going to Australia. It's not worth it now. Let's go to New Zealand—let's look for other destinations—and we'll give Australia a miss.' That is the danger here. We are going to hurt the tourism industry, we are going to hurt the agricultural industry and we are going to do in the name of penny-pinching. This was a mess. It was a bad idea.

Senator McKim interjecting—

Senator Di Natale: That is right, Senator McKim: it was a shocking idea. It was a shocking idea handled terribly. There is a simple fix. The simple fix that the Greens promote is to treat working holiday-makers who earn an income like every other person in this country; let us tax them at the same rate.

This is a government in serious strife. It is about time it started to listen not just to big business and to its mates at the big end of town but to those ordinary people who own farms and who rely on seasonal labour for their farms to succeed. Again, I say to the National Party: you need to start to understand that it is no longer acceptable for people in rural communities to be deserted by your party because you are more interested in supporting the interests of people like Gina Rinehart than the interests of people like Mr Tim Reid from Tasmania, whose business is so absolutely critically dependent on these people, who make a great contribution to Australia.
Senator IAN MACDONALD (Queensland) (12:44): I want to very briefly in the committee stage ask the minister a couple of questions, because this issue is particularly important to the state that I represent, Queensland, but even more importantly up to the north of Queensland where small crop growers, horticulture growers, banana growers and mango growers rely on foreign backpackers to pick their crops. I am disappointed to say that, with huge unemployment in Townsville and Cairns, particularly youth unemployment, we still cannot get unemployed young Australians to go and do this work—but that is a separate issue.

I agree with the previous speakers that, unless we have these foreign backpackers to do the work, the crops will rot on the tree or on the bush. It is a very big issue. And I do think, and I have said this publicly, that the budget measure announced by the government was a mistake and it cost us during the election campaign. I assured everyone who raised this issue with me that, as long as I had breath in my body, we would change what was then proposed. I am pleased to see that the government did subsequently do it.

I chaired the Economics Legislation Committee in the absence of the chairman when it met in Cairns. The general response from Cairns—which is the centre of the tourism industry in Australia, as we know, and which has a very big horticulture industry in the Cairns, Far North Queensland region—was that, whilst they would prefer the passenger movement charge not to be imposed, they did not think it was going to make a great deal of difference. A $5 charge on a $2,000 airfare to and from Australia was not going to be a big deal. I think this is important. If you look at the Hansard evidence, none of the tourism industry people in Cairns were terribly worried about that. The horticulture people were concerned about the 19 per cent, the 15 per cent and the 13 per cent that applies in different places.

I have a question for the minister on a matter that I do not quite understand and that a lot of my constituents have raised with me. In the past there was a tax-free threshold for foreign workers that allowed them to earn up to $18,000 and not pay any tax, and that is what attracted a lot of them to Australia. Just in a brief contact with the minister before, I did not understand—the minister just mentioned it, and I want him to elaborate on it—that there was a court case which changed that. I want to understand that and get the facts on why that doesn't apply. Most people in the north, in my state, still believe that is the situation. Minister, could you explain that to me. I understand this matter has to be dealt with today. I do not want to take much time. I understand that, if it is not dealt with today, we will be having tax at 33 or 35 per cent—

Senator Williams: 32½.

Senator IAN MACDONALD: and that means we will get no backpackers. So I understand the urgency. I do not want to delay the debate much further, but I am very curious about that, minister, and I know a lot of my constituents are as well.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (12:48): I thank Senator Macdonald for that question and for the opportunity to clarify the actual situation in relation to this. The reality is that a starting tax rate—that is, a tax from the first dollar earned for foreign residents working in Australia—has been in place in Australia since 1983-84. At the time, the initial tax rate was 29 per cent. It was the—

Senator Ian Macdonald: That was the Labor government.
Senator CORMANN: No, that was actually the tail end of the Fraser government. It was the 1983-84 budget. So it has been in place since 1983-84. It was 29 per cent in 1983-84. It was increased under the Labor government, the Gillard government, by the then Treasurer Wayne Swan to 32.5 per cent in the 2012-13 budget. And as you know, under our legislation, we are proposing to reduce that to 19 per cent from 1 January 2017.

It is true that, if the legislation is not passed, the current rate of 32.5 per cent will continue to be the tax rate from that time. I also have to say that the $18,200 tax-free threshold for residents in Australia is only a recent development. It was increased quite substantially in the wake of the introduction of the carbon tax by way of carbon tax related compensation.

When it comes to foreign workers, the uncertainty that existed prior to the 2015-16 as to the status of backpackers, working holiday-makers, was whether they were residents or nonresidents. If they were treated as nonresidents, like any other foreign worker in Australia they paid tax from day one. The tax rate applied by Labor was 32.5 per cent. If they were treated as residents then they were able to take advantage of the same tax-free threshold arrangements as Australian taxpayers.

That was an unresolved issue back in 2015. The budget measure was designed to provide certainty and to resolve that issue. But around the same time as that measure was being discussed the Administrative Appeals Tribunal heard a number of cases which were handed down on 6 March 2015. Those cases confirmed that working holiday-makers invariably were nonresidents for tax purposes, and the tax office clarified it and provided certainty around the status of working holiday-makers as non-resident taxpayers and workers. In statements released by the tax office on 2 November 2016, the tax commissioner has made that very clear. He said:

We consider that most working holiday makers are non-residents due to their pattern of working and holidaying while in Australia.

We will help working holiday makers understand Australia’s self-assessment tax system, so that they correctly advise their employers of their residency status …

The implication of all of this, as you quite rightly pointed out, is that if this bill today does not pass or does not pass in a way that is acceptable to the government the consequence of that will be that the Labor tax rate of 32.5 per cent will apply to every foreign worker in Australia, including working holiday-makers. That will be the consequence.

We are proposing a sensible compromise which Liberal and National Party senators along with their colleagues in the House of Representatives worked on very hard with stakeholders across the sector to come up with. We are proposing to bring the rate down to 19 per cent, which we think is sensible. Obviously we have a fiscal challenge in Australia. Obviously we need to raise more revenue. I guess the implication of the proposition put by some that we should cut the tax further is that we would be cutting taxes for foreign workers and forcing taxes up for Australian workers or forcing deeper cuts in order to get the budget back into balance. We do not believe, on balance, that that is the right way to go. This is going to be my only contribution in order to facilitate the process.

The way this has been framed by the government, in close consultation with all relevant parts of the sector and in close consultation, from the government's point of view, with Liberal and National Party members and senators in particular, has been to ensure that those holiday-makers coming to Australia have a better deal than if they went to New Zealand, the
United Kingdom or Canada, for example. Indeed, under our government's changes, a backpacker earning $30,000 in Australia during their holiday would have $10,530 in their pocket after tax. Under similar working arrangements, take-home pay in Canada would be just $9,937. In New Zealand it would be $10,126. In the United Kingdom it would be $10,470. So when you look at the pure financials you will see that the arrangement we are proposing is internationally competitive.

Let me assure you as somebody who as a student came on a holiday to Australia—and, of course, I stayed!—that I came to Australia because of what a wonderful country Australia is. I did not sit there with my laptop trying to figure out what the tax rates were in Australia. It might surprise you, but I certainly did not think, 'What are the tax rates in Australia? Oh, okay. They are slightly better than in New Zealand or Canada. Let's go to Australia because they have a more competitive tax rate!' That is certainly not the way it worked for me. I put it to you that that is not the way it works for most holiday-makers. I think most holiday-makers come to Australia because of what a beautiful country Australia is. It is because of what a wonderful country Australia is. It is because it is such a great country to visit with such great opportunities and such great people to meet. Yes, of course, you have to be mindful that your tax arrangements are internationally competitive. We believe that what is on the table here is internationally competitive, and we commend it to the Senate.

Senator WHISH-WILSON (Tasmania) (12:55): Senator Cormann, you just said, 'This is going to be my last contribution.' I certainly hope that is not the case, because we have got nowhere near the bottom of this yet. In your budget papers for 2015-16 you said:

Currently, a working holiday maker can be treated as a resident for tax purposes if they satisfy the tax residency rules, typically that they are in Australia for more than six months. This means they are able to access resident tax treatment, including the tax-free threshold, the low income tax offset (LITO) and the lower tax rate of 19 per cent for income above the tax free threshold up to $37,000.

Now, I understand that the AAT made a ruling on three cases, out of hundreds of thousands of backpackers who have come to this country. I also understand, from asking the ATO and Treasury myself during the Senate inquiry, that they do not actually have information on how many backpackers are currently residents for tax purposes and how many are not residents for tax purposes. I very clearly asked them to clarify whether it is technically correct of you and the Nationals and the farmers groups, out there championing your cause, to be claiming that the default position for all backpackers in this country is going to be 32.5 per cent. The clear answer was no, that is not the default position. Some backpackers in this country are legally entitled to have the same tax residency as Australians. It is black and white. They can go onto the ATO's website. There is a list of things there that they need to comply with.

I just wanted to clear up for anyone listening and for the Hansard record that this implication that has been put forward—and I would call it spin and BS—and that has been played out in this debate in recent weeks, including here in the last couple of days, and which is designed to frighten senators, MPs and farmers groups into accepting 19 per cent, is rubbish. I would like to know, from the ATO, what kind of work they have done in recent years on actually determining how many backpackers are residents for tax purposes and how many are not, and how many should be residents for tax purposes and how many should not. You said that 'invariably'—or some word to that effect—they are not. But my understanding is that there is no data on that.
I would also like to know, if this is the case, and Senator Leyonhjelm raised this in his speech, how it is possible, if the default rate is 32½ per cent and that is the rate they should be paying, that in your own budget—unless you have some sort of Enron-style accounting or you are a financial alchemist and can create money out of nothing—that a tax cut can create revenue in your budget. Could you address those two questions?

**Senator CORMANN** (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (12:58): Firstly, the cases that went before the Administrative Appeals Tribunal, as often is the case in relation to the interpretation of tax laws, were test cases. My advice is that they have clarified the accurate interpretation of the law, and the statement that the tax commissioner put out on 2 November 2016 could not be more clear. We considered that most working holiday-makers are nonresidents due to their working and holidaying while in Australia. As such, the expectation would be that most holiday-makers, if this law is not passed in the form that the government is putting forward, will end up paying 32.5 per cent tax from the first dollar earned. We are proposing to make that 19 per cent.

The senator asked about data. The reality with the tax office is that the ATO is very much backward looking. You are quite right, Senator Whish-Wilson: in the end it does come down to individual circumstances. If somebody comes to Australia on a working holiday, so called, and properly settles in a particular way and makes Australia their residence for residency purposes and is not using the usual pattern of a working holiday-maker with their residence overseas, then there will be different circumstances. On 2 November the tax office made it very clear, again, that it considers that most working holiday-makers are nonresidents but due to their pattern of working and holidaying while in Australia they would be liable to pay the 32.5 per cent tax from the first dollar earned in Australia.

**Senator McKENZIE** (Victoria) (13:00): I support the legislation. I am making a very short contribution, as I made an adjournment speech on this issue on 10 November, and I would like to refer the Senate to that adjournment speech. I urge the Senate to stop the delay. I would like to thank the Deputy Prime Minister for the review into the backpacker tax announced on the back of what we were hearing on the ground, particularly in my home state of Victoria. We ran forums in Shepparton to hear from growers, processors and producers about the impact of the then—and maybe soon to be existing—rate of tax for backpackers. They were unanimous: solve it. So we went out and consulted with industry and we found the solution. I challenge the senators here who have continually sought to delay the processing and the passing of the legislation to fix this issue. We ensured that the timing of that solution was presented in a way that—

**Senator Lambie:** 20 months later.

**Senator McKENZIE:** It is a seasonal industry, Senator Lambie. Not everyone comes from Tasmania. Not everyone's crops are ripening when yours are. When we look around the nation, we know that we need to have a solution presented to this place that will allow farmers and horticulturists from right around regional Australia to actually get their crop off—to secure their businesses and their local farmers. For those who called for the Senate inquiry—another step of delay—look at the farmers who presented to that. They were all Tasmanians. Thank you, re-election campaign of Senator Lambie, for stalling the debate.

Farmers actually came down to Parliament House today from my home state and from states right across the country to make it clear that they wanted this legislation passed and
they did not want to still be sitting here on Thursday to do it. They wanted that legislation passed, because the reality is that the world is watching. I have a tweet here from a French website with 22,000 followers who are watching this debate right now. The world is watching, and every moment of delay results in young people, in particular, making decisions about where they will book their around-the-world trip ticket and how that will be paid for. Every day of delay costs our farmers.

I commend the legislation to the Senate. Regarding the economic lunacy that is presented by Mr Bowen, saying that he has a solution, well, with Senator Lambie as treasurer for the Labor Party, putting forward the 10.5, I would argue that he does not. I urge the Senate to pass the legislation as it exists right now and refer you to my Senate adjournment speech of 10 November.

Senator WHISH-WILSON (Tasmania) (13:03): I am sorry you are rushed, Senator McKenzie, and I genuinely wish that you had more time to contribute.

Honourable senators interjecting—

Senator WHISH-WILSON: No, I do. And I wish Senator Duniam could stand up and contribute on behalf of Tasmanian fruitgrowers who do not agree with this. But the truth is you tried to pull a stunt yesterday afternoon in the Senate, Senator Cormann. Your speaking list crumbled and we ended up having a vote, which backfired on you, and here we are in a situation where I cannot do my job as a senator. I am under the pump to try and get this voted on. I could certainly spend a couple of hours just on this issue of residency, but I do not have that opportunity, which I find very, very frustrating.

I have no doubt that with the rules the way they, with the clarification the ATO has provided, backpackers in the future will take into account the information they have been provided and the majority of them will end up still being residents for tax purposes. We will maintain in this country our competitive advantage of them not paying tax on the average of $14,000 that they earn.

I urge the Senate: do not give away this country's competitive advantage in attracting backpacker labour to fruitgrowers in the state Senator Lambie and I are from, Tasmania. Do not give away our competitive advantage. Numbers are already down. Nineteen per cent is not acceptable to fruitgrowers in this country, regardless of what the NFF and other cheerleaders for the Liberal and Nationals parties say. It is not acceptable. Do not vote for this legislation.

Senator LAMBIE (Tasmania) (13:04): I know that many ordinary Australians are a little confused after listening to Treasurer Morrison and Deputy Prime Minister Joyce over the last few days. They have deliberately misled the community about what is happening here. The first myth to bust is that I am not voting against the government backpacker legislation. If this Senate fails to vote for my amendment of 10.5 per cent, then I will not oppose this government legislation. It will pass with the tax at 19 per cent. The government have tried to tell the public of Australia that I and other crossbenchers and Labor will vote against their backpacker legislation. That is deliberately misleading the people of Tasmania and the mainland. But what is new with your lies? Unfortunately some gullible media have even fallen for Barnaby's porkies and reported that I am going to vote against their legislation, when quite clearly I am not.
The TEMPORARY CHAIR (Senator O'Sullivan): Senator Williams, on a point of order?

Senator Williams: I ask you to request that Senator Lambie refer to those in this place and in the other place by their correct titles, not in the way she just referred to Minister Joyce.

The TEMPORARY CHAIR: Senator Lambie, it would assist the chair if you were to withdraw that and pay attention to how you refer to members in the other place.

Senator LAMBIE: Secondly, it is false to say that the backpacker tax act 10.5 per cent is a tax break for foreign workers. At 10.5 per cent, the backpacker tax—

The TEMPORARY CHAIR: Senator Lambie, my reflection on the withdrawal was the reference to 'porkies' attached to a member of the other place. That has an inference of its own, and I ask you to withdraw.

Senator LAMBIE: What do you want me to withdraw, Chair? That he tells porkies, or that it is Barnaby's? Which one is it?

The TEMPORARY CHAIR: You made reference to 'Barnaby's porkies'. I asked you to withdraw the reference to that.

Senator LAMBIE: I withdraw 'Barnaby's porkies' to keep the peace. At 10.5 per cent, the backpacker tax will be an increase, not a tax break. I repeat that for some media who are still swallowing the Treasurer's and the Deputy Prime Minister's lines hook, line and sinker. At 10.5 per cent, the backpacker tax will be an increase, not a tax break. Now we all have that right. I know that even at 10.5 per cent backpackers will suffer a disadvantage and have a tax increase over normal arrangements. It is because they stop coming to Tasmania to pick our fruit. Some members of the media and in this parliament may get fooled by this government's deliberate untruths, but the backpackers are not fooled and they are now voting with their feet.

How do we stop them voting with their feet and bypassing Australia? We lower the tax rate from 19 per cent to 10.5 per cent, because 19 per cent is not internationally competitive. How do we know that it is not internationally competitive? Because the backpackers, even at nine per cent, are voting with their feet and avoiding Australia like the plague. We have an opportunity in our parliament to fix this problem right here and now. Do it once and do it right. Guarantee that our farmers are not coming back to this parliament in one or two years and saying, '19 per cent is just not working.'

I am going to speak very slowly for those National Party members of this chamber who have difficulty in understanding this issue. No matter how much you spend on advertising this stinking, rotten tax deal overseas—you can double the promotion budget to $20 million—it will still be a stinking, rotten tax deal. This morning all that the Deputy PM, Mr Joyce, could say on national radio was, 'Jacqui Lambie, Jacqui Lambie, Jacqui Lambie'. All the problems of the Australian rural sector can be blamed on Jacqui Lambie, Jacqui Lambie, Jacqui Lambie. After this morning's interview with Radio National host Fran Kelly, I think the Deputy PM has an unhealthy fixation with Jacqui Lambie. He said 'Jacqui Lambie' seven times. Get a life! The poor old Deputy PM obviously needs help. The government is falling into Labor's clever political trap to make the Liberals and National look like a bunch of dysfunctional fools. All the Labor Party is doing to take down this government is to give the Deputy Prime Minister an opportunity to speak to our media. That is it: a simple plan to bring down the Turnbull government, let Deputy Prime Minister Joyce—
The TEMPORARY CHAIR (Senator O'Sullivan): Senator Macdonald on a point of order.

Senator Ian Macdonald: It is difficult enough to have to listen to this, but every single word is from a written speech which, as you know, is contrary to standing orders. I ask you to bring the senator in line with the standing orders and to not read the speech entirely—even the jokes.

The TEMPORARY CHAIR: Senator Macdonald, there is quite a tolerance here with respect to the process of referring to a written speech. Senator Lambie, please continue.

Senator LAMBIE: I am going to break this down even more simply. If you walk outside, hop on the tractor to do some work and you find that all the tyres have been let down again, you know who let your tractor tyres down—yep—it is those crazy next door neighbours, the Nats. They sit on their porches in there rocking chairs with pieces of straw hanging out of their mouths with their modified Adler shotguns cradled in their arms, because they cannot hit the tin cans and the flying foxes with their first shots. So what do you do? The crazy Nats have crept over in the middle of the night, again—they have done it for the last 18 months—terrorised the sheep, put in crop circles, flogged your fuel and let down all your tractor tyres again. Do you pump up three tractor tyres before you do your work or do you pump up four? Do you have a 19 per cent backpacker tax or do you have a 10.5 per cent tax? The crazy Nationals, with their 11-shot rapid-fire shotguns and Jackie Lambie obsession, would love it if you only pumped up three out of the four tyres they have let down. The Nationals want to rock on their verandahs, laugh and take pot shots with their Adler shotguns while farmers struggle to get their work done.

In all seriousness, everyone knows that the 19 per cent backpacker tax proposed by the Nationals will not work. It is not internationally competitive. A 10.5 per cent backpacker tax is internationally competitive. Supporting a 19 per cent backpacker tax is like pumping up three tyres after your crazy next door neighbour has let down four tyres. My message to the Nationals today is very simple, and understood by the people in the bush that the Nationals pretend to represent: if you are going to do the job, do it once and get it right. If this legislation is amended to 10.5 per cent by a vote in the Senate during the committee stage then the National senators must have the guts to vote in the third and final reading of this legislation against their own amended and improved legislation, legislation that they know will fix a problem that they have created and that they have done nothing about for well over 18 months. They sit in this chamber under the gaze of farmers whose livelihoods have been placed in jeopardy by their dysfunction and inaction. And they vote against their own reasonably amended legislation that will give immediate and lasting certainty and relief to tens of thousands of farming families and workers all over Australia, especially in my Tasmania. Between the drought, the floods, the dairy crisis and now this, we cannot take any more in Tasmania.

Senator WHISH-WILSON (Tasmania) (13:14): by leave—I move Australian Greens requests (1) and (2) together:

(1) Schedule 1, item 6, page 5 (line 15) omit "on $37,000 of that salary,", substitute "for the part of that salary exceeding the tax-free threshold but not exceeding $37,000, ".

(2) Schedule 1, item 7, page 5 (table item 1), omit the table item, substitute:
Statement pursuant to the order of the Senate of 26 June 2000

These amendments are framed as requests because they are to a bill which imposes taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation. These amendments should therefore be moved as requests.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

I have already spoken today so I will not say any more except to say, very simply, that these amendments amend Senator Lambie's amendment. It essentially aligns the 10.5 per cent tax rate with $18,200 so that on the first dollar earned as a backpacker you pay 10.5 per cent up to $18,200—the same as the tax-free threshold for Australian residents. Above $18,200, to $37,000, you pay 19c in the dollar—the same as an Australian resident. So this essentially takes it to 10.5 per cent to $18,200, which we feel is fairer, given that above $18,200 Australian workers would be paying the same tax rate as foreign workers. We see Senator Lambie's amendment as being problematic because 10.5 per cent above $18,200 does at least appear to allow foreign workers to have a lower tax rate than Australian workers. So we believe it should be 10.5 per cent for the first $18,200 and above that it should be 19c in the dollar.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:15): I will talk to all three amendments that have been circulated, which broadly seek to achieve the same thing. The government does not support the proposal to reduce the tax rate further from 32.5 per cent, as currently applies, to 10.5 per cent. We think that 19 per cent is the appropriate line in the sand.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (13:16): Labor will be opposing this amendment. We do this because we believe that 10.5 per cent is a better and fairer level at which to set the working-holiday maker tax rate.

The TEMPORARY CHAIR: The question is that the Australian Greens requests (1) and (2) circulated on sheet 7970 be agreed to.

Question negatived.

Senator LAMBIE (Tasmania) (13:16): I wish to advise the Committee that I will not be proceeding with my request on sheet 7955 revised and I seek leave to move requests (1) and (2) young on sheet 7949, revised, together.

Leave granted.

Senator LAMBIE: I move:

(1) Schedule 1, item 6, page 5 (line 15) omit "19%", substitute "10.5%".

(2) Schedule 1, item 7, page 5 (table item 1), omit "19%", substitute "10.5%".

Statement pursuant to the order of the Senate of 26 June 2000
These amendments are framed as requests because they are to a bill which imposes taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation. These amendments should therefore be moved as requests.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

I recommend these amendments to the Senate.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (13:17): I have a couple of questions for Senator Lambie in relation to these amendments. Could Senator Lambie inform the Senate as to what the unemployment levels are in Tasmania, especially in relation to youth unemployment? What number of people are seeking work and what number have given up seeking work in Tasmania? Could you enlighten the Senate on those details?

Senator WONG (South Australia—Leader of the Opposition in the Senate) (13:17): Can I just make this point, because it is quite clear what is happening here: we, as the opposition, in good faith gave the government this time to resolve this matter so that it could be voted on and what we have seen from the government senators is, frankly, a willingness to filibuster and extend the time on this debate. Let's be clear: we gave a commitment that we would give up this time so that the government could fix up its own mess, deal with the backpacker tax, and then deal with the recommittal, at the request of One Nation senators, which we will deal with. Now we have government backbenchers asking questions about an issue everybody knows has been well-ventilated in this debate. What a joke. Can't you run the parliament? Let's get on and vote.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:18): That was an unnecessary contribution. The government has been dealing with this issue very swiftly. All of the contributions of coalition senators have been very concise.

Opposition senators interjecting—

Senator CORMANN: Last night, Senator Di Natale did not turn up to speak in the second reading debate. Even after a quorum call was held he still did not turn up to speak in the debate.

Opposition senators interjecting—

Senator CORMANN: The government is very keen to have this issue resolved before question time. We very much appreciate the cooperation of the opposition in ensuring that in relation to last night's vote the will of the Senate is maintained, given that two One Nation senators yesterday missed a division.

Senator McKIM (Tasmania) (13:19): Briefly, in response to the rubbish we just heard from Senator Cormann with regard to Senator Di Natale not being here: the situation last night was that Senator Duniam was the next senator on the speaking list and, because Senator Cormann and Senator Duniam had cooked up a strategy to bring that debate to a close, in fact Senator Di Natale was not here because it was actually not his turn on the speaking list. It was Senator Duniam's turn on the speaking list, and then Senator Cormann got to his feet, got the call and therefore closed the debate. I wanted to place that on the record.
By the way, these questions from Senator Williams to Senator Lambie are a disgrace. He is attacking Tasmania. He is attacking Tasmanian farmers. It's like the Three Amigos: you never learn, you mob. It is why you got so thrashed in the election in Tasmania, why you lost lower house seats, why you lost Senate seats: you are out of touch with farmers. What Senator Lambie and the Greens are trying to do in here is stick up for Tassie farmers like Tim Reid, who, by the way, I used to pick apples for, so I do know what I am talking about here. I have pulled apples off the tree for Tim back in the day to earn money to go backpacking, by the way, so don't come in here and try to lecture me about what is best for farmers and what is best for backpackers.

Senator LAMBIE (Tasmania) (13:21): In relation to remarks from Senator Williams: first of all, I know where you are going here, trying to cover your own rear-end for the massive mistake that you have just made.

Senator Wong: Just ignore them. They're just filibustering.

Senator LAMBIE: Yes, I know what they're trying to do.

Just so we are very clear down here: even if I had every youth working in Tasmania, I would still not have enough to pick fruit. You know that as well as I do. You are telling me that I am taking jobs off our locals, but that is rubbish. If you have not noticed, we have a crisis with our youth. They are not working, and that is why I am working very closely with Mr Tudge on that welfare card, so you should be congratulating me, not sitting here taking the absolute crap out of me, Mr Williams. That is what I am doing for you people, trying to sell your welfare card. I am trying to do something.

I have put things out there. I have asked for you people over that side to look at voluntary national service. I have asked for the trade skills to be lifted in this country while you are taking shipping jobs offshore. That is right: the Nationals and Liberal Party are taking the trade skills of our shippers offshore. You are now coming for our truck drivers. Don't you dare criticise me with your crap, because I am not taking it.

The TEMPORARY CHAIR (Senator O'Sullivan): Senator Lambie, just be careful with your expressions in this place. Senator Williams.

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (13:22): I just asked a simple question of Senator Lambie, and I hope she remains civil during this brief question I am going to ask Senator Wong. I have the right to ask these questions. The point I have made I made to my side and other sides. We have got 735,000 unemployed Australians in this country. The unemployment rate for Tasmanians aged 15 to 24 is 16.1 per cent. There are 7,100 youths who were unemployed and 21,200 youths who were not in the labour force, a total of 28,000 youth. The point I am making in this whole debate that has been going on for months is: why aren't unemployed Australians doing this work?

As far as your amendment goes, Senator Lambie, I think it is unfair. I will give you an example. I am just being civil and asking you a civil question. A shearer comes out here from South Africa and after six weeks breaches the $18,200 and is paying 10.5 per cent tax. A shearer shearing 200 sheep a day will earn $600 a day and $3,000 a week. In six weeks they will breach the $18,000 mark. Why should I be shearing alongside a shearer from South Africa when I am paying—

Senator Whish-Wilson: You already said this in your second reading speech.
Senator WILLIAMS: Senator Whish-Wilson, I am trying to ask a sensible—

The TEMPORARY CHAIR: Through the chair, Senator Williams.

Senator WILLIAMS: I am just saying I think it is very unfair that I would be paying 32 or 37 per cent tax as an Australian shearer while the overseas backpacker shearer alongside me is paying 10.5 per cent. I think that is very unfair, and that is the point I want to make through this whole debate. Life is about fairness. We should be fair not only to the foreign workers but to the Australian workers as well. These people in the Labor Party supposedly represent the Australian workers. You should be sticking up for a fair tax system for Australians as well.

Senator GALLAGHER (Australian Capital Territory—Manager of Opposition Business in the Senate) (13:24): In the interests of time, I will just say that the opposition will be supporting Senator Lambie's amendment. We acknowledge the work she has done. The reasons we support reducing the tax rate to 10½ per cent have been well ventilated in the other place and in the media, so I do not see the need to add further to that.

The TEMPORARY CHAIR (Senator O'Sullivan): The question is that Jacqui Lambie Network requests (1) and (2) on sheet 7949 be agreed to.

The committee divided. [13:29]

(The Temporary Chair—Senator O'Sullivan)

AYES

Bilyk, CL  Brown, CL
Burston, B  Cameron, DN
Chisholm, A  Collins, JMA
Culleton, RN  Dastyari, S
Di Natale, R  Dodson, P
Farrell, D  Gallagher, AM
Gallagher, KR  Hanson, P
Hanson-Young, SC  Ketter, CR
Kitching, K  Lambie, J
Leyonhjelm, DE  Marshall, GM
McAllister, J (teller)  McCarthy, M
McKim, NJ  Moore, CM
O'Neill, DM  Polley, H
Pratt, LC  Rhiannon, L
Rice, J  Roberts, M
Siewert, R  Sterle, G
Urquhart, AE  Waters, LJ
Watt, M  Whish-Wilson, PS
Wong, P

NOES

Abetz, E  Back, CJ
Birmingham, SJ  Bushby, DC
Canavan, MJ  Cash, MC
Thursday, 24 November 2016

SENATE

3213

NOES

Cormann, M
Fawcett, DJ
Fifield, MP
Hinch, D
Kakoschke-Moore, S
McGrath, J
Nash, F
Parry, S
Reynolds, L
Ryan, SM
Sinodinos, A
Williams, JR (teller)

Duniam, J
Fierravanti-Wells, C
Griff, S
Hume, J
Macdonald, ID
McKenzie, B
O'Sullivan, B
Paterson, J
Ruston, A
Scullion, NG
Smith, D
Xenophon, N

PAIRS

Carr, KJ
Lines, S
Ludlam, S
Singh, LM

Brandis, GH
Seselja, Z
Payne, MA
Bernardi, C

Question agreed to.

Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 agreed to, subject to requests; Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 and Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 agreed to.

Income Tax Rates Amendment (Working Holiday Maker Reform) Bill 2016 reported with requests; Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 and Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 reported without amendments; report adopted.

Third Reading

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:34): I move:

That the Treasury Laws Amendment (Working Holiday Maker Reform) Bill 2016 and the Superannuation (Departing Australia Superannuation Payments Tax) Amendment Bill 2016 be now read a third time.

Question agreed to.

Bills read a third time.

Passenger Movement Charge Amendment Bill 2016

Second Reading

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:35): I seek leave to have the question put again on the motion for the second reading of the Passenger Movement Charge Amendment Bill 2016.

Leave not granted.

Leave granted.

Senator GALLAGHER: The opposition wishes to hear a personal explanation from Senator Hanson and Senator Burston and will grant leave for this purpose. Before granting leave to the government to have the question put again on the second reading, as I had understood, had been explained to the government.

The PRESIDENT: Maybe I can facilitate this. Minister, is that acceptable to the government?

Senator Cormann: Yes.

The PRESIDENT: Is it acceptable to Senator Hanson and Senator Burston?

Senator Hanson: Yes.

Senator Burston: Yes.

The PRESIDENT: I call Senator Burston to make an explanation.

Senator BURSTON (New South Wales) (13:36): Last evening when the division on the Passenger Movement Charge Amendment Bill 2016 was called, Senator Hanson and I were just leaving her office to attend a function. We returned to the office to view the television monitor and mistakenly believed that the quorum bell was ringing again, as it had done a few minutes earlier. Senator Hanson and I proceeded to the function without realising that a division was taking place on the Passenger Movement Charge Amendment Bill. Had I been in the chamber, I would have voted in favour of the bill, with my colleagues Senator Roberts and Senator Culleton. I apologise for the inconvenience caused to the Senate.

The PRESIDENT: Senator Hanson.

Senator HANSON (Queensland) (13:36): I concur with what Senator Burston has just said. It was a complete mistake. Having seen that there was a quorum and the bells ringing soon after, again, I thought it was another call for a quorum. We were heading to a function where I was a guest speaker. I, too, would have voted with my two other senators on the bill. I apologise to the chamber for this inconvenience.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (13:37): I seek leave to make a short statement.

Leave granted.

Senator WONG: I thank the chamber. Consistent with precedent, the opposition accepts the explanation that the senators have provided, and I thank them for attending the chamber, as is appropriate, to request this. We will grant leave, accordingly, for the government to recommit. I would make this point, though, that a government that cannot run the parliament, cannot run the country. This is a government that cannot manage to organise its own legislation, yet it is asking the Australian people to continue to trust it with government. This is another Turnbull government disaster—a government that has no agenda, no plan for this nation. We have seen division and chaos each day this week in the Senate on an ongoing basis. Nevertheless, consistent with precedent and consistent with my commitment to the Deputy Leader of the Government in the Senate, the opposition will be granting leave for the recommittal of the Passenger Movement Charge Amendment Bill.

Leave granted.

Senator DI NATALE: I want to respond to some of the comments that were made earlier by Senator Cormann in the chamber. Senator Cormann indicated to the chamber that the reason the division was called just before parliament was adjourned last night was that I was not present to speak to the bill. In fact, a Liberal member was next on the speaking list. What happened was that Senator Cormann, with his fellow colleagues, thought they had hatched a grand plan to bring this bill on for a vote at a minute to midnight and sneak it in. Instead, the only people they fooled were themselves. The only people who were fooled last night were members of the Liberal Party and the One Nation Party. Instead of being honest and saying, 'We hatched a plan, we stuffed it up and the consequence was we lost the vote,' Senator Cormann misleads the parliament by suggesting that the reason this happened was that I was not present in the chamber. No, Senator Cormann. It was your mistake. It was your silly little plan. You botched it up like you have botched so many things in this chamber, and you reap what you sow.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:39): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted.

Senator CORMANN: Let me firstly thank the opposition for their indulgence in acting consistent with longstanding convention where if a vote has occurred that does not represent the will of the Senate that vote is recommitted. We very much appreciate that.

Let me say in relation to the Greens that that representation is entirely wrong. I did not expect to be in a position to sum up last night. The second thing I did not expect was a vote on the second reading debate. I knew there were going to be amendments in the committee stages. I assumed—wrongly, in hindsight—that the bill would pass on the voices at the second reading stage and that we would have the debate in relation to the specifics during the committee stages. That is not the way it played out. Senator Whish-Wilson made a quorum call in order to assist Senator Di Natale to get to the chamber on time. That did not happen. He was not able to make his contribution. That is why I continued to sum up.

The PRESIDENT: I gather that the Senate is in agreement to now recommit the Passenger Movement Charge Amendment Bill 2016 for a second reading debate. Do I have any objection to that course of action? Since I do not, I call the minister to move the second reading.

Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:41): I move:

That the bill be now read a second time.

The question is that the Passenger Movement Charge Amendment Bill be read a second time.

The Senate divided. [13:46]

(The President—Senator Parry)

Ayes .......................35
Noes .......................34
Majority ...................1
SENATE
Thursday, 24 November 2016

AYES
Abetz, E
Birmingham, SJ
Bushby, DC
Cash, MC
Culleton, RN
Fawcett, DJ
Fifield, MP
Hanson, P
Hume, J
Macdonald, ID
McKenzie, B
O'Sullivan, B
Paterson, J
Roberts, M
Ryan, SM
Seselja, Z
Smith, D
Xenophon, N

Back, CJ
Burston, B
Canavan, MJ
Cormann, M
Duniam, J
Fierravanti-Wells, C
Griff, S
Hinch, D
Kakoschke-Moore, S
McGrath, J
Nash, F
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Williams, JR (teller)

NOES
Bilyk, CL (teller)
Cameron, DN
Collins, JMA
Di Natale, R
Farrell, D
Gallagher, KR
Ketter, CR
Lambie, J
Lines, S
McAllister, J
McKim, NJ
O'Neil, DM
Pratt, LC
Rice, J
Sterle, G
Waters, LJ
Whish-Wilson, PS

Brown, CL
Chisholm, A
Dustyari, S
Dodson, P
Gallacher, AM
Hanson-Young, SC
Kitching, K
Leyonhjelm, DE
Marshall, GM
McCartby, M
Moore, CM
Polley, H
Rhiannon, L
Siewert, R
Urquhart, AE
Watt, M
Wong, P

PAIRS
Bernardi, C
Brandis, GH
Payne, MA

Singh, LM
Carr, KJ
Ludlam, S

Question agreed to.
Bill read a second time.

Third Reading

The PRESIDENT (13:48): As there can be no amendments to this bill, I call the minister to move the third reading.
Senator CORMANN (Western Australia—Minister for Finance and Deputy Leader of the Government in the Senate) (13:49): I move:

That this bill be now read a third time.

The government is grateful to the Senate for having dealt with this bill by way of recommittal to ensure that the true will of the Senate is reflected. I can confirm for the Senate that the government had previously agreed to a request by One Nation senators to ensure that the passenger movement charge, after being increased to $60, would not be increased for a further five years thereafter. It is the intention of the government to amend the bill to that effect in the House of Representatives. The advice that we have is that we are not able to move such an amendment in the Senate. I place on the record, in Hansard, the government's commitment, consistent with the agreement we have reached with One Nation senators, that we will move an amendment to the Passenger Movement Charge Amendment Bill 2016 to insert, after $60 in schedule 1, part 1, the following words: 'and does not increase for five years thereafter'.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (13:50): Well there we have it, ladies and gentlemen—that is the deal, the deal that was just handed to Senator Culleton and Senator Hanson as they were walking into the chamber to make sure they did the right thing on the recommittal. What I would say to One Nation is: understand this—you have been conned, because you cannot bind a future parliament. If another government, or this government, comes in at another time and says they need to change the passenger movement charge, they just make that amendment and take the five-year so-called freeze out. It is just a bunch of words that have no effect on the capacity of a future parliament to change the passenger movement charge.

I would say to One Nation, let us remember that this government went to the last election with a commitment not to increase the passenger movement charge. That is how much this commitment is worth—we had an election promise to the Australian people that you would not change the rate but that has been brushed away, so how easy do you reckon it would be, if this government were still in after the next election, for them to walk away from that commitment? They walked away from an election commitment to the Australian people; they have done a deal with you because they have egg on their face and they want to get the bill voted on, wanted to get a deal. They have given you a deal at the last minute but it is worthless, because any future parliament can simply make a change.

Senator O'Sullivan: Make the promise.

Senator WONG: Do you mean like the one you made before the last election that you would not change the passenger movement charge? What a joke! You have egg all over your face, both in the content of your policy and in the procedural chaos that we have seen today. This is a stunt. Labor will oppose this amendment, but I would say this: we can have a long debate about the lack of sensible process around the legislation, and we have amendments being floated around between senators and the government that most of the Senate have not seen—

Government senators interjecting—

Senator WONG: Democracy? You were not even able to move it last time. They could not even work it out, in time, to have a vote in the Senate. We have seen Senator Cash sprinting to Senator Culleton's office, desperate to get his vote, to make sure he turned up for
this vote. We have seen the unseemly huddle over there of two cabinet ministers trying to get a deal on the floor of the Senate because they were worried about a loss after the loss last night.

Leaving aside all that chaos, this is no way to run a government. This is chaos, this is dysfunction, this is division, and the things the Australian people want us to focus on—jobs, living standards, education, health; the things that matter to Australians out there—are being ignored by this government as they focus on desperately trying to cover up the chaos and the dysfunction that has now come to characterise the Turnbull government.

**Senator Hanson** (Queensland) (13:53): I need to respond to this because this is political grandstanding at its best. Let me make it quite clear that I delivered a speech yesterday to the tourism and transport committee and I made my position quite clear that I would support this change to $60—that was the change, and I made that commitment yesterday. After I attended that meeting, I then went back to my office. Someone from the tourism committee came up to my office and asked me if I would have an amendment moved to this bill so it would not be increased anymore for the next five years. They said it would assure their industry and there would not be any problems. I cannot see any problem with that whatsoever. That gives them assurances in the tourism industry. Senator Wong says, 'Ministers are huddling around One Nation.' Well, it is all right for Brendan O'Connor to come to my office. Albanese turned up at my office today handing in his card. It is all right to criticise everyone else. I will also say in this chamber that I have come here with three new senators. All of us have new staff and we are trying to learn the ropes. I have sat here beside other crossbenchers and other members, and they say, 'We understand.' It took us at least six months plus to understand the workings of this chamber. I have appreciated—and I can speak for my senators—all the help that we have received from, mainly, the coalition—

*Opposition senators interjecting—*

**Senator Hanson**: I know you want to have a say—and also some of the crossbenchers. If anyone knows or understands me, I will not be bought. I will vote on what I believe is right for the country and its people—just as I backed Jacqui Lambie's 10½ per cent backpacker tax. So do not ever criticise me by saying that I do deals. My deal is only done for the people of this nation, and I wish a lot of you people would not do your deals, because there are a lot of deals that go on in this place. That is why the public have lost confidence in this house and members of parliament, because you cannot be true to yourselves and the people that you represent.

**Senator Di Natale** (Victoria—Leader of the Australian Greens) (13:56): It is wonderful to hear about the new coalition that is emerging right now. We have a new coalition: it is the grand coalition of the Liberal Party, then National Party and One Nation. That is great news. I just want to put it on the record. I understand that there are a number of politicians who were in and out of Senator Hanson's door. I just want to put it on the record that the Greens were not one of them.

What we have here is a piece of legislation with an amendment that is absolutely meaningless. You might as well have an amendment that said, 'We want world peace.' Any government at any time could have said—at some point in the future, make no mistake, we will have either this government or a future government come in and put an amendment to the meaningless deal that was negotiated with the One Nation party to say we are going to
increase the passenger movement charge. You have been duded. You have been absolutely duded You have been played, but it is good to see. You are now right out of the mould of the National Party. You are in this coalition and you have become another doormat.

Senator WHISH-WILSON (Tasmania) (13:58): Perhaps I could cap this off in the last couple of minutes. It seems funny, but it is a very serious matter. This has been blatantly about raising revenue for the government—whacking tourists, whacking backpackers because of Mr Scott Morrison's obsession. This is about $500 million. Let me say to you today, Senator Hanson, that you have learnt a very important lesson. You are one of two things in this place: you are either a predator or you are prey. Today you are prey. You are a cheap date. You have sold out backpackers, you have sold out the tourism industry today.

This was all about Mr Scott Morrison's obsession with penny-pinching—going after industries without tackling real reform in this country. We can raise revenue to fix the budget; we can raise revenue to make Australia a good place for people, especially with the safety net that we require. This is not the way to raise money. This is not good for the tourism industry. I was also at that forum yesterday, Senator Hanson. No National Party staffer or Senator Cormann staffer or anyone else approached me about doing a deal. This is not a good precedent to be setting, to be selling out the tourism industry because of the obsession of a Treasurer with penny pinching.

The PRESIDENT: The question is that the bill be now read a third time.
The Senate divided. [14:04]
(The President—Senator Parry)

Ayes ......................36
Noes ......................33
Majority................3

AYES
Abetz, E
Birmingham, SJ
Burston, B
Canavan, MJ
Cormann, M
Duniam, J
Fierravanti-Wells, C
Griff, S
Hinch, D
Kakoschke-Moore, S
McGrath, J
Nash, F
Parry, S
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Williams, JR
Back, CJ
Brandis, GH
Bushby, DC (teller)
Cash, MC
Culleton, RN
Fawcett, DJ
Fifield, MP
Hanson, P
Hume, J
Macdonald, ID
McKenzie, B
O'Sullivan, B
Paterson, J
Roberts, M
Ryan, SM
Seselja, Z
Smith, D
Xenophon, N

NOES
Bilyk, CL
Brown, CL

CHAMBER
Question agreed to.

Bill read a third time.

QUESTIONS WITHOUT NOTICE

Broadband

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (14:06): My question is to the Minister for Communications, Senator Fifield. Yesterday, the minister told the Senate that the government's promise of a $29.5 billion cap referred to a cap on its equity contribution to the NBN and not a cap on its total contribution. But the Prime Minister's website unequivocally states that Mr Turnbull's NBN only requires 'public funding of $29.5 billion'. Who is correct—you or the Prime Minister?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (14:07): I thank Senator Bilyk for her question. It seems we are going to traverse the same ground that we did yesterday, which is that the government's commitment has been an equity cap of $29.5 billion and that remains the case. There are two concepts that those opposite seem to have difficulty differentiating. They are the concept of equity and the concept of a loan. The equity cap was, and remains, $29.5 billion. A loan is entirely different to equity. A loan is something that is repaid. There has always been the need for a loan to NBN. The government looked at the options. NBN received a good indicative credit rating, and NBN could have borrowed on external markets. But the government compared that with what the government would be able to borrow at, and we made the entirely reasonable, sensible and rational decision to do that which would be at a lower cost to taxpayers. That was an entirely appropriate thing to do. What I do wonder, and what I have not heard from those opposite is: are they proposing a different approach? What is the approach that the Australian Labor Party would be putting forward? Do the Australian Labor Party think that we should have taken a different approach? Do the Australian Labor Party think the government should have taken a different decision? We have not heard from the Australian Labor Party in relation to that. What the government has said has been consistent, and what we have done matches that.
The PRESIDENT: Senator Bilyk, a supplementary question.

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (14:09): I refer to the Minister for Finance, who yesterday told the Senate that the best deal for taxpayers was 'for the government to provide a loan on commercial terms to NBN'. Can the minister confirm the market was only willing to provide a loan to the NBN on terms that would be uncommercial to NBN?

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (14:09): No, that is not correct. As I have indicated and as the finance minister has indicated, the indicative credit ratings that NBN received were good. NBN was absolutely and entirely in a position to borrow on external markets, but—

Senator Wong interjecting—

Senator Ian Macdonald: Penny, be quiet!

Senator FIFIELD: It is simply a fact that government can borrow at better rates. That is something that I think everyone here knows. Government is in that position—that is not a surprise. So, when we looked at the options before us, we decided that we would pursue the option which was a lower cost to taxpayers.

Senator Wong interjecting—

Senator Ian Macdonald: Penny! Penny, be quiet!

Senator FIFIELD: That is in no way a reflection on NBN, it is in no way a reflection on the credit rating that NBN received and it is in no way a reflection on NBN's capacity to raise money on external markets.

The PRESIDENT: Senator Bilyk, a final supplementary question.

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (14:10): Given that the market would not give NBN a loan it could afford and that the NBN had to be bailed out with $19.5 billion in taxpayer-backed loans, isn't it clear Mr Turnbull's second-rate copper-dominated NBN is uncommercial and unviable?

Senator Nash: It was your mess that we had to clean up.

Senator Wong: Yours is going to cost more and it is copper! Brilliant! What a brilliant strategy!

Senator Cameron: Point of order.

Senator FIFIELD: I haven't said a word!

The PRESIDENT: A point of order, Senator Cameron?

Senator Cameron: Senator Macdonald continually interjects and is continually calling Senator Wong 'Penny'. You must have heard it. He must stop that.

Honourable senators interjecting—
The PRESIDENT: Order! On the point of order, Senator Macdonald?

Senator Ian Macdonald: Senator Wong has been so good in the last few weeks, but she is breaking out as it gets close to Christmas!

The PRESIDENT: There is no point of order.

Senator Ian Macdonald: I was just trying to help you keep her quiet, not shouting through all of question time.

The PRESIDENT: Thank you, Senator Macdonald! Thank you, Senator Cameron; that is a timely reminder for all senators not to interject during question time. One can only hope that you will not. Minister, you have the call.

Senator FIFIELD: NBN's business case is strong. NBN received strong indicative credit ratings. The government has taken an entirely prudent and appropriate approach. Can I remind colleagues, again, where the NBN is today compared to where the NBN was in 2013.

Opposition senators interjecting—

The PRESIDENT: Order, on my left!

Senator FIFIELD: The NBN, under those opposite, was a failed project—$6½ billion spent by those opposite and only 51,000 paying customers. Today, the NBN is available to in excess of three million Australians. We will complete this six to eight years ahead of you.

Building and Construction Industry

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (14:13): My question is to the Minister for Employment, Senator Cash. Will the minister update the Senate on the impact that industrial lawlessness has on small and medium-sized businesses, and subcontractors in Australia's construction sector?

Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (14:13): I thank Senator Bushby for his question. There are over one million people employed in the building and construction industry in Australia. That is approximately 165,000 electricians, 124,000 carpenters, 87,000 plumbers, 46,000 painters, 43,000 civil engineers, 35,000 concreters, 34,000 plasterers, 33,000 bricklayers, 32,000 tilers and 26,000 cabinetmakers, along with many, many other tradies in this industry. The overwhelming number of businesses in building and construction are actually small businesses. There are approximately 300,000 small businesses helping to build Australia.

But it is a fact that it these businesses that are least able to withstand industrial lawlessness and intimidation. It is these businesses that are least able to afford the inflated costs that result from CFMEU pattern agreements. I have met with many, many subcontractors who, when I meet with them, explain to me the horrendous intimidation and standover tactics they are subjected to. The first thing they say to me when they meet with me is that, 'We cannot have our names disclosed or our businesses disclosed, for fear of retribution and for fear that we will be blacklisted by the CFMEU within this industry.'

On this side of the chamber, we believe in small and medium business. We believe in giving everybody in Australia who wants to have a fair go a fair go. When there is a policy in place that encourages cartel-like behaviour between one union and the big end of town to the
detriment of the little man, something is wrong. That is why we need to restore the Australian Building and Construction Commission. *(Time expired)*

**Senator BUSHBY** (Tasmania—Chief Government Whip in the Senate) (14:15): Mr President, I do have a supplementary question. Will the minister advise the Senate how Australians would benefit from a more lawful and productive building and construction sector?

**Senator CASH** (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (14:15): Again, this is a sector that contributes to eight per cent of our GDP, employing more than one million Australians. It is our third-largest employer in Australia. When you have a problem with your third-largest employer in Australia, it is a problem that flows through to the rest of our economy, ultimately impacting on all Australians. It is estimated that the cost of public infrastructure in Australia is 30 per cent higher—in particular due to the high level of industrial disputes in the construction industry.

In recent years, the CFMEU have been found guilty of breaching industrial law on projects across Australia. These projects include office buildings, apartment buildings, shopping centres, hospitals, universities, schools, roads, stadiums, hotels, medical research facilities and aged care facilities. The list just goes on and on. No project is spared from this type of industrial action.

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

**Senator BUSHBY** (Tasmania—Chief Government Whip in the Senate) (14:16): Will the minister advise the Senate of the economic benefits of a more productive construction industry?

**Senator CASH** (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (14:17): As I say, it is our third-largest industry, employing more than one million people. There are 300,000 small business involved in this industry. These are the people who are quite literally building Australia. When there is a problem in that industry, it flows directly through the rest of our economy. Currently, two-thirds of working days lost due to industrial action are in the construction industry. The rate of industrial action in the construction sector is now, in the June quarter, nine times higher than across all other industries. Since 2012, the rate of disputes in construction has increased by 40 per cent while across all industries the rate of disputes has declined by 33 per cent. Again, when there is a problem in such a vital industry, as policy makers we need to do something about it.

**Budget**

**Senator DASTYARI** (New South Wales) (14:18): My question is to the Minister representing the Prime Minister, Senator Brandis. I refer to the Deloitte *Budget Monitor* report released on Monday, which projects that the budget deficit will blow out by a further $24 billion over the forward estimates. Given that this comes after the government delivered a budget deficit for 2015-16 eight times bigger than they inherited, isn't it clear that when it comes to economic management the government are, in Senator Brandis's own words, very, very mediocre?
Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:18): The government will update the budget, as Senator Dastyari may be aware, in the MYEFO on 19 December, after receiving the September quarter national accounts.

Senator, you refer to a report from Deloitte Access Economics. What that report does is echo the comments the government has been making for months by rightly drawing attention to the impact of lower growth in wages and profits growth on government revenues. We have been saying that before Deloitte Access Economics said it. The report also correctly puts in perspective the impact of recent commodity price movements on budget revenues. That said, Senator Dastyari, recent commodity price increases have contributed to national income growth in recent quarters, and the government notes that iron ore prices are consistent with the levels incorporated into the 2016-17 budget that Labor criticised as being unrealistic. The report contradicts that criticism that the Labor Party made of the government's figures, Senator Dastyari.

The government will be adopting a cautious approach to commodity price assumptions in the MYEFO and it agrees with Deloitte that commodity price impacts are being offset by wages and inflation outcomes. Senator, the goal of the government's national economic plan outlined in the budget is to lift what Australians are earning from their wages and their businesses, not to tax them more, as Labor wants to do. That is why our enterprise tax plan is so important. That is why you cannot expect businesses to earn and invest in providing jobs when you are demanding that they keep paying higher taxes. Senator Dastyari, as the Deloitte Access Economics report notes: what we need in Australia for there to be healthy wages growth is prosperous businesses. (Time expired)

The PRESIDENT: Senator Dastyari, a supplementary question.

Senator DASTYARI (New South Wales) (14:20): Can the minister confirm that the deficit for this year has tripled since this government's first budget, and net debt for this year has blown out by more than $100 billion since the government took office in 2013? Isn't it the case that when it comes to managing the budget this government is, in Senator Brandis's own words, not very good?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:21): Senator Dastyari, if you are so concerned about the state of the budget, why does the Australian Labor Party here in this Senate continue to block savings measures? Because that is what you are doing, Senator Dastyari. The budget would be $16.5 billion in better shape if the Australian Labor Party did not consistently block savings measures in the Senate—including, by the way, Senator Dastyari, savings measures that in advance of this year's election you said, were there to be a Labor government, you yourselves would introduce. So, Senator Dastyari, the one thing we will always know about the budget deficit is this: it is much lower than it ever would have been under a Labor government, and it would be a lot better if the Labor Party got out of the way and passed the savings measures.

The PRESIDENT: Senator Dastyari, a final supplementary question.

Senator DASTYARI (New South Wales) (14:22): I refer to Standard & Poor's warning that the Turnbull government is at risk of losing the AAA credit rating. Given that Mr
Turnbull promised to deliver economic leadership but has delivered growing deficit and more debt, isn’t it a fatal attack on the Prime Minister's, in Senator Brandis's words—and I will apologise here: English is my second language and French is not my third—raison d'etre?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:22): Sam, stick to your day job. Comedy, at least deliberate comedy, is not your strength. Senator Dastyari, as a monolingual person might I say I admire your linguistic skill, but let me speak to you in plain English. Australia is one of only 10 countries in the world with a AAA credit rating from all three major credit-rating agencies. Since the election, that AAA credit rating has been reaffirmed by all three major credit-rating agencies, and that can only reflect the strength of the Australian economy under this government.

Minister for Immigration and Border Protection

Senator DI NATALE (Victoria—Leader of the Australian Greens) (14:23): My question is to the Minister representing the Prime Minister, Senator Brandis. The Minister for Immigration and Border Protection claims that the former Liberal Prime Minister the late Malcolm Fraser made mistakes in bringing Lebanese Muslim people into Australia in the 1970s. In question time yesterday, the minister said:

Nothing that Mr Dutton has said has in any way compromised or prejudiced that engagement, and I have had no suggestion from any of my agencies or my department to that effect.

Will the minister now correct the record and confirm that senior members of the Australian Federal Police have indeed contacted leaders of the Australian Muslim community with concerns about the impact of Minister Dutton's comments?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:24): No such concerns have been expressed to me, as I said in response to the question I received from the Greens yesterday. The fact is that Mr Dutton, like Mr Morrison before him, is a minister for immigration who has restored control of Australia's borders. And, as you know, Senator Di Natale, public confidence in the government's capacity to control Australian borders is an absolute precondition of successful multiculturalism.

The PRESIDENT: Pause the clock. A point of order, Senator Di Natale?

Senator Di Natale: Yes, on relevance. Again, it was a very narrow question, and the question was whether senior members of the Australian Federal Police have contacted leaders of the Australian Muslim community with their concerns about Minister Dutton's comments—very straightforward.

The PRESIDENT: You did preface that with 'Will the minister correct the record', and I think the minister has indicated that he does not need to correct the record, so he has been relevant in that context.

Senator BRANDIS: I am always chary of accepting a precis of documents that you will not quote from in direct speech. But no such complaint, no such concern, has been raised with me by either my department or my agencies. So, far from correcting the record, I absolutely stand by what I told you yesterday. Returning to Mr Dutton, the success of any minister for immigration is judged in a number of ways. It is judged—

The PRESIDENT: Pause the clock. Senator Di Natale, a point of order?
Senator Di Natale: Yes, a point of order on relevance, again. I am not interested in the success or otherwise of Minister Dutton; I am interested in whether senior members of the Australian Federal Police have contacted members of the Australian Muslim community. It is straightforward. And if the minister does not have that information he can take it on notice. But he made a very clear statement yesterday that that had not occurred. Take it on notice, if he does not have the answer at hand.

The PRESIDENT: My recollection of yesterday was that the minister said he had not had concerns expressed to him. You have now asked him whether he is aware of concerns expressed to third parties or to others. The minister has heard the question. The minister has been relevant. He has been in context to the question you have asked.

Senator BRANDIS: So, Senator Di Natale, if you care to quote, in direct speech, from a document that you assert refers specifically to Mr Dutton's remarks, please do so. Your failure to do so is revealing. The success of Mr Dutton as a Minister for Immigration and Border Protection is judged according to how successful Australia's immigration policy has been, and it has been immensely successful, and how successful our resettlement programs for refugees have been, and they have been the most successful in the world, and how successful Mr Dutton has been in protecting Australia's borders so that public confidence in the government's capacity to protect the borders is high, and on that he has a perfect score.

The PRESIDENT: Senator Di Natale, a supplementary question?

Senator DI NATALE (Victoria—Leader of the Australian Greens) (14:28): Yes, I have a supplementary question. Minister Dutton claims that out of the last 33 people who have been charged with terrorist related offences in this country 22 are of second- and third-generation Lebanese Muslim background. Can you provide the source for these figures? And are you confident that they are accurate?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:28): How revealing is it that twice now, given the opportunity—and indeed met with the request by me—to quote in direct speech from the document he references, Senator Di Natale has failed to do so. So, I think we can only—

The PRESIDENT: Senator Di Natale, a point of order?

Senator DI NATALE: Yes, a point of order on relevance. Firstly, I did not reference a document. You are hearing things, Senator Brandis. Secondly, I asked a very specific question. The supplementary question was about the source of the figures and whether you are confident that they are accurate.

The PRESIDENT: I will remind the minister of the question.

Senator BRANDIS: Well, we are now hearing that there is no such document, so Senator Di Natale, having purported to quote from members of the AFP, can now produce nothing but what apparently is anecdote and hearsay. I am very confident that any statement made by my ministerial colleagues in either house of this parliament is accurate.

The PRESIDENT: Senator Di Natale, a final supplementary question.

Senator DI NATALE (Victoria—Leader of the Australian Greens) (14:29): Has the minister received any advice from the AFP to correct the statistics that the minister cited with
regard to the people that have been charged with terrorist related offences, and will the
minister immediately table any such advice if or when it is received?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive
Council and Leader of the Government in the Senate) (14:30): Your question assumes that
there is a correction required. That premise is not accepted. In any event, Senator Di Natale, I
have received no such advice.

Skilled Migration Program

Senator CHISHOLM (Queensland) (14:30): My question is to the Minister representing
the Minister for Immigration and Border Protection, Senator Cash. I refer to the member for
Dawson, George Christensen MP, who says:

We really do not need the issuance of any more 457 visas into our region.

Is Mr Christensen's moratorium on 457 visas in Central and North Queensland consistent with
government policy?

Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public
Service, Minister for Employment and Minister for Women) (14:30): I thank the senator for
his question. I always find that, when you ask a question on a policy in this place where your
own government failed, you need to be very, very careful. I come from a party where we are
very proud that individual members are able to represent and articulate their own views—
unlike those on your side, where, if any one of you says what they really think, they get out.
There is a former Western Australian senator who had to leave this place because his views
were inconsistent with the Australian Labor Party's.

In relation to 457 visas, let us put a few facts on the table first. Labor are very, very good at
doing a lot of this, but, when you look behind everything they say at the actual facts, you will
find time and time again that they are deliberately misleading and hoodwinking the Australian
public. Fact under Labor: in terms of—

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

Senator Wong: The point of order is relevance. It is a minute and five. I appreciate the
minister always wants to talk about the Labor Party, but she was not asked about the Labor
Party. She was asked about the comments of the member for Dawson, who said there was no
need for the issuance of anymore 457 visas into the region. She was asked whether that was
government policy.

The PRESIDENT: Thank you—I think 'consistent with government policy' was the
correct wording. Minister, I remind you of the question.

Senator CASH: Again, I state: on this side of the chamber we allow our members to have
their own views, and if they are inconsistent with government policy, that is what they are.
The policy of the government is very clear: we believe that, where there is an Australian
ready, willing and able to undertake work, that Australian should be employed. However, we
also understand that a business that is unable to employ anybody closes down. So, if they
need to access skilled foreign labour and they go through all of the hurdles that we put in
place before they can get that labour and they satisfy those tests, to ensure that business is
able to stay open and employ more Australians, we do not have a problem with that, because
a business that has to close employs no-one.
The PRESIDENT: Senator Chisholm, a supplementary question.

Senator CHISHOLM (Queensland) (14:33): I again refer to Mr Christensen, who says:
If there’s no action forthcoming, then we’ll have to bring that up in the appropriate forum like the joint partyroom meeting.

Has the minister taken any action to implement Mr Christensen's moratorium?

Senator CASH: Again, I welcome Mr Christensen bringing it up in the joint party room, because I can tell you: we encourage rigorous debate in our joint party room, because we actually believe in freedom of speech on this side of the parliament. As I have said, on this side of the parliament we understand the priority must always be to Australian workers, but where you cannot find an Australian that is ready, willing and able to work and you go through all the hurdles that we put you through to ensure that you have tried to employ an Australian, you should be able to employ a foreign worker. But, if Senator Chisholm is advocating that there should be absolutely no foreign workers in Queensland, and if George Christensen is advocating that as well, well I have to say it is not going to happen, because where there is a case for foreign labour, we support that, but on the basis that you have tried to employ an Australian first.

Senator Cameron interjecting—

The PRESIDENT: Senator Cameron!

Senator CHISHOLM (Queensland) (14:34): Mr President, I ask a further supplementary question. I refer to the member for Flynn, Ken O'Dowd, who said:
Australians could be doing some of these jobs but they don't want to come and do the seasonal work.

They’d rather stay in western Sydney on the dole.

Is this the government’s view of the people of Western Sydney?

Senator CASH (Western Australia—Minister Assisting the Prime Minister for the Public Service, Minister for Employment and Minister for Women) (14:35): We believe that any Australian who is able to work should work, because we on this side of the chamber believe that the best form of welfare is a job. It is very different to your beliefs on your side of the chamber. We will do everything within our power to put in place policies that encourage Australians to work, because work gives you so many benefits other than just the ability to pay your bills. But, again, where you cannot get an Australian to undertake the job we are not going to stand by and watch businesses close down. Unfortunately, the closest those on the other side have ever come to a business is to close it down, and they are very proud of that fact. Again, a business that cannot access labour and closes down employs nobody.

Federal Courts

Senator HANSON (Queensland) (14:36): My question is to the Attorney-General, Senator George Brandis. In late 2013 the government commissioned KPMG to review the performance of the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia. In 2014 the Attorney-General's Department engaged Ernst & Young to identify savings and implementation costs of reform options for the federal courts outlined in the independent review of KPMG. On 23 April 2015 the Attorney-General's Department again engaged Ernst & Young to look at further structural and funding issues in consultation with the federal courts. Neither the KPMG nor the Ernst & Young report has been publicly released for comment or consultation. In view of the ongoing serious issues
facing these courts, is the Attorney-General intending to make public these reports and, if so, when?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:37): Thank you very much indeed for that question, Senator Hanson. I know you take a very close interest in the federal judiciary and in particular the family law system. I am familiar with the KPMG report and the Ernst & Young review. These were internal departmental documents. There have been reforms and efficiencies within the federal judicial system, in particular, the consolidation of the registry functions of the three federal courts that sit beneath the High Court of Australia—that is, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court. So, now, rather than having three different administrations, there is one common administration on which each of those courts is represented and operates under the auspices of the Federal Court of Australia. These are the kinds of efficiencies in the system, in the administrative aspects of the federal judicial system, that the government has implemented in collaboration or cooperation with the three heads of jurisdiction.

We are always looking for efficiencies in the way that all agencies operate. The need to seek efficiencies extends to the way the third arm of government, the judicial arm, operates, as well. I do not like referring to courts as agencies. I think the finance department does but I am a bit of a purist about this.

The PRESIDENT: Pause the clock. Senator Hanson on a point of order.

Senator Hanson: I was asking about the reports. Are they going to be released, and when?

The PRESIDENT: I remind the minister that he has 15 minutes within which to answer. Fifteen seconds—I correct the record!

Senator BRANDIS: I could spend 15 minutes on this subject, Mr President; there is a lot to be said. But, Senator Hanson, I will consult with the secretary of my department to see what can be made available. The point I was making to you is that we have already relied upon these reports to achieve useful efficiencies. (Time expired)

The PRESIDENT: Senator Hanson, a supplementary question?

Senator HANSON (Queensland) (14:39): The honourable Attorney-General would be aware of the ongoing, serious delays in hearings on family law matters before the Family Court and the Federal Circuit Court. I understand a full complement of appointed judges is currently 65. However, would the Attorney advise on whether or not there is no statutory or regulatory limit on the number of judges that can be appointed to the Federal Circuit Court?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:40): That is strictly right, Senator Hanson, but there is of course a cost limit. The number of judges in the respective federal courts or the courts to which you refer are limited by budget allocation. We have kept the number at a constant level throughout the life of this government. We have replaced judges when they have retired or, in some cases, resigned from the bench. Last year there was a delay in replacing a Family Court judge in Brisbane, I recall, but it is largely the case that we have kept the establishment of judges at a constant number.

The PRESIDENT: Senator Hanson, a final supplementary question?
Senator HANSON (Queensland) (14:41): Irrespective of the exact number of judges that may or may not be appointed but mindful of the serious delays faced by litigants before the Federal Circuit Court exercising its family law jurisdiction, would the Attorney-General explain why there are currently four judicial vacancies on the Federal Circuit Court, being two in Melbourne and one in both Canberra and Sydney, which have been long-term vacancies. Of those vacancies, three of those four judges were family law specialist judges. When did you intend to have those positions filled? (Time expired)

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (14:41): With respect, Senator Hanson, it is not correct to say that they are 'long-term vacancies'. But I can advise you that replacements for three of those four vacancies have been identified. The relevant candidates have been approached. They have gone through the process that is undergone in the recruitment of judges. I expect to be taking the names of those three replacement judges to cabinet next week.

There will be one vacancy. I am in discussion with the Chief Judge of the Federal Circuit Court, Chief Judge Pascoe, to identify a suitable candidate for that vacancy. It is my practice, Senator Hanson, when we fill a judicial vacancy to discuss the matter with the head of jurisdiction, whether it is the chief justice of the Family Court or the Chief Judge of the Federal Circuit Court, to identify suitable candidates and then to approach them. Sometimes that takes a little time. But three of the four vacancies that you mentioned are about to be filled. (Time expired)

Education

Senator PATERSON (Victoria) (14:42): My question is for the Minister for Education and Training, Senator Birmingham. Could the minister update the Senate on what the government is doing to improve literacy levels in Australian schools?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:43): I thank Senator Paterson for his question and his strong interest, like all on this side of the chamber, in quality outcomes for Australian schoolchildren. Unfortunately, though, we have some challenges in literacy levels in Australian schools. If you look at the data over recent years, the Australian PISA results, the international benchmark for assessment in these areas, have shown that reading standards between 2020 and 2012 have declined by some 16 points. Where once we were the fourth best performing country amongst those assessed, we are now coming 14th. That shows a decline in our relative performance, but that decline by some 16 points is also a decline in our real performance in outcomes for Australian students. Our NAPLAN results similarly showed that approximately 196,000 Australian school students are either at or below the bare minimum standard in their reading skills. Around 66,000 are in fact below. Of course reading skills are the foundation stone for so much other learning that occurs in a school. When we have these poor results in reading skills in the early stages that is a particular challenge for us.

That is why our government, over the last few years, has sought to implement the review of the Australian curriculum; strengthen the focus on literacy; increase the presence of phonics and phonetic awareness in the Australian curriculum; implement the report of TEMAG, the Teacher Education Ministerial Advisory Group; and ensure that prospective teachers in future are equipped with a thorough understanding of the teaching of literacy and numeracy,
including phonetic skills. All of this seeks to make sure that our record investment in Australian schools is actually being used on quality outcomes, to address real problems in our school systems.

The PRESIDENT: Senator Paterson, a supplementary question.

Senator PATERSON (Victoria) (14:45): Can the minister inform the Senate about the proposed phonics check, as outlined in the Quality schools, quality outcomes statement?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:45): In the budget this year, the government released our commitment to further grow Australian school funding to record levels. But, at the same time, we outlined how we want to see and demonstrate that that investment is directed into areas in which it will make a real difference.

Our Quality schools, quality outcomes statement identified a range of reforms, particularly the establishment of a national skills check for all children in year 1 across literacy and numeracy standards, including a phonics check. Such a check has been used in UK schools since 2012, and evaluations demonstrate that the proportion of students now reaching the required standard in literacy has increased from 58 per cent in 2012 to 81 per cent most recently.

That is a real demonstration that such measures can make a positive impact, with similar improvements shown for most disadvantaged students. This demonstrates that it is actually making a difference where it is most important. It is a simple check. It takes only a few minutes, but it can make a real difference.

The PRESIDENT: Senator Paterson, a final supplementary question.

Senator PATERSON (Victoria) (14:46): Can the minister update the Senate on what steps are being undertaken to implement the phonics check?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:46): The government is acting to implement all of the measures across the Quality schools, quality outcomes document. We have circulated it to key stakeholders, particularly principals and school leadership groups. We have formally presented it to state and territory ministers, seeking their feedback in terms of the implementation of these measures. We have had positive feedback from organisations such as dyslexia representatives and speech pathologist associations, and from experts such as Associate Professor Kay Margetts, from the Melbourne Graduate School of Education.

We are working to make sure we get this measure right because it can make a real difference to learning outcomes for Australian schoolchildren. It can help to ensure that our record investments in Australian schools are used to make the best possible difference. It can build reading skills—and I trust that everybody in this chamber would agree that little can be more important than ensuring Australian schoolchildren learn to read effectively in their earliest years, providing an effective foundation stone for all of their educational experience.

Murray-Darling Basin

Senator HANSON-YOUNG (South Australia) (14:47): My question is to Senator Canavan, the Minister representing the Minister for Agriculture and Water Resources. Will the Turnbull government commit to delivering the Murray-Darling Basin Plan in its entirety,
including the additional 450 gigalitres of environmental water that will result in an overall 3,200 gigalitres recovered for the river? This is the minimum amount, shown by science, that is required to give the river a fighting chance, to keep the Murray River healthy and to ensure that in South Australia our agriculture and environment are protected.

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (14:48): I thank the senator for her question. I can inform the Senate that the government will implement the Basin Plan in full, as agreed to. Senator Hanson-Young mentioned a number of components of that Basin Plan, one of which was the potential to provide an additional 450 gigalitres, above and beyond what was agreed. That additional 450 gigalitres will be delivered—or the consideration of that 450 gigalitres, I should say—consistent with the Basin Plan.

In the Basin Plan 2012, which Senator Hanson-Young's party and other parties voted for, one criterion under section 7.17 reads:
The efficiency contributions to the proposed adjustments achieve neutral or improved socio-economic outcomes …

So there must be no detriment to the social and economic outcomes for the basin in delivering this additional water. That is what has to be looked at before it is delivered. That is what the Basin Plan called for, and that is what the government is committed to.

I would make the point that we have seen, particularly through the Northern Basin Review, how important it is to get this right. That review has shown that if you buy back water in an uncoordinated way and when you take water out of communities it does have an impact on those communities, it does have a real-world impact in terms of jobs. What has happened so far has already led to the loss of 700 jobs. What this government will not do is trade off people's lives and people's opportunities to have jobs and to provide for their own families against other things. What we are committed to doing is ensuring there is a balance between the economic, social and environmental outcomes of this plan, consistent with what was agreed to. That is our commitment to the Australian people, and that is what we will do.

The PRESIDENT: Senator Hanson-Young, a supplementary question?

Senator HANSON-YOUNG (South Australia) (14:50): I ask for a clarification from the minister. I asked whether the 450 extra gigalitres would be delivered, not whether the government would consider delivering it. Will you deliver the 450 gigalitres in addition, putting the total figure to 3,200? Yes or no?

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (14:50): To help the senator, I might quote directly from a South Australian Department of Environment, Water and National Resources website that states that the Basin Plan 'sets a target of 2,750 gigalitres by 2019, with potential to increase this by another 450 gigalitres'—'potential', Senator Hanson-Young. That is a direct quote from the South Australian government. The 450 gigalitres was always, under the Basin Plan, potentially able to be delivered but was only going to be potentially delivered in accordance with the criteria of the Basin Plan as agreed. So that criteria has to be met. We will not agree to any additional water that causes detriment on a social or economic basis, because of jobs cost, the impact on families in the basin and the impact on our ability to have access to fresh and cheaply
available food in this country. They are all important objectives for the Australian people. We have a balanced approach in this plan and we will implement the plan in full.

The PRESIDENT: Senator Hanson-Young, a final supplementary question.

Senator HANSON-YOUNG (South Australia) (14:51): I would like to clarify that that is precisely why the Greens did not vote for the Murray-Darling Basin Plan. We knew you would squib it. We knew you would screw South Australia eventually. Earlier this week, Senator Xenophon indicated that his support for government bills, including the backpacker tax and the ABCC legislation, would be dependent on the delivery of this extra 450 gigalitres. One of those bills has already passed. How much water, if any, will you promise?

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (14:52): We will deliver water back to environmental flows for the Murray-Darling Basin consistent with the Basin Plan. Our position has always been the same. That is why we have just completed the Northern Basin Review that was part of the Basin Plan. That review has recommended that the water recovery target in the northern basin should be reduced by 70 gigalitres. I know that Senator Hanson-Young might not like to take the advice of the Murray-Darling Basin Authority but that is the independent umpire in this area. That independent umpire has concluded that that 70 gigalitres that would not be recovered in the northern basin would lead to a three-gigalitre reduction in the water that goes over the barrages in South Australia. That is the connectivity between the north and the south. So 70 gigalitres in the north translates to only three gigalitres less at the barrages. According to Senator Hanson-Young and the philosophy of the Greens, they would prefer us to have a policy that would lose 200 jobs in the northern basin for that three gigalitres. That is not our approach, Senator Hanson-Young. Our approach is a balanced approach, and we will not put Australian jobs ahead of every dream the Greens might have. (Time expired)

Day, Mr Bob, AO

Senator CAMERON (New South Wales) (14:53): My question is to the Minister for Education and Training, Senator Birmingham. I refer to the minister's letter responding to former Senator Day's request for funding of his pet student-builder pilot in which he told the former senator that the pilot could not be funded because 'employers consider a continuing strength of Australian apprenticeships is work-integrated learning' and 'institution based models did not garner wide support from employers or industry groups' and apprenticeships provide 'significant on-the-job experience and training', enabling employers to 'meet their particular needs'. Why did the minister subsequently provide $1.84 million to the pilot when he had already made such a strong case against funding it?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:54): I would emphasise firstly to Senator Cameron that he of course has received a bunch of information under documents that I tabled in the Senate. He might want to have a closer look at them to see what are draft letters versus what are signed letters, because of course there is a significant distinction between the two. I would further emphasise that over a period of time further analysis and indeed changes to the proposal were undertaken. In particular, Senator Cameron wants to talk about work integrated learning aspects of such proposals. Under the pilot proposal that is being delivered through this program, I am happy to tell Senator Cameron, students will complete around 2,242 hours in work based training, in work placements, in on-the-job training activities—59 weeks at 38 hours a week during that time. It
is very clear that there is a strong element of work-integrated learning in the pilot that is being undertaken—work-integrated learning that will lead to these students receiving their certificate III in carpentry or their certificate IV in building and construction. It will ensure that they will meet licensing requirements for a builder’s licence and registration so that they can go on and be fully participating working tradespeople in the South Australian economy.

It is very clear that the issues and concerns that Senator Cameron identifies are being addressed but also tested as part of a pilot. That is why this is a pilot—to assess exactly how it works, to assess whether it, along with the other four pilots that are being funded, can provide lessons to improve uptake in our apprenticeship system in the future. (Time expired)

The PRESIDENT: A supplementary question, Senator Cameron.

Senator CAMERON (New South Wales) (14:56): In the minister’s letter he told former Senator Day that the student builder pilot posed a number of challenges, including ‘industrial relations issues and employment outcomes for students’. Can the minister advise the Senate what he meant by the industrial relations and employment outcomes challenges posed by the student builder pilot?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:57): Once again I emphasise to Senator Cameron that he should be mindful of whether a letter was a signed letter or a draft letter, in terms of documents that have been released. Senator Cameron should of course also be very mindful of the fact that, as I said before, issues were addressed during the development of this and will continue to be addressed as the project plans are finalised by the deliverer of this grant. We can have absolutely every confidence that as the project is rolled out all of these issues must have been addressed for its successful implementation, because they are the types of conditions that have been put in place, they are the types of terms that have been worked through between the department and the North East Vocational College.

The PRESIDENT: Senator Cameron, a final supplementary.

Senator CAMERON (New South Wales) (14:57): Does the minister really expect the Senate to believe his significant criticisms of Senator Day’s student builder pilot were overcome and that the $1.84 million grant was not just the government keeping their most reliable crossbencher happy?

Senator BIRMINGHAM (South Australia—Minister for Education and Training) (14:58): I really expect the Senate will believe that there was a real decline in apprenticeship commencements from 2012 to 2013 of 38 per cent, which occurred because of policy changes instigated by the former Labor government—creating, of course, a significant decline in overall numbers of apprentices, necessitating action to look at alternative ways to get a recovery in place in apprenticeship numbers. That is exactly what we are working to do, to get a recovery in place in terms of leadership numbers. I equally expect the Senate to believe the findings of the ANAO in relation to things such as the $300 million pre-election splurge that those opposite undertook in the Early Years Quality Fund, all of it designed to drive more people into membership of United Voice—a $300 million union membership splurge. Put that alongside other failures of their side, such as their decisions into— (Time expired)
Economy

Senator DUNIAM (Tasmania) (14:59): My question is to the Cabinet Secretary representing the Minister for Trade, Tourism and Investment, Senator Sinodinos. Will the Cabinet Secretary update the Senate on the government's plan for generating jobs and growth as the economy transitions from its traditionally heavy reliance on investment in the still important mining and resources sector?

Senator SINODINOS (New South Wales—Cabinet Secretary) (14:59): I thank Senator Duniam for his question and his ongoing interest in matters of tourism, trade and investment, all very important to the great state of Tasmania, which under its Liberal state government and a munificent federal government is going really great guns. Before I begin my answer, I say it has been literally a year and a day since the opposition have asked me a question about trade. But I can report that the economy is diversifying. Our services sector is picking up the slack. It now represents over 70 per cent of our gross domestic product and employs four out of five Australians. Many Australian service companies are small- and medium-size enterprises in states like Tasmania and are involved in a range of industry sectors like tourism, education, IT and transport.

While services are playing a crucial role in our domestic economy, they are also stepping up to the mark when it comes to exports, although we can do better than the current proportion, which is that the services sector accounts for around 20 per cent of our total exports. We have a big opportunity here to grow our service exports. That opportunity is being provided by the ambitious trade agenda laid down by the great Andrew Robb and now being followed so competently by Mr Ciobo in the other place. Our services sector will have a significant advantage in capturing the gains from the growth in Asia's middle class, because incomes are rising and, as incomes rise, so goes up the demand for services—particularly more sophisticated services. It is projected the Asian middle class will grow from 600 million today to three billion by 2030, and we will be seeking out opportunities even further afield, from Indonesia to Europe.

The early report card on this government's economic plan and ambitious trade agenda shows that we are getting runs on the board.

The PRESIDENT: Senator Duniam, a supplementary question?

Senator DUNIAM (Tasmania) (15:02): Can the Cabinet Secretary outline how services exports are performing and how the government plans to capitalise on these results?

Senator SINODINOS (New South Wales—Cabinet Secretary) (15:02): Trade data for the 12 months to August show that value of our services exports has surpassed the value of our iron ore exports for the first time in six years and in 2015 grew by 10 per cent. The share of services exports as a proportion of our total exports has increased by over a third over the past four years. What does this mean? It means our future FTAs will seek to replicate what we have achieved in our North Asian FTAs, seeking guaranteed access for our health, aged-care, tourism, education, logistics and financial services providers and allowing them to establish a presence in those overseas markets. There is no doubt these agreements will translate into real jobs for all Australians, who are already starting to see the benefits particularly from the China-Australia Free Trade Agreement, which is creating jobs in Australia, stimulating
growth and leading to stronger business and cultural ties between our two nations through the exchange of services. *(Time expired)*

**The PRESIDENT:** Senator Duniam, a final supplementary question?

**Senator DUNIAM** (Tasmania) (15:03): I would like to thank the Cabinet Secretary for those very good answers. Finally, can he outline for the Senate any trade negotiations currently underway?

**Senator SINODINOS** (New South Wales—Cabinet Secretary) (15:03): Thank you, Senator Duniam. Our trade agenda will see those service providers gain greater access in our region very soon. Recently, the Prime Minister and several of my colleagues signed the Australia-Singapore Comprehensive Strategic Partnership with the Prime Minister of Singapore and his ministers. This is the third update for the Singapore-Australia Free Trade Agreement, a broad agreement signed under the Howard government which continues to open further doors to Australian business and workers in one of Asia's most dynamic service markets. That agreement will also lead to significant investment in northern Australia. In North Queensland it will power growth that is defence related as well as other infrastructure related activities.

And we do not stop there. We have the Trade in Services Agreement, another historic negotiation Australia is leading with 50 countries. It will set new standards in trade rules, reduce red tape, increase transparency and certainty for our service exporters and be the most significant upgrade in 20 years. *(Time expired)*

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**Prime Minister**

**Senator POLLEY** (Tasmania) (15:04): My question is to the Minister representing the Prime Minister, Senator Brandis. On Tuesday the Prime Minister told his colleagues, 'Never go to Lima for the weekend.' What exactly when wrong while the Prime Minister was in Lima? Was the Prime Minister referring to the Deputy Prime Minister declaring war on the Murray-Darling Basin Plan?

**Senator BRANDIS** (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (15:04): If the Prime Minister said that, I am sure he would not have been reflecting on Peruvian tourism. But, as you raised the matter, the Prime Minister's attendance at the APEC Summit in Lima was an enormously successful occasion, because, in particular, it gave the Prime Minister and the other leaders of the APEC economies the opportunity to reaffirm their commitment to the integration of the world economy, to reaffirm their commitment to free trade—

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

**Senator Polley:** Yes, that was not the question; the question was very specific: what exactly went wrong while the Prime Minister was in Lima? Was the Prime Minister referring to the Deputy Prime Minister declaring war on the Murray-Darling Basin Plan? It had nothing to do with the reason he was there.

**The PRESIDENT:** Senator Polley, you had two parts to your question. The first part was what went wrong when the Prime Minister was in Lima. The Attorney-General has been discussing what happened in Lima, and so far he is indicating that nothing went wrong.
Senator BRANDIS: The point I was trying to make to Senator Polley is that nothing went wrong in Lima; everything went right, because it gave Australia and it gave the leader of Australia the opportunity for long discussions with the President of the United States, with Xi Jinping, with Shinzo Abe, with Justin Trudeau and with other world leaders in our region and in the Pacific basin and gave them the opportunity to reaffirm their commitment to free trade, to reaffirm their commitment to the greater integration of their national economies and— notwithstanding observations that have come from the President-Elect of the United States of America about the TPP—to reaffirm their interest in and commitment to entering into a trans-Pacific free trade arrangement or agreement of some kind and to continue to prosecute those negotiations. So, it was a fine old time in Lima. (Time expired)

The PRESIDENT: Senator Polley, a supplementary question?

 Senator POLLEY (Tasmania) (15:07): Yes, I do have a supplementary question. In fact, I agree partly with Senator Brandis, because everything went wrong here. But was the Prime Minister referring to the Nationals rebellion against the ban on the import of the Adler A110 shotgun?

 Senator O'Sullivan interjecting—
 Senator Cameron interjecting—

The PRESIDENT: Senator O'Sullivan and Senator Cameron, go outside if you need to discuss things across the chamber.

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (15:08): Senator Polley, you asked me about what happened in Lima and whether anything went wrong in Lima, and I am telling you that Australia's representation at Lima by the Prime Minister was enormously successful. Now, particularly in view of some of the observations that have come from the President-Elect of the United States of America, of course it was important that Australia's voice be heard in that forum to reaffirm our commitment to free trade and the greater integration of the economies of our region. And you may seek to make light of it, Senator Polley, but for the Prime Minister of Australia to have the opportunity for long meetings with, for example, President Xi of China and Prime Minister Abe of Japan, was extremely helpful and extremely beneficial to Australia.

The PRESIDENT: Senator Polley, a final supplementary question?

Senator POLLEY (Tasmania) (15:09): Was the Prime Minister referring to his very, very mediocre Attorney-General's latest gaff calling for the split of the Liberal National Party in Queensland?

Senator BRANDIS (Queensland—Attorney-General, Vice-President of the Executive Council and Leader of the Government in the Senate) (15:09): Well, I have heard of a long bow, Mr President, but I have never seen a bow drawn quite as long as that—from Lima to the LNP! I have never seen a bow drawn as long as that. Among the other things that the Prime Minister discussed with other regional and world leaders in Lima was the continuing—

The PRESIDENT: Order! Pause the clock. Senator Polley, a point of order?

Senator Polley: Mr President, I would ask that you draw Senator Brandis to the question so that he can at least attempt a reasonable response.
The PRESIDENT: I will draw the nature of your question to the Attorney-General.

Senator BRANDIS: The efforts that Australia is making in coalition with many of the nations represented at APEC in the global fight against terrorism—

Senator Polley interjecting—

Senator BRANDIS: Once again, Senator Polley, you might think that is a laughing matter. I actually do not happen to think it is a laughing matter. The Prime Minister's visit to Lima, his attendance at the APEC Leaders Summit, was extremely successful and very important to Australia's national interests, particularly in light of the recent elections in the United States of America. It was an entirely successful visit. (Time expired)

Senator Brandis: I ask that further questions be placed upon the Notice Paper.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Broadband

Senator O'NEILL (New South Wales) (15:11): I move:
That the Senate take note of the answer given by the Minister for Communications (Senator Fifield) to a question without notice asked by Senator Bilyk today relating to the National Broadband Network.

As a matter of interest, about an hour ago a wonderful staffer from my office, Rhys, posted a speech that I gave about the NBN in this place just the other night. In the space of one hour, ladies and gentlemen, this is the sort of comment that I have had:

the nbn is a joke - took time off work to accommodate the technician who arrived then announced that there was no signal at the pole and that he would be back later in the day plus that he would call - none of which happened

Here is another comment:

Not only does it have inherent problems, but you have to sign a waiver saying that the retailer cannot be held to any guarantee of service, as it's not their fault if the infrastructure has problems.

And another:

Never able to converse with anyone at the NBN...they are scarce as hens teeth. Constantly dropping out...slower than dial up...that is if you are lucky enough to get a connection.

And this comment comes from a woman in the wonderful suburb of Kariong:

I don't know if im lucky we in Kariong will not have it for two years so I've been told.

The people who do not have the NBN that this government is rolling out are indeed lucky, because the market refused to provide additional funding to the NBN, which is the promise that this government went to the election on. The market knows what this government is trying to hide from ordinary Australians. The NBN that it is building is a lemon. The NBN taking fibre to a node and then forcing it down a copper pipe to your house is like shooting a superhighway to somewhere near you and then forcing you onto an information goat track in the last century. It simply is not working.

For those comments to arrive in the space of just an hour means there will be hundreds of them in a couple of hours. There are hundreds of people contacting my office on the Central Coast, where this live experiment in making Australians able to participate in the global economy, where they need the internet at genuinely high speeds—100 down, 25 meg up—is not being delivered. This government decided that 25 meg down and five up was going to be
enough. That was never going to be enough, and the market knows it. That is why the government are ashamed and embarrassed by the fact that, while they put a $29.5 billion cap on equity, they have to go for public funding of $19.5 billion, as is declared on the Prime Minister's own website, to make sure that their dog's breakfast of an NBN goes ahead.

We should not really call it the NBN, because it is not what people were going to get. Under Labor they would have got fibre to the home, fibre to the business—fibre to give them real opportunities to change how they do business and how they use technology right across this country. I heard from a farmer who has made a half-million dollar investment in wonderful technology. His internet capacity is so poor he has a $500 debt. That is a liability that he cannot even use.

That is the kind of future that we see from this government for their NBN. It is not the NBN: it should be called what it is—Malcom Turnbull's Mess: the MTM. That is what we have: a dog's breakfast of combined different technologies. Fibre to the node—now they have figured out it is so bad that they decided they will go a little bit more fibre, so they are going to propose to bring fibre to your kerb instead of the fibre to the node. It will be a bit closer to your house, but it will still be copper from the kerb to your house, and that is where the problem is. The HFC network—at the beginning, our great innovation Prime Minister, Malcolm Turnbull, who was the Minister for Communications who made this happen, said it was going to be a fantastic thing to have HFC. He was going to use the Foxtel line into your house. They bought it, and they have not been able to use it. Millions of dollars have gone down the trap. The market knows—the market would not invest in this dodgy and disgraceful piece of infrastructure, which is selling Australia's future down the river. It is a failure at every single turn.

The number of complaints that I have received is nothing by comparison with what has been received at the Telecommunications Industry Ombudsman's office. Complaints about the NBN are coming through thick and fast. What are those complaints about? This is the government that promised faster, cheaper, sooner. We should have all had it by 2016—we have not got it. It was going to be cheaper—they said they could do it for $29.5 billion. Now they have had to back it up with taxpayers' money of $20 million just to keep it going. They said it was going to be faster. This is the complaint. The number of complaints of slow data speed, unusable services and dropouts has increased by 147.8 per cent nationally. That is why they could not get investors for their NBN. (Time expired)

Senator O'SULLIVAN (Queensland) (15:16): That was almost a manic contribution. I often find myself in the position these days of having to devote so much of my time to pastoral care of our friends on the other side, to try to educate them. You can reject it—it is a feature of ignorance. I am about to let you know the real story in relation to the NBN. The other thing is that I made the comment only yesterday: farmers everywhere—people who live west of the Great Divide, people who live in provincial parts of the state—should break out in a cold sweat every time someone from the Labor and/or Greens coalition starts to talk about their interests. To be honest, I will bet you London to a brick it has been a long time since you have driven any more than 20 minutes where there have not been four lanes, Senator.

Senator Bilyk: You are condescending!

Senator O'SULLIVAN: This is my experience in the bush.
The DEPUTY PRESIDENT: Senator Bilyk, on a point of order?

Senator Bilyk: I am not sure which senator Senator O'Sullivan was referring to, but if he is not sure, three of the Labor senators in the room come from Tasmania. We would be lucky to get any four-lane highways.

The DEPUTY PRESIDENT: That is a debating point.

Senator O'SULLIVAN: To clear up the point for Senator Bilyk, I was referring to all four of them. The situation we have is that for decades the question of communications in the bush was ignored completely through the entire term of the Australian Labor government. I have met with dozens of families who reported to me that they had to get up in the early hours of the morning so they could just do a transaction with their accountant or a business transaction or simple search on the internet. I had many old-timers tell me—I remember one in particular when I was going through Birdsville, but it was consistent with reports that I was getting right across my own state of Queensland—that the School of the Air was more efficient that the communications system that had been provided to them under the former Labor government.

The stories and the accounts that I get from the bush are completely different to the one or two little exercises undertaken by the previous speaker. We now have the Sky Muster satellites, and that brings great promise to the bush. People are reporting now that they are able to function, particularly around the scope of education and delivery of health care. For example, we have had entire surgical units set up with the capacity to provide rural health services, which had not been able to function until this government came to power and brought the NBN on line with Sky Muster. They could not use the equipment. They had state-of-the-art equipment but they could not connect or communicate. So the story that I get as I move around my home state of Queensland is completely different to the story just provided.

It is a question of us rolling this out. If you go back to some of the figures, we are now on track to connect 1.2 million services this year. For the first four months there were 400,000 new customers. So if you want to have a conversation about how the market is responding, we are happy to have that conversation—400,000 new customers in four months, which is 100,000 customers a month. It is an increase. We added another 613,000 in the last financial year, so that will be 1.8 million Australians who will go on in just on two years with our rollout of the NBN. When you compare that with what was happening under Labor it is not hard to make the statistical comparison, because absolutely nothing was happening.

This was a multibillion dollar brainstorm when Labor dealt with it. I am sure the people in the gallery will be absolutely shocked to understand that the entire structure of the NBN, when the Labor government was in control of it, was done on the back of a napkin. We have all drawn on the back of a napkin—

Senator Brandis: I thought it was a beer coaster.

Senator O'SULLIVAN: I am sorry—on the back of a beer coaster—and we have all made annotations on the back of a beer coaster. You come here today to criticise this government, which is very organised. This government has absolutely exceeded all expectations in the rollout of the NBN. The rollout of the NBN will make the bush in Australia much more productive and, socially, a much better place to live, which is inconsistent with previous contribution.
Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (15:22): Very mediocre, Senator O'Sullivan. I rise to take note of the answers given by Senator Fifield to questions on the National Broadband Network. This is the latest chapter of the ongoing farce that is the rollout of the government's second-rate copper network, or the MTM network, as they call it. Those opposite tell us that MTM stands for multi-technology mix, but we all know that people out in the community are saying all the time that it really stands for 'Malcolm Turnbull's mess'.

Is it any surprise that Australian taxpayers are now forking out for this NBN budget blow-out? Three years ago, Mr Turnbull's and Mr Abbott's decision to roll out a second-rate copper network was going to cost $29.5 billion and be delivered to every home and business in Australia by the end of—guess when—this year, 2016. What a joke that was. The timetable for the rollout has blown out to 2020, which is four years later than the government promise, while the total cost of the network has almost doubled. The budget for purchasing new copper wire blew out by more than 1,000 per cent. That is enough copper wire to connect Brisbane to Beijing or Perth to Pakistan. What are you guys doing on that side? You need to sharpen your pencils, as my dear friend would say.

While the Turnbull government has been rolling out its second-rate network, Australia's average peak broadband speed has fallen from the 30th to the 60th fastest in the world, and by the time the network has been rolled out it will be obsolete, according to technology experts. On top of all these failures we learn that taxpayers will have to forke out $19.5 billion for a loan to complete Mr Turnbull's second-rate copper network, despite the government insisting for the past three years that the project has an equity cap of $29.5 billion. This is a backflip of epic proportions. As recently as May this year, both Senator Cormann and Senator Fifield were insisting that the government equity cap was $29.5 billion and that the remaining funding would have to be sourced from external markets. What makes this backflip especially farcical is that the government's original equity cap promise is still featured on the Prime Minister's website. Someone had better tell him. He needs someone in his office, given all the staff there, to make sure that they keep the website up to date.

There are still many unanswered questions about the government's $19.5 billion NBN bailout. There are questions such as: was the government advised that private lenders were lacking confidence in the coalition's NBN and the long-term liability of using copper? What did NBN recommend to government after receiving its underwhelming AA-minus credit rating? And what did the Department of Finance and the Treasury recommend to cabinet? Taxpayers have a right to know why $19.5 billion of their money has been needed to save this flagging project from the Turnbull government's mismanagement. All we can conclude from this backflip—the only reason why the government would have to bail out the NBN—is that private investors do not want to touch Mr Turnbull's second-rate copper network. They know that they would be being sold a lemon. According to a US telecommunications analyst, Point Topic, over 89 per cent of new global access network connections between the first quarter of 2015 and 2016 were fibre to the premises. To illustrate how out of date the government's second-rate copper network is, two-thirds of fixed-line NBN customers are already opting for the maximum 25 megabits per second speed tier, or higher speeds where they are available.

The NBN is now accounting for almost 12 per cent of complaints to the Telecommunications Industry Ombudsman, even though the NBN comprises less than four
per cent of fixed and mobile internet services. No wonder private investors are turning their nose up at the government's second-rate copper network. They want to invest in a 21st century broadband technology, not 20th century copper. Instead, it has been left to the Australian taxpayer to save what was once a world-leading project, which, under Mr Turnbull's watch, has become the worst infrastructure disaster in our nation's history. It is like you started off with a Ferrari, you have been adding bits to it from a Kingswood and then you have crashed it into the wall. *(Time expired)*

**Senator FAWCETT** (South Australia—Deputy Government Whip in the Senate) (15:27): I rise to address some of the points raised by members in the opposition in response to answers given by the Minister for Communications. As a South Australian senator, I do take exception to the comments about a Kingswood which imply that the Kingswood is somehow a poor car. I think Holden has actually produced some very good cars, and I would have thought the Labor Party would have appreciated that.

The point that we really do need to highlight is that the Labor Party, yet again, are highlighting their lack of understanding of commercial reality. Members opposite have just been talking at length about the Prime Minister's website and the discussions on there around equity caps. For people who have been involved in business, they clearly understand that equity implies ownership. If you have equity in something, you have some ownership of it. Whereas, if you provide a loan, the loan means that there is a debt that the company has to repay and, yes, you have an interest. But, if it is on commercial terms, it is not ownership; it is not equity. That is quite commonly understood in the world of business. I will talk a little bit further about that, but it is important to highlight that the Labor Party has form on this kind of misunderstanding.

Much of my work in this place relates to Defence and defence procurement. We are working hard at the moment to try and keep a sustainable shipbuilding industry in Australia. During some of the discussions in this place around why the value of debt has occurred where we have seen shipbuilding workers being laid off in South Australia, I was flabbergasted to hear what members opposite—those with an association with the portfolio—said when answering the very telling question as to why the Labor Party in the six years that they were in government did not commission a single ship to be built in Australia's shipyards. Their answer in this chamber and in the other place was that the shipyards were already full of work. They were already busy so they did not have to commission anything. What that shows is a complete lack of understanding of the fact that in the real world, where designs have to be approved and contracts have to be negotiated, there a whole bunch of enabling steps required before you can commence a large project.

Six years of inaction was excused by those opposite with a throwaway comment that the yards were full. Why were they full? They were full because the coalition government, under Prime Minister Howard, had commissioned the shipbuilding projects that were occurring during the time of the previous Labor government—both the LHDs and the air warfare destroyers—with the lead time of four to five years between the decision and work actually starting. So if there was any commercial understanding from members opposite, they would have realised that, in order to avoid the layoff of workers, you actually have to do those enabling steps. So with that kind of history and the dire consequences it has had for that workforce around Australia and in South Australia in particular, it does not surprise me to
hear the complete lack of understanding on this very basic financial issue around the difference between equity and making a loan.

In constrained financial times I would have thought that the Labor Party would have welcomed what the average person on the street would recognise is wise financial management. Let us take a simple example: if you go to a bank and seek a loan to buy a house and they offer you an interest rate but you can go to a different provider and get a better interest rate, then that is clearly where you are going to go. In this case, the government is able to seek debt funding at a better rate than NBN were able to seek debt funding through another provider. So, looking for every way to be good stewards of the taxpayers' money, this government has taken the sensible decision—in fact, respected business journalist John Durie has described this decision as a smart use of the cheapest source of funds—whereby the government is making a loan on commercial terms to the NBN. So the cap remains. Our equity remains in accordance with the statements that we have consistently made, but we are being good stewards of taxpayers money by making sure we get the best deal available in terms of the cost of capital to the NBN. *(Time expired)*

**Senator URQUHART** (Tasmania—Opposition Whip in the Senate) (15:32): I also rise to speak on the motion to take note of answers by the Minister for Communications, Senator Fifield, on the government's latest broadband backflip. This one is remarkable. The government's decision to complete the NBN rollout through a $19.5 billion government loan is a complete backflip on everything it has been saying for the past three years. It shows that Mr Turnbull's second rate copper-reliant broadband network could be uncommercial and unviable. I want the government to succeed on the NBN. The people of Australia need the government to succeed on the NBN. But every backflip comes with a risk that a previous position could be next up for a change of heart. With every backflip there is a risk that there is information the government and NBN are hiding—that the backflip is only ever part of the story.

A message that we have been delivering consistently for years is that the Australian people deserve, and the Australian people need, fibre-to-the-premises broadband. We have been saying do it once, do it right, do it with fibre. This Prime Minister has not listened, and now he and his minister are contradicting each other on this latest development. On one hand we have Minister Fifield promising that there is a cap on the government's equity contribution to the NBN of $29.5 billion but there is not a cap on the government's total contribution; on the other hand, we have the Prime Minister who on his website states that there will only be public funding of $29½ billion, which of course has blown out now, with this extra $19½ billion from the taxpayer. The latest development demonstrates that the Prime Minister and Minister Fifield have lost control of the NBN project.

In my home state of Tasmania, I have been working with the communities on the west coast, in Queenstown, Zeehan and Rosebery, to secure at least the second-rate fibre-to-the-node service. We made the case that the satellite service was inappropriate and pressured the minister, the Prime Minister and the former member for Braddon to acknowledge the need for fibre broadband to the west coast and to match Labor's commitments to these communities. But, of course, months after the election there is confusion for who is responsible for what and frustration with yet further delays.
The west coast has long been the main exporter earner for the Tasmanian economy, bringing millions of dollars to the state through mining, forestry and tourism. However, a reliance on resource based industries presents serious risks in the future, and the region really needs to build other industries. That is why it is critical for governments at the federal, state and local level to work together. The west coast developed a west coast community plan for the next 10 years. They did that in consultation with the entire community. The section on the economy identifies the need to improve access to broadband and wireless technologies to support a sustainable, dynamic and resilient business model. Broadband is also important to the region for health outcomes and education, allowing people to receive important and sometimes life-saving emergency treatment and to gain an education without having to leave the region. That is really important for the west coast, because sometimes during the winter it gets snowed in and it is inaccessible, and people need to be able to access this information to get to school for their education, and businesses need it, and they need a proper program.

Labor is focused on working with the communities on the west coast to improve their communications services. We need the Turnbull Liberal government to set a clear path for the NBN, to stop all the uncertainty and to stop the regular backflips, because with every backflip comes a risk that the previous position, such as rolling out fibre to the west coast, could be up for the next change of heart. With every backflip there is a risk that there is information the government and NBN are hiding.

So I urge the Prime Minister and the minister to come clean on the government's financial support to NBN. Come clean on exactly what this means for the project in the future. I urge the Prime Minister and the minister and NBN to work with the Tasmanian government and the West Coast Council to lock in broadband rollout for the west coast, to meet their election commitments for the people of Queenstown, Zeehan and Rosebery. Stop hiding behind half-truths and clarify your exact position on the finance of the project so that those people can get on with their lives, get on with getting a good education and get on with attracting new businesses to the area so that they can become self-supporting and long-term sustainable into the future. (Time expired)

Question agreed to.

**BUDGET**

**Consideration by Estimates Committees**

Senators FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:37): I present additional information received by the Foreign Affairs, Defence and Trade Legislation Committee relating to estimates:

Foreign Affairs, Defence and Trade Legislation Committee—Budget estimates 2016-17 (Supplementary)—Additional information received between 9 and 23 November 2016—Foreign Affairs and Trade portfolio.

**COMMITTEES**

Education and Employment Legislation Committee

**Additional Information**

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:38): On behalf of the Chair of the Education and Employment Legislation Committee, Senator
McKenzie, I present additional information received by the committee in its inquiry into the provisions of the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016.

Joint Standing Committee on Treaties

Report

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (15:38): On behalf of the Chair of the Joint Standing Committee on Treaties, I present Report 164 Air Services—Kuwait, Air Services—Bahrain and Report 166 Implementation Procedures for Airworthiness-USA; Convention on Choice of Courts-accession; GATT Schedule of Concessions-amendment; Radio Regulations-partical revision.

Ordered that the reports be printed.

Senator FAWCETT: I move:

That the Senate take note of the report.

The Joint Standing Committee on Treaties report 164 and report 166 contain the committee's review of six treaty actions. Four of the treaties had been tabled in the 44th Parliament, and the inquiries lapsed when parliament was dissolved. These treaties were subsequently re-referred to the committee at the beginning of the 45th Parliament.

There are two air service agreements examined in report 164. The first is with Kuwait and follows the standard Australian model air service agreement and is expected to facilitate trade and tourism between the two countries. The second is a protocol to amend the current air service agreement with Bahrain and provides for more liberal route rights and tariff provisions for both countries. The committee has recommended that both of these air service agreements be ratified.

The more substantive of the reports, however, is report 166, in which are the implementation procedures for airworthiness with the United States will enable Australian manufacturers to gain access to the United States aviation market—one of the largest in the world. This is an important area because our aviation sector has proven over many years to have quite innovative people working both in the design and in the manufacturing areas. Having agreements at a government-to-government level that provide these companies with access into other markets is really important for them to survive. Aviation is very important to many sectors of our community—not only the major airports, the commuters and the cargo but particularly our rural and regional areas. The aviation sector is a lifeline for them in so many areas.

One of our concerns is that, where our regulations do not immediately line up with those of other nations, people cannot export their products to other nations—whether that is conducting a service for others or whether that is, as in this case, manufacturing parts for aircraft. This is a measure that the parts-manufacturing industry has been calling for for some time. It has been broadly welcomed. During the Forsyth inquiry into aviation regulatory reform here in Australia, and during the committee process where we examined this particular treaty and looked at the cost implications for Australia, one of the points was looking at our own Civil Aviation Safety Authority and their capacity to deal with the engineering and design proposals put forward by Australian industry. I think it is important that, if we sign up to international agreements which potentially open a great export opportunity, whether we
have interposed in that a role for the regulator, as opposed to outsourcing to a competent industry participant the ability to sign off on the design on behalf of the regulator. I note that, in many cases, industry actually have more people with a greater range of experience than the regulator is able to attract and retain. We need to be careful that we do not create a choke point in the regulator such that, when people see a market and there is a mechanism by which they can access the market, their time to market is not impacted by a lack of capacity or, in some cases, a lack of competence within the regulator to deal with the approvals in a timely manner.

On the basis of the evidence we received, I was not convinced that that mechanism is necessarily yet in place. We had a range of opinions come from industry players, all of whom welcomed the treaty and welcomed the avenue being created for them to access the US market. But I think it is important we make sure that either the regulator looks at ways that it can work within the treaty framework to do what we have successfully done in the past—which is to empower an independent third party within industry have the sign-off, where there is both the competence and the capacity to do so—or the regulator is adequately resourced and their processes are appropriate. That is important so that our industry players, when they see an opportunity, can actually make the bid to win the contract and get to market in a time frame that enables them to win that work on a consistent basis.

This report also looked at a number of other amendments to, for example, Australia's schedule of concessions in the General Agreement on Tariffs and Trade—GATT. That removes tariffs on a range of technology products and eliminates some agricultural export subsidies.

Finally, there is a partial revision of the radio regulations, which updates the international use of the radiofrequency spectrum, including the allocation of spectrum to radiocommunications services. These regulations ensure the rational, efficient and equitable use of spectrum. They will improve a wide range of areas, including:

- provisions for the growing demand for mobile broadband services;
- aeronautical communications capability; and
- provisions to improve radar for collision-avoidance and driver-warning systems.

Accepting these revisions will align Australia with the rest of the world in its regulation of the radiofrequency spectrum.

I will finish my contribution by putting on the record here that many people use our technology, whether it be mobile phones, radios or television—anything that streams data—and most do not actually appreciate that behind the scenes there is a huge demand for spectrum, and often commercial demands start putting real pressure on legitimate uses by things like aviation, defence, and science and technology, whether it be space or others. Part of the work that is done by parliaments and committees such as the treaties committees and others is the behind-the-scenes work that makes sure all of these vital functions continue to work in the best interests of the nation. And so, when people look at our parliamentary system, view things like question time and become despondent because they think it is all about politicians yelling at each other, I invite the Australian public to realise that 90 per cent of the time, behind the scenes, behind that stuff that gets picked up in the media, there is a lot of bipartisan, constructive work making sure that the regulatory system that supports all of the
things that we take for granted in our day-to-day life is in place and is planned for and provided for appropriately so that our society can continue to enjoy them and our economy can continue to utilise them and grow. In the context of people's sometimes dissatisfaction with the parliamentary system, I encourage them to realise that this is an example. You will not see it in the headlines, but it is an example of the bulk of the work that occurs here in the parliament. It is productive, often on a bipartisan basis and in the best long-term interests of our nation. I commend both reports to the Senate and seek leave to continue my remarks.

Leave granted; debate adjourned.

Rural and Regional Affairs and Transport References Committee Report

Senator URQUHART (Tasmania—Opposition Whip in the Senate) (15:47): On behalf of Senator Sterle, I present the report of the Rural and Regional Affairs and Transport References Committee on the future role and contribution of regional capitals.

Ordered that the report be printed.

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

I seek leave to continue my remarks.

Leave granted; debate adjourned.

Economics References Committee Report

Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (15:47): On behalf of Senator Ketter, the Chair of the Economics References Committee, I present the report of the Economics References Committee on the 2016 census together with the Hansard record of proceedings and documents presented to the committee.

Ordered that the report be printed.

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

I would like to congratulate my colleague Senator Ketter and the other members of the Economics References Committee on their excellent report on the 2016 Census of Population and Housing. The census is a very important process for Australia. It creates a snapshot of our nation and its people, helps us to observe population and demographic trends and is a very important public policy tool. Given its importance, it is also really important that we get the census right. The Australian public must have trust in the census process to be encouraged to participate and to be assured that the data is accurate and reliable. While this report is incisive, even a casual observer can see that this year's census was the worst in Australia's history.

Millions of people across Australia logged onto their computers on census night, 9 August, anticipating the great family tradition of filling in their census together, only to be faced with messages on their screens such as 'This page can't be displayed,' or 'This site can't be reached.' Social media then lit up with the outrage of users who could not access the online census or eCensus site. It was later revealed that the ABS had made a decision to shut down the site due to a distributed denial of service attack. I think there were four attacks, actually.
Mr Turnbull’s special adviser on cybersecurity, Mr Alastair MacGibbon, told a Senate estimates that the denial-of-service attack should not have brought down the census website. He said that the attacks were small and predictable, sending around three gigabytes per second of data when it is not uncommon to see attacks of 100 gigabytes per second or even 1,000 gigabytes per second. The Senate economics committee agreed. In the report they state:

It goes without saying that the eCensus website should have had the capacity to withstand what was a relatively minor attack.

The report goes on to say:

…the there appears to have been significant and obvious oversights in the preparation of the eCensus.

The committee's report addresses issues such as the preparedness of the ABS’s subcontractor IBM for denial-of-service attacks and the decision not to hold an open tender process for the contract. Evidence was also given by IBM that the ABS was considering not proceeding with the e-census, and, indeed, decreasing the frequency of the census to once every 10 years. Their final decision to proceed with the 2016 e-census was, according to IBM's evidence, reported to them as late as May 2015. To quote the committee's report:

The committee's report addresses issues such as the preparedness of the ABS's subcontractor IBM for denial-of-service attacks and the decision not to hold an open tender process for the contract. Evidence was also given by IBM that the ABS was considering not proceeding with the e-census, and, indeed, decreasing the frequency of the census to once every 10 years. Their final decision to proceed with the 2016 e-census was, according to IBM's evidence, reported to them as late as May 2015. To quote the committee's report:

The confirmation that the census would proceed, the delayed development of an eCensus solution, the use of a limited tender and the erosion of internal capacity to adequately oversee the development of the eCensus are all serious concerns that may have contributed to the events of 9 August 2016.

But the ultimate blame, obviously, rests with the government. You cannot discount the impact of budget cuts to the ABS, the long-running vacancy in the position of the Australian Statistician, the government's hands-off approach to the project and the revolving door of ministers responsible for the census—matters that are also addressed by this report, with appropriate recommendations.

The Australian Statistician acknowledged during the last round of budget estimates that the ABS has to date incurred additional costs of around $20 million and anticipates spending another $10 million. The cost to taxpayers of this bungle is a staggering $30 million. There is a possibility that some of that money may be able to be recovered, and I certainly hope that is the case. Australian taxpayers are rightly angry about their money being wasted in this way, but the millions of Australians who attempted to complete their census online on 9 August are also angry about the time wasted in their repeated futile attempts to access the site. They are also angry because the government continued to encourage Australians to complete the census online, even after the site had crashed, wasting many more millions of hours. One indication of what a monumental disaster this census has been is the undercount rate, or the percentage of households missing from the census at the end of the reporting period. Since 1971 the average undercount rate was 1.9 per cent, with the highest reported rate of 2.7 per cent occurring in 1976 and 2006, but the undercount rate for this year’s census was a massive five per cent. How is this going to impact the integrity of the data generated by this year’s census—data which is so important for public policy decisions? How many extra hours are census field officers going to have wasted listing the homes of people who could not complete the census online on census night?

At same time as this government has bungled Australia's census, Canada has recently held a census conducted primarily online, with the response rate of 98.4 per cent— their highest ever. Is it any surprise that Australia’s census disaster occurred, given the way the Abbott-Turnbull government has treated the ABS? The government left the position of Australia’s
Statistician unfilled for nearly a year, and they appointed four ministers in the space of three years, all of whom ignored the census. On top of this, their savage cuts to the ABS have led to the recent announcement that the agency will need to cut 150 jobs. These cuts and job losses will have a huge impact on the scope and quality of the data that they are able to collect. The census appears to have become the largest victim to this government's ideological obsession with reducing the size of the Public Service. It is a cruel twist that the very public servants who worked so hard to save this government's census will be paying with their jobs.

Those opposite would do well to pay attention to the recommendations in this report to avoid a repeat of the debacle that was Australia's worst census ever. Among the recommendations in the report are:

…that the Australian Government commit the necessary funding for the 2021 census in the 2017–18 Budget.

…that the ABS conduct open tendering processes for future census solutions requiring the participation of the private sector.

… that the Department of Finance review its ICT Investment Approval Process to ensure that projects such as the 2016 Census are covered by the cabinet two-pass process.

…that the Australian Government provide portfolio stability for the ABS.

… responsible ministers seek six-monthly briefings on the progress of census preparations. These briefings should cover issues including, but not limited to, cyber security, system redundancy, procurement processes and the capacity of the ABS to manage risks associated with the census.

Given the government's attitude to the ABS and the census, this was a disaster waiting to happen. While Mr Turnbull seems to want to blame everyone but himself for this debacle, can we be in any doubt who would be taking the credit had the census been an outstanding success? If everything had run smoothly, I am sure Mr Turnbull would be crowing about its success in response to a series of suitably worded Dorothy Dixers in the House of Representatives and in the Senate. As the saying goes, success has many fathers, but failure is an orphan.

But in the Westminster system the buck always stops with the minister. To quote from the report:

While many parties have not lived up to their responsibilities in delivering the 2016 census, the primary responsibility lies with the government.

The Prime Minister and his Minister for Small Business must take responsibility for the government's census stuff-up. I seek leave to continue my remarks later.

Leave granted.

Senator KETTER (Queensland) (15:56): I also rise to speak in relation to the Senate Economics References Committee's report into the 2016 census. The events of the night of 9 August were very, very concerning. It was concerning that millions of Australians had their time wasted. The shutdown of the website raised fears over the security of the data that was provided. And, of course, the public was left confused when statements were given by the ABS and the government on 9 August which were not consistent. It is appropriate that the committee investigated what occurred and recommended actions that would prevent this issue from occurring again.
I will quote from one paragraph of the report that emphasises the committee's view that the decisions taken in the years and months leading up to 9 August put the 2016 census at risk:

A narrow focus on the events of August risks treating the symptoms and ignoring the disease. Questions regarding the validity of the ABS' actions should be focused on the years and months before the 2016 census when the decisions were made that would manifest themselves on 9 August 2016. The confirmation that the census would proceed, the delayed development of an eCensus solution, the use of a limited tender and the erosion of internal capacity to adequately oversee the development of the eCensus are all serious concerns that may contributed to the events of 9 August 2016.

The issue that the committee identified through the inquiry and through the estimates process included the following. There were four ministers with responsibility for the portfolio from September 2013. That is four ministers over the course of under three years. The Australian Statistician vacancy was left open for almost a year during 2014 when major contractual decisions were being made. Planning for the census was disrupted when the government was considering a move to the 10-yearly census. There must have been confusion within the Public Service in relation to that. A decision was taken in 2014 to use the limited tender process whereby IBM was the only company allowed to tender for the eCensus. IBM had already developed key IT infrastructure for the ABS and it was felt by them that it would be very difficult to consider working with another contractor. We noted that that was also the view of other potential bidders for the work for the census. Also:
The ABS did not independently test the DDoS protections that IBM was contracted to put in place, as it considered that it had received reasonable assurances from IBM.

That was part of the ABS submission. The relatively small DDoS attacks should have been easily thwarted, and we heard from experts in the industry who explained that these types of attacks are commonplace and should have been identified as being a potential threat, and adequate measures should have been taken to thwart them.

The public consultation on the decision to retain name information for longer for the purpose of data linkage was for a period of three weeks, and the ABS received three submissions in response. The cost of the census, as a result of these failures, blew out by $30 million and Treasury, as far as we know at this point in time, is in commercial negotiations with IBM over the damages and perhaps recompense for Australian taxpayers for the failure of the e-census.

The committee has made a number of recommendations to strengthen the processes of census preparation to ensure that these events are not repeated again. I want to emphasise a few things when reflecting on the inquiry. The report notes that the committee heard much evidence to the effect that the ABS is underfunded to meet its objectives and that the current levels of funding place at risk the ongoing operations of the ABS. The government needs to properly fund the ABS so that it can carry out its functions and properly serve the Australian public. The government needs to provide clear portfolio stability for the ABS and to take an active interest in its functions. It would appear that failure is an orphan here, and we did not see any of the ministers stepping up to the plate to claim responsibility for what has happened. The government also needs to ensure that organisations like the ABS are properly resourced and skilled to manage cybersecurity threats and that good governance and procurement processes are put in place and followed.
There has been a deafening silence from the government over this census debacle. A grown-up, responsible government should have managed the 2016 census better, but it seems that the government cannot help but mismanage everything it touches. Whether it is the backpacker tax, the census or the budget, poor processes were followed and Australians are the worse for it.

I want to close my comments and refer to a recent media article by Mr Andrew Moore in The Daily Telegraph regarding the census. I want to raise the point that in that article there is yet another reported cabinet leak. This is obviously a divided government that spends its effort fighting itself rather than fighting for the interests of the Australian people. The article notes that the census:

… results were reported to Cabinet and suggested a very high completion as a percentage of all households and greater than previous Census results. What the number actually is we don’t yet know because it is in a confidential Cabinet document. The problem with the number, however, is that it apparently isn’t a whole number. It has a decimal digit. For example — 85.6 per cent …

Apparently one minister, who did not seem to understand this, said, ‘How can you have a fraction of a person or a fraction of a household?’ That is quite a revealing quote to be leaked to the media—a cabinet minister responsible for the most important decision Australia faces does not understand basic mathematics or statistics.

This is a government that apparently does not care about numbers, and maybe that is why critical organisations like the ABS are not given the proper attention and resourcing that they deserve. A government responsible for the management of the economy has a cabinet minister who does not understand basic maths. The Prime Minister, in my view, needs to take action. The Australian people deserve better. He was quoted as saying that ‘heads will roll’ over the census debacle. Maybe he could start with the responsible minister, and maybe he could also send that cabinet minister back to school to learn about maths and statistics. This census inquiry has shown that the ABS, IBM and the government have all let down the Australian people. The committee has made serious recommendations to address the key issues identified, and we call on the government to take responsibility, step up to the plate and fix the mess. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Rural and Regional Affairs and Transport References Committee
Report

Senator WHISH-WILSON (Tasmania) (16:04): I seek leave to make a short statement in relation to the Rural and Regional Affairs References Committee's regional capitals inquiry report, which was tabled by Senator Urquhart.

The ACTING DEPUTY PRESIDENT (Senator Gallacher): Is leave granted? Leave is granted.

Senator WHISH-WILSON: I commend all senators and Australians to read the Rural And Regional Affairs References Committee's report into regional capitals. It is an important piece of work. I initiated this inquiry after meeting with Regional Capitals Australia. I was very interested because I live in a regional capital, as defined by that group, I live in Launceston. I moved to Launceston for good reasons, and I see huge potential for regional capitals around the country to help remove and relieve congestion in the major cities and
provide a quality of life and a lifestyle for a lot of Australians, like it has for me and my family. I am also very interested in seeing regional capitals prosper, because they are great places to live, and also because they can serve communities and provide environmental benefits to this country.

We went right around the country. We heard from a number of stakeholders, including community groups, about the benefits of regional capitals. The report makes a number of important recommendations. The way I see it this is just a first step in officially recognising the Regional Capitals Australia group. They have now brought together dozens of regional capitals from around the country presenting a united front when they come to Canberra to ask us, as senators and members of the other place, to take them seriously in the way we prioritise infrastructure spending around this country and in the policies that we adopt.

In this place we tend to focus on either cities or what we might call the bush. Regional capitals occupy a place in between. They are what some may even call second cities. They are great places to live, but they nevertheless need our focus in terms of upgrading their infrastructure and services. This is something that was very clear to us when we went to Rockhampton, Geraldton, Launceston and Geelong. We heard that these regional capitals have a number of constraints on their infrastructure financing and investment and on the services that are provided by federal government. They feel like they are batting well above their weight in terms of what they contribute to the Australian economy and community, yet they do not get that back in terms of funding from the Australian government.

I am very proud that the Rural and Regional Affairs References Committee took this on, and I thank Labor for supporting the Greens' push to have this inquiry. Although the inquiry report only has a small number of recommendations, they are nevertheless very important. I am particularly interested in defining what a regional capital is and having both the federal and state governments recognise them as official entities that we should build policy around. So I recommend this report to all senators and the Australian people.

There is one recommendation in there that I would definitely say is aspirational. Evidence was provided to the committee in Geraldton from the Mayor of Geraldton, who set up the Regional Capitals Australia group. He said that we need to plan ahead 50 to 30 years for developing regional capitals. We need an aspirational target on how many Australians we would like to see move from our major cities to other second cities and regional capitals. I think that kind of long-term, strategic planning is really important.

I seek leave to be in continuation so that others can make a contribution on this important report, and I look forward to the Senate and this parliament building on this report, taking Regional Capitals Australia seriously and developing a plan to help get Australians back into regional capitals, where we started. That is where we started at federation: most of us lived in regional areas. Very few do now, but there is huge potential for this country to see more demographic change and for it to go the other way.

Leave granted; debate adjourned.
MINISTERIAL STATEMENTS

Infrastructure

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (16:09): On behalf of the Prime Minister, Mr Turnbull, I table a ministerial statement on infrastructure.

Senator RICE (Victoria) (16:10): I move:

That the Senate take note of the document.

This ministerial statement on infrastructure is full of fine sounding, silver tongued words from the Prime Minister. It is yet another example of Prime Minister Turnbull talking big while only delivering on the same old small thinking Abbott-Turnbull agenda. We have a situation where the government is stretching the truth. We will believe the government's talk on infrastructure when we see action. This infrastructure statement is trying to pretend that the government has seen the light and is recognising what Infrastructure Australia has been saying is important—that we need to be dealing with congestion in our cities, dealing with the livability of our cities, by investing more in public transport. The Prime Minister in this statement, in this response to the infrastructure plan, is stretching the truth to make it sound like the government is committed to investing in public transport, pretending that there is something different, while it is the same old roads, roads, roads agenda.

The truth is that this government has an abysmal record on investing in public transport, and there is no sign that anything is going to change. In my home state of Victoria we have a situation where federal funding in transport infrastructure is at a very low level—only an abysmal one per cent of federal transport funding is going into public transport—and yet the Prime Minister has the gall to acknowledge that Infrastructure Australia found that our largest cities need urgent investment in public transport to improve transport options in outer suburbs and increase rail capacity. Nothing in the statement gives us confidence that anything is going to change. In fact, if you look at the investments that are outlined here, if you look at the projects outlined here, overwhelmingly they are more of the same—roads, roads and more roads. We know that you cannot cure congestion in our cities by investing in more roads. Trying to solve congestion by building more roads is like trying to cure obesity by loosening your belt—it just does not work. We have to give people the choice of fast, frequent, reliable, affordable and safe public transport; we have to give them the opportunity to get out of their cars and travel on public transport. If you live in the outer suburbs you do not have that choice at the moment, and the type of investment that is being outlined here is not going to be the level of investment that is required to change that.

This statement says that it is not just about roads, and in fact the Prime Minister said in his statement there is over $4 billion of funding in public transport projects. However, if you dig into the detail of that $4 billion you find that that was a Liberal Party commitment that was taken to the election—it is not in the government's overall response. That $4 billion includes $800 million that was going to go to Melbourne Metro, but we now know that the Victorian government could not do a deal with the federal government and get adequate funding for transport in Victoria, so they said no to the federal government's $800 million for Melbourne Metro. The figures in this statement on investment in public transport are absolutely dodgy. Even if you accept that $4 billion figure, that is $4 billion out of $50 billion, which is the total
transport package—eight per cent. That is not the type of transformational investment that is going to make a difference. This is more of the same. This is the same old Tony Abbott ‘roads, roads, roads’ agenda being delivered by Malcolm Turnbull, but with the guise that something has changed.

Similarly, there are supposed commitments here about getting freight on rail. There is this wonderful statement that we are going to see construction begin on inland rail in the new year, which I find fascinating, because we know from questions at Senate estimates that the whole inland rail project is going to take something like $10 billion. At the moment only half a billion dollars has been invested. When I have asked what that half a billion dollars will deliver, it obviously is not going to deliver the whole inland rail service from Melbourne to Brisbane. Basically, no construction is factored into that half a billion dollars. So we wait to see what investment the government is going to put into inland rail to deliver on that statement that construction is going to begin in the new year.

There are a lot of fine-sounding words in both the response to the Infrastructure Plan and the ministerial statement about the need to have better-quality decision-making, to have rigorous, evidence based decision-making. Yet, all over the place, there is a lack of transparency and a lack of accountability, so we just do not know whether the evidence stacks up for the investments that are being made. In fact, in the examples where we have been able to dig the information out of the black holes, where there have been business cases where bits of information have been allowed to be on the public record rather than be commercial-in-confidence, we end up with interesting situations. In fact, they are more than interesting; they are really inappropriate situations of complete misrepresentation of the value of these road projects. At overfl ow Senate estimates this week we discovered that there are serious questions that need to be asked about the benefit-cost ratio that has been touted for the WestConnex project in Sydney. Under questioning, is very clear that these supposed benefit-cost ratio of 1.7 that has been touted for WestConnex is based on a lower price than what the road is actually going to cost. That benefit-cost ratio is based on WestConnex costing only $13.5 billion, which is the discounted cost of the road rather than the real undiscounted cost of the road of $16.8 billion. When I was questioning the department on this during estimates this week, they acknowledged that, yes, it should be the $16.8 billion cost that that benefit-cost ratio should be based on. So it means that that 1.7 benefit-cost ratio does not stack up. It is not accurate and it is not true, and the government's investment in WestConnex is based upon those false figures.

Why should it take digging and pulling out these tiny bits of information bit by bit, like pulling teeth, to get this information to come out. The reason it is so, the reason we have lack of transparency and all of this secrecy, is that continuing to invest in these big road projects does not add up. If you had truly evidence-based, transparent, accountable decision-making, it would be clear, as Infrastructure Australia made clear, that the urgent investment needs to be in public transport. That is where the priority needs to be. That is where we have lacked investment over the last 40 years. Yet, this government shows absolutely no signs of doing anything more than just talk. The action on delivering it is nowhere to be seen.

I also want to note the government shirking of its responsibility for investing in walking and cycling infrastructure. In the response to Infrastructure Australia they said that walking and cycling are the responsibilities of the states and local governments. That is not good
enough. We know that investing in walking and cycling has got such potential to deliver real benefits to the liveability of our cities, to congestion in our cities and to people's health and wellbeing. The Greens took at packaged to the last election saying that the federal government needs to come up to the plate and deliver $1 billion of funding for walking and cycling infrastructure. That would really kick-start what is needed—high-quality infrastructure, safe infrastructure, infrastructure that makes it easy for people to walk and cycle—and yet the government have washed their hands of that completely.

In conclusion, all we have in this ministerial statement is more of the same. We have the Abbott government's 'roads, roads, roads' agenda just continuing to be delivered under this veneer that things are different. But things are not different. Things need to be different. Things have to change if we are going to have livable cities, if we are going to tackle congestion in our cities and if we are going to really deliver on transport infrastructure for our country that is going to boost jobs, boost productivity and boost our overall health and wellbeing.

Question agreed to.

BILLS

Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Bill 2016

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator MOORE (Queensland) (16:20): This Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Bill 2016 proposes a number of technical amendments to strengthen the legislation to better achieve its original intention. It is not controversial. Schedule 1 amends date-of-effect provisions for the calculation of family tax benefit supplements in order to prevent payment of a supplement where an entitlement would have existed had the recipient complied with existing reporting time lines. Schedule 2 consists of contingent provisions which repeal schedule 1 in the event that the government passes its family tax benefit supplement cuts, and the changes in schedule 1 then become redundant. Schedule 3 corrects an unintended consequence in the youth allowance rate calculator which results in underpayment of some youth allowance recipients.

Labor supports these technical amendments to ensure that the legislation achieves its policy intent. In fact, the original legislation around ensuring that families reconcile their income within a year in order to receive their supplements was introduced by Labor. However, if the government cared about families, they would abandon their cruel cuts that will abolish the very supplements this bill relates to—supplements that were designed as a buffer to stop families incurring debt if their income fluctuates through the year and supplements that families rely on and are factored into their budgets.

Since the 2014 budget, Labor have been fighting the Liberals' unfair cuts to families. We fought these changes because they were fundamentally unfair. They would have seen low- and middle-income families lose thousands of dollars each year. Because of Labor's campaign, the government have backed down on two of the measures from last year's budget:
their plans to freeze family tax benefit rates and certain eligibility thresholds. Because of our campaign and our pressure, the Turnbull government finally scrapped its appalling cuts to grandparent carers—and I should say that Senator Smith was deeply involved in the support of grandparent carers. Because of Labor’s pressure, Australian families have been protected from these harsh and unfair cuts. The Turnbull government’s cuts to families will leave some families worse off than Tony Abbott’s cuts would have done. There are 1.2 million families on incomes of less than $80,000 who are going to lose their FTB part A supplements, a cut of more than $700 per child every year. Around 600,000 of these families are single-parent families. Around 500,000 of these families are on the minimum rate, meaning they are on a combined family income of less than $51,000. There are 1.3 million families who will lose their FTB part B supplements, a cut of more than $350 per family every year. Again, single-parent families will be hit even harder, having their family tax benefit part B reduced to $1,000 per year when their youngest child turns 13 and then cut entirely when their youngest child turns 16.

When it comes to fairness, it seems that this Prime Minister is no better than his predecessor. He still refuses to make multinationals pay their fair share in tax. He still refuses to curb generous tax concessions for wealthy superannuants. Labor will continue to oppose those cuts.

Senator SIEWERT (Western Australia—Australian Greens Whip) (16:24): I rise to make a short contribution on this Social Services Legislation Amendment (Family Assistance Alignment and Other Measures) Bill 2016. This bill is technical in nature and, I must admit, takes a little bit of effort to get your head around. Schedule 1 of the bill is complicated as well. The amendments seek to make clear that, where an individual notifies that they were not required to lodge a tax return for the financial year after the 12-month time frame, they will not receive any family tax benefit end-of-year supplements or top-ups they may otherwise have been entitled to. The amendments apply to the 2012-13, 2013-14 and 2014-15 financial years.

We had concerns regarding this schedule, the possible removal of a 12-month extension to report in special circumstances and the payment of top-ups and end-of-year supplements to those who are granted a special circumstances extension of time. In other words, we thought that, although people had been granted the extension, that may affect the top-ups. However, the minister did clarify. We were asking some questions about that, and I should put on record that I do appreciate the fact that we did have a briefing to address some of these issues and our concern. I was pleased to see that the minister in his summing up speech did address the very issue of concern that we had. The minister said in his speech:

This bill does not prevent extensions to the period of time available for recipients to notify that they were not required to lodge where there were special circumstances that prevented them from fulfilling their obligations on time. Such extensions continue to be available under the current subsection 32J subsection (2) of the A New Tax System (Family Assistance) (Administration) Act 1999.

Are we keeping up, folks? He went on to say:

This bill also does not prevent those recipients granted an extension under the above-mentioned subsection from being paid family tax benefit supplements and top-ups as a result of notifying that they were not required to lodge an income tax return more than a year after the end of the relevant financial year.
As I said, I am very pleased to see that the minister has made that statement to clarify that, and that has addressed our concerns. When I spoke to stakeholders about this, they were concerned about that, so I am really pleased to have been able to clarify that issue. Schedule 2 contains contingent amendments that will remove references to family tax benefit end of year supplements if they are phased out.

I would like to note that the Australian Greens do not support the cessation of these supplements. These are important sources of income for many families, particularly those families where the levels of support are already inadequate. It is vitally important that we protect families on low incomes and ensure that we do not make their lives even more difficult. For too long, governments have looked at—and continue to look at—how they can cut payments to the most vulnerable members of our community. This is not where the government should be looking for savings. Try the wealthy end of town, not the most vulnerable. The government has also been on a campaign to denigrate those struggling on income support and on the disability support pension. Taking supplements away and cutting supplements is not where we should be focusing for those savings measures. We will continue to stand up for those the government seeks to demonise. The government is clearly trying to run a campaign to attack those most vulnerable members of our community and those on the lowest incomes in our community.

The Greens will be supporting this bill now that that process has been clarified, but we will continue to oppose those cuts. We will continue to oppose legislation that aims to take income support away from young people, because they do want to work. They need support; they should not be abandoned and kicked off income support for five weeks. Having said that, thank you, again, for the clarification. We will be supporting this bill.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (16:29): I thank colleagues for their contributions and for their support for this bill. I note that Senator Moore and Senator Siewert are always very assiduous in the area of social policy and the examination of what is before this chamber.

The ACTING DEPUTY PRESIDENT (Senator Gallacher): The question is that the bill be now read a second time.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Gallacher) (16:30): As no amendments to the bill have been circulated, I shall call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate, Minister for Communications and Minister for the Arts) (16:30): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Law Enforcement Legislation Amendment (State Bodies and Other Measures) Bill 2016
Second Reading

Consideration resumed of the motion:
That this bill be now read a second time.

Senator MOORE (Queensland) (16:30): Labor will be supporting the Law Enforcement Legislation Amendment (State Bodies and Other Measures) Bill 2016, which amends a range of Commonwealth laws to assist laws state and federal agencies to combat corruption and organised crime. Labor has zero tolerance for corruption, which diminishes government revenue, distorts decision making and destroys good government. It is also a key enabler of other crimes. Labor's position against corruption is reflected in our strong track record in government. In office, Labor established a code of conduct for ministers and their staff. We significantly expanded the role of the Australian Commission for Law Enforcement Integrity. We strongly supported the Australian Crime Commission. We also strongly support state and territory anticorruption efforts.

Over the past 30 years state anticorruption bodies have had a profound effect on our awareness of and response to corruption. Recent revelations in the New South Wales ICAC were so explosive, so shocking that they forced the resignations of former New South Wales Liberal Premier Barry O'Farrell and two New South Wales Liberal cabinet ministers. These bodies play an important role in combating corruption. We believe it is important that we continue to equip state anticorruption and integrity bodies with the powers they need in order to perform their important functions. We cannot and do not tolerate corruption at any level of government.

Schedules 1 and 2 of this bill provide routine updates to a number of pieces of Commonwealth legislation to reflect changes in state anticorruption regimes. These updates will confer powers on the Victorian IBAC, established in 2012, and the New South Wales Law Enforcement Conduct Commission, which will replace the current Police Integrity Commission in 2017. Schedule 1 replaces references to the former Police Integrity Commission with its replacement body, the New South Wales Law Enforcement Conduct Commission, or LECC, in a number of Commonwealth acts. As part of this update the bill removes the Police Integrity Commission from lists of criminal law enforcement agencies under the Telecommunications (Interception and Access) Act, or data retention legislation, and replaces it with the new LECC. The data retention legislation confers significant powers on criminal law enforcement agencies, including the ability to access individuals' SMS messages and emails, to require telecommunications carriers to preserve communications relating to an individual, and to authorise the prospect of disclosure of telecommunications data for 45 days.

Without this legislation the LECC would not have access to this telecommunications data. This would be a major blow to the LECC's ability to investigate integrity issues in New South Wales law enforcement. However, these powers can also have an enormous impact on an individual's privacy. For this reason, our approach in this area must strike an appropriate balance between individual privacy and ensuring that we have the investigative tools necessary to combat corruption. Because of this need for balance, these amendments were
referred to the PJCIS for routine review pursuant to section 110A(11) of the Telecommunication (Interception and Access) Act. The PJCIS review found that the powers of the new LECC will be comparable to those of other integrity bodies within Australia that are listed as criminal law enforcement agencies, such as the New South Wales ICAC, the Victorian IBAC and the Western Australian Corruption and Crime Commission. After careful consideration it recommended that the bill be passed.

In light of this recommendation, Labor supports this bill. In addition to providing necessary powers to state anticorruption bodies, this bill closes a loophole in our current proceeds of crime regime that criminals could otherwise exploit to hide money made from crime beyond complex financial structures. This loophole was exposed by the Western Australian Supreme Court recently, when they found that a property will be lawfully acquired if the deposit on the property was paid with legitimate money, irrespective of whether money from crime is used to pay off the mortgage. This loophole runs contrary to the purpose of the Proceeds of Crime Act. Essentially, it allows criminals to funnel the money from crime into mortgages so as to avoid confiscation or other penalties under our proceeds of crime regime.

The bill before us will amend the Proceeds of Crime Act to change the definition of 'lawfully acquired'. This new definition will ensure that property will only be lawfully acquired if the money used to acquire or retain the property was also lawfully acquired. This means that criminals will no longer be able to hide money from their crime in their mortgage or rental payments, funnel their dirty money into loan repayments or set up levels of layered liabilities under the proceeds of crime regime. It is disappointing but unsurprising that criminals have used complex financial structures to escape penalties under our proceeds of crime regime. It is our job in the parliament to ensure that these laws are sufficiently robust to tackle organised crime in the 21st century. Labor welcomes the measures in this bill to close this loophole and its amendments to various Commonwealth Acts to ensure that state anticorruption bodies can continue their important work. We will support this bill and I thank the Senate.

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (16:36): I thank Senator Moore for her contribution and commend this bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Gallacher) (16:36): As no amendments to the bill have been circulated, I shall call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.

Senator CANAVAN (Queensland—Minister for Resources and Northern Australia) (16:36): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.
Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill 2016
Second Reading

Consideration resumed of the motion:
That this bill be now read a second time.

Senator POLLEY (Tasmania) (16:37): I rise to speak on the Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill 2016. This bill amends the Australian Organ and Tissue Donation and Transplantation Authority Act 2008 to establish the Australian Organ and Tissue Donation and Transplantation Authority Board, abolish the existing Australian Organ and Tissue Donation and Transplantation Authority Advisory Council and transfer responsibilities currently invested in the CEO to the board.

Before I get into the detail of this legislation I want to briefly comment on the recent history of organ donation policy. The Australian Organ and Tissue Donation and Transplantation Authority, also known as the Organ and Tissue Authority, was established in 2009. It was the Rudd Labor government which established the Organ and Tissue Authority as part of the national reform program to implement a world’s best practice approach to organ and tissue donation for transplantation. The program consisted of nine key elements: establish a new national approach and system for organ and tissue donation—a national authority and network of organ and tissue donation agencies; establish specialist hospital staff and systems dedicated to organ donation; provide new funding for hospitals; provide national professional education and awareness; provide coordinated, ongoing community awareness and education; provide support for donor families; establish a safe, equitable and transparent donation and transplantation network; national eye and tissue donation and transplantation; and undertake additional national initiatives, including living donation programs.

The program was announced in July 2008, and Labor committed $151.1 million over four years to improve access to transplants through a nationally coordinated approach to organ and tissue donation. In July 2013, the Supporting Leave for Living Organ Donors Program was introduced by Labor as a two-year pilot program. Living organ donors make an incredible sacrifice to help the life of someone else, often but not always a family member. Donating an organ is not risk free. Major surgery is required. Donors who work need to take leave while they recover. Consequently they may use up a large amount of their leave or, worse, have to take leave without pay. That can impose a financial burden, which could act as a disincentive to donate in the first place, or could encourage people to return to work before they should do so. The Supporting Leave for Living Organ Donors Program aims to minimise that financial burden. It does so by reimbursing employers for payments or leave credits provided to employees for leave taken to donate an organ and to recover from the operation. Following the conclusion of the pilot program, the coalition increased the support provided and extended funding for the program for another two years.

A review of organ donation and transplantation was also announced in May 2015. Ernst and Young were commissioned to carry out the review, which was completed in August 2015 and released by the government in February this year. The review found:
Since the implementation of the national reform programme in 2009, there has been an overall increase in the dpmp—
deceased donors per million population—by 41% (11.4 dpmp in 2009 compared to 16.9 dpmp in 2014).

Some time has passed since the review and, whilst in 2014 we saw a slight drop in donation rates, the 2015 figures recovered and improved to 18.3 dpmp, slightly exceeding the 2015 target. There were 435 deceased organ donors in 2015—an increase of 76 per cent over 2009. Those 435 donors made an enormous difference to the lives of 1,241 Australians.

It is clear that Labor's program has been met with considerable success and that this review represents an overwhelming endorsement of our reforms. With organ donation rates, however, particularly as there are more than 1,400 people on a waiting list in any one month, there is always room for further improvement. Meeting the target of 25 dpmp by 2018 will require the rate of improvement to increase. That is not an easy task. However the donation rates for deceased donors per million population vary significantly between states and territories, which in 2015 were: New South Wales, 17.2; Victoria, 21.2; Queensland, 15.1; South Australia, 24.7; Western Australia, 16.2; Tasmania, 17.4; Northern Territory, 16.4; and Australian Capital Territory, 21.2. Those figures demonstrate that 25 dpmp is achievable.

Nevertheless organ availability is low partly because only around one per cent of deaths which occur in a hospital happen in the specific circumstances where organ donation is possible. That leads to just under 1,000 requests to families for donation being made. In 2015, the acceptance rate by families was around 60 per cent. After the request for donation was accepted, around a quarter of those transplants did not proceed for clinical reasons. The acceptance rate is an area where further improvement is possible. When families do not know what the deceased's wishes would have been, they are far more reluctant to agree to donation and only around half agree. Sadly, the request for donation comes at an extremely difficult time for the family and the decision is no doubt much harder to make when the deceased's wishes are unknown. However, if the deceased had registered their decision to donate, over 90 per cent of families agreed to the donation. That means getting more people on the register is crucial to improving donation rates. That has been occurring, and, while there are around six million people on the register, that figure could be much higher. Registration on the Australian Organ Donor Register is normally very simple and can be done online, by a form or even through the Medicare express phone app.

To return to the review: it made 24 recommendations, five of which relate to governance of the Organ and Tissue Authority. Those five recommendations all deal with replacing the existing advisory council with a board of governance. The governance arrangements for the Organ and Tissue Authority are currently advisory only, and the review found that 'the strategic oversight of the DonateLife Network as well as the performance monitoring, succession planning and mentoring of the Organ and Tissue Authority CEO will be improved by the introduction of a board of governance for the Organ and Tissue Authority that will be responsible for these functions.'

The board of governance established by this bill will comprise eight members, including the chair, deputy chair and CEO. The CEO will manage the day-to-day administration of the Australian organ and tissue donation transplant authority, although the board may delegate some of its functions to the CEO. Before appointing a deputy chair, the minister is required to
request nominations from each state and territory health minister and consider those nominations. A similar process occurs with respect to other board members with nominations from the COAG Health Council. The deputy chair and the board members are also required to have substantial experience in or knowledge of at least one of a number of healthcare fields. The chair, however, is nominated by the Commonwealth and is only required to have substantial experience in or knowledge of public administration, business or management.

Organ donation policy is an area where a bipartisan approach has been and should be taken. Labor therefore appreciates the government's commitment to consult the opposition on the selection of the chair. Board members' terms are limited to four years. Remuneration will be determined by the Remuneration Tribunal or the remuneration that is prescribed by the regulation if no determination is in operation. The transition from advisory council to a board of governance is expected to cost an additional $200,000, which I understand is to be met from existing funding arrangements.

Aside from the governance recommendations, the review also recommended publication of the breakdown of state and territory funding on the Organ and Tissue Authority website, that organ and tissue donation data be made public on hospital-by-hospital and state-by-state bases, that minimum standards for auditing of organ donation practices be defined, that the DonateLife Network monitor the proportion of ICU specialist staff and trainees in each hospital who have been trained in having the donation conversation with families, that states and territories clearly define who is responsible for organ donation rates in their jurisdiction and proceeding with a one-step online donor registration process. Whilst I do not know the status of each of these recommendations and they are not subject to this bill, the donor registration process is now quick and simple in most cases.

I would like to take this opportunity to thank the Organ and Tissue Authority, the advisory council members, clinicians and hospital staff for their work and, most importantly, the donors and their families for giving such an important gift to others.

In summary, whilst the governance changes are relatively minor, they may improve the accountability and transparency and therefore the operations of the authority. If the result is even slightly higher donation rates than would otherwise have been the case then it will have been a very worthwhile step. But I would also like to place on record that so many of us are touched by either having a family member making a donation or being a recipient. I have to put on record that my cousins Michelle and Robert Polley of Launceston lost their young son very tragically. The number of lives that he was able to give the opportunity for the greatest gift of all I would like to place on record. I urge everyone in this chamber to support this bill, as I am sure they will. Labor therefore will be supporting the bill, and I commend it to the Senate.

Senator SIEWERT (Western Australia—Australian Greens Whip) (16:49): On behalf of the Greens leader, Senator Di Natale, I rise to make a contribution on the Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill 2016. This bill makes changes to the governance arrangements of the Australian Organ and Tissue Authority, removing the existing advisory council and replacing it with a board. The bill follows the commissioning by the government of a review into the implementation of the national reform agenda on organ and tissue donation and transplantation.
The review was required in large part due to the declining organ donation rates in 2014. The Ernst & Young review made a range of recommendations, including changes to the governance arrangements for the Organ and Tissue Authority. The Greens will support this legislation as it is in line with the recommendations of the independent review, but in doing so we want to put the government on notice that we are continuing to keep a sharp focus on the success of the authority and the reforms on driving up donation rates in Australia.

In July 2008 the then Australian government announced a national reform program to implement 'the world's best-practice approach to organ and tissue donation for transplantation'. This is exactly the objective we should have in Australia, but, unfortunately, by no measure can we claim success on this pursuit. In fact, despite the more than $250 million that has been spent on this reform agenda since 2008, Australia ranks 22nd in the world for organ donation, having actually dropped two places in 2014. We are going backwards. The problem with going backwards in this field is that there are lives not saved—Australian children, men and women who are needlessly lost who could have been given the miracle of another lease on life.

Australia's donation rate is currently at 16.9 donors per million population and the government has said that it wants to achieve 25 donors per million population by 2018. That is an ambitious target from where we are now. We want to see that happen, too. We will be keeping a watch on whether this reform will serve to improve the rate.

The government has said that this change to the governance arrangements, in line with the E&Y recommendations, is about better implementation of the reform agenda. We do support that. But the proof as ever is in the pudding. Who will comprise this board and will their mix of skills and expertise be the best possible to drive forward innovation to get that donation rate up? The legislation does set out a complex process of the nomination for members, through the states, and sets out the required set of skills they ought to possess. It has been raised with us that the lack of reference in the list of relevant skills to managerial, financial or business experience is likely to result in a repetition of the problems that beset the existing advisory council, and misses an opportunity to in fact expand the board. The new board assumes responsibility from the CEO for the setting and monitoring of strategic goals. It is certainly the case that we need to see the best most innovative thinking from the board in setting and meeting those very goals. Let us make sure that we are not repeating the problems of the past, which, we have seen, simply are not delivering the results that Australia deserves and expects.

The Greens welcome the government's moves last year to investigate the reasons for the disappointing results for organ donation reform and we support the donation reform agenda, through the Organ and Tissue Authority. We will be continuing to monitor the progress and, hopefully, the outstanding success of this new process.

Senator O'NEILL (New South Wales) (16:54): I rise to speak on this very important part of Australia's conversation about how we look after one another at critical times when we are faced with the death of somebody whom we very much love and the choices that are made in that very high pressured context about what might happen with organ donation. Organ donation is an intimately personal choice that can determine someone's quality of life or even save a life altogether. Labor certainly understands this. At its most generous and extreme, it is the donor's choice to give a lifesaving organ upon their death to help someone survive. I note
Senator Hinch is here in the chamber. I do not know if he is going to contribute to this debate. He is giving me the thumbs up. I am hoping that is a sign that he likes me, as well as that he is going to contribute to the debate.

**Senator Hinch:** I am here.

**Senator O'NEILL:** Thank you very much, Senator Hinch, because I do know that you have been a recipient of such a gift of generosity as part of the Australian medical structure. It changes things. You are here. That is probably a very powerful thing for us to be discussing in the consideration of the bill this afternoon.

The Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill 2016 establishes the Australian Organ and Tissue Donation and Transplantation Board, which is a replacement of an advisory council. As others have said, it is a consequence of a recommendation of review in 2014 by Ernst & Young. The bill continues the work of the Labor Party, which, in 2008, pioneered the establishment of the Australian organ and transplant authority. In 2008 organ donation reached a record low level. I do note Senator Siewert's comments about a current decline again, but that particular time prompted us into action. The low level was in fact as few as 10 donations per million Australians. In response, the Rudd government announced a new program, expressing the very frank frustration of many Australians by stating that the government had been stuffing around for too long over who would fund the dedicated program.

A result of that action is what is known today as the Australian Organ and Tissue Donation and Transplantation Authority Advisory Council—the body that this bill seeks to replace in a way that updates it rather than dismisses it. The funding included $67 million for dedicated specialists and staff for public hospitals, and $46 million to establish an independent national authority. So, it was no small commitment. We did this because Labor believe that the health of Australians is a concern for all Australians and that authorities such as this are very much a part of the fabric of making sure that Australians get access to what they need, when they need it. We know today that that Labor initiative grew the number of organ donations per million people to 18 from 10—almost a doubling. That is a great outcome, but, as has been alluded to, there is much more work to be done.

The member for Hasluck, Ken Wyatt, stated that the OTA had achieved a broadly effective agenda. But, despite the success, there is still work to be done to improve the function of the OTA, especially to encourage the normalisation and acceptance of organ donation in Australia. This bill builds upon the great work of the OTA and helps it consolidate its position as a world leader in organ transplantation and donation. Labor has always fought for a fair and equitable health system, where the people of Australia are looked after, whatever their background or whatever the condition or whether their wealth gives them the capacity to determine their health outcomes. This was a significant investment to improve life outcomes for many Australians.

Through Medicare, Labor has constructed a support network for Australian families. Our efforts to keep Medicare free and public are reflected in the priority that we place on health and, consequently, the significant funding to establish this authority in the first place. As the chair of the Select Committee on Health in the previous parliament and now as the shadow assistant minister for mental health, I speak with people in the sector on a regular basis.
Nurses, doctors, patients and their families all speak about how much health matters to them. It matters particularly at the moment when people are passing and at the moment when your life might not be able to be continued unless somebody is generous enough to give you an organ or a tissue that will enable you to survive. We know the OTA has proved a very effective body in reforming the donation system and tapping into that generosity of Australians. Those goals to increase donation rates continue to drive the agenda of the OTA.

Labor understands the personal challenges to donation are complex and rooted in social and cultural issues, especially when gaining consent from family if the deceased person has not left clear wishes. Senator Moore is here in the chamber. We were just responding to Senator Siewert's contribution and she said, 'Nobody really knows why we've had this dip because it is such a complex issue.' Hopefully this change of structure to the board is going to provide research that might give us a better understanding of why this is happening.

We know that some of the things that the OTA have done included employing a family donation conversation professional who came to train staff and specialists to help clarify potential fears of families of donors. This has certainly increased the rate of family acceptance to 75 per cent. That is particularly in the case where family donation conversation trained staff members have been in place with specialists when having these conversations. It is a very difficult conversation to have and a very challenging part of a family's journey together. That was a piece of information that came from the OTA's 2016 report.

The focus, as I said, of this proposed bill is to change the current structure where there is an advisory council that sits underneath the CEO. The change to the board structure means that the CEO will now account to a board. Echoing the expression of perhaps concern and perhaps hope by Senator Siewert, the quality of the people on the board is going to be critical in determining how successful this change that is mooted in the bill will be.

Improving the OTA and continuing the Labor led focus on the health and welfare of the people of Australia is something that I am very proud to support. I do not often want to speak the same words as Senator Nash, but when she says she is not interested in personalities but is interested in saving lives I have to concur. I think all Australians would agree with that. It gives me great hope that there has been such widespread support for the arrangement that has been put in place over some period of time.

There was a threat at one point to the OTA in the last parliament. I was very pleased that the Senate Select Committee on Health had hearings into that and Labor was able to draw sufficient public attention to the different functions of the OTA as opposed to the blood authority which meant that it could get a stay on the threat of a merger of those two authorities. I am pleased to see that what we are debating here in this bill is a change of shape for the OTA as an independent body rather than what we might have had, which was two organisations doing very different things being forced together. I have to say that the Liberal and Nationals parties with regard to the OTA may have seen the benefit of not going ahead with that.

According to the OTA, one organ or tissue donation can save 10 or more lives. Organ transplants are a very effective and well-researched treatment. They currently provide the best quality of life for many in need and, as I said earlier, save lives. It is this spirit of kindness when donating that the DonateLife organisation refers to as the greatest gift. While I am speaking about that, I notice that we have a number of Christmas trees around the place. In
the spirit of Christmas, I recall that in one of my Christmases as the member for Robertson I took some of the documentation and some of the flyers from DonateLife to my local stations—Gosford station and Woy Woy station. I asked people to think at Christmas. And I also put this on the record today. I ask people here in the parliament and people who might be listening to think about it. We talk about Christmas as this time of gift giving. There is perhaps no greater gift that you can give than to decide you are going to register as an organ donor.

One of the things that the DonateLife campaign has been funded to do is raise awareness that if you do make a decision to record your support to donate life then it is important you have a conversation with the people who are most likely to be with you at the time at which a decision might be made about whether your organs and tissues might be harvested to bring life to someone else.

When I think about all the Australians I come in contact with in the community—and I have doorknocked tens of thousands of doors—I meet amazing people every single time. They inspire me with their passion, with their work, with their commitment to the community. There is a generosity of spirit that is quintessentially Australian. Yet we are not quite there with donations. So, again, I say: if you have not decided to register to donate your organs, think about that as a Christmas gift that you give your community. You never know, somebody might be able to save a family member of yours, or you might be able to help another family.

I would also like to take the opportunity to acknowledge the incredible community leadership shown by a family on the Central Coast when faced with a particularly challenging situation. I am talking about the Pilon family. On the coast we know of a young boy called Banjo Pilon. His older brother, Fletcher, is more known to people because he was a performer on The Voice, one of those wonderful music shows, and he was a winner. He is an amazing young man. His career was really starting to take off. On a Sunday in August last year he was with his young brother, Banjo, and his sister, Gabbi, and things were looking wonderful for that family. But just before 5 pm, when skating with friends in Prince Street in Wamberal, Banjo was, very sadly, struck by a young local person on the Central Coast who was on their P-plates. It was a horrific accident.

The Pilon family responded in a way that was so open to the whole community and with such generosity that they modelled how a family might respond in grief. Banjo's mother, Jilly Pilon, wrote a very moving online tribute to her son, who she described as being 'full of huge smiles, filled with love, always having fun and living in the moment'. In her tribute, she said: You have put up the greatest fight these last two days our angel. So proud of you and how strong you've been.

On the Wednesday night of that week, she wrote:

At 3.01pm today, whilst your precious little heart still beats strong, it was time to declare you've moved into another dimension. We now savour every last minute with you our little hero before you are taken to donate your organs tonight to other sick little children and give them your special gift of life. Keep smiling sweetheart. We all love you so, so much and you will always be with us wherever we are.

When I think of being able to write that—I am barely able to say it. This is what I am talking about: these are the sorts of people that Australians are. There are great people who understand this, and it is just a technical thing that we need to do—we just need to register.
And we need to have these conversations with the people we love. That is really the outcome that we want to achieve so that we can give this gift of life to other people. The gift of people's creativity and the technological capacity we have give us the opportunity to do something remarkable that was impossible 40 years ago. It is time for Australia to embrace this. It is time for us to take the lead from people like Jilly Pilon, who honours her son Banjo and who shows us what can actually be achieved, to manage through that terrible grief to make something very positive. They continue to be a remarkable family. There are many stories about the Pilon family that I could tell. That makes this personal.

I do want to make some remarks about what the OTA program can do. As a 2014 report of the Senate Select Committee on Health stated:

The benefits of organ transplantation both to the recipient and the broader society are undeniable. The benefits of organ donation are clear in the numerous stories shared by transplant recipients, such as those seen in the many reports of the OTA or on their annual 'thank you days', where there is a common theme of 'beginning anew', 'doing what I never would have been able to do before' and of being 'provided with a life that otherwise would have been lost'.

In 2016 the OTA recorded the amazing and life-changing contributions of 435 donations—435 amazing Australians who made a choice. We are a population of close to 24 million; I think we can do better than that. Those 435 donations transformed the lives of 1,239 people. As I said, I think that much more can be achieved. Through Labor and the OTA's efforts Australia has gained a reputation for a world-leading number of donations, but not as much as we could possibly do. We do have fantastic facilities for transplants, and we need to make sure that our hospital funding is maintained at a level where that is possible. I have some more remarks to make about that later this evening, when I will talk about the hospital funding cuts that came in as part of the 2014 budget brought in by Tony Abbott and banked continually by Mr Turnbull.

The OTA has been provided with $½ million of funding by this current government to establish and maintain a governing board and to allow it to continue to expand the scope of its operation, continuing the originally Labor-led initiative for the welfare of Australians with regard to tissue and organ donation. According to its 2015-20 strategy report, the OTA will follow a three-step plan: firstly, increasing the number of potential donors to minimise the number of people left waiting; then it will improve its conversion rate or acceptance of organ donation in the community; finally, it will improve the systems to support organ and tissue transplantation.

By cementing Australia's position as one of the world leaders in organ and tissue transplantation and donations and ensuring that the people of Australia receive the best possible care when they are in need, this bill will continue the great work around providing help that I stand by and the Labor Party has always stood by. Can I indicate to those who are interested that there is a capacity for you to register or change your registration details to donate organs. The number is 1800777203. There is an email, which is aodr@medicareaustralia.gov.au. If you are thinking about a Christmas gift, this is a really good one. Please consider giving this gift to your fellow Australians. I commend the bill to the Senate.

Senator RICE (Victoria) (17:11): I rise to speak on the Australian Organ and Tissue Donation and Transplantation Authority Amendment (New Governance Arrangements) Bill
2016. As my colleague Senator Siewert has already outlined, the Greens will be supporting this legislation in line with the recommendation of the independent review.

I want to start by noting how timely it is that I am speaking on this bill tonight, because right at this very moment a very dear old friend of mine is probably receiving a kidney donation. He and his partner Cathy have been part of the Australian Paired Kidney Exchange Program. Cathy had a kidney removed this morning, and I am told that the operation went well, and Ian was due to receive his kidney at 5 o'clock this afternoon. I think there were four pairs of people that were going to be involved and kidneys being flown across the country so that people could be getting this gift of life. Ian's kidneys were failing, and I know that to be able to receive a new kidney is going to be life-giving for him.

So it is very appropriate, because we know that organ donations are life-giving. People's lives depend upon their organs functioning well. Tonight we are speaking about the governance structures of the organ authority because we want to increase donation rates. We want make sure that all Australians have the opportunity to receive very precious donations of organs to allow them to continue to live. The Greens are very concerned, as Senator Siewert outlined in her contribution, about the fact that it appears that rates of organ donations are in decline. There are not enough organs available for all Australians who need them. What I want to talk about particularly tonight is what the consequences of that are. Not only does it mean that people cannot get their kidneys, hearts, lungs, and other organs and tissues to enable their lives to be extended and to enable them to be healthy and well; I am very disturbed that this lack of organs being available in Australia is fuelling a disturbing practice: the unethical procurement of organs overseas and the possibility that some Australians may be receiving these organs, potentially unwittingly.

I am very pleased that earlier today the Senate agree to a motion put forward by Senator Abetz and myself—there is not much that Senator Abetz and I agree on, but we agreed on this one—regarding this matter. The Senate agreed today that the Australian government should consider making it an offence to travel overseas to receive an organ acquired from a non-consensual donor and that it should also establish a register of Australians travelling overseas to receive transplants, including details of the country they receive them in. I sincerely hope that the government takes this recommendation seriously.

I have no doubt that the overwhelming majority of people find the notion of organ harvesting abhorrent. It brings to mind a fictional dystopian future, not something that should be occurring in the world today. Just think of what organ harvesting means: people unwillingly having a kidney removed—which means they would probably survive that process—or other organs, like the heart and lungs, and people being killed for their organs. We know that organ harvesting from non-consensual donors is occurring. It is happening in 2016, particularly in China, and it has been going on for years.

Since the 1990s there have been reports and evidence of forced organ procurement in China. These organs come from executed prisoners and prisoners of conscience, mostly Falun Gong practitioners, Tibetans, Uighur people and Christians. Researchers estimate that as many as 1.5 million victims have had their organs harvested for China's transplant industry. In 2005, China admitted to harvesting organs and said it would reform its practices, but in 2010 the director of the China Organ Donation Committee told The Lancet that more than 90 per cent of transplanted organs still came from executed prisoners. In late 2014 China announced
that it would switch to a completely voluntary donation-based system and said that reports of
the practice continuing are non-factual and baseless.

But you only need to look at the evidence. We had the world experts who have been
delving into this evidence, Canadians David Matas and David Kilgour, at Parliament House
this week. The evidence that they presented is very, very compelling. The evidence they gave
showed that China cannot be meeting its needs on a voluntary basis alone given that between
2012 and 2013 only around 1,400 people signed up to donate. From looking into all the
hospital records of the transplant hospitals in China, David Matas and David Kilgour estimate
that there are between 60,000 and 100,000 transplants occurring every year. So we have 1,400
people signed up to donate versus 60,000 to 100,000 transplants occurring every year. Even if
you say, 'Okay, it is just from executed prisoners so you may as well use those donations,'
again, we have very limited information from the Chinese government as to how many
prisoners they execute each year, but the estimates are that it is in the order of around 1,000 to
2,000. Again, that is nowhere near meeting the 60,000 to 100,000 transplants that it is
estimated are occurring each year.

I am really deeply concerned that Australians may be driving this practice, unwittingly or
not. Bringing it back to the legislation that we are discussing today, we need to be increasing
the number of organs that are available in Australia so that Australians do not feel that this is
their only hope of gaining an organ to allow them continue to live. There is limited data
available on how many Australians are travelling to China to receive organ transplants, but,
according to the Australia and New Zealand Dialysis and Transplant Registry, 53 Australians
travelled to China to receive transplants between 2001 and 2014. It is acknowledged that
these figures could be drastically under-reported, because we do not have any registration. All
of these Australians might have family members in China who are acting as donors, but it
seems unlikely. It is probably likely, sadly, that they are contributing to terrible human rights
abuses of Chinese prisoners and persecuted minorities, whether they are doing it intentionally
or not.

The motion that Senator Abetz and I moved earlier today asked the government to consider
making it an offence to travel overseas to receive an organ acquired nonconsensually, which
is what Spain, Israel and Taiwan have already done. We are also asking the government to
consider establishing a register of Australians who receive organs overseas so that we have a
better understanding of how Australians might be contributing to this awful practice.

We want those actions with regard to Australians travelling overseas. Coming back to
home, we want action to encourage Australians, in whatever way we can, to be giving the gift
of life by donating their organs. I will conclude by urging all Australians to consider joining
the organ and tissue donor register. It really is the gift of life that you can give to one of your
fellow Australians. And when you have registered, please take the time to talk to your friends
and family about your wishes, so that they know your intentions, should the very worst
happen.

**Senator HINCH** (Victoria) (17:21): I know that a lot of senators rise from their seats in
this place to talk about things that are close to their heart. Well, I stand here tonight to talk
about something that is close to my heart, literally—a few centimetres from my heart—and
that is my liver. Probably I am one of the few if not the only liver transplant recipient to stand
here in the Senate. I stand here as one of those lucky Australians who received a new life
through the generosity of a donor family, and, even more importantly, in their time of grief—in my case, the family of Heath Gardner, who died only a day before his 29th birthday. I lived and I live now because he died. That was more than five years ago. It was after I had been diagnosed with terminal cancer and given 12 months to live. After my transplant the pathologist showed me my old liver. I asked, 'Do you see many as bad as that?' He said, 'Usually at autopsies.' I asked, 'How long do you think I had to live?' He said, 'Well, now that I have got it out and had a look at it, I reckon about two weeks.'

We have had numerous campaigns to improve organ donorship in Australia. Former Prime Minister Rudd and his government deserve credit. They committed $151 million over four years, and I shudder to think how much of that was wasted on administration costs. That is why I applaud and approve of this move to streamline the system.

We have opt-in and opt-out systems for organ donation. I must admit that when I wrote the book *A Human Deadline—A Story of Life, Death, Hope and House Arrest* I devoted a chapter in it to the opt-out system, which is the way the Spanish people have gone. I thought that that was the way to go. I was a great advocate for opt-out, where everybody is presumed to be a donor. It is presumed consent—presumed approval. I have since changed my mind. Under opt-out everybody is in unless, for whatever reason, you sign a thing to say that for cultural, religious or whatever personal reasons you do not want to do it, and that would be enough. I have now changed and I believe that the opt-in system, which I now call opt-in-plus, is the best way to go. With opt-in-plus you would have what I call a living will, and in this parliament I hope to push to get this approved—a living will. It means that once you have become a registered organ donor in Australia that is a living will, and that will happen if your organs or tissue are declared to be suitable for transplant.

The sad thing in this country—keeping in mind that we have one of the worst rates of organ donation in the free world—is that even though you are on the list, even though something like six million Australians are on the Organ Donor Register, very few of them will be transplanted. Very few of their requests will be honoured.

About 150,000 people die in Australia every year, and, as Senator O'Neill pointed out, only something like 435 people's organs were used for transplants. Because of multiple uses and multiple organs, they gave new life to about 1,200 people. The reason why there are so few is partly the circumstances of death and that the organs are not suitable, but the main reason—and this is a national scandal—is that families overrule their loved ones. You are on the register. You say, 'I want to be an organ donor.' For more than 40 per cent of people on the register who die and who want to give the gift of life to somebody, their organs cannot be touched, because no hospital in Australia will transplant an organ from an organ donor, even if they are on that list, if the family in their grief says no.

You can understand it, because most people—to be macabre—who are suitable as organ donors die suddenly and often tragically in terrible circumstances. Another example I will give you probably would not have helped things, but just imagine it. Just imagine you were a mother of a 10-year-old girl. You wave your child off to school in the morning and say, 'Bye-bye darling; I love you.' Twelve hours later, after some terrible accident, you are standing in the intensive care unit at a hospital and they are saying, 'Would you donate your daughter's organs?' It takes enormous strength, enormous courage to say, 'My little girl's gone, but I can save somebody else's.' Out there are hundreds of kids desperately in need of organs to give
them some sort of life. In that moment of grief of course it is going to be hard. But adults on the register say, 'I want to be a donor.' The hospitals just say, 'The family didn't approve,' and so it does not happen.

Good things are happening even now. People are being trained up following some of the Canadian systems whereby people are trained as counsellors and so can make it less of an emotional pain for people as they decide to give loved ones' organs out to be transplanted.

One of the Justice Party's main promises when we campaigned was to improve organ donor numbers in Australia, and we want to get one million more in a living will. It can be done. My surgeon, Professor Bob Jones at Gosford Hospital, was talking about the old system where on your driver's licence you had a little tick. 'Will you be an organ donor? Yes or no.' Most states have phased this out, but anyway. He said to me, 'They asked the wrong question.' He said, 'The question on the driver's licence should have been, "Would you accept a donated organ?"' and you would get a 95 per cent acceptance rate on that one.'

Senator Rice was talking quite rightly—and I applauded the move by her and Senator Abetz this morning—about organ harvesting in places like China. When I was told I had 12 months to live, as the months ticked by and there did not seem to be any chance, other than a couple of false alarms, of getting a new liver, I was told by a senior businessman in Melbourne that I could go to Shanghai and for $150,000 get a new liver next week. I presume from that that they would almost execute on order. How you could morally extend your life by doing that I cannot believe, but I was also told I could go to India and do the same thing.

I think it was an apocryphal story, but at a function one night a Chinese businesswoman said to me: 'Don't worry about China; there's a hospital in London. A lot of Middle Eastern people go there, and you can buy an organ.' And some well-known people have bought organs for transplant over the years. But I condemn those practices in China and I am happy to support Senator Rice and Senator Abetz.

As I mentioned, in this country we have one of the lowest donation rates. We have had efforts—great efforts at times—by Transplant Australia and by DonateLife. We have the biennial Transplant Games. Several months ago I opened those games when they were held in Penrith. Those sorts of things do give awareness and, yes, people get on the register, which is very good, saying, 'I am happy to donate my organs', but, as I said, it is the families who knock it back. Bob Jones, who I mentioned, said to me that he could conduct 50 more liver transplant operations a year if he had access to the organs. Most people do not know but, if you are on the list, generally, the organs you donate will go to somebody in your state. That is the first prerequisite, unless there is a red alert of some sort and somebody in another state is in desperate need; then, they will cross state lines. That is what he said—50 more a year—it is just extraordinary. He and his team have transplanted more than 1,000 people here in Australia.

This bill has 24 recommendations from the 2015 review into the implementation of a national reform agenda on organ and tissue donation transplantation. By setting up the Australian Organ and Tissue Donation and Transplantation Board to replace the Advisory Council, they say this will allow strategic oversight, which is currently lacking. The report in August 2015 stated:

Current governance arrangements for the OTA are advisory in nature only and do not provide any strategic oversight, performance monitoring, succession planning or mentoring of the CEO. The Review
found that stakeholders were generally in support of the establishment of a Board of governance for the OTA who would be responsible for these functions (noting that legislative amendments—

I mentioned those before—

would be required). Some concerns were raised by a number of stakeholders over the observed ‘defensiveness’ of the OTA and tendency to limit debate about controversial issues; …

Well, they were spot-on about that one because I was a DonateLife Ambassador—I am very proud of it—until I spoke out in favour of opt-out rather than opt-in, and I had my ambassadorship removed. I did not add that to the list of 16 sackings I have had in my life; I just put that as an ambassadorial removal!

This is a small step but a very important step in reforming organ and tissue donation in this country. I will be fighting in this place to get one million more donations onto the register. I want to do that because I will be able honour Heath Gardner, his mother, Lyn, his father, Trevor, and his sisters, Kimberly and Melanie. I have met them all. I could not know when I promised them after I met them after my transplant—they tracked me down and I knew I wanted to honour their gift—how I would ever be in the position I am in now, five years later. Thanks to their son and the decision of his sisters and his mother I am here to try to do something about it. It was so whimsical: he was brain dead from a gunshot wound to the head. In the hospital, Heath's father had been told that he was not going to make it. He walked down to the car to meet his daughter, who had just arrived at the hospital, and Trevor Gardner said to his daughter, Kim, 'You know, they have asked me would we donate Heath's organs,' Trevor said, 'What do you reckon;' and Kim said, 'Why not.' Those two words are why Derryn Hinch is standing here now. That is why, five years later, I am now in a position that I can do something about it. Heath Gardner: I am going to keep that promise.

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (17:33): As the minister responsible at the time, the then Minister for Rural Health, who initiated this process, I am absolutely delighted to stand here today and close the debate. I will be very brief. I want to acknowledge Senator Hinch, who last year did indeed call my office at one point to offer some support for what I was doing, in sometimes interesting circumstances. I have not forgotten that and I still very much appreciate it.

I do want to make two quick points following up from other senators. One is to make the decision to donate. Senator O’Neill said earlier that the time running up to Christmas is a wonderful time to think about the gift of giving. Think about making that decision to donate, and also talk to your loved ones about your decision. I thank all senators for their contributions and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Ketter) (17:35): As no amendments to the bill have been circulated, I shall call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.
Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (17:35): I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

Customs Tariff Amendment (Expanded Information Technology Agreement Implementation and Other Measures) Bill 2016

Second Reading

Consideration resumed of the motion:

That this bill be now read a second time.

Senator PRATT (Western Australia) (17:36): Labor supports the Customs Tariff Amendment (Expanded Information Technology Agreement Implementation and Other Measures) Bill 2016, which amends the Customs Tariff Act to meet Australia's obligations under the World Trade Organization's expanded Information Technology Agreement. The bill creates new tariff subheadings to allow certain technology products to be separately identified for custom purposes, phases out custom duty rates for products listed under selected subheadings and removes obsolete duty rates. Gradual reductions in the duty rates for the selected products, which will incrementally reduce to free, begin on 1 January and will be completed by 2021. The measure was included in the 2016-17 budget, which estimates that the phase-out will reduce custom revenues by $80 million over the forward estimates.

These new subheadings are required because of a commitment to reduce the duty rate for some goods within a classification but not for all of those products. Some Australian made items will be affected by these changes, including speakers and car components. Reduction of tariffs in these categories will, accordingly, take the longest time. In the light of inclusion of measures that accommodate those needs while meeting our global obligations, Labor supports this bill.

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (17:37): I thank senators for their contribution and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Ketter) (17:37): As no amendments to the bill have been circulated, I shall call the minister to move the third reading unless any senator requires that the bill be considered in Committee of the Whole.

Senator NASH (New South Wales—Deputy Leader of The Nationals, Minister for Regional Development, Minister for Local Government and Territories and Minister for Regional Communications) (17:38): I move:

That this bill be now read a third time.
Question agreed to.
Bill read a third time.

VET Student Loans Bill 2016
VET Student Loans (Charges) Bill 2016
VET Student Loans (Consequential Amendments and Transitional Provisions) Bill 2016

Second Reading

Consideration resumed of the motion:
That these bills be now read a second time.

Senator HANSON-YOUNG (South Australia) (17:38): I previously started my speech on these bills, but, as I only had 30 seconds, I might just take it from the top, if that is okay. The VET Student Loans Bill 2016 and related legislation, of course, have been a long time coming. We have known for quite some time that the VET students loans scheme is a program that has been rorted consistently since its beginning back in 2012. We know that despite warning that deregulating this type of loan scheme across providers—particularly those who were set to make profit from these training programs at the expense of students—would lead to rorting the system. There was a lot of warning about it, and that is what we have seen. It is a core principle of the Australian Greens that all Australians have access to high quality and well funded public education, from childhood through to university, and vocational education and training is an essential part of that learning future and direction. We will continue to work tirelessly in the parliament to guarantee access to high quality university and VET training for all Australians.

The rampant rorting of the VET system since it was deregulated just a handful of years ago is one of the most extraordinary and damning examples of failed privatisation that Australia has ever seen. Experts warn that funnelling money into the private education system would have disastrous results, and that is exactly what has happened. The current system is unworkable, and the Australian Greens support reforming the vocational education and training sector—in fact, we have been calling for it for a number of years. The road to recovery for the VET sector will be a long and difficult one. The damage done by years spent abusing the trust of the Australian community cannot simply be wound back easily. The onus is now on the sector to adopt reform, and on the Labor and coalition parties to accept the mistakes of the past, to clean up now the extraordinary mess they have made and to ensure—this is very important—that there is proper independent oversight that has teeth.

Sadly, however, it is students and vulnerable Australians who are caught up in this chaos. They are the ones who have suffered the most. With that in mind I am pleased to see that the government has finally come to support the establishment of an ombudsman for the VET sector. This is something that the Australian Greens have campaigned for long and hard, and we are thankful that common sense has been realised in the minister’s office and that the government will move to establish an ombudsman in the early New Year. This is a much needed reform that has taken far too long to reach reality.

At the core of the issues around the deregulation of the VET sector is the fact that public money should never have been given to private for-profit education providers. The
government should instead be properly funding our TAFE colleges, making our education and training available to everybody and not just using taxpayer funds to prop up private for-profit education providers, many of which have shown they simply cannot be trusted. TAFEs are and should always be the backbone of the VET sector. Recognising that, and the important role that they will play in the wake of these reforms being made for the for-profit sector, I also believe that TAFEs should be given greater flexibility to provide ongoing education to students whose courses are no longer available due to colleges closing and providers going out of business. If your business model relies on abusing and exploiting students then it should not exist at all. A 12-month exemption from the VET student loans eligible course list and the proposed fee caps would allow TAFEs to provide ongoing education to students who would otherwise be left in the lurch. There are amendments, of course, to be discussed in this chamber and which no doubt we will get to next week which go to dealing with some of these issues.

I still have serious questions about what will happen to the students who have been caught up in the scams and the roting of this dodgy system. We will continue to work to make sure that no-one is left with massive unfair debt. It is simply not okay for students who have been the victims of these roting schemes to left saddled with debt while the government simply wipes their books clean. Students who were enrolled into courses that were worthless or effectively did not exist, or courses which they could never have been expected to complete, should have their debts to the Commonwealth forgiven. It is not the students' fault that this system of deregulation has ended in such a debacle and expensive mess to the Commonwealth. The fact that warning signs were not listened to much earlier on shows that the onus is now on the government and the education department to fix this and to ensure that students are no longer saddled with this disaster.

I foreshadow that I will move two second reading amendments to this bill, supporting the arts and the creative industries in Australia, because I solemnly believe that they must be included on the course list, and also outlining our opposition to this spending of public money on private for-profit education providers. The Australian Greens are doing this because we believe that our public education institutions and our artistic communities and industries are too important not to back and to not invest in. We must clean up the roting of the VET sector—that is essential—but it should not come at the cost of arts courses or education providers who were doing the right thing.

Under this government, the arts are consistently under attack, and they need to be defended. Over and over again, we see this government taking an axe to the creative industries or simply leaving them out of the very important discussion about what the jobs of the future are. We have a Prime Minister who says that he is the Prime Minister of innovation—the innovation Prime Minister of the innovation employment future—yet we have absolute silence from his government when it comes to investing in the creative industries, even though, as everyone who understands these issues knows, having a strong, creative arts sector and a strong, creative arts industry sector means that innovation is more likely to thrive.

Our creative industries employ thousands of people across Australia, and to help build the social fabric of our community they must be supported properly. Stripping almost all the arts courses from the VET student loans eligible course list is not an acceptable way forward, and
I hope that, when we get back next week, the Senate will see sense and back the amendments that I have today foreshadowed.

As we know, the deregulation of the VET FEE-HELP scheme under the previous Labor government led to a massive increase in for-profit private education providers and an industry-wide decline in quality. There is story after story after story about the abuse, exploitation and just plain rorting of the system. There are so many stories to point to. The fact that this was going on right under the nose of our education department bureaucrats is beyond belief. Minister after minister was warned that this was happening, and still it has taken this long for anyone to act.

Under the deregulated system, private training colleges were free to set their own fees. Well, you couldn't see that being rorted, now, could you, Mr Acting Deputy President Ketter! Hansard, I say that with tongue firmly planted in cheek. Of course it was going to be rorted from the moment for-profit providers were allowed to set their own course fees, with basically a guarantee of a loan payment from the Commonwealth. There are people out to make money at the expense of students and the taxpayer, and that is exactly what they did. In effect, they were handed a blank cheque from the Australian government, paid for by the Australian taxpayer. As long as they could get students to sign on the dotted line, everything was A-OK.

Many young and vulnerable people were pressured to enrol in courses that were effectively worthless, did not exist or were ones that they could never be expected to complete. It has been a rort and it is time that it was cleaned up. Completion rates for courses and online diplomas are abysmal as a direct result of the rorting that has taken place, and that is just the tip of the iceberg. Victims of this system have included those with intellectual disabilities, people in Aboriginal and Torres Strait Islander communities and very vulnerable young people who did not even understand what they were being asked to sign up to.

I will give you a couple of examples, Mr Acting Deputy President, just to illustrate how pathetic and abusive the parasites in these private for-profit providers were and how they preyed on people. One couple with intellectual disabilities, living in a housing commission unit in Victoria, were doorknocked by a salesman representing Melbourne's Phoenix Institute. The salesman was told about their disabilities, but that did not deter him from pressing and pressuring these young people further. In the comfort of their living room, he offered them a free laptop and a free qualification. When they struggled with literacy and numeracy tests, he gave them all the answers. It was Exploitation 101.

In another case, 80 people from a remote Aboriginal community in Queensland were signed up in just one day without even being told the courses would cost them any money. Those people are now saddled with thousands of dollars worth of debt. In another case, salespeople authorised by the Phoenix Institute signed people in remote committees up to multiple online diploma courses which cost $18,000 each, even though some of them did not even have access to the internet. How on earth they could be expected to complete online diploma courses when they could not even use the internet is beyond me. This is the type of disgraceful, exploitative and parasitic behaviour by these for-profit providers, desperate to make money out of this situation, and the tactics that they use to do it. High-school students who were enrolled in a trades VET in Schools program had to learn how to use hand tools by
looking at photographs, without ever actually seeing or being able to hold or touch them, let alone learn how to manage them in real life.

There were blatant examples of providers charging students using the loan schemes much more money for courses identical to those that were costing fee-paying students much less. One example of this was two Cairns based RTOs, both owned by the same person and operated out of the same business address. One, which was approved for a VET FEE-HELP course, charged $12,750 for a diploma of management. The other, which sells courses directly to students, charged only $3,500. This was a massive mark-up at the cost of the Australian taxpayer—all under the nose of the Australian government. These are just a handful of the many stories that have emerged as the scale of disaster has become more and more apparent. These students suffered a great deal. Many of the teachers were abused in this situation as well. In many cases, these students have been lumped with debts of many thousands of dollars. It is time we forgive those student debts. It is time we look after those providers who are doing the right thing. It is time we severely punish those who absolutely screwed the Australian taxpayer and their students and who took the Australian government—this government and the former Labor government—for absolute mugs.

As I said at the beginning, this is one of the most explicit examples of how deregulation and privatisation, in this case of our education system, has become a disaster. It never should have been allowed to happen. It happened under the nose of many ministers. Thank God it is now being cleaned up. We need to reform the VET sector—there is no question about it—but it is going to take more than just this bill. We must change the culture and the attitude towards the incentive to make a profit out of educating some of our most vulnerable and disadvantaged young people in this country. We have a jobs crisis. In my home state of South Australia, we have an increasing youth unemployment rate—as it is across the country. If we want people to be engaged in training and education and to skill up for the future, we need to make sure it is in a safe environment that offers quality training and education and that we are not just opening the door to people who want to make big bucks out of other people's vulnerability and disadvantage—all at the expense of the Australian taxpayer.

The Australian Greens will be supporting this bill, and we will be moving the foreshadowed second reading amendments and other amendments in the committee stage.

**The ACTING DEPUTY PRESIDENT (Senator Ketter):** Senator Hanson-Young, you foreshadowed two amendments to the bill. Is it your intention to seek leave to move those amendments now? Your choice is to move one amendment now or to seek leave to move both amendments together.

**Senator HANSON-YOUNG:** by leave—I move:

At the end of the motion, add:

"but the Senate is of the view that public funds should not be provided to private for-profit vocational education and training providers."

I also move:

At the end of the motion, add:

"but the Senate calls on the Government to recognise the importance of the Australian arts industry and community by giving greater representation to artistic and creative courses on the VET student loans eligible course list.".
Senator BILYK (Tasmania—Deputy Opposition Whip in the Senate) (17:54): Tonight we are considering a package of three bills to replace the VET FEE-HELP loan scheme with the student loans program. The bills also: provide that student loans are approved only for eligible students for approved courses; limit course eligibility for loans through a courses and loan caps determination; impose stronger eligibility requirements for qualification as an approved course provider; ban providers from using brokers or agents to interact or engage with students in relation to the loans; and provide for monitoring and investigation powers and enforcement powers, such as civil penalties, infringement notices, enforceable undertakings and injunctions.

We all know that there are unscrupulous and dodgy providers operating in the vocational education and training sector who have been ripping off students. Private vocational education providers have been using aggressive recruiting tactics to get students into courses with highly inflated fees. Often when students enter these courses they are not properly supported to graduate.

To illustrate the problem I will tell the chamber about a couple of stories of constituents who have spoken with my office about their experience. One constituent came to my office to report that recruitment agents for a vocational college approached a local men's shed to sign up potential students. The recruiters encouraged him to sign up on the spot and said he would receive an increase in his government payments and, to top it off, threw in a free iPad to sweeten the deal. Thinking that the offer was too good to be true, my constituent told the recruiters he would take some time to consider it. And wasn't it a good thing that he did? The recruiters had emphasised that he would not pay any money up-front and focused on the up-front benefits and glossed over the debt that he would incur.

I have heard similar stories from other VET students who have accepted the recruiters' advice and signed up to private colleges with VET FEE-HELP loans for tens of thousands of dollars. Some students signed up to courses where they were given little administrative support and absolutely terrible customer service. One constituent told me the paperwork she sent to a provider frequently went missing, as did documents the provider posted to her, because they had recorded her address details incorrectly. When they told her how much the fees would be for the course, they failed to mention the 20 per cent loan fee that would be applied on top. Like the other constituent I mentioned, she was offered a free iPad. Unfortunately, her iPad died after two months and the provider would not give her any advice about where she could go to get it repaired or replaced. Added to all these problems was a general lack of communication from the provider, even when the provider changed their name. They simply started sending out correspondence under the new name rather than formally notifying any students of the change.

While the experiences that have been reported to my office have been pretty bad, there have been much worse stories around the sector, such as the 10,000 qualifications in Victoria that were cancelled because they were not worth the paper they were written on. Also, there were the students who were offered online training as jockeys without even having to ride a horse! There were even students who had been signed up to loans without their knowledge. Throughout the sector there has been an explosion in online and short courses and a decline in quality, and students have racked up massive debts without any hope of getting a job or paying them back. It is estimated that up to 40 per cent of VET FEE-HELP loans will never
be repaid. For those students who have failed to graduate or whose qualification is of little or no value, this money has just been flushed down the toilet. So much for a government that promised to end of the waste!

In 2014 the 10 largest private training providers received $900 million in government subsidies, yet only five per cent of their students graduated. VET FEE-HELP loans have blown out from $700 million in 2013 to $2.9 billion in 2015. Some colleges have cost taxpayers $1 million to produce a single graduate. This is clearly unacceptable.

Labor made a commitment before the election to introduce reforms which would crack down on these dodgy providers and restore integrity to Australia's VET sector. To give you an idea of how much these loans have blown out over time, it is estimated that these bills will reduce outstanding loans by $7 billion over the forward estimates and $25 billion over the next 10 years. We support these bills the government have introduced today as we want to see effective measures to address the crisis in the VET sector.

Anyway, how could we possibly oppose them when the government have copied our policies? The provisions contained in these bills are almost a carbon copy of what Labor were proposing prior to the last election. Just look at what the government have included in their VET reforms—capping of student loans, cracking down on brokers, linking publicly funded courses to industry need and skill shortages, requiring providers to reapply under new standards so only high-quality providers can access the loan system, linking funding to student progress and completion, and a VET loans ombudsman. And what do all these measures have in common? Every single one of them was copied from Labor's policies. They say that imitation is the sincerest form of flattery, and these bills are very flattering indeed.

The PRESIDENT: It now being 6 pm, the debate is interrupted.

DOCUMENTS

Consideration

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (18:01): I rise to take note of documents 2, 3, 4, 6, 7 and 9 on page 10 of the Notice Paper and seek leave to continue my remarks.

Leave granted.

Senator McALLISTER: I also seek to preserve documents 13, 15 to 18, 20, 24, 30, 34, 36, 37, 38, 40, 41, 42, 47, 56, 59, 60, 61, 65, 66, 67, 69, 71, 72, 73, 79, 82, 83, 86 to 91, 93, 97, 105, 106, 108 to 112, 117, 119, 120, 135, 139, 145, 146, 156 to 160 and 162.

National Archives

Senator McALLISTER (New South Wales—Deputy Opposition Whip in the Senate) (18:05): I seek leave to restore the annual report of the National Archives and the National Archives Advisory Board.

Leave granted.

DOCUMENTS

Consideration

The following orders of the day relating to government documents were considered:
Estimates hearings—Unanswered questions on notice—Additional estimates 2015-16—Statements pursuant to the order of the Senate of 25 June 2014—Foreign Affairs and Trade portfolio; Health portfolio; Tourism Australia. Motion of Senator Urquhart to take note of document agreed to.

Australian Hearing—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

NBN Group—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Aged Care Complaints Commissioner—Report for the period 1 January to 30 June 2016, including final report of the Aged Care Commissioner for the period 1 July to 31 December 2015. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Organ and Tissue Donation and Transplantation Authority—Report for 2015-16. Motion of Senator Urquhart to take note of document agreed to.

Attorney-General’s Department—Report for 2015-16. Motion of Senator McKim to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Bureau of Statistics—Report for 2015-16. Motion of Senator Urquhart to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

National Gallery of Australia (NGA)—Report for 2015-16. Motion of Senator Bilyk to take note of document agreed to.

Fair Work Commission—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Australian Institute of Marine Science (AIMS)—Report for 2015-16. Motion of Senator Bilyk to take note of document agreed to.


Reserve Bank of Australia—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Fisheries Management Authority—Report for 2015-16. Motion of Senator Bilyk to take note of document agreed to.

Productivity Commission—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Postal Corporation (Australia Post)—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Communications and Media Authority (ACMA) and the Office of the Children’s eSafety Commissioner—Reports for 2015-16. Motion of Senator Bilyk to take note of documents called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Department of Communications and the Arts—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.
Airservices Australia—Report for 2015-16, including report of the Aircraft Noise Ombudsman. Motion of Senator Bilyk to take note of document agreed to.

Fair Work Building Industry Inspectorate (Fair Work Building and Construction)—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Comcare and Safety, Rehabilitation and Compensation Commission—Reports for 2015-16. Motion of Senator Bilyk to take note of documents agreed to.

Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Department of Social Services—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Federal Court of Australia—Report for 2015-16, including report of the National Native Title Tribunal. Motion of Senator Carr to take note of document agreed to.

Federal Circuit Court of Australia—Report for 2015-16, including financial statements for the Family Court of Australia. Motion of Senator Carr to take note of document agreed to.

Australian Commission for Law Enforcement Integrity—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Financial Reporting Council (FRC)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

National Competition Council—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Competition and Consumer Commission (ACCC)—Report for 2015-16, including report of the Australian Energy Regulator (AER). Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Australian Institute of Criminology—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Clean Energy Regulator—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Export Finance and Insurance Corporation (EFIC)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Trade and Investment Commission (Austrade)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Department of Health—Report for 2015-16, including the Pharmaceutical Benefits Advisory Committee report on processes, financial statements for the Australian National Preventive Health Agency, and the report of the Australian Digital Health Agency. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.
Food Standards Australia New Zealand—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Independent Hospital Pricing Authority (IHPA)—Report for 2015-16, including report of the Clinical Advisory Committee. Motion of Senator Carr to take note of document agreed to.

Department of Human Services—Report for 2015-16. Motion of Senator Siewert to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Indigenous Business Australia—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Indigenous Land Corporation—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australia Council for the Arts (Australia Council)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Transaction Reports and Analysis Centre (AUSTRAC)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Commission on Safety and Quality in Health Care—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Fair Work Ombudsman—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Transport Safety Bureau (ATSB)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


National Transport Commission (NTC Australia)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Repatriation Medical Authority—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Reinsurance Pool Corporation (ARPC)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Civil Aviation Safety Authority (CASA)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Central Land Council—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

National Heavy Vehicle Regulator (NHVR)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Parliamentary Service Commissioner—Report for 2015-16, including report of the Parliamentary Service Merit Protection Commissioner. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Federal Police (AFP)—Report for 2015-16, including reports on assumed identities, the National Witness Protection Program and unexplained wealth investigations and proceedings. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Public Service Commissioner—Report of the Australian Public Service Commissioner for 2015-16, including report of the Merit Protection Commissioner. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Remuneration Tribunal—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Commonwealth Director of Public Prosecutions (CDPP)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Department of Finance—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Electoral Commission (AEC)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Bureau of Meteorology—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australia Business Arts Foundation Limited (Creative Partnerships Australia)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Institute for Teaching and School Leadership Limited (AITSL)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Australian Research Council (ARC)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Cancer Australia—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

National Mental Health Commission—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Northern Territory Fisheries Joint Authority—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.
Queensland Fisheries Joint Authority—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Screen Australia—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Western Australian Fisheries Joint Authority—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Curriculum, Assessment and Reporting Authority (ACARA)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian War Memorial—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Department of Education and Training—Report for 2015-16, including reports of the Student Identifiers Registrar, Trade Support Loans Program and Tuition Protection Service. Motion of Senator Carr to take note of document agreed to.

Department of the Treasury—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Superannuation Complaints Tribunal—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Tertiary Education Quality and Standards Agency (TEQSA)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Charities and Not-for-profits Commission (ACNC)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Institute of Health and Welfare—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Prudential Regulation Authority (APRA)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Taxation Office (ATO)—Report of the Commissioner of Taxation for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Climate Change Authority—Report for 2015-16. Motion of Senator Carr to take note of documents called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Commonwealth Scientific and Industrial Research Organisation (CSIRO)—Report for 2015-16, including report of the Science and Industry Endowment Fund. Motion of Senator Carr to take note of documents called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Future Fund Board of Guardians and Future Fund Management Agency (Future Fund)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


National Health and Medical Research Council (NHMRC)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


ASC Pty Ltd—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Auditing and Assurance Standards Board—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Accounting Standards Board—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Centre for International Agricultural Research (ACIAR)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Film, Television and Radio School (AFTRS)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Australian Pesticides and Veterinary Medicines Authority (APVMA)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Renewable Energy Agency (ARENA)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Skills Quality Authority (ASQA)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Sports Commission—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Department of Industry, Innovation and Science—Report for 2015-16, including reports of Geoscience Australia and IP Australia. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Infrastructure Australia—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

National Capital Authority—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

National Disability Insurance Scheme Launch Transition Agency (National Disability Insurance Agency)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Public Lending Right Committee—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Australian Nuclear Science and Technology Organisation (ANSTO)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Australian Rail Track Corporation Limited (ARTC)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Securities and Investments Commission (ASIC)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Department of Infrastructure and Regional Development—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Department of the Environment and Energy—Report for 2015-16, including reports on the operation of Acts administered by the department, and financial statements for the National Heritage Trust of Australia. Motion of Senator Carr to take note of document agreed to.

Director of National Parks—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


National Health Funding Body—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.
National Health Funding Pool—Report for 2015-16, including financial statements for state and territory State Pool Accounts. Motion of Senator Carr to take note of document agreed to.


Office of the Official Secretary to the Governor-General—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Repatriation Commission, Military Rehabilitation and Compensation Commission and the Department of Veterans' Affairs—Reports for 2015-16, including financial statements of the Defence Service Homes Insurance Scheme. Motion of Senator Carr to take note of documents agreed to.


Tourism Australia—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Australian Information Commissioner—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

Coal Mining Industry (Long Service Leave Funding) Corporation—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.

National Film and Sound Archive of Australia (NFSA)—Report for 2015-16. Motion of Senator Carr to take note of document agreed to.


Australian Broadcasting Corporation (ABC)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Special Broadcasting Service Corporation (SBS)—Report for 2015-16. Motion of Senator Carr to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.


Inspector-General of the Australian Defence Force—Report for the period 1 January 2014 to 30 June 2015. Motion of Senator Carr to take note of document agreed to.


Science and technology—Commonwealth Scientific and Industrial Research Organisation review—Letter from the Cabinet Secretary (Senator Sinodinos) responding to the order of the Senate of 10 October 2016, and attachments. Motion of Senator Carr to take note of documents agreed to.


Aboriginal Hostels Limited—Report for 2015-16. Motion of Senator Dodson to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Executive Director of Township Leasing—Report for 2015-16. Motion of Senator Dodson to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Anindilyakwa Land Council—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Outback Stores Pty Ltd—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Torres Strait Regional Authority (TSRA)—Report for 2015-16. Motion of Senator Bilyk to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

Australian Health Practitioner Regulation Agency (AHPRA)—Report for 2015-16. Motion of Senator Williams to take note of document agreed to.

Australian Human Rights Commission—Report—Willing to work: National inquiry into employment discrimination against older Australians and Australians with disability 2016. Motion of Senator Paterson to take note of document called on. On the motion of Senator McAllister debate was adjourned till Thursday at general business.

COMMITTEES

Consideration

The following orders of the day relating to committee reports and government responses were considered:

Human Rights—Joint Statutory Committee—9th report of 2016—Human rights scrutiny report. Motion of Senator Reynolds to take note of report called on. On the motion of Senator McAllister the debate was adjourned till the next day of sitting.

Intelligence and Security—Joint Statutory Committee—Criminal Code Amendment (High Risk Terrorist Offenders) Bill 2016—Report. Motion of Senator Bilyk to take note of report agreed to.

Foreign Affairs, Defence and Trade References Committee—Report—Capability of Defence's physical science and engineering workforce—Government response. Motion of the Minister for Indigenous Affairs (Senator Scullion) to take note of document agreed to.

Foreign Affairs, Defence and Trade References Committee—Report—Delivery and effectiveness of Australia's bilateral aid program in Papua New Guinea—Government response. Motion of the Minister for Indigenous Affairs (Senator Scullion) to take note of document called on. On the motion of Senator McAllister the debate was adjourned till the next day of sitting.
Economics References Committee—Personal choice and community impacts—Interim report. Motion of Senator Leyonhjelm to take note of report called on. Debate adjourned till the next day of sitting, Senator Smith in continuation.

Economics References Committee—Personal choice and community impacts—Bicycle helmet laws (term of reference d)—Interim report. Motion of Senator Leyonhjelm to take note of report called on. On the motion of Senator Smith the debate was adjourned till the next day of sitting.

Economics References Committee—Personal choice and community impacts—Sale and use of marijuana and associated products (term of reference c)—Interim report. Motion of Senator Leyonhjelm to take note of report called on. Debate adjourned till the next day of sitting, Senator Smith in continuation.

Economics References Committee—Personal choice and community impacts—Western Sydney Wanderers supporters (term of reference f)—Interim report. Motion of Senator Leyonhjelm to take note of report called on. Debate adjourned till the next day of sitting, Senator Smith in continuation.

Health—Select Committee—Hospital funding cuts: the perfect storm – The demolition of Federal-State health relations 2014-2016—Final report. Motion of Senator Polley to take note of report called on. On the motion of Senator McAllister the debate was adjourned till the next day of sitting.

Economics References Committee—Personal choice and community impacts—The classification of publications, films and computer games (term of reference c)—Interim report. Motion of Senator Leyonhjelm to take note of report called on. Debate adjourned till the next day of sitting, Senator Smith in continuation.

Economics References Committee—Personal choice and community impacts—The sale and use of tobacco, tobacco products, nicotine products and e-cigarettes (term of reference a)—Interim report. Motion of Senator Leyonhjelm to take note of report called on. Debate adjourned till the next day of sitting. Economics References Committee—Personal choice and community impacts—Sale and service of alcohol (term of reference b)—Interim report. Motion of Senator Leyonhjelm to take note of report called on. Debate adjourned till the next day of sitting, Senator Smith in continuation.

Community Affairs References Committee—Report—Palliative care in Australia—Government response. Motion of Senator Polley to take note of report called on. On the motion of Senator McAllister the debate was adjourned till the next day of sitting.

**ADJOURNMENT**

The PRESIDENT (18:06): Order! I propose the question:

That the Senate do now adjourn.

Groome, Mr Doug

Western Australian of the Year Awards

Senator SMITH (Western Australia—Deputy Government Whip in the Senate) (18:07): I would like to acknowledge the important contribution of a number of important Australians, who are resident in my home state of Western Australia. In the heat of political debates that occur in this building, and given the increasingly busy daily lives that all Australians are leading, it is sometimes easy to forget just what a remarkable country Australia is. It is easy not to think about or, worse still, to take for granted its blessings of abundant mineral resources and its rich agricultural capacities. We sometimes fail to properly appreciate the successful evolution of our democratic institutions and practices, which place our nation amongst the most peaceful, stable and longest-enduring democracies in the world.
In our focus on the nation's economic challenges—and they are real, and I do not care for a moment to deny that—we can sometimes forget that, despite those challenges, we still live in a vibrant economy, replete with opportunities for the development of new businesses, new job opportunities and the expansion of trade in Australian goods and services into emerging markets. And, all too often, we overlook the abundance of virtue and the inspiration that is to be found in Australia's greatest resource—our people. I think that, despite the cynicism of some commentators, these are the qualities that are plentiful across the generational divide. Just two weeks ago, Australians gathered at the 11th hour of the 11th day of the 11th month at both significant monuments, such as the Australian War Memorial here in Canberra, and along humble avenues of honour in some of our smallest rural communities. In so doing, we honoured, in our own small way, the enormous sacrifices that have been made by so many of our fellow Australians, who have fought, been injured and, in the most tragic of instances, killed, in the course of preserving our freedom. I think one of the most heartening things about Remembrance Day and, indeed, Anzac Day is that, while the number of veterans is obviously decreasing with the passage of time, the size of the crowds attending commemorative events to pay their respects is not diminishing. In fact, their ranks seem to be swelling, and the ranks of younger Australians are especially well represented.

Perhaps nowhere was this more obvious than in Albany in Western Australia two years ago, when many tens of thousands of people flooded to the city to attend commemorative events associated with the 100th anniversary of the departure of the first ANZAC convoy. For me, the most striking thing about the crowds that stood five and six deep for the commemorative march along York Street that day was not only its size but its relative youth. There is clearly a deep appreciation among younger generations of Australians for the sacrifices made by their forebears, and that is something we absolutely need to applaud and encourage.

The other thing that we must encourage and foster is full recognition of the service of those who have served our nation in wartime, and that includes appropriate recognition of that service from foreign governments. However, it has also brought to light another issue: the significant number of Australian service personnel whose efforts have not been formally recognised by those nations they helped to free. One such example is France, whose liberation was secured in part due to the efforts of some 2½ thousand Australians in operations off the French coast, on French soil or in the skies over Nazi occupied Western Europe.

To commemorate the 70th anniversary of the Allied invasion of Normandy in June 2014, the French ambassador to Australia invited all eligible Australian veterans to nominate for the Legion of Honour, France's highest national award. Of course, there are some veterans in our community who remain scarred by their wartime experience and had no wish to relive the painful episodes. Commemorative events and citations can sometimes bring up these long-lost emotions. We must respect their choice to remain anonymous.

However, I have been very pleased over the past couple of years to be part of the efforts in Western Australia that afforded long-overdue recognition of the service of some of our lost heroes of World War II, who have received the Legion of Honour. These have included brothers Murray and the late Eric Maxton, Mr Thomas Lofthouse, Mr Eddie Davis and Mr Wilbur Towler. In fact, since June 2014 some 327 Australian veterans from World War II have received the French Legion of Honour.
Regrettably, however, there are some in our community who, despite significant efforts, have still not received that recognition. Mr Doug Groome, also of Albany and now aged 95, likewise flew 32 missions in Lancaster aircraft, conducting bombing missions over the heart of Nazi Germany. To emphasise the bravery of Mr Groome's service, the dangerous reality facing Bomber Command crews needs to be noted. Seventy-five per cent of Bomber Command crews died before they completed a tour, which was generally 30 flights. Nearly 330 aircraft were lost, and more than 1,400 aircrew were captured, killed, went missing or were presumed killed.

Doug Groome served in the RAF rather than in the Australian Squadron in Bomber Command. He did receive a European star and bar for service over Germany and France but, despite his active role in the liberation of France, has not received the Legion of Honour. It is one of my greatest regrets that, despite extensive efforts thus far to obtain recognition from the French government for Mr Groome's service—representations which have included those made to the British High Commissioner in Canberra, the United Kingdom Ministry of Defence in London and the French defence attache in Canberra—our efforts to date have been unsuccessful.

I hasten to add that the lack of success does not detract from the enormity of the sacrifices he made and the risks he took early in his life to protect others. In that respect, Australians owe Doug Groome a debt of gratitude not just for his military service but for being a powerful reminder of how important it is for us to recognise service to the community.

In that connection, I would like to briefly move to another end of the generational spectrum. Last weekend the 2017 WA Australian of the Year Award recipients were announced. As the Prime Minister has noted, each year the list of finalists offers an insight into our nation, the problems we seek to confront, the issues we want to highlight and the idea we choose to pursue. I am sure all Western Australians will join me in extending warm congratulations to WA Australian of the Year Andrew Forrest for his outstanding philanthropic endeavours, as well as the WA Senior Australian of the Year, social entrepreneur Mr Peter Kenyon. I also congratulate the 2017 WA Local Hero, anti-alcohol campaigner June Oscar AO, of Fitzroy Crossing. She has done remarkable work bringing together often conflicting parties in the Kimberley to support Indigenous families affected by foetal alcohol spectrum disorders.

I would also like to extend particular congratulations to WA's new Young Australian of the Year, Abdullahi Alim, whom I have had the pleasure of meeting only recently. Aged just 24 and a recent university graduate, Abdullahi has already co-founded an innovation lab to deal with contemporary challenges. And, as senators are aware, we face no greater challenge than national security. One of the projects Abdullahi has coordinated is an anti-extremism 'hackathon', which allows young Australians to create digital solutions to undermine the influence of violent extremist propaganda. His projects have attracted the support of our own government, Google and the United States Department of State.

It goes without saying that this is very different to flying bombing missions over Nazi Germany. The element of risk is not comparable. But the way we fight wars has also changed, and the 'cyber war', for want of a better term, is now our crucial terror front. Yet the driving principle, the commitment to service, the love of one's own democratic freedoms and a determination to protect them against real and insidious threats in many ways, are common
bonds linking the service of a young Doug Groome more than 70 years ago and the contribution of Abdullahi Alim today. It is that dedication to service and determination to protect and improve the nation we all love that all Australians, inside and outside this building, should be encouraged to celebrate.

**Coalition Government**

Senator CHISHOLM (Queensland) (18:16): This week we saw further cracks open up in the LNP in Queensland and further fighting between the Libs and Nats here in Canberra. I want to talk further about the main reason for this, and that is the lack of leadership within this government. First we saw the most senior LNP member of parliament, Senator Brandis, say:

I'd say that the state opposition is very very mediocre …

He went on:

… but the thing that's alarming everyone is, as you would expect, is the sudden spike in One Nation, which is now at about 16 per cent. And One Nation, as you know, their strength is in heartland National Party seats …

When speaking of the state of the LNP merger, Senator Brandis said:

I think there might be a revisiting of things as a result of compulsory preferential voting.

So in one brief conversation the Attorney-General has managed to both destabilise the Queensland LNP state opposition and reignite the debate around the merger of the conservative parties in Queensland, which we knew from the beginning was always going to end in failure. This went further. An unnamed LNP MP summed up the sentiment of those opposite when he said of Senator Brandis:

London can't come soon enough.

It is no wonder that the Queensland LNP is in serious trouble as an organisation. We have seen numerous examples of the Queensland Nationals and Liberals at loggerheads, and this will develop into a full-scale war over coming months. I note Senator Canavan refused to back Senator Brandis this week in question time, and we have reports out of the Nationals party room meeting that, under Mr Turnbull, this government is focussed on issues that 'very few people in the real world are worried about'. The Prime Minister was also reportedly referred to as 'out of touch' by his National Party colleagues.

Let us go through some of the greatest hits that we saw this week of this LNP unravelling. We have to hand it to the Deputy Prime Minister, who obviously saw the writing on the wall and moved out of Queensland a couple of years ago. We have seen a trio of policy issues that is really driving a deep wedge inside the LNP: the backpacker tax, the 457 visas and the Adler shotgun issue. The member for Dawson, George Christensen, talks a big game when he is in Mackay, but he meekly pulls his head in as soon as his plane lands at Canberra Airport. On the backpackers, he has gone from threatening to quit the party a few months ago to now toeing the party line. His colleagues in the Senate are not much better. National Party senators were prepared to cross the floor to vote for more shotguns, but they are not prepared to cross the floor to stand up for regional Queensland and protect it from this Scott Morrison tax grab. That is how low the Nationals have become. Scott Morrison could have easily axed this tax
over a year ago when he took over from Joe Hockey, but he is prepared to leave it in place, and we know that this shambling government is responsible for what we have seen. We have also seen the member for Dawson and the member for Flynn contradict the government when it comes to 457 visas in Queensland. It is clear that the National Party is a hollow shell of what it used to be and that the days of the LNP merger are absolutely numbered.

This week we also had former senator Ron Boswell in town. The National Party of today is a very poor imitation of the National Party that Ron Boswell was a member of. You only have to look at his valedictory speech in 2014:

I must single out John Howard. In delivering gun control, he took the most courageous action I have seen in my time in politics. Every time I hear about another gun massacre in America, I know that bringing in those gun control laws was the right thing to do and I give thanks for his courage and leadership.

That makes the Nats' crossing of the floor on the Adler shotgun issue all the more galling. He went on to say of John Howard:

He also understood small business and the ethos of the bush. John Howard was the best Prime Minister the Nationals ever had.

You only have to look at that and at what the National Party have done this week on the backpacker tax to know that they are a poor imitation.

But the real kick in the guts to the legacy of Ron Boswell and the National Party is their unwillingness to stand up to One Nation. The Nationals have become a shadow of their former selves. Again, I quote Ron Boswell's words in his valedictory speech in 2014:

… to be taken seriously, you have to stand for something. In the fight of my life, against Pauline Hanson, I risked everything to stand up against her aggressive, narrow view of Australia. Defeating Pauline Hanson and One Nation in 2001 has been my greatest political achievement.

Well, Pauline Hanson is back in the Senate and she still has her narrow view of Australia, which Ron Boswell clearly identified. The thing that has changed has been the National's unpreparedness to stand up to that legacy, like Ron Boswell did. It is just two years ago that former Senator Boswell made his speech, but it seems like a lifetime in terms of where the Nats are now. This vacuum in leadership in the Nats is reflected in the 'very, very mediocre' opposition that we have in the Queensland LNP. You also have to add into the mix what we saw in New South Wales, with them losing the seat of Orange to the Shooters, Fishers and Farmers Party—truly a black mark in the history of the Nats. We have also seen them cosying up to Campbell Newman.

It is clear on several fronts that the Prime Minister, in his efforts in keeping this government united and focused, is in for some very rough times. The actions of the National Party this week have only added to that. Not only did former Senator Boswell cast a giant physical shadow; he left a political legacy that he should be proud of, and I am sure he would be bitterly disappointed in what he sees from the current-day Nationals.

Senate adjourned at 18:23

DOCUMENTS

Tabling

The following documents were tabled by the Clerk pursuant to statute:
Legislative instruments are identified by a Federal Register of Legislation (FRL) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.


National Health Act 1953—National Health (Concession or entitlement card fee) Amendment Determination 2016 (No. 1)—PB 106 of 2016 [F2016L01789].

Private Health Insurance Act 2007—Private Health Insurance (Complying Product) Amendment Rules 2016 (No. 6) [F2016L01790].