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SITTING DAYS—2015

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
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<tbody>
<tr>
<td>February</td>
<td>9, 10, 11, 12</td>
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<tr>
<td>March</td>
<td>2, 3, 4, 5, 16, 17, 18, 19, 23, 24, 25, 26</td>
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<tr>
<td>May</td>
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<td>June</td>
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<td>10, 11, 12, 13, 17, 18, 19, 20</td>
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<tr>
<td>October</td>
<td>12, 13, 14, 15</td>
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<td>November</td>
<td>9, 10, 11, 12, 23, 24, 25, 26, 30</td>
</tr>
<tr>
<td>December</td>
<td>1, 2, 3</td>
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- DARWIN 102.5FM
- HOBART 747AM
- MELBOURNE 1026AM
- PERTH 585AM
- SYDNEY 630AM

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FORTY-FOURTH PARLIAMENT
FIRST SESSION—FIFTH PERIOD

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

Senate Office holders
President—Senator Hon. Stephen Parry
Deputy President and Chair of Committees—Senator Gavin Mark Marshall
Temporary Chairs of Committees—Senators Christopher John Back, Cory Bernardi, Sam Dastyari, Sean Edwards, Alexander McEachian Gallacher, Susan Lines, Deborah Mary O'Neill, Nova Maree Peris OAM, Dean Anthony Smith, Zdenko Matthew Seselja, Glenn Sterle, Peter Stuart Whish-Wilson and John Reginald Williams
Leader of the Government in the Senate—Senator Hon. Eric Abetz
Deputy Leader of the Government in the Senate—Senator Hon. George Henry Brandis QC
Leader of the Opposition in the Senate—Senator the Hon. Stephen Conroy
Manager of Government Business in the Senate—Senator Hon. Mitchell Peter Fifield
Manager of Opposition Business in the Senate—Senator Claire Moore

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

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

<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
<th>Term expires</th>
<th>Party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abetz, Hon. Eric</td>
<td>TAS</td>
<td>30.6.2017</td>
<td>LP</td>
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<tr>
<td>Back, Christopher John</td>
<td>WA</td>
<td>30.6.2017</td>
<td>LP</td>
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<tr>
<td>Bernardi, Cory</td>
<td>SA</td>
<td>30.6.2020</td>
<td>LP</td>
</tr>
<tr>
<td>Bilyk, Catryna Louise</td>
<td>TAS</td>
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<td>ALP</td>
</tr>
<tr>
<td>Birmingham, Hon. Simon John</td>
<td>SA</td>
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<td>LP</td>
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<tr>
<td>Brandis, Hon. George Henry, QC</td>
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<td>LP</td>
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<tr>
<td>Brown, Carol Louise</td>
<td>TAS</td>
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<tr>
<td>Bullock, Joseph Warrington</td>
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<tr>
<td>Bushby, David Christopher</td>
<td>TAS</td>
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<td>LP</td>
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<tr>
<td>Cameron, Hon. Douglas Niven</td>
<td>NSW</td>
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<tr>
<td>Canavan, Matthew James</td>
<td>QLD</td>
<td>30.6.2020</td>
<td>LNP</td>
</tr>
<tr>
<td>Carr, Hon. Kim John</td>
<td>VIC</td>
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<td>ALP</td>
</tr>
<tr>
<td>Cash, Hon. Michaela Clare</td>
<td>WA</td>
<td>30.6.2020</td>
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<tr>
<td>Colbeck, Hon. Richard Mansell</td>
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<tr>
<td>Collins, Hon. Jacinta Mary Ann</td>
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<td>ALP</td>
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<tr>
<td>Conroy, Hon. Stephen Michael</td>
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<tr>
<td>Cormann, Hon. Mathias Hubert Paul</td>
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<tr>
<td>Dastyari, Sam</td>
<td>NSW</td>
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<tr>
<td>Day, Robert John</td>
<td>SA</td>
<td>30.6.2020</td>
<td>FFP</td>
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<tr>
<td>Di Natale, Richard</td>
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<tr>
<td>Edwards, Sean</td>
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<tr>
<td>Fawcett, David Julian</td>
<td>SA</td>
<td>30.6.2017</td>
<td>LP</td>
</tr>
<tr>
<td>Fierravanti-Wells, Hon. Concetta Anna</td>
<td>NSW</td>
<td>30.6.2017</td>
<td>LP</td>
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<tr>
<td>Fifield, Hon. Mitchell Peter</td>
<td>VIC</td>
<td>30.6.2020</td>
<td>LP</td>
</tr>
<tr>
<td>Gallacher, Alexander McEachian</td>
<td>SA</td>
<td>30.6.2017</td>
<td>ALP</td>
</tr>
<tr>
<td>Hanson-Young, Sarah Coral</td>
<td>SA</td>
<td>30.6.2020</td>
<td>AG</td>
</tr>
<tr>
<td>Heffernan, Hon. William Daniel</td>
<td>NSW</td>
<td>30.6.2017</td>
<td>LP</td>
</tr>
<tr>
<td>Johnston, Hon. David Albert Lloyd</td>
<td>WA</td>
<td>30.6.2020</td>
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<tr>
<td>Ketter, Christopher Ronald</td>
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<tr>
<td>Lambie, Jacqui</td>
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<td>IND</td>
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<tr>
<td>Lazarus, Glenn Patrick</td>
<td>QLD</td>
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<td>IND</td>
</tr>
<tr>
<td>Leyonhjelm, David Ean</td>
<td>NSW</td>
<td>30.6.2020</td>
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<td>Lines, Susan</td>
<td>WA</td>
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<tr>
<td>Ludlam, Scott</td>
<td>WA</td>
<td>30.6.2020</td>
<td>AG</td>
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<tr>
<td>Lundy, Kate Alexander</td>
<td>ACT</td>
<td></td>
<td>ALP</td>
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<tr>
<td>Macdonald, Hon. Ian Douglas</td>
<td>QLD</td>
<td>30.6.2020</td>
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<tr>
<td>Madigan, John Joseph</td>
<td>VIC</td>
<td>30.6.2017</td>
<td>IND</td>
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<tr>
<td>Marshall, Gavin Mark</td>
<td>VIC</td>
<td>30.6.2020</td>
<td>ALP</td>
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<tr>
<td>Mason, Hon. Brett John</td>
<td>QLD</td>
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<tr>
<td>McEwen, Anne</td>
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<td>McGrath, James</td>
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<td>McKenzie, Bridget</td>
<td>VIC</td>
<td>30.6.2017</td>
<td>NATS</td>
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<tr>
<td>McLucas, Hon. Jan Elizabeth</td>
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<tr>
<td>Milne, Christine Anne</td>
<td>TAS</td>
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<tr>
<td>Moore, Claire Mary</td>
<td>QLD</td>
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<td>ALP</td>
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<tr>
<td>Muir, Ricky Lee</td>
<td>VIC</td>
<td>30.6.2020</td>
<td>AMEP</td>
</tr>
<tr>
<td>Nash, Hon. Fiona Joy</td>
<td>NSW</td>
<td>30.6.2017</td>
<td>NATS</td>
</tr>
<tr>
<td>O’Neill, Deborah Mary (1)</td>
<td>NSW</td>
<td>30.6.2020</td>
<td>ALP</td>
</tr>
</tbody>
</table>
**Senator** | **State or Territory** | **Term expires** | **Party**
--- | --- | --- | ---
O'Sullivan, Barry James | QLD | 30.6.2020 | NATS
Parry, Stephen Shane | TAS | 30.6.2017 | LP
Payne, Hon. Marise Ann | NSW | 30.6.2020 | LP
Peris, Nova Maree OAM | NT | 30.6.2017 | ALP
Polley, Helen Beatrice | TAS | 30.6.2017 | ALP
Reynolds, Linda Karen CSC | WA | 30.6.2020 | LP
Rhiannon, Lee | NSW | 30.6.2017 | AG
Rice, Janet Elizabeth | VIC | 30.6.2020 | AG
Ronaldson, Hon. Michael | VIC | 30.6.2017 | LP
Ruston, Anne Sowerby | SA | 30.6.2017 | LP
Ryan, Hon. Scott Michael | VIC | 30.6.2020 | LP
Scullion, Hon. Nigel Gregory | NT | 30.6.2020 | CLP
Seselja, Zdenko Matthew | ACT | 30.6.2017 | LP
Siewert, Rachel Mary | WA | 30.6.2017 | AG
Singh, Hon. Lisa Maria | TAS | 30.6.2017 | ALP
Sinodinos, Hon. Arthur | NSW | 30.6.2020 | LP
Smith, Dean Anthony | WA | 30.6.2017 | LP
Sterle, Glenn | WA | 30.6.2017 | ALP
Urquhart, Anne Elizabeth | TAS | 30.6.2017 | ALP
Wang, Zhenya | WA | 30.6.2020 | PUP
Waters, Larissa Joy | QLD | 30.6.2017 | AG
Whish-Wilson, Peter Stuart | TAS | 30.6.2020 | AG
Williams, John Reginald | NSW | 30.6.2020 | NATS
Wong, Hon. Penelope Ying Yen | SA | 30.6.2020 | ALP
Wright, Penelope Lesley | SA | 30.6.2017 | AG
Xenophon, Nicholas | SA | 30.6.2020 | IND

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.

<table>
<thead>
<tr>
<th>Territory</th>
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<th>Party</th>
<th>Senator</th>
<th>Party</th>
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<tr>
<td>Australian Capital Territory</td>
<td>Lundy, K.</td>
<td>ALP</td>
<td>Seselja, Z.M.</td>
<td>LP</td>
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<tr>
<td>Northern Territory</td>
<td>Scullion, N. G.</td>
<td>CLP</td>
<td>Peris, N.M.</td>
<td>ALP</td>
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</tbody>
</table>

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

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

**PARTY ABBREVIATIONS**

AG—Australian Greens; ALP—Australian Labor Party;
AMEP—Australian Motoring Enthusiast Party; CLP—Country Liberal Party;
FFP—Family First Party; IND—Independent, LDP—Liberal Democratic Party;
LNP—Liberal National Party; LP—Liberal Party of Australia;
NATS—The Nationals; PUP—Palmer United Party
Heads of Parliamentary Departments

Clerk of the Senate—R Laing
Clerk of the House of Representatives—D Elder
Secretary, Department of Parliamentary Services—C Mills
Parliamentary Budget Officer—P Bowen
<table>
<thead>
<tr>
<th>Title</th>
<th>Minister</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Prime Minister</strong></td>
<td>The Hon. Tony Abbott MP</td>
</tr>
<tr>
<td><strong>Minister for Indigenous Affairs</strong></td>
<td>Senate the Hon. Nigel Scullion</td>
</tr>
<tr>
<td><strong>Minister Assisting the Prime Minister for the Public Service</strong></td>
<td>Senator the Hon. Eric Abetz</td>
</tr>
<tr>
<td><strong>Minister Assisting the Prime Minister for Women</strong></td>
<td>Senator the Hon. Michaelia Cash</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>The Hon. Charles Porter MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Prime Minister</strong></td>
<td>The Hon. Alan Tudge MP</td>
</tr>
<tr>
<td><strong>Minister for Infrastructure and Regional Development</strong></td>
<td>The Hon. Warren Truss MP</td>
</tr>
<tr>
<td>(Deputy Prime Minister)</td>
<td>The Hon. Jamie Briggs MP</td>
</tr>
<tr>
<td><strong>Minister for Foreign Affairs</strong></td>
<td>The Hon. Julie Bishop MP</td>
</tr>
<tr>
<td><strong>Minister for Trade and Investment</strong></td>
<td>The Hon. Andrew Robb AO MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Minister for Foreign Affairs</strong></td>
<td>The Hon. Steven Ciobo MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Minister for Trade and Investment</strong></td>
<td>The Hon. Steven Ciobo MP</td>
</tr>
<tr>
<td><strong>Minister for Employment</strong></td>
<td>Senator the Hon. Eric Abetz</td>
</tr>
<tr>
<td><strong>Attorney-General</strong></td>
<td>Senator the Hon. George Brandis QC</td>
</tr>
<tr>
<td><strong>Minister for the Arts</strong></td>
<td>Senator the Hon. George Brandis QC</td>
</tr>
<tr>
<td>(Vice-President of the Executive Council)</td>
<td></td>
</tr>
<tr>
<td>(Deputy Leader of the Government in the Senate)</td>
<td></td>
</tr>
<tr>
<td><strong>Minister for Justice</strong></td>
<td>The Hon. Michael Keenan MP</td>
</tr>
<tr>
<td><strong>Treasurer</strong></td>
<td>The Hon. Joe Hockey MP</td>
</tr>
<tr>
<td><strong>Minister for Small Business</strong></td>
<td>The Hon. Bruce Billson MP</td>
</tr>
<tr>
<td><strong>Assistant Treasurer</strong></td>
<td>The Hon. Joshua Frydenberg MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Treasurer</strong></td>
<td>The Hon. Kelly O'Dwyer</td>
</tr>
<tr>
<td><strong>Minister for Agriculture</strong></td>
<td>The Hon. Barnaby Joyce MP</td>
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<tr>
<td><strong>Parliamentary Secretary to the Minister for Agriculture</strong></td>
<td>Senator the Hon. Richard Colbeck</td>
</tr>
<tr>
<td><strong>Minister for Education and Training</strong></td>
<td>The Hon. Christopher Pyne MP</td>
</tr>
<tr>
<td>(Leader of the House)</td>
<td>Senator the Hon. Simon Birmingham</td>
</tr>
<tr>
<td><strong>Assistant Minister for Education and Training</strong></td>
<td>Senator the Hon. Scott Ryan</td>
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<tr>
<td><strong>Minister for Education and Training</strong></td>
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<tr>
<td><strong>Parliamentary Secretary to the Minister for Education and Training</strong></td>
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<tr>
<td><strong>Minister for Social Services</strong></td>
<td>The Hon. Scott Morrison MP</td>
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<tr>
<td><strong>Assistant Minister for Social Services</strong></td>
<td>Senator the Hon. Mitch Fifield</td>
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<tr>
<td>(Manager of Government Business in the Senate)</td>
<td>Senator the Hon. Marise Payne</td>
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<tr>
<td><strong>Minister for Human Services</strong></td>
<td>Senator the Hon. Concetta Fierravanti-Wells</td>
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<tr>
<td><strong>Parliamentary Secretary to the Minister for Social Services</strong></td>
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<tr>
<td><strong>Minister for Industry and Science</strong></td>
<td>The Hon. Ian Macfarlane MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Minister for Industry and Science</strong></td>
<td>The Hon. Karen Andrews MP</td>
</tr>
<tr>
<td><strong>Minister for Defence</strong></td>
<td>The Hon. Kevin Andrews MP</td>
</tr>
<tr>
<td><strong>Minister for Veterans' Affairs</strong></td>
<td>Senator the Hon. Michael Ronaldson</td>
</tr>
<tr>
<td><strong>Minister Assisting the Prime Minister for the Centenary of ANZAC</strong></td>
<td>Senator the Hon. Michael Ronaldson</td>
</tr>
<tr>
<td><strong>Assistant Minister for Defence</strong></td>
<td>The Hon. Stuart Robert MP</td>
</tr>
<tr>
<td><strong>Parliamentary Secretary to the Minister for Veterans’ Affairs</strong></td>
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<tr>
<td><strong>Minister for Veterans’ Affairs</strong></td>
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<tr>
<td><strong>Parliamentary Secretary to the Minister for Defence</strong></td>
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</tr>
<tr>
<td>Title</td>
<td>Minister</td>
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<tr>
<td>Parliamentary Secretary to the Minister for Defence</td>
<td>The Hon. Darren Chester MP</td>
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<tr>
<td>Minister for Communications</td>
<td>The Hon. Malcolm Turnbull MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Communications</td>
<td>The Hon. Paul Fletcher MP</td>
</tr>
<tr>
<td>Minister for Immigration and Border Protection</td>
<td>The Hon. Peter Dutton MP</td>
</tr>
<tr>
<td>Assistant Minister for Immigration and Border Protection</td>
<td>Senator the Hon. Michaelia Cash</td>
</tr>
<tr>
<td>Minister for the Environment</td>
<td>The Hon. Greg Hunt MP</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for the Environment</td>
<td>The Hon. Robert Baldwin MP</td>
</tr>
<tr>
<td>Minister for Finance</td>
<td>Senator the Hon. Mathias Cormann</td>
</tr>
<tr>
<td>Special Minister of State</td>
<td>Senator the Hon. Michael Ronaldson</td>
</tr>
<tr>
<td>Parliamentary Secretary to the Minister for Finance</td>
<td>The Hon. Michael McCormack MP</td>
</tr>
<tr>
<td>Minister for Health</td>
<td>The Hon. Sussan Ley MP</td>
</tr>
<tr>
<td>Minister for Sport</td>
<td>The Hon. Sussan Ley MP</td>
</tr>
<tr>
<td>Assistant Minister for Health</td>
<td>Senator the Hon. Fiona Nash</td>
</tr>
</tbody>
</table>

Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there is a Department of Human Services in the Social Services portfolio and a Department of Veterans’ Affairs in the Defence portfolio. The title of a department does not necessarily reflect the title of a minister in all cases.
<table>
<thead>
<tr>
<th>TITLE</th>
<th>SHADOW MINISTER</th>
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</thead>
<tbody>
<tr>
<td>Leader of the Opposition</td>
<td>Hon. Bill Shorten MP</td>
</tr>
<tr>
<td>Shadow Minister Assisting the Leader for Science</td>
<td>Senator the Hon. Kim Carr</td>
</tr>
<tr>
<td>Shadow Minister Assisting the Leader for Small Business</td>
<td>Hon. Bernie Ripoll MP</td>
</tr>
<tr>
<td>Shadow Parliamentary Secretary for Small Business</td>
<td>Julie Owens MP</td>
</tr>
<tr>
<td>Shadow Cabinet Secretary</td>
<td>Senator the Hon. Jacinta Collins</td>
</tr>
<tr>
<td>Shadow Parliamentary Secretary to the Leader of the Opposition</td>
<td>Hon. Michael Danby MP</td>
</tr>
<tr>
<td>Shadow Parliamentary Secretary to the Leader of the Opposition</td>
<td>Dr. Jim Chalmers MP</td>
</tr>
<tr>
<td>Deputy Leader of the Opposition</td>
<td>Hon. Tanya Plibersek MP</td>
</tr>
<tr>
<td>Shadow Minister for Foreign Affairs and International Development</td>
<td></td>
</tr>
<tr>
<td>Shadow Minister for Women</td>
<td>Senator Claire Moore</td>
</tr>
<tr>
<td>Manager of Opposition Business (Senate)</td>
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</tr>
<tr>
<td>Shadow Minister for the Centenary of ANZAC</td>
<td>Hon. David Feeney MP</td>
</tr>
<tr>
<td>Shadow Parliamentary Secretary for Foreign Affairs</td>
<td>Hon. Matt Thistlethwaite MP</td>
</tr>
<tr>
<td>Leader of the Opposition in the Senate</td>
<td>Senator the Hon. Penny Wong</td>
</tr>
<tr>
<td>Shadow Minister for Trade and Investment</td>
<td>Dr. Jim Chalmers MP</td>
</tr>
<tr>
<td>Deputy Leader of the Opposition in the Senate</td>
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Wednesday, 25 March 2015

The PRESIDENT (Senator the Hon. Stephen Parry) took the chair at 09:30, read prayers and made an acknowledgement of country.

COMMITTEES
Abbott Government's Budget Cuts Committee
Health Committee

Meeting

The Clerk: Proposals to meet have been lodged by the Select Committee into the Abbott Government's Budget Cuts for a public hearing on 26 March from 10 am, and by the Select Committee on Health for a private meeting today from 3.30 pm.

The PRESIDENT (09:31): Does any senator wish to put the question on any of those motions? There being none, I will proceed.

PARLIAMENTARY REPRESENTATION
Australian Capital Territory

The PRESIDENT (09:31): I inform the Senate that I have received a letter from Senator Lundy—which people would not be surprised about after her speech last night—resigning her place as a senator for the Australian Capital Territory. Pursuant to section 44 of the Commonwealth Electoral Act 1918, I have notified the ACT Chief Minister of the vacancy in the representation of that territory caused by the resignation. I table the letter and a copy of my letter to the ACT Chief Minister.

BILLS
Migration Amendment (Protection and Other Measures) Bill 2014
In Committee

Debate resumed.

Senator HANSON-YOUNG (South Australia) (09:32): Could I just seek some clarification from the Clerk as to whether we dealt with the amendments on sheet 7683 last time. I think we were halfway through that vote, from memory.

The CHAIRMAN: Where we are up to is Australian Greens amendments (3) and (4), but they were actually consequential on the previous one, on which the question has been resolved. So I do not think you would want to move those. We would then be ready to go on to—

Senator HANSON-YOUNG: Opposition amendments?

The CHAIRMAN: Opposition amendments, yes—if we are following the running sheet.

Senator KIM CARR (Victoria) (09:34): The opposition opposes schedule 2 in the following terms:

(5) Schedule 2, page 10 (line 1) to page 15 (line 9), to be opposed.

Schedule 2 of the bill seeks to make significant changes to the way in which Australia will determine if it has protection obligations in relation to certain non-citizens. Specifically, the
bill inserts a new section 6A that provides that a non-citizen is not entitled to complementary protection unless the person can prove that it is more likely than not that he or she will suffer significant harm if removed from Australia. Currently, the 'real chance' test means that a person must not be returned to a situation where there is a real chance that they would face significant harm. This means a chance which is not remote or insubstantial but which may be below 50 per cent and may be as low as 10 per cent. These changes have the potential to put vulnerable people seeking Australia's protection at risk of persecution, death or serious harm if returned to their country.

While Labor notes that complementary protection applies to only a small cohort of those who apply for refugee status but are refused, they are nonetheless an important cohort. When Labor introduced the Migration Amendment (Complementary Protection) Act 2011, it was intended to assess and provide protection to those who do not satisfy the definition of a refugee. However, they are nonetheless provided protection on the basis that they face serious violations of their human rights if returned to their country of origin.

The changes proposed in schedule 2 of the current bill are contrary to the complementary protection framework that Labor introduced, and therefore Labor is seeking to have the bill amended to actually remove schedule 2. I welcome the government's agreement to also support this amendment, as well as, I trust, the support of the crossbench.

The CHAIRMAN: Just for the information of the chamber, we probably jumped a little bit ahead, but we will come back to the previous amendments. Just so everyone is aware, we are not in the order of the running sheet at the moment. Senator Carr has requested that the question be put in respect of schedule 2—that is, opposition amendment (5) on sheet 7578—and that is presently the question before the chair.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (09:36): I would like to thank the opposition for their constructive approach in relation to the negotiations for this piece of legislation. In terms of this particular amendment, for the record of the Hansard, the government believes that the changes it has proposed to complementary protection provisions in the Migration Act through this bill are fair, measured and appropriate, and I refer back to my summing-up speech, in which I outlined the reasons why we have taken this position. The government maintains that schedule 2 is an important part of this piece of legislation. However, the government has noted the voting intention of the majority of senators in the chamber and will not be calling for a division on the opposition amendment.

Senator HANSON-YOUNG (South Australia) (09:37): The Australian Greens support this amendment. We have been concerned since day one about the impact of changing, effectively, the risk threshold of the assessment.

Senator Ian Macdonald interjecting—
Senator Wright interjecting—
Senator HANSON-YOUNG: Excuse me, Chair. I am just going to ask for this conversation to happen a little more quietly so I can continue speaking, if that is all right. Can you just be a little quieter.

The Australian Greens support this amendment. We are very concerned, of course, about changing the risk threshold. While I understand that the government believe that their
assessment has been that it was needed, I am thankful that it proves that in this place, when you have senators that are concerned and listen to what the experts say, particularly through the inquiry process, we are able to make positive changes to government legislation. I commend the opposition and my fellow crossbenchers for standing strong on this particular point.

The CHAIRMAN: The question is that schedule 2 stand as printed.

Question negatived.

The CHAIRMAN: Senator Carr, given that this is a related matter, maybe you could move amendment (1) on sheet 7578 now. It is on the same matter.

Senator KIM CARR (Victoria) (09:39): I move opposition amendment (1) on sheet 7578:

(1) Clause 2, page 2 (table items 5 to 8), omit the table items.

Question agreed to.

The CHAIRMAN: Senator Carr, would you be happy to move your amendments (2) and (3) on sheet 7578 by leave together?

Senator Kim Carr: Mr Chairman, it is not our intention to proceed with those amendments.

Senator Cash: Mr Chairman, could you just confirm which ones we are not proceeding with.

The CHAIRMAN: The opposition have indicated they are not proceeding with amendments (2) and (3) on sheet 7578.

Senator Kim Carr: And (4); we are not proceeding with (4).

The CHAIRMAN: And the opposition have indicated, for the chamber's information, that they will not be proceeding with amendment (4) on sheet 7578. On that page of the running sheet, what is left is amendment (5) of the Australian Greens.

Senator HANSON-YOUNG (South Australia) (09:40): The Greens oppose item 14 of schedule 1 in the following terms:

(5) Schedule 1, item 14, page 8 (lines 1 to 15), to be opposed.

This amendment goes to dealing with concerns that many experts and others had in relation to this bill with the difficulties for asylum seekers who have new information that would strengthen their claim—or, indeed, things perhaps may have changed over the long period of time that we know people have been waiting for their claims to be processed.

We have to remember here that this legislation is going to impact directly on people who are part of what has been referred to by the government as the legacy caseload. There are around 30,000 people whose claims either have not started to be assessed yet or are part of the way through. Many of those people have already been in Australia for three or four years. The circumstances in their home countries have perhaps changed. The issues that they have dealt with while they have been held in immigration detention may have impacted on their ability to give clarity to their case and information. Also, of course, one of the things that I am extremely concerned about is the impact on people's claims, through no fault of their own but through the lax management of people's data, such as when the immigration department accidentally uploaded the personal information of over 10,000 asylum seekers. You would
remember, Mr Chairman, this happened a number of years ago. All of those people have now been put at further risk because of that data breach.

We need to ensure that, if new information becomes available and was not included the first time round, there is an ability for that to be included, without punishment, without fear of raising those issues and without a negative impact on people. It strikes me that this legislation before us, as it is, punishes people for circumstances that are often out of their control and out of their hands. If new information becomes available, it should be able to be included, particularly when we talk about people's identity documents and clarifying exactly who they are and where they are. People should not be punished because of things that perhaps have changed over the last three or four years as they have been waiting desperately to have their claims assessed.

That is why I propose Australian Greens amendment (5): because we need to make sure we are not unduly dismissing somebody's legitimate claim because we are not recognising the realities that people face fleeing persecution and then the hardships that they have had to endure while they have been here in Australia effectively on a freeze in terms of their assessment, which has forced new, subsequent information to now have a very direct impact on their ability to be safe or, indeed, to be put in further danger if they are sent home.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (09:44): The government will not be supporting the Greens amendment. The amendment opposes and seeks to remove the requirement under proposed section 423A that a tribunal is to draw an inference unfavourable to the credibility of a claim or evidence unless the applicant has a reasonable explanation for not providing it before the primary decision. Together with proposed section 5AAA, the intent of proposed section 423A is to encourage the comprehensive and timely presentation of all claims and evidence in support of a protection visa application and to discourage the late presentation of claims or evidence unless the applicant has a reasonable explanation for doing so. When considering what is a reasonable explanation, tribunal members will take into account factors such as the applicant being a minor, a sufferer of torture or trauma, or a person with a mental or physical impairment. The provision is intended to facilitate a tribunal member in dealing with an application for a protection visa where new claims and evidence have been raised simply to prolong an applicant's stay in Australia rather than due to a genuine need for protection. The tribunal has procedural fairness requirements which require it to give the applicant an opportunity to explain late or new claims in evidence.

I again confirm, for the benefit of the chamber, that the government has tabled additional information in the addendum to the explanatory memorandum which explains the existing requirements.

Senator HANSON-YOUNG (South Australia) (09:46): I just have a question for the minister, in clarification of why the minister and the government believe this particular part of the legislation is important. You referred to taking into consideration those who had suffered torture and trauma. I would just like to know whether that includes the torture and trauma of being indefinitely detained in an offshore detention centre.

The CHAIRMAN: The question is that item 14 of schedule 1 stand as printed.
The committee divided. [09:51]

(The Chairman—Senator Marshall)

Ayes .................. 44
Noes .................. 11
Majority ............. 33

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Ludlam, S
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Question agreed to.

The CHAIRMAN (09:53): Senator Hanson-Young, your amendment (7) would have been consequential on that amendment being successful, so I take it you will not proceed with amendment (7).

Senator HANSON-YOUNG (South Australia) (09:53): That is right.

The CHAIRMAN: Thank you, Senator. Then maybe we should now move to your amendment (5) on sheet 7683.

Senator HANSON-YOUNG: My understanding is that was consequential as well.

The CHAIRMAN: The question would be that part 3 of schedule 1 stand as printed.
Senator HANSON-YOUNG: I think we will move on from that amendment if that is okay.

The CHAIRMAN: Thank you.

Senator HANSON-YOUNG: I would like to go to amendments (1) to (5) on sheet 7675. These are fairly basic amendments. They deal with removing the retrospectivity elements of this bill across all of the schedules—1, 2, 3 and 4. They speak for themselves. We should not, in this place, be creating legislation that is retrospective in its impact and its nature to pull the rug out from under people. It is a basic concept that we apply across the board when we are debating issues in this place that you do not make things retrospective.

These amendments are fairly simple. They just say that, from the moment that this bill passes and has royal assent, that is when these new rules will apply. We should not be trying to change the rules backwards, which is effectively what the government is doing by having these retrospective elements in the legislation. Of course, I am concerned about the very real impact that will have on asylum seekers who do have their claims already on foot. I do not think it is fair at all, but it is a broader point than that. This is actually about ensuring that we stick by the basic notion that you do not make laws in this place retrospective.

Because these amendments are all of the same nature, I seek leave to move them all together.

Leave granted.

Senator HANSON-YOUNG: I move Greens amendments (1) to (5) on sheet 7675 revised:

(1) Schedule 1, item 15, page 9 (lines 3 to 12), omit subitems (1) and (2), substitute:

(1) Section 5AAA of the Migration Act 1958 as amended by Part 1 of this Schedule applies to an application made on or after the commencement of that Part.

(2) Section 5AAA of the Migration Act 1958 as amended by Part 1 of this Schedule also applies in relation to an administrative process starting on or after the commencement of that Part.

(2) Schedule 1, item 15, page 9 (lines 13 to 17), omit subitem (3), substitute:

(3) Sections 91W, 91WA and 91WB of the Migration Act 1958 as amended by Part 2 of this Schedule apply to an application for a protection visa made on or after the commencement of that Part.

(3) Schedule 2, item 6, page 12 (lines 21 to 30), omit subitem (2), substitute:

(2) Subitem (1) covers an assessment made on or after the day this item commences.

(4) Schedule 3, Part 2, page 19 (line 1) to page 20 (line 19), omit the Part, substitute:

Part 2—Application

14 Application of amendments

The amendments made by this Schedule apply in relation to a person who arrives in Australia after the day this item commences (whether or not that person had been in Australia previously).

(5) Schedule 4, item 34, page 38 (lines 2 to 32), omit the item, substitute:

34 Application of amendments

The amendments made by this Schedule apply in relation to an application to the Migration Review Tribunal or the Refugee Review Tribunal for review of a decision if the application is made on or after the commencement of this Schedule.
**Senator CASH** (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (09:56): Again, the government will not be supporting the Australian Greens amendments. These amendments in the bill, contrary to what Senator Hanson-Young has said, are not retrospective—that is, they do not take effect prior to their commencement date. They operate prospectively, albeit in respect of already existing protection visa applications or administrative assessments.

In relation to proposed section 5AAA, the onus on the applicant, there is already an obligation on an asylum seeker to present all of their claims and evidence up-front. In relation to the amendments to sections 91W and 91WA, identity documents, these amendments do not change an existing obligation on the part of a person seeking protection in Australia to provide documentary evidence of identity, nationality or citizenship. In relation to new section 91WB, applications for protection visas by members of the family unit, this does not change the way the current provisions in the Migration Act operate in relation to how members of the same family unit of protection visa holders are dealt with. This amendment simply puts beyond doubt what the current interpretation of the act is.

In relation to schedule 3, making the amendments apply to new arrivals means that it will not capture UMAs or transitory persons already in Australia and living in the community who are currently section 91K barred to be instead made 46A or 46B barred. This will therefore not achieve the intended effect of schedule 3: to streamline the application bars for UMAs and transitory persons.

In relation to schedule 4, the tribunal efficiency measures, the purpose of making the amendments apply to existing applications before the tribunal is to maximise the number of applications affected by these changes, which provide increased efficiency and consistency of decision making.

**Senator HANSON-YOUNG** (South Australia) (09:58): I accept the government's argument. It seemed a bit muddled—both prospective in its nature and impacting on things that have already happened. It seems to be retrospective in my understanding of the term. I am disappointed that the government continue to pretend that this is not retrospective. It clearly is. The reason it is is that they want it to impact on as many people as possible. It is simply not fair. I accept, though, that the government have not listened to that argument.

**The CHAIRMAN:** The question is that the amendments moved by Senator Hanson-Young be agreed to.

The committee divided. [10:03]

(The Chairman—Senator Marshall)

Ayes .................11
Noes ..................34
Majority .............23

AYES

<table>
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<tr>
<th>Ayes</th>
<th>Noes</th>
<th>Majority</th>
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<td>Di Natale, R</td>
<td>Lazarus, GP</td>
<td>Ludlam, S</td>
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<td>Milne, C</td>
<td>Rhiannon, L</td>
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<td>Milne, C</td>
<td>Rice, J</td>
<td>Siewert, R (teller)</td>
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<td>Rice, J</td>
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<td>Waters, LJ</td>
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Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (10:05): I rise to move amendments to the Migration Amendment (Protection and Other Measures) Bill 2014 on behalf of the government. First, I advise the chamber that the government will not be seeking to move amendments (1) to (10) on sheet ZA361 as a result of the concerns raised in relation to the amendments in schedule 2 to the bill, which provides for the more likely than not risk threshold for assessing complementary protection. As I have already stated, the government will not be actively opposing its removal, which has now occurred. In terms of the remainder of the government's amendments, I seek leave to move amendments (11) to (20) on sheet ZA361 together.

Leave granted.

Senator CASH: I move:

(11) Schedule 3, item 1, page 16 (lines 7 to 10), omit paragraph (b), substitute:

(b) either:
(i) is an unlawful non-citizen; or
(ii) holds a bridging visa or a temporary protection visa, or a temporary visa of a kind (however described) prescribed for the purposes of this subparagraph.

Note: Temporary protection visas are provided for by subsection 35A(3).

(12) Schedule 3, item 6, page 17 (lines 11 to 14), omit paragraph (b), substitute:

(b) either:
(i) is an unlawful non-citizen; or
(ii) holds a bridging visa or a temporary protection visa, or a temporary visa of a kind (however described) prescribed for the purposes of this subparagraph.

Note: Temporary protection visas are provided for by subsection 35A(3).
In response to the recommendations made by the Senate Legal and Constitutional Affairs Legislation Committee, schedule 4 to the bill will be amended to increase the time frame, from seven to 14 days, in which an application for reinstatement may be made by an applicant who failed to appear before the Migration Review Tribunal or the Refugee Review Tribunal and whose review application was subsequently dismissed as a result of that nonattendance.

The government also moves technical amendments to the bill, including to schedule 3 to take into account the reintroduction of temporary protection visas by the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014. This amendment extends the statutory visa application bar by providing that unauthorised maritime arrivals or transitory persons who are the holders of a temporary protection visa are prevented from making a valid visa application unless the Minister for Immigration and Border Protection determines it is in the public interest to do so. I commend the amendments to the chamber.

Question agreed to.

The CHAIRMAN: I believe we should now move to opposition amendment (8) on sheet 7578.

Senator Kim Carr: Chairman, we are not proceeding with that amendment.

The CHAIRMAN: Thank you. I think the remaining amendments are government amendments (1) and (2) on sheet EE113.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (10:08): by leave—I move government amendments (1) and (2) on sheet EE113 together:

(1) Clause 2, page 3 (at the end of the table), add:

11. Schedule 5 The day after this Act receives the Royal Assent.

(2) Page 38 (after line 32), at the end of the bill, add:

Schedule 5—Technical corrections

Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014

1 Subsection 2(1) (table items 6, 7, 9, 11 and 12)

Omit "Migration Amendment (Protection and Other Measures) Act 2014", substitute "Migration Amendment (Protection and Other Measures) Act 2015".

Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014
2 Subsection 2(1) (table items 4A, 13 and 15)
Omit "Migration Amendment (Protection and Other Measures) Act 2014", substitute "Migration Amendment (Protection and Other Measures) Act 2015".

3 Division 2 of Part 1 of Schedule 5 (heading)
Repeal the heading, substitute:
Division 2—Amendments if this Act commences after the Migration Amendment (Protection and Other Measures) Act 2015

4 Division 1 of Part 3 of Schedule 5 (heading)
Repeal the heading, substitute:
Division 1—Amendments if this Act commences before the Migration Amendment (Protection and Other Measures) Act 2015

These amendments are purely technical in nature and fix references to this bill in other acts so that they refer to the Migration Amendment (Protection and Other Measures) Act 2015 rather than 2014. This is a technical clean-up and does not have any effect on the interpretation or action of the other acts. These amendments do not modify the interpretation of this bill, the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act or the Counter Terrorism Legislation Amendment (Foreign Fighters) Act in any way.

Question agreed to.
Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (10:10): I move:
That this bill be now read a third time.

The DEPUTY PRESIDENT: The question is that the bill be now read a third time.
The Senate divided. [10:14]
(The Deputy President—Senator Marshall)

Ayes ......................36
Noes ......................12
Majority ................24

AYES
Back, CJ
Bushby, DC
Canavan, M.J.
Cash, MC
Day, R.J.
Fawcett, DJ
Ketter, CR
Leyonhjelm, DE
Ludwig, JW
McEwen, A
McKenzie, B
Muir, R

Bullock, J W.
Cameron, DN
Carr, KJ
Collins, JMA
Edwards, S
Gallacher, AM
Lambie, J
Lines, S
Marshall, GM
McGrath, J
Moore, CM
O'Sullivan, B

CHAMBER
Wednesday, 25 March 2015

SENATE

2287

AYES

Peris, N
Ruston, A (teller)
Seselja, Z
Sinodinos, A
Sterle, G
Williams, JR

Reynolds, L
Ryan, SM
Singh, LM
Smith, D
Urquhart, AE
Xenophon, N

NOES

Di Natale, R
Lazarus, GP
Madigan, JJ
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS

Hanson-Young, SC
Ludlam, S
Milne, C
Rice, J
Waters, LJ
Wright, PL

Question agreed to.
Bill read a third time.

Telecommunications Legislation Amendment (Deregulation) Bill 2014
Telecommunications (Industry Levy) Amendment Bill 2014

Second Reading

Debate resumed on the motion:

That these bills be now read a second time.

Senator KIM CARR (Victoria) (10:17): I rise to speak on the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014. These bills are part of the repeal day package, and they are very minor matters indeed—even smaller than the first round in March of last year. In March, the changes to the Communications portfolio amounted to about $35 million a year—not what you would call a big effort by any measure. This time the savings amount to about $18 million, which is about half the size.

These bills do a number of things. They repeal outdated provisions in respect of the making of e-marketing industry codes and the supply of telephone sex services. They repeal preselection requirements. They make the registration period for the Do Not Call Register indefinite. They streamline notice requirements to improve the operation of the Customer Service Guarantee and enable the Telecommunications Industry Ombudsman to publish documents on the web rather than in the Gazette. These amendments are not contentious, and they have the support of the industry and of consumer representatives. The best way to describe these two bills is that they are a rudimentary cleaning-up exercise.

However, bundled up in these bills are changes to the Telecommunications Universal Service Management Agency and the delivery of the universal service obligation—changes that are reflected in the revised Commonwealth agreement with Telstra on the National Broadband Network. On 14 December 2014, the government reached agreement with Telstra on the revised Commonwealth agreements, which included the TUSMA agreement. Labor
senators noted that, in a collection of thin media releases, no details were forthcoming from the government on the TUSMA agreement, despite the fact that these deregulation bills were before the Senate. Until these bills were referred to committee, the only detail available to the public and to the opposition on the amendments to the TUSMA agreement was contained in material released by Telstra under its market disclosure obligations. This was also true of the remaining Commonwealth agreements and the definitive agreement. Absurdly, like most of the publicly available material on the National Broadband Network, it is available through the market, not the government-owned company.

Malcolm Turnbull has promised transparency not once, not twice but repeatedly. He said:
Maximum transparency is going to be given to this project.
He said:
But our commitment is, our focus is, to have a much greater level of transparency and openness.
I quote again:
The bottom line is that as far as the NBN project is concerned, the government's commitment is to be completely transparent …
And again:
The main promise, the most important thing we said about the NBN was that we would tell the truth, and we would liberate the management of NBN Co to tell that truth.
Further:
You will be aware that Government policy provides for increased scrutiny and transparency of NBN Co and its activities.
Still further again:
The Government requires a high degree of transparency from NBN Co in its communication with the public and Parliament.
The truth of the matter is that, as with most of the NBN promises, Mr Turnbull has failed to live up to his own rhetoric. Secrecy, in fact, is the order of the day. The government has embarked—

Senators O'Sullivan interjecting—

Senator KIM CARR: Sorry, what was that?

Senator O'Sullivan: You can't lecture us on the NBN.

The ACTING DEPUTY PRESIDENT (Senator Sterle): Ignore the interjections, Senator Carr.

Senator KIM CARR: You cannot possibly maintain the claim that this government has been transparent and open about the NBN when it has refused to provide even the most basic details to this parliament. Yet, of course, we find out from matters reported to the stock exchange that there are questions that this parliament rightfully should have had answers to.

The government emphasised in December 2014 that revisions to the TUSMA agreement do not include any:
… weakening of the obligations imposed on Telstra to continue to deliver the STS USO, Payphones USO or emergency call services.
But what we see is that, under the revised TUSMA agreement negotiated by the government, the period of time within which Telstra may be required to take action in the event of a breach has been extended from 14 days to six months. I note that the purpose of the Telecommunications Universal Service Management Agency is:

We support the delivery of universal service and other public-interest telecommunications services for all Australians through the implementation and effective administration of contracts and grants. Our aim is to promote high quality and efficient contract and grant management to maximise the benefit for consumers and manage risks appropriately, within a transparent and accountable legislative framework.

Contrary to the government's assertion, this new provision is in fact a weakening—I repeat, a weakening—of the obligations imposed on Telstra to continue to deliver on its STS universal service obligation, its payphones universal service obligation or emergency call services. It has not been included in the TUSMA agreement for the purposes of maximising the benefit to consumers. This provision in the TUSMA agreement, of course, is not in these bills.

So we will not be opposing these bills but, if the Commonwealth had been less secretive in relation to the Commonwealth agreements and their nexus with the TUSMA arrangements in the deregulation bills, the referral back to the committee would not ever have been necessary. These bills could have been passed months ago.

Senator LUDLAM (Western Australia) (10:24): On the face of it, the Telecommunications Legislation Amendment Deregulation Bill 2014 and the Telecommunications (Industry Levy) Amendment Bill 2014 are fairly inoffensive bills, dealing with a number of fairly uncontroversial deregulation measures. This is interesting, given that the fanfare that accompanied the deregulation days that the government started out with have subsided somewhat—but, nonetheless! A large part of the measures deal with the removal of regulations which were introduced at particular times and for particular reasons which have now become largely obsolete—partly due to the march of technology.

I am just going to raise two issues today, particularly that of the extension of useful provisions of worthwhile government programs such as the Do Not Call Register. My understanding is that unless these bills pass this sitting week—unless we manage to spill it out to budget week—that people who have placed themselves on a Do Not Call Register—something which the Greens strongly support—would find themselves rolling off. In fact, that record would lapse and people would start getting unsolicited telemarketing calls and so on. That is not something that anybody in here supports. We are very happy to make sure that that program does not lapse.

I would draw attention to some bizarre behaviour by the communications minister, Malcolm Turnbull, on his Facebook page, proposing that the Labor Party and the Australian Greens are putting the Do Not Call Register at risk. He knew absolutely damn well that that was not the case. Presuming that Senator Conroy or Mr Clare had made this claim, we certainly indicated directly to Mr Turnbull's office that we certainly had no intention of holding up these provisions of the deregulation bills. They are completely uncontroversial and I think the blowback on Mr Turnbull's Facebook page from that rather peculiar intervention probably speaks for itself.

The management of these bills has been a bit of a case study in how not to handle legislation—the very fact that we are getting into it almost at the end of March is a case in
point. This legislation was introduced last October, right in the middle of the debate about the government's controversial data retention legislation, which we will return to properly sometime this morning. One of the things that this legislation originally did was weaken the reporting obligations regarding data requests. And there has been a certain amount of confusion. The police, anticorruption agencies and other enforcement agencies are required to report to the Attorney-General's Department every year how many warrantless authorisations and how many warranted interception requests for stored communications and live communications they require. It is not a bad reporting obligation. We like to see more detail produced, particularly on the number of people who are caught up. But, nonetheless, that amounts in aggregate to about 340,000 warrantless metadata requests a year, including prospective requests, by our agencies to track people around the landscape effectively in real time. It is about 340,000 a year in total and about 4,700 warranted interception requests. That is what the police agencies are obliged to report under the TIA Act.

What telecommunications providers are required to report to the ACMA, however, is an entirely different matter, and the total aggregate number is nearly three-quarters of a million. Presumably, what is happening is that agencies are submitting requests for their logging as one but they are putting them out to multiple telecommunications carriers so the aggregate is nearly three times higher. I guess that in pushing the deregulation broom through places where does not belong that maybe Mr Turnbull was not even aware of this. It was actually proposing to abolish that reporting requirement to the ACMA so that the public would have no idea of the total number of warrantless authorisations that have been requested.

On registering the backlash that immediately erupted when people realised what he was proposing to do, Minister Turnbull had the good sense to make those provisions of the bill disappear and render this bill largely uncontroversial. There was a brief Senate inquiry conducted into the bill, which ended in re-referral back to the committee as some senators were concerned that arrangements involving Telstra, NBN Co and TUSMA would have some bearing on the bill. Senator Carr addressed this briefly.

I think this is one example of how not to manage a bill through the parliament but, nonetheless, as I have indicated and as Senator Carr has indicated, the measures contained herein are largely uncontroversial—partly because Minister Turnbull had the good sense to remove the sting in the tail that would have removed important information from the public domain. On behalf of the Australian Greens I am happy to commend this legislation to the chamber.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (10:29): I think there are no other colleagues seeking to make a contribution, so I thank those who have. I just want to do three things quickly to briefly cover off the main provisions of the bills and respond to some of the points raised by Senator Carr and Senator Ludlam.

The Telecommunications Legislation Amendment (Deregulation) Bill 2014 will streamline telecommunications regulation while maintaining important consumer safeguards. The amendments will contribute to the government's agenda of cutting red tape by $1 billion every year to reduce the regulatory burden. The bill delivers reform in the portfolio through better tailored regulation to lower the cost burden on industry and consumers, with expected savings of $6.71 million a year. There has been extensive and close consultation between industry,
consumer groups, government agencies and the Department of Communications. The government released a discussion paper and telecommunications deregulation road map in early 2014, followed up with a stakeholder forum in May last year. In February, as colleagues would know, the Senate referred the bill to the Senate Environment and Communications Legislation Committee for inquiry and report by May. The committee recommended that the bills be passed; indeed, this was the second time that the committee had examined these bills.

The main measures in the bill as amended and passed in the other place include the abolition of TUSMA, which was announced in the May budget, and the transfer of its functions to the Department of Communications; the repeal of minor regulatory requirements governing certain adult phone services; the removal of the time limit on registration on the Do Not Call Register that Senator Ludlam referred to; the removal of the arrangements for the ACMA to register e-marketing codes under the Telecommunications Act; a reduction in the scope of telephone preselection obligations; minor compliance changes relating to the publication of notices; and a minor change to the consumer notification obligation concerning the customer service guarantee. A lot of these are just common-sense changes which reflect the changing world that we are in and how telecommunications have changed over time.

There were two points that Senator Carr raised that I want to cover off that were also touched on by Labor senators in their additional comments in the Senate committee report. The first is Labor senators’ concern that there was limited information provided by government on the amendments to the TUSMA agreement. I indicate that the reality is that comprehensive information has been shared by the government and Telstra. Mr Turnbull’s media release at the time, as well as Telstra’s ASX announcement at the time of signing, provided comprehensive information in relation to the amendments to the TUSMA agreement. Telstra’s ASX announcement was and still is available via a link on the department’s website. There is also a summary of the terms of the TUSMA agreement on the TUSMA website, and TUSMA is required to publish that information under section 27 of the TUSMA Act. If the TLA dereg bills are passed, and it looks like they will be, then the department will make available the same information on the department’s website.

Labor senators also were concerned that moving from a 14-day period to up to six months to enforce a contractual breach is a weakening of the TUSMA agreement. Let me just explain it. The rationale for the extension from 14 days to six months is that it provides the Commonwealth with a greater period of time to exercise its rights, providing TUSMA or, as is proposed by the bill, the Department of Communications greater flexibility, given that both TUSMA and the ACMA have enforcement roles in this area. The change does not prevent the Commonwealth from taking action more quickly under the contract if that is warranted, but it does enable greater time to coordinate with the ACMA on whether regulatory or contractual action will occur if there is a breach. I hope that provides some comfort to colleagues.

Senator Ludlam raised the issue of record-keeping changes and the amendment that was moved in the House of Representatives. Following the introduction of the bills in the other place, public concerns were aired in relation to section 5 of the bill, which sought to remove certain record-keeping and disclosure requirements listed in part 13 of the 1997 act. In light of the current focus on data and privacy in the telecommunications industry, the government moved an amendment to remove schedule 5 in its entirety from the bill. The government believe that disclosure reporting should be consistent across sectors before removing an
existing reporting obligation. While the record-keeping changes proposed in schedule 5 reflected a particular industry concern that the requirements were duplicated across portfolios, the government have determined that existing arrangements will continue until a more consistent framework can be agreed upon. As colleagues know, the bill, as amended in that way, went through the House at the end of last year, which is why it is before us today in its current form.

I hope that provides some additional context for colleagues in relation to that particular change and I commend the bills to the Senate.

Question agreed to.

Bills read a second time.

Third Reading

The ACTING DEPUTY PRESIDENT (Senator Sterle) (10:36): As no amendments to the bills have been circulated, I shall call the minister to move the third reading unless any senator requires that the bills be considered in Committee of the Whole.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (10:36): I move:

That these bills be now read a third time.

Question agreed to.

Bills read a third time.

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

In Committee

Debate resumed.

Senator LUDLAM (Western Australia) (10:37): I have a very quick question for the government and Senator Fierravanti-Wells, who looks as though she might have been thrown in the deep end. Is Senator Fierravanti-Wells aware of whether the Attorney-General will be gracing us with his presence this morning?

Senator FIERRAVANTI-WELLS (New South Wales—Parliamentary Secretary to the Minister for Social Services) (10:37): Yes, the Attorney-General is on his way. (Quorum formed)

Senator LUDLAM (Western Australia) (10:40): I thank the Attorney for joining us. Probably Senator Xenophon will reserve his right to ask general overview questions. I ran through most of mine last night so I am proposing to start working through the amendments. I also offer a note of thanks to the clerks, who probably worked all night to give us the running sheet for a very complicated set of amendments from a few different sources. I now seek leave to move Australian Greens amendments (1) and (4) on sheet 7669 together.

Leave granted.

Senator LUDLAM: I move:

(1) Schedule 1, item 1, page 3 (line 14), omit "specified in or under section 187AA", substitute "specified in section 187AA".

(4) Schedule 1, item 1, page 8 (line 1) to page 9 (line 2), omit subsections 187AA(2) to (5), substitute:
(2) For the purposes of items 2, 3, 4 and 6 of the table in subsection (1), 2 or more communications that together constitute a single communications session are taken to be a single communication.

These amendments are identical to those of Senator Leyonhjelm, so presumably he will add some commentary as well. This debate has been somewhat bogged down from the very beginning in definitions of the kind of data that the government wants telecommunications carriers to collect. Everybody would be well aware that the Attorney did not help his cause at all by not being clear, but that is not a confusion that is isolated to the Attorney-General alone. The discussion has been bogged down in definitions of metadata, which is a phrase that is not even really a term of art in the telecommunications sector. It can mean pretty much what people want it to mean.

It is extraordinary, firstly, that the government initially proposed to bring together a bill to impose on telecommunications carriers an obligation to store material that some of them were not storing. There are matters on the record from Telstra and from the Communications Alliance that this is not just about extending a reporting obligation for material that is already being stored. No matter what the government thinks, and the communications minister has been just as guilty of making this contention, it is simply not the case. The Attorney-General's Department has been proposing an arbitrary two-year mandatory data retention capture and storage plan since at least 2008 that I am aware of, but as recently as January the government still did not know what kinds of material it wanted to force industry to keep. That is remarkable in itself.

The second interesting thing is that the government wanted to keep that definition of the material it wanted industry to store outside the act, in regulations, which makes it much easier for the definition to arbitrarily change. That has flow-on consequences for service providers who have to adjust their systems, not only in capturing the material but in organising for it to be retrieved, presumably reasonably promptly for agencies that will occasionally be in a serious hurry, and brought to light in a form that could potentially be used as evidence in court proceedings. What the government wanted to do, and the bill before us is not completely dissimilar to the government's original intention, was have the definition in regulations so they could change it very rapidly, without consultation with the technology sector or the general public and without recourse to this parliament.

The government has taken a measure of credit, and I guess we should observe it where it is due, that the definition of metadata is now in the bill—I will have a little more to say about that later—but the government still reserves the right to arbitrarily change the definition of material it wants to capture and store and then give itself 40 sitting days for parliament to ratify the decision. Last count, looking at the parliamentary calendar, there were only 58 Senate sitting days this year—the House sits a little bit more than we do because we have four weeks of budget estimates—which means that the time between the government, potentially on a whim, deciding that it needs new material and needs to expand the scope of the bill in the regulations and parliament catching up and ratifying the decision could be seven or eight or nine months.

We will move an amendment down the track that takes that extraordinary 40-day sitting day window and restricts it to four, but that amendment will only be necessary if this amendment of the Australian Greens does not prevail. What this amendment seeks to do is
remove the ability of the Attorney-General to arbitrarily widen the scope of metadata that it insists telecommunications carriers trap and store.

Before I commit the amendment to the chamber, I am very interested to know what criteria the Attorney-General proposes to apply—because my understanding is that this will reside with your office, Attorney—for adding information types to the scope of the bill. So what would we expect to be happening behind the scenes prior to an announcement by the government that it has actually widened the scope of the data retention scheme? What process will you follow and what criteria will you have regard to before making such a decision?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:45): Senator Ludlam, as you have acknowledged, the definition of the description of the categories of metadata has been located in the bill. The government has done that, having considered the recommendations of the PJCIS, and it now forms proposed section 187AA.

Proposed section 187AA sets out in descriptive terms six different categories. In the event, because of changes in technology, technologies develop or emerge in which information of the kind referred to in those six broad categories are retained and those technologies answer the description of metadata, then the bill preserves the flexibility in using the mechanism to which you have adverted of expanding the definition. The purpose here is not to expand the scope of that which is the subject of the retention obligation but rather to give the government the flexibility to keep pace with evolving technology so that, if there is an evolution so that a currently unanticipated form of metadata were to emerge following the development, for example, or a new device or a new form of communication, then that could be added to the list subject to the approval of the parliament after the requisite 40-day sitting day period. It is not the intention to alter the nature of the categories merely to enable us to have the flexibility to contemporise the description of the way in which metadata falling within those categories is retained.

Senator LUDLAM (Western Australia) (10:48): I thank the Attorney for his answer. I still do not feel any closer to an understanding—although I think I understand where the government is coming from, and there is no contention about the fact that the technology changes and new categories of data would be brought into existence over the life of the bill such as this. But I am still no wiser as to what process would be followed—for example, are there consultation periods that I have missed within industry, given how long and contentious it has been settling the definition to date? What comfort can we give industry today? Will it be given set periods of time or completely arbitrary period of time to comply with new categories of material that the government decides it requires to be kept?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:49): Senator Ludlam, as you know, there has been very extensive consultation with industry in the development of this dataset, and the government anticipates that that consultation with industry will continue. This is a collaborative process, so you ask what sort of process the government will undertake—to which the best answer I can give you is: a collaborative process in consultation with industry.
This is classically an example of the government of necessity collaborating with industry in a partnership to achieve a common end. What we envisage is continuing collaboration with industry. The scheme established by this bill, which imposes, as you know, the primary obligation upon industry of necessity, envisages that the government will continue to consult with and collaborate with industry in any decision about amending the descriptions of the dataset and would undoubtedly be arrived at in consultation with industry.

Senator LUDLAM (Western Australia) (10:50): But I am correct in my understanding that there is nothing in the bill that prescribed particular periods of time or anything to give guidance to you or your successor in adding certain kinds of data to the scope.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:51): No, that is correct. The way this bill will operate when it is enacted is dynamically so that there will always be of necessity, as I said in answer to your previous question, collaboration with industry. In my view it would fetter the flexibility of that collaboration were there to be prescriptive machinery provisions of the kind that you seem to be suggesting incorporated within the bill.

Senator LUDLAM (Western Australia) (10:51): I thank the minister for that. Why is the government insisting that service providers retain data on volume? What possible national security consequence could that have? Just so the minister is completely aware of where I am going, there has been plenty of conjecture as to the ways in which this bill, when it is enacted into law, will be used through processes of civil discovery or, potentially, criminal prosecution should the law relating to copyright infringement ever change. That volume usage would be very useful if rights holders, for example, were attempting to track down illegal file sharing. What is the government's rationale for including volume uses on page 8 of the bill in the table, 'Kinds of information to be kept'?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:52): Those provisions were developed in consultation with the security agencies and on the basis of the information that they gave to the PJCIS. Since you raise the matter, Senator, can I reassure you—and I do not know how many times I have to say this—that it is not the purpose of this bill to enable, through a process of third-party discovery, access by civil parties in civil litigation of the kind that you refer to, or at all. This is about facilitating criminal investigations.

Senator LUDLAM (Western Australia) (10:53): Senator Brandis, I am delighted to take you at your word; there are many who will not. One of the things that we are here to do today is track down the possible unintended consequences of a bill such as this. I would like to get some details particularly about location. There is a lot of concern around the fact that included well and truly within the scope of the bill is location of a particular device when a call connects and when it disconnects or when a communication is initiated and when it is concluded. For example, for a mobile phone handset within a metropolitan area where you are surrounded by probably half a dozen cell towers at any given time, to what degree of accuracy does that allow a particular device to be located?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:54): Senator...
Ludlam, the bill does not prescribe that. What the bill prescribes is the obligation, and the obligation is described in terms of the data set required to be retained. As to the operation of the scheme from a technical point of view, that really is beyond the scope of the bill. It is not something on which I am going to respond to you. What this bill sets up is a scheme that works upon the application to a primary obligation defined in terms of the data set of the obligations of telecommunications companies. A technical question of that kind is well beyond the scope of the bill.

Senator LUDLAM (Western Australia) (10:55): The technicalities may be beyond the scope of what you are able to provide us with, but they are certainly not beyond the scope of the bill. Under item 6, topic column 1, ‘The location of equipment, or a line, used in connection with a communication’, in the way that the bill is currently drafted:

(a) the location of the equipment or line at the start of the communication;
(b) the location of the equipment or line at the end of the communication.

Then you have put, helpfully, two examples:

Cell towers, Wi-Fi hotspots.

I can see that some of your advisers have arrived, which is good. I do not think that it is anything like outside the scope of the bill to tell us to what degree of accuracy does that allow particular devices to be pinpointed. That is well within the scope of the bill.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:56): Senator Ludlam, you are referring, I think, to item 6 of the table in proposed section 187AA, is that right?

Senator Ludlam: That is right.

Senator BRANDIS: The obligation is as set out in item 6. The obligation is not expressed in terms of quantitative measurement. It creates an obligation to retain certain data by reference to, in this case, that which is described in item 6. That is a qualitatively, not quantitatively, expressed obligation.

Senator LUDLAM (Western Australia) (10:56): I might throw to one of my colleagues; I do not feel like I am getting very far. Because we are reading from the same page of the same bill, I understand very well that there is not a quantitative obligation and that you are not required, as a service provider, to track people within a few tens of metres. Nonetheless, I think it is well within the scope of the bill and a reasonable question to put to you; when you place this obligation on a mobile phone service provider, because this is not material that is retained or held for very long periods of time at a moment, I think that users of telecommunications products have a right to know the degree or the accuracy to which government agencies will heretofore be able to track them around the landscape. Is it within a few kilometres, within a few hundreds of metres or within a few tens of metres? I am talking about the example of a mobile phone handset in a metropolitan area surrounded by half a dozen cell towers or so. I guess that this debate is going to run for a while. If you do not have the requisite technical information to hand then I would ask that you take it on notice and provide it to us.
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (10:58): Senator Ludlam, you seem to be missing the point here. That is not the work of item 6 in the table in proposed section 187AA. The work of item 6, or indeed each of the six items in the table, is to describe an obligation, not to enact a technical specification, but to describe the character of an obligation, and that is what it does. There will be an implementation phase, as you know, over 18 months after this bill is enacted. Indeed, one of the principal purposes of the implementation phase is to enable the operationalisation of these obligations by the ISPs and the telecommunications services providers to be settled. That is not what this bill does; it is not what the bill purports to do.

Might I point out to you that it is no part of the purpose of this legislation to, as you put it rather colourfully, follow people around. It is no part of the purpose of this bill to follow people around. It is the purpose of this bill to require the retention of metadata of the six categories or kinds described in the schedule to which you are addressing your questions. The technical specification as to how that obligation is to be given effect is not what this bill does.

Senator LEYONHJELM (New South Wales) (11:00): Minister, I am wondering if you can help us with an explanation. I am assuming that you are not in favour of these amendments, which are identical to the ones I moved, yet I cannot see that there is anything harmful about them—in fact, they improve the bill. Amendment (1) confines the kinds of information defined in the bill to those brought into the bill on the recommendation of the PJCIS, so it reduces the scope for regulatory creep. Amendment (4) does away with the elaborate 40-day approval regime for new additions introduced into the bill thanks to the PJCIS, and I am not suggesting that the 40-day approval is not an improvement on what was there before. Can you elaborate why you do not find them acceptable.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:02): The government has taken this bill through a very, very long process, through what is bound to be a long committee stage here in the Senate yesterday and today and perhaps tomorrow, and through a very long PJCIS inquiry, in which I think you would acknowledge we have shown a great deal of flexibility in accepting recommendations made by that committee—in fact, we have accepted them all. The government is satisfied with the bill in its ultimate form. All I can say to you is that the bill in the form in which it is now presented to the chamber is in our judgement the best shape in which the bill can be drafted.

Senator LEYONHJELM (New South Wales) (11:02): With great respect, what you are saying is you have reached agreement with your political opponents but you will not entertain reaching a political agreement with what I would consider a political ally, which is myself and my party, nor with Senator Ludlam, who coincidentally has arrived at the same place. I find it a peculiar position to take.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:02): You are entitled to your view, but the bill in its current form, including on the issue, by the way, of the description of the dataset and the inclusion of that description in the act and the provisions for the amendment or alteration of the dataset where that becomes necessary, in fact gives effect
to the PJCIS recommendations. I do not want to repeat myself, but this has been a long process: many minds have looked at this issue and this is where both government and opposition have come after a very extensive inquiry. I think you have acknowledged that the amendments that the government has adopted improve the bill from its initial form. The process of endless iterations of any piece of legislation cannot go on forever. This is where we have landed and this is what we present to the chamber for its consideration.

Senator XENOPHON (South Australia) (11:03): I will be as expeditious as possible, because I know there is a lot of material to get through. Last night in the chamber the Attorney was very clear that this legislation does not require anything more from telecommunications companies than the storage of their data. I do not have last night's Hansard in front of me, but in a recent ABC interview, the Attorney said:

This law does not change the status quo. That's the first point to be made. Telecommunication companies have always retained this information. It has always been accessible to ASIO, to state and federal law enforcement authorities without warrant. At heart all this legislation does is to mandate the continuation of the status quo.

I think that is a fair summary of what the Attorney said last night. I hope it is not a misrepresentation of what was said in the chamber last night—I do not want it to be. Given that this amendment is about not allowing the definition of metadata to be changed unilaterally, so it is relevant to this amendment, in my view, what does the Attorney say about the comments made by Telstra's Chief Information Security Officer, Mike Burgess, who told a conference recently:

Telstra will be required to retain data under the legislation that it has no need to—and doesn't—retain today.

Mr Burgess said that at a Cisco Live panel on cybersecurity on Monday of last week. He says that more information is being sought to be retained by this legislation than they currently retain. I hope I have quoted the Attorney fairly. I believe I have quoted Mr Burgess fairly. I will quote directly what Mr Burgess said at the panel:

We're not saying 'give us the money because security is going to be an issue'. There is data required under this new law … that we do not collect today, that we have no reason to collect today, and we will be collecting it.

I am just trying to get clarification of that. The Attorney has been very consistent in his position in his statements to the ABC and to the chamber last night. Mr Burgess, as the Chief Information Security Officer for Telstra has said something quite different. I am just trying to understand where we are at in respect of that.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:06): Although I know Mr Burgess, and I acknowledge his long and deep experience in this field, I have not seen his remarks. It is not my practice to comment on remarks that are quoted to me that I have not seen. That having been said, you do paraphrase me accurately. This is an obligation to maintain the status quo. It is also an obligation to regularise and standardise that which is done across the industry. As I said last night in response to the question from one of the crossbench senators, there is no uniform, consistent data-retention period across the industry. According to evidence given to the PJCIS inquiry by one of the witnesses in relation to telephony, some telecommunications companies currently retain data for up to seven years,
and some retain data for periods less than two years. So, in routinising and standardising the data retention obligation period to two years, in some cases we are reducing the retention period from the status quo, in some cases we are extending the data retention period from the status quo. We are not changing the character of the obligation. Let me rephrase that: the obligation that this legislation imposes does not change the character of the commercial practice from that in which the ISPs and telecoms have engaged, but it does standardise it.

Senator XENOPHON (South Australia) (11:08): If I can just go to the issue: I will repeat what has been attributed to Mr Burgess—I do not have the privilege of knowing Mr Burgess, as the Attorney does; I do not think I can do is to put this in the most neutral and objective terms possible. If Mr Burgess actually said—as he is reported to have said: 'there is data required under this new law …’—and just to be fair, I will say that there is an ellipsis there in the quote—that we don't collect today, that we have no reason to collect today, and we will be collecting it. That is what he is reported to have said.

I understand what the Attorney has said about standardising the periods of data collection, but what Mr Burgess is reported to have said is, in fact, that there is additional data—additional material—that is being required of Telstra and of telecommunications companies, which goes beyond what they are currently collecting. That is why—it is reported—Mr Burgess has said:

'We're not saying, 'give us the money because security is going to be an issue'. There is data required under this new law … that we don't collect today, that we have no reason to collect today, and we will be collecting it.

If the Attorney could assume that that is what has been said, the question is whether he agrees with that particular assumption or not.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:10): Senator Xenophon, I understand your point perfectly, although I should point out to you that the obligation is an obligation to retain, not an obligation to collect. That being said, you rightly say—and it is a point I have acknowledged already in the course of the debate—that there are variable practices across the industry. There are variable practices across the industry in relation to the period of time for which data is retained and the actual nature of the metadata that is retained. I think you are particularly focusing on the second of those two points. The practices do vary, but I am advised that there is nothing in the data set—that is, at the tabled proposed section 187AA—that is not commonly retained across the industry. Individual telecommunications companies and individual internet service providers might have different practices in relation to particular metadata. They may have variable practices in relation to the periods for which they retain that metadata, but the character of the obligation which is standardised and routinised by this bill is to impose as a statutory obligation what is industry practice. I acknowledge that that industry practice is variable, but it is industry practice.

Senator XENOPHON (South Australia) (11:11): I want to conclude this as quickly as I can: last night the Attorney stated, consistent with the statements he made to the ABC: 'So the core provision of this bill is to impose upon telecommunications companies an obligation to retain the metadata that they hitherto had retained anyway for two years. What the bill does, in effect, is freezes the status quo.' Given what is reported to have been said by Mr Burgess,
the Chief information Security Officer of Telstra—that they will actually be having to retain other data which they do not currently retain—does the Attorney concede that there are circumstances when—and it may freeze the status quo in some circumstances; I understand that—there may actually be a requirement on telecommunications companies to retain more data than they currently do? I am asking this on the basis of Mr Burgess's reported remarks.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:13): Well, as I have said to you, Senator Xenophon, I have not read Mr Burgess's remarks. So you may wish to interrogate me about them, but I have nothing to say about them without having read them. That being said, my response to the point you make is, as I said earlier, that this legislation standardises an industry practice. There are, in relation to the retention and metadata, variable practices across industry, both as to the length of time for which data is retained—as I said before, in some cases up to seven years—and as to the particular metadata that is retained, so that there will be some telecommunications companies or internet service providers that retain a particular dataset; there will be others that retain a somewhat differently described dataset. There is a variable practice. The effect of this legislation is to standardise that practice, both as to that which is required to be retained and the length of time for which it is required to be retained. That said, I repeat, Senator Xenophon, that the effect of the legislation is to freeze the status quo. When you standardise something where the practice is variable, obviously, in standardising that practice, there will be required of some companies greater or lesser obligations than they might currently observe. But, as a general proposition, the obligation contained in proposed section 187AA reflects practice across the industry. That is what the legislation requires the relevant members of the industry to observe in respect of their own companies.

Senator XENOPHON (South Australia) (11:15): My background is as a suburban lawyer; I do not think I could ever interrogate the Attorney—ask him some questions maybe, but interrogate him? No. As I understand the answer from the Attorney—and I am sorry if I am being a bit slow on this—that means that there will be some circumstances where there will be an obligation for greater retention of data than some telecommunications companies currently retain in their current practices.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:15): The answer to your question, Senator Xenophon, is yes. Let me give you an example. Let us say that there is a particular ISP, for example, that at the moment has the practice of retaining metadata for 18 months. Obviously the imposition of a two-year standard would mean in that theoretical case that the retention obligation would expand the industry practice in the case of that particular company by six months. But, as I said to you before—and this would be in evidence given to the PJCIS—there are some cases where telephone companies retain metadata for up to seven years and there are some cases in which ISPs retain metadata for up to five years. I refer you to page 120 of the PJCIS report. The obligation in those cases will be reduced significantly by a period of either five or three years. That is the duration of the retention obligation.

As to the substance of the retention obligation, that is to be standardised. It is to be standardised to the table which appears in proposed section 187AA of the bill. Just as with the
duration of the retention of metadata, so with the dataset there will be some ISPs and telephone companies that retain all of that data, some that retain some but not other of that data and some that retain data that is beyond the obligation described in the table. That obligation is also standardised. So the dataset is standardised and the duration is standardised. That will mean in respect of some industry participants a lower obligation. In respect of some industry participants, it may mean a higher obligation. We are trying to capture an industry standard and apply it uniformly across the industry.

Senator LUDLAM (Western Australia) (11:18): Just on this point, I think we may be getting closer to a resolution of the facts. I will just read a brief quote from the communications minister that he put to ABC radio earlier this month. He said:

The only thing the data retention law is requiring is that types of metadata which are currently retained will be retained in the future for at least two years.

That sounds rather harmless, but it is not true. It is actually not the case at all.

Senator Xenophon has read the views of Mr Burgess from Telstra. I have something here that the CEO of the Communications Alliance, Mr John Stanton, put to Computerworld in an interview in December last year. It is worth reading it in full. He said:

The telecom industry "has grown a little weary of hearing this proposal described as a requirement to do no more than service providers do to today … "

"It's in most cases far from that. It is a data creation regime as well as a data retention regime."

"There are elements of the dataset, for example, that require data to be collected and manipulated in ways it's not today. Historical aggregate records of upload and download volumes, for example – I don't know of any provider who manages to put that material today. There's no business requirement for it, and the feedback from some of our members is that will be quite difficult to do."

That was the CEO of the Communications Alliance, representing pretty much the entire Australian telecommunications community.

I draw the minister's attention to his own bill—proposed subsection 187A(6):

To avoid doubt, if information that subsection (1) requires a service provider to keep in relation to a communication is not created by the operation of a relevant service, subsection (1) requires the service provider to use other means to create the information, or a document containing the information.

In black and white, your own bill says to the service providers that, 'If you do not presently keep the material outlined in the table'—and this is the table that we have been discussing in 187AA—'this places an obligation on you to create the information.' It uses the words 'create the information'. That is why I think people are a little sick of hearing this from the communications minister and others. If anything, Attorney-General, you have provided a slightly more nuanced view to us this morning than the communications minister has been providing. Spokespeople have been waving their hands, saying, 'It doesn't require the creation of anything you haven't already been doing.' It is not true. Please stop saying that.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:21): I refer you to what is the principal provision—proposed subsection 187A(1):

A person (a service provider) who operates a service to which this Part applies (a relevant service) must keep, or cause to be kept—
in accordance with proposed section 187BA—
for the period specified in section 187C:

(a) information of a kind—
specified in or under proposed section 187AA—
or

(b) documents containing information of that kind;

relating to any communication carried by means of the service.

That is the primary obligation. That is the key provision of this bill. That is the obligation
confering provision of this bill. What it requires is for data to be kept, not created. You point
to proposed subsection (6) of proposed section 187A, which might perhaps be regarded as an
anti-avoidance provision. But the primary obligation is to keep that which is set out in
proposed section 187AA for the period set out in proposed section 187C—that is, two years—
in accordance with proposed section 187BA, which specifies the manner in which the data is
to be kept.

Senator, if you keep proposed section 187A(1) foremost in your mind, I think you will
understand what the purpose and effect of this bill is. In relation to the question of whether or
not the bill mandates the status quo, it does, because what it mandates is a common industry
standard. I have acknowledged—and it has never been controversial—that there are variable
practices, because this is an industry with a multiplicity of players. I know, Senator Ludlam,
you know this industry well. It has a multiplicity of players with various commercial practices
in relation to both datasets and retention periods. So, of course, when you standardise and
make uniform across an industry so described a single obligation then there are going to be
variances in the way in which individual industry players retain data at the moment and what
they do in compliance with the statutory obligation that will be imposed upon them. But what
it is designed to do is to reflect and make uniform a common industry standard.

Senator LUDLAM (Western Australia) (11:24): To my mind, the Attorney just described
proposed subsection (6) as an anti-avoidance measure. I understand why you are reading the
context of proposed subsection (1), because it identifies the primary obligation of the service
provider. Again, to avoid any ambiguity, proposed subsection (6) says that, if you are not
creating this, then you are going to have to. Maybe we are just dancing around terminology
here. Minister, when you talk about inconsistencies or varying practices within the industry,
what you are really telling us is that some providers—potentially smaller ones—are going to
be forced to keep material they presently do not in order to create the standardised obligation.
I do not think there is any way of avoiding that conclusion, which was why I guess some
people find the member for Wentworth's sweeping statements that carriers will not be forced
to catch and store stuff that they presently do not somewhat irritating. It is simply not
accurate. If you force standardisation across the industry, you will force individual players to
do things and store things that they do not presently do. The reading of the bill is actually
fairly clear in that regard. That process of standardisation and levelling-ups, that everybody is
treating the same kinds of information in the same way, will force some carriers to create
categories of material that they presently do not. I do not propose to detain us too much
longer, because I think the reading of the bill is actually fairly clear.
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:26):
Senator, I do not want to repeat what I said in answer to your previous question or indeed to Senator Xenophon. I think you understand what I am saying to you. But might I make two observations. First of all—and I think you acknowledge this, Senator Ludlam—the primary obligation is in proposed subsection (1). Proposed subsection (6) is inserted into the bill as an anti-avoidance measure so that, particularly during the implementation phase, an ISP or a telecommunications provider cannot vacate, as it were, the retention of metadata that it currently retains and then say, 'I'm sorry; none of this applies to us.' Proposed subsection (6) is an anti-avoidance measure which, as the opening words of it say, is for the avoidance of doubt. But the primary obligation imposed by this legislation is the obligation imposed by proposed subsection (1).

Secondly, you raise the relevant question of compliance by small ISPs in particular. We acknowledge that there may be particular burdens on small ISPs. That is why there is an 18-month implementation period to give effect to, to enable all players in the telecommunications industry, not just the giants like Telstra, the opportunity to adjust their business model and business practices to be compliant. But also if I may refer you, please, to proposed section 187K in division 3: that provides an exemptions regime—and the example you give, Senator, is a particularly relevant one—so that, in circumstances in which a small ISP may find compliance with the proposed 187A(1) obligation unreasonably burdensome, an exemption can be made for it.

Senator LEYONHJELM (New South Wales) (11:28): Minister, I am going to change the subject for a moment. As you know, I am a libertarian. One of my preoccupations is regulatory overreach, and associated with that is incremental or creeping regulation. What I would like to do is seek your views on clause 187AA(2), which says:

(2) The Minister may, by legislative instrument, make a declaration modifying (including by adding, omitting or substituting) the table in subsection (1), or that table as previously modified …

Yesterday in question time you responded that the heading of an email would not be included in metadata. I have checked on that. Bearing in mind that this legislation will remain on the books long after both of us are in our dotage, what is to prevent you or a subsequent minister from bringing in a legislative instrument, such as that envisaged in clause (2), and adding the heading or, indeed, the content of an email or any other communication of a similar nature?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:30): Senator Leyonhjelm, the answer to your question, if I understand you correctly, is proposed section 187A(4). Although proposed section 187AA(2) gives the minister the power by legislative instrument and subject to the requirement of parliamentary assent within 40 sitting days to modify the description of the dataset in the table subjacent to proposed section 187AA(1), a minister may never, by legislative instrument or any form of delegated legislation, derogate from the statute itself. The fundamental distinction between content and information about a communication, or metadata, is preserved in particular by proposed subsection (4) of proposed section 187A, so that the extension of the reach of the act to content, which is prohibited by that section, would never be derogated from or varied by ministerial declaration.
under proposed section 187AA(2) by an amendment to the dataset, because the description of
dataset is subject to that overarching statutory limitation.

Senator WRIGHT (South Australia) (11:32): I am interested in the confusion that seems
to exist around the term 'content' and the term 'metadata'. I am interested to ask the Attorney-
General whether metatags are included within the type of data that will be required to be
retained under the bill or under regulations in the future.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-
President of the Executive Council, Minister for Arts and Attorney-General) (11:32): Senator
Wright, nothing that is not in the dataset is required to be retained.

Senator WRIGHT (South Australia) (11:32): I am interested to know then whether
metatags are within the dataset?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-
President of the Executive Council, Minister for Arts and Attorney-General) (11:32): Senator
Wright, if you offer me a definition of metatags and what you mean when you use that word, I
will tell you whether they are within or without the table.

Senator WRIGHT (South Australia) (11:32): That really highlights the confusion and the
difficulty of around this. I do not profess to be an expert in this area by any means, but I am
guided by concerns that have been raised by people who have a lot more knowledge about it
than I. I am going back to concerns that were articulated when this bill was considered by the
Parliamentary Joint Committee on Human Rights. Among other things, this legislation
engages the right of privacy, and the committee's 20th report actually states that the
committee acknowledges the desirability of having a definition of 'content' which would
therefore be excluded from the requirement for retention but is capable of keeping pace with
technological changes. The committee expressed concern that without a clear
definition of 'content' there is the potential that what constitutes content could be interpreted restrictively so
that the scope of data to be retained is broader than what is required to achieve the
government's stated objective. In other words, the scope of the dataset to be retained may be
disproportionate to the objective which is to be achieved.

The reason I have raised the issue of metatags is that the committee noted that the bill
could potentially see data retained that does actually include aspects of content. The example
given was the idea of metatags, which are used by website developers to provide search
engines with information about their sites and may contain significant information about a
website, including aspects of its content. However, it is unclear whether it is intended that
metatags will be prescribed in the regulations as data to be retained for the purposes of the
scheme. I think it is a fair question to ask the Attorney-General whether or not metatags will
be prescribed in the regulations as data to be retained for the purposes of the scheme.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-
President of the Executive Council, Minister for Arts and Attorney-General) (11:35): Senator,
with respect, just because you are confused does not mean that there is confusion
about the bill; it means that you are confused about the bill. So let me respond to you. We
know, of course, Senator, there is a lot of jargon that is used in discussion in this area of
policy. Now that you have given me the definition that you are attribute to the word 'metatag',
I can answer your question. No: anything that reveals content is explicitly excluded, even if it

CHAMBER
be material that contains what would otherwise be metadata—that is, that would otherwise fall within one of the six categories described in the table to proposed section 187 AA. If it also reveals content, then it is beyond the scope of the bill.

Senator Wright (South Australia) (11:36): First of all, I suspect you were not listening particularly carefully to my question, because I actually introduced it by indicating that it was not I who was confused; rather it was a view that was represented by a committee of this parliament, comprised of members of both Houses and which is also reflecting discussion in the broader Australian community. You may wish to suggest that this is just one individual of 23 million people who is a bit confused but I do not think that accurately characterises the concerns here. I am going to leave that somewhat belittling response aside. I am not an expert in this area and I do not profess to be. But, in a sense, I am not the proponent of this legislation either. 'Metatag' is clearly a term that is used by website developers; I would presume it is a term that is recognised and used, which is why I think it is being referred to here. Is it a term that you have ever heard of before? Do you accept or understand that this is a term that is generally used to describe something that is used by website developers to provide search engines with information about their sites? I am sure there are people out there who would be interested to know whether or not you accept that this is actually a term that is generally used.

Senator Brandis (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:37): I have heard the term before, but I caution against diverting this debate into an argument about the meaning of technical language, much of which is jargonistic. The very reason the bill has been drafted in the way it has, with a broad definition of content and with a broad intendment of content and very specific descriptions of metadata, is to say the obligation only attaches to that which falls within one of the six categories in the table. And it does not attach to content. If, for example, something contained both content and metadata and the two were unable to be separated, the obligation in the bill does not apply to it. That is the very point of not defining content by category but defining metadata by category; so that the words in clause 187A(4) are generic.

Let me read them to you:

This section does not require a service provider to keep or to cause to be kept information that is the contents or substance of a communication.

Then there is a note:

This paragraph puts beyond doubt that service providers are not required to keep information about telecommunications content, or (b) information that (i) states an address to which that communication was sent on the internet from a telecommunications device using an internet access service provided by the service provider and (ii) was obtained by the service provider only as a result of providing the service.

There is another note:

This paragraph puts beyond doubt that service providers are not required to keep information about subscribers' web browsing history.

Then it goes on through three more specific provisions that are designed to put beyond doubt the extensiveness of the concept of content.
That is the exclusion. All content is excluded. Metadata, if it answers the description of one of the six categories in the table, is included. But because the overall provision is to exclude content, if there were a situation in which metadata answering a description of the table were so co-mingled with content that the two could not be separated, the governing provision is—you are a lawyer, Senator; you know this—that a general overarching prohibition will govern in a situation like this. The general governing provision against the disclosure of content or not mandating the retention of content would be the operative provision.

**Senator WRIGHT** (South Australia) (11:41): I think it is because I am a lawyer that I inherently seek certainty and clarity around these issues. I would like then to confirm what I think I just heard you say, Attorney-General—that is, the six examples in the table under 187AA are exclusive definitions of what may be retained. My reading of that section is that, under subclause 1, the following table sets out the kinds of information that a service provider must keep or cause to be kept, in which case it would suggest that they were examples but not exclusive examples. It is the very fact that there is not a prescription that is causing concern. Can you please confirm that these six items in the table are the exclusive requirement as to what is to be retained.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:42): Yes, I can confirm that, Senator. I have been trying to convey that to you and your colleagues for some little while now in this debate. The retention obligation is imposed by clause 187A(1):

A person (a *service provider*) who operates a service to which this Part applies (a *relevant service*) must keep, or cause to be kept, in accordance with section 187BA and for the period specified in section 187C:

(a) information of a kind specified in or under section 187AA; or

(b) documents containing information of that kind; relating to any communication carried by means of the service.

So by the obligation creating provision of this bill—that is, the proposed section of the act—clause 187A(1) specifically limits the retention obligation to that which is specified in clause 177AA—that is, that which is specified in the table. I think therefore, Senator, with respect, you incorrectly use the word 'example'. These are not examples; these are the six categories of information to which the retention obligation created by clause 187A(1) attaches.

**Senator WRIGHT** (South Australia) (11:44): In that case it is somewhat mystifying to me, I suppose, as to why the wording in subclause 1 is that it is the kinds of information that a service provider must keep or cause to be kept. It is not written in the way that one would normally expect to see an exclusive definition written.

However, I am also seeking to clarify what I think you said earlier. I want to be really sure that I understand this. You are saying that if there is any other data that is outside those descriptions in the table that could potentially involve something that could be seen as being associated with content, there will be no requirement to retain that.

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:45): No. I am going to have another go at this, Senator, so you are no longer mystified. Content is not the subject of a retention obligation. That much is clear from clause 187A(4). The only thing
that is subject to a retention obligation is information of a kind specified in or under clause
187AA, or documents containing information of that kind. Those which are required to be
kept under clause 187AA are the six categories of information, which we have been referring
to generically in this debate as 'metadata', set out in the table—and that is it. Unless there were
to be a ministerial declaration—which, of course could not contradict clause 187A(4)—of
additional categories, the retention obligation is limited only to that which is set out in the
table in clause 187AA(1). That obligation is further limited by the exclusion in clause
187A(4) so that if it reveals content it is not subject to the retention obligation, either.

Senator LEYONHJELM (New South Wales) (11:47): I would like to follow up on that.
Clause 187A(4) does say:

This section does not require a service provider to keep, or cause to be kept:

(a) information that is the contents or substance of a communication …

I would like you, please, to clarify this. In the case of an email where the subject of the email
is contained in the heading, is that equivalent to content or substance? In the case of an email
where there is nothing in the heading, does the heading comprise the data to be retained? In
other words, in what situations might an email be considered not content or substance?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-
President of the Executive Council, Minister for Arts and Attorney-General) (11:48): The
answer to your first question is: no. The heading of an email is content, and therefore it is
within the exclusion.

Senator Ludlam: Under all circumstances?

Senator BRANDIS: Under all circumstances. Let me say that again. The heading of an
email is content and is therefore subject to the exclusion in all circumstances. I must confess,
Senator Leyonhjelm, that I did not understand your second question. You seem to be positing
a situation in which there was no content line in the email. If there is no content line in the
email then there is nothing that can be either within or without the exclusion: there is nothing
there.

Senator LUDLAM (Western Australia) (11:48): I just have one or two questions to
follow up and then I am happy to commit this amendment; I am happy to move on through
the running sheet. Attorney, perhaps you could explain to us why you think it is necessary to
have potentially six or eight months delay between deciding to add a new service provider or
a new content of metadata to be captured. This extraordinary de-

lay—40 sitting days—could, I
think you would agree, go for seven or eight months, depending on the sitting schedule at the
time.

We both accept the fact—I am not going to offer any contention—that technology changes
and there will be new services designed and new categories of material. You see those
coming. You have it identified that it needs to be brought into the scope of the bill. You bring
forward a relatively uncontroversial amendment and then the parliament signs it off. Why this
extraordinary eight months delay? Why has this been crafted in the bill as, effectively, an
executive decision which the parliament is to catch up with months later. Why not do it using
the ordinary legislative process?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-
President of the Executive Council, Minister for Arts and Attorney-General) (11:50): I should
say that the selection of 40 sitting days was not mine. It was the recommendation of the PJCIS. So, in order to meet the concerns of those who were worried about the possibility of an arbitrary regulation-making power not being supported by legislation the government adopted the PJCIS recommendation.

I do not sit on the PJCIS, of course. They arrived at the 40 sitting-day standard or time frame. Had I been a member of the PJCIS would I have adopted 40 days, 30 days, 20 days or 50 days? I do not know. But in a spirit of comity the government decided to adopt the unanimous view of the PJCIS that 40 days was the appropriate period.

By the way, Senator Ludlam, do not disregard how unusual this is in terms of additional protections. Ordinarily, of course, where a regulation-making power is conferred there is no obligation to support that regulation by the introduction of legislation, at all. The regulation is, of course, subject to the disallowance powers of either house of the parliament but in an ordinary case a regulation is not required to be supported by legislation, at all. So this is, if you like, an additional safeguard measure to lend consistency to the government's decision to locate the descriptions of the metadata required to be retained within the act rather than in regulations.

I think you can see the point, Senator, that it would be very odd—having decided to put the descriptions of the information, the subject of the retention obligation, into the act itself—then to allow that to be avoided by allowing the minister to use a regulation-making power to add new categories, which is why we have said these have to be legislated for as well.

As to 40 sitting days, it does not strike me as an obviously unreasonable length of time; nevertheless, that is what the PJCIS, in its wisdom, decided to recommend and the government—eager to oblige the critics of this bill—adopted all of the PJCIS's recommendations, including that one.

Senator JACINTA COLLINS (Victoria) (11:52): As we seem to be moving towards the first set of amendments, I might indicate the Labor position on this matter. These amendments would remove the capacity to modify the dataset by regulation. Presently, the bill allows for such modifications on a temporary basis. As we have been discussing, regulations altering the dataset will cease to have effect after the 40 sitting days. Any permanent alteration must be achieved by amendment of the act, and the bill requires that any such amendment goes first to the PJCIS for review.

I note that those arrangements are the result of the committee's report and were insisted upon by Labor. The government's original bill allowed the entire dataset to be determined by regulation. Labor agrees that as much as possible the detail of the scheme should be set out in the primary legislation. We think this has been achieved and therefore we will be opposing these amendments.

Senator LUDLAM (Western Australia) (11:54): That is an immense surprise. Just to be clear, the effect of this amendment is that the ordinary legislative powers of the Senate would be restored if the government of the day decided it wanted to widen the scope of the bill and require more data to be captured. This is material that could not necessarily be conceived of at the moment. I have no argument about the fact that this is likely to happen. Scope creep is built into the DNA of the bill. Where I disagree is that it should not be a regulation-making power. The government should be able to make its case and state it plainly to this parliament.
so that the parliament can then widen the scope. I do not see the necessity for doing things as backward as an executive decision being made and then leaving it to the PJCIS to work out whether it is a good idea and the parliament to ratify or not six to eight months down the track.

This amendment removes the ability of the Attorney-General of the day to arbitrarily increase the scope of the scheme through regulation. I have made my reasons for wanting to do that very clear. I would put one final question to the Attorney before we commit this one to the vote, unless other senators have questions. Recommendation 3 of the Parliamentary Joint Committee on Intelligence and Security said:

To provide for emergency circumstances, the Committee recommends that the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 be amended so that the Attorney-General can declare items for inclusion in the data set under the following conditions:

It then steps through them; effectively, you have enacted those with reasonable fidelity.

We do not have any kind of description at all as to what the emergency circumstances are. I am interested to know. Emergency implies the necessity of a fairly rapid decision. Since it does not appear to be in the bill, what definition will the government be adopting in its definition of 'emergency'? That is very different from the set-up you described before, which is the introduction of new services or the gradual evolution of technology. That is not an emergency, that is what we expect. What does the government believe will be an emergency that would require this kind of executive decision making rather than the ordinary legislative processes of this parliament?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (11:56): I am not the author of those words. The authors of those words are the PJCIS. I think I understand the purpose or motive of those who made the recommendations—that is, to allow for a regulation-making power in circumstances where the development of technology means that the efficacy of the data-retention regime would be compromised were the ordinary parliamentary processes to be observed. That is why the bill has been drafted in this manner.

It is a provision that will operate in unusual circumstances. 'Emergency circumstances' is not a lawyer's term of art. Senator Wright, your colleague is always urging further definitions. At the end of the day, we are all limited by the English language and we cannot pursue an infinite regression through the thesaurus. Where words have a reasonably commonly understood English-language meaning, in my view, we ought to leave it at that. Where they are technical terms, perhaps they can be understood by reference to the technical language of their particular discipline. Emergency circumstances is a flexible concept but the mischief it seeks to address is circumstances where a development might occur so rapidly that it derogates from the efficacy of the regime.

Senator LUDLAM (Western Australia) (11:58): What the PJCIS specifically recommended what was that this power be made available to the government, to the Attorney-General of the day, 'to provide for emergency circumstances'. The drafting that has emerged, that has been incorporated into your bill—that you are presenting and speaking for today—has no emergency circumstances provided for. The power to add data to the dataset, by these unilateral declarations, is not limited by any circumstances, emergency or otherwise. It is completely open.
The Attorney brought forward examples of new services being developed and new kinds of devices creating new kinds of data. That is not an emergency. That is the distinction I am drawing. There is no constraint on the power of the government of the day, for any reason that it feels fit—justified or unjustified—to demand that service providers begin capturing more material. That is the point I am trying to make. I do not know whether the Attorney wants to address that comment—otherwise, I am happy to commit these amendments now to the chamber. They are amendments (1) and (4) on sheet 7669 which would remove that arbitrary decision-making power and would restore the ordinary processes that this parliament is used to following.

The CHAIRMAN: The question is that the amendments moved by Senator Ludlam be agreed to.

The committee divided. [12:04]

(The Chairman—Senator Marshall)

Ayes ......................14
Noes ......................33
Majority.................19

AYES

Di Natale, R
Lambie, J
Ludlam, S
Muir, R
Rice, J
Waters, LJ
Wright, PL

Hanson-Young, SC
Leyonhjelm, DE
Milne, C
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

NOES

Back, CJ
Bullock, J.W.
Cameron, DN
Dastyari, S
Fawcett, DJ
Fifield, MP
Heffernan, W
Lindes, S
Macdonald, ID
Marshall, GM
McKenzie, B
Moore, CM
O'Sullivan, B
Ruston, A
Sinodinos, A
Urquhart, AE (teller)
Williams, JR

Brandis, GH
Bushby, DC
Canavan, M.J.
Edwards, S
Ferravanti-Wells, C
Gallacher, AM
Ketter, CR
Ludwig, JW
Madigan, JJ
McGrath, J
McLucas, J
O'Neill, DM
Polley, H
Singh, LM
Sterle, G
Wang, Z

Question negatived.
Senator LEYONHJELM (New South Wales) (12:06): Chairman, can you advise: should I present my amendments (1) and (4) on sheet 7661 or withdraw them, since they were a duplication of those?

The CHAIRMAN: We probably would do neither. Those amendments were identical to the amendments that were just voted down, so we simply will not proceed with them, Senator Leyonhjelm. Thank you.

Senator LUDLAM (Western Australia) (12:07): by leave—I move amendments (1) to (4) on sheet 7692:

1. Schedule 1, item 1, page 4 (line 16 and 17), omit "40 sitting days", substitute "4 sitting days".
2. Schedule 1, item 1, page 8 (lines 8 and 9), omit "40 sittings days", substitute "4 sitting days".
3. Schedule 2, item 3, page 59 (lines 11 and 12), omit "40 sitting days", substitute "4 sitting days".
4. Schedule 2, item 4, page 61 (lines 29 and 30), omit "40 sitting days", substitute "4 sitting days".

These amendments obviously relate to the matters we have been discussing so far this morning. They go to the fact that the amendment that the parliament just unfortunately disposed of means that the Attorney-General can still make rather arbitrary decisions to attach new categories of metadata to the bill and refer the matter to the PJCIS, and then has to return to parliament within 40 days for ratification of this executive decision. What happens—it could be six or eight months or more after the Attorney's decision is first made depending on the time of year and the sitting schedule—if parliament does not ratify the decision? What would the obligation be? Presumably that lays a fairly heavy obligation on service providers in the meantime—money would need to be spent; systems would need to be set up depending on the volume of material that would need to be collected. What happens to that material if parliament does not ratify the decision? We will just have to take it as read that the money is wasted. Would there be an obligation on service providers to destroy the material they had collected between that executive decision being made and the parliament knocking it back?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:09): Senator Ludlam, you seem to be arguing the opposite proposition from the one you are arguing immediately before the division. Now you are suggesting that service providers might want to retain data that is not the subject of a retention obligation, whereas before, as I understood you, you are saying that service providers are being subject to an unwelcome cost of requiring them to retain data that they would not wish to provide. The fact is that the provisions in section 187A(2) and following set out certain conditions which must be observed in order to bring any potential new dataset within the reach of the obligation of this section 187A(1). If those conditions are not satisfied that the retention obligation is no longer extant and therefore the requirement of section 187A(1) would no longer apply. You make a point about costs having been incurred—I suppose that is at least theoretically possible but, senator, you seem to be assuming, and you take a somewhat paranoid view, if I may say so, sometimes about what government might do, but if the government were of the view, whether it be a Labor government or a Liberal government or who was, at the description of the dataset in the table in section 187A(1) needed to be enhanced, it is hardly likely that it would avoid cooperating with industry. As I said at an earlier stage in the debate, collaboration and cooperation with industry—is to establish an industry-based scheme—is integral to the operationalisation of this legislation. Secondly, nor is it likely that the government would seek to delay until the
last possible statutorily permissible moment the introduction of legislation to give effect to the declaration. You pointed out before that the PJCIS make these recommendations to deal with emergency circumstances. In emergency circumstances the minister may make a declaration. In my case, if I were the Attorney-General, having made such a declaration he or she would want to go to the parliament as soon as possible.

Senator JACINTA COLLINS (Victoria) (12:12): Labor will be opposing these amendments. The committee process of the PJCIS lasted some months, heard extensive evidence and involve significant negotiation amongst committee members. Labor is satisfied that the 40-day period proposed by the committee is appropriate.

Senator LUDLAM (Western Australia) (12:12): I have a few other ‘paranoid’ questions to put to our Attorney-General. I will try to restate my question, because I do not think he understood where I was coming from. If the Attorney-General decides for whatever reason, good or bad, that new categories of material need to be collected and added to the table we were discussing earlier, the PJCIS agrees, at some point between that decision being made and parliament signing off presumably there will be an obligation on industry to start collecting it, particularly if it is a genuine emergency. If parliament knocks it back, what happens to the material that has been collected in the interim? Is there anything in the bill that creates an obligation to destroy it, is it stranded? What happens to it?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:13): There is no actual destruction obligation. This whole debate has proceeded against the background of protests on behalf or the critics of this legislation that industry does not want to retain this data for so long. It is hardly likely, it said to me, that those who do not want to retain the data for the statutory minimum period are going to be wanting to retain data that is no longer the subject of a retention obligation. For that reason, by the way, this bill does not contain a destruction obligation when whatever is the relevant period expires, whether it be the two-year period or on the scenario that you have posited in your question, in the event of the parliament after 40 sitting days not upholding a ministerial legislative instrument. As I am reminded, the privacy act would apply to such data in the unlikely event that a Telco or ISP which was affected by it were to retain that data.

Senator LUDLAM (Western Australia) (12:14): Just to be very clear, before we commit these amendments—unless others have matters that they want to raise—this goes a little further through the running sheet than we have been discussing thus far in that, for anywhere in the bill where the Attorney-General is given that discretion of 40 sitting days and the first amendment having been disposed of, our fallback position, if you like, is to collapse that process from 40 sitting days to four. If it is an emergency or something that anyone could have seen coming, such as a new service being introduced and a bit more routine than an emergency—whatever that might mean—I see absolutely no reason at all why the government of the day and the executive of the day should be given 40 sitting days. That seems immensely leisurely. The Attorney has just assured us that he cannot think of a reason why government would leave it so long. I would actually take him on his word at that.

This amendment in terms of declared information, declared services, declared criminal law enforcement agencies and declared enforcement agencies are issues that we have not really
traversed yet. Anywhere where this 40 sitting day extended period of time is found in the bill would be reduced to four sitting days also known as one sitting week.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:16): I do not want to be tedious but I think I have addressed that—so perhaps it is not me being tedious. Let me respond again: this was a period that was selected by the PJCIS, and we have adopted their recommendations. You say 40 sitting days seems a leisurely period. I acknowledge your view but I do make the point, as I made in answer to your previous question, that I would not expect any sensible Attorney-General to want to delay it that long.

As for the proposal in this amendment that it be truncated to four sitting days, that is unrealistic. It is quite a process to get legislation onto the parliamentary program: all ministers have to go through the processes of the parliamentary business committee presided over in Star Wars-like fashion by my friend Mr Pyne, the member for Sturt. The competition to get business onto the legislative agenda through the parliamentary business committee for any government for bids to be approved with the limited number of sitting days and indeed sitting hours available is quite an exhaustive process. The suggestion that a bill could be brought on in four sitting days is, frankly, unrealistic, Senator.

Senator LUDLAM (Western Australia) (12:17): Senator Brandis, I think that may be the first time in 6½ years you actually made me laugh. I will commend these amendments to the chamber, unless others have comments.

The CHAIRMAN: The question is that amendments (1) to (4) on sheet 7692 be agreed to. Question negatived.

Senator LEYONHJELM (New South Wales) (12:18): by leave—I move amendments (2) and (3) on sheet 7661:

(2) Schedule 1, item 1, page 4 (line 3), omit "1992); or", substitute "1992); and".
(3) Schedule 1, item 1, page 4 (lines 4 and 5), omit subparagraph 187A(3)(b)(iii).

These are simple amendments. Amendment (2) confines the definition of services to those already in the bill and does not allow them to be added to except by legislation. Amendment (3) prevents further services being simply declared. They have to be enacted, requiring the act to be amended.

Senator LUDLAM (Western Australia) (12:19): I will just indicate that the Australian Greens will be supporting these amendments. They are substantially similar—maybe even identical—to amendments that we have further down the running sheet. We would also in one of my forthcoming amendments—which I could maybe just speak to really briefly now—propose that, similarly, to the way we wanted to handle the definition of metadata and the definition of information that is caught within the scope of the bill, we fundamentally disagree with this process of doing it by regulation, this very long tail of time for the PJCIS to make up its mind followed by eventual parliamentary ratification.

In the event that these amendments of Senator Leyonhjelm's fail—and you never know your luck in a big city—and Senator Leyonhjelm has indicated constraining the definitions then we would be proposing that, in the instance that the government wanted to expand the service providers caught by the bill, it would do what governments normally do and bring
such a decision to parliament. We would be supporting these amendments, and I am just foreshadowing that we have some similar to come.

**The CHAIRMAN:** The question is that amendments (2) and (3) on sheet 7661 be agreed to.

Question negatived.

**The CHAIRMAN:** Senator Ludlam, that would also dispose of your amendments (2) and (3) on sheet 7669.

**Senator LUDLAM** (Western Australia) (12:20): Those amendments took a long time to draft. I would just like to put a very quick question to the Attorney before we move through: what criteria will the government apply for adding a service provider to the scope of the bill?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:21): The criteria are not specifically set out in the act, but you may be confident that the approach that I would take—and I would expect any rational minister to take whether from the coalition or the Labor Party for that matter—would be to include categories which are similar in effect to the categories set out in the table. Senator, may I say that I am well aware of the sophistication of your knowledge of this area and I take encouragement from your observation that one thing that ought to guide us in approaching this issue is an appreciation that technology will evolve—I think you acknowledge that it might evolve quite rapidly. As technology evolves then information of a similar kind, but retained or embodied on a different platform or medium from that envisaged by the six categories of descriptions in the table, is likely to emerge. If it does then we would make—by analogy, if you like—the natural logical extensions to the six categories in the table.

**Senator JACINTA COLLINS** (Victoria) (12:22): Whilst we are on this point, I should indicate that while Labor agrees that, as much as possible, the detail of the scheme should be set out in the primary legislation, we think that that has already been achieved in what is proposed in the bill as amended in the House. We do understand that some flexibility is required and that the bill reflects that. Senator Brandis referred to issues around emerging technology, but I should also highlight that this arrangement is subject to the 40 days that we were previously discussing.

**Senator LUDLAM** (Western Australia) (12:23): I am honestly not sure why the Labor Party even turned up to work today. I am going to stand down amendments (2) and (3) because I think identical amendments have already been dealt with by Senator Leyonhjelm, so I will not be proceeding with those.

**The CHAIRMAN:** Yes, I helped you dispose of those earlier.

**Senator LUDLAM:** But what I would point out, and it is the reason why we have paused here to make these points, is that you have quite conceivably, presumably unintentionally, could have companies arbitrarily brought into the ambit of this legislation by an Attorney-General of the day. I am sure it would not be one as august as Senator Brandis. Maybe 'Attorney-General Cory Bernardi', for example, in some future government, would decide to bring a whole new sector or new platform of industry within the scope of the data retention act, as it will be, whatever the view of the PJCIS. That would then get committed to parliament seven or eight months later, and the parliament may disagree, but you would have
had platforms, industries or companies arbitrarily brought within the ambit of an act that imposes quite stringent collection requirements on them that are potentially quite expensive only to be told eight months down the track that, 'No, we got it wrong; the parliament disagrees.'

That is why we have paused here. This eight- or nine-month lag seems to me totally unseemly both in the case of an emergency that you did not see coming, where you would need to move very rapidly, and also in the case of gradual technological evolution, where you could simply make the case and then legislate rather than having this arbitrary decision by executive fiat that then either gets backed up and endorsed by parliament months and months later or not. Anyway, I think I have made my point.

I move Australian Greens amendment (5) on sheet 7669:

(5) Schedule 1, item 1, page 10 (lines 16 to 34), omit subsections 187C(1) and (2), substitute:

1 The period for which a service provider must keep, or cause to be kept, information or a document under section 187A is the period:

(a) starting when the information or document came into existence; and

(b) ending 3 months after it came into existence.

I foreshadow that what we are going to propose to do later in the running order is contract the two-year data retention period, for which no case has been made. It seems to me that where the two-year period came from is somewhat lost in the mists of time. I think, Senator Brandis, this came up briefly last night, and you observed that it fell out of the PJCIS or out of the agencies themselves. It is shorter than five years and it is longer than 12 months, and that is where we have landed. To me, that is not particularly satisfactory. The Australian Greens will be seeking to contract that two-year obligation period to three months, partly in order to reduce costs and also the potentially invasive nature of holding on to this material for such a long period of time.

I am foreshadowing that because our amendment (5) removes the requirement that data be kept for at least two years after the closure of a customer account. I would be keen to hear the government's account or reasoning as to why data should be kept for that long after the closure of account, because that could effectively mandate material be hanging around for four years. For example, if I generate particular contact records, location records or whatever—there are masses of material that is going to be created—and then, two years after creating that record, I close my account, the government proposes that it should be retained for another 48 months. There is no real justification for that, as far as I am concerned. It is entirely possible that data could be kept way beyond two years. Many service providers leave customer accounts open even if the customer is not explicitly using them. That is no fault of the service provider; you could cease using a service, and you are not under any obligation to tell the service provider that you have done so. That, again, creates this very long tail of material hanging around, certainly for much longer periods than two years.

This amendment is reasonably simple. It provides that the period for which the service provider has to keep information is the period starting when the information or document came into existence and ending three months after it came into existence. What that would effectively do is bring it into consistency with the amendment, which I foreshadowed earlier, to contract that two-year period down to three months. This amendment, coming slightly out
of order, I guess, would provide that that be the case, even if it is an account that is closed and is no longer active.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:28): This is a very important question—that is, the length or the duration of the mandatory data retention regime. It is probably instructive to take you through the history of it. The two-year period had its genesis in the first PJCIS inquiry—that is, the inquiry that reported in May 2013. Because I was a member of the PJCIS during the last parliament and participated in the discussion, I can tell you about it. It found form in recommendation 42 of the original PJCIS report. The sixth dot point of recommendation 42 states:

- save for existing provisions enabling agencies to retain data for a longer period of time, data retained under a new regime should be for no more than two years;

When the legislation was prepared, the two-year period that had been envisaged by the original PJCIS inquiry was adopted. When this legislation was reviewed by the more recent PJCIS inquiry, which reported on 27 February this year, the committee expressed the view in paragraph 4.120:

... the Committee accepts the unequivocal evidence of the national security and law enforcement agencies, which is supported by the international evidence, that a retention period of up to two years is necessary and proportionate for a range of investigations into particularly serious types of criminal and security-relevant activity.

You use the adjective 'arbitrary' as a pejorative, but any time period is arbitrary in the sense that it identifies a particular span of time, whether it is five years, two years or your three months. It is really a question of judgement, and that judgement has to be informed by the best advice of the national security and law enforcement agencies. Let us come back to first principles. The purpose of this legislation is to assist national security and law enforcement agencies in carrying out investigations, in particular in carrying out investigations which establish and identify networks of individual actors.

I remember from the first PJCIS inquiry we had quite a long discussion about what the appropriate period should be. We looked at various international precedents. I cannot call them all to mind at the moment, but in some countries it was more and in some countries it was less. About two years seemed to us to be around the international standard. We asked the national security agencies—I think it might have been a closed session, so I had better be careful in what I say—and I remember the then director-general of ASIO saying that he would prefer a much longer period, because retained metadata is obviously going to have potentially a utility beyond two years, but equally, as a matter of common sense, it is going to be a diminishing marginal utility across time.

The evidence that the PJCIS received was that within two years the overwhelming number of investigations which would seek to have access to metadata will have either been completed or run their course to the stage at which access to the metadata will have been had. This does not exclude the possibility that, for example, information is received by the agencies quite some time after a particular episode or event of concern is the subject of an investigation. It may be that more than two years has expired and the metadata is gone before the agencies appreciate, in the course of an investigation which has commenced well beyond the occurrence of the relevant events, that it might have been useful for them to access
metadata. This is admittedly and advertently a limitation on what the agencies in their perfect world would have wanted, which is a longer retention period. Equally, from a practical point of view, we do not consider it appropriate to impose an unlimited obligation or an unreasonably long retention obligation on the industry.

Having looked at a lot of data and received a lot of evidence, as referred to in the first PJCIS report, by the way, from the agencies, particularly the Australian Federal Police, about the usual lifespan of an investigation of the kind with which we were concerned—counterterrorism, transnational and organised crime, and paedophilia—the Australian Federal Police and the other agencies were able to say to us, 'We think that if we had a two-year retention period that would satisfy us in almost all cases, but shorter than that we think from an investigative capability point of view we would run into problems.' So it was not an arbitrary decision; it was a decision informed by the experience and specialist opinion of those who need to access this data for the investigative purpose for which it is retained.

I can assure you, Senator Ludlam, that on the basis of the evidence that I heard at those hearings and the long discussions we had about this very point the idea of three months is ridiculously short. When you consider that we are dealing with complex crime—counterterrorism, transnational and organised crime, and paedophilia—if you think that investigations of that kind can be carried to fruition within a period of three months of first notification to the authorities you are kidding yourself.

Senator LEYONHJELM (New South Wales) (12:35): Mr Chairman, can you assist me: have we formally moved Australian Greens amendment (5) on sheet 7669?

The CHAIRMAN: Yes, it is formally on the table now.

Senator LEYONHJELM: I am speaking in support of it. It is substantively the same as my own amendments (5) and (6) on sheet 7661. The rationale behind these amendments is appropriate. To the extent that data retention is used in law enforcement, the vast bulk of access required—I understand that it is at least 70 per cent—is to data that has been retained for three months or less. Retaining data for three months is also consistent with the commercial practices of some ISPs. Their customers reasonably expect their ISP to retain data in order to determine, for example, how they blew their data allowance and how it was used. When such a request comes from the customer it is reasonable; when the demand comes from the government at the taxpayers' expense I consider it to be unreasonable.

I am intrigued by the extent to which the Attorney relies on the advice of law enforcement agencies in relation to why three months is inadequate and two years is appropriate. I have never yet known a law enforcement agency to suggest that a law is too strict, is too stringent or goes too far. In fact, if you asked them, 'Would you like us all to be microchipped so that we can be tracked on a daily basis?', I doubt you would get too many objections. From the point of view as to the appropriateness of a proposal for strengthening the law and making it harder, I hesitate to suggest that they are a very reliable source of advice. The fact is that their use of the data should be the determining factor, and their use of the data shows that three months is an appropriate period. They rarely use it any longer than that.

Senator JACINTA COLLINS (Victoria) (12:37): I would like to indicate that Labor is satisfied that a two-year period is appropriate, for much the same reasons as Senator Brandis outlined. The Parliamentary Joint Committee on Intelligence and Security heard persuasive
evidence to this effect, as it recorded in some detail in its report. This period has not just dropped out of the air, as Senator Ludlam might have been suggesting or characterising from last night’s discussions in this debate. I would also like to note that the retention period is one matter expressly listed by the committee as a topic of the statutory review which this bill provides for. I would also like to address the concern that Senator Ludlam has raised about data perhaps being retained for up to four years. It seems he is misinformed on that point. It is only the subscriber details that will be retained for the further two-year period.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (12:38): Senator Leyonhjelm, I am not aware of the provenance of the statistic you quote—that 70 per cent of investigations are concluded within six months, I think you said. The advice of those who actually do this as specialists in their daily professional lives was that less than two years would compromise a significant number of investigations. My attention has been drawn to a review by the Government of the Netherlands of its data retention regime, which concluded that a six-month retention period was considered unanimously to be too short, particularly so for complex cases. Senator Leyonhjelm, I just want to emphasise this point to you: the law enforcement agencies want this regime established to deal with complex cases—not with mundane or trivial cases, but with complex cases, particularly counter-terrorism, transnational and organised crime, and paedophilia. It is not ordinarily the experience that cases of that complexity—particularly as cases of this kind do often involve actors in multiple jurisdictions—are able to be concluded in so brief a period as six months. That is unrealistic, Senator Leyonhjelm. That was the very firm view of ASIO, of the AFP, and of the state and territory police forces, who came before us. You may say—and you speak from a libertarian perspective—that we should always take with a grain of salt what the policing powers of the state may tell us. Well, up to a point that is true. But I think we should also listen respectfully to the advice of those who have the professional knowledge that, frankly, nobody this chamber has.

The members of the PJCIS, including the Labor members; sober and serious members like Mr Anthony Byrne the then chairman, former Senator Faulkner, and others, considered two years to be not unreasonable. It is consistent with the experience of other jurisdictions. But certainly, the three-month period which you contend for in this amendment—and, by the way, I understand that you have previously said on two occasions that six months was the appropriate period, so you have changed your mind on this—but to suggest that a complex investigation of this kind can be concluded in three months is, frankly, ridiculous.

Senator LUDLAM (Western Australia) (12:41): I understand that we are probably going to adjourn this debate in a couple of minutes, so I will just put a couple of quick remarks on the record.

I think Senator Brandis oversimplifies the way in which this material is used. We have a regime of mandatory data preservation notices in Australia, and we have had this regime for a period of time—so telling the chamber that you have three months to solve your complex crime, or to bust your organised crime network, is actually pretty disingenuous. During that period of three months of data retention—or however long the material is retained; some material lies around for a lot longer than that already—you have the ability to make a case, and either to go and get a warrant for fairly invasive tapping of people’s phones or for various
other forms of intercepts, or you have the ability—if you do not need that level of intrusion—to seek data preservation notices, which is, effectively, targeted data retention. People do not find themselves particularly offended by the concept of data retention for particular suspects or persons of interest. So it is not that we would be demanding that investigative agencies conclude everything within three months, and I think you know that, Senator Brandis. There are plenty of ways in which agencies can go ahead and get the information that they need. You did use a phrase though, Senator Brandis—through you, chair—of diminishing returns, and I acknowledge that that is quite correct. The EU Court of Justice Evaluation report on the Data Retention Directive—that is, the directive that that same court threw out—pointed out that only two per cent of accessed data by law enforcement agencies was over one year old, which I think actually bears out your conclusions about diminishing returns. Goodness knows what it would be for material that was two years old—assumedly practically nothing. The fact that we in Australia do not have actually have statistics such as those is quite instructive. I can quote the statistics from the EU Court of Justice because they bothered to collect the information; the Federal Police do not. In their submission to the PJCIS, the AFP pointed out: … there are a number of reasons that prevent us from actually quantifying the accurately quantifying the age of requests for historical telecommunications data within the current timeframe.

AFP systems are not configured to capture this information, and extraction of this information from historical records would require significant resources to manually review. So I can quote statistics from Europe—because they bothered to collect that material—and give some quantification to Senator Brandis’s quite correct assertion that there would be diminishing returns. But we have no idea what the numbers are for Australia—maybe they are similar, maybe they are not—because we do not bother to collect the information. And that is why some people, including myself—I guess would put myself in this category—have been quite critical of the fact that two years falls out of the air, as a result of conversations behind closed doors in the PJCIS, but we have to take the word of the investigative agencies and the intelligence agencies without the benefit of evidence.

Progress reported.

STATEMENTS BY SENATORS

The ACTING DEPUTY PRESIDENT (Senator Seselja) (12:45): It being 12.45, the Senate will now move to senators’ statements.

New South Wales State Election

Senator WILLIAMS (New South Wales) (12:45): I rise to speak about the important day coming up in New South Wales this Saturday. Of course, it is the state election. The New South Wales people have a simple decision to make: do they re-elect the Liberal-National government of Mike Baird and Troy Grant? I make the point that four years ago when a coalition government was elected to power in New South Wales the state was running at No. 7. What I mean by that is that, of the six states and two territories, it was seventh out of eight on performing economies. It is now No. 1. It has gone from No. 7 to No. 1 in just four years.

The people of New South Wales have an option: re-elect the coalition government led by Premier Mike Baird and Deputy Premier Troy Grant or be fooled by the untruths and scaremongering by the Labor Party and the trade union movement. Even the Labor leading lights of previous years are disgusted with what they are hearing. Who said this? Who said:
lie after desperate lie is being thrown at the public in an attempt to frighten the electorate into rejecting the Baird government's sensible reforms…

Senator O'Sullivan might ask the question: who would have said that? Was it Premier Mike Baird? No, it was not. Was it Deputy Premier Troy Grant? No. It was actually former New South Wales Labor Treasurer Michael Costa! I will repeat what he said: 'Lie after desperate lie is being thrown at the public in an attempt to frighten the electorate into rejecting the Baird government's sensible reforms.' Mr Costa also said the unions have already cost the New South Wales public $10 billion by knifing the power privatisation he and Morris Iemma attempted in 2008.

Here is another quote. Former federal resources Minister Martin Ferguson said recently that the New South Wales trade unions and New South Wales Labor are deliberately misleading the public by telling them the proposed privatisation of the electricity networks will drive up electricity prices. Mr. Ferguson said:

"It's … creating unnecessary fear and trying to scare people into voting for Labor not on merit but on misinformation … In many ways I am ashamed of the Party."

Former state Labor Treasurer Michael Egan said in 1997:

I am pressing on with electricity privatisation because, as I have pointed out on numerous occasions, I think it is the best course for New South Wales … job creation in New South Wales and every community throughout every nook and cranny …

In July 2008, former Labor Premier Barry Unsworth said:

"Transport, health, public security: all these matters are ones which in my view have a greater priority than who delivers electricity through your meter … the problem we have got here is that we've got some Luddites here in NSW that can't comprehend that."

Then we have former Prime Minister Paul Keating backing privatisation, as does former Labor leader Mark Latham. The ACCC, the Productivity Commission and peak business organisations have all called for privatisation.

It is amazing that the Electrical Trade Union is running around the state claiming the sky will fall in if New South Wales power assets are privatised, and yet, when Labor was in power, electricity prices increased by 60 per cent over five years. Sixty per cent over five years is how much electricity prices went up when the Labor government was in power in New South Wales. The Australian newspaper of 11 March reported that Australians who live in states with privatised electricity supplies have faced smaller price rises over the past two decades than their counterparts in other states.

The fact is New South Wales are leasing, not selling. They are not going to privatise the whole network. They are going to lease 49 per cent of the power assets. One thing is that Essential Energy is going to be quarantined from that lease. It will remain in public hands. If you go out to rural and regional New South Wales, Essential Energy is the provider. So I am very pleased that the Nationals have secured the quarantine from that lease of Essential Energy.

Of the $20 billion expected to flow from this leasing, $6 billion will be spent in regional New South Wales. This will be spent on roads and bridges, on health and education, and on helping our regional communities. An example is health. Health has always been a big priority for the Nationals. Nationals members live in rural communities and they do not just
read about problems like the distance to hospitals and medical services; they live in their communities and experience the very same problems.

Look at what the Nationals members in regional New South Wales have delivered. I refer to Kevin Anderson, the member for Tamworth. Kevin fought hard to secure $100 million from the state for the Tamworth Hospital upgrade on top of the federal government's $120 million. The new hospital includes 81 additional treatment spaces, including 32 extra beds. Kevin Anderson also secured $300,000 for the upgrade of the Gunnedah hospital emergency department.

There is great news, also, for people in the Northern Rivers. When the people wanted a champion to take up the fight to have the Lismore Base Hospital upgraded, they turned to the member for Lismore, Mr Thomas George. As a result, a re-elected Nationals team in government will deliver $180 million to finally complete the Lismore Base Hospital. That is a great win for Thomas George in that area. There will be a helipad on top of the main tower, new operating theatres, a maternity suite, a paediatric unit, a medical imaging centre and more beds. The Northern Rivers community is grateful they have a local champion in Thomas George.

The communities of Inverell and Armidale are rejoicing at news delivered to them by the member for Northern Tablelands. In the company of state Nationals leader Troy Grant, local member Adam Marshall announced the Armidale Hospital redevelopment would get $60 million and Inverell District Hospital—Inverell is where I live—would get a $30 million upgrade. For many, many years both communities have been crying out for an upgrade and, again, it has taken a Nationals member to deliver in a New South Wales coalition government.

Just down the road from here in the Monaro electorate, John Barilaro stepped in and got the Cooma dialysis unit up and running and got an upgrade of Cooma District Hospital. When it comes to health, this New South Wales coalition government has spent over $1 billion upgrading hospitals and has outlined plans to spend another $2 billion in the communities I have mentioned, plus in areas such as the Tweed, Mudgee and Coffs Harbour.

Likewise, in relation to roads and bridges, I was in the Upper Hunter recently for the announcement of some excellent road funding. Hopefully this Saturday the member for Upper Hunter, George Souris, will be handing the baton across to Michael Johnsen, the Mayor of Upper Hunter Shire Council.

Four years ago the Nationals announced Resources for Regions, and it was estimated $160 million would be spent in mining-affected communities. In fact, $217 million flowed in, and this program will continue. Resources for Regions is allowing the upgrade of major roads in the Singleton shire, $2 million for an overtaking lane on the New England Highway and $4 million for Muswellbrook Shire Council to upgrade a number of local roads used by mining-related vehicles.

I come back to the record of the Nationals in government in New South Wales: $13 billion for better roads, hospitals and schools; more than 2,000 extra nurses, teachers and police in our communities; 25,000 more jobs in regional New South Wales; and a plan to invest $6 billion into new and improved roads, rail networks, water supplies and hospitals.
The facts can certainly be lost in the hysteria and, as I have said in this chamber before, there should be no mining on prime agricultural land, and the Liverpool Plains is off limits. But we have people like the failed Independent, Peter Draper, who was thrown out by the people at the last election and is attempting get his old job back, running around claiming to be the Messiah when it comes to mining. Mr Draper was in state parliament as the member for Tamworth and did absolutely nothing when Labor handed out licence after licence—he sat there mute.

Before I finish, I want to say thank you and well-served to five retiring Nationals. Firstly, Andrew Stoner steps down after a stellar career serving the people of Oxley since 1999, and having been Leader of the New South Wales Nationals from 2003 to 2014. Andrew will always be remembered as the man who kept the Nationals together during some tough times, when there were plenty who were predicting the demise of the party. He kept the party together, and I wish him and Cathy and family all the best for the future.

Another former party leader, George Souris, also retires on Saturday. George has been the member for Upper Hunter since 1988—that is what you call electorate loyalty. He was state leader from 1999 to 2003 and in his time held a number of ministerial portfolios. I wish Vassy and George all the best as George finally walks out of Macquarie Street.

Bowing out also is the member for Ballina, Don Page, taking a break for the first time since his election to the seat in 1988. Don was also Deputy Leader of the Nationals from 2002 to 2007 and a minister in the current government. My best wishes go to Don and Liz.

My namesake in state parliament, John Williams, lost his seat due to a redistribution. We refer to him as John 'not Wacka' Williams, to distinguish between John and me. John was a great champion of the far western region and flew his aeroplane around so that he could cover the 250,000 square kilometres of the electorate.

To my good friend Jenny Gardner MLC: all the best to you, Jenny, after many years of good service. (Time expired)

**Abbott Government**

**Senator WONG** (South Australia—Leader of the Opposition in the Senate) (12:55): The Abbott government's failings are widely known in the community. There are the broken promises and the cruel cuts to health, pensions, education and superannuation. There is the callous disregard for the welfare of ordinary Australians. Then there is the incompetence and the dysfunction which we see on display so often, including in this chamber. And there is the profound and public disunity in the most senior ranks of the government. Really, never has a government let down so many Australians so quickly after being elected, and on such a comprehensive range of issues.

Today I wish to focus on the Abbott government's contempt for fundamental principles of transparency and accountability in Australia's democratic system. In our system, the government of the day, the ministers and the Prime Minister, are accountable to the Australian people through the parliament. Yet the Abbott government routinely treats this parliament, and this Senate in particular, with contempt. When senators ask questions on behalf of the public in question time, we see ministers stonewalling and blustering. We saw an example of that yesterday with Senator Ronaldson. When senators seek information through questions in writing, we see ministers failing to respond within the time limits set by the Senate. And when
they do finally respond, instead of being honest and clear, we see obfuscation, evasion and sometimes outright deception.

Before the election, Mr Abbott promised to deliver accountable government. He said, 'We will restore accountability and improve transparency measures to be more accountable to you.' He said that government should be 'transparent and open'. These have turned out to be yet more broken promises from a Prime Minister and a government whose list of broken promises continues to grow and grow and grow.

The responsibility of the executive government to the people's elected representatives in parliament is a cornerstone of our system of democracy. In that system, this chamber, this Senate, has a particularly important role to play. In the modern political environment, where the government of the day typically has the numbers in the House of Representatives, the Senate is a critical institution of accountability. Yet the Abbott government acts as if it thinks the Senate should be a rubber stamp for the executive. It is a fundamentally antidemocratic attitude, an attitude which you can see on display from ministers on the other side.

The Senate is one of the most important mechanisms by which the executive government of the day is held accountable. As written in Odgers', the functions of the Senate include:

To probe and check the administration of the laws, to keep itself and the public informed, and to insist on ministerial accountability for the government's administration.

I repeat: 'and to insist on ministerial accountability for the government's administration'. One of the important ways the Senate fulfils this role is through the right of senators to ask ministers questions, whether by way of questions without notice, in question time, and through written questions on notice. Questions on notice are an important vehicle for senators to seek information and to hold ministers accountable. Under the standing orders, ministers are required to answer questions on notice within 30 days. Yet, under this government, long delays in responding to questions have become commonplace and a way of evading scrutiny.

Over the period from November 2013 until the end of 2014, coalition ministers failed to answer an extraordinary 585 questions on notice within the 30-day deadline—that is, 36 per cent of questions asked by senators. The worst offenders when it comes to failing to answer questions have included the Prime Minister himself and the Attorney-General. In the period to the end of 2014, the Prime Minister failed to answer 173 questions on time—around a third or 35 per cent of the questions directed to Mr Abbott. The Attorney-General's figure for the same period was around 30 per cent. The average number of days Senator Brandis took to answer questions on notice in the Attorney-General's portfolio was 86 days.

Across all ministers, there are currently 330 questions from senators which have not been answered, and the majority of these, some 261 of them, the answers are overdue and some are very overdue. Senator Ronaldson seemed miffed yesterday when opposition senators laughed when he said he would take a question on notice. Perhaps it is because he has still not answered questions on notice that he was asked on 30 January 2014.

All too often, when ministers in this place finally deign to answer questions, their answers are not answers at all. A good example is the Prime Minister and his representative in this place. The answers provided, or the non-answers provided, by Senator Abetz on behalf of Mr Abbott are some of the most extraordinary answers to questions I have ever seen. I have asked on a number of occasions the minister to confirm the widely-known fact that the Prime
Minister's chief of staff attends cabinet. I know it, the ministry knows it, the government backbench knows it and anyone who has read a paper in this country in the last 12 months knows it, but the Prime Minister's office refused to allow Senator Abetz to confirm it. We kept getting a refusal to answer that question. What you read in the papers is more informative than the Prime Minister's representative was prepared to provide to the elected representatives in this Senate.

Recently, in answer to question no. 1616, Senator Abetz even refused to disclose whether the Cabinet Secretary attends cabinet—that is, the person who, according to the Cabinet Handbook, 'generally attends all meetings of the Cabinet and the Cabinet committees'.

Consistent with this contemptuous approach to accountability is the government's approach to freedom of information. I have encountered the same stonewalling as other FOI applicants. I do not know if journalists and other applicants share my experience in this, but I would like to know if anybody else has received anonymous correspondence in response to an FOI request from FOI officers in the Prime Minister's department. That is right: the Open Government Unit in the Prime Minister's department corresponds with me anonymously—I do not even get initials! I get an anonymous FOI response to an FOI application. Really, it would be laughable, if it were not so serious. I suppose it is no surprise, when the Public Service Commissioner describes the FOI laws as 'pernicious'.

It is critical that the Public Service and the Parliamentary Service understand the role they play in this accountability. In relation to the latter we have had the regrettable circumstances of the Secretary of the Department of Parliamentary Services providing misleading evidence to a committee of this Senate. There are a number of other examples of poor accountability to which I would make reference, but I will only speak of one. At an additional estimates hearing of the Finance and Public Administration Committee on 23 February, I asked a deputy secretary of the Department of Prime Minister and Cabinet, Ms Kelly, some questions about the appointment of a new secretary. I got answers, but one month later Ms Kelly, the deputy secretary, wrote to the committee saying her evidence was wrong. It took her one month to correct the record, and, even when she corrected the record, she did not provide the correct answer. All I got was a letter saying, 'Oh, my evidence was wrong,' but no answer.

It is not an acceptable standard from the Public Service, and I make it clear that I will not accept it, nor will the Labor Party. I have outlined just some of the examples of the track record of an arrogant and incompetent government, which wants to hide from the public. It is part of a wider pattern of behaviour on the part of this government and ministers, such as the attempts to cut the funding of non-government organisations or the outrageous treatment of the Human Rights Commission by this government. We see it over and over again: the Abbott government's way is intimidation and intolerance, reprisal and vendetta.

I say this to the crossbenchers, to journalists and to members of the public: you do not have to accept this behaviour and these low standards, and you should not. As Leader of the Opposition in this place, I make it very clear, that we do not, and we will not, stand in the face of this conduct and we will be consistent in pursuing not only this government over its broken promises but also the important principle of accountability in this chamber.
Senator MILNE (Tasmania—Leader of the Australian Greens) (13:05): I rise today as budget talks get underway to pose the question: where are we going as a nation? What is the destination for Australia and what is the plan to get there? What are the competing visions for our future as a society and in the world? How is that being underpinned by the budget? The point is: budgets do not exist in a vacuum. They are meant to deliver outcomes. If you do not have a destination, how are you going to get there? If you do not have a plan for where you want to be in 2050 or 2100, how are you ever going to get there? The big problem in Australia, I would argue, in recent years is that there has been far too much of a focus in budgets on buying off the vested interests; keeping others quiet; delivering for certain sections of the community and not for others; and refusing to have a budget which underpins a vision and a practical plan to get there so that the Australian community can make judgements. Instead of that, this year we have a budget which is being judged for a political outcome. Will it be enough to keep the Prime Minister in power? Will it be enough to satisfy the backbench of the Liberal Party on the performance of Joe Hockey?

That is not the way we should be governing the nation. We should have a plan, and the Greens do have a vision and a long-term plan for Australia.

What we recognise here in 2015 is that the two overwhelming trends affecting the world and affecting Australia are global warming and increasing inequality—the gap in income and wealth. These trends have not been just identified by the Greens; they are what the World Economic Forum has identified in its list of top 10 trends for the planet that people need to be thinking about. When I use the term 'global warming' I do so in the broader sense. The World Economic Forum says we are talking about water scarcity, food insecurity. We are talking about loss of biodiversity and species. We are talking about extreme weather events and their impacts on everyone. Global warming is the overwhelming trend but so too is inequality, as it is increasingly apparent that the world's top 10 per cent of people own the overwhelming majority of wealth resources of the planet. That is entirely the wrong way to go.

I put to you today that if you accept, as the Greens do, that the overwhelming trends we have to be responding to are global warming and inequality then the vision is clear. We want a country which links its cities with high-speed rail. We want a country which has modern public transport in its cities. We want electric vehicles; we want cycleways. We want to make sure that the economy is powered by 100 per cent renewable energy as quickly as possible with households with solar PV, with businesses with solar PV, with large-scale utility—whether it is wind energy or wave energy. Our cities are currently becoming increasingly uncompetitive because no government has had a long-term plan to say, 'We want modern metros in Sydney and in Melbourne.' We want to make sure our large centres are linked with efficient rail.

You do not do these things overnight; you have to plan for them. Look at what Spain and China have done with high-speed rail, and Australia is still fiddling around right back at the start of this conversation. Why? Because there is no long-term plan that says that, by a certain date, Sydney and Melbourne will be linked. We will make sure that we have got freight back on the rail. We need to have dates and time frames and then you can invest, budget by budget. The community gets it and understands what it is necessary for.
We want to make sure that our farms are able to produce food and that water is being used in a way which sustains the natural environment and produces food in an age where what is grown in certain places will change because of climate outcomes. We know that south-west Western Australia has dried out in the last 25 years. We know that extreme weather events are moving further south as a result of the climate scenarios coming to pass. We know we are going to see more extreme weather events. There is so much work to be done in retrofitting our buildings, in changing our cities, in anticipating where we are going to see the extreme weather events and how we can adapt to that scenario. These are all job-creating projects.

We need to invest in our education system. We need to make sure that we recognise that the resource of this century is imagination; it is not iron ore or coal. And therefore every child from early childhood right through to university and TAFE and lifelong learning has the capacity to develop to the best of their potential, to get into research and development to deliver the technologies. Look at the way the digital economy is now contributing. If you saw that as a separate part of our economy, it would outdo most industry sectors given what it is contributing to the economic wellbeing in Australia. Yet we are not thinking about where the growth sectors are.

We should be exporting capacity building into Asia. Our intellectual property is something that is valuable here yet all we seem to have with free trade agreements is a lower and lower common denominator. Australia is losing out because there is no recognition that those free trade agreements do not take into account the fact that other countries do not have to meet the environmental standards and the labour standards that we have in this country.

There is so much work to do. We need to get involved in primary health care, being the fundamental of our health system. For a happy society in which people care for each other, you have to have inclusion, you have to have equality and you have to include women and minorities. You have to make sure that this wealth and income gap is reduced. That is why the Greens stand here and say, 'We have to raise the money from those who can afford it.' We need to go out and make sure that the big end of town pays its way, that tax evasion is leapt on, that there are not two laws in this country—one for the wealthy and one for everybody else—which is currently the case. You have people being offered an amnesty to bring their money home from overseas tax havens and the like yet others who are dependent on welfare, for example, might well end up in the criminal justice system, but are not given an amnesty. There is no justice in the way that this is being rolled out at the moment.

In terms of our place in the world, the Greens say Australia needs to be an independent republic. We need to stand on our own in the region. We do not need to follow the United States into every war they take us into, like the current absolute quagmire in Iraq that we are in. Instead we need to be investing in social inclusion in this country. That is why we have put forward in the budget that we want money for a social inclusion centre so that we can start bringing in people and making them feel like they are making a major contribution to the country.

This is the whole framework in which people should look at the budget. We want to say that budgets are not about buying boats, not about shutting up donors or making sure you are going to get donors by pitching something that they particularly want so they make another donation and then you get kept in power, and around and around it goes. I would argue that
the current government is out of touch, is arrogant, is focused entirely on political survival and does not have a vision for the nation.

I would urge that, in the light of this year's budget, if you are serious about addressing global warming and inequality as the overwhelming threats of our time, the budget has to do much more than buy political popularity for a government. It has to do more than go from an emergency to dull and boring. Australia deserves better than dull and boring; Australia deserves a vision.

People need to know when we are going to see, in Australia, public transport systems rolled out in our cities and high-speed rail. When are we going to see climate adaptation occurring across our farmlands? When are we going to see coal mining and coal seam gas stopped? When are we going to see consistency in those programs? If it was up to the Greens there would be a clear plan and a time frame for getting there. That is why we consistently bring that to the budget process. (Time expired)

Royal Commission into Trade Union Governance and Corruption

Senator McGrath (Queensland) (13:15): Today I rise to speak on matters that concern the links between the New South Wales CFMEU and controversial businessman George Alex, and between Mr Alex and two Islamic State terrorists. George Alex is a controversial Sydney businessman and an undischarged bankrupt. Known for his connections with the criminal underworld, he recently pleaded guilty to making threats to kill a woman and her family over a business debt. He is being investigated by the Royal Commission into Trade Union Governance and Corruption.

Khaled Sharrouf is a convicted terrorist who is now fighting with Islamic State in the Middle East. He was jailed for his involvement in plots to blow up the MCG on AFL grand final day in 2005, Sydney's Lucas Heights nuclear reactor, and Crown Casino during grand prix weekend. He was arrested in what was then Australia's largest counter-terrorism operation, and pleaded guilty to possessing goods in preparation for a terrorist act. After serving only four years in jail, in exchange for agreeing to mental health treatment, news reports state that he was picked up and hired as a debt collector for George Alex. The royal commission also heard evidence from Sharrouf's mother-in-law, Karen Nettleton—a bookkeeper for George Alex—that Sharrouf spent a lot of time at Alex's place and that she guessed he was his debt collector.

On 3 November 2014, the ABC's Four Corners program screened its investigative story on the links between Sharrouf and figures in the building industry. It reported that Sharrouf came to the attention of authorities after an alleged extortion threat. It involved a dispute between Tony Di Carlo and Australia's biggest residential builder, Meriton. Di Carlo alleged that Meriton owes him millions of dollars. Four Corners reported a confrontation in which Meriton's employees were approached and threatened. Meriton took the alleged extortion threat to the police. The Four Corners report explains how the dispute escalated and how Sharrouf was involved and became violent and brandished a gun. Soon after, Sharrouf's associate was gunned down at his door. A New South Wales police investigation into these incidents is still underway.

In a highly concerning incident, Sharrouf was again linked with George Alex in 2014, when the ABC reported, on 3 November, that he was taken on a shooting trip along with
another terrorist convicted in the 2005 anti-terror raids, Mohamed Elomar. Alex's lawyers claimed the trip was a pick-me-up for Alex's depression and that the parties 'did very little shooting but had a big barbecue'. But police were reportedly called out after they received a complaint of excessive gunfire, and found Sharrouf with a rifle to his shoulder, pointing straight ahead, and large amounts of ammunition on the ground. He had no gun licence and refused to be interviewed.

The ABC reports that Sharrouf was summoned to the court the following month. But the court never got to hear his case. Within weeks, he and Elomar had eluded authorities and joined Islamic State forces in the Middle East. This man was the infamous father who posed with his seven-year-old son holding the head of a decapitated victim. These matters raise grave concerns about the types of individuals who have been involved in parts of the construction industry.

I also want to raise concerns about the connection between George Alex, whose purported debt collector was this convicted terrorist who is now fighting for Islamic State, and the New South Wales branch of the CFMEU. The royal commission heard evidence that the New South Wales CFMEU has been receiving kickbacks in return for favouring construction firms controlled by, or associated with, Alex. The commission's investigation is ongoing and I would not want to pre-empt its conclusions. However, there is some very important evidence already on the record that is important to identify and consider.

Evidence to the commission shows that companies controlled by, or associated with, George Alex were formed and entered enterprise bargaining agreements with the CFMEU. Some of these went into liquidation with large sums of money owed to their workers. The evidence also shows that at least one senior CFMEU member was violently threatened after raising concerns about links between the union and Alex companies. The submissions from counsel assisting the royal commission, Jeremy Stoljar QC, state that 19-year CFMEU delegate Jose (Mario) Barrios had been subjected to 'utterly inappropriate and disparaging comments' by Brian Parker, New South Wales state secretary of the CFMEU. Although Parker denied it in his evidence, transcripts and recordings showed that he called Barrios a dog, wanted to bash him, and otherwise referred to him abusively. The evidence also showed that Barrios was contacted by Mr Alex, who said he was running out of patience with him, asked where he worked, and closed by saying, 'See you tomorrow.' Mr Barrios reported these matters to the police and they continue to be investigated by the royal commission.

Rather than taking every step to assist with this investigation and indeed pursuing these matters internally as well, the CFMEU destroyed documents and has, whether intentionally or not, obscured the commission's investigation. On 6 September 2014, the Daily Telegraph reported how the royal commission issued a notice for the union to supply it with emails about its relationship with Mr Alex's companies. Weeks later, the union found it had a problem with 'disk space' on union computers, which was preventing emails arriving, and that that would require the union to delete years of emails. In an email to staff, the report states that the branch's general manager Kylie Wray said:

We are just days away from the Royal Commission kicking off and there is a LOT going on, we need everyone to make this a priority please.
She and a team of nine people spent three days deleting emails. Ms Wray said that she had deleted Mr Parker's emails and was positive there was nothing there that would have interested the commission.

The royal commission also found that another senior CFMEU member who raised concerns about links between the union and Mr Alex companies, Brian Fitzpatrick, received death threats in response, from New South Wales branch organiser Darren Greenfield, and was frozen out of the union.

Another witness to the royal commission was too afraid to give evidence about the alleged kickbacks or his associates in the unions. He was forced to explain to Commissioner Heydon that he was being as honest as he could be, given that he had a wife and three children waiting outside for him. These matters are deeply concerning.

The crossovers between two Islamic State terrorists and an underworld figure, and between this figure and the CFMEU, are a reminder of the importance of maintaining a strong cop on the beat in the building and construction industry.

Thalidomide Victims

Senator KETTER (Queensland) (13:22): I was born in the year 1961. If I may be so immodest, my parents were blessed with a healthy baby boy, but across our country and around the world, at the same time, there were many people who were nowhere near as fortunate as me. I rise today to talk about the scourge of thalidomide and to draw attention to the tragic predicament of a small number of thalidomide survivors in Australia.

Thalidomide was introduced to the Australian market in 1957 and prescribed to pregnant women suffering from morning sickness. Thalidomide was invented by a German cosmetics manufacturer that had expanded into pharmaceuticals. The drug was marketed as a sedative for pregnant women and an effective treatment for sleeplessness and nausea. The drug was claimed to be safe and non-toxic. However, its effect on unborn babies was, as we know, devastating. It caused birth defects and dreadful abnormalities.

The most common physical deformities in infants included structural abnormalities of the arms and legs, short or absent limbs, holes in the heart, blocked intestines and/or an absence or duplication of other internal organs. Malformations of the ears were also common, as were a range of eye abnormalities. The drug continues to affect survivors to this day. It was readily available without prescription and, tragically, was often accessed over the counter. It was withdrawn from sale, as many of us know, after Australian obstetrician Dr William McBride, in 1961, and German paediatrician Dr Widukind Lenz linked thalidomide with birth deformities. Determining the precise number of those affected is difficult to estimate but a figure of 10,000 or so victims is widely accepted.

Thalidomide victims have been fighting for justice over the past 50 years. Criminal action against the German manufacturer was not successful. The company continues to deny liability and refuses to compensate Australian victims. The morning-sickness drug was distributed by the Distillers Company Biochemicals (Australia) Pty Limited to Australians from 1958 to 1968. British company Diageo later acquired Distillers Company in 1997.

Two recent class actions have been brought by thalidomide survivors in Australia and New Zealand against the German company and Diageo. In 2010 a settlement was reached between Diageo and 45 thalidomide victims in Australia and New Zealand, which is reported to
involve an annual payment of $3 million to be shared amongst the survivors for the duration of their lives. That class action was led by Ken Youdale, the father of a thalidomide victim, and was conducted by Gordon lawyers.

All of those compensated had previously received compensation in 1974 and the settlement of such payments was considered full and final settlements. The 2010 compensation by Diageo with therefore paid on an ex gratia basis, without recognising any liability, recognising the continuing support needs of many survivors. A second class action was brought in 2011, in the Victorian Supreme Court, against Diageo and the German manufacturer. It was led by thalidomide victim Lynette Rowe and was conducted, jointly, by Gordon lawyers and Slater & Gordon. The action included more than 100 people, born between 1 January 1958 and 31 December 1970, who had suffered since birth from a congenital malformation, whose mothers had consumed thalidomide whilst pregnant with them and who had not previously received compensation.

In 2013 the majority of thalidomide survivors in Australia and New Zealand reached an $89 million settlement with Diageo, the British multinational owner of the company that distributed thalidomide in Australia. I am honoured to have a constituent of mine, from my home state of Queensland, Trish Jackson, a thalidomide survivor, in the gallery today. I was introduced to Trish through the office of Mark Ryan, the new Labor member for the state seat of Morayfield.

Trish was part of the 2010 settlement, which was not considered as generous as the 2013 settlement. We should endeavour never to forget the ordeal experienced by victims of the thalidomide drug. Trish's story is remarkable. Trish is a courageous and determined woman. She is inspirational in her bravery. Survivors of thalidomide do not just cope with missing limbs but with internal damage as well as nerve-ending damage. Trish is in constant pain—24/7—and new symptoms regularly arise. Thalidomide survivors often say that thalidomide is the drug that keeps on giving. Trish told me that her parents never received an apology from the Australian government or financial assistance to help raise her and provide the constant care she requires. Trish informs me that she is unable to afford the medical treatment required or to renovate her bathroom and home in order to cater for her ailments. Trish also tells me that thalidomide survivors often deteriorate incredibly quickly; this is why it is essential that we ensure victims receive good care.

Management of those affected by thalidomide primarily involves treating the symptoms and managing the disabilities. Deaf individuals may require hearing aids or will need to learn sign language. Severe limb abnormalities may require the use of a wheelchair or other devices to assist in mobility. Specialised medical treatment such as heart surgery may be necessary in certain situations. Long-term community and/or family care is often required to assist with daily tasks. I know that there but for the grace of God, go I. I would like to thank Trish and her husband for being here today.

**Taxation**

**Senator DAY** (South Australia) (13:30): It was Benjamin Franklin who said, 'In this world nothing is certain but death and taxes.' Will Rogers responded: 'Yes, and the only difference between death and taxes is that death does not get any worse every time parliament sits.'
I note that over the past 12 months, the strategy to repair the budget has shifted from cutting spending to now raising revenue. If that is the government's strategy then it begs the question: what is the best way to raise revenue? As we attempt to answer this question, can we please set aside preconceived ideas and beliefs and look at the facts, the figures, the evidence and the logic because these all give rise to one irrefutable conclusion. If you want more revenue then lower the tax rate. Let me explain.

Tax law in Australia has been described as unintelligible. It is practically impossible to know what the law is and what it means. As we have learnt from bitter experience, in any area of compliance, rules and sanctions must be clearly spelt out so people know how they are supposed to behave and what will happen to them if they do not. The resultant attitude of many taxpayers to tax law is to treat the law and the courts as irrelevant. 'Forget legal advice, just give me an ATO ruling that will protect me from penalties or prosecution,' many say. Other taxpayers of course just surrender and pay up. Systems which are complex in their application and debilitating in the sense that the more you earn the less of each dollar you keep, and unfair and unreasonable in the sense that people feel penalised for working, are destined to failure. Anything not based on economic reality is doomed to failure and it is clear that our tax system has failed us.

Australia's cash economy is estimated at about 15 per cent of GDP—that is approximately $240 billion—one of the largest in the developed world. An underground economy of that magnitude requires the involvement not only of a lot of businesses but also of millions of consumers. As we know, laws only work when people believe in them and at the moment they have no respect for our tax laws. High tax rates undermine enterprise and destroy the will to work. Behavioural response is a reality.

The prospect of giving up half or more of any additional earnings leads people to decide that it is simply not worth it. Taxation then starts to produce gross inefficiencies as people stop working as much or as hard as they used to and governments find their taxes are not producing the revenue they expected. Similarly, many on welfare benefits decline opportunities to work due to the punitive effect that small earnings and high tax rates have on the security of their welfare benefits and the value of extra work. As for people on very low incomes, they fare worst of all, for as they increase their earnings, higher rates of income tax combined with the loss of means-tested benefits deprive them of up to 80c of every extra dollar they earn.

If we are to extricate ourselves from this dysfunctional system, the goodwill of the public needs to restored by getting tax levels back to something which most people would see as reasonable. To do this, we need to make three specific policy changes. Firstly, in order to remove one of the most significant tax avoidance avenues, align personal tax rates with company tax rates—in other words, make personal tax rates and corporate tax rates the same. Secondly, raise the tax-free threshold; and, thirdly, introduce a single-rate tax system.

Single-rate, flat taxes are gaining popularity across the globe. The reason Treasury officials like the idea of single-rate flat taxes is that they work. Single-rate, flat taxes increase economic efficiency by reducing distortions, improving the overall allocation of resources, encouraging labour supply and stimulating economic growth. If one looks at the experience of those countries which have introduced a single-rate, flat tax and also the tax reforms of the
1980s which took place in Britain and America, reducing tax rates causes revenues to rise. If you want more revenue, lower the tax rate.

Some further examples. When the Australian company tax rate was cut from 39 per cent to 30 per cent, revenues went up not down. The famous Reagan tax cuts in the US in the 1980s from 70 per cent to 28 per cent produced a $9 billion increase in revenue, when everyone said there would be a $1 billion shortfall.

Russia is another example: the move to a 13 per cent flat rate tax in 2001 increased their revenues. When Sweden halved its company tax rate from 60 per cent to 30 per cent, revenues tripled.

Resistance to paying tax declines as people's tax rates fall. Conversely, when taxes increase, people respond accordingly. Former New South Wales Premier Bob Carr's attempt at revenue raising by introducing the vendor stamp duty in 2004 resulted in less revenue being collected, not more, and it was scrapped after just 12 months. Single-rate flat taxes have now been adopted in over 30 countries and counting. In a research paper commissioned by the Association of Chartered Certified Accounts, Australia's Professor Sinclair Davidson concluded:

Our existing tax system is flawed and unsustainable. … A single-rate flat tax with a generous tax-free threshold would be a major improvement on the current Australian tax system.

Australia is becoming uncompetitive. In 2006—nine years ago—an inquiry headed by Dick Warburton and Peter Hendy benchmarked the Australian tax system against tax systems applying in other major trading nations. Mr Warburton said:

… we should be looking at major tax reform—not just tax cuts, but reforms that look at the whole structure of the tax system. One of the ways you can do that is broaden the base and cut the rate.

Mr Hendy called for personal tax rates to be cut to equal company tax rates.

We also need to start reducing the current 30 per cent company tax rate. It cannot be done overnight, but the government could start by cutting the rate by one percentage point in this year's budget and then announcing its intention to make a similar reduction every year it is in office. That would hold out the prospect of a 20 per cent company tax rate, if the government is really serious about an internationally competitive tax system, and a 20 per cent personal tax rate by 2025.

Nobody enjoys paying taxes, but in the 1950s and 1960s relatively low taxation and a comparatively simple set of rules meant that people paid what was due without too much complaint. Today, however, the government and the ATO find themselves locked into a destructive relationship of repression and resistance with ordinary taxpayers. Where people can avoid tax by exploiting loopholes they will do so; where they cannot, as with ordinary PAYG taxpayers, they will just become resentful at the unfairness of it all.

Mr Lee Kuan Yew GCMG, CH

Senator BACK (Western Australia) (13:40): I rise to express my condolence at the passing away on Monday of this week of past Prime Minister of Singapore Lee Kuan Yew and extend that sympathy to his family and indeed to the people of Singapore. It was his oldest son, now Prime Minister, Lee Hsien Loong who said on the death of his father the other morning:
The first of our founding fathers is no more. He inspired us, gave us courage, and brought us here. To many Singaporeans, and indeed others too, Lee Kuan Yew was Singapore.

I join with those comments by Prime Minister Lee.

Lee Kuan Yew had a most interesting history. Born in 1923, he was 91 years of age when he passed away. Obviously he was in Singapore as a young man during the Japanese occupation. He actually had an interaction with the Japanese and I think was eventually able to escape from the activities associated with the Japanese occupation. He then went to the London School of Economics and obtained a degree in law from Cambridge University. He was very active in the trade union movement at the time, and on his return to Singapore formed the party of which he was the leader for much of his adult life and indeed in 1959 was able to lead the negotiations for independence from Britain. In 1963 Singapore merged with Malaysia to become Malaya, and only two years later he took Singapore away from that relationship, and it celebrates its 50th anniversary as an independent country on 9 August this year. It is somewhat ironic that Lee Kuan Yew did not live long enough to actually be there for the 50th anniversary.

What is his legacy? He took an island that is only one-third the size of the ACT from a very backward, Third World, underdeveloped country and he simply jumped it across the agrarian, across the industrial and created it as a First World, high-tech, high-IT country. And it would be fair to say that it was the shadow cast by Lee Kuan Yew that was largely responsible for that incredible transition. Between the years 1960 and 1980, the gross national product of Singapore increased some 15-fold, which was an amazing result. On his retirement as Prime Minister in 1990, a period of some 31 years, he was indeed the longest-serving Prime Minister in the world. He passed over the prime ministership to Prime Minister Goh Chok Tong in 1990, and the position of Minister Mentor was created. And then when his own son, now Prime Minister Lee Hsien Loong, became Prime Minister in 2004 he was, if I recall correctly, given the title of Senior Minister. And of course many believe that even from beyond the grave Lee Kuan Yew will continue to have a profound effect on Singapore and indeed on the region.

I ask you to reflect again on the fact that Lee Kuan Yew had responsibility for an island only one-third the size of the Australian Capital Territory—no natural resources, no capacity for agriculture, little opportunity for any industrial development, and a shortage of water on the island. He had to negotiate, despite the tensions when Singapore split from Malaysia, that there would continue to be a water pipeline from Malaysia across the causeway into Singapore, and I believe even to this day water of a lesser quality is piped from the Malaysian mainland into Singapore, where value is added, where it is treated and where, at a higher price, water is sold back to Malaysia.

Singapore now has a population of some 5.5 million people and a tremendously harmonious society—which was not the case when Lee Kuan Yew first took responsibility for that island state. Approximately 75 per cent of the population are ethnic Chinese, around 13 per cent are Malays, 10 per cent are Indians and there is a smaller number of others. Despite Singapore being such a small island with no natural resources it has one of the highest per capita incomes in the world—I think it is currently US$63,000. Singapore has one of the largest sovereign wealth funds anywhere in the world and it has been this that has allowed
Singapore to withstand many of the economic and other crises that have befallen much of Asia, simply because of the tremendous security that has been attached to that country.

Having been the chief executive officer of a company with an office in Singapore through much of the last decade, I can tell you from my own experience what a wonderful place Singapore is in which to do business. There is no corruption in Singapore. The work ethic of Singaporeans is very, very high. The quality of the finished product, particularly in the IT space, is enviable. Referring back to my colleague Senator Day's comments in the last few minutes, both the company and personal tax rate in Singapore is 15 per cent. That makes it very, very attractive for people to live and work in that country.

It is interesting that under the influence of the Singapore government, particularly through the Singapore Housing Development Board, in excess of 90 per cent of adult Singaporeans are living in a home that they either own or are buying through their provident fund; more than 90 per cent of adult Singaporeans are in their own home. We have had a debate in this place in recent times about what an aspiration it would be if we could move in that direction for Australians.

All three of my children resided in Singapore until three or four years ago when two of them left to go to the United States. My middle son remains in Singapore and has a business there which is absolutely flourishing. I can tell you what a safe place Singapore is. My wife and I would often visit our daughter there. She did not know where her front door key was—simply because no-one in Singapore locks their front door. Isn't that an incredible reflection in contrast to Australia. If you leave a mobile phone in a taxi, generally by the time you realise it the taxi driver has returned to the location where they dropped you off and the phone is there waiting for you.

So what is the miracle that Lee Kuan Yew established in this country? On the negative side, there would certainly be those who say he was far too dictatorial. Young Singaporeans today resist that level of interference in their day-to-day lives but of course their parents would say that Lee Kuan Yew was a man who took them from being an undeveloped Third World country to a First World highly IT economy. We know of course that Singapore is a transport hub. All of us who have flown to Europe would know of the quality of the Singapore airport; it is consistently judged to be the best airport in the world. We know about the tonnage of shipping that goes through Singapore. In terms of the movement of containers, the port of Singapore remains the world benchmark in terms of efficiency and effectiveness. We know that Singapore is an excellent banking, industrial and insurance country. In fact, Australia interacts and engages continually with that country. Much of this is the legacy of Lee Kuan Yew. I speak as a Western Australian because of the closeness of the association between Singapore and my home state. Those of us in any way associated with higher education in WA would know of the very high proportion of Singaporean students who have been at our colleges of advanced education and our universities, and we retain and maintain that very close link with Singapore as a result.

Lee Kuan Yew was a towering figure throughout the region. He was very influential on China and its direction over time. I, for one, think the world is poorer for his absence.
Pensions and Benefits

Senator LINES (Western Australia) (13:50): Today Australia's 3.7 million pensioners want to send a message to the Abbott government: 'Don't pocket our pension!' After the announcement of the Abbott government's first budget, I received many emails from pensioners who were very concerned about was going to happen to their pensions over time. They were not convinced by the Abbott government's rhetoric that they would somehow be no worse off. They were able to do the maths on their pension and realised that they would be worse off. So many of them emailed me—and I am sure they emailed members of the Abbott government—expressing outrage and very real concern about how they were to meet their rising costs. We all hear of the horror stories that are often reported in the daily newspapers of pensioners being afraid to use their heating in the wintertime and their cooling in the summertime. This is not the way that a fair-go country such as Australia should treat those who have worked hard and contributed to Australia's lifestyle and community, and indeed our tax system, in their senior years. We should be respecting senior Australians and making sure that, through either superannuation or the pension, they are able to live decent lives. But we have seen both of those elements under attack by the Abbott government.

In response to those pensioners' concerns we held a forum in the federal seat of Swan, the electorate in which I live, and hundreds of pensioners turned out and asked questions. They raised very real concerns about their future wellbeing. They could not believe that a government that, when in opposition, promised them faithfully that there would be no cuts to pensions would do such a thing. Obviously, many of them voted believing the then opposition when it said there would be no cuts to pensions, only to learn that they had been hit and hit again in the budget. And no doubt those measures that the Abbott government wants to put in place will continue. That will be a major drive by the Abbott government.

The Prime Minister wants to cut the indexation arrangements for the pension, and that will eventually hit the hip pocket of pensioners. Currently, the pension is indexed to the highest of movements in either the Pensioner and Beneficiary Living Cost Index, the consumer price index or 27.7 per cent of male total average weekly earnings—nearly 28 per cent. If Mr Abbott gets his way, the pension will be indexed to CPI only, so there will be no advantage there for pensioners to be able to get the highest of measures; they will simply cop CPI.

One of the ploys that those opposite like to level is that it is Labor's scaremongering. But according to the Australian Council of Social Services, in just 10 years, if this measure gets through, Australian pensioners will be $80 a week worse off. How could you disadvantage those senior Australians who, all their working lives, have contributed to the tax system by ripping them off to the tune of $80 a week? Again, according to the Parliamentary Budget Office, changes to indexation of the age pension will result in $23 billion less being paid to pensioners by 2024. That is not a statistic that anyone should be proud of—to be ripping that money out of the pockets of pensioners. An independent analysis by Professor Peter Whiteford shows that, if the Prime Minister gets his way, the value of pensions will drop from around 28 per cent of average weekly earnings to just 16 per cent of average weekly earnings in 2055. Is it any wonder that, with those kinds of facts, Australia's pensioners—all 3.7 million of them—are so upset with the Abbott government, with this disgraceful attack on their pockets?
And it does not stop there. We know that Mr Abbott wants to increase the pension age to 70. That means that either Australians work much longer or somehow they maintain themselves until they can reach pension age.

**Senator Bernardi:** You did increase it. You should read your own government's reports.

**The President:** On my right.

**Senator Lines:** And that will make the Australian pension age the highest in the world. Imagine being the first for that—being so mean to those working Australians who have paid their tax all of their working lives as to say to them, 'And you can work longer and you can have a pension age amongst the highest in the world.' And it goes on with the cuts to deeming thresholds. You would not think that a government that is allegedly so pro private business and so pro all sorts of measures would cut the deeming thresholds. But, again, that is what it wants to do. The Prime Minister wants to cut the deeming thresholds used in the pension means test from $77,400 for a couple to $50,000—that is a massive cut—and from $46,600 for a single down to $30,000. This means part pensioners will get less and some pensioners will lose their pension altogether.

I attended a forum, as did Senator Smith, where pensioners in the western suburbs of Perth—the more affluent suburbs—told Senator Smith in no uncertain terms that they were not happy about losing any kind of money out of their pocket. And, of course, there are also the new taxes that the Abbott government has already levied. There is the fuel tax and also the GP tax, which might be gone but is not forgotten. It will be back for sure—make no mistake about that. In fact, I think Minister Ley is on the record as suggesting that the GP tax is there for a later day.

As those opposite like to cry over and over again, 'What's Labor done?' Well, let's have a look at Labor's record in relation to pensions. In 2009, Labor implemented the largest increase to the pensions in 100 years. That is our legacy. That included a $70 per fortnight increase to the base rate of the pension and fixing indexation of the pension to the highest of either CPI or 27.7 per cent of male total average weekly earnings or to the new Pensioner and Beneficiary Living Cost Index. That measure helped to ensure that the rate of the pension kept pace with the real cost of living for pensioners. What do those opposite want to do? It seems to me that anything that Labor did that contributed to the wellbeing of Australians is well and truly under attack by the Abbott government. I can assure those opposite that Labor will not stand by and allow the Abbott government to diminish the incomes of Australian pensioners.

Three point seven million—that is the group that the Abbott government have well and truly got in their eyes. That is part of their target. That is the group that they want to really get with these measures. Let's just really understand who it is that the Abbott government is attacking. Of that 3.7 million, 2.5 million are aged pensioners, working Australians in their senior years who have well and truly contributed to the wellbeing of the Australian community; 830,000 are disability support pensioners; 240,000 are carers pensioners; 70,000 are veterans pensioners. That is the group that the Abbott government and the Prime Minister want to absolutely target with this cruel, hard measure that is part of their budget—

**Senator Bernardi:** Mr President, I rise on a point of order. My point of order is that Senator Lines seems to have glossed over the fact that Labor's policies are costing people a billion dollars a month in interest payments.
The PRESIDENT: No, that is a debating point, Senator Bernardi. Resume your seat. That is no point of order.

Senator LINES: So let those opposite try and gloss the facts over. They speak for themselves.

The PRESIDENT: It now being 2 pm, we proceed to questions without notice.

QUESTIONS WITHOUT NOTICE

Defence Procurement

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (14:00): My question is to the Minister representing the Prime Minister, Senator Abetz. Will the government provide bipartisan support for Australia's Future Submarine project, our largest ever Defence procurement project, and promise to build, maintain and sustain our new submarine fleet in Australia, or is the government still set on delivering the Prime Minister's captain's pick to have our submarines built in Japan?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:00): I was surprised to learn today of the announcement by the Leader of the Opposition and the shadow Defence spokesman in relation to Labor's plan, during which time I noted that the Leader of the Opposition boldly claimed that no-one was calling for an open tender in relation to this particular project, despite—

Senator Conroy: That was me.

Senator ABETZ: Exactly. No-one was, despite the fact—and he has now just admitted it—that the shadow minister himself had called for an open tender not once, not twice but three times. So the Labor Party comes to this having done nothing on the submarine program for six years whilst in office. They now want a process which would take another five years before we come to a landing in relation to this issue.

The PRESIDENT: Pause the clock.

Senator Moore: Mr President, I raise a point of order on direct relevance to the question that was asked, which was about a statement of government support for Australia's Future Submarine project, particularly building, maintaining and sustaining. It is a point of order on direct relevance to the question asked.

The PRESIDENT: Thank you, Senator Moore. The minister has barely gone through half his answer.

Senator ABETZ: What I had just done was contextualise the situation, bringing us up to date with where we are now. The government's position is very clear: the safety and security of our citizens has to be the No. 1 priority. So the government is determined to get the best submarine capability available and the best value for money for taxpayers through a competitive evaluation process. We are not going to prejudge what that is, and what the Labor Party is saying is: 'We don't care what the Defence capacity is. We don't care what the cost is.'

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

Senator Conroy: That was your policy.

The PRESIDENT: Senator Conroy, you have your colleague on her feet.
Senator Moore: Mr President, I again rise on a point of order on direct relevance to the question that was asked. It was about bipartisan support to build, maintain and sustain submarines in Australia.

The President: I think the minister was answering it by way of saying that the government will not commit. But the minister has 15 seconds left to answer the question.

Senator ABETZ: The simple fact is, no matter what, there will be more submarines, and that means more jobs for South Australia under whatever methodology the government adopts for the acquisition of our submarine fleet. (Time expired)

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (14:03): Mr President, I ask a supplementary question. Will the government provide bipartisan support for a proper competitive tender process with a funded definition study to ensure that Australia secures a future submarine fleet that meets Australia's Defence requirements at the most competitive price for taxpayers, or is the government still committed to your sham evaluation process designed only to deliver the Prime Minister's captain's pick, which your entire National Security Committee ticked off? (Time expired)

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:04): Just as the shadow minister just then went way over time with his question, so Labor went way over time in putting pencil to paper. It took them six years of not even getting pencil to paper for the submarine program. Let that not be forgotten. Now the shadow minister has the audacity to come into this place and say, 'Please join us in a bipartisan manner,' when for six years you had misled the Australian people about where you had got to with the submarine program.

Senator Conroy: You said you would build 12 in Adelaide.

The President: Order on my left.

Senator ABETZ: Absolutely nowhere did they get with their submarine program in six years, despite media release after media release. Now they say, 'Trust us and join us in a bipartisan approach.' Your actions speak louder than your words—or should I say your inactions speak a lot louder than your words. (Time expired)

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (14:05): Mr President, I ask a further supplementary question. Will the government provide bipartisan support for Sweden to join Japan, Germany and France in the procurement process so that the most capable submarine designers are all competing for the work, or is the government still committed to excluding this experienced builder so that the Prime Minister can deliver his captain's pick to Japan? It is your government that promised to build 12 submarines in Adelaide before the last election. (Time expired)

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:06): Once again, Senator Conroy is overtime, exactly like Labor did with the submarine program. They have no understanding of time limits and the need to get this project underway as soon as possible. We have already indicated our attitude in relation to Sweden, and it really does seem interesting, does it not, that any mention of Japan is met with howls of derision. Yet they seem to champion the cause of Sweden. One wonders why they have this approach of Japan
bad; Sweden good.' I wonder what might motivate that sort of attitude. It does not reflect well on the Australian Labor Party. *(Time expired)*

**DISTINGUISHED VISITORS**

The PRESIDENT (14:07): I inform honourable senators of the presence in the gallery today of the Australian Political Exchange Council's 9th Delegation from the Philippines. On behalf of all senators, I wish you a warm welcome to Australia and in particular to our Senate.

Honourable senators: Hear, hear!

**QUESTIONS WITHOUT NOTICE**

**Infrastructure**

**Senator SINODINOS** (New South Wales) (14:07): My question is to the diligent Assistant Minister for Immigration and Border Protection, Senator Cash, in her capacity representing the Minister for Infrastructure and Regional Development. Will the minister inform the Senate of how the coalition government is delivering on its promise to build the infrastructure of the 21st century?

**Senator CASH** (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:07): I thank Senator Sinodinos for his question. This government promised the Australian people that if we were elected to govern we would deliver to them the infrastructure of the 21st century, and that is exactly what we are doing. This government has made a historic investment into infrastructure of $50 billion through to 2019-20. I remind senators that our investment into infrastructure is $16.4 billion more than what those opposite promised. That is right: $16.4 billion more than what those opposite promised. Under this government, 84 projects are currently under construction right across Australia, with another 88 projects in detailed planning stages, with construction expected to commence in the near future.

In terms of major works, they include the Pacific Highway, in New South Wales, for which 60 per cent, or 397 kilometres, of the final highway length has already been duplicated, with a further 123 kilometres under construction. A total of 2,137 construction workers were on-site across the Pacific Highway at the end of last year.

Then, of course, under this government there is the Western Sydney Infrastructure Plan, where work is already underway on stage 1 of the $509 million Bringelly Road upgrade, which will support the new Western Sydney Airport at Badgerys Creek. But we do not stop there. In Queensland construction is underway on seven major projects. In Tasmania, construction has commenced on seven safety work projects along the Midland Highway. In my home state of Western Australia, construction on the first stage of works along the North West Coastal Highway commenced in January 2015. We said we would deliver on infrastructure and that is exactly what this government is doing. *(Time expired)*

Honourable senators interjecting—

The PRESIDENT: Order on my left.

**Senator SINODINOS** (New South Wales) (14:10): Mr President, I ask a supplementary question. Will the minister update the Senate on the action the government is taking to improve infrastructure in my home state of New South Wales, and outline how this will create jobs in that great state?
 Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:10): As Senator Sinodinos knows, investing in infrastructure is critical for the people of Sydney and the surrounding areas, as well as those living in the regional areas of New South Wales. Our decision to work with Premier Mike Baird, Deputy Premier Troy Grant and the rest of the New South Wales coalition government to invest in infrastructure is ensuring that the people of New South Wales have a strong and prosperous economy. Their economy has been boosted and productivity has increased, and we have created thousands of jobs for people on the ground.

 Senator Cameron: Tell that to the workers at GM.

 The PRESIDENT: Senator Cameron.

 Senator CASH: In terms of our $50 billion historic investment into infrastructure, we have invested $14.9 billion into projects into New South Wales. We have included $3.6 billion for the Western Sydney Infrastructure Plan, $405 million for NorthConnex, and $5.64 billion to complete the duplication of the Pacific Highway. This is a government that is committed to the people of New South Wales. (Time expired)

 Senator SINODINOS (New South Wales) (14:11): Mr President, I ask a further supplementary question. Will the minister update the Senate on how projects like WestConnex will improve travel times and create jobs in Western Sydney?

 Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (14:11): Projects like WestConnex that are fully supported by a coalition government will remove up to 52 sets of traffic lights, cut travel time between Parramatta and Sydney Airport by 40 minutes, remove 3,000 trucks away from Parramatta Road and halve the commute time between the inner-west and the city for those travelling by bus. This is a significant reform for the people of New South Wales. It is a significant investment in infrastructure and it is delivering real outcomes for the local people of New South Wales. The WestConnex project provides 33 kilometres of continuous traffic-light-free motorway to link the west and south-west of Sydney with the city, the airport and the port. The project will create at least 10,000 jobs in Sydney. This government knows that investment in infrastructure is good for the state economy and it is good for the people of New South Wales.

 Economy

 Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:12): My question is to the Minister representing the Prime Minister, Senator Abetz. I refer to the recent release of a publication by the Minister for Trade and Investment, Mr Robb, entitled Why Australia: benchmark report 2015, which states:

 With more than 23 years of uninterrupted annual economic growth, a AAA sovereign risk profile and diverse, globally competitive industries, Australia remains well placed to build on an impressive record of prosperity.

 I ask the minister: does that sound like a budget emergency?

 Honourable senators interjecting—

 The PRESIDENT: Order on both sides!
Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:13): What the honourable senator has outlined is the factual circumstance of the Australian economy. Does that mean that there are not problems on the horizon? Of course not. That is where the most failed finance minister in Australian history deliberately seeks to obfuscate and convince the Australian people that she who delivered the six biggest budget deficits in Australian history somehow has the solutions to Australia's problems. The simple fact is that the Australian Labor Party, not content with delivering us the six highest deficits, left us on a trajectory to even higher deficits. Our task now is to try to reduce those even higher deficits down lower. So, do we have a huge economic budget task ahead of us? Yes, we do.

What makes that task more difficult is that the Australian Labor Party went to the last election and said to the Australian people, hand on heart, 'Believe us: we are economically responsible and we will take $5 billion worth of cuts,' and then, when we said, 'We will match that $5 billion worth of cuts exactly,' and put that to the parliament after the election, do you know what they did, Mr President? To a man and woman, each and every one of them, lemming like, did what Mr Shorten told them to do and voted against their own savings policies that they had taken to the Australian people. That is the economic credibility of the Australian Labor Party, and there is no better exemplar of that than the failed finance minister herself. (Time expired)

Senator WONG (South Australia—Leader of the Opposition in the Senate) (14:15): Mr President, I ask a supplementary question. I quote again from Mr Robb's report, which states: … the Australian Government's net debt would be 16.6 per cent of GDP in 2015— which— reinforces Australia's healthy financial position and sound economic credentials … Noting that this net debt quoted by Mr Robb is in fact higher than the peak net debt under the former government, does the minister agree with Mr Robb that debt is low?

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (14:16): The Australian economy does have sound credentials, and the reason for that is that, after the Howard-Costello government, the Labor Party were given a legacy of budget surpluses and future funds, all of which were dissipated under Labor—and then the debt crisis grew. We said to the Australian people that we would deal with that situation to ensure that our economic credentials remain intact and that is what we are doing, but no thanks to the Australian Labor Party.

The PRESIDENT: Pause the clock.

Senator Moore: Mr President, I rise on a point of order, again on direct relevance to the specific question, which was quite straightforward: does the minister agree with Mr Robb that debt is low?

The PRESIDENT: Thank you, Senator Moore. The minister has 20 seconds in which to answer the question.

Senator ABETZ: If the Manager of Opposition Business is so convinced that her point of order is correct, she will agree to the tabling and incorporation of the full question by the
Leader of the Opposition in the Senate in the *Hansard*, which will disclose how false Senator Moore was with her point of order, seeking to obfuscate—*(Time expired)*

**Senator Moore:** Mr President, on a point of order: I am more than happy to table the question—

*Opposition senators interjecting—*

**The PRESIDENT:** Just a moment, Senator Moore. Order on my left!

*Senator Cameron interjecting—*

**The PRESIDENT:** Order, Senator Cameron!

*Honourable senators interjecting—*

**The PRESIDENT:** Order on both sides! Senator Moore, did you still wish to pursue a point of order?

**Senator Moore:** Just that I am more than happy to table the question, Mr President.

**The PRESIDENT:** Thank you, Senator Moore.

**Senator Wong** (South Australia—Leader of the Opposition in the Senate) *(14:18):* Mr President, I ask a further supplementary question. I refer again to Mr Robb's report, which states:

Australia has enjoyed a sustained period of labour productivity growth … particularly … in 2012-13 and … 2013-14.

Can the minister confirm Mr Robb is correct to highlight the contribution of Labor's Fair Work Act to increased productivity in this nation?

**Senator Abetz** (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) *(14:18):* Australia, in general terms, has relatively good labour productivity growth. Having said that, the difficulty with the Australian Labor Party is they do not understand that a good country will always seek to strive to do better, and that is where the Australian Labor Party are stuck in a rut. Be it financial, they have no aspiration to do better. Labour productivity? No aspiration to do better. Reduced cost of living? No aspiration to do better. More jobs for the Australian people? No aspiration to do better. We have that aspiration on this side, and that is what we dedicate ourselves to day after day, hour after hour, whilst we have the privilege of being the government—

**The PRESIDENT:** Pause the clock.

**Senator Moore:** Mr President, on a point of order—and I will table this question as well. The only question that was asked was: is Mr Robb correct to highlight the contribution of Labor's Fair Work Act to increased productivity?

**Senator Abetz:** No, it wasn't.

**Senator Moore:** That was the question. We would like to hear it mentioned in the answer.

**Senator Ian Macdonald:** Mr President, on the point of order: how can Senator Moore table a question that is allegedly being asked by Senator Wong?

**The PRESIDENT:** There is no point of order. Minister, had you concluded your answer?

**Senator Abetz:** Yes.
Forestry

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:20): Mr President, my question is to Senator Birmingham, the Minister representing the Minister for the Environment. Is the minister aware the Tasmanian government has approved logging in critical nesting habitat areas for the EPBC endangered-species-listed swift parrot and that that has been approved in direct contravention of expert scientific advice? That advice was that logging will not support the conservation of the species. Minister, is the government happy to stand by and watch the swift parrot's habitat logged to the bird's extinction?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:21): I thank Senator Milne for her question. Senator Milne would well understand and appreciate, having been around these debates for a very long time, that regional forest agreements operate in a manner to provide balance between environmental, social and economic outcomes for regional communities. These arrangements in place in Tasmania, as I understand it, align with the Tasmanian Regional Forest Agreement and of course they have certain exemptions under the EPBC Act, which has long been the case since that act came into existence. If there is evidence to suggest that that forestry operations contravene the Regional Forestry Agreement, then those are rightly matters for the Tasmanian government. It is certainly this government's position that we want to see economic advancement in Tasmania, we want to see the creation of opportunities there, but we also want to ensure the preservation of endangered species. Our policies are all about making sure that we preserve jobs in Tasmania as well as threatened species in Tasmania. We are confident that that is what the Tasmanian government is seeking to do as well. As a government we have taken steps in relation to threatened species protection through the appointment of a Threatened Species Commissioner, which has been welcomed by outfits such as BirdLife Australia, who have praised that and acknowledged the potential there. I quote from BirdLife Australia:

A champion for threatened species within government will help to ensure our recovery efforts and funding programs are more strategic and, importantly, throw a lifeline for Australia's threatened birds …

We are serious about working in this space but we are just as serious about making sure that jobs and opportunities continue to exist, and exist in greater abundance in the future, in states like Tasmania.

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:23): Mr President, I ask a supplementary question. Is the minister saying that the Commonwealth has abrogated all responsibility for threatened species because of the regional forest agreements and, if not, will you now move in to stop the logging of this critical nesting habitat? Secondly, will you stop the automatic rollover of the forest agreements now we know they are a complete and total failure when it comes to protecting threatened species?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:24): Senator Milne does like to come into this place and play judge, jury and executioner when it comes to the full assessment of these debates. Clearly her word is final in these matters. But what she says is not the case. Firstly, as I said in the original answer, and Senator Milne should appreciate this, the regional forest agreements act outside, in a sense, of the terms of the EPBC Act. Senator Milne, you appreciate how that works. You have every
capacity, through the Greens, to prosecute your arguments in Tasmania with the Tasmanian government if you wish. This government is serious about supporting Tasmania in the creation of new jobs and new economic activity, while taking our responsibility seriously for the protection of threatened species, and that is exactly what we will continue to do with our policies but without it being to the detriment of the future of the Tasmanian economy.

Senator MILNE (Tasmania—Leader of the Australian Greens) (14:25): Mr President, I ask a further supplementary question. Will the minister now accept that handing Commonwealth responsibility to protect matters of national significance to the environment back to the states is a pathway to their destruction, given that the Tasmanian government has logged these areas in contravention of scientific advice?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:25): Emphatically not. We all know that the Greens would not be satisfied until every logging activity in the country was brought to a halt. We all know that the Greens would not be satisfied until all jobs in these industries were pushed out of existence. We all know that, in terms of extinction, what the Greens want to make extinct are industries like the logging industry and jobs like those of the people in the logging industry. We want to make sure that the nation's environmental laws work in the most efficient and effective way possible. That is about reducing red tape, which is exactly why our one-stop shop proposal is the right way to go, to make sure we have the least amount of red tape, or green tape, when it comes to projects being approved and the maximum opportunity for jobs and projects to go ahead as long as there are safe and sound environmental safeguards, which there absolutely will be under us. (Time expired)

Centenary of Anzac

Senator MASON (Queensland) (14:27): My question is to the very diligent Minister Assisting the Prime Minister for the Centenary of Anzac, Senator Ronaldson. Can the minister explain to the Senate how the Spirit of Anzac Centenary Experience travelling exhibition will form part of the governments agenda for the Centenary of Anzac?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:27): It is with a degree of sadness that I say that this is probably Senator Mason's last question, and we will miss him very much. He has been a very significant contributor to this place. Today at the Australian War Memorial the Prime Minister launched the Spirit of Anzac Centenary Experience, which will be a travelling exhibition going to 23 sites throughout Australia over the Centenary of Anzac period. The Prime Minister was joined by Mr Ian Narev from the Commonwealth Bank and Mr David Thodey and incoming CEO Andy Penn from Telstra, who are the two principal financial supporters of the exhibition. On behalf of the government I want to thank those two companies most sincerely for their support. This is a real partnership between the corporate sector, the Australian War Memorial and the Australian government.

This will be the flagship community event of the Centenary of Anzac. From September this year Australians right throughout the nation will have the opportunity to experience the historical perspective of the First World War as well as gain an understanding of those theatres of war that we have been engaged with since that time. We are deeply committed to ensuring that all Australians, and particularly young Australians, understand the service and
sacrifice of the men and women who have served this nation over the last 100 years. We should always remind ourselves of the 102,000 names in the Australian War Memorial of those who have made the ultimate sacrifice. This exhibition will provide all Australians, particularly I am very pleased to say those in regional Australia, with a first hand experience of the military artefacts and interpretive materials that will be in the exhibition. I am very pleased that former Deputy Prime Minister Tim Fischer has been appointed envoy of the exhibition. (Time expired)

Senator MASON (Queensland) (14:29): Mr President, I thank the minister for his answer and I ask a supplementary question. Can the minister inform the Senate where the Spirit of Anzac Centenary Experience travelling exhibition will visit?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:29): I again thank Senator Mason for his question. Just to confirm, as I ran out of time: Tim Fischer will be the envoy for this exhibition which I am sure, being a Vietnam veteran, is a further indication of the centenary of the service and sacrifice.

This exhibition will go to 23 locations across Australia—to the states and the Northern Territory. The exhibition will open in Albury-Wodonga. It will then go to Tasmania and conclude in Sydney around Anzac Day in 2017. What this will do is ensure that not only does this nation commemorate events—it is some 30-odd days now—like the landing at Gallipoli but, equally importantly, the Western Front and the Sinai where this nation lost so many of its finest over that four-year period. It will be an opportunity to reflect on a centenary of service and sacrifice.

Senator MASON (Queensland) (14:30): Mr President, I ask a further supplementary question. Finally, will the minister advise the Senate how the Spirit of Anzac Centenary Experience fits into the government's program of commemoration for the Centenary of Anzac?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:31): I again thank Senator Mason for his question. As I said, this will be the flagship commemorative event but it comes on top of the Anzac Centenary Local Community Grants Program—which I acknowledge was started under the former government. In the last budget we topped it up, and 150 members in the other place are providing in their own communities local projects which will enable those communities to commemorate as well.

For those who are from country areas, they will fully understand, as I do, the level of sacrifice of, predominantly, men who came from the smallest towns around this nation and went to Albany and left our shores.

Telstra and the Commonwealth Bank have been absolutely pivotal in the success of the running of this program. The exhibition will tell this nation's story. It must be told and it needs to be told for future generations as well as those of us who are here today.

Goods and Services Tax

Senator WANG (Western Australia—Palmer United Party Whip in the Senate) (14:32): My question is to the Minister for Finance. For many months now the call for a fairer distribution of GST has gone unanswered. The people of Western Australia are frustrated by
the conflicting information and little assurance other than vague hints of future promises from government ministers. From various reports, it is justifiably suggested that the government is playing politics with Western Australia's genuine GST entitlements by holding back information in order to boost the appearance of a more accommodating budget in May. My question therefore is this: will the minister agree to release the government announcement on GST distribution before the end of this month, March 2015?

Senator CORMANN (Western Australia—Minister for Finance) (14:33): I thank Senator Wang for his question. The government of course is not withholding any information. The government is managing relations with the states and territories in an orderly and methodical fashion consistent with past practice by previous governments of both persuasions.

Senator Wang may be aware that there is a scheduled meeting of federal, state and territory treasurers in Canberra, I believe, sometime in the middle of April. As is the usual practice, in the lead-up to that meeting, the Treasurer will provide relevant information to state and territory treasurers in the usual way.

Senator WANG (Western Australia—Palmer United Party Whip in the Senate) (14:33): Mr President, I ask a supplementary question. The WA state Treasurer was reported on 18 March as letting it slip that our federal Treasurer:

… now has the review from the grants commission on his desk, though he won't release it … until the NSW election is over.

Will the minister confirm that this is the case?

Senator CORMANN (Western Australia—Minister for Finance) (14:34): I cannot answer for assertions that were made by the state Treasurer in Western Australia. The timing of the election in New South Wales is completely irrelevant when it comes to the timing of relevant information in the lead-up to the state and territory treasurers' meeting. It has always been the practice that the federal Treasurer provides relevant information in time for these regular meetings of the federal, state and territory treasurers. That is what will happen on this occasion, and information will be provided to state and territory treasurers in the usual way sometime in April.

Senator WANG (Western Australia—Palmer United Party Whip in the Senate) (14:34): Mr President, I ask a further supplementary question. Do the minister and his colleagues in the government not realise that every single day that Western Australia's deprivation of its fair share of GST continues it takes the state's employment and growth prospects another seriously adverse step backwards?

Senator CORMANN (Western Australia—Minister for Finance) (14:35): The Australian government wants all states and territories across Australia to be as successful as they possibly can. Of course from that point of view, the Australian government makes judgements that are nationally fair, and we want the great state of Western Australia to be as successful as it can be; we want Tasmania, South Australia, New South Wales and the Northern Territory to as successful as they can be. In that context, we have to consider all of the relevant perspectives from people in government from different parts of Australia and then we have to make decisions that are nationally fair, and that is what this government will continue to do.
Government Services

Senator SESELJA (Australian Capital Territory) (14:36): My question is to the Minister for Human Services. Can the minister update the Senate on how the coalition government is improving access to government services for all Australians?

Senator PAYNE (New South Wales—Minister for Human Services) (14:36): I thank the senator very much for his question, because we are involved in a transformation of the delivery of government services around Australia with a continually growing network of myGov shopfronts. In January this year we opened the new myGov shopfront in Martin Place in Sydney and, previously, in Brisbane in June of last year. These shopfronts are a serious innovation in the provision of government services. We bring together Medicare; Centrelink; the Australian Tax Office, the PCEHR—the personally controlled electronic health record; the Department of Veterans’ Affairs—I say to my colleague Senator Ronaldson; the NDIS; and also, most recently, Australian JobSearch. So we are continually adding to the number of services that Australians are able to obtain access to by visiting the single myGov shopfront. We are going to roll out more of those, I am pleased to say, in other capital cities around Australia—in Adelaide, in Perth and in Melbourne. Those three will come in during the rest of this calendar year.

They do not just deliver more integrated services for customers because that is what customers are looking for; they want to be able to do the business that they transact with government in one place at the one time, as far as possible. But we are also able to help our customers engage in the online space with us. In the myGov shopfronts in Sydney and in Brisbane we have a set of app bars with iPads, where customers can acquaint themselves with the use of apps and then replicate that on their smartphones or their own other devices. We have a whole range of self-service terminals. In fact, the senator will recall from our visit to Woden earlier this year that the take-up of that sort of self-service engagement is ever increasing. The growing demand shows us that there is in fact a requirement for more and more services to be coordinated, to be integrated like that so that customers are able to access them where they want and when they want.

Senator SESELJA (Australian Capital Territory) (14:38): Mr President, I ask a supplementary question. Can the minister advise the Senate how Australians are responding to online government services?

Senator PAYNE (New South Wales—Minister for Human Services) (14:38): Again, I thank the senator very much for his question. The numbers actually speak for themselves. As at today, we have over six million myGov accounts across our Australian customer base. The average growth is 20,000 new accounts every day, so the take-up is considerable. Obviously, in the tax period—in June, July and August of last year—that take-up was particularly significant, and we are looking forward to that happening again.

We are not just doing this in the space of the myGov account. As at the end of last month, since May of the previous year, we had sent over 40 million digital letters across the country. What that saves, in terms of the snail mail process, is significant, but the ease of access that it gives to our customers is what is most important in that space. In the Medicare online transactions over the last financial year, the number of transactions increased by a third. (Time expired)
Mr President, I ask a further supplementary question. Can the minister explain to the Senate how such initiatives support the coalition's e-government and digital economy policy?

Senator PAYNE (New South Wales—Minister for Human Services) (14:39): Senators will be aware of the recent announcement of the establishment of the Digital Transformation Office in government. The myGov online entry point is absolutely vital to delivering our e-government and digital transformation technology. It was an election commitment of ours to shift major services and interactions with individuals online, and we are committed to doing that by 2017 so that all major transactions with government can be conducted, end to end, digitally. We are going to keep that promise, and we are going to be able to meet that commitment. What the Digital Transformation Office will do is to leverage myGov to transform the way that services are delivered, not just to individuals but to business as well. That will be transformational for the way that business is able to engage with government. Staff from my department are embedded within the interim DTO and will continue to work very closely with them in the development of that project. (Time expired)

Indigenous Employment

Senator DAY (South Australia) (14:40): Mr President, my question is to the Minister for Indigenous Affairs. Minister, whilst I am encouraged by news yesterday out of my home state that, in order to open up job opportunities, penalty rates have been reduced, this will not, however, benefit people elsewhere in Australia, particularly those in remote regions. On this point, I note that an Aboriginal person, for example, living in a remote region can hunt kangaroos, turtles and dugongs; enlist in the armed forces; get married; have children; buy a house; and vote. But they cannot take a job under terms and conditions which they decide are best for them. Minister, the social costs of unemployment amongst Aboriginal people—poor health, depression, substance abuse, crime, domestic violence, teenage pregnancy and even suicide—are so horrendous. Why are they not permitted to make up their own minds about getting a job?

Senator Cameron interjecting—

The PRESIDENT: On my left. Senator Cameron.

Honourable senators interjecting—

The PRESIDENT: Order on both sides!

Senator SCULLION (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:42): I thank Senator Day for the question; I would like to also acknowledge his 40-odd years working in remote Indigenous communities. First of all, there should be no distinction between the wages and conditions available to our First Australians and to any other worker in Australia. For those issues in South Australia, changes in the hospitality industry within Adelaide should certainly be available in other areas like the APY lands. I understand that these are processes at a state level. Hopefully, if those matters are good for them in one state, they should be good for individuals in another.

The focus of this government in Indigenous employment in remote areas is to ensure that we seize every single opportunity to transition people into training and, ultimately, real sustainable employment. That, of course, was the whole focus of the Forrest report, *Creating parity*. We have a strong, coordinated employment strategy to ensure that Indigenous people
are able to take up job opportunities. So from 1 July this year, major reforms to employment services in remote communities will end passive welfare and give people a pathway to real jobs. Twenty-nine vocational and training centres are going to end training for training's sake. The employment parity initiatives to help big employers get to employment parity of three per cent, which I announced last week, will create 20,000 jobs. By 2020, three per cent of new government contracts will be afforded to Indigenous businesses. And by 2018, three per cent of Australian Public Service employees will be Indigenous. We have made a good start. Since September 2013, 23,100 Indigenous Australians have been assisted into employment under our new job programs.

**Senator DAY** (South Australia) (14:44): Mr President, I ask a supplementary question. Minister, rather than shuffling young Aboriginal people through the job services industry that, in the words of Noel Pearson, 'subjects them to bureaucratic straitjackets and red tape that kills innovation and social entrepreneurship,' why doesn't the government consider trialling community based exemptions to let young Aboriginal people negotiate employment opportunities which suit them?

**Senator SCULLION** (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:44): I again thank Senator Day for his question. Any ideas, including yours, Senator Day, deserve consideration on the basis that they get support from the community. This government have made it clear that getting Indigenous adults into work is one of our highest priorities in improving the lives of our first Australians. That is why we have reformed remote employment services. From 1 July this year, job seekers in remote communities will be able to participate in continuous work-like activities and meaningful work experience. Senator, I assure you that it will not be people standing around with shovels or painting rocks. It will be genuine activities that equip people either to take on real jobs that, as Marcia Langton said in the *Australian*, do exist in remote communities or, where they choose, to move to take up employment opportunities. These reforms will include $25 million invested each year to build local businesses which will underpin the local economy, create jobs and offer opportunities for job seekers to get practical work experience. *(Time expired)*

**Senator DAY** (South Australia) (14:46): Mr President, I ask a further supplementary question. In the last census, Aboriginal unemployment was given at over 20 per cent. Warren Mundine has said:

… allowing people to languish on welfare and dismissing them as being unable to work is not treating them with dignity.

When will the government restore their dignity and allow them to enter the workforce under terms and conditions which suit them?

**Senator SCULLION** (Northern Territory—Minister for Indigenous Affairs and Leader of The Nationals in the Senate) (14:46): The government believe that everyone who can work should work. If jobs are not available then people need the opportunity to undertake meaningful activity that builds their skills and contributes to their community in the longer term. That is why we have reformed remote employment services. Employment gives people financial independence, control over their lives and the ability to provide for their family's future. Combined, our Indigenous employment initiatives have the potential to change the face of our workforce and our country, to create vibrant, thriving Indigenous businesses that ensure that our workforce reflects the strong diversity and strength of our nation. It is
everyone's task to ensure that we close the employment gap between Indigenous Australians and the rest of our country, once and for all.

Research and Development

Senator KIM CARR (Victoria) (14:47): My question is to the Minister representing the Minister for Industry and Science, Senator Ronaldson. I refer to a report released today showing that $145 million worth of economic activity, or 11 per cent of the Australian economy, relies directly on advanced mathematics and physical sciences. I further refer to the government's last budget, which cut more than $1.5 billion from Australian science, research and commercialisation. Given the overwhelming evidence that science underpins prosperity, can the minister rule out further cuts to science research in the next budget?

Government senators interjecting—

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:48): Senator Carr has been a busy old sausage over the last 24 hours. Clearly, Senator Conroy has hidden his book 'North Korea on $10 a Day', and he has had to do something else since. What I will say in relation to this is that Senator Carr constantly is reflecting back onto his own times of inactivity. As I have said before, this government is deeply committed to science, research and innovation. But those are not just words: there is $9.2 billion in science research and innovation. People talk about where this is leading: is this going to lead to jobs? Are advanced manufacturing jobs being grown? Just out of interest, I was advised this morning that there has been growth in manufacturing jobs to 922,400 jobs in the February quarter up from 913,200 jobs in the November quarter. They are predominantly full-time jobs.

Senator Moore: Mr President, I rise on a point of order on direct relevance to the question. There was a specific question which I am sure Senator Carr could table. It said, 'Can the minister ruled out further cuts to science and research in the next budget?' That was the question, and we have 30 seconds to go.

The PRESIDENT: I will remind the minister of the question. He does have 30 seconds in which to answer.

Senator RONALDSON: We now know the Australian Labor Party views an increase in manufacturing jobs as bad news.

Senator Wong: You can't answer the question! You can't answer the question, and everybody behind you knows it! You're an embarrassment!

Senator RONALDSON: We think it is good news, and the 9.2—

Senator Wong: You can't answer the question!

Senator RONALDSON: The worst finance minister in Australia's history—

Senator Moore: Mr President, a point of order on direct relevance to the question: you have drawn the attention of the minister to the question, and we only have eight seconds to go that stage.

Senator Bernardi: Mr President, I raise a point of order.

Opposition senators interjecting—

Senator Lines interjecting—
Senator Bernardi: I was listening to the minister comprehensively cover the question, and I could not hear him because of the disorderly interjections from Senator Wong, which were rather shrill and abusive I thought.

Senator Wong: On the point of order: I said he couldn't answer the question. I have been accused of being abusive, Mr President. I will put it on the record: I said, 'He can't answer the question.'

The PRESIDENT: There is no point of order

Senator Abetz: Mr President, on the point of order: Senator Wong knows that she said a lot more than that which she has put on the record. This is disgraceful behaviour.

The PRESIDENT: There is no point of order.

Senator Wong: If I am asked to withdraw something that has been alleged they can tell me.

The PRESIDENT: I do not think you were asked to withdraw anything, Senator Wong.

The PRESIDENT: Order, Senator Lines! In relation to the points of order—

The PRESIDENT: On both sides! In relation to Senator Moore's point of order, I will remind the minister of the question. In relation to Senator Bernardi's point of order, I will remind all senators that the noise has been intolerable again, today, and that interjections are completely disorderly. Senator Ronaldson, you have eight seconds in which to answer the question.

Senator RONALDSON: In my representative capacity I have been telling the chamber exactly what the government's commitment is to science and innovation and manufacturing. (Time expired)

Senator KIM CARR (Victoria) (14:52): I ask a supplementary question. I refer to the same report, which found that the hard sciences account for seven per cent of employment and contribute 23 per cent of exports. Can the minister explain why this government remains committed to cutting support for science and engineering degrees by more than 28 per cent?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:52): Of course, Senator Carr will not refer to the $1.82 million to secure the operation of vital scientific assets and he will not talk about the government investing a further $12 million to improve the focus on the STEM subjects that he was referring to. When he talks about cuts, why doesn't he talk about the increase in STEM funding? Why doesn't he talk about the $3 billion for CSIRO? Senator Carr has shown his extraordinary ignorance again in relation to this matter: science, technology, engineering and mathematics are, indeed, STEM. I mean, talk about cuts—I will table a document which refers to the cuts under the Australian Labor Party when Senator Carr was the minister.
Senator KIM CARR (Victoria) (14:53): I rise on a further supplementary question. In light of this minister's failure to answer a single question about the Cooperative Research Centres Programme yesterday—or any today—is the minister now able to assure the Senate that the program will not be further cut or abolished in the upcoming budget?

Senator RONALDSON (Victoria—Minister for Veterans' Affairs, Minister Assisting the Prime Minister for the Centenary of ANZAC and Special Minister of State) (14:54): I think the chamber might be more surprised if I talked about what was in the budget, as opposed to what may or may not be in the budget. I think, in the interests of fairness, and so we do have a proper debate, I might just go through the Australian Labor Party's cuts in relation to this—

The PRESIDENT: Pause the clock.

Honourable senators interjecting—

The PRESIDENT: Order on both sides! Senator Cameron, on a point of order.

Senator Cameron: Thank you, Mr President. This is on relevance: the minister is saying that he is in a debate. He has to answer a question—something he has failed to do ever since he has been on the front bench.

The PRESIDENT: Thank you, Senator Cameron. There is no point of order.

Senator RONALDSON: What Senator Cameron has not done since he has been on the front bench is ask a question of Senator Payne—not one question since September 2013 has been asked by the man who just—

Honourable senators interjecting—

The PRESIDENT: Pause the clock. Order on both sides!

Senator Conroy interjecting—

The PRESIDENT: That means you too, Senator Conroy. Senator Moore on a point of order.

Senator Moore: It is on direct relevance to the question asked by Senator Carr. It is about the minister being able to assure the Senate that the program will not be further cut or abolished in the upcoming budget. It is very straightforward, Mr President. I would ask you to draw the minister's attention to the question.

The PRESIDENT: Thank you, Senator Moore. I draw the minister's attention to the question. He has 19 seconds in which to answer.

Senator RONALDSON: As the Minister for Finance said, on the second Tuesday in May the budget will be announced. I will just go through the Labor cuts: the 2014 budget, an efficiency dividend of two per cent, a saving of $902 million—

Senator Moore: I rise on a point of order, Mr President, again direct relevance. I seek your assurance in this place as to whether reading out a list actually responds directly to our question. Is that directly relevant?

The PRESIDENT: Just prior to the minister referring to the list as you have just mentioned, Senator Moore, he did indicate that the answer will be in the budget in May—which was part of the question. But, as always, ministers are entitled to enhance their answers—

Honourable senators interjecting—
The PRESIDENT: Order! Minister, have you concluded your answer? You have two seconds remaining.

Senator RONALDSON: No, I have not done—and in fact, there was the cessation of the facility funding of $384 million—(Time expired)

Industry Skills Fund

Senator McGrath (Queensland) (14:57): My question is to the Assistant Minister for Education and Training, Senator Birmingham, representing the Minister for Education and Training. Can the minister update the Senate on the benefits that are flowing to small- and medium-sized businesses from the coalition’s Industry Skills Fund?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (14:57): I thank Senator McGrath for the question. The Industry Skills Fund is a shining example of this government’s commitment to support real training that connects with real jobs. It provides $476 million in funding over the next four years that will support some 200,000 training opportunities for people right around Australia. But importantly, they are training opportunities that relate to job-specific training, rather than what we saw those opposite engage in too much of, which was training for training’s sake. Employers who contribute to the costs of the training through this program get to decide and model training for what is needed to grow their business, to grow employment opportunity in their business and, therefore, to create more jobs right around Australia. I am pleased to advise that the first grants under this program have started to flow. One of those first ones was to the iconic South Australian ice-cream manufacturer, Golden North. And I know that ice-cream is very dear to Senator McGrath’s heart, as I am sure it is to many in this chamber, and I would implore all—

Senator Wong interjecting—

Senator BIRMINGHAM: Even you, Senator Wong, I am sure, enjoy Golden North from time to time!

Senator Wong: I do.

Senator BIRMINGHAM: Golden North will benefit from $40,000 through the fund which will assist in the cost of training 30 of its staff. This demonstrates that, through modest contribution we can make a major difference, because the funding will help new opportunities for the company in China and South-East Asia by providing their employees with skills in competitive systems to improve factory efficiency. Barker Trailers, a regional business in Victoria will benefit, as will a business in outback Queensland. All up, a number of businesses are already in the early days of benefiting from this program.

Senator McGrath (Queensland) (14:59): Mr President, I ask a supplementary question. Can the minister advise the Senate how the Industry Skills Fund will assist businesses to grow the Australian economy?

Senator BIRMINGHAM (South Australia—Assistant Minister for Education and Training) (15:00): Of the training places approved to date, 72 per cent have gone to micro and small businesses, demonstrating the creation of opportunity for those small businesses to grow themselves and to grow export markets for Australia into the future. Already just in the first couple of months of this program 115 businesses are benefiting from the training opportunities. In contrast, as I said before, Labor wasted billions of dollars on programs that failed to deliver training that actually connected with real job outcomes. A review into Labor’s
failed $4.1 billion Productivity Places Program found it was impossible to tell who had even been trained, it was impossible to estimate how many people had been trained and it was difficult to determine who had even been awarded contracts to deliver the training. By contrast, this program under the coalition connects training with jobs and real employers. (Time expired)

Senator McGrath (Queensland) (15:01): Mr President, I ask a final supplementary question. Can the minister advise the Senate how the Industry Skills Fund is helping to address youth unemployment?

Senator Birmingham (South Australia—Assistant Minister for Education and Training) (15:01): Importantly, as part of this overall program the government is investing $44 million in trialling two innovative youth pilot programs under the Industry Skills Fund which will target and provide the opportunity for individual training programs to be tailored to the needs of those individual young people. Under the Training for Employment Scholarship Program, up to 7,500 job-specific training places will be created across 11 regions, targeting young people aged 18 to 24 who are not in full-time employment or study. Employers must hire the employees for more than 25 hours per week for a minimum of 12 months. In return, the employer is supported with reimbursement up to $7,500 for the costs of up to 26 weeks of personally tailored training to help give this young person often their first job and an opportunity to step into the workforce.

Senator Abetz: Mr President, I ask that further questions be placed on the Notice Paper.

ANSWERS TO QUESTIONS ON NOTICE

Question No. 1487

Senator Siewert (Western Australia—Australian Greens Whip) (15:02): Pursuant to standing order 74(5) on questions on notice, I seek an explanation from the Assistant Minister for Social Security, Senator Fifield, as to why question on notice 1487 asking for a copy of the report of the review of the East Kimberley Youth Services Network has not been answered.

Senator Fifield (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:02): I think these sort of matters on questions on notice are usually given to the representing minister of whom an explanation will be sought. I am not sure whether that occurred but, given there are obviously many hundreds of questions which are placed on notice, I am not in a position at this point in time to give an explanation. But I will certainly take that on notice and do so.

Senator Siewert (Western Australia—Australian Greens Whip) (15:03): I move: That the Senate take note of the minister's failure to provide either an answer or an explanation.

Firstly, I will explain that my office has been in contact with the minister's office, in fact, on several occasions over the last couple of days—

Senator Fifield: With my office?

Senator Siewert: Yes, with your office. My office has been in contact with your office on several occasions over the last couple of days about the answer to this question because we are very keen to get a copy of this report. The reason I am asking now, I should say up-front, is that this pertains very clearly to the effectiveness of remote communities. Of course, that is
on everyone's minds at the moment with the consideration of the government in Western Australia of closing up to 150 communities. This pertains to a program that, from what I understand, has had some important impacts and also looks at how we could support remote communities better.

This example relates to the East Kimberley, as I said, but it is particularly pertinent to the remote community of Ringer Soak. Ringer Soak is located in the Kimberley region of Western Australia. It is approximately 100 kilometres from the Northern Territory border. It consists of about 100 people. There are about six members of the community who are non-Aboriginal, so it is an Aboriginal community. It is about three hours drive from Halls Creek, which is the next largest population centre.

In 2010 the federal Attorney-General, in collaboration with the then FaHCSIA department, commenced the Indigenous Justice Program in this Aboriginal community and also in 15 other communities within the Kimberley region. I have been contacted by people who worked on the program and worked in the community at the time who have particularly community development skills and mental health expertise. They describe the federal Indigenous Justice Program as being tasked to primarily focus on young Indigenous men and having five clear goals: less trouble with the police; less time before the courts; less incarceration; less trouble with alcohol and drugs; and less incidence of youth suicide. In other words, it is focused on the key areas when you are talking about some of the issues that cause disadvantage in Aboriginal communities.

One of the workers describes being in Halls Creek in February 2010 along with the Indigenous Justice Program workers from the neighbouring communities. Those workers were provided a summary of the project by the Western Australian Attorney-General's delegate. They said they identified those five goals because, 'They cost us a fortune to address, they are interrelated and they can cause enormous suffering to individuals, their families and wider communities.' They said, 'If we had some guaranteed methods for achieving the five goals of this program, we would be training you as to how to foster these. But, as you know, the rate of incarceration and youth suicide in this demographic, already the highest in the country, is increasing and we have no pat solutions to teach. That is why we are investing in this program. For this reason, you are being asked to live and work in these communities for three years and to address our quarterly reporting procedures.' They were asked to explain the five goals to their respective community councils, sit with the old people and discuss the goals and build a rapport with the young people and then be directed by the community councils in these centres as to what they would do and how to achieve these five goals. The workers said: 'The quarterly reporting was designed to capture information relating to these five goals and allow for analysis and comparison between the six communities of the project and look then at the conclusions. Whatever successes stand out from this analysis, we hope to be able to copy and reuse elsewhere.' Again, you can see why it is really important for us to have the review of the program, to see what actually does work. The program, which commenced in late 2009 and early 2010, was a bit delayed, but it was carried out and the review was done in 2012 by Allen Consulting Group, who we know have carried out these sorts of analyses in the past.

We believe it is really important that this report be made available, and that is why I have had people contacting me to ask for this review to be made available. I am renewing this call
for it to be made available because of the current debate that is going on. These continue to be five burning issues for the families living in these communities and for other communities. To date, this report has not been released to the public, and people are asking for it to be released so that we can learn what happened in this particular project. You will understand from the goals and the way I have just described it that it is a rather unique project that I hope has a lot of learnings for the community. That is why I asked the minister for an explanation, and I would like to move that that report be made available publicly by the end of March.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:09): I thank Senator Siewert for raising this matter. I have checked with my office, and there was one contact from your office, but I am checking to see if there were further contacts. My understanding is that my office indicated that they would check to see where the answer was and come back on the matter. I am also advised that it was not indicated that the matter would be raised here. So I indicate that that is the situation. It is part of the responsibilities that I have as a minister representing. As I say, my office indicated that we would come back to you as to where it was at, and I will advise you myself, Senator Siewert, where that matter is at.

Question agreed to.

DOCUMENTS

WestConnex

Order for the Production of Documents

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (15:10): I table a response to an order for the production of documents agreed to by the Senate on Wednesday, 18 March 2015 relating to the WestConnex road project in New South Wales.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Defence Procurement

Senator CONROY (Victoria—Deputy Leader of the Opposition in the Senate) (15:10): I move:

That the Senate take note of the answer given by the Minister for Employment (Senator Abetz) to a question without notice asked by Senator Conroy today relating to the manufacture of the next fleet of Australian submarines.

Today Labor has extended the hand of bipartisanship to the government on submarines. As we all know, this decision will transcend governments and generations. It is one of the most important defence capability decisions that our country will ever make. Prior to the 2013 election, there was bipartisan support for the future of the submarine project—genuine bipartisan support. That promise was to build our future submarines in Australia. But, since coming to government, the Prime Minister has been crab-walking away from that promise. It is an open secret. Even Senator Edwards must know by now that the Prime Minister, Mr Abbott, has a handshake deal with Japan to build our new submarines. It is also clear that, to save his own job, he traded submarines for votes in the Liberal party room. To win those votes, the government has announced a sham competitive evaluation process. But be in no
doubt, Senator Edwards and those opposite: this process is being retrofitted to still deliver the Prime Minister his captain's pick for having the submarines built in Japan.

The dysfunction and chaos within the Liberal Party is infecting the submarine decision. Senator Abetz may not be in the NSC—I am not sure—but if he was in the NSC, he was one of the ministers who sat there when they went around the table last October with officials and ministers—and I hope Senator Edwards is listening—and said 'yes' or 'no', 'deal with Japan', 'no tender', 'build in Japan', and 'we announce it with Prime Minister Abe in November at G20'. So, Senator Abetz, if you were a member of the NSC, you know that is the truth. And I accept that if you were not, you may not have been privy to it, because they did not want to bring it to cabinet. But they drew up the press releases in the Department of Defence. They drew them up for an announcement in November of this year. So poor Senator Edwards was sitting there last year being treated like a mushroom by his own frontbench, by his own ministers on the NSC. He was treated like a mushroom, just like every other person in South Australia.

That is why we offer the opportunity today; we reach out and we say that we have outlined a fair and proper process to deliver the best submarine for Australia at the most effective price for taxpayers. The key criterion is to ensure that future submarines are built in Australia. This is a return to the bipartisanship that we saw before the elections.

We are not the only political party offering such a deal. The conservative British Prime Minister David Cameron recognises how important it is for the United Kingdom to build and maintain its own warships. Under Labor's process we would include France, Germany, Japan and Sweden in the competitive tender. We would ensure that the final bids guarantee submarine performance and Australian ownership of all intellectual property.

This is the test for new today: in your five-minute contribution, Senator Edwards, will you make a commitment that the next generation of submarines is built, maintained and sustained in Australia? All you are being asked to do today is to be bipartisan. Build them, maintain them and sustain them here in Australia or are you going to cave-in to the captain's pick again— (Time expired)

**Senator Edwards** (South Australia) (15:15): What a disingenuous rant that was! Let me talk to you about crab-walking. Where was Senator Conroy—when he was in cabinet—when he was crab-walking from Defence Minister Fitzgibbon? Where was he when Minister Faulkner was crab-walking from the issue of the submarine build?

**Senator Conroy:** Not on the NSC.

**Senator Edwards:** Where were you, Senator Conroy, when Minister Smith did the same? There were three defence ministers in six years in the Defence portfolio. How trite of you to come in here and accuse us of inaction in building submarines, when you sucked $16.3 billion out of the Defence budget and left it in a complete vacuum. Senator Gallacher was down there that day, along with the other South Australian Senators when the Leader of the Opposition, Mr Shorten, did his big xenophobic rant on the back of a truck—

**Senator Gallacher:** Mr Deputy President, I would like to point out that I was not there; I was in Tasmania.

**Senator Abetz:** That is better than being in South Australia.
Senator EDWARDS: I respect the interjection from Senator Gallacher, because I know that if he could have gone to a further place—if he could have got to Norfolk Island that day for a hearing—he probably would have. I know him to be a fair and reasonable person. I have worked with Senator Gallacher, and there is not an island far enough away that he could have found himself on that day. There was not a place he would not hidden that day to get away from the rant of the Leader of the Opposition, who was spruiking the Labor lines down there to the handful of fluoro-vested union spruikers, working up fear and loathing about the government.

We are actually doing something. Senator Conroy, I hope you are listening because it was only a few Fridays ago that the Abbott government dealt Australian shipbuilders into the largest defence procurement project in the Commonwealth's history. What a day that was! Now we have some action. Do you know what we have going on in Adelaide over the next couple of days? We have a submarine convention going on. When did we have one of those in the glorious days of submarine building in the Rudd-Gillard-Rudd reign that sucked the Defence budget dry? The light at the end of the tunnel is no longer a freight train, as it was when the Labor party was in power, it is now is a build.

Senator Conroy: A build in Japan!

Senator EDWARDS: Australian shipbuilders, if they get their act together, have the opportunity to build a submarine force that is world-class, as the Collins class was. Now they have an opportunity to do it. If the union movement came together, stopped protesting and sharpened their pencils to get together with management of ASC and other shipbuilders like Forgacs and Osborne. If they realised that, they would have a real shot at this. ‘Do not waste a nanosecond’ is my message to the union movement, which has been crying this opportunity but which has been ranting and raving—

Senator Conroy: You're building them in Japan.

Senator EDWARDS: Senator Conroy, I listen to them and I have heard the experts. That is why I have made the representations that I have and I stand behind them. But do not shrilly come in here, lecturing us about crab walking. It is absolute hypocrisy.

Senator Conroy: You have been treated like a mushroom.

Senator EDWARDS: I wish I had another five minutes. For almost 80 Defence acquisitions completed by Labor after July 2007, nearly 70 per cent were single-sourced procurements. So much for Labor's commitment to open tenders. If you were actually committed—(Time expired)

Senator GALLACHER (South Australia) (15:21): I would like to put on the record very early in the piece some comments that have been made around the Collins class submarine. Ian Mcphedran said:

In what has been regarded as one of the most incredible naval shipbuilding feats of the modern era, the first Swedish designed Collins class submarine, HMAS Collins was commissioned from a former greenfield site at Port Adelaide in July 1996, just nine years after the project began. The Collins class boats are extremely stealthy and have been known to sneak right under US aircraft carriers to photograph their keels.

So we have a very successful base here. We have world recognised technology efficiency and shipbuilding capability in these submarines. What we do not have, if I can use Senator Abetz's
metaphor from his generous contribution to Senator Lundy yesterday, is people looking forward and telling the South Australian community that we need to do this build, design, sustain, maintain in Australia. We have to use his analogy—looking one way and doing another. That is exactly what this coalition government is doing—looking one way and saying: 'Nothing to see here, South Australian public. We will give you 500 jobs.' There was that debacle of a press conference where it came out that the minister was unable to describe what competitive evaluation was but said, 'Don't worry; there will be 500 jobs in it.'

We really need to go back and revisit some of the earlier contributions. When we questioned the Defence minister we were labelled incongruous and stupid. He then went on to say that the ASC could not build a canoe, when all of the evidence in South Australia with the supplement that has been read by thousands of South Australians this week is to the contrary.

What happened is our Prime Minister and the Prime Minister of Japan got together and did a deal. As Senator Conroy said, the National Security Committee ticked off on revoking the promise that we would build 12 submarines right here in Adelaide. That went out the window, and if you want to go into it deeper, Senator Cormann and the Hon. Joe Hockey said, 'Where are we going to save some more money? Slash and burn—who cares about South Australia?'

They now have to revisit that because there is such widely-held and deeply-felt antagonism to this position put by this coalition government that people's seats are in jeopardy.

We know from the by-election results of Davenport and Fisher that people are prepared to change their mind about who they support on this issue. And why should we have Senator Birmingham touting programs of training and employer positions, which are all valuable, but there is never a word said about his own state? Never a word is said about ASC. Never a word is said about the small businesses, the people who need these opportunities in South Australia. Not a word is said about the destruction that the closure of Holden will cause in our northern suburbs. If we do not do this design, build and sustain in South Australia, it will be cumulative. He is out there announcing good programs but he is not at home defending his own state.

We know that the member for Hindmarsh is, at every opportunity, trying to defend himself in that electorate, which is a very marginal electorate. We know that Andrew Southcott is increasingly concerned and has fronted up behind any opportunity to get some profile in this argument. But unless they actually agree to what has been put to them today, they are going to pay extreme electoral pain. People in South Australia want it built. They want the promise honoured. The Labor Party has stepped up in a bipartisan way today as we always have with this project. There has always been bipartisan support. The Australian National Audit Office actually says that there is bipartisan support for this naval shipbuilding capability. And it must continue in South Australia. We will take this issue on for as long as it needs to be to win it. *(Time expired)*

**Senator McGrath** (Queensland) (15:26): It gives me pleasure to speak in this debate because I want to highlight that Labor were in power, allegedly, between 2007 and 2013. They were in power, they were in government, they were in ministerial leather but they were incapable of making a decision on the submarine fleet. Their failure to make a decision and their failure to think about the future defence needs of this country has risked a credibility gap between the ageing Collins fleet and the future submarines. Now Labor want to spend another five years on a tender process. It is rich of Labor, it is typically hypocritical of Labor to call
for an open tender process given that back in 2007 Prime Minister Rudd said that Labor would bypass a tender process for submarines. Even Senator Conroy has conceded, in a masterclass in understatement regarding submarines, that it did not go as fast as everybody wanted. In fact, it did not go anywhere under Labor. They did nothing for six years while they were in-fighting amongst themselves.

In the Defence budget, Labor broke their commitment to guarantee an average of three per cent real growth in Defence spending to 2017-18 and 2.2 per cent real growth to 2030 to fund the promises made in their 2009 Defence white paper. Defence spending under Labor fell to 1.56 per cent of GDP in 2012-13. This is the lowest level of Defence funding since 1938 and that was before the outbreak of the Second World War. They cut the budget for 2012-13 by 10½ per cent. That was the biggest cut to Defence spending since the Korean War. Now Labor come into this place and reach out with their alleged hand of bipartisanship. Actually, what they do is reach out with a hand of hypocrisy and a hand of insincerity in relation to the submarines. They want to talk about a fair and proper process—I was writing the words down while the Labor senators were speaking—and they want to talk about a fair deal for taxpayers. If you want to talk about a fair deal for taxpayers, we can talk about what Labor did in relation to debt. We can talk about what Labor left here on the ministerial desks and on the credit cards and in the savings accounts of Australians—that is, the huge debt that Labor left.

The independent Parliamentary Budget Office stated in mid-2014 that, without action, Australia's debt would grow at one of the fastest rates in the developed world. We are currently paying a billion dollars a month in interest payments. That is over $12 billion a year, for those senators opposite who are not very good at counting with their shoes on. That is enough to build a world-class teaching hospital in every capital city, enough to finish the duplication of the Pacific Highway and it is around half of the Defence budget. It is about the same amount as government spends on aged care. It is more than the cost of the Pharmaceutical Benefits Scheme. It is more than the cost of the National Disability Insurance Scheme. It is more than the cost of higher education spending.

So for Labor to come into the Senate and talk about what we are doing in relation to the submarines is disappointing and hypocritical, because we have to try and clean up the mess that Labor has left behind and ensure that we get the debt down so that we deliver better services for Australian taxpayers. We also need to deliver a submarine fleet that delivers value for taxpayers.

In terms of the acquisition strategy for future submarines we want to provide a pathway—based on a competitive evaluation process—which will maximise the involvement of Australian industry, while not compromising on capability, cost, schedule or risk. And Australia is going to need an international partner to deliver this program. France, Germany and Japan have all emerged as potential international partners, and they will be invited to participate in the competitive evaluation process that will assess their ability to partner with Australia to develop our future submarines.

As part of this evaluation process Defence will seek proposals from potential partners for pre-concept designs, options for designs built overseas or in Australia and/or a hybrid approach, and costs and schedules for each option. The future submarines program will involve an investment of around $50 billion over its full life, and it is very important that we deliver value for money for Australian taxpayers. That is what this government is going to do,
rather than spitting out press releases for dirty, grubby politics, which is what Labor are currently doing.

**Senator McEwen** (South Australia—Opposition Whip in the Senate) (15:31): I, too, would like to take note of the answers given today to Senator Conroy, which, once again, demonstrated the incredible mess that the coalition has got themselves into with regard to the future submarine project.

The government promised before the last federal election to build the 12 future submarines in my home state of South Australia, in Adelaide. We know they backflipped on that promise. We know that the hapless former defence minister slurped the Australian Submarine Corporation. And we know that the Prime Minister, Mr Abbott, has done a deal with Japan to give the work to that country without any sensible, transparent and accountable tender process.

It has been a saga of dreadful mishandling of the most important procurement process ever in the history of Australia. Today, I was very proud when the Leader of the Opposition, Bill Shorten, came out and offered an olive branch to the coalition—he offered a hand to the coalition—to get this most important procurement project right. We asked for their bipartisan support to put in place a decent, accountable process—an accountable process that would deliver for Australia and for South Australia the best possible, cost-effective submarines that are suitable for Australia's security. The process would guarantee the work is retained in Australia to build and to maintain those submarines and to ensure that we have the shipbuilding skills in Australia for the future.

The process that Labor put forward today in South Australia—in my home state—would commence with the four most prominent non-nuclear submarine designers from Germany, France, Japan and Sweden. It would be a 12- to 18-month process, involving a request for proposals, a project definition study and a request for tender, with a decision taken by the end of 2016 about where we would get the design for the submarine from. It is a concrete, clear, accountable, sensible process. It is the first time we have had on the table a real process to ensure that the submarines that we desperately need in this country are built and, most importantly, maintained in Australia.

It was disappointing that the coalition took barely any time to consider this very sensible bipartisan approach to them to fix this problem of the future submarine project. Almost immediately, the useless defence minister, Kevin Andrews, who was dumped into that position when he did not really want to be defence minister—

**Senator Abetz:** I rise on a point of order. If she is going to use those sorts of descriptions—

**Senator Wong:** She has a name: Senator McEwen.

**Senator Abetz:** When there are male senators I say 'he' and when it is a female senator I say 'she'. If there is something offensive about that of course I withdraw that.

**Senator Wong:** She has a name.

**Senator Abetz:** I assume 'hes' also have a name, Senator Wong. But that does not overcome the fact that if the senator wishes to use that sort of terminology she may as well abide by the standing orders and refer to the minister appropriately.

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The PRESIDENT: Senator McEwen, you need to refer to members or ministers in the other place by their correct titles.

Senator McEWEN: Thank you Mr President, I will attempt to do so, when it is warranted.

As I was saying, what the Labor Party has put on the table today is a process that the coalition should sign-up to, because it is the most rational process. It is a reasonable process and one that will actually deliver. It was interesting that Senator Abetz had to take offence when I criticised the Minister for Defence. It just shows how rattled the coalition are by this whole process.

Many of those opposite were disappointed by Mr Abbott's captain's pick, which only came about in the context of a potential leadership spill. When his own job was threatened, Mr Abbott suddenly invented this process, and coerced the defence minister into supporting him in this so-called tender process, which was demonstrated again today by Minister for Defence, Mr Andrews, as a fig leaf for a decision that has already been made. It is a fig leaf for a decision that has already been made in a dodgy deal that the Prime Minister has stitched up with Japan, and which will dud this country, because there are no guarantees under that dodgy deal that this important work will be done in Australia, in my home state. There is no guarantee at all.

As a passionate South Australian, and a great fan of the Australian Submarine Corporation and a person determined to ensure that we have skilled manufacturing jobs in my home state of South Australia, I implore the coalition to put the past behind us and to join with Labor to ensure that this most important defence procurement project is delivered in Australia and guarantees jobs for Australians and guarantees the security of Australia into the future.

Question agreed to.

Forestry

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:37): I move:

That the Senate take note of the answer given by the Assistant Minister for Education and Training (Senator Birmingham) to a question without notice asked by Senator Milne today relating to protection of the swift parrot.

This afternoon we heard in here that the federal Abbott government intends to do nothing to stop the logging of the critical nesting habitat of the swift parrot in Tasmania. This demonstrates that all the talk we have had over the years about the marvellous Regional Forest Agreements, in protecting threatened species and conservation outcomes, is just hot air, hogwash, rubbish.

The Tasmanian government has signed off on logging the habitat of an endangered species, the swift parrot. The federal government intends to do nothing about it, using the excuse that the EPBC Act does not apply. They do not have to look after threatened species if they are in a logging coop, if they are under the Regional Forest Agreements. This comes at a time when the Commonwealth is keen to roll over the Regional Forest Agreements into the future. Let us not have any pretence that the Abbott government cares in any shape or form about the species.

All we got in the answers from the minister was, 'We want to make sure we have jobs in Tasmania.' Mr President, as you and I well know, the native-forest logging industry in
Tasmania is on its knees. There was a rescue tried for the native forest industry, but the Abbott government determined it would not go down that path. As a result of this appalling logging—of three coops, already, out of a possible five—of threatened species habitat, Forestry Tasmania will never get Forest Stewardship Council certification. Never.

This is a classic and carefully documented case of where the Tasmanian government does not protect threatened species. In particular, the expert advice that was provided to the government before it made its decision said: 'There is no scientific evidence to support the position that continued harvesting of breeding habitat will support the conservation objectives for the species.' There is no scientific evidence to support ongoing logging whatsoever. It also said that in allowing the harvesting of breeding habitat for the species at this site, conservation objectives for the species at the coop and regional scales will not be met. Hence, the conservation management of this species would become ineffective.

It is obvious what needs to happen here. We all know this has been through the courts several times. My former colleague Senator Bob Brown took this to the Federal Court when the threatened species were absolutely being contravened, in the EPBC Act, in areas logged by Forestry Tasmania. The Federal Court upheld the view that the threatened species were not being cared for consistent with Commonwealth law. That was then appealed and overturned. Now the Commonwealth just washes its hands of threatened species in logging coops.

Make no mistake, Mr President. Anyone who suggests that the Regional Forest Agreements protects threatened species has a classic case here where it is absolutely wrong. Not only that, we have a Commonwealth that says they want to hand back environmental responsibility to the states. We had that again from Senator Birmingham today. They want to give the Tasmanian government full and total control over our World Heritage areas and over all environmental issues that the Commonwealth previously cared about, including threatened species. What good would that be when the Tasmanian government has deliberately, in contravention of its scientific advice, gone ahead and given the go-ahead to logging? That is the Hodgman Liberal government in Tasmania logging the habitat of threatened species, and the Abbott government in Canberra ticking it off.

That is a process they would support around the country. That is why the Regional Forest Agreements should not be rolled over and should actually be dumped. More particularly, we need the Commonwealth to now intervene. They have a Threatened Species Commissioner. What is he going to do about the swift parrot? We want an investigation into what Tasmania has done, into why they are so keen to log the nesting habitat when we only have 2½ thousand of the species left on the planet. It is very bad policy, unsustainable and is environmental vandalism endorsed by the Abbott government.

Question agreed to.

PETITIONS

The Clerk: Petitions have been lodged for presentation as follows:

Defense Expenditure

To the Honourable President and Members of the Senate in Parliament assembled, the petition of the undersigned shows that:
Australia faces no military threat from any other nation, nor has there been any increase in such a threat for many years. No nation in the region or the world is capable of launching a military invasion of Australia, apart from our ally, the US.

However, there is a danger of an 'arms race' in the Western Pacific - exemplified by the United States' so-called military 'pivot' to the region.

Australia may be contributing to this process, through plans to increase government expenditure in all areas of defence, especially in the acquisition of such offensive, military hardware as the F35 Joint Strike Fighter. Meanwhile, other civilian programs are facing severe reductions in expenditure.

Australia currently spends $29.3 billion per year on defence, and, by buying 10% of all US arms exports, is the seventh largest importer of major arms in the world.

Your petitioners ask that the Senate:

ensure that there is no increase in Australia's military spending, thereby indicating our peaceful intentions to all our neighbours and releasing funds to be spent in more beneficial areas.

by Senator Rhiannon (from 760 citizens).

Minister for Defence

To the Honourable President and Members of the Senate in Parliament assembled:

The petition of the undersigned shows:

A profound objection to the censure of Senator David Johnston by the Senate on the 26th of November 2014.

Your petitioner asks that the Senate:

Expunge from the record the censure of Senator David Johnston

by Senator Reynolds (from one citizen).

Petitions received.

NOTICES

Presentation

Senator Bushby to move:

That the Joint Select Committee on Northern Australia be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:

(a) Tuesday, 12 May 2015;
(b) Tuesday, 16 June 2015; and
(c) Tuesday, 23 June 2015.

Senator Bushby to move:

That the Joint Select Committee on Trade and Investment Growth be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:

(a) Tuesday, 12 May 2015;
(b) Tuesday, 16 June 2015; and
(c) Tuesday, 23 June 2015.
Senator Brandis to move:
That the following bill be introduced: A Bill for an Act to consolidate the Australian Government Solicitor into the Attorney-General’s Department, and for related purposes. Judiciary Amendment Bill 2015.

Senator Rhiannon to move:
That the Senate—
(a) notes that science and research are crucial to Australia’s wellbeing and economy, but that funding for science, research and innovation is currently at a 30-year low; and
(b) calls on the Government to:
(i) put funding for research and science on a secure footing, with long-term legislated funding guarantees that last longer than the yearly budget cycle or the 3-year political cycle, and
(ii) reverse the decision not to proceed with funding for the Future Fellowship program and guarantee that funding for the National Collaborative.

Senator Xenophon to move:
That the following bill be introduced: A Bill for an Act to provide for the accurate labelling of the country of origin for fish, and for related purposes. Food Standards Amendment (Fish Labelling) Bill 2015.

Senator Di Natale to move:
That the Senate—
(a) notes the findings of the Australian National Audit Office (ANAO) performance audit into the Administration of the $15 billion Fifth Community Pharmacy Agreement (the Agreement); and
(b) that the ANAO found:
(i) expected net savings under the Agreement are not clearly documented,
(ii) there is no straightforward means for the Parliament and other stakeholders to know the expected or actual cost of key components of the Agreement,
(iii) there were persistent shortcomings in record-keeping by the Department of Health (the department) in that:
   (A) it failed to keep a record of its meetings with the Pharmacy Guild,
   (B) it failed to take minutes of those meetings, and
   (C) it did not prepare agreed notes of what had been discussed,
(iv) the decision by the department not to prepare an official record of discussions over a $15 billion funding agreement is not consistent with sound practice,
(v) the department reallocated funds without prior ministerial approval, including to a $5.8 million communication strategy to be delivered by the Pharmacy Guild,
(vi) the department did not secure ministerial approval before reallocating funding of $7.3 million originally approved by ministers,
(vii) that department records indicate that in its preparations for the Agreement negotiations and implementation, the department did not:
   (A) develop a risk management plan,
   (B) develop a probity plan or consult with a probity advisor,
   (C) complete specific conflict of interest declarations for members of its negotiation team, or
   (D) develop a strategic implementation plan,
(viii) it would be of benefit for the department, in consultation with the Department of Finance, to clarify the basis on which it treated the Pharmacy Guild as the sole recipient of grants of Commonwealth financial assistance intended to be distributed by the Pharmacy Guild to pharmacy owners, and that the department was unable to provide evidence that the relevant funds were authorised by ministers as grants to the Pharmacy Guild, and

(ix) that including patient co-payments in cost estimates had the effect of significantly overstating the cost to government of the Agreement by approximately $2.2 billion.

**Senators O'Sullivan and Canavan** to move:

That the Senate—

(a) supports the Australian and Queensland Governments’ release of the Reef 2050 Long-Term Sustainability Plan for the Great Barrier Reef, including the additional $100 million investment to protect the reef;

(b) notes that opposition to this plan is now blatantly focused on stopping coal mines 500 kilometres inland from the reef, not protecting the reef per se; and

(c) supports the Australian and Queensland Governments’ investment and campaign against the ‘in danger’ listing of the reef by the United Nations Educational, Scientific and Cultural Organization given that government efforts have now addressed the key areas of concern raised by the World Heritage Committee, and that such a listing would cause great harm to tourism industries.

**Senator Ludlam** to move:

That the Senate—

(a) notes that:

(i) Australia, together with 155 other states, participated in the Vienna Conference on the Humanitarian Impact of Nuclear Weapons on 8 December and 9 December 2014,

(ii) in a statement to the conference, Pope Francis called for nuclear weapons to be ‘banned once and for all’,

(iii) at the conclusion of the conference, Austria pledged to, inter alia, 'identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons', and

(iv) the host government of Austria has invited all interested states to associate themselves with this pledge by formal diplomatic means;

(b) endorses the Austrian Pledge; and

(c) calls on the Australian Government to do the same and voice its support for the start of a time-bound diplomatic process to negotiate a treaty prohibiting nuclear weapons and establishing a framework for their elimination.

**Senator Wright** to move:

That the Senate—

(a) notes the effects of Commonwealth funding uncertainty on the legal assistance sector, including the possible closure of community legal centres, staff loss, a reduction in services to clients and declining staff morale;

(b) acknowledges that, unless this uncertainty is addressed and funding restored, critical services directed at family violence, child protection, disability and mental health and services to regional, remote and Aboriginal and Torres Strait Islander communities may be irrevocably compromised;

(c) accepts the findings of the Productivity Commission’s 2014 report on access to justice, which recommended an additional $200 million in Commonwealth, state and territory funding be provided for civil legal assistance services to address urgent need; and
(d) calls on the Federal Government to immediately address the funding uncertainty and include increased funding for the legal assistance sector in the 2015-16 Federal Budget.

Senator Whish-Wilson to move:

That the Senate—
(a) notes that the Malaysian Government:
(i) is undertaking a cost-benefit analysis of the impact of the Trans-Pacific Partnership Agreement (the Agreement) to inform its cabinet and parliamentary decision making processes prior to signing any deal, and
(ii) is stating that it will not sign the Agreement unless it proves to be in Malaysia's interest to do so; and
(b) calls on the Australian Government to:
(i) request that the Productivity Commission undertake a comprehensive socio-economic cost-benefit inquiry into the impact of the Agreement on Australia, and
(ii) postpone both signing any agreement and approval processes of the Joint Standing Committee on Treaties until this Productivity Commission inquiry report is completed and tabled in parliament.

Senator Rice to move:

That the following matter be referred to the Environment and Communications References Committee for inquiry and report by 11 November 2015:
The future of Australian forest management, including:
(a) an assessment of past and current management of native forests, including assessment of Regional Forest Agreements in achieving their objectives and those of the National Forest Policy Statement, and other land management mechanisms and programs;
(b) assessment of the economic, environmental and social value of native forests for regional and rural communities, including for recreation and tourism;
(c) assessment of the challenges and opportunities for protecting the environmental values of native forests, including, but not limited to, biodiversity, protections for threatened species, water and bushfires;
(d) the impacts of climate change on native forests and plantations, and the role of native forests and forest management in mitigating the effects of climate change on people and the environment;
(e) assessment of the challenges and opportunities facing the forestry industry, and assessment of actions required to support competitiveness and employment, including but not restricted to innovation and investment, research and development, and the sustainability and management of the plantation forest estate;
(f) assessment of the workforce profile of the Australian forestry and forest products industry and the impacts of forest management regimes, such as Regional Forest Agreements, on employment;
(g) assessment of the most effective mechanisms for ensuring the social, environmental, and economic values of forests are effectively protected and managed for future generations; and
(h) any other related matter.

Senators Carr, Xenophon, Muir, Wright, Wang and Lazarus to move:

That the Senate—
(a) recalls its resolution of 13 May 2009, moved by Senator Cormann, setting out the process to be followed by public sector witnesses who believe that they have grounds for withholding information from Senate committees;
(b) concurs with the statement of Senator Cormann during debate on the motion, in which he said, 'At the end of the day, the final decision on whether to claim a public interest ground for not disclosing information should be made by a minister, with a statement of the ground, and ultimately only the Senate itself can determine whether the claim is accepted';

c) acknowledges a letter tabled by Senator Cormann on 17 March 2015 in response to an order for the production of documents agreed to by the Senate on the same day, relating to the Automotive Transformation Scheme;

(d) does not recognise that the act of marking documents as 'Protected for reasons of Cabinet confidentiality' is an appropriate basis for making a claim of public interest immunity;

e) does not accept Senator Cormann's claim of public interest immunity on the grounds that to produce the documents ordered would disclose the substance of Cabinet deliberations which would give rise to harm to the public interest; and

(f) insists that Senator Cormann table the correspondence requested in the order for production of documents agreed to by the Senate on 17 March 2015 by 3.30 pm on 12 May 2015.

Senator Wong to move:

That the Senate—

(a) notes that former Senator John Faulkner resigned his place as a Senator for the State of New South Wales by letter to the President of the Senate on 6 February 2015;

(b) notes that the vacancy in the representation of New South Wales arising from the resignation of Senator Faulkner was notified to the Governor of New South Wales by the President of the Senate in accordance with section 21 of the Constitution on 9 February 2015;

(c) reaffirms its resolution of 3 June 1992 (reaffirmed on 7 May 1997) in which the Senate:

(i) expressed the view that casual vacancies in the Senate should be filled as expeditiously as possible, so that no state is without its full representation in the Senate for any time longer than is necessary;

(ii) recognised that under section 15 of the Constitution an appointment to a vacancy in the Senate may be delayed because the Houses of the Parliament of the relevant state are adjourned but have not been prorogued, which, on a strict construction of this section, prevents the Governor of the state making the appointment; and

(iii) recommended that all state parliaments adopt procedures for casual vacancies to be filled expeditiously within 14 days after notification of the vacancy, including by recall if necessary;

(d) notes that the New South Wales Houses were prorogued on 2 March 2015, the Legislative Council until 5 May 2015 and the Legislative Assembly until 6 March 2015 on which day it expired prior to an election to be held on 28 March 2015; and

(e) calls on the Government and the Parliament of New South Wales to take all necessary steps to ensure that the people of that state are not denied full representation in the Senate for any time longer than is strictly necessary.

Senators Gallacher and Hanson-Young to move:

(1) That a select committee, to be known as the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, be established to inquire into and report by 15 June 2015 on the responsibilities of the Commonwealth Government in connection with the management and operation of the Regional Processing Centre in Nauru (the Centre), with particular reference to:
(a) how the Commonwealth Government is fulfilling its obligations under the Memorandum of Understanding between The Republic of Nauru and the Commonwealth of Australia relating to the transfer to and assessment of persons in Nauru, cost and related issues;

(b) the performance of the Commonwealth Government in connection with the Centre, including the conduct and behaviour of the staff employed at the Centre, to the extent that the Commonwealth Government is responsible;

(c) the Commonwealth Government's duty of care obligations and responsibilities with respect to the Centre;

(d) the circumstances that precipitated the Moss Review, including allegations made regarding conditions and circumstances at the centre and the conduct and behaviour of staff employed by contracted service providers, the timing of the Commonwealth Government's knowledge of the allegations, and the appropriateness of the response of the Commonwealth Government to these allegations;

(e) factors relating to the timing of the release of the Moss Review;

(f) the response of the Commonwealth Government to the recommendations of the Moss Review, including timelines for implementation; and

(g) any related matters.

(2) That the committee consist of 5 senators, 2 to be nominated by the Leader of the Government in the Senate, 2 to be nominated by the Leader of the Opposition in the Senate, and 1 to be nominated by the Leader of the Australian Greens in the Senate.

(3) That:

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

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

(4) That 3 members of the committee constitute a quorum of the committee.

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

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

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

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

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

(10) That the committee have power to appoint subcommittees consisting of 3 or more of its members, and to refer to any such subcommittee any of the matters which the committee is empowered to consider.
(11) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.

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

Senator Siewert to move:

That the Senate—

(a) notes the reports that the Special Broadcasting Service (SBS) may have to cut the specialist news program on its Aboriginal and Torres Strait Islander channel NITV;
(b) recognises the importance of Indigenous news media and the role that NITV reports play in covering a range of breaking news stories that are in the interest of, or from the perspective of Aboriginal and Torres Strait Islander peoples; and
(c) calls on the Government to work with SBS to ensure that this important service is retained.

Senators Leyonhjelm, Muir and McKenzie to move:

That the Senate notes that:

(a) there has been a successful start to the Victorian duck hunting season, with hunters demonstrating their commitment to conserving wetlands and observing game and firearms laws;
(b) the Victorian Game Management Authority has observed increased involvement of family groups;
(c) more than 20,000 licensed duck hunters contribute substantially to the Victorian economy and community each year; and
(d) a study commissioned by the Victorian Department of Environment and Primary Industries estimated that hunting by game licence holders contributed $439 million to the Victorian economy in 2013, and had a total employment impact of 2,382 jobs.

Senators Ludwig and Xenophon to move:

That the following matter be referred to the Finance and Public Administration Legislation Committee for inquiry and report by 13 May 2015:

The proposed Parliament House security upgrade works, including perimeter fencing, internal infrastructure changes and CCTV cameras, with particular reference to:
(a) security and safety considerations;
(b) project management;
(c) value for money;
(d) design integrity;
(e) heritage impact;
(f) moral rights;
(g) impacts on building occupants and visitors; and
(h) any related matters

BUSINESS

Leave of Absence

Senator McEWEN (South Australia—Opposition Whip in the Senate) (15:43): by leave—

I move:

That leave of absence be granted to Senator Bilyk for 25 March to 26 March 2015 for personal reasons.
Question agreed to.

NOTICES
Postponement

The following item of business was postponed:
General business notice of motion no. 674 standing in the names of Senators Rice and Wright for 26 March 2015, proposing the introduction of the Automotive Transformation Scheme Amendment (Sustainable Jobs in the Auto Component Industry) Bill 2015, postponed till 13 May 2015.

COMMITTEES
Reporting Date

The Clerk: Notifications of extensions of time for committees to report have been lodged in respect of the following:
Environment and Communications Legislation Committee—Australian Broadcasting Corporation Amendment (Local Content) Bill 2014—extended to 27 March 2015
Community Affairs References Committee—
   Availability of cancer drugs in Australia—extended to 17 June 2015
   Treatment of people with disability in institutional and residential settings—extended to 16 September 2015

The PRESIDENT (15:44): Does any senator wish to have any motion put in relation to those extensions? There being none, we will move on.

BILLS
Australian Centre for Social Cohesion Bill 2015
Second Reading

Debate resumed on the motion:
That this bill be now read a second time.

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:45): I seek leave to have my second reading speech to the Australian Centre for Social Cohesion Bill 2015, which was introduced on my behalf on 9 February, incorporated into Hansard.
Leave granted.
The speech read as follows—

In Australia, we currently lack a comprehensive national plan to address extremism in our communities. If we are to address these issues at their root, if we are to work to prevent attitudes that accept terrorism and violence as acceptable, then we need to invest in programs that build social cohesion and work to prevent young Australians from becoming radicalised.

As United Nations Secretary-General Ban Ki-Moon has said, "the best response to a corrosive, malevolent ideology is a strong assertion of collective resistance". It is this collective, comprehensive and unified response that the Australian Centre for Social Cohesion Bill 2014 pursues. The Bill establishes a centralised body to develop and implement key preventative programs that help stop young Australians from becoming radicalised. The Centre and its Director will focus on building social cohesion, working with communities to prevent violent extremism. Through bringing together
government bodies, law enforcement agencies, academics, researchers and former extremists to consult and work together to build resilient and cohesive communities, the Centre will be well equipped to develop high quality, effective programs for social cohesion.

Currently in Australia, we are under-investing in prevention programs for young Australians at risk of involvement with extremist groups and ideology. To put it in perspective, of the $630 million Counter-Terrorism package currently being implemented by the Australian Government, just $13.4m is allocated in Australia to for prevention programs targeting young Australians involved with extremist groups. That’s a mere, 0.5% of the total budget. Of this total funding, just $1 million is currently being utilised, leaving an enormous funding and capacity gap that fails our community.

The lack of a central body dedicated to building social cohesion in our communities or preventing extremism compounds the impacts of this under-investment. Though we currently have in place individual programs such as Countering Violent Extremism, a four-year grant program that works to deter young people from extremism, this has been subject to cuts in funding at a time when we should be investing even more in such schemes.

Furthermore, as Australian violent extremism expert Dr Anne Aly has noted, "Other countries including the UK, Sweden and the US have non-government and not-for-profits working specifically to combat violent extremism, but in Australia much of the work is taken on by government or the research community. There are of course NGOs [Non-Government Organisations] who have developed projects that aim to address the root causes of violent extremism but there was no entity that could take on a coordinating role bringing together government, research and community. This is where we see ourselves having the most impact."

The establishment of the Australian Centre for Social Cohesion would act to break down this siloed approach, bringing together groups from various sectors to develop effective and comprehensive policies to address radicalisation. Research and experience has proven that violent extremism is best dealt with by civil society groups, in coordination and consultation with government and law enforcement agencies. In Australia, this is illustrated in groups such as People against Violent Extremism (PAVE), which grew out of recognition that civil society is a vital player in conflict resolution and developing community resilience against extremism. We also know that countering violent extremism through early intervention and individual and community engagement represents a smarter approach that recognises social as well as political and ideological factors that can make people vulnerable to extremism. This Bill, and the functions and powers of the Australian Centre for Social Cohesion that it outlines, puts into practice these findings.

Community engagement and consultation is necessary, but they do not hold all of the answers alone. Diversionary and educational programs, along with strong online campaigns, are all part of a necessary strategy to help stop young Australians becoming radicalised. It is not about targeting one particular community, but rather a collective approach across multiple communities, government and academia, to implement programs and strategies that that are more targeted at identified points in radicalisation where intervention is likely to succeed. We cannot continue to rely on decisions from the bureaucratic level alone. We need recognise that our failings, both at a government and community level, in preventing radicalisation, is largely due to a policy response that was based on assumptions rather than on a framework that has had proven success. Research from Curtin University has found that deradicalisation programs delivered by government "lack viability and credibility within the target group and are most likely to be viewed manipulative and agenda serving." By enabling relevant NGOs, community leaders, government departments and academic experts to come together we will be able to develop a best practice model for combating violent extremism.

There is precedent around the world for success using this model. The Australian Centre for Social Cohesion framework, focusing on community, government, research and dialogue, is largely based on Hedayah, the premier international institution for training and research to counter violent extremism.
The Bill takes this successful international model, and replicates it at a domestic level, focused on the Australian circumstance, and tailoring their research and training to our domestic needs. Hedayah works closely with communities and stakeholders (e.g. youth, women, educators and community leaders) who have traditionally been on the outer when it comes to developing policies to combat violent extremism.

If we are serious about dealing with extremism and terrorism, we must not isolate our focus to reacting to acts of terror and extremism, but also be serious about prevention. Identifying those at risk, finding pathways to deradicalisation, and bringing together the community to find collective solutions, must be a focus of our proactive response to extremism as a nation. The establishment of the Australian Centre for Social Cohesion will provide the foundation that Australia needs to effectively implement such a response.

Debate adjourned.

COMMITTEES

Rural and Regional Affairs and Transport References Committee

Reference

Senator RUSTON (South Australia—Deputy Government Whip in the Senate) (15:45): I, and also on behalf of Senators Xenophon, McKenzie, Whish-Wilson, Madigan and Smith move:

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 11 November 2015:

(a) the extent and nature of any market failure in the Australian grape and wine industry supply chain;
(b) the extent to which federal and state legislative and regulatory regimes inhibit and support the production, processing, supply chain logistics and marketing of Australian wine;
(c) the profitability of wine grape growers, and the steps industry participants have taken to enhance profitability;
(d) the impact and application of the wine equalisation tax rebate on grape and wine industry supply chains;
(e) the extent to which grape and wine industry representation at regional, state and national level effectively represents growers and winemakers with respect to equity in the collection and distribution of levies;
(f) the work being undertaken by the Australian Grape and Wine Authority pertaining to levy collection information;
(g) the power and influence of retailers of Australian wine in domestic and export markets;
(h) the adequacy and effectiveness of market intelligence and pricing signals in assisting industry and business planning;
(i) the extent to which the Australian grape and wine industry benefits regional communities both directly and indirectly through employment, tourism and other means; and
(j) any related matters.

Question agreed to.

Foreign Affairs, Defence and Trade References Committee

Reference

Senator WHISH-WILSON (Tasmania) (15:46): I move:
That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 19 February 2016:

The mental health of Australian Defence Force (ADF) personnel who have returned from combat, peacekeeping or other deployment, with particular reference to:

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

I seek leave to make a short statement.

Senator WHISH-WILSON: In one of life's strange coincidences, after sailing in the Sydney to Hobart last Christmas, I was down at the docks buying a coffee and I got chatting to a guy at the bar, who wanted to buy me a drink. He then insisted that I come and sit with his group. After a few minutes, I realised that this group of people I was sitting with had sailed also from Sydney to Hobart. They were a group of veterans called Mates4Mates, a support network for veterans. They had actually sailed a boat down and had trained—and they work with philanthropists. To cut a long story short, as we parted ways after one or two rum-and-cokes, they made me swear that I would try and do something about support for veterans.

I am pleased today to have Labor's support and support from the crossbench to get the Senate to look at something that was raised very recently by Four Corners: the dire situation for veterans in this country with regard to suicide, homelessness and mental health issues. I thank the Labor Party and the crossbenchers for their support.


The PRESIDENT: Leave is granted for one minute.

Senator FIFIELD: The government acknowledge the unseen psychological wounds from conflict and training, and we are resolutely committed to caring for those carrying physical or psychological scars as a result of their service. The government understand the unique nature of military service and the importance of providing comprehensive and timely support to veterans with mental health conditions. DVA spends almost $179 million a year on meeting the mental health needs of the veterans and ex-service community and has developed a range
of significant resources to support them, and this expenditure is demand driven and not capped.

The government have also launched the $5 million Transition and Wellbeing Research Program as part of its ongoing commitment to support ADF personnel and their families. This initiative represents the largest and most comprehensive program of study undertaken in Australia to examine the impact of military service on the mental, physical and social health of serving and ex-serving personnel who have deployed to contemporary conflicts, and their families.

Question agreed to.

**BILLS**

**Construction Industry Amendment (Protecting Witnesses) Bill 2015**

**First Reading**

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:49): I move:

That the following bill be introduced: A Bill for an Act to amend the Fair Work (Building Industry) Act 2012, and for related purposes.

Question agreed to.

Senator ABETZ: I present the bill and move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (15:49): I table the explanatory memorandum relating to the bill and 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—

Today, I introduce the Construction Industry Amendment (Protecting Witnesses) Bill 2015.

The Bill maintains the existing examination powers used by the building industry regulator, Fair Work Building and Construction, to combat unlawful conduct.

The construction industry is a critical sector of the Australian economy. It is the nation’s third largest employer with more than one million workers, with many employed in small businesses. It has, regrettably, been affected by unlawful conduct, thuggery and intimidation for too long.

The Government, and any objective observer, realise that Australia desperately needs a construction industry that is not plagued by lawlessness, intimidation and thuggery, and in which all participants respect the rule of law. It is what one would expect in the twenty-first century.

For this reason, one of this Government’s first tasks was to introduce a Bill to re-establish the Australian Building and Construction Commission. That Bill was passed by the House of Representatives in December 2013 and is currently before the Senate.

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CHAMBER
The case to re-establish an effective regulator to enforce appropriate laws, to provide sufficient penalties to deter unlawful conduct, and stop the thuggery and lawlessness in this important industry, is a powerful one.

Re-establishing the ABCC and bringing respect for the rule of law back to the building industry remains a priority for this Government. I also reiterate the Government's firm commitment to the advance release of the Building Code 2014 which will be administered by the ABCC.

However, the Government appreciates that the Senate requires additional time to consider the ABCC Bills.

Whilst this would ordinarily be a matter of scheduling, we need to stop a ticking time bomb from exploding. The compulsory powers in the current legislation to address the culture of silence and intimidation are subject to a sunset clause imposed by the former Labor government. These important powers will no longer be available to the regulator from 1 June 2015.

Accordingly, until the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 are dealt with by the Senate in the coming sitting period, this Bill, the Construction Industry Amendment (Protecting Witnesses) Bill 2015, will extend the period during which the Director of the Fair Work Building Industry Inspectorate can exercise the agency's compulsory powers.

The Bill will extend the powers for a further two years. All other aspects of the current legislation are unchanged, including the automatic immunity given to a witness over their evidence.

The ability to compel a person to provide information is vital to protecting workers and witnesses who dare to stand up to unlawfulness and intimidation and assist the regulator to clean up the industry. The powers also ensure Fair Work Building and Construction is able to carry out its investigations effectively and break down the 'culture of silence' and retribution that exists in the sector.

This Bill simply extends the existing powers. These kinds of powers are not novel or new. A range of other Commonwealth regulatory bodies have compulsory powers, such as the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission, the Australian Taxation Office, Centrelink and Medicare.

In 2009, the Hon. Murray Wilcox, AO, QC conducted a review of the Australian Building and Construction Commission and its powers at the request of the former Labor government. He recommended that the compulsory powers be retained because he was satisfied there was still such a level of industrial unlawfulness in the industry that warranted the powers. He also said that, in reality, without such a power some types of contraventions would be almost impossible to prove.

We have recently seen the effectiveness of compulsory powers during the investigation by the Australian Competition and Consumer Commission of the alleged CFMEU secondary boycott against Boral. ACCC Chairman Sims and his agency were confronted by the culture of silence and fear of reprisal that is all too often a feature of the building and construction industry.

Mr Sims said that "the ACCC has only been able to progress the investigation by compelling people to give evidence". Without the ACCC's use of its compulsory powers, the serious wrongdoing alleged could not have been put before the Court.

It remains the case today that law-abiding industry participants have nothing to fear from the continuation of these powers. In fact, as the name of the Bill suggests, the powers will protect those people who do the right thing.

This Bill provides for the continuation of arrangements already in place, which have been previously supported by both sides of Parliament and ensure individuals who are brave enough to take a stand against unlawfulness are not stood over and intimidated into silence.
The Government is committed to re-establishing the ABCC and returning the rule of law to Australia's construction industry, and this Bill will ensure that there is no break in the existing regulator's ability to investigate unlawfulness until the Senate has had an opportunity to consider the legislation to re-establish the ABCC.

Ordered that further consideration of the second reading of this bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

BUSINESS

Withdrawal

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:50): I move:

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

Question agreed to.

Days and Hours of Meeting

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:50): I move:

That the hours of meeting for Tuesday, 12 May 2015, be from 12.30 pm to 6.30 pm and 8.30 pm to adjournment, and for Thursday, 14 May 2015 be from 9.30 to 6 pm and 8 pm to adjournment, and that:

(a) the routine of business from 8.30 pm on Tuesday, 12 May 2015 shall be:
   (i) Budget statement and documents 2015-16, and
   (ii) adjournment; and

(b) the routine of business from 8 pm on Thursday, 14 May 2015 shall be:
   (i) Budget statement and documents—party leaders and independent senators to make responses to the statement and documents for not more than 30 minutes each, and
   (ii) adjournment.

Question agreed to.

MOTIONS

Liverpool Plains

Senator RHIANNON (New South Wales) (15:51): I move:

That the Senate—

(a) notes that:

(i) the Minister for the Environment (Mr Hunt) has referred the Shenhua Watermark coal mine planned for the Liverpool Plains to the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development (IESC) for assessment under the water trigger provisions of the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act),

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

(iii) the Federal Government has passed legislation in the House of Representatives, including to hand over application of the water trigger, including approval decisions, under the EPBC Act to state and territory governments and local councils, and
(iv) as well as the proposed Shenhua Watermark project two other major mining projects are proposed for the Liverpool Plains—BHP Billiton is planning a coal mine of 500 000 000 tonnes less than 10 km from the Shenhua site, and Santos has a coal seam gas licence to explore for gas across the whole Liverpool Plains floodplain;

(b) calls on the Minister for the Environment to publicly clarify:

(i) if he is requiring that the IESC review assess the cumulative impacts of the project in association with other developments, whether past, present or reasonably foreseeable,

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

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

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

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

A division having been called and the bells being rung—

Senator MOORE (Queensland) (15:53): Mr President, with your indulgence, we have misjudged our position and we are actually in support of this motion of the Greens.

The PRESIDENT: Do I then gather there is no need for a division? Is that the case? We can terminate a division. Will we stop the bells or will we go ahead? We will let the division stand, and I will put the motion once the doors have been locked. Lock the doors. I understand that there may be no need for this division. Senator Siewert, did you wish to have the question put again and decided on the voices?

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:56): Mr President, I do not think your call reflected the will of the chamber, so I ask you to recommit the vote.

The PRESIDENT: I think my call reflected the will of the chamber, but I think senators might not have called it correctly! I will put the question again. The question is that general business notice of motion No. 681, standing in the name of Senator Rhiannon, be agreed to.

Question agreed to.

Senator WILLIAMS (New South Wales) (15:57): Mr President, I seek leave to make a short statement.

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

Senator WILLIAMS: The government would like to clarify that we oppose the motion just voted on because it does not accurately reflect the environmental approval processes for coal or coal seam gas projects. The government has made it clear that in respect of the Liverpool Plains it is taking the advice of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development. That committee was established by the former government with the support of the coalition and the Greens. However, the Greens seem to lack an understanding of the word 'independent'.

The government has requested that the committee respond directly to questions raised by the community but it will not tell the independent committee how to do its job, as the Greens have suggested in this motion. To do so would taint the work of the independent committee. The government is carefully considering the impacts of proposed projects in the Liverpool Plains.
Plains area and it will assess these impacts consistent with Australia's stringent environmental laws.

Environment

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:58): I move:

That the Senate—

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

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

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

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (15:58): Mr President, I seek leave to make a short statement.

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

Senator FIFIELD: The Australian government supports government procurement on a value for money basis. Unlike the Greens, the coalition government cares about ensuring that taxpayer dollars are well spent. The government acknowledges the efforts in the United States to reduce emissions without an economy-wide carbon tax which pushes up electricity prices. The United States is using direct action measures which are supported in Australia. Energy productivity retrofits are supported under the coalition's Emissions Reduction Fund, renewable energy is supported under the renewable energy target, ethanol and biofuel usage in transport fleets is supported under the Emissions Reduction Fund and light vehicle fuel efficiency standards are being consulted on through the energy grant paper.

Question agreed to.

COMMITTEES

National Broadband Network Committee

Appointment

Senator LUDLAM (Western Australia) (15:59): I move:

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

After paragraph (d), insert:

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

Question agreed to.
BUSINESS

Days and Hours of Meeting

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (16:00): I move:

That—

(1) On Wednesday, 25 March 2015:
   (a) the hours of meeting shall be from 9.30 am to 7 pm and 7.30 pm to 11.10 pm;
   (b) the routine of business from not later than 7.30 pm until 10.30 pm shall be government business only; and
   (c) the question for the adjournment shall be proposed at 10.30 pm.

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

Question agreed to.

Days and Hours of Meeting

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (16:00): I ask that government business notice of motion No. 5 relating to an additional sitting day on Monday, 11 May 2015, be taken as a formal motion.

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

Senator Moore: Yes.

The PRESIDENT: There is an objection.
Suspension of Standing Orders

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (16:00): Pursuant to contingent notice standing in the name of the Leader of the Government in the Senate, Senator Abetz, I move:

That so much of the standing orders be suspended as would prevent a minister moving a motion to provide for the consideration of a matter, namely a motion to give precedence to government business notice of motion No. 5.

The Leader of the Government in the Senate and I commenced this week in discussions with representatives of all groupings in this place. We met with the Australian Labor Party. We met the Australian Greens and we met with each member of the crossbench or a representative of their office.

In those discussions, it rapidly became clear that there were some people who were very willing to talk about how this week may play out, particularly in the light of Mr Malcolm Fraser’s passing and the obvious effect that that had in relation to the Monday sitting.

We discussed a range of options in relation to this sitting week and, as I say, it became clear that there was a greater willingness amongst some senators—in this case, particularly those senators who are crossbenchers—to discuss these sorts of matters. It also became clear that there wasn’t such a willingness on the part of the Australian Labor Party and the Greens for those discussions. We had some good discussions and, as a result of those, we were able to enter into agreement for arrangements which flow through the course of this week.

We, subsequently, continued those discussions with those individual senators who were keen to work on a cooperative basis. We continued those discussions in relation to bringing the first sitting day of the budget week forward: having a sitting on the Monday—indeed, that was a proposition which one or two of the crossbenchers put forward.

I know that there is a proposition in this place, which has been circulated in the chamber by the Australian Labor Party, to have that sitting Monday of that budget week take place according to a different format to that which is contained within my motion.

We were very pleased that there was the proposition from members of the crossbench, which I think was broadly supported, to have a Monday sitting. The way that the Monday sitting is laid out here is that it will be, essentially, an opportunity to transact a bit of additional government business but, most importantly of all, there is a question time there for that day as is appropriate.

I make clear to all colleagues that there has never been a suggestion that we have a sitting on the Monday without question time. Question time is there within that motion.

That is the proposition which the government has before the chamber and which I hope receives the support of the chamber. If the opposition senators are wondering why there hasn’t been an ability to reach an agreement with them on this front, it is probably partly a function of the earlier disposition this week, which was manifest.

Senator Wong: We just gave you all the hours you wanted!

Senator FIFIELD: I am hearing a voice of support from Senator Wong at the table and I appreciate that. We are appreciative that the chamber has supported the additional hours for this week. We are also grateful that there is broad support in this place to sit on the Monday of
the budget week. There are two propositions, I suspect, that will be before this place in relation to how that Monday flows, and we will see what the will of the chamber is.

I do not think that it is reasonable on this occasion for those opposite to deny leave to move this motion, but that is why I am in this position of seeking to move a motion to suspend standing orders so that I can move the motion which is on the Notice Paper.

Senator MOORE (Queensland) (16:06): The reason we are in this position for Senator Fifield's information is that there was an inability from the government to appropriately consult with the many people on this side of the chamber on the important issue of extended hours.

I agree with Senator Fifield: we did meet to look at a range of issues about the need for extra hours of debate. We acknowledge the government was in a position that they had important legislation that needed to be considered and also the special circumstances of this week with the death of Malcolm Fraser and the state funeral for him on Friday. There was no disagreement about that, and you can see from notices on this paper today that there was agreement with significant extra hours this week—more so than we have ever seen in my experience in this place.

We agree that we need to focus the attention of the Senate on the important matters to be discussed. At one of those meetings, there was a discussion about maybe sitting on the Monday. We were told that we would receive a letter from the government following up on that meeting about what would be the proposal for extended hours for the Monday of budget week. There was no in-principle opposition to meeting on that day. However, this notice, which talks about a process different to any other sitting day for the Monday of budget week, came to us in a letter today at lunchtime after this notice of motion had already been circulated to everyone. That was the consultation process.

In good faith, we need to look at how the Senate best operates to meet the requirements of legislation. There were 'robust discussions' in those meetings we had earlier this week, and that is how it should be. Governments put forward proposals, and we look at the way that we can make them work. We have come up with an agreed result: two notices of motion amending hours this week have already been passed by this place without any dissent. We have put forward a reasonable proposal in the notice of motion about hours for the Monday of budget week that, if we agree to meet in this place on the Monday, we have a standard sitting day of the Senate. That would allow not just question time but the ability to take note of the answers of question time, formal business, any proposal to debate a matter of public importance or an urgency motion—standard operations of the Senate.

If our amendment is passed—and it has been circulated and should have come forward for debate—we would have between seven and eight hours of dedicated time to look at the items of business put forward by the government. That is not standing in the way of debate in this place; that is looking at how we can operate as a Senate, do our business and also ensure that the way the discussions are held are similar to that which we had earlier this week, where all the interested parties are gathered together, the discussion is held and the propositions are heard at the same time. Discussions should not be held in the way that this particular proposal has operated, which was that we got a letter from the Leader of Government which says that the members of the crossbench have already been favourably considering this proposal, rather than us having the opportunity as a group to put forward what we wanted.
In the discussion that we had with the government earlier this week, there was no debate on what would happen on Monday of budget week. People who were in attendance at that meeting had opportunities to talk about what would happen this week and also how we would look at the legislation agenda that the government is trying to have us consider. There has been great consideration, negotiation and allowance by the Senate to have extra hours to look at the important issues of legislation that came forward. Then, today, we had yet another demand and it was put as a fait accompli. That is not the best operation of the Senate.

We would save a lot of time if we could have these discussions as we did earlier this week. That does not mean that there will be absolute agreement; that does not always happen in negotiations. The way that the Manager of Government Business in the Senate has put it today, if we do not agree, we will be punished by not being part of the discussion. That was how I heard Senator Fifield put forward his position that, because there was a certain lack of accommodation or cooperation in the meetings earlier this week, they had to exclude the Labor Party from further decisions about what would happen in future hours motions. We think it is important—(Time expired)

Senator SIEWERT (Western Australia—Australian Greens Whip) (16:11): The Greens will be supporting the amendment to the motion proposing that the Senate sit on the Monday before budget day. I think that this will be the first time since I have been in this chamber that we have sat on the Monday before the budget. There is a reason for that: there is a lot of preparation and work done in the lead-up to the budget and a lot of talk about it before the budget. So it will be the first time that we have sat on the Monday.

When we sit on Fridays in this place, it is usually considered a rollover of the Thursday. Despite the fact that the Greens have argued for question time and other business to be transacted on a Friday, when we sit on Fridays in this place we have always been told, 'No, this is just a rollover of Thursday.' We have failed to get question time and some of the other business that we consider important on the Friday. However, this Monday is the beginning of a sitting week. It should be treated as a normal sitting day that allows us to do the normal business of this place. That includes consideration of documents and clerks documents; authorisations for committees to sit; question time, which is about the only thing that the original motion of the government allows us to do; petitions; taking note of answers; postponements; rearrangements; formal motions; and any matters of public urgency.

If we are successful in amending the motion to vary hours, the amended motion will provide the government with plenty of time to deal with the bills that it specifically wants to deal with. Of course, we know that the bills that are listed in the government's motion are the Construction Industry Amendment (Protecting Witnesses) Bill 2015, which is about the ABCC; the Limitation of Liability for Maritime Claims Amendment Bill 2015; and the Tribunals Amalgamation Bill 2014. The government has plenty of time to debate these bills. We have already extended hours.

I acknowledge that Mr Fraser's death and the adjourning of this place as a matter of respect of course needed to be taken into consideration. We sat late last night; we are sitting late tonight, which we very rarely do on a Wednesday night; and we will be sitting late into the night, potentially, tomorrow until adjournment to consider the bills that the government has asked the Senate to consider. There is extra time to make up there. If the government's motion on sitting hours is amended, there will be plenty of time for the government to consider its
business. Of course, if the government was not so intent on ramming through the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2015 this week, it would have had more opportunity to deal with the other bills that it claims are urgent.

An honourable senator interjecting—

Senator SIEWERT: Yes, we met with the government as part of the leaders and whips process. We indicated our position there. As Senator Moore just articulated, the government said they wanted to sit on Monday. Of course, we would expect that to be a normal Monday. There was no further communication beyond that until we saw the motion, which shows quite clearly that they just want to use the time to ram through these additional bills, without proper consideration of what the Senate does. The Senate has other important work to do. The government seeks through this motion to not allow the Senate to carry out its functions. We do not support the government’s coming in here and making us deal with their agenda without full transparency and the ability for us to prosecute the other things that need to be dealt with in this chamber. It is unreasonable for the government to try to not allow us to have full consideration of, for example, take note of petitions and of the clerks documents and transact the normal business of this place. It should be treated as a normal Monday if we are required to sit. The government has had ample time through the extended hours we have already sat this week.

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (16:16): This motion has been moved as part of a suite of motions by the Manager of Government Business in the Senate with the intention of ensuring that there is adequate government time to deal with a number of time critical bills and other major pieces of legislation that it has been agreed by various members of this place should pass in a timely manner.

The opposition tell us they have denied leave to move this motion on the basis that they have not been properly consulted or that consultation has been insufficient. The fact is that, Senator Fifield tells me, immediately following the meeting where the possibility of the Senate sitting on the Monday of budget week was raised, Senator Fifield, as I understand it, telephoned Senator Moore to advise her that this was something we would like to do. I think it is probably slightly misleading to say that a letter was the first notification that the opposition received that this was happening, because at the first opportunity that was available to us that advice was made.

There is more than one view about how this chamber can be managed from time to time. I acknowledge that this government does not have a majority in this place. We do not have the ability to set the agenda. We do not have the ability to set the hours that this place sits, but neither does the opposition. I might just note for the record that last week we invited all members of this place to be represented at a leaders and whips meeting that was held earlier this week to discuss how we could manage the issue of hours. So we started the process last week, and I believe that even before then there had been some discussions between the opposition and the government as to how we might manage that. In order to do it in a consultative manner that involved everybody we invited everybody to a meeting that occurred at the beginning of this week. At that meeting, the opposition presented us with a take it or leave it option on extended hours. That was not acceptable to us and we thought that, given that there are a number of other senators in this place, it would be advisable that the government speak to them and discuss other options. That is how this place should work.
There are major parties, minor parties and Independents in this place. Everybody has the ability to have input into how this place is run. That occurred.

The idea of sitting on Monday was a proposal put forward by one of the crossbenchers, which was then discussed by the rest of them. Discussion occurred between the government and the crossbenchers as to how sitting on Monday could work. In the end, the motion that was put forward reflects the discussion, the toing and froing, that occurred with the crossbenchers. The crossbenchers certainly were not putting forward things to the government as a take it or leave it option. They were prepared to discuss, be consultative and negotiate. It was a very fruitful discussion. As I say, the idea of sitting on Monday came from one of the crossbenchers, and this motion reflects the discussion that we had.

The end result is that the Senate should be entitled to make a decision on that motion. Formality should not be denied. There are 76 people who make up this place and those 76 people should be entitled to make a decision on this motion. It is up to them whether they actually accept or reject it, but denying formality on the motion is not the appropriate way to deal with this. Doing that would deny the Senate the opportunity to make a decision that it should be entitled to make, not to mention the fact that it also denies the opportunity for the opposition to move the amendment that it has circulated and clearly intends to move. It is a nonsensical thing to deny formality on a motion about which you have circulated notice of your intention to amend. On that basis, I believe that we should suspend standing orders to allow this motion to be voted on.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (16:20): Just so we are very clear, the government was offered by the opposition a full sitting day on the Monday before budget. As long as it was a normal Monday sitting day they would have had full agreement from the alternative government and the majority of the chamber. But Senator Abetz does not want to accept that. He does not want to accept an agreement by the opposition to facilitate debate on some controversial bills which are opposed by a number of parties in this chamber, because he does not want a normal sitting day on the Monday. He wants one that is only about government business with the addition of question time, but nothing else, none of the other aspects of a sitting day. That is what we are arguing about.

We are having a suspension of standing orders, because the government has turned down the opposition's agreement to a normal sitting day on the Monday. That is how unbelievably unreasonable we have been. We have actually suggested that the parliament sits. We should have a normal sitting day. I emphasise, as someone who has been on that side of the chamber, Monday is a very good day for government business. On a normal sitting day on a Monday you are looking at around seven hours of government business. You would have had that by agreement. But no, instead they decide they do not like how unreasonable we are being—for daring to suggest that if the parliament sits, we should have a normal parliamentary day with seven hours of government business! And instead, they want to try and ram through this motion, notice of motion No. 5, on the basis that they have got agreement with members of the crossbench. If the crossbenchers choose to vote for it, that is a matter for them; we do not agree. We think that if we have a full sitting day with that many hours, it is only reasonable that the Senate have a normal sitting day. But behind the argument—actually, explicitly part of this argument—is the government's suggestion that we have been somehow unreasonable.
I want to make it very clear what we as an opposition have done which has agreed to facilitate debate on the metadata bill. I wrote and requested—via the Manager of Opposition Business and directly—of the government their request for additional hours in this sitting week. We kept getting only a Tuesday variation. We kept being told, "oh, we only need to sit on Tuesdays; that is all we will take". Now we do not agree with Senator Ludlam on the metadata bill. But I was not going to agree to only have it only debated on Tuesday. So I said to them, "we want a full proposal about what would happen during the sitting week". Did I get that? No. I acknowledge that in the intervening period between those discussions and the first discussion this week, we had the passing of Mr Fraser, which obviously affected the Senate. At the meeting, what we indicated to the government is essentially what they have got agreement to, with the exception of Wednesday.

We indicated that the opposition was prepared to give up the MPI on both Tuesday and Wednesday and private senators' business on Thursday, and to sit additional hours on Tuesday and Thursday. Can I just repeat that so everyone understands: for government business, the opposition was prepared to give up the MPI on Tuesday, the MPI on Wednesday, and private senators' business on Thursday, and to sit additional hours on Tuesday and Thursday in order to debate the metadata bill. That is the unreasonable position that Senator Abetz is now going to try and complain about. Well, Mr President, that was not an unreasonable offer. The opposition's position on this is not unreasonable. And if the government choose to try and run the Senate this way, well, they are going to get these sorts of responses. They are going to get the opposition saying, quite rightly, 'well, we are not just going to agree to this motion', and, 'we are going to do deny formality', and, 'we are going to move amendments'—because that is what we believe. That is what we believe: that the Senate ought to be run with a little more consultation; frankly, with a little more organisation than the chaos that we appear to be seeing from those opposite.

I repeat: we are prepared to facilitate debate on the metadata bill, which is why we are prepared to give up time. We are prepared to sit on the Monday before budget week—not something that those opposite ever gave us in government. But we are prepared to do it. We just want a sitting day with seven hours of government business. And instead, the tactical decision by the geniuses on the other side is that they now want a debate and a suspension of standing orders, instead of taking what was a very reasonable offer—a very reasonable offer—from the opposition about additional sitting time on the Monday of the budget week. So I say to the crossbenchers: I would encourage you to consider supporting the opposition on this. We will be moving an amendment to ensure a full sitting day. (Time expired)

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (16:25): Mr President, what we have just witnessed is a regrettable attempt at rewriting history. I will not seek to justify what the coalition has done or not done. All I would do is appeal to the crossbenchers, who were in my office—and their staff—when we were seeking to come to a reasonable landing in relation to this matter—

Senator Wong: You don't listen!

Senator ABETZ: And whilst I am talking in the fashion I am, we have the ongoing interjecting by the Leader of the Opposition in the Senate, who cannot help herself. As a result of there being no decision able to be achieved in the meeting in my office, another
suggestion was proposed to us: that there be a sitting of the Senate on Monday 11 May, and that that be devoted to government business, other than for question time. That is now the proposal.

Might I say, Mr President, that people can put their spin what did or did not occur in the communications, but I think the crossbenchers were able to see firsthand what occurred, and they can make up their minds; they can make their determinations as to who was being reasonable and who was being unreasonable. Mr President, we had the situation, very regretfully, of the passing of a former Prime Minister. It is the tradition and proper that we adjourn as a mark of respect for that situation; as a result, Monday of this week was denied to us. Further, if we were to have thought of sitting on Friday of this week—which normally would have been a possibility—that also has been denied to us, because Mr Fraser's funeral service will be held this coming Friday. Therefore, we have had to seek extra time for government business, and the proposal was put that the Monday before the budget session would be the appropriate time, and that it be devoted to government legislation. Indeed, the motion indicates, I think, the three bills that we have nominated which have particular time constraints in them which do require the urgent consideration of the Senate.

The Labor Party have, regrettably, continued with their course of action. I know that the crossbenchers were not able to witness the first nine months of this government because they were not here in the Senate, but for the first nine months, when Labor and the Greens had the majority, it was objection, objection, delay, and negativing everything possible—including Labor's own policies which they took to the last election. Since 1 July, when the new Senate came about, and Labor and the Greens lost their majority, we have in fact been passing things through the Senate, and there has been some substantial and reasonable progress with legislation. And so I say to the crossbenchers that the sitting on Monday is something that should be supported; and that the fact that Labor now—all of a sudden—say: 'Monday, what a good idea; we would have been supportive of that, but for—', is a rewriting of history that is disingenuous in the extreme. And I would—

The PRESIDENT: Senator Wong, on a point of order.

Senator Wong: Mr President, the Minister is misleading the Senate. If he does not talk to the Manager of Government Business then that is not our problem.

The PRESIDENT: Senator Wong, that is not a point of order. That is debating the topic.

Senator ABETZ: Just that intervention yet again by the Leader of the Opposition in the Senate indicates the attitude she has taken ever since the people of Australia made the decision to remove her and her colleagues from government.

Senator Wong interjecting—

Senator ABETZ: We have non-stop interjections from the Leader of the Opposition in the Senate, so one can imagine, without the glare of cameras and microphones, how tolerant Senator Wong is when trying to discuss these matters and come to a reasonable landing. So I simply plead with the crossbenchers. That which was determined the other day is a reasonable way forward, and I would encourage the Senate to support the motion that is before them.

The PRESIDENT: The question is that the motion to suspend standing orders moved by the Manager of Government Business in the Senate be agreed to.
The Senate divided. [16:34]

(The President—Senator Parry)

Ayes .................36
Noes .................31
Majority .............5

AYES
Abetz, E
Bernardi, C
Brandis, GH
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
Mason, B
McKenzie, B
Nash, F
Parry, S
Ronaldson, M
Ryan, SM
Seselja, Z
Smith, D
Williams, JR

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Johnston, D
Leyonhjelm, DE
Madigan, JJ
McGrath, J
Muir, R
O'Sullivan, B
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Wang, Z
Xenophon, N

NOES
Brown, CL
Cameron, DN
Conroy, SM
Di Natale, R
Hanson-Young, SC
Lambie, J
Ludlam, S
Marshall, GM
McLuscas, J
Moore, CM
Peris, N
Rice, J
Singh, LM
Urquhart, AE
Whish-Wilson, PS
Wright, PL

Bullock, J.W.
Collins, JMA
Dastyari, S
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
McEwen, A (teller)
Milne, C
O'Neil, DM
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wong, P

PAIRS
Heffernan, W
Payne, MA

Polley, H
Carr, KJ

Senator Cormann and Senator Canavan did not vote, to compensate for the vacancies caused by the resignations of Senator Faulkner and Senator Lundy.
Question agreed to.

Senator Fifield (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (16:37): I move:

That government business notice of motion No. 5 may be moved immediately and determined without amendment or debate.

The President: The question is that the motion moved by Senator Fifield be agreed to.

The Senate divided. [16:39]

(The President—Senator Parry)

AYES

Abetz, E
Bernardi, C
Brandis, GH
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Lazarus, GP
Madigan, JJ
McGrath, J
Muir, R
O’Sullivan, B
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Wang, Z
Xenophon, N

NOES

Brown, CL
Cameron, DN
Conroy, SM
Di Natale, R
Hanson-Young, SC
Lambie, J
Ludlam, S
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rice, J
Singh, LM
Urquhart, AE (teller)
Whish-Wilson, PS

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Colbeck, R
Edwards, S
Ferravanti-Wells, C
Johnston, D
Leyonhjelm, DE
Mason, B
McKenzie, B
Nash, F
Parry, S
Ronaldson, M
Ryan, SM
Seselja, Z
Smith, D
Williams, JR

Bullock, J.W.
Collins, JMA
Dastyari, S
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
MeEwen, A
Milne, C
O’Neill, DM
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wright, PL
Senator Cormann and Senator Canavan did not vote, to compensate for the vacancies caused by the resignations of Senator Faulkner and Senator Lundy.

Question agreed to.

Senator FIFIELD (Victoria—Manager of Government Business in the Senate and Assistant Minister for Social Services) (16:42): I move:

That the Senate meet on Monday, 11 May 2015, and that:

(a) the hours of meeting shall be 10 am to 6.30 pm and 7.30 pm to adjournment;

(b) the routine of business shall be:

(i) government business,

(ii) at 2 pm, questions, and

(iii) from 3 pm, government business only;

(c) the following government business orders of the day shall have precedence over all other government business:

(i) Construction Industry Amendment (Protecting Witnesses) Bill 2015,

(ii) Limitation of Liability for Maritime Claims Amendment Bill 2015, and

(iii) Tribunals Amalgamation Bill 2014; and

(d) the question for the adjournment of the Senate shall not be proposed until a motion for the adjournment is moved by a minister.

Senator XENOPHON (South Australia) (16:42): by leave—I move:

Omit paragraph (b)(ii), substitute:

(iii) motions to take note of answers, and

(iv) subsequently, government business only;

Senator MOORE (Queensland) (16:43): Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MOORE: Senator Xenophon, we appreciate your efforts to extend the hours and we do acknowledge the work you have done. However, we believe strongly in the principle that we want a full standard day of operations on that day. That was the process on which we operated—

Senator Ian Macdonald: How many times didn't you do that when you were in government?

The PRESIDENT: Order on my right!

Senator MOORE: In terms of the process, we believe it is important—

Senator Ian Macdonald: How many times when you were in government?
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The PRESIDENT: Senator Macdonald!

Senator MOORE: that the Senate actually has that opportunity. We also believe that, in the discussions we have had with the government over this process, there was no clarity about the process they were following. We did not get full detail about the changes they were proposing.

Senator Ian Macdonald: You rammed all these through all the time when you were in government, with the help of the Greens.

The PRESIDENT: Senator Macdonald!

Senator MOORE: And, in terms of the process, we truly believe that the best way that this Senate can continue to operate effectively is to have open discussions about process—

Senator Ian Macdonald: You never did that!

The PRESIDENT: Senator Macdonald, I am prepared, under standing order 203, to name you. Please be quiet.

Senator MOORE: Whilst we appreciate the efforts of Senator Xenophon, it is really important for the people on the crossbench to understand that this is not a frivolous process we are following. It is an important point of principle; it is also a matter of integrity of communication and of having a full understanding of what is going on. We acknowledge the amendment, but we will not be supporting it.

Senator ABETZ (Tasmania—Leader of the Government in the Senate, Minister Assisting the Prime Minister for the Public Service and Minister for Employment) (16:44): I seek leave to make a one-minute statement.

Leave granted.

Senator ABETZ: Very briefly, Mr President, if I may address the crossbench. The homily that we just heard is from a senator who voted time and time again to ram through 52 bills without a single word of discussion in this place, and with the support of the Greens. She is now trying to say: 'Proper process demands this.' That is hypocrisy writ large. What has normally been the case, Mr President, is that, when extra days are set aside, they are set aside for the purposes of government business, standard practice, including question time and take note of answers. I commend the amendment and the motion to the Senate.

The PRESIDENT: The question is that the amendment moved by Senator Xenophon to Senator Fifield's motion be agreed to.

Senator ABETZ: I do not think Labor are wanting to vote against that.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (16:46): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator WONG: Senator Abetz often does not listen to me; he often does not listen to people in the chamber. That is why he did not understand what I was offering up on Monday. He may have misunderstood Senator Moore's contribution. She indicated that we are not
going to agree to Senator Xenophon's amendment, because our position is that we want a proper full sitting day with seven hours of government business on the Monday. I appreciate Senator Xenophon's—

Senator Ian Macdonald interjecting—

The PRESIDENT: Order, Senator Macdonald.

Senator WONG: Senator Xenophon's amendment may ameliorate the deal that he has done with the government, but not to the extent we think is appropriate. So we are going to hold to our position, which is that there should be a full sitting day on Monday. We will be seeking to move an amendment after this one, if it fails.

The PRESIDENT: The question is that the amendment moved by Senator Xenophon to Senator Fifield's motion be agreed to.

The Senate divided. [16:51]

(The President—Senator Parry)

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

AYES

Abetz, E
Bernardi, C
Brandis, GH
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Lambie, J
Leyonhjelm, DE
Madigan, JJ
McGrath, J
Muir, R
O'Sullivan, B
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Wang, Z
Xenophon, N

NOES

Bullock, J.W.
Carr, KJ
Conroy, SM
Di Natale, R
Hanson-Young, SC
Lines, S
Ludwig, JW
McEwen, A
Milne, C
O'Neill, DM

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NOES

Polley, H
Rice, J
Singh, LM
Urquhart, AE (teller)
Whish-Wilson, PS
Wright, PL

Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wong, P

Question agreed to.

Senator MOORE (Queensland) (16:53): by leave—I move:

Omit all words after "Monday, 11 May 2015", substitute ", and that:

(a) The hours of meeting shall be 10 am to 6.30pm and 7.30pm to 10.30pm; and

(b) The routine of business shall be:

(i) documents,
(ii) Clerk’s documents,
(iii) committees - authorisation to meet,
(iv) government business only,
(v) at 2pm, questions,
(vi) motions to take note of answers,
(vii) petitions,
(viii) postponement and rearrangement of business,
(ix) formal motions – discovery of formal business,
(x) any proposal to debate a matter of public importance or urgency,
(xi) consideration of documents under standing order 61 for up to 30 minutes,
(xii) government business, and
(xiii) at 9.50pm, adjournment proposed".

Senator MOORE: Mr President, I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MOORE: Everyone knows what the amendment is; you have had a good chance to read it. But I do want to respond briefly to comments made by Senator Abetz about the hypocrisy on this side of the chamber in looking to put forward a process which allows debate in this place. If we go back through history over a series of governments since the time this parliament first met, there has been poor practice and best practice. The fact that we could make an argument that we could not come here today to talk about having a more transparent way of how we operate and seeking a full day of debate in this Senate in a standard day would be able to be dismissed because people said that it would not operate beforehand. That is not the way this place operates. We are not going back to argue about different places in the past.

Senator Ian Macdonald: What did you do when you were in government?

The PRESIDENT: Senator Macdonald.
Senator MOORE: No matter how many times Senator Macdonald raises his voice in this debate, it will not move the chance that we have to make a vote on having a standard day of debate in this place next Monday. (Time expired)

The PRESIDENT: The question is that the amendment moved by Senator Moore to Senator Fifield’s motion be agreed to.

The Senate divided. [16:56]

(The President—Senator Parry)

Ayes .................... 31
Noes ..................... 36

Majority ................ 5

AYES

Bullock, J.W.
Collins, JMA
Dastyari, S
Gallacher, AM
Ketter, CR
Lines, S
Ludwig, JW
McEwen, A
Milne, C
O’Neill, DM
Polley, H
Rice, J
Singh, LM
Urquhart, AE (teller)
Whish-Wilson, PS
Wright, PL

Cameron, DN
Conroy, SM
Di Natale, R
Hanson-Young, SC
Lambie, J
Ludlam, S
Marshall, GM
McLucas, J
Moore, CM
Peris, N
Rhiannon, L
Siewert, R
Sterle, G
Waters, LJ
Wong, P

NOES

Abetz, E
Bernardi, C
Brandis, GH
Cash, MC
Day, R.J.
Fawcett, DJ
Fifield, MP
Lazarus, GP
Macdonald, ID
Mason, B
McKenzie, B
Nash, F
Parry, S
Ronaldson, M
Ryan, SM
Seselja, Z
Smith, D
Williams, JR

Back, CJ
Birmingham, SJ
Bushby, DC (teller)
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Johnston, D
Leyonhjelm, DE
Madigan, JJ
McGrath, J
Muir, R
O’Sullivan, B
Reynolds, L
Ruston, A
Scullion, NG
Sinodinos, A
Wang, Z
Xenophon, N

Question negatived.
The PRESIDENT: The question now is that the substantive motion, as amended by Senator Xenophon's motion, be agreed to.

Question agreed to.

MOTIONS

Sugar Industry

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (16:59): At the request of Senator O'Sullivan, I move:

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

Senator MOORE (Queensland) (16:59): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MOORE: At present the Rural and Regional Affairs and Transport References Committee is undertaking an inquiry into the current and future arrangements for the marketing of Australian sugar. The reporting date is 30 April 2015, and Labor believe that the committee process should be completed before we support statements about the current marketing arrangements. Therefore, Labor will not be supporting Senator O'Sullivan's motion at this time.

Senator SIEWERT (Western Australia—Australian Greens Whip) (17:00): Mr President, Senator Moore took the words right out of my mouth.

The PRESIDENT: It is a good sign!

Senator SIEWERT: I was going to make the point that this is the subject of a Senate inquiry at the moment. A motion of this nature should wait until the Senate inquiry has concluded.

The PRESIDENT: The question is that the motion moved by Senator Bushby at the request of Senator O'Sullivan be agreed to.

Senator O'SULLIVAN (Queensland—Nationals Whip in the Senate) (17:00): I seek leave to withdraw the motion.

Leave granted.

The PRESIDENT: The motion is withdrawn.

Uranium Mining

Senator BUSHBY (Tasmania—Chief Government Whip in the Senate) (17:01): At the request of Senator Canavan, I move:

That the Senate—
(a) recognises that the uranium mining industry has the potential to generate significant economic growth, jobs and income in regional Queensland; and
(b) notes:
   
   (i) its disagreement with the Queensland Labor Government’s decision to renege on the policy of allowing developers to submit applications for the development of new uranium mining projects in Queensland, and

   (ii) that this decision will have significant adverse effects on regional areas due to:

   (A) the potential loss of construction and operational jobs, investment and income associated with new projects, and

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

Senator MOORE (Queensland) (17:01): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MOORE: Prior to the 2015 Queensland election, the Queensland Premier Annastacia Palaszczuk was very clear in her precommitment to the Queensland people that it has been long-standing ALP policy in Queensland to oppose the mining of uranium in Queensland. This has been long-standing policy, and a ban on uranium mining had existed in Queensland since the 1980s, providing certainty to Queenslanders and industry.

Former premier Campbell Newman also took this long-standing policy to the 2011 Queensland election, promising that he would not overturn the long-standing ban on uranium mining in Queensland. Despite the backflip by the former LNP government, the Department of Natural Resources and Mines in Queensland has not received one single application for a uranium mining lease since the previous LNP government’s new framework started on 31 July. It should be noted that exploration has always been allowed in Queensland since the original ban on uranium mining in the 1980s. This frequently takes place in combination with exploration for other minerals such as gold, copper and rare earths.

Senator LUDLAM (Western Australia) (17:02): I seek leave to make a brief statement.

The PRESIDENT: Leave is granted for one minute.

Senator LUDLAM: I could not let the opportunity go unmet to congratulate the incoming government of Queensland on its initiative. It might be something of an unfamiliar and foreign concept to coalition senators that promises made in opposition would be followed-through on when you get into government. It is something that those opposite do not appear to have learned from their experience at the 2013 election.

The Queensland Greens campaigned very strongly on this issue, particularly in the parts of regional Queensland where this is a clear and present danger. To her credit, Ms Palaszczuk and her colleagues made very firm commitments in the run-up to the election, and they have stuck to them. How remarkable that coalition senators would come in here and try to get a motion carried asking an elected government to violate an election commitment! Quite frankly, it says a lot more about the character of those coalition senators who bring such a motion forward than it does about the integrity of those who would uphold an election commitment.

The PRESIDENT: The question is that the motion moved by Senator Bushby at the request of Senator Canavan be agreed to.
The Senate divided. [17:08]

(The President—Senator Parry)

Ayes .................30
Noes .................30
Majority ............0

AYES

Back, CJ
Bernardi, C
Birmingham, SJ
Brandis, GH
Bushby, DC (teller)
Cash, MC
Colbeck, R
Day, R.J.
Edwards, S
Fawcett, DJ
Fierravanti-Wells, C
Johnston, D
Leyonhjelm, DE
Macdonald, ID
Madigan, JJ
Mason, B
McGrath, J
McKenzie, B
Nash, F
O’Sullivan, B
Parry, S
Reynolds, L
Ronaldson, M
Ruston, A
Ryan, SM
Scullion, NG
Seselja, Z
Smith, D
Wang, Z
Williams, JR

NOES

Bullock, J.W.
Collins, JMA
Conroy, SM
Dastyari, S
Di Natale, R
Gallacher, AM
Hanson-Young, SC
Ketter, CR
Lambie, J
Lazarus, GP
Lines, S
Ludlam, S
Ludwig, JW
Marshall, GM
McEwen, A (teller)
McLucas, J
Milne, C
Moore, CM
O’Neill, DM
Peris, N
Polley, H
Rhiannon, L
Rice, J
Siewert, R
Singh, LM
Sterle, G
Urquhart, AE
Waters, LJ
Whish-Wilson, PS
Wright, PL

Question negatived.

**Construction, Forestry, Mining and Energy Union**

**Senator SESSELJA** (Australian Capital Territory) (17:10): I, and also on behalf of Senators Cash and McKenzie, move:

That the Senate—

(a) notes recent reports and evidence of aggression and abuse towards women by Construction, Forestry, Mining and Energy Union (CFMEU) officials, including that:
(i) CFMEU organiser, Mr Luke Collier, abused a female Fair Work Building and Construction (FWBC) inspector using expletive and misogynist swear words,

(ii) CFMEU Assistant Secretary, Mr Shaun Reardon, made threatening late-night phone calls to a female staff member of the building industry watchdog,

(iii) a CFMEU official spat at a female FWBC inspector when she was called out to a worksite to inspect a union blockade,

(iv) a CFMEU official made a late-night phone call to a female staff member of the building industry watchdog, threatening her with gang rape, and

(v) on multiple occasions female FWBC officers have had to be moved off inspection duties because of the threats and aggression expressed towards them;

(b) condemns such behaviour directed at female FWBC inspectors;

(c) condemns CFMEU Secretary, Mr Dave Noonan, for attempting to defend Mr Collier's verbal intimidation of a female FWBC inspector and similar cases of intimidation, by saying that swearing on building sites is nothing new; and

(d) expresses its gratitude to FWBC inspectors, including the 31 female FWBC inspectors, who work to maintain the rule of law on Australia's building and construction sites.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (17:10): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator CASH: Recently, we have heard of disturbing cases of violence, abuse and intimidation perpetrated by CFMEU officials against female Fair Work building commission inspectors, including spitting, threatening phone calls, verbal abuse and—most disturbingly—a threat of gang rape.

Each year on White Ribbon Day we stand together as representatives of our community and pledge to not remain silent and not excuse violence against women, whether it is by union officials or anyone else. I note that four male members of the Australian Greens have taken the White Ribbon pledge. Australians must therefore wonder why they refuse to support this motion.

Perhaps this explains their reasons: the CFMEU donated $145,000 to the Australian Greens last financial year. More worryingly, the CFMEU contributed $1.33 million to the ALP in 2013-14 and $13.4 million over the last 19 years. Given this evidence, their refusal to support this motion is reprehensible. I table a copy of this photograph of the four Australian Greens male members taking the White Ribbon pledge. (Time expired)

Senator MOORE (Queensland) (17:12): Mr President, I wish to make a short statement, and in doing that I ask whether the last process was in line with the process of the Senate.

The PRESIDENT: The senator has tabled it. It is disorderly, Senator Cash, to hold up items. She has tabled the document. She was indicating that was the document she was tabling. It is very borderline.

Senator Lambie: Mr President, on a point of order: if they are going to continue to throw these accusations around, I would like to see them either provide police statements, from the opposition, in relation to these accusations, on stat decs—
The PRESIDENT: Senator Lambie, that is not a point of order; that is a debating point. You have other opportunities to deal with that.

Senator MOORE: Mr President, I was seeking leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator MOORE: Labor is not a defender of criminal or thug-like behaviour, as we have made clear many times in this chamber, and in public notice. We do not tolerate intimidation or bullying. If criminal conduct has taken place, Labor condemns it. However, it is not proper for the Liberal-Nationals government to use allegations of criminal conduct to pursue a political campaign against its opponents. If there is evidence of crime it should be immediately reported to the police for investigation. Labor and the union movement are consistently supporters of White Ribbon, as can be seen. We support lawful process and do not tolerate bullying or intimidation.

Senator RICE (Victoria) (17:13): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator RICE: This motion contains serious allegations. Violence against women is to be condemned, and anyone engaged in it should feel the full force of the law. It is disturbing that neither the employer of these women, Fair Work Building and Construction, nor the government has referred any of these matters to the police.

We note that the CFMEU has referred the serious claim of violence and sexual assault to state and federal police but that no CFMEU officials have been contacted by them so far. Some of these claims, such as those about allegedly threatening late-night phone calls, are strongly denied. The Greens firmly believe that government officials have a right to work in a safe environment, but if the government were serious about the welfare of FWBC officers it would not bring unproven allegations to the Senate in a motion and ask us to stand in judgement. Take the matter to appropriate authorities.

That this has not happened raises questions about the motivation for bringing these allegations under parliamentary privilege. It seems it has more to do with the government's legislative agenda than concerns about women's safety or people's rights at work. We will not be supporting this motion.

The PRESIDENT: The question is the motion moved by Senator Seselja be agreed to.

The Senate divided. [17:19]

(The President—Senator Parry)

Ayes .................27
Noes .................30
Majority...............3

AYES

Back, CJ
Birmingham, SJ
Cash, MC
Day, R.J.
Fawcett, DJ
Johnston, D
Macdonald, ID

Bernardi, C
Bushby, DC (teller)
Colbeck, R
Edwards, S
Fierravanti-Wells, C
Leyonhjelm, DE
Mason, B
Question negatived.

**Whistleblower Protection Legislation**

_Senator MILNE_ (Tasmania—Leader of the Australian Greens) (17:21): I move:

That the Senate—

(a) notes:

(i) the importance of comprehensive whistle-blower protection legislation at all levels of government and across both the public and private sectors, and

(ii) the recent announcement by the New South Wales Labor Party that it will extend state whistle-blower protection laws to the private sector to encourage disclosure of corporate corruption and illegal activity; and

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

_Senator MOORE_ (Queensland) (17:21): I seek leave to make a short statement.
The PRESIDENT: Leave is granted for one minute.

Senator MOORE: Labor introduced federal whistleblower protection legislation and Labor believe that parliamentarians should always be looking for ways to improve transparency and accountability in both the public and the private sectors. However, Labor do not support a pledge to support and move to implement whistleblower protection legislation to the private sector, as this motion calls on the federal government to do. Labor believe that if such reforms are to proceed, it should be following consultations with stakeholders to develop an effective and appropriate framework, and that any draft legislation produced should then be subject to wide public consultation.

Question negatived.

Great Barrier Reef

Senator WATERS (Queensland) (17:22): I move:

That the Senate—
(a) notes:
(i) the recent report of the Australian Coral Reef Society which stated that policies for a safe climate are inconsistent with the opening of new fossil fuel industries like the mega coal mines of the Galilee Basin, and
(ii) the comments of Professor Terry Hughes on ABC Radio that it is an impossible task to open up the mega coal mines of the Galilee Basin while sustaining the Great Barrier Reef for future generations; and
(b) agrees that Galilee Basin coal must stay in the ground in order to protect the Great Barrier Reef.

Senator CASH (Western Australia—Assistant Minister for Immigration and Border Protection and Minister Assisting the Prime Minister for Women) (17:22): I seek leave to make a short statement.

The PRESIDENT: Leave is granted for one minute.

Senator CASH: Climate change affects all reefs and ecosystems worldwide. To suggest that the development of the Galilee Basin is solely responsible for the challenges facing the reef is irresponsible and ignores the science. The government has done more than any other government prior to help the reef. Alongside Queensland, we are investing over $2 billion over the next decade. It was the former Bligh and Gillard Labor-Greens governments that were touting the development of megaports along the reef. Talk is cheap. When Labor and the Greens had the chance to act, they did nothing. On Saturday 21 March this government released the Reef 2050 Long-Term Sustainability Plan, the most comprehensive plan ever developed to secure the health and resilience of the Great Barrier Reef for generations to come. The plan addresses the challenges the reef faces now and into the future and sets clear priorities and targets. In addition, the Australian government announced a further commitment of an additional $100 million in new funding for the Reef Trust.

The PRESIDENT: The question is that the motion moved by Senator Waters be agreed to.
The Senate divided. [17:25]

(The President—Senator Parry)

Ayes .................11
Noes .................38
Majority............27

AYES
Di Natale, R
Lazarus, GP
Milne, C
Rice, J
Waters, LJ
Wright, PL

Hanson-Young, SC
Ludlam, S
Rhiannon, L
Stewart, R (teller)
Whish-Wilson, PS

NOES
Back, CJ
Bushby, DC (teller)
Colbeck, R
Conroy, SM
Day, R.J.
Fawcett, DJ
Ketter, CR
Lines, S
Macdonald, ID
Mason, B
McGrath, J
McLucas, J
Nash, F
O'Sullivan, B
Peris, N
Ruston, A
Seselja, Z
Smith, D
Urquhart, AE

Bullock, J.W.
Cash, MC
Collins, JMA
Dastyari, S
Edwards, S
Gallacher, AM
Leyonhjelm, DE
Ludwig, JW
Marshall, GM
McEwen, A
McKenzie, B
Moore, CM
O'Neill, DM
Parry, S
Reynolds, L
Scullion, NG
Singh, LM
Sterle, G
Wang, Z

Question negatived.

MATTERS OF PUBLIC IMPORTANCE

Health and Education

The PRESIDENT (17:27): A letter has been received from Senator Moore:

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

The Abbott Government's failure to rule out further cuts to health and education.

Is the proposal supported?

More than the number of senators required by the standing orders having risen in their places—
The PRESIDENT: I understand that informal arrangements have been made to allocate specific times to each of the speakers in today's debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

Senator O'NEILL (New South Wales) (17:27): I rise with some energy to contribute to the debate on the matter that Senator Claire Moore has put before the Senate this afternoon, and that is a concern that must be absolutely reverberating right across this country, but nowhere more particularly than in the great state that I represent here in the Senate—the great state of New South Wales—and as voters put their minds to the election coming up this weekend to understand the difference between the Liberal Party and the Labor Party on these critical issues that touch every single person's life. And it has been very, very clear, from the moment they got in. Since the election, we have heard nothing but negativity from the government on the issue of any expenditure towards core services such as health and education. They constantly talk about these sectors as the great costs to the nation. They fail to understand the power of education and health as investments in our people—investments in our young people, investments in retraining, investments in keeping people well and healthy so that they can participate and live full, active and fulfilling lives that contribute to the common good of society.

But we have seen an environment of austerity from the moment they arrived in this place—this Liberal government and Liberal governments all around the country that have been punished at the polls because of their miserly vision of this country, because of their determination to cut and cut hard, right to the heart of people's lives in their access to education and health. Parents and teachers are rightly concerned about school funding after the government walked away from Labor's Gonski funding reforms. Everybody understood that we needed to move to a sector-blind, needs-aware funding model—everybody, that is, except this miserly government. When they got in they cut years 5 and 6. They completely misrepresented to the community beforehand that they were on a unity ticket with Labor. But the minute they had the opportunity, when they felt that people were looking the other way, it was gone—just like the cuts we see in the health sector.

People are fearful of the cuts that this government has made and the chaos of policymaking with regard to Medicare. The prospect of being taxed to go to your GP is a concept that no Australian who voted for the Liberal Party was made aware of before they voted. No indication was given to the entire Australian population that this government was going to come in and tax you to go to your own doctor. And the shemozzle that has followed that! They made that announcement, without consultation, on the day they delivered the budget. That is the first time that health professionals across this country and the people who voted this sad and sorry government in found out that they were going to be taxed to go to the GP. That is a disgrace.

And, of course, that is why we should be extremely fearful about what the Abbott government is set to do in the next budget. They are all outside the chamber now having a big talk as if they are consulting. But the reality is that this government always thinks it knows better than the experts. This is a government that ignores the facts. It is not making evidence based policy and it is determined to inflict pain on those who can least afford it. They target the most vulnerable, and when they are on their knees is when they kick them the hardest.
There is a big difference between Labor values and Liberal values expressed in the two critical policy areas of health and education. In government, Labor has always fought for universal access to health care—people know it as Medicare, and it underpins access for every Australian. People who are old enough will remember that, before Medicare, people were made bankrupt because they had to have an operation. Those are the old days that this government is set to return us to. On education, there was no sound from this government before they were elected that they were intent on setting up $100,000 degrees, cutting 20 per cent of the higher education budget and holding the Senate to account—over a barrel and with a shotgun to its head—by saying they would not fund NCRIS, our most prestigious investigation body in terms of science.

We are deeply concerned by the ongoing commitment of this coalition government to cut funding from health and education. What we have seen since they came to power in terms of their real action in this area is cuts to valuable program such as Youth Connections. We wonder what is going to be targeted in the next budget. From 2010 to 2013, Youth Connections across the country cost $286 million. That is a lot of money for every household but in terms of the budget of a nation it is a small investment in very vulnerable young people. At a cost of just $76.8 million in its final year, 2014, this program delivered for extremely vulnerable young Australians who had fallen out of school the little support that they needed to connect back into education or back into life. But this government, driven by an ideology that sees investment as a cost not an investment, cut that program. Right across this country now, as the Youth Connections program has disappeared, connections to education, jobs, training and a future for young people are absolutely falling apart.

In terms of health, what we have seen with this disastrous set of policies that changed from May to December. again in January and again in March is the shameful way in which this Liberal-National coalition government is determined to hurt Medicare and everyone that it protects this country. They will cut it to the bone. While they might be making noises that they have pulled their GP tax—and some may be fooled—let's be clear that the minister confirmed that this government is absolutely committed to putting a price signal on Medicare. This is what they said: 'It is definitely good policy to put the right price and value signals in health to make sure that people value the service they get from doctors.' Well, they cannot value the service they get from doctors if they cannot get to the doctor—and that is what this lot have got cooked up in the next budget. We will be watching closely to defend health and education at every turn.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (17:34): I rise to make some comments on this MPI before us today. It is interesting to listen to the scaremongering from those opposite. Senator O'Neill spoke about the coalition's 'austerity'. It is not austerity; it is the responsible and sensible management of this nation's economy—something the previous Labor government failed to do. And it is because the previous Labor government failed to do that that this government is having to take sensible and responsible decisions when it comes to managing the nation's economy. When we look at that—and, of course, we are running up to the budget—it is worth looking at why this government needs to take sensible, responsible decisions when it comes to managing the nation's economy. It is because of the waste and mismanagement that we saw from the previous Labor government.
Let's have a look at what the previous Labor government left us. They left us a trajectory to a debt of $657 billion. In case someone out there was not listening when I said that, let me repeat it. The previous Labor government left us a trajectory to a debt of $657 billion. This coalition government makes absolutely no excuses for responsible, sensible decisions about managing the nation's economy to get it back on track because the previous Labor government left us an economic basket case. What does that actually mean for people across the country? It means we are paying $1 billion a month in interest because of the previous Labor government's waste and mismanagement.

Sensor O'Neill interjecting—

Sensor Nash: I will take that interjection from the senator opposite: 'What about health and education?' Let's have a look at that. Guess what? With the $1 billion we are paying in interest every month, we could have a new tertiary hospital in every city. That is what we could have when it comes to health. When it comes to things we need right across the country, we could have 12 kilometres of road every single day. But we cannot fund these things, because of the previous Labor government's debt. So for the senator to come in here and say that it is this coalition government's austerity is absolutely gobsmacking. It is because of their mess that they left us that we are in this situation—the previous Labor government's mess.

Let's just have a look at the sort of things that led us to that mess. Under the Home Insulation Program, the pink batts, $2 billion was mismanaged, with over $1 billion spent fixing the mistakes. Under the set-top box program, Labor wasted $67 million on administration costs to run a program to install set-top boxes in people's homes for an average of $350 a home even though Harvey Norman offered the same deal for $168. Everybody remembers, under the previous Labor government, FuelWatch and Grocery Choice. Nearly $30 million was spent setting them up, and then they were dumped. And this one is one that those on this side of the chamber are forever stunned about: the previous Labor government sold the parliamentary billiard tables that used to be in this building for $5,000. But then what happened? The government spent over $102,000 determining whether or not they got value for money.

It is those sorts of things that mean that this government has to take sensible, responsible decisions to get the economy back on track. And we will do that. We take absolute responsibility for doing that. We make no excuses for taking the tough decisions that we know the Australian people need us to take to get this country back on track. At the same time, when we see the scaremongering from the Labor Party about what the government may or may not do, the one thing that we have noticed about the Labor Party, on the other side of this chamber, is that so often they have failed to deal in fact. They do not let the facts get in the way of the story they are trying to sell. And some of the facts are the things that I am going to talk about today: they are about the investments that this government is making in health.

We only have to look at the fact that Commonwealth funding for public hospitals is going to grow. It is going to grow from $13.5 billion to $89 billion over four years—and this in the environment when we hear those on the other side completely ignoring the facts and trying to say that we are cutting funding to public hospitals, which is entirely not true. It is going to increase by nine per cent over 2014-15, nine per cent over 2015-16, nine per cent over 2016-
17 and six per cent over 2017-18. Even I can understand that, when you see those percentages going up and up and up, you can see that that is an increase in funding, even though those opposite would try to tell a different story entirely. It is this government that is investing in health. This government is not cutting; we are investing. We only have to look at Indigenous health funding when it comes to health—$3.1 billion over the next four years for Indigenous health. Very interestingly, that is actually $500 million more than it was over the four years previously under Labor—more funding, not a cut. And, of course, we have just announced the $1.4 billion in funding for primary health care for Indigenous health. A lot of that is going to our Aboriginal community-controlled health sector, which, I have to say, does an incredibly good job in delivering primary health care right around the country.

We just see this continual harping by the opposition, saying that the government is going to make cuts. The scaremongering is absolutely unbelievable. Also, we see hypocrisy there when we look at what Labor cut when they were in office. We only have to look at things like agriculture. They cut the department’s budget by two-thirds. They cut the AQIS rebate by 40 per cent. And the biggest cut of all in agriculture was in cutting the live export trade. To actually stop, ban, the live export trade for cattle was absolutely appalling. For the Labor Party to come in here and talk about cuts from this government! When we look at their track record, the list just goes on and on. One cut that was particularly galling for people in rural and regional areas was the cut to the students that were going to be able to get independent youth allowance. The previous Labor government tried to rip that money away from regional students right across the country—and you know it, Madam Acting Deputy President O’Neill, and so do the rest of your colleagues on the other side. It took this side, the coalition in opposition, to push and push and harangue and harangue until the Labor government did a backflip. So for the Labor Party to come in here and lecture this government on cuts is absolutely the height of hypocrisy. When we look at the previous Labor government trying to absolutely rip $400 million out of medical research—which they could not do; they had to do a backflip because of the pressure—to come in here and talk about cuts is absolutely the height of hypocrisy.

What we are going to do is manage this nation’s economy responsibly and sensibly. We are not going to engage in the sort of economic irresponsibility we saw from the previous Labor government, which left us with, as I said earlier, a trajectory to debt of $667 billion. We are taking the responsibility to fix the mess that Labor left us, and we will do that. It is not only for now but for our children and our grandchildren that we need to fix that mess. Labor might think it is absolutely fine to hand out $900 cheques to people all over the globe, as it turned out. I even knew of somebody that gave a call from a pub in London saying, ‘Thanks very much to Kevin Rudd for the $900 cheque.’ This coalition government is going to make the responsible and sensible decisions we need to fix the mess that the previous Labor government left us. The Australian people elected us to do it, and that is what we are going to do. We are going to make sure that we do that so that we get the best outcomes and a sustainable future for people living right across this country, not only in rural and regional areas but in cities and from side to side of this nation. We are going to fix the economic mess.

Senator WRIGHT (South Australia) (17:45): If only those things were true. If only we had reality and not just rhetoric from Senator Nash. I rise to speak on the Abbott government’s failure to rule out further cuts to health and education. It is worth emphasising right here that
we are talking in this debate about further cuts. We are not even talking about the $80 billion cuts already proposed to take effect over the next 10 years. But this government will not rule out even deeper cuts. How many more billions can we expect to see ripped out of our schools and hospitals in this government's desperate attempt to steady their sinking policy ship?

Of course, the rule-in rule-out game is a scourge of modern politics. But this was a door that the coalition chose to open and walk through voluntarily when yesterday they announced no further cuts to the foreign aid budget. But what further cuts will there be? The Abbott government must also rule out further cuts to education because we already have a system which is suffering from chronic underfunding. It is a system which stifles the opportunities that are available to hundreds of thousands of Australian children, and because education is such an important investment in the potential of our population it also limits our nation's economic potential. It is an absolutely crazy and irresponsible way to go.

Our public schooling system, which educates the majority of Australian students, is the bedrock of our future society. Whether you look at it from a social or an economic perspective, there are huge benefits to all of us in investing properly in our schools. The Gonski review into school funding found truly staggering levels of inequity in Australia across the Australian system. They found disadvantaged children lagged years behind their peers. It is a scandal in a wealthy country like Australia. This was not because of a lack of intelligence; it was because of a lack of opportunity. How can we expect students to learn in school classrooms that cannot afford to have adequate heating or cooling? How can we expect classrooms to function adequately when more and more is demanded of teachers and they do not receive the support that they need to be able to do their job? How can we expect literacy and numeracy rates to rise when a student's chance in life is more likely to be defined in Australia by their socio-economic status then by their ability or their dedication?

Further funding cuts to education must be ruled out by this Abbott government. But that is not enough. Our schools need more than the status quo because we know that inequality is still rising in Australia, despite the best efforts of the Gonski review to shine a light on this scandal in Australia that compares so badly with our OECD peers. Inequality in Australia is still rising. This government has broken a string of election promises, and it did so when it announced not only that it would not fully implement the Gonski school funding reforms but, as well as that, that it would make drastic cuts to education generally.

Sucking billions out of our school funding system and our education system now will actually cost us trillions in terms of lost productivity and social costs down the track. Just yesterday I met with families of disabled children who are here to plead with the Minister for Education to keep his promise to introduce a needs based disability loading in the upcoming federal budget. It is appalling that parents have to come to plead for an education for their kids. They were begging for a decent education for their children, just as any of us would expect, and that is a crying shame in the Australia of today. They told heart-breaking stories of children who could not get the support they need, not because of a lack of will from their parents or their teachers but simply because the money and the resources were not there. Because of this, up to 100,000 children with disability are receiving no funded support in Australia, and many more are not receiving the funding they need to meet their needs.

These parents are not only worried about getting their children through the school year. They are also worried, of course, about what comes next. They know that without support to
stay in schools their children may never gain the skills they need to join the workforce. I can only imagine what struggle these families will face when the Abbott government's further cuts will come into effect. What a huge waste of potential with so many children achieving below their best. The Abbott government must rule out further cuts to education.

Senator DASTYARI (New South Wales) (17:50): I rise today to speak to this matter of public importance, that being the Abbott government's refusal to rule out further cuts to health and education in my state, New South Wales. We are obviously on the eve of a state election, and we are six weeks out now from the next federal budget. I will put to this place that the commitments that were made on the eve of the last election that there would be no cuts to health and no cuts to education have obviously not been met.

On budget night last year, almost a year ago to the day, we learned that the commitment of the government to a Gonski unity ticket applied only to the first four years of Labor's six-year transition. Their long-term allocation of Commonwealth funding for schools is not consistent with the principles and reforms recommended by the Gonski panel. The Liberal Party's pre-election policy on higher education stated that they would, firstly, ensure the continuation of the current arrangements of university funding and, secondly, work with the sector to reduce the burden of red tape, regulation and reporting.

Senator Seselja: Say it like you mean it, Sam.

Senator DASTYARI: What Australia got was a proposal for wholesale deregulation of the higher education sector. What Australia got was the prospect of $100,000 university degrees.

Senator Seselja: Do it like Dougie does it.

Senator DASTYARI: Madam Acting Deputy President, could you please stop the interjections from the good senator from the Australian Capital Territory, who I note is not a New South Wales senator?

The ACTING DEPUTY PRESIDENT (Senator O'Neill): Given that you are seeking my assistance, Senator Dastyari, Senator Seselja, could you refrain from interjecting.

Senator DASTYARI: It is clear that he is afraid of the truth.

The ACTING DEPUTY PRESIDENT: Senator Dastyari, please take your seat. Senator Seselja on a point of order.

Senator Seselja: I know it is in accordance with standing orders that if a senator asks for protection from the chair then there should be no interjection, so I will definitely take your advice!

The ACTING DEPUTY PRESIDENT: I appreciate your compliance, Senator Seselja. Senator Dastyari, proceed—with no interjections!

Senator DASTYARI: I just get concerned that I think some senators on the other side are afraid of some of the truths and the facts that are being put on the record by me. They will do what they can to try to silence me! I just want to be clear that when it comes to standing up for New South Wales I will not be shushed in this place!

Tony Abbott and the Liberals want to take Australia down the path of a two-tiered higher education system. The Americanisation of our universities will put a degree beyond the reach of many young people in New South Wales. A university degree should depend on hard work...
and good marks, not your parents' bank balance. A degree should never be a debt sentence for students and their families, who are already struggling to make ends meet. Australia needs an education system that provides an opportunity for every young Australian who wants one.

The tragedy of what we have seen happen in terms of education reform, at both the school level and the higher education level, is that the actions of this government have not met the rhetoric they took to the last federal election. If the people of Australia had been given a frank assessment and frank information about the reality of the horrors that were going to transpire after the election on both higher education reform and school funding, I believe it would have had a large impact on the federal election.

When it comes to the issue of education funding, there is an opportunity for the people of New South Wales to have their say on it this weekend—to actually have their say on the model and what has been proposed by the government, particularly the failure of the New South Wales state government to stand up and fight against the cuts, particularly the cuts to the Gonski reforms, which the government has failed on. There is an opportunity available to New South Wales residents this weekend. I urge them to take that opportunity.

I also wish to speak about the cuts to health we have seen unfold, especially in future funding for our health sector. At the launch of the coalition's health policy, on 22 August 2013, Mr Abbott, the then Leader of the Opposition stated:

… I am giving an absolute commitment here today that the overall levels of health funding will be maintained.

But his budget imposed an $80 billion cut to health and education spending over next decade. Also, in August 2013, Mr Abbott stated, 'We are not shutting any Medicare locals.' But all 61 Medicare Locals will now be scrapped and replaced with new local health networks, which are a pale imitation of what was being provided.

While the Prime Minister has now backed down in the face of massive community opposition, he has, by attempting to introduce a GP tax, also broken his promise that there will be no new taxes. It was a $5 tax, a $20 tax and then a $7 tax. The figure kept changing, but when it settled at the $7 model it was estimated that this would cost Australian families $3.5 billion in out-of-pocket costs—a hit on the most vulnerable Australians.

When we are sitting here in this chamber in Canberra we talk about these things as big principles, but I want to talk about the reality of what some of this means at the local hospital level. I would like to speak briefly about the challenges facing one area of Sydney, and I am picking this area because I think it is a good example. I am referring to the St George region in Sydney's South-East and those who live and work in the suburbs along the Eastern Suburbs train line in places like Rockdale and Kogarah, and also the residents from all across the state of NSW who have cause to call upon the services of St George Hospital.

St George Hospital, located near the shoreline of Botany Bay and close to Sydney Airport, serves the entire state of New South Wales, whether it is the cattleman near Cobar who has fallen from a horse, or kids in Kogarah who have come off their skateboards. The emergency ward at St George Hospital is one of the most overstretched in New South Wales. Under the national benchmark, hospitals are required to treat 81 per cent of emergency patients within four hours of presentation. St George Hospital is well below this target, with 41 per cent waiting more than four hours for treatment. Between July and September 2014, more than 870
patients were still in the emergency department nearly 14 hours after arriving. The South East Sydney Local Health District’s Asset Strategic Plan 2012-2017 documented numerous failings at St George Hospital. I quote them here:

The current ICU [Intensive Care Unit] capacity is saturated and land locked. There is 1 bathroom for 15 critical patients and nil for CICU [Cardiothoracic Intensive Care Unit]. The plan also states that there is a ‘high infection control risk’ and ‘refurbishment for hybrid theatres will not provide adequate space for technology’.

I am very conscious of the time and there is much more I would have liked to have said on this topic. But I do want to say that the people of New South Wales have an opportunity this weekend to stand up and be heard on these issues.

In conclusion, I thank the good senator from the ACT for hearing me in silence!

**Senator SESELJA** (Australian Capital Territory) (17:58): Unlike Senator Dastyari, I will not be claiming my right to have the Acting Deputy President’s protection from interjections, because, as you would know Acting Deputy President O’Neill, it is within the standing orders that where interjections are helpful to debate they are allowed, and I was certainly going to be very helpful to Senator Dastyari! But a senator can claim the protection of the chair, which Senator Dastyari has done. So good on him for claiming that protection! I think it is nice that he feels the need to do that rather than have a genuine debate about it.

There is a reason he did not want to hear it: most of what he was saying was absolute claptrap. There was no truth in it. He was making it up as he went along, and the last thing he would have wanted was an alternative voice in that debate. We do look forward to the New South Wales election. It will be interesting to see whether the Labor Party does better this time than they did when Sam Dastyari was running their campaign! It will be interesting to see the comparison between the two results.

**Senator Dastyari:** I’m sure they’ll do much, much better.

**Senator SESELJA:** So, who knows? I am sure Luke Foley will be hoping that they do a fair bit better than 36 per cent of the two-party preferred vote!

**Senator Dastyari:** I’m hoping they’ll do much better!

**Senator SESELJA:** Senator Sterle interjecting—

**Senator Cameron** interjecting—

**Senator Dastyari:** Katy’s coming!

**Senator SESELJA:** What was that? Katy?

**Senator Dastyari:** We’ll remind you of that when Katy comes!

**Senator SESELJA:** I think I beat her on the primary vote, at least, so that is better than you did! That is a fair bit better than you did! So we—

**Senator Cameron:** Then you had to kneecap a senator to get in here!

**Senator SESELJA:** We can compare notes on the 36 per cent TPP! But I should not get sidetracked by these issues, because what I wanted to do was actually put some facts on the table that Senator Dastyari neglected, which is why he did not want to engage in that debate. I will go a little bit to Senator Dastyari’s home state, as well as other states.
Let us start with hospitals, because hospital funding from the Commonwealth is increasing at a significant rate. Commonwealth funding for hospitals, contrary to what those opposite say, is expected to grow significantly in the future, from $13.5 billion in 2013-14 to $18.3 billion in 2017-18, an increase of almost $5 billion. What part of that is a cut? We have to put facts on the table to counter the misrepresentations from those opposite. Hospital funding will grow from $13½ billion in 2013-14 to $18.3 billion in 2017-18.

In Queensland, hospital funding will increase from $3 billion in 2014-15 to $3.7 billion in 2017-18—a $700 million increase in Queensland. In New South Wales, Senator Dastyari’s home state, it will increase from $4.7 billion in 2014-15 to almost $5.8 billion in 2017-18. That is a massive increase—from $4.7 billion to $5.8 billion in New South Wales. Then we go to Victoria, where it will increase from $3.7 billion to $4.5 billion; in South Australia, from $1 billion to $1.3 billion; in Western Australia, from $1.7 billion to $2.1 billion; in the ACT, from $283 million to $300 million; and, in Tasmania, from $312 million to $380 million. In the Northern Territory, hospital funding will increase each year from $153 million in 2014-15 to $192 million in 2017-18.

Those are the facts. That is what is happening under the coalition government, despite the absolute financial mess left by the economic vandals on the other side, the Labor Party, supported by those other economic vandals, the Greens. Despite that, we are seeing a massive increase in Commonwealth investment in hospitals in this country, as I have just laid out state by state, territory by territory.

Labor claimed that, in the never-never, beyond the forward estimates, they would somehow find billions of extra dollars over and above the billions of extra dollars that we are actually delivering. We know that claim was false. We know they could not have done it. It will be interesting to hear—and I do not know if it is Senator Cameron who will be following me in speaking—from Labor senators whether or not they will now commit to that growth beyond the out years that they apparently were so keen on but could never find the money for. We are delivering the billions of extra dollars.

The test for the Labor Party now is that, if they believe in that policy—if they believe in the never-never projections that they did not fund, they were not prepared to fund and they could not find the money for—they should commit to it. We could actually have a policy now from the Labor Party that, if they are re-elected beyond the out years, beyond the increases that we are delivering, they will have massive increases on top of that. If we do not hear that, we will know that it is all hollow rhetoric: they never intended to deliver it. They did not have the capacity to deliver it and now they will not commit to it. But perhaps they will prove me wrong, and we will hear them say in this debate, ‘Yes, we actually now are going to be able to deliver it. It’s a promise. We will deliver.’ I do not think they will.

Let us go to education. Total recurrent Commonwealth funding to all schools across Australia will total over $65 billion as at MYEFO over the 2014-17 funding period. Of course, we are delivering more in these four years than the Labor Party were going to deliver, because they ripped out $1.2 billion. So not only are we delivering the increase; we are delivering an extra $1.2 billion. If Labor had been re-elected, there would be $1.2 billion less in the four-year budget period for schools in this country. That is a fact.

Total Commonwealth funding to all schools across Australia will increase by $4 billion, a 29 per cent increase from 2014-17: 9.3 per cent from 2014-15; 8.2 per cent from 2015-16; and
9.1 per cent from 2016-17. Total Commonwealth funding to government schools will grow by $1.8 billion by 2017, a 37.1 per cent increase, while funding to the non-government sector will grow by 24.5 per cent over the same period. Here in the ACT, we know that funding for government schools will grow by $10 million by 2017, a 13.8 per cent increase, while funding for the non-government sector will grow by 20.5 per cent over the same period.

This MPI is scaremongering. It is wrong. The facts are that we are increasing health and education funding, even if we inherited Labor's—(Time expired)

Senator LAMBIE (Tasmania) (18:06): I rise to contribute to this discussion on further cuts to health and education. If Tasmanian Liberal members of this place had told the truth about the cuts they had planned to both health and education, it is likely that they would not be members of this parliament today. The people of Tasmania would not have voted for members of any political party who came to this place and advocated a cut in resources and funds to the University of Tasmania or additional health costs and charges being imposed on our sick, elderly and disabled people. The Liberal members of this palace, as well as the lower house three amigos, have gleefully been part of a disgusting, cowardly and dishonourable campaign to ambush the University of Tasmania and every other Australian university with a 20 per cent cut to their funding.

Senator Ruston: Mr Acting Deputy President, I rise on a point of order. I think the senator should refer to members in the other place by their correct titles and not 'the three amigos'.

The ACTING DEPUTY PRESIDENT (Senator Smith): I remind Senator Lambie that members should be referred to by their correct titles.

Senator Cameron: On the point of order, Mr Acting Deputy President: it is quite clear that we use rhetorical flourishes. Senator Lambie has not identified anyone. I think using the term 'the three amigos' when you do not identify anyone is quite in order.

The ACTING DEPUTY PRESIDENT: Thank you, Senator Cameron—there is no point of order.

Senator LAMBIE: Recently I met personally with Professor Rathjen at a dinner in Parliament House, and I have met him on other occasions as well. Professor Rathjen's bombshell disclosure on Tasmanian ABC radio that, without additional funding, the future of the Burnie and Launceston campuses of the University of Tasmania could be in jeopardy was a brave move given the pattern of bullying behaviour exhibited by federal Liberal members towards academics who blew the whistle on the dangers associated with the proposed higher education changes.

The federal Liberals in Tasmania never guaranteed the $400 million of capital funding which is needed to help the University of Tasmania prosper and grow. All they wanted was to allow mainland higher education providers into the Tasmanian market to compete with the University of Tasmania. The Liberals know that the University of Tasmania will be harmed if higher education competitors are allowed to undercut it. Tasmania's reputation as a quality higher education provider and place of research excellence would have been damaged under the Liberals' plan. In addition, the Liberals' plan would have guaranteed the deregulated cost of degrees for university students would have skyrocketed.
In this debate, the Liberals have also failed to answer two of my important questions. Firstly, if the Nordic countries can deliver the best higher education in the world to their young people for free, why can't we? Secondly, in 1995 we spent 0.9 per cent of our GDP on higher education per annum and in 2013 we spent 0.6 per cent of our GDP on higher education. Why can't Australia boost our investment in higher education—investing in our kids, the future of Australia—to one per cent? There is no reason why the Liberal Party cannot do this, they just refuse to because they cannot prioritise things correctly. That seems to be happening a great deal in this chamber.

In closing, I note that federal funding for the Mersey hospital still has not been guaranteed or settled on—like much other Indigenous health funding around Australia. I raised this issue with the new health minister Sussan Ley, and I appreciate the time she gave me and her consideration. I would ask that this funding be guaranteed and delivered as soon as possible.

Senator CAMERON (New South Wales) (18:10): I am pleased to participate in this discussion on two of the key issues for this country—the health of the population and the education of the population. I note that Senator Nash made a 10-minute contribution and in my estimation she managed to talk about her own portfolio, and I will be very generous, for about a minute and a half, if that. We had a minute and a half from the junior minister on her portfolio. It was a pathetic performance. All we heard was the old rhetoric from the coalition about balanced budgets and responsible and sensible management of the economy. Who in this country believes that the coalition are capable of sensible and responsible management of the economy? No-one, really, because they have seen the budget. We know the budget was based on a complete fallacy. Prior to the election, people were told there would be no cuts to health, no cuts to education, no cuts to the SBS, no cuts to the ABC and no cuts to pensions. That was the line being run out, and it was nothing more than a line.

When did we see the coalition's real policy? We saw the real coalition policy in the budget. In the budget we saw a move away from every promise they made—on health, on education, on the ABC, on the SBS and on pensions. It is one of the worst-received budgets ever. The budget was so bad that 40 per cent of the Liberal backbench wanted to get rid of the Prime Minister and the Treasurer. That is how bad the budget was. Coalition backbenchers are now coming in and basically saying that they are economically responsible. How can it be economically responsible to take $80 billion out of the budget for health and education? What is responsible about that? What is responsible about targeting the weakest and most vulnerable people in our community? None of that is responsible.

Senator Cormann was asked repeatedly yesterday in question time to rule out further cuts to health and hospitals, and he just refused to do it. Hopefully, sometime, Senator Nash can be in the same shot as Senator Cormann and maybe she can do the same as the foreign minister and put her head in her hands, shake her head in disgust and look with disgust at the Treasurer. Maybe Senator Nash can do that with Senator Cormann and maybe we will save further cuts to health and education. It seems to have worked in the other place when the foreign minister shook her head and looked disgusted about the contribution from the Treasurer, so maybe we should try doing that. Maybe the National Party, just for once, could stop using the rhetoric of opposition, could stop attacking the trade union movement in this country and concentrate on the issues that are good for rural and regional Australia. Maybe it could deal with the issues of a decent health system in rural and regional Australia and a
decent education system—public schools that are well-resourced. Maybe for once we can hear the National Party deal with these important issues, but what do we get? We get the argument that Australia is an economic basket case. That was just put to the sword, that argument. It was put to the sword by the Minister for Trade and Investment, Mr Robb. What did Mr Robb say in a publication called: *Why Australia: Benchmark report 2015*—this is a senior frontbench Liberal. He says:

With more than 23 years of uninterrupted annual economic growth, a AAA sovereign risk profile and diverse, globally competitive industries, Australia remains well placed to build on an impressive record of prosperity.

Either we have got a budget emergency or Mr Robb has got it right. I know what the answer to that is: Mr Robb has got it right. We have got a AAA credit rating. We have had 23 years of uninterrupted economic growth, and yet we get scare campaigns from the coalition trying to justify the worst budget ever in this country.

The people of New South Wales have to understand when they go to the polls that this is the Liberal Party that Mr Baird is the leader of, and Mr Baird supports the economic ideology of Mr Abbott. He cuddles up to Mr Abbott. He wears the same colour tie as Mr Abbott. He is part of the team. He is part of the club. He is a Liberal through and through.

What is going to happen in New South Wales as a result of this budget? New South Wales schools will lose around $9.6 billion; and $1.3 billion from New South Wales universities. We are watching the TAFE system being decimated under federal and state Liberal coalition governments. New South Wales hospitals will lose more than $16½ under the Prime Minister’s budget.

We have Senator Seselja coming in here saying, ‘We’re increasing expenditure.’ It is the oldest trick in the book. You just look at the GDP of the country and say: ‘We’re increasing expenditure,’ but it does not tell you the real story. The real story is in the budget papers. That is where you look for the real story. If you look in the budget papers, what do they say about public hospitals in this country under the coalition government—$57 billion being cut out over a decade? That is what the budget papers say. That is in the budget, and you cannot come in here with some political argument from your advisers to try and give you cover for cutting $57 billion out. This is what is going to hurt people in New South Wales. If you are a family on $65,000 a year and you are going to be $6,000 worse off, how are you going to pay for your education? How are you going to pay for your health? It is just impossible.

Pensioners—how are they going to pay for more when they are being ripped off to the tune of $80 a week under the projected cuts by the coalition government? A hundred New South Wales seniors will be $886.60 worse off each year as a result of the government’s plan to abolish the seniors supplement. Then we will get petrol taxes imposed on top of that.

The people who vote for the National Party drive more and use more petrol. They are not poor people who do not have a car; they are actually poor people who need a car. They use a car. They use petrol, and yet we have got a Treasurer here who says that poor people do not drive. Well, where were the National Party—where were the doormats of the Senate—when this was being doled out? We never heard a word from the Nationals and we never heard a word from the Premier of New South Wales, Mike Baird.

He started saying, ‘We can't afford these cuts.’ Since then, there has not been another word. The Liberal coalition team have kicked in. They are trying to cover up the real effects of this
budget. This budget is bad for New South Wales. It is bad for education. It is bad for health and it is bad for the economy. *(Time expired)*

**Senator McKenzie** (Victoria) (18:20): Praise the Lord time has expired on Senator Cameron who is struggling to wind himself up and get all hot under the collar about the National Party not standing up for regional Australia. We will never stop standing up for regional Australia. We will never stop standing up to make sure that more rural kids get to school and university, more young people get into jobs and have bright and prosperous futures; more of our population as they age, have access to ageing in their own communities; and that indeed our hospital services are filled with regional doctors, nurses and allied health professionals who are trained in the regions.

**The Acting Deputy President (Senator Smith):** Order! Senators are reminded that senators are to be heard in silence.

**Senator McKenzie:** Thank you so much, Mr Acting Deputy President Smith: Senator Cameron can get quite wild and woolly when it is such a boring matter of public importance. I tell you: the matter before us today is a little bit like the Labor Party's policy initiatives—it is all blank ideas and question marks above their heads as the tactics team the night before, or Senator Brown maybe early this morning, gathered around the whip's or the leader's table and asked: 'What have you got? What have you got? I've got nothing. It's like our policy drawer—nothing.' So we are here talking about cuts to health and education. Last week, it was the 'budget of despair'; this week, the talking points are all about cuts. The rhetoric just stays the same because they cannot face the reality. The reality is that there have not been any cuts to education funding and there have not been any cuts to health funding. Indeed, this government is very proud of investing in those two areas which underpin the social architecture of our communities.

I think that the contribution from Labor senators—like so many of their contributions in this place since the election—simply shows that they cannot deal with the legacy of their own government. They cannot deal with the reality that the debt and deficit legacy that they left our government and, indeed, our nation to deal with is significant. In 2012-13 the price of iron ore was $126 per tonne; the price is projected to come in at $60 over 2014-15. That is a significant cut in revenue. This is the reality that we are dealing with. We are dealing with a budget that was constructed over those six years and that actually had all the payment down the track. It was big on promises and very good on the media release, but very elusive in ensuring that those promises were paid for in the forward estimates. Those opposite come in now moaning and wailing about years 5 and 6 of Gonski, about year 5 and year 6 of this, and about year 10 of that. In reality, if they had had the economic acumen which they needed to run a strong budget for the nation in the national interest, they would have ensured that they put those figures into their budget.

Who can forget the cuts to education under the Labor government? They cut $6.6 billion from 2011-12 to 2016-17. They do not talk about that, do they? Right throughout the budget of 2013-14 we had almost $1 million in cuts as the efficiency dividend; we had the removal of the 10 per cent HECS/HELP discount, $276 million; the conversion of student start-up scholarships to student loans, $1.1 billion. It just goes on and on. We talk about it all the time; you guys cut $6.5 billion out of higher education.
Who can forget that in 2012, health minister Tanya Plibersek cut funding to my home state of Victoria, and those cuts had a real impact on hospital budgets right around my state. The cuts were $107 million across the whole year and $475 million across four years. Those were Labor Party cuts whilst they were in government to health services in regional areas, on the front-line. Hospitals felt them. Bendigo Health's hospital urgently needed the money that it was promised and that was not delivered: $1.676 million in the red as a result of the failure of the then health minister to fund public hospitals. The Royal Women's Hospital had to plan to cut gynaecological and core services for women and babies. Dr Galbally said:

These service cuts will have a significant impact on the health of Victorian women …

That was as a result of the $107 million cut to Victorian hospitals thanks to the now deputy leader of the Shorten opposition, Ms Plibersek. Similarly, in Maryborough, the fabulous local member, Mr Dan Tehan, raised the issue of the $173,000 funding cut to Maryborough's public hospital. So when Senator Cameron comes in and wails and moans about this side of the chamber, worrying about what happens on the ground in regional areas to health and education services, we are not the ones out there cutting funds to hospitals in those very places and affecting front-line services. I could go on and on.

What we are interested in, in this government, is securing the future for our nation—a future where young people can get a job; where Indigenous Australians are included not only in our Constitution but in our social and economic fabric in a very real way; where we have an education system that is accessible, equitable and excellent; and where there is a healthcare system that retains our world-class status. These are exactly the types of things that this side of the parliament is interested in securing for the future of our nation and our citizenry. We are passionate about that. That is exactly why we got into politics: to ensure that we can have those things and that our nation is set up for the 21st century. We have to pay for it. We have to ensure that we are responsible in government. It is exactly what we are hoping to deliver. We are looking forward to our next budget to ensure that we continue it.

Senator LAZARUS (Queensland) (18:27): Since commencing my role in the Senate, I have watched the Abbott government break promise after promise. In my home state of Queensland, we have endured harsh budget cuts not only at a federal level but also at the state level. Across Queensland, all levels of government have let the people of Queensland down. CSG mining has been allowed to expand at an alarming rate, damaging the environment, water, soil, land and air. Of further concern, it is also impacting the health of farmers and landowners across the state.

The people of Queensland need increased investment in health and education, not cuts. We need additional resources allocated to support the people of Queensland who have been, and continue to be, impacted by the toxic effects of CSG mining. People are experiencing migraines, skin complaints, blood noses, breathing issues and other chronic health conditions. The chemicals used in CSG mining are known to cause serious health problems, including cancer. Landowners affected by CSG mining cannot afford doctors to assist them. I call on the government to do the right thing and allocate increased funding to the health sector; get medical teams out to regional and rural areas of Australia to treat people who are becoming sick from CSG mining; set up an independent testing centre; and start conducting proper comprehensive tests to determine the level of contamination that is occurring in people, animals, water, soil and the air as a result of CSG mining. These people need help. No-one is
listening to them. The government must stop turning a blind eye and do something now to help all Australians affected by CSG mining.

The ACTING DEPUTY PRESIDENT (Senator Smith): The time for the discussion has expired.

DOCUMENTS

Consideration

The following order of the day relating to government documents was considered:

Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 October 2014 to 31 December 2014.

COMMITTEES

Scrutiny of Bills Committee

Report

Senator POLLEY (Tasmania) (18:30): I present the fourth report of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 4 of 2015, dated 25 March 2015 together with Work of the committee in 2014.

Ordered that the report be printed.

Senator POLLEY: I move:

That the Senate take note of the report on the work of the committee in 2014.

I rise to speak to the tabling of the Senate Scrutiny of Bills Committee's report on the work of the committee in 2014.

Background

As most senators would be aware, the Scrutiny of Bills Committee scrutinises each bill introduced into the parliament and reports to the Senate if it considers that a provision in a bill may:

(i) trespass unduly on personal rights and liberties;
(ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
(iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
(iv) inappropriately delegate legislative powers; or
(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Changes to standing orders

There have been some changes to standing orders. A significant change for the committee in 2014 was the amendment of standing orders 24 and 25, agreed to on 15 July. These amendments arose following the committee's 2012 report into its future role and direction. Important changes to the standing orders in relation to a number of areas were agreed to, including an amendment to standing order 25. This amendment inserted standing order 25(2A), which provides that when legislation committees are examining bills they should take into account any comments on the bills published by the Scrutiny of Bills Committee. Further information in relation to the changes to standing orders 24 and 25 is contained in the report.
The work of the committee in 2014

The work of the committee in scrutinising bills against its five scrutiny principles assists and improves parliamentary consideration of legislation in a number of important ways. Outcomes of the committee's work include:

- amendments to bills;
- improved explanatory material;
- more informed consideration of issues in legislation committee reports; and
- more informed debate in the Senate and committees.

The committee's 2014 annual report outlines some key achievements of the committee during the year, and I would like to take this opportunity to briefly comment on a few of those.

The report notes that an important aspect of the committee's work in 2014 was scrutinising several significant counterterrorism and national security bills. The committee commented on a number of issues in relation to these bills and, as a result, explanatory material associated with the bills was revised.

The committee regularly requests that additional information be included in explanatory memoranda to ensure that provisions of bills on which the committee has commented are adequately explained. The committee therefore welcomed the revisions to the explanatory memoranda for the national security and counterterrorism bills following the committee's scrutiny of the bills.

Several government amendments to the national security and counterterrorism bills were also moved as a result of the committee's comments. For example, in relation to the authorisation of 'special intelligence operations', an amendment was moved so that a 'special intelligence operation authority' is now required to state a description of the nature of the authorised conduct (rather than just a 'general description' of the nature of that conduct).

The committee also routinely forwards its comments on bills to Senate legislation committees. The annual report outlines some examples of reports by legislation committees that have drawn on the Scrutiny of Bills Committee's comments, such as the Legal and Constitutional Affairs Legislation Committee's inquiry into the provisions of the Australian Citizenship and Other Legislation Amendment Bill 2014.

The report also notes examples where the committee's comments have been referred to in debate in the Senate and at public hearings of legislation committees inquiring into bills. For example, during a hearing of the Legal and Constitutional Affairs Legislation Committee into the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, the Scrutiny of Bills Committee's comments in relation to the exclusion of the common law rules of natural justice were raised by witnesses appearing at the hearing.

Issues of continuing interest

The report also notes some issues which the committee will continue to monitor into the future. For example, the committee will closely monitor provisions that delegate legislative powers to ensure that the disallowance process applies and that any departure from this approach is fully justified in the explanatory material. The committee also monitors these provisions to ensure that important matters are included in primary legislation, rather than delegated legislation. For example, in 2014 the committee noted its preference that legislative
authority for arrangements and grants, following the High Court's decisions in the Williams cases, should be included in primary legislation to allow full parliamentary involvement in, and consideration of, such proposals.

The committee will also continue to monitor the classification of expenditure items in appropriation bills and may query instances in which expenditure items appear to be inappropriately classified as 'ordinary annual services of the government' as this prevents the Senate from exercising its constitutional right to amend non-ordinary annual services items.

Focus for 2015

In addition to undertaking its general scrutiny function, the committee has also considered areas in which it may focus its attention during 2015 to support an increased awareness of, and access to, the committee's work. In particular, the committee intends to introduce new information resources on its website, such as guidelines containing practical information about the committee's work and scrutiny expectations.

The committee also plans to undertake a project that will emphasise the importance of providing comprehensive explanatory material and which will be intended to help those drafting explanatory memoranda to make them as useful as possible. The committee will continue to liaise with other committees, including Senate legislation committees, the Senate Regulations and Ordinances Committee and the Parliamentary Joint Committee on Human Rights, in 2015.

Finally, on behalf of the committee I would like to take this opportunity to acknowledge the work and assistance of the committee's legal adviser, Associate Professor Leighton McDonald. I would also like to acknowledge the assistance of ministers and departments, as their responsiveness to the committee is critical to the legislative process as it ensures that the committee can perform its scrutiny functions effectively. And, noting the committee's long-standing practice of undertaking its scrutiny in a non-partisan, apolitical and consensual way, I also thank all of my current and former scrutiny committee colleagues for their understanding of the committee's approach to its work and their commitment to it. I would also like to take the opportunity to acknowledge the hardworking Committee Secretary, Ms Toni Dawes, and her team. We all in this place appreciate the outstanding work that is done by our committee secretaries.

I commend the committee's report, Work of the committee in 2014, and the committee's fourth report and Alert Digest No. 4 of 2015 to the Senate, and I look forward to its next annual report. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Regulations and Ordinances Committee

Delegated Legislation Monitor

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (18:38):
On behalf of the Chair of the Senate Standing Committee on Regulations and Ordinances, Senator Williams, I present the Delegated Legislation Monitor No. 4 of 2015.

Ordered that the document be printed.
On behalf of the Chair of the Joint Standing Committee on Migration, Senator Back, I present the committee's Report of the inquiry into the Business Innovation and Investment Programme and move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

On behalf of the Chief Government Whip and Chair of the Parliamentary Joint Committee on Human Rights, I present the Human rights scrutiny report: twenty-first report of the 44th Parliament. Ordered that the report be printed.

I move:

That the Senate take note of the report.

I seek leave to incorporate a tabling statement in Hansard.

Leave granted.

The statement read as follows—

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Twenty-first Report of the 44th Parliament.

This report provides the committee's view on the compatibility with human rights as defined in the Human Rights (Parliamentary Scrutiny) Act 2011 of bills introduced during the period 16 to 19 March 2015, and legislative instruments received during the period 27 February to 5 March 2015. The report also includes consideration of legislation previously deferred by the committee, as well as one response to issues raised by the committee in a previous report.

Of the seven bills considered in this report, six are assessed as not raising human rights concerns and one raises a matter requiring further correspondence. The committee has deferred its consideration of the remaining two bills introduced during this period and a number of instruments.

This short report outlines the committee's examination of the compatibility of these bills and instruments with our human rights obligations. The committee seeks to engage in dialogue with relevant ministers, both to help the committee better understand the intent of the legislation before it and to help relevant ministers and officials to identify and explore questions of human rights compatibility.

The committee has approached its consideration of the human rights implications of the legislation before it using the same analytical framework that it has consistently applied to the assessment of limitations of rights. When examining legislation, the committee assesses whether the legislation engages human rights and, if so, whether it limits or promotes rights. The majority of legislation, as can be seen in this report, either does not engage human rights or, if it engages with rights, either promotes rights or does not limit them. Where legislation does limit human rights, the committee's analytical framework allows it to focus on three key questions:
1. whether the measures are aimed at achieving a legitimate objective;
2. whether there is a rational connection between the measures and that objective; and
3. whether the measures are proportionate to that objective.

These questions are the first stage of the committee's analysis. It is on this basis that in the present report the committee has sought the advice of ministers in relation to a small number of bills and instruments.

Also in this report, the committee has examined the Criminal Code (Foreign Incursions and Recruitment—Declared Areas) Declaration 2015—Mosul District, Ninewa Province, Iraq. This regulation makes it an offence under the Criminal Code Act 1995 to enter, or remain in, the Mosul district in Iraq. The declared area offence provision was included in the Criminal Code as part of the government's 'Foreign Fighters' Bill in late 2014. The committee has previously examined this offence provision and, after conducting substantial dialogue with the Minister for Foreign Affairs, found that it is incompatible with a number of human rights. As this regulation implements that offence provision with respect to the Mosul district in Iraq, the committee has concluded that the regulation is also incompatible with a number of human rights. Notwithstanding this conclusion, the committee agrees that there is a public interest argument in declaring areas under the Criminal Code as 'no go zones' to pursue the legitimate objective of national security particularly the threat of returning foreign fighters.

I encourage my fellow Senators and others to examine the committee's report to better inform their consideration of proposed legislation.

With these comments I commend the committee's Twenty-first Report of the 44th Parliament to the Senate.

Question agreed to.

Economics Legislation Committee
Corrigenda to Report

Senator FAWCETT (South Australia—Deputy Government Whip in the Senate) (18:40):
I present a corrigendum to the Economics Legislation Committee's Annual reports (No.1 of 2015).

Ordered that the document be printed.

Environment and Communications References Committee
Report

Senator McEWEN (South Australia—Opposition Whip in the Senate) (18:40): On behalf of the Chair of the Environment and Communications References Committee, Senator Urquhart, I present the National Landcare Program report, together with the Hansard record of proceedings, minutes of proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator McEWEN: I move:

That the Senate take note of the report.

Senator SIEWERT (Western Australia—Australian Greens Whip) (18:40): I rise to speak on the motion to take note of the National Landcare program report. This was a very important inquiry looking into the national Landcare program. It was very timely, given the changes to the Landcare program. The report provides, first off, a very good overview of the history of Landcare—over almost the last 30 years; not quite that long—from what people talk about as the birth of Landcare in 1989. Those of us that have worked in Landcare for
longer than that know that Landcare was a concept that had been around for a significant period longer than that; in fact, I was working in Landcare in the early eighties, and there was a lot of early work done in Victoria. Then my home state of Western Australia took it up with gusto and formed a large number of Landcare groups. The report goes through some of that work. It goes through the history of some of the early programs in the National Heritage Trust, and then the rollout of the first and second stages of that, then to the Caring for our Country, and then to this new process. We travelled quite a bit around the country and spoke to as many Landcare groups and natural resource management groups as possible, and learnt a great deal. I think that people who are not that engaged and do not know that much about Landcare and natural resource management in this country will learn a lot from this report. However, what I want to get to is focusing on the conclusions and recommendations.

I think that the recommendations around funding are going to be particularly important. What we did ascertain, and it is extremely disappointing, is that the funding that is available—and here is Senator Urquhart coming in, so I will apologise that I am speaking to the motion first. As chair of the committee, I am sure that Senator Urquhart will want to make some comments on this report. The issue around funding is extremely important, and the first recommendation is:

The committee recommends that the Government provide funding to the National Landcare Programme to the same level as provided under Caring for our Country.

That needs to be at least to the level of funding provided, because we have seen a decrease in the level of funding that is provided to national resource management and to Landcare. Under the current process, after the rollout of the small grants for the 25th anniversary of Landcare which were granted last year, there will be no more funding available for small grants. That is extremely disappointing. After the government had promised there would be more funding made available for Landcare, it has been really obvious that there will no longer be that additional funding available. Funding will be made available by the NRM groups, but it is to come out of their existing funding. Some NRM groups already make that 20 per cent available, they argue. Others do not have such a clear devolved grants process. But the point there is that that will then come at the expense of the NRM groups—so their funding will be reduced. One of the other recommendations deals with landscape-scale projects. I also want to focus on that. Small grants are very important, particularly for Landcare because they do initiation projects. They are small projects that groups can get focused around and get done. Having been involved with NRM and Landcare for a very long time, I know that those landscape scale projects are also important. That is what we talked about in the report. From the information that was available to the inquiry, there is a very real concern for the future of those landscape scale projects.

We also looked at the Green Army and 20 Million Trees in the report. The point that was strongly made to us in evidence we received in submissions and from people who appeared at the hearings is that there is very deep concern that funding for those projects not replace funding for the types of programs that are provided through both small grants programs for Landcare and the larger landscape scale projects. It is only through landscape scale projects that we will ultimately achieve what we need to in sustainable natural resource management. I am not dismissing small grants at all. They play a very important role. But if we do not have the funding made available for landscape scale projects that are coordinated across the
landscape and that engage everybody then we are not going to really, truly ensure that we are sustainably managing our natural resources.

There are recommendations in the report around those landscape scale projects. There are also recommendations made around needing to make sure we monitor and have a good look at the assessment evaluation next year of both the Green Army and 20 Million Trees. There is also a recommendation that the Commonwealth government consider avenues to ensure the continuation of landscape scale projects and to foster further collaboration between stakeholders on the long-term landscape scale strategic planning and action. That is the next point in dealing with the landscape scale projects. We need to ensure that they are long term. People need certainty to have the ability to plan for the long term, because we are talking about projects that need to be carried out over a number of years.

The other point that was strongly made to the committee was about the impact of funding uncertainty on staff and the ability to keep staff. I have been involved in NRM and Landcare long enough to have seen the cycle so many times—funding becomes available, uncertainty kicks in and we lose staff. Then we go through another round. The funding kicks in, we take on staff, uncertainty prevails and we lose staff. That is happening again, and that is deeply concerning.

I will wrap up by saying that the other area we touched on was around monitoring and evaluation but also looking at how we measure outcomes into the future. This has been another persistent issue for Landcare and NRM. We can count the widgets when we are doing our monitoring and accounting, but how do we know we are actually achieving long-term outcomes? That is why I think there is a lot of appeal in the proposal of the Wentworth Group of Concerned Scientists on national environmental accounting. I think recommendation 11 is a very important recommendation. It recommends that we investigate the feasibility of implementing such a system or a similar system that incorporates the merit reporting process that is already underway. I think that is a really important recommendation for the future so that we can put in place a proper system of national environmental accounting. I recommend that people look at that report from the Wentworth group, and I really urge the government to seriously look at the group's proposal on national environmental accounting.

I commend the report to the Senate and urge senators to read it. If you care about Landcare and the future of natural resource management, please read it. Take on board the issues around funding. Funding is absolutely essential if Landcare and NRM are going to continue into the future.

Senator URQUHART (Tasmania—Deputy Opposition Whip in the Senate) (18:49): Thank you, Senator Siewert. I was in another meeting and had to scurry in here, so I thank you for speaking on this. I rise today as Chair of the Senate Environment and Communications References Committee to table the report into Landcare. Firstly, I would like to put on the record my appreciation for all the people and groups who took the time to make submissions but also to come along and provide testimony before the committee. Seventy-three submissions were received from across the country, and we held committee hearings in Perth, Melbourne and Canberra. I would also like to thank the secretariat for their very hard work in managing the inquiry and in providing excellent support to committee members. Yet again, committee secretary Christine McDonald and her small team have done a fantastic job.
This was a particularly timely report in light of the government's decision to cut a massive $471 million from the Landcare budget, despite promising before the election that this would not happen. Landcare has achieved incredible outcomes in its 25 years and should be recognised for that. Landcare offers a unique community based approach to delivering environmental outcomes across Australian landscapes. Millions of trees, shrubs and grasses have been planted. Riparian zones have been repaired. Native vegetation has been protected. Agricultural, Indigenous, urban and coastal lands have been rehabilitated and revitalised by the work of Landcare's wonderful people. Agricultural productivity has also been improved through better grazing methods and soil management.

Local communities have been mobilised and united around a goal that they all share. In fact, Landcare projects have attracted participants from across the length of the demographic spectrum in communities. People of all ages, from schoolkids to grandparents, and people from many different cultures have come together to create better environmental outcomes in their own communities.

Along the way, Landcare has also raised awareness of local and broader environmental issues. Significantly, Landcare has delivered enormous returns on the government's investment. In fact, for every dollar invested by the government in Landcare projects, up to $12 in value comes in kind from the community and local landholders. Now that is bang for your buck.

Through the submissions, and as a result of the expert testimony provided to the committee, it quickly became very clear to the committee that these gains are in great peril as a result of the government's cuts. Before the election, the government promised not only to maintain Landcare funding but to increase it. Environment minister Greg Hunt said in August 2013:

The Coalition will give Landcare significantly greater access to the Caring for Country pool of funds, as well as the current Landcare funding.

He went on to say:

We have listened to local communities and we will put Landcare at the heart of our land conservation programs.

Fairfax papers reported that Minister Hunt also announced $1 million in new funding per year to support the operating costs of running the national network which coordinated local groups.

Well, what a difference an election makes. In the very first budget these solemn promises were tossed aside with the news that Landcare would lose close to half a billion dollars. This puts all the great work that has already been done in jeopardy. Many in the Landcare sector were quick to point out that this is clearly a broken promise from the Abbott government. The committee heard from submission after submission about how the Abbott government's cuts are putting decades of gains at risk. NRM bodies submitted that staff would have to go. Organisations would have difficulty planning. There would be a haemorrhaging of skills and corporate and local knowledge, not to mention the impacts on jobs, social cohesion and capacity. The committee found the cuts imposed by the government to be short-sighted and counterproductive. They clearly run in direct contrast to the government's promise to place Landcare front and centre.
For all of these reasons, the committee found it difficult to support any reduction in funding for NRM programs. It recommended that the government provide funding for the National Landcare Program to the same level as under the Caring for our Country program. The committee also recommended that the 25th Anniversary Landcare Grants program should be maintained as a small continuing grants program over the forward estimates. We also considered it would be of value for the government to review the funding model with a view to reinstating funding for facilitators and community support staff.

Quite frankly, Landcare cannot sustain the cuts that have been imposed by this government. I hope that government members take the time to read the report and to understand the impact that their cuts will have on this long-honoured Australian institution. As committee chair, I look forward to receiving the government’s response and hope that they seriously consider the recommendations made by the committee in this report. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

**Procedure Committee**

**Report**

**Senator MARSHALL** (Victoria—Deputy President of the Senate and Chair of Committees) (18:55): I present the first report of 2015 of the Procedure Committee and move:

That the Senate adopt the recommendation of the first report of 2015 of the Procedure Committee.

Question agreed to.

Accordingly, standing order 19 was amended as follows—

Name of committee

(1) Omit "Appropriations and Staffing" (wherever occurring), substitute "Appropriations, Staffing and Security".

Functions of the committee

(2) Omit paragraph (3)(d), substitute:

(d) consider the administration, operation and funding of security measures affecting the Senate and advise the President and the Senate as appropriate; and

Composition of the committee

(3) Paragraph (4), after "President", insert ", the Deputy President".

**BILLS**

**Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014**

**Report of Legislation Committee**

**Senator FAWCETT** (South Australia—Deputy Government Whip in the Senate) (18:55): Pursuant to order and at the request of the chair of the committee, I present a report of the Community Affairs Legislation Committee on the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014, together with the *Hansard* record of proceedings and documents presented to the committee.

Ordered that the report be printed.
The ACTING DEPUTY PRESIDENT (Senator Smith) (18:55): The President has received letters from senators seeking variations to the membership of committees.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:56): by leave—I move:

That Senator Xenophon be appointed a participating member of the Select Committee into the Abbott Government's Budget Cuts and the Select Committee on Wind Turbines.

Question agreed to.

BILLS

Public Governance and Resources Legislation Amendment Bill (No. 1) 2015

First Reading

Bill received from the House of Representatives.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:57): 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 NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:57): I table a revised explanatory memorandum relating to the bill and 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—

PUBLIC GOVERNANCE AND RESOURCES LEGISLATION AMENDMENT BILL (No. 1) 2015

The Public Governance and Resources Legislation Amendment Bill (No. 1) 2015 (the Bill) would, if enacted, amend 33 Acts, in relation to matters of a governance or resource management nature.

The Bill follows on from the Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014 (PGPA C&T Act), which implemented a range of amendments to the enabling legislation of Commonwealth entities and companies to harmonise their operation with the Public Governance, Performance and Accountability Act 2013 (PGPA Act) from 1 July 2014.

The Bill is part of a broader Public Management Reform Agenda and represents the next stage in the Government's approach towards streamlining and simplifying resource management and governance arrangements across the Commonwealth. While the PGPA C&T Act made changes to 242 Acts to reflect the introduction of the PGPA Act, not all enabling legislation could be amended due to the complexity of some arrangements. This Bill involves:
technical amendments that would further improve the operation of the PGPA Act, including a provision to support the administration of GST obligations by non-corporate Commonwealth entities;

amendments to provisions within the PGPA C&T Act that would streamline transitional arrangements supporting the implementation of the PGPA Act;

amendments to the enabling legislation of Commonwealth entities intended for inclusion in the PGPA C&T Act but unable to proceed at that time due to complexity of arrangements; and

amendments to improve and clarify the governance and resource management arrangements of the enabling legislation of Commonwealth entities that have been identified in consultations with those entities during and since the development of the PGPA C&T Act.

While many of the amendments in the Bill are technical in nature, they provide greater certainty in relation to the operation of the PGPA Act.

For example; arrangements operating under the Financial Management and Accountability Act 1997 (the FMA Act) for the administration of GST obligations were continued pending further consultation with affected entities. These arrangements were only preserved until 30 June 2015.

The outcome of this process, which included the development and consideration of a discussion paper, was that these arrangements should continue, and the Bill provides the necessary support for the continuation of existing GST arrangements for non-corporate Commonwealth entities from 1 July 2015.

Another example relates to repayments by the Commonwealth. The transitional arrangements in the PGPA C&T Act will be amended to clarify that repayments by the Commonwealth are covered by section 77 of the PGPA Act, regardless of when the money was received by the Commonwealth. Section 77 of the PGPA Act ensures that the consolidated revenue fund can be appropriated when a repayment is required and no other appropriation for the repayment exists.

The Bill also proposes amendments directed at improving efficiency and reducing red tape by harmonising and improving alignment with the PGPA Act across the statute book. For example, the Bill:

- updates references in Commonwealth legislation from the FMA Act and CAC Act to the new financial framework to remove any outstanding ambiguities over the application of provisions; and

- simplifies enabling legislation where provisions of the PGPA Act cover an issue previously dealt with in enabling legislation, such as disclosure of interest arrangements, which are provided for in section 29 of the PGPA Act. The Clean Energy Regulator Act 2011 currently contains disclosure of interest requirements that are duplicative and represent unnecessary red tape. The Bill would amend the Clean Energy Regulator Act 2011 to streamline these arrangements.

The Bill also contains amendments to entity enabling legislation, as identified by Ministers, to improve and clarify their broader governance and resource management arrangements.

The Bill would amend the Air Services Act 1995 to address a longstanding issue involving the exposure of Airservices Australia to undue foreign currency risk, due to limitations on hedging activities. The Bill amends the Air Services Act 1995 to address this issue, by enabling Airservices Australia to undertake activities to effectively mitigate the risk of adverse financial consequences to the entity.

The Bill, if enacted, will support the PGPA Act and simplify regulatory requirements to contribute to long-term efficiencies, such as achieving improved governance, transparency and accountability arrangements for Commonwealth entities within the Australian Government.

The Bill is another step towards streamlining and simplifying resource management and governance arrangements across the Commonwealth.

I commend the Bill.
Debate adjourned.

Seafarers Rehabilitation and Compensation and Other Legislation Amendment Bill 2015

First Reading

Bill received from the House of Representatives.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:58): 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 NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:58): I table a revised explanatory memorandum relating to the bill and 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—

SEAFARERS REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2015

This bill will amend the Seafarers Rehabilitation and Compensation Act 1992 and the Occupational Health and Safety (Maritime Industry) Act 1993 to restore certainty to maritime industry employers, employees, regulators and insurers by clarifying the coverage of those acts.

The amendments are made in response to the Full Federal Court decision in Samson Maritime Pty Ltd v Aucote and the original Administrative Appeals Tribunal decision of Aucote and Samson Maritime Pty Ltd. The decisions interpreted the coverage of the seafarers act as being beyond what it had widely been understood to be by including within its scope intrastate trade or commerce. The decisions also have potential implications for the OHS (MI) act, since it has near identical coverage provisions to the seafarers act.

To be clear, this bill will simply be clarifying the coverage of the seafarers and OHS (MI) acts to ensure that it represents what has been widely understood to be the case since those acts commenced.

The Commonwealth Government has provided a workers' compensation scheme to protect Australian seafarers and their families against the financial impacts of death, injury or illness resulting from the often dangerous conditions of working on the sea since the Seamen's Compensation Act 1911. That act applied broadly to Australian seafarers who were engaged in interstate or international trade or commerce, or engaged in trade or commerce within or between the territories. This reflected the understanding of the limits of the Commonwealth Government's constitutional powers at the time.

The seafarers act commenced in 1993. It provides workers' compensation and rehabilitation arrangements for seafarers in a defined part of the Australian maritime industry. The seafarers act also establishes the seafarers Safety, Rehabilitation and Compensation Authority (the Seacare Authority), which oversees the Seacare scheme. The OHS (MI) act commenced in 1994. It provides work health and safety regulation for a defined part of the Australian maritime industry. The two acts together form the legislative basis of the current Seacare Scheme.
Since the seafarers act and OHS (MI) act commenced, successive governments and maritime industry employers, unions and regulators have operated on the basis that the Seacare scheme generally covers the employment of employees on prescribed ships engaged in interstate or international trade or commerce. Seafarers employed on ships engaged in trade or commerce within a single state were considered to be covered by the workers' compensation and work health and safety laws of the state in which they work.

The Full Court's decision has in effect produced uncertainty by moving a large number of maritime industry employers and employees out of the coverage by state and territory workers' compensation and work health and safety schemes into the coverage of the Commonwealth Government's Seacare scheme.

This bill amends the coverage provisions of both the seafarers act and the OHS (MI) act to ensure that coverage aligns with how the Seacare scheme had been understood to apply. The amendments will clearly provide that the seafarers act and the OHS (MI) act do not apply to ships engaged in purely intra-state trade or commerce. This will provide ongoing clarity and certainty for maritime regulators, employers and employees on the coverage of the Seacare scheme.

The amendments will apply retrospectively to any injury, loss or damage suffered by any employee on or after the commencement of the seafarers act in 1993 in order to return the operation of the Seacare Scheme to what it has always been understood to be.

The approach ensures that past claims are not disturbed and that there is certainty as to what a seafarer's appropriate workers compensation coverage is and has been. The key aim is to restore the 'status quo' regarding workers' compensation and work health and safety coverage of the maritime industry.

The bill also amends the coverage provisions to ensure that the Seacare scheme applies to the employment of employees on a prescribed ship, or unit in the case of the OHS (MI) act, that is 'directly and substantially' engaged in trade or commerce. This amendment is intended to make clear that the activity of the ship must be more than merely incidental or preparatory to interstate or international trade or commerce for a ship to be covered by the Seacare scheme. To be covered, there must be a direct and substantial connection.

This bill also makes amendments to the seafarers act to ensure that when the Seacare Authority grants an exemption from the act in relation to an employee's employment, the relevant employer is also exempt from paying a levy under the Seafarers Rehabilitation and Compensation Levy Collection Act 1992. This amendment addresses a long-standing anomaly where employers have been required to pay a Seacare levy on behalf of a group of employees who, by virtue of being granted an exemption from coverage by the seafarers act, are not covered by the Seacare scheme.

This bill does not change the workers' compensation entitlements and work health and safety protections of seafarers. The bill restores the balance of Commonwealth and state coverage of workers' compensation and work health and safety for seafarers that existed since the Seamen's Compensation Act 1911.

With passage of this bill, seafarers will have the workers' compensation rights and work health and safety protections that they were widely understood to have had prior to the handing down of the Full Court's decision.

Ordered that further consideration of the second reading of this bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

**Australian Border Force Bill 2015**

**Customs and Other Legislation Amendment (Australian Border Force) Bill 2015**

**First Reading**

Bills received from the House of Representatives.
Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:59): I move:
That these bills may proceed without formalities, may be taken together and be now read a first time.
Question agreed to.
Bills read a first time.

Second Reading
Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate and Assistant Minister for Health) (18:59): I move:
That these bills be now read a second time.
I seek leave to have the second reading speeches incorporated in Hansard.
Leave granted.
The speeches read as follows—

AUSTRALIAN BORDER FORCE BILL 2015

Australia’s border is a national asset that defines the space within which our democratic and sovereign nation state can prosper. It supports a strong economy by serving as a global gateway for trade, and enabling business and the operation of free markets. It supports strong national security by interdicting prohibited goods and people who seek to do us harm. The border also contributes to a prosperous and cohesive society with a rich and diverse culture, by promoting the freedoms and responsibilities of Australian citizenship and helping to create safer communities.

In short, our border creates the space where we can be who we are and become who we want to be as a nation.

Maintaining our borders as a secure platform for legitimate trade, travel and migration is a core responsibility of the Australian Government and this is a responsibility we take very seriously. There is little point in having a planned migration program or laws around the movement of goods and people if we cannot protect the integrity of those programs.

In the environment of ongoing growth in trade and travellers to Australia, the Australian Border Force Bill 2015 and the other border protection reforms being implemented by this Government position our nation to confront the challenges posed by increased border interactions.

This Bill establishes the statutory office of the Australian Border Force Commissioner, who will command the Australian Border Force as a new, front-line operational border control and enforcement entity within the Department of Immigration and Border Protection that will enforce customs and immigration laws and protect Australia’s borders.

The Australian Border Force Commissioner will be our most senior border law enforcement officer who will lead a professional and agile team of highly trained officers tasked with protecting and managing our borders.

The Commissioner will have the same standing as other heads of key national security related agencies, such as the Commissioner of the Australian Federal Police or the Chief of the Defence Force.

The powers and functions of the Commissioner are conferred under the Customs Act 1901, the Migration Act 1958, the Maritime Powers Act 2013 and other Commonwealth laws.

The Commissioner will also be the Comptroller-General of Customs, with responsibility for the enforcement of customs law and the collection of border related revenue.

The Australian Border Force will not be a separate agency for the purposes of the Public Service Act 1999, the Public Governance, Performance and Accountability Act 2013, or the Privacy Act 1988. The
Secretary of my Department will remain the Accountable Authority for PGPA Act purposes and will remain the Agency Head for Public Service Act purposes.

The Secretary will make available the resources, strategy, policy corporate and enabling support the Australian Border Force needs to operate effectively.

This removes unnecessary duplication and enables the deployment of a greater proportion of resources into the front line. It also contributes to a more efficient government footprint that will assist in achieving fiscal repair and ensuring the sustainability of government operations.

The Australian Border Force will bring together the people, capability and systems from across my portfolio that protect the border and facilitate the lawful passage of people and goods.

This Bill also enables the full integration of the Australian Customs and Border Protection Service and the Department of Immigration and Border Protection into a single department of state.

Staff performing operational functions in the Australian Customs and Border Protection Service will move into the Australian Border Force. Departmental staff who will transfer into the Australian Border Force include those working in immigration compliance, enforcement, detention services and other operational functions. All other functions from the Service will be integrated within the broader Department.

By removing the traditional silos of immigration and customs, my Department – and within it the Australian Border Force – will deliver an improved capability that truly focuses border policies, strategy and operations in an integrated and holistic way.

The establishment of an integrated border entity is not a new concept. It has been a theme of global border reform, in particular in the United States through the Homeland Security Department and a series of reforms at the UK Home Office.

In bringing forward our reforms, we have studied these overseas experiences carefully. The model the Government is implementing takes account of what has worked well for other countries, but also takes into account the unique challenges we face here.

The Australian Border Force will encompass not only those people who staff our air and sea borders at airports and ports, but also those involved in detection, investigations, compliance and enforcement in relation to illicit goods and illegal visitors. This includes management of detention facilities and the removal of non-citizens who do not have a right to remain in Australia.

The Australian Border Force will also include staff who serve beyond our borders, working in operational roles with our regional partners to secure Australia's maritime zone, prevent and deter illegal arrivals and the movement of prohibited goods.

While the Australian Border Force will deliver an important law-enforcement and national security capability in its own right, it won't operate alone. The Australian Border Force will work in close collaboration with national security, defence, law enforcement and intelligence partners domestically and overseas to deliver a secure border.

This integrated approach has proved to be a key element of our Government's success under Operation Sovereign Borders in stopping the destructive people smuggling trade.

To underpin community confidence in Australia's immigration, customs and border arrangements, it is imperative that the Australian Border Force is established as professional and disciplined workforce.

The Bill provides that certain immigration and border protection workers in the Australian Border Force or performing services for the Force may be requested to make and subscribe an oath or affirmation. This requirement sets an upfront marker that the Government and the public expect the highest standards of professionalism and integrity for officers that are exercising significant enforcement powers. The Commissioner will also be required to make and subscribe an oath or affirmation on commencement of his or her office.
An employee who has made or subscribed such an oath or affirmation must not engage in conduct that is inconsistent with the oath or affirmation.

This Bill also gives power to the Secretary and ABF Commissioner to give written directions in connection with the administration and control of the Department and Australian Border Force respectively, and the performance of functions or exercise of powers.

Directions may be made in relation to the setting of essential qualifications for the performance of duties, the mandatory reporting of serious misconduct or criminal activity, and the implementation of the professional integrity system for my Department.

These directions are binding and failure to follow them represents a breach of the Australian Public Service Code of Conduct.

These provisions will enable the highest standards of operational effectiveness and professional integrity to be achieved throughout my Department.

To ensure a safe working environment and increase resistance to corruption, the Bill provides that all immigration and border protection workers may be required to undergo an alcohol screening test, an alcohol breath test, an alcohol blood test or a prohibited drug test.

While the focus of the testing will be on operational and high risk areas, any departmental employee may be selected randomly for testing.

In addition, the Bill provides that alcohol screening involving a breath or blood test, and/or a prohibited drug test, may be required if an incident occurs such as a workplace injury or death involving a motor vehicle, vessel, the discharge of a firearm or physical force.

The Australian Federal Police, Australian Crime Commission and Australian Customs and Border Protection Service all currently apply similar drug and alcohol testing arrangements. The Australian Defence Force also operates a prohibited substance testing programme.

To further strengthen integrity arrangements, the Bill establishes resignation and termination provisions in circumstances involving serious misconduct.

Where an employee is suspected of serious misconduct such as corruption, a serious abuse of power, a serious dereliction of duty, or any other seriously reprehensible act or behaviour and they tender their resignation, the Secretary of the Department or the ABF Commissioner would be able to defer the date of effect of resignation by up to 90 days.

This will enable an APS code of conduct investigation to be finalised and where a breach decision is made, consider whether to impose a termination of employment sanction.

Additionally, in cases where the employment of a departmental officer is terminated under the Public Service Act 1999 as a result of serious misconduct, the Secretary or ABF Commissioner will be able to make a serious misconduct declaration that excludes the termination of employment from review for unfair dismissal under the Fair Work Act 2009.

These provisions provide a strong signal that serious misconduct will not be tolerated.

Part 6 of the Bill establishes important information protections, similar to provisions that are in place within the Australian Customs and Border Protection Service and a range of other Commonwealth agencies.

These protections prohibit the unauthorised making of a record or disclosure of protected information. Breach of this requirement is punishable by imprisonment for two years.

This provision provides assurance to industry and our domestic and international law enforcement and intelligence partners that sensitive information provided to the Australian Border Force and my Department more broadly will be appropriately protected. The provision also enables authorised disclosure where this is appropriate.
In summary, the reforms delivered through this Bill support the Government's priority of ensuring Australia's ongoing success as an open economy and as the world's most successful immigration nation.

This Bill will enable the Australian Border Force and the Department to create stronger borders. Stronger borders will contribute to safer communities and a prosperous and cohesive society.

This Bill deserves the support of all parties. We must take this opportunity to enhance Australia's capacity at the border to manage exponential growth in trade and travellers and combat transnational crime syndicates seeking to exploit our systems.

The government is serious about border protection. The measures in this Bill underscore that commitment, and I commend it to the Senate.

CUSTODIAL AND OTHER LEGISLATION AMENDMENT (AUSTRALIAN BORDER FORCE) BILL 2015

The Customs and Other Legislation Amendment (Australian Border Force) Bill 2015 will repeal the Customs Administration Act 1985 and amend a number of other Commonwealth Acts, including the Customs Act 1901.

Consequential amendments proposed in this Bill will ensure that all Commonwealth legislation reflects the changes to organisational arrangements and statutory roles associated with the integration of the Department of Immigration and Border Protection and establishment of the Australian Border Force within the Department.

The Australian Border Force Bill 2015 establishes the statutory office of the Australian Border Force Commissioner and also designates the Commissioner as the "Comptroller-General of Customs". In that capacity, the holder of the position will have general administration of the Customs Act and the various provisions within other Commonwealth Acts and Regulations that confer powers and responsibilities on Customs and on officers of Customs.

This Act generally substitutes references to the "Chief Executive Officer of Customs" with "Comptroller-General of Customs" or "Secretary of the Department of Immigration and Border Protection"; and the "Department of Immigration and Border Protection" will generally be substituted as the successor agency to the Australian Customs and Border Protection Service.

The terms "officer of Customs" and "Collector" are being retained, and the provisions in a range of Commonwealth laws that are linked to these defined terms generally remain unchanged. The associated powers will be exercised by those officers within my Department who are appropriately authorised and trained, in accordance with established protocols and guidelines. In many, but not all cases, these officers will be within the Australian Border Force.

There are three matters in the Bill that I specifically want to mention. These are the amendments to the Crimes Act 1914, the Law Enforcement Integrity Commissioner Act 2006 and the Work, Health and Safety Act 2011.

First, in relation to the Crimes Act: there are several provisions that currently apply to officers of Customs or the Australian Customs and Border Protection Service that will be crucial to maintain when the Service integrates with the Department of Immigration and Border Protection.

The Australian Customs and Border Protection Service currently falls within the definition of a law enforcement agency within Part 1AB, which deals with "controlled operations", and Part 1AC, which deals with "assumed identities". A controlled operation involves the participation of officers from law enforcement agencies and is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence, or State offence with Commonwealth aspects. An assumed identity is a false identity that is authorised to be adopted by an officer of a law enforcement agency to facilitate the collection of intelligence and investigation of offences of Commonwealth laws.
Part 1AB currently exempts officers of Customs who are involved in a controlled operation from criminal liability for a Commonwealth, State or Territory offence.

In addition, Part 1AC currently exempts officers of Customs from criminal liability for a Commonwealth, State or Territory offence in respect to things done in the course of acquiring or using an assumed identity.

These are important provisions. In its 2013 report into Organised Crime in Australia, the Australian Crime Commission details the significant impact serious and organised crime has on the everyday lives of Australians. The Commission conservatively estimates organised crime costs Australia $15 billion annually and notes the ability for such crime to undermine our border integrity, erode the confidence in institutions and law enforcement agencies and damage our prosperity and regional stability. This form of crime reaches across borders and can include trafficking in drugs or in people, corruption, and money laundering.

With the increasing threat of serious organised and transnational crime, it is vitally important that Australia's border arrangements continue to be able to operate with relevant powers and protections to conduct operations that counter these threats. Accordingly, the Bill substitutes the Department of Immigration and Border Protection for the Australian Customs and Border Protection Service as the primary agency with overarching responsibility for protecting our borders. It therefore ensures these provisions will continue to apply to officers in my Department when the new organisational arrangements are in place.

The second matter I want to highlight relates to amendments to the Law Enforcement Integrity Commissioner Act, or the LEIC Act.

The broad objectives of the LEIC Act are to strengthen the integrity of prescribed Commonwealth law enforcement agencies and to enable the prosecution of corrupt officials and their criminal counterparts. To this end, the Law Enforcement Integrity Commissioner and staff at the Australian Commission for Law Enforcement Integrity (ACLEI) are empowered to detect and investigate corrupt conduct by using a combination of coercive information gathering and law enforcement powers.

The Commission for Law Enforcement Integrity focusses on serious and systemic corruption risks, such as criminal compromise, infiltration and other corruption.

The Australian Customs and Border Protection Service is currently prescribed as a law enforcement agency under the LEIC Act. This Bill proposes that the Integrity Commissioner's jurisdiction would be broadened to apply to the Department of Immigration and Border Protection on a whole of agency basis, from 1 July 2015.

My Department plays a critical role in protecting Australia's sovereignty and managing the movement, each year, of millions of people and goods across the border. In fulfilling this role, immigration and border protection workers have access to secure environments, protected systems and sensitive information. Officers are also entrusted with powers to authorise or prevent the movement of people and goods across the border and also the power to grant permissions associated with the stay of non-citizens in Australia. The Australian community expect these workers to demonstrate the highest level of integrity and professionalism in the exercise of such powers and in the protection of sensitive information.

I have every confidence that the vast majority of officers meet that expectation.

As a department charged with responsibilities that are so integral to strong national security and a strong economy, however, it is only appropriate that there are strong controls in place to detect and investigate corrupt behaviour and to ensure any workers who act corruptly are prosecuted to the full extent of the law.
This Bill will therefore ensure the Law Enforcement Integrity Commissioner has an unhindered ability to investigate suspected law enforcement related corrupt activity across my Department, regardless of the role, location or job title of an individual officer, including in non-operational roles.

There is one further matter in this Bill I would like to mention, and that relates to proposed amendments to the Work, Health and Safety Act, or the WHS Act.

The WHS Act imposes duties on persons conducting a business undertaking and workers to protect the health and safety of themselves and others. The thresholds imposed by these provisions are that workers should exercise 'reasonable care'.

The WHS Act also provides that nothing in the Act requires a person to take or refrain from taking any action that would or could reasonably be expected to be prejudicial to Australia's national security or defence.

Sections 12C and 12D of the WHS Act enable the Director-General of Security and the Chief of the Defence Force to make declarations clarifying how the provisions within the WHS Act apply or are modified in cases relating to Australia's national security and defence. These declaration provisions importantly assist in providing assurance to front line officers about how they can meet their obligations under the WHS Act while also fulfilling their obligation to protect Australia's national security and defence.

These declarations can only be made with the agreement of the Minister for Employment.

The Chief of the Defence Force currently has a declaration in place under this section of the WHS Act to cover certain elements of Operation Sovereign Borders. This declaration covers both Australian Defence Force personnel and ACBPS workers who are working together to protect Australia's sovereignty.

Into the future, workers in the Australian Border Force, like their counterparts in the Australian Defence Force and some other national security agencies will at times be involved in fast moving and inherently high-risk activities. This is particularly evident in the on-water maritime border protection environment, where some of the risks are difficult to predict and control in comparison to other workplace environments. Employees involved in these special operations (such as fishery or Southern Ocean Patrols) often need to make difficult, time-critical judgments, and any uncertainty could threaten the effectiveness of the activity or the safety of the officer or others.

Amendments proposed in this Bill will give the ABF Commissioner the ability to assure Australian Border Force workers in these environments and remove any doubt that they can professionally and diligently perform the tasks required of them, without any legal or operational uncertainty about how the WHS Act applies. It will do this by enabling the ABF Commissioner to make declarations under the section 12C national security provision and section 12D defence provision of the Act clarifying how the Act applies or is modified in particular operations.

At all times, the Secretary of my Department and the ABF Commissioner will continue to give precedence to the health and safety of immigration and border protection workers and other persons in the workplace, and promote the objectives of the WHS Act. Employees will continue to undertake risk assessments and be provided with the training and equipment they need to undertake the important roles the Government and the Australian community need them to do.

The bill also includes important safeguards around the making of a declaration by the ABF Commissioner. The ABF Commissioner must take into account the need to promote the objects of the WHS Act to the greatest extent consistent with the maintenance of Australia's national security and Defence. To make a declaration, the ABF Commissioner must consult with the Secretary of the Department. In addition, for declarations under section 12C, the Director-General of Security must be consulted; and for a declaration under section 12D, the Chief of the Defence Force must be consulted.
The ABF Commissioner must also seek the Employment Minister's approval prior to a declaration being made.

This amendment to the WHS Act appropriately recognises the risks faced by Australian Border Force officers in protecting Australia's sovereignty and security.

This Bill deserves the support of all parties. Together with the Australian Border Force Bill 2015, it will assist us to remain prosperous, strong and secure in the twenty-first century as we deal with increasing demands and threats to our immigration and border protection systems.

This government is serious about strong and effective border protection. The measures in this Bill underscore that commitment, and I commend it to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

Sitting suspended from 19:00 to 19:30

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

Debate resumed.

The CHAIRMAN: The question before the committee is that Australian Greens amendment (5) on sheet 7669, moved by Senator Ludlam, be agreed to.

Senator LUDLAM (Western Australia) (19:30): I believe the amendment should be agreed to, so I commend it to the chamber. For the benefit of senators, when the debate was interrupted before question time we were discussing the issue of whether it should be a two-year mandatory data retention period, if it is mandatory at all, or, in conflicting proposals, three months or six months. We had spoken of diminishing returns and the fact that most data is nowhere near two years old in the jurisdictions for which we have information and that we do not have information in Australia; and thus, like so much of the rest of this policy, we are proceeding on the basis of anecdote rather than evidence. I do not propose to repeat myself because we still have a long way to go, so I commend Australian Greens amendment (5) on sheet 7669 to the chamber.

Question negatived.

Senator LEYONHJELM (New South Wales) (19:31): I withdraw LDP amendments (5) and (6) on sheet 7661. I move amendment (7) on sheet 7661:

(7) Schedule 1, item 1, page 11 (after line 5), after section 187C, insert:

187CA Information or documents must be kept in Australia

A service provider must take all reasonable steps to ensure that information or a document that the provider must keep under section 187A is:

(a) kept in Australia; and

(b) kept by a body incorporated, owned and operated in Australia.

The rationale for this amendment is widespread industry disquiet that sensitive, personal information will be stored offshore in jurisdictions with more flexible approaches to privacy and security. My party, the Liberal Democrats, dislikes protectionism of any sort, and it is a sign of how bad this bill is that I have even considered an amendment of this kind. But it probably is in the national interest not to have all our personal data bundled up and stored
somewhere else overseas, very likely in China because that is where it is cheaper. It would be a honeypot for not just our own intrusive snoops and bullies but everyone else’s as well.

Of course, I recognise that corporate ownership can be quite complicated and very difficult to ascertain, and companies will often subcontract out. That is why I have included a requirement that the service provider ‘take all reasonable steps’. This will go some way towards mitigating some of these issues. For example, it would ensure that, if a service provider’s contracted data storage provider were to subcontract to a provider outside of Australia without the service provider’s consent or knowledge, the service provider could not be penalised for it.

Senator LUDLAM (Western Australia) (19:34): I will speak briefly to this because it does traverse an area that we addressed earlier, to a degree. It does require a bit of careful drafting, and I will just also foreshadow that the Australian Greens have an amendment to similar effect, worded slightly differently from the way that Senator Leyonhjelm has tried to handle it—and it is difficult.

We heard, I think, a variety of views on this matter when Senator Xenophon, Senator Leyonhjelm and I convened a forum of interested parties from across the political spectrum and from industry, digital rights organisations and advocates late last year. One of the guests we had was the then iiNet Chief Regulatory Officer Steve Dalby, and he put forward quite forcefully the fact that ISPs were trying to find the lowest cost option for storing the required data which, in his words, ‘at the moment is in China’.

I recognise that not all the costs of the data retention scheme are in storage; in fact, storage gets cheaper by the year. But of course data volume is increasing, and it is a bit difficult to tell whether in the future these things are going to keep pace, because, as fast as technologists work out cleverer ways of storing ever-larger quantities of material in smaller and cheaper spaces, we generate more of the staff. So storage is only part of the cost. I suspect Senator Brandis, if I asked him, could not provide us with a break-up of the roughly $390 million—how much of that estimated cost is storage, how much is retrieval systems, how much of it is compliance administration. I suspect, if those numbers exist, they may well be beyond the reach of the Senate, although I would be delighted to be proven wrong.

The point Mr Dalby was making was not so much that iiNet would take up that option of the lowest cost hosting provider but that perhaps others, with fewer resources than an entity the size of iiNet, might have to do just that. We heard estimates from industry earlier this year that, potentially, half of the smaller end of the spectrum of service providers might go to the wall as a result of this. I think it is spectacular reversal of policies of regulation that, just for a change, you have actually been supported by all sides of politics, and the disaggregation of Telstra from NBN was a part of that—taking the wholesale business out of private hands and bringing that back into public hands, and then letting the private sector let it rip at the retail end. That has actually created what I would argue is a wonderful fragmentation in the RSP end of the market, but it is those smaller and newer players that we will potentially put to the wall. They are going to be seeking the lowest costs. They will not have the legal clout and they may not have the technical clout to embed the kind of security provisions that are going to be required. They do not necessarily have high-powered legal counsel and they are not necessarily going to be able to run sophisticated demands of this government to recover their costs. That end of industry, in particular, who already operate on pretty fine margins, are
going to be looking to cut costs wherever they can. Some of that obviously is going to be in storage.

A former ASIO chief whose name has popped up a couple of times, Mr Irvine, who Senator Brandis quite correctly pointed is pro data retention—nothing that I quote of his words is intended to dispute that—was at a defence and national security roundtable jointly held by The Australian Financial Review and KPMG not that long ago, and he said that while the cloud was a 'wonderfully efficient thing' and it was where everyone was going, 'I would rather the cloud hovered over Sydney or Melbourne rather than Shanghai or Bangalore, where it was governed by someone else's sovereign legislative system.' He said he would feel much more comfortable with the data governed by Australian law than by law in some other country. He said:

These days every bit of data is sensitive and I know Telstra stores its data in 13 different places
That is not necessarily 13 different countries or jurisdictions, but Telstra, as a result of its very long history and the huge variety of services that it offers, hosts material on quite different kinds of platforms and systems, and obviously the cloud, almost by definition, is transnational.

This is the speech in which I believe Mr Irvine declared himself a 'cyber nationalist', which is an interesting concept to fold into a medium as borderless as the internet. The reason he put that view is that, although Senator Brandis was at some pains to inform us earlier that Australian material hosted in other countries is still obliged to treated under Australian privacy law, it is difficult in advance to establish whether the protection from data breaches is as robust as we would find here in Australia, and is it is going to be easier to establish, I would argue, that the protections are up to scratch? This is people's personal private material. It is not the personal private material of just criminals and terrorists but necessarily, by the breadth of this bill, of everybody else—people who are not suspected of anything.

There was a remarkable report produced by Mandiant about two years ago, and it is very rare that documents such as this would get put into the public domain. They spent months and months tracking an entity that they referred to as APT1—advanced persistent threat 1—operating out of an office block in Shanghai that they argued was a unit of the Chinese military, and it appeared that its entire sole purpose of existence was industrial espionage on a massive scale. This entity appeared to be entering corporate data systems and government databases around the world using a mix of technical and social engineering techniques to gain access to systems to set up small encampments inside people's databases and then systematically loop and withdraw material, some of it quite sensitive, for purposes that I suppose we can only guess at. This kind of stuff happens on an extraordinary scale, and it is obviously not just the records of ordinary Australians that are going to be stored but everybody all the way up to CEOs of blue-chip corporations and their families will be caught up in this legislation—personal records; private and confidential communications of a presumably very sensitive nature from a business perspective. We are proposing that all that material be hosted and preserved for the first time in a really systematic way, and we are also forcing the providers to make it much easier to access and withdraw and bring it out. I suspect that is where Mr Irvine was heading with his cyber nationalism. It is his view that telcos should be forced to create this data, and obviously that is where we part ways. His view is that, if it is going to be created, we had better make sure we look after it as well as we can and
a server somewhere else in the world, goodness knows where, subject to goodness knows what kind of technical protection measures, may not be the best place for it.

The Australian Greens will be supporting Senator Leyonhjelm's amendment. Senator Brandis acknowledged before that the government does not have a closed mind on this issue and that it may be something that is revisited in the course of the review that you alluded to before. In supporting this amendment, and that of the Australian Greens that is to follow, I would also acknowledge that it is likely to increase costs. It is likely to be more expensive; that is precisely the reason that some of the ISPs may well want to outsource this elsewhere. They would be doing that because of cost. That means that if we require them to host this material in Australia that may well have a material financial impact on the bill. I would like to hear from Senator Brandis how costs are being factored in and how he can proclaim confidence about material hosted elsewhere that may well be subject to Australian privacy law but is subject to a much lower standard of technical protection, and whether this would be dealt with in that six-month period where ISPs and telcos are going to be required to submit their implementation plans, whether data security of where they are proposing to host these new categories of material will be a material fact and whether the government is aware that this may indeed increase costs if it is held locally.

Senator JACINTA COLLINS (Victoria) (19:43): I am not sure why Senator Ludlam was necessarily waiting for the opposition to contribute at this stage, but I will put our position on the record and correct some of his misunderstandings about how some matters are to proceed. I am sure Senator Brandis will follow with respect to the remainder of his questions. As I said in my speech on the second reading, Labor holds concerns about offshore storage of data retained under this scheme. However, the appropriate avenue for resolving these concerns is, as the joint committee noted, through the broader telecommunications sector security reform process—a process that Labor established and that the government has agreed is the appropriate avenue to address these concerns. There is sufficient time within the implementation period for this to occur, and that is where Labor will be focusing our efforts.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (19:44): The government also opposes this amendment, for reasons that I largely explained yesterday so I will not detain the chamber by speaking for too long. The comments of Mr David Irvine, the former Director-General of Security, have been referred to several times in this debate. It is not merely the case, Senator Ludlam, that Mr Irvine is a supporter of mandatory data retention, which of course he is. Mr Irvine is a supporter of this particular bill. He considers this particular bill meets all of his objectives; in fact, he, probably more than any other witness to the first PJCIS inquiry during the last parliament, was the principal advocate of a mandatory data retention regime. Indeed so frustrated was Mr Irvine by the misrepresentation of remarks attributed to him by a journalist that he contacted my office last week and authorised me to convey that it was his wish that this bill in this form should be passed. Nothing that he said at that seminar and nothing in the words attributed to him by a journalist should be understood to derogate from his view that this bill in the form in which the government presents it to the chamber was the appropriate bill for the chamber to pass.

In relation to cost, you are right, Senator Ludlam: of course companies will look for the lowest-cost option as they always do—that is the way capitalism works. They should do that
and they will do that. That is why we must have an appropriately robust framework of laws to ensure that the search for the least-cost option in fulfilling the statutory obligation does not compromise data security.

The telecommunications providers, the internet service providers, which are subject to the obligation created by this bill, are subject to Australian law not just to the obligations created by this bill but to other relevant Australian laws, including the provisions of the Privacy Act to which I referred the chamber last night in the context of the discussion of this issue—and which I will not repeat but with which I am sure, Senator Ludlam, you are familiar. And, as I foreshadowed in my contribution last night, the telecommunications sector security reform—which the government has been working with great effort to develop and which we expect to introduce into the parliament in the second half of this year—the TSSR legislation, is specifically designed to create a very robust, very reliable, framework for the protection and the security of data and of networks.

The suggestion that seems to come from you, Senator Ludlam, that there is a zero-sum game in which every incremental reduction in cost is associated, invariably, with an incremental reduction in the security of data is wrong. As long as the relevant companies are observant of their legal obligations and as long as the legal framework is sufficiently robust, then we would expect players in a marketplace to gravitate to the least-cost option consistent with their legal obligations. That is the way in which this has been structured.

I do not really think I need to say anything more about the matter. This is, as you said yourself, Senator Ludlam, a borderless environment, so it is, if I may say so, a little simple-minded to suggest that in a borderless environment we should be as conscious of national borders as you seem to be. But what we should be conscious of is the robustness of the legal framework which we have and which the legislation, which I foreshadowed, will further augment.

The CHAIRMAN: The question is that the amendment be agreed to.

Question negatived.

Senator LUDLAM (Western Australia) (19:52): I think in light of the debate and the arguments that we have heard thus far, I will put my strong disagreement on the record and note that the Australian Greens amendment (6) is slightly at odds with the way in which Senator Leyonhjelm sought to do this. Nonetheless, I think we will just withdraw the amendment and move onto the next one. I move amendment (7) on sheet 7669:

(7) Schedule 1, item 1, page 11 (before line 6), at the end of Division 1, after proposed section 187CA, add:

187CB Destruction of records

If:

(a) information, or a document, is kept, or caused to be kept, by a service provider in accordance with section 187A; and

(b) the period for which the service provider must keep, or cause to be kept, the information or document has ended; and

(c) the information or document is no longer required in relation to billing by the service provider;

the service provider must cause the information or document, including any copies of the information or document, to be destroyed as soon as practicable.
Note: If a preservation notice is in force under Part 3-1A this section does not apply to require the destruction of any information or documents that are the subject of the preservation notice.

Australian Greens amendment (7) relates to the introduction of data after the retention period. This is an amendment that requires telcos to destroy retained data after the mandatory retention period, unless that data is explicitly required for building purposes. What it effectively does is set the two-year minimum threshold that the Australian government is proposing to establish for new material, recognising, as I think a number of speakers have pointed out, that some service providers keep some categories of material for much longer than that.

An overall data destruction amendment would not make much sense. I have got personal email records—and I am sure most of us have—going back much longer than two years. I am certainly not interested in the service provider wiping them, but categories of material that have been brought into being for the sole purpose of the objects of this bill should be subject to an explicit data destruction policy. So materials that are recorded for longer than two years for billing purposes and materials that are recorded for longer than two years for all sorts of legitimate reasons, obviously, would not be subject to this amendment. Material that is only being brought into being to satisfy the government and the opposition's objectives should not hang around forever.

I might be so bold as to anticipate an objection that Senator Brandis might raise: why would service providers hang onto it, if we are making these arguments that it is so immensely costly? But, of course, most of the costs are in the set-up, creating the space for it in the first place. I suspect keeping it for longer would be of marginally much lower cost. What we would like to do is ensure that material that was forced into being solely for the mandatory data retention scheme, which we do not believe is necessary, is not then hanging around in the ether for longer than that.

Without an explicit data destruction policy, the default would be that many telcos would be likely to retain data beyond the two-year mandatory data retention period. We do not want to see that two-year period become indefinite, even though some records, as I have identified, would be indefinite. I would like to get a read from the Attorney-General of what his understanding is of the way that the bill is presently structured. Is my suspicion correct that there would be no obligation as the bill is currently drafted for material to be destroyed or deleted if it has been brought into purpose solely for the legal obligation as set out in this bill?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (19:53): Yes, you are correct, Senator Ludlam: the bill does not provide for or create a destruction obligation after the expiry of the two-year retention period. Although you say that your proposed amendment relies upon a sole purpose test, it does not. If you wanted to change your amendment by altering the words in subclause (a) by inserting the words, ‘solely for the purpose of compliance with’ rather than ‘in accordance with’ then we would still vote against your amendment, but that would be a sole purpose test. This is not your fault, Senator Ludlam; it is drafting error, I suspect. However, your amendment does not do what you think it does. That being said, I feel the force of the argument; it was considered, as well, by the PJCIS.
For reasons that I expounded upon earlier in the day, it is unlikely that telcos and ISPs would want to retain data for longer than the statutory minimum period; their case is that that is a burdensome obligation. But it remains the case—were telcos and ISPs to choose, counterintuitively, to do so—that that is not against Australian law as it currently stands. In fact, when I had the discussion earlier today with Senator Leyonhjelm about variable retention periods, I pointed out that in some cases at the moment metadata is stored for up to seven years. That is not against the law. In any event, although this bill does not deal with the handling obligation; that is dealt with, in particular, by the Privacy Act, which requires entities to take reasonable steps to notify customers if their information will be disclosed to an overseas recipient, of the countries where the information will be held, and to ensure that any overseas recipient of personal information does not breach the Australian privacy principles.

Lastly, might I point out, as I have done in another context, that it is by no means unusual for Australian law to mandate the retention of business records for more than two years. Under the Taxation Administration Act, the Australian Taxation Office requires business records that are relevant to a taxpayer's tax affairs to be retained for five years. Our law has not adopted a destruction obligation; what it has adopted is a handling obligation so as to protect the security of data that is retained.

Senator Jacinta Collins (Victoria) (19:56): I might supplement that as well and highlight changes, related to this point, that have been made to the explanatory memorandum. Labor's view is this amendment is now unnecessary. We were alive to the suggestion that data which is retained only for the purposes of this scheme should be destroyed once the retention period expires. The Parliamentary Joint Committee on Intelligence and Security addressed this matter, recommending that the explanatory memorandum to the bill be amended to clarify the obligations of telcos in this regard. The revised explanatory memorandum clarifies that, as the Australian privacy principles apply to the scheme, telcos are obliged to destroy or de-identify data at the end of the retention period if there is no other acceptable purpose under privacy law for retaining it.

Question negatived.

Senator Ludlam (Western Australia) (19:57): by leave—I move Australian Greens amendments (8) and (9) on sheet 7669 together:

(8) Schedule 1, item 1, page 13 (after line 19), after subsection 187G(1), insert:

Copy of any comments must be given to service provider

(1A) If the Communications Access Co-ordinator receives a comment from an enforcement agency or security authority on a data retention implementation plan, the Co-ordinator must give the service provider a copy of the comment as soon as practicable.

(9) Schedule 1, item 1, page 13 (lines 20 to 31), omit subsection 187G(2), substitute:

Request for amendment of original plan

(2) If:

(a) the Communications Access Co-ordinator receives a comment from an enforcement agency or security authority requesting an amendment of the original plan; and

(b) the Co-ordinator considers the request to be a reasonable one;

the Co-ordinator must request that the service provider make the amendment within 30 days (the response period) after receiving the comment or summary.
Note: The Communications Access Co-ordinator must give the service provider a copy of the comment as soon as practicable, see subsection (1).

The bill sets up a new office of the Communications Access Coordinator, which will be responsible for accepting the plans which telcos make to implement the data retention legislation, and the ACMA works with it on adjudication. I think that is the only role, really, that the ACMA plays—that is, compliance. Plans submitted by telcos for implementing the legislation would be sent to law enforcement agencies for comment, meaning that law enforcement would have a direct say in how these plans were implemented and a certain degree of subsequent control over how they operate. The feedback would not be made public and it would not even necessarily be made available to the service providers, meaning that the law enforcement agencies would have a behind-closed-doors feedback loop on how the data retention legislation would be implemented.

This amendment would resolve that situation. It does not require publication. I kind of buy the argument, if the Attorney-General is prepared to run it, that the publication of these things would probably be quite risky. But at the very least, give the telcos copies of the feedback that has been provided by the law enforcement agencies. Otherwise, you effectively have ASIO and a suite of other agencies—albeit a narrower range of agencies that can access this material now—being able to reach into the back office operations of every telecommunications service provider in the country and tell them how to run their affairs. For a government obsessed with deregulation, it is a remarkable reregulation of the telecommunications sector that particular companies could find themselves and their implementation plans effectively vetoed and forced to make certain changes without getting to see exactly what it is that is wrong with the proposals that they have put forward. In order to assist compliance with a bill like this, which many of these operators reject and have campaigned against quite strenuously, for reasons that are pretty obvious to everybody, it is remarkable that the government does not propose that those plans are at least returned to the telcos. I commend the amendment to the chamber.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:00): The Communications Access Co-ordinator is of course a pre-existing role, not a role newly created by this bill. The provision which the bill introduces which is relevant to the metadata retention scheme, includes proposed section 187G(2):

(2) If:

(a) the Communications Access Co-ordinator receives a comment from an enforcement agency or security authority requesting an amendment of the original plan; and

(b) the Co-ordinator considers the request to be a reasonable one;

the Co-ordinator:

(c) must request that the service provider make the amendment within 30 days … after receiving the comment or summary; and

(d) may give the service provider a copy of the comment or a summary of the comment.

There are two points to be made about the provision in its current form. First, the request must be, in the judgement of the Communications Access Co-ordinator, a reasonable comment or request. Second, the coordinator may give the service provider a copy of the comment or summary. It is permissive, not mandatory, and the effect of your amendment, would be, as I
read it, to change it from being permissive to mandatory. There is no prohibition on doing this. Ordinarily, I would expect that that is what would happen, because, as I have been at pains to say, this is an industry scheme that is going to work only if there is good collaboration and cooperation between the regulatory authorities and industry. However, there are circumstances in which it may not be appropriate for the Communications Access Co-ordinator to provide that material to a telco. The obvious circumstance is where the provision of that material might disclose information of a security character which it is not appropriate be disclosed or put into the public domain.

Proposed section 187G then sets out quite a detailed schema for balancing and governing the rights of the respective parties in the event that such a request was made, to which you did not refer. In particular, proposed subsection (4) of that section provides:

(4) If the service provider indicates that it does not accept a request for an amendment of the original plan, the Communications Access Co-ordinator must:

(a) refer the request and the service provider's response to the ACMA—the Australian Communications and Media authority; and—

(b) request the ACMA to determine whether any amendment of the original plan is required.

(5) The ACMA must then:

(a) determine in writing that no amendment of the original plan is required in response to the request for the amendment; or

(b) if, in the opinion of the ACMA:

(i) the request for the amendment is a reasonable one; and

(ii) the service provider's response to the request for the amendment is not reasonable;

determine in writing that the original plan should be amended in a specified manner and give a copy of the determination to the service provider.

So there is a right of appeal, in effect, to the ACMA. It is not as if the Communications Access Co-ordinator may merely dictate to a service provider on the basis of an agency comment or request. If it makes a determination which the service provider objects to or considers not to be reasonable then there is an arbitration or determination at arm's length from the Communications Access Co-ordinator by the ACMA, and the ACMA must give reasons and give a copy of the determination to the service provider. I think I am right in saying, but I will check for you and confirm, that a determination by the ACMA under proposed section 187G would itself be a judicially reviewable decision. Yes, I am told that that is right. That would be a judicially reviewable decision, so one could then go to the Administrative Appeals Tribunal and one ultimately has recourse on points of law to the federal courts. So it is not as you say it is. In fact there is quite a detailed schema, as I have said, to protect the rights of the service provider in the event that such a request is given by the Communications Access Co-ordinator.

Senator JACINTA COLLINS (Victoria) (20:05): I should indicate that Labor will be opposing these amendments because we accept that, as Senator Brandis outlined, in some cases it will not be appropriate to do so. As he highlighted, it is certainly permissive, but there are some circumstances, including where the comment relates to sensitive law enforcement or national security matters, where it may not be appropriate. We accept that what has been structured here is in the appropriate form.
Senator LUDLAM (Western Australia) (20:05): I will not press the argument, because it appears that, again, the numbers are against us. I thank the Attorney-General for clarifying the flow chart. It is useful to know exactly how he envisages it working in practice. I still find it remarkable that the only example—or counter-example, I guess—that you could give us as to why the agency feedback would not be passed on to the telecommunications providers as a matter of course is security. I would think that if the agencies had a problem relating to security about how service providers were proposing to implement their obligations, albeit unwillingly, that would somehow still be withheld from the service providers. We are not talking about publishing this material and putting it into the public domain; we are talking about the technicians and the people who are now suffering a legal obligation to do something they would rather not do to be able to receive directly feedback that the agencies were providing. It is remarkable, again, that a government that proposes de-regulation in every other sphere be imposing such an enormously intrusive obligation. I understand and acknowledge Senator Brandis’s outlining of the rights of appeal and so on, but, nonetheless, it must be observed that industry is doing this under duress. They have been fighting this proposal since—as far as I am aware—2008. So it is, at the very least, a measure of transparency between the intermediary within the ACMA and industry. It would seem to me to be an issue of good faith, if nothing else. Unless other senators have comments, I will commend Australian Greens amendments (8) and (9) on sheet 7669 to the chamber.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:07): I do not want to delay this, but I am advised that, in fact, industry supports the creation of the Communications Access Co-ordinator. You do have a very negative view of this I know, Senator Ludlam, but the reality is—as I keep trying to explain to you—this is an industry scheme, the efficacy of which depends to a very high degree on cooperation and indeed collaboration. And although it is theoretically possible, of course, that an occasion might arise where that spirit of collaboration or cooperation is absent, ordinarily we would not expect that to be the case. Ordinarily, we would expect the regulator and the service providers to be working together to ensure that the scheme works as well as it can be reasonably made to work. But, in those circumstances where they may be at odds with each other, and the service provider is of the view that an unreasonable view has been taken by the Communications Access Co-ordinator, then there is that right of appeal to the ACMA and beyond that to the Administrative Appeals Tribunal, and beyond that to the Federal Court, as I have explained.

The TEMPORARY CHAIRMAN (Senator Marshall): The question is that the amendments be agreed to.

Question negatived.

Senator LUDLAM (Western Australia) (20:09): by leave—I move amendments (10) to (19) on sheet 7669 together:

(10) Schedule 1, item 1, page 16 (lines 18 and 19), omit "a specified service provider from the obligations imposed on the service provider", substitute "a specified class of service provider from the obligations imposed on the class of service provider".

(11) Schedule 1, item 1, page 16 (line 22), omit "a specified service provider", substitute "a specified class of service provider".

CHAMBER
I will speak to this reasonably briefly, and it will probably seem reasonably technical. These amendments ensure that exemptions which are sought—and I think Senator Brandis has mentioned in an earlier stage of the debate the ability of exemptions to be sought and received—should be uniform. For example, if one provider has IPTV services exempted, then this exemption would apply across the industry. Whatever else we might say about our security agencies, or those intermediaries within the ACMA who are undertaking the implementation of this proposal, they are not necessarily specialists in competition in this very complex, fast-moving sector. The last thing that we want to do is inadvertently tilt the competitive playing field against one carrier over another because of an arbitrary decision such as this that creates a carve-out for one company which then is not applied fairly and competitively across the rest of the sector.

The intention here is deliberately to protect smaller players in the industry who may not have the funding to engage significantly with this new regulatory burden that is being placed over them. While I acknowledge that Senator Brandis has gone into a bit of detail around how this is going to work, this does overlay a new regulatory blanket over the industry, one that the government has been at pains—and the former government, for that matter, to give them their due—to deregulate. And so we do not want to see perverse outcomes, where exemptions sought by one player can convey a competitive advantage over others or where companies, through no fault of their own, find themselves disadvantaged by an exemption carved out by somebody else. So I would be very interested in the Attorney-General's views on why that is not a great idea—unless, of course, he thinks it is a great idea.
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:11): There is a very clear reason for proposed section 187K of the bill being structured in the way that it is, and that is because it provides the flexibility to grant exemptions on a class basis or on a case-by-case basis. Exceptions can either be provided by category or on a case-by-case basis to individual service providers. And I am a little taken aback, frankly, Senator Ludlam, by your critique, because I thought one of the points you were at pains to agitate in this debate was that there should be particular concern for the interests of the small ISPs—which the government agrees with. But the nature of the needs and the persuasiveness of the case put by an individual ISP for an exemption will depend upon that ISP's particular characteristics. I think it is quite wrong—I think it is from a methodological or even a logical point of view wrong—to say that, where one is considering whether exemptions ought to be granted, one ought to be limited only to granting exemptions to an entire class, although that class may contain quite a degree of variability within it; rather than to look at each individual, where appropriate, on a case-by-case basis. Proposed section 187K, as currently drafted, does both. Where there is a sufficient degree of uniformity among a particular class of like ISPs or service providers, then a class exemption can be granted of which all of them may be the beneficiary. But where there is a particular ISP which has unique features, so that it is appropriate to look at it and to look at its profile on an individuated basis, than the draft allows for that to happen too. And your amendment, Senator Ludlam, were it to be carried, would entirely remove the capacity to deal with an individual ISP with an individual or unique profile on an individuated basis. For that reason, the government frankly does not see the utility, even from the point of view of the argument you advance, Senator Ludlam, of your amendments and we do not support them.

Senator JACINTA COLLINS (Victoria) (20:14): I will follow Senator Brandis by indicating that Labor believes that these amendments are unnecessary and that the current provisions are the most appropriate to the circumstances.

Question negatived.

Senator LUDLAM (Western Australia) (20:14): I move Australian Greens amendment (20) on sheet 7669:

(20) Schedule 1, item 1, page 19 (lines 11 to 20), omit section 187KB, substitute:

187KB Commonwealth must make a grant of financial assistance to service providers

(1) The Commonwealth must make a grant of financial assistance to a service provider for the purpose of assisting the service provider to comply with the additional costs that service provider's incur in complying with the service provider's obligations under this Part.

(2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the service provider.

(3) An agreement under subsection (2) may be entered into on behalf of the Commonwealth by the Minister.

This amends the governments grants provisions to state that the government must make a grant to telcos covering the additional costs to implement the data retention legislation as recommended by the PJCIS. This is a very serious amendment. It goes to some of the issues we traversed last night and a bit earlier today about the costs. I recognise that Senator Brandis is presumably bound up in an Expenditure Review Committee skirmish at the moment under
fairly tight budget constraints. That is one of the reasons why we have no information as to how much the government's contribution is going to be. I would have thought that was an argument for delaying passage of the bill rather than progressing it, but that argument does not seem to have persuaded either the government or the opposition.

This is tremendously important to the question that nearly everybody who has been following this debate at any distance wants to know—"Is the taxpayer picking up the tab or are we picking up the tab through increased data charges?" There are arguments for and against.

Senator Xenophon: It is going to be both.

Senator LUDLAM: It is going to be both, as Senator Xenophon interjects quite correctly. But I think everybody has a reasonable expectation of being told before it passes into law rather than after what that balance is going to be—no-one more so than the same telecommunications providers who are going to have this impact on their bottom line. That is going to have, without doubt, an asymmetrical impact on the industry, because there are companies out there with hundreds of millions of dollars on their balance sheets competing against start-ups that might be only a couple of weeks old. That will also impact on the way companies make their argument when they come after the government to recover costs. I suspect that if you can afford some of the best QCs in the country to put together your cost submission you are likely to run a better argument and get a better hearing than somebody running a company from their garage.

Communications Alliance CEO John Stanton put it the following way. He said:

… it was unreasonable for the Government to push for the legislation to be passed into law before providing detail on its commitment to contribute to up-front capital costs that consultants estimate could cost more than $319 million.

"We are not asking Senators to block the Bill, but simply to delay its passage until Government provides some detail about the contribution it has promised to make—given that telecommunication users will inevitably shoulder much of the burden of any Government shortfall," Mr Stanton said.

… … …

Mr Stanton said the Government should spell out the dollar value of its contribution, or at the very least the percentage of the total cost that it will contribute.

So, Senator Brandis, maybe rather than continuing on I will ask you now whether the government has reconsidered its view that we ought to blindly pass this bill without having the faintest idea of how much of taxpayers' money the government will contribute. Or, if you are not willing to do that, could you at least put to us a rough proportion or percentage of the total cost that the government will contribute? Keep in mind that a lot of people—not 100 per cent, but a lot of the Australian population—strongly object to being forced to have their taxes go into being spied on. That is why it has come to be known as the surveillance tax. But at the very least let's find out the quantum or proportion of the surveillance tax. Any information that the Attorney-General is able to provide will contribute to and greatly assist the course of this public debate because the sum total of information you have put into the public domain thus far is approximately zero.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:18): Senator Ludlam, just when I was beginning to respect your forensic analysis of these provisions you
have launched into a rhetorical flight of fancy. But I will not follow you there. This is a very oddly drafted amendment because—and, again, this is probably a drafting issue rather than anything I can blame you for, Senator Ludlam—although it provides that proposed section 187KB of the bill be omitted and the following words substituted, in fact between what you propose and what is in the original bill there is a difference of only one word—and that is that the bill says 'may' and your proposed amendment says 'must'.

Senator Ludlam, the reason this entire discussion is otiose is that the government has already committed to doing so. Neither the provision in its original form nor your amendment quantifies the amount or identifies what proportion it ought to be. There is no quantification or allocation in the amendment that you propound, Senator Ludlam. You merely say that rather than it being permissive, that the government may make a contribution, the government must make a contribution. But the government is making a contribution. That has already been announced. It has already been agreed. It is well understood in the industry. Therefore, the amendment that you urge does nothing but require the government to do something that it has already undertaken to do. That is why I say your amendment is otiose.

As to the quantum, there are a range of estimates. You choose for the purpose of advancing your argument, understandably, a figure at the top of the range—$319 million. The PricewaterhouseCoopers report to which I referred to last night suggests a credible range between $188 million and $390 million. That is not imprecise; it is not at all uncommon for people who place a value on economic activity to describe it by reference to a range. The Commonwealth government has committed to making a substantial contribution to those costs. Within that range, it will make a substantial contribution. What a 'substantial contribution' is is obviously a matter for discussion between government and industry. It is also a matter for internal decision within government. You yourself, Senator Ludlam, observed shrewdly that this is a matter that is at the moment part of the budget process. The government will make a judgement informed by the discussions that it has had with industry as to what proportion fairly represents a substantial contribution within that range.

Senator JACINTA COLLINS (Victoria) (20:22): Senator Brandis, you are forever helping my vocabulary! But, to stay on the point here, I can indicate that Labor accepts that the government has accepted the recommendation of the joint committee in its report, where it called on government to make a substantial contribution to the costs of telcos in meeting their obligations under the scheme. That being said, I think the points that I made in my second reading contribution about how this case could have better been managed applies here. If I recall correctly, there is an outstanding motion in the Senate in relation to the report regarding costs in this matter.

Senator XENOPHON (South Australia) (20:23): This is not a trick question to the Attorney, but I just wanted to ask whether there have been any representations or whether any consideration has been given as to whether the provisions of section 51(xxxi) of the Constitution in respect of acquisition of property on just terms could potentially be a legal argument that could be used by some of the telco providers in terms of the metadata regime that is being proposed. I am hoping that the answer is no.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:23): Senator Xenophon, you can be reassured that all relevant considerations have been had regard to by
the government. The learning and case law on section 51(xxxi), which is about the acquisition of property, is, as the High Court has said—actually quite recently, again—premised upon the notion of a transfer of title, not merely the imposition of an obligation. There must be some transfer of ownership, and that is not the case here.

Senator LUDLAM (Western Australia) (20:24): This goes to the Australian Greens second reading amendment. In my experience in this sector—and there are certainly people in this place who have been around the block for longer than I—I can never recall seeing a letter such as the one that was signed by the combined CEOs of practically the entire telecommunications industry in this country. I am going to read a small section of it now, because I think the urgency of industry, who has been forced into this plan against their will—Senator Brandis before said that implementation relies on consensus—

Senator Brandis: No, I said collaboration.

Senator LUDLAM: Yes, 'collaboration' I think was the term that you used. These are unwilling collaborators, Senator Brandis, and I hope you will at least acknowledge that. These are collaborators who have been forced to collaborate. There is probably a more diplomatic choice of words than 'collaborators' when you have effectively forced people by law to do so. The CEOs of the telcos of Telstra, Optus, Vodafone, iiNet and so on, all the way down to the start-up end of the spectrum—two pages of signatures—state:

We write as the Chief Executive Officers/Senior Executives of a broad spectrum of Australian telecommunications carriers and carriage service providers (C/CSPs) to seek clarity as to the Government’s stated intention to provide a contribution to the upfront capital expenses that may fall on our industry sector following the anticipated debate and potential passage of the … Bill …

Our request to you is, we believe, relatively simple and reasonable. It is that the Government provide to industry, the Parliament and the wider community a degree of certainty as to the size of the Government’s planned contribution (and the planned methodology for apportioning those funds between C/CSPs of differing types and market shares) in advance of the Bill being debated and potentially passed into law.

My question and their question to you is: under a tight budget circumstance—and I cannot remember a budget cycle in which the budget was not tight, for one reason or another; it is just the way that these things are—what if the minister does not come away with anything like $319 million? What if, in fact, you come away with $50 million, for example, that would go in no way far enough to meet the basic need that was set out by PwC? And we just have to take you on your word that those are the figures. How is this scheme going to work then? On budget day in early May, are we going to be looking back on tonight’s debate, with an amount of money that is patently inadequate, and should we not therefore heed the call of the entire telecommunications industry, bar one or two—TPG, interestingly enough, being one of the ones not represented on that list—and pause this debate until you know how you are going to pay for it?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:27): Senator Ludlam, if I may say so, your memory is too short. When I first sat in the Senate during the Howard government, it was not the case that budgets were very tight. In fact, in all but one of the budgets delivered by my former colleague Mr Peter Costello there was a very substantial
surplus. I remember the late, great Matt Price making an observation about one of the last Costello budgets that budgets were like birthdays those days; the public so looked forward to them. In those happy days of the Howard government, when the economic affairs of the nation were conducted competently, there was a rolling surplus budget for more than a decade. But that is a political point, I unashamedly concede. Senator Ludlam, you need to get out more if you think that letter is the most extraordinary letter you have ever read. I get more extraordinary letters than that on a daily basis, I can promise you.

Being a little more serious, Senator Ludlam, because I am teasing you, I know, industry will have certainty—of course industry will have certainty—because, at the appropriate time, the government will announce the proportionate contribution that it will make. In his second reading speech on 30 October 2014, Mr Turnbull, in the other place, committed the government to making a substantial contribution to the capital costs. The determination of what the capital costs are will be informed, among other things, by the range estimated by the PwC report of between $188 and $319 million. The government will make a substantial contribution to an appropriate figure within that range.

What that substantial contribution will be has not yet been determined. It has not yet been determined, but I can tell you that it is close to being determined. That determination has been informed by long discussion with industry. It is, as you yourself have shrewdly observed, part of the budget process. The budget is being delivered on 12 May. It does not create uncertainty for industry merely to say to them: ‘We will be announcing at a date in the near future the precise proportionate contribution that the government will be making to help meet the obligation provided for by proposed section 187KB.’

The TEMPORARY CHAIRMAN: The committee is considering Australian Greens amendment (20) on sheet 7669. The question is that the amendment be agreed to.

The committee divided. [20:34]

(Temporary Chairman—Senator Bernardi)

Ayes .................... 13
Noes ..................... 33
Majority ............... 20

AYES

Di Natale, R
Lambie, J
Ludlam, S
Rhiannon, L
Siewert, R (teller)
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Leyonhjelm, DE
Milne, C
Rice, J
Waters, LJ
Wright, PL

NOES

Back, CJ
Birmingham, SJ
Brown, CL
Bushby, DC
Conroy, SM
Fawcett, DJ

Bernardi, C
Brandis, GH
Bullock, J.W.
Cameron, DN
Edwards, S
Fierravanti-Wells, C

CHAMBER
Question negatived.

Senator LEYONHJELM (New South Wales) (20:37): I move Liberal Democratic Party amendment (8) on sheet 7661:

(8) Schedule 1, item 1, page 21 (after line 31), after section 187N, insert:

187NA Sunset provision

This Part (other than section 187N) ceases to be in force at the end of the third anniversary of the implementation phase for this Part.

The rationale for this amendment is to provide the opportunity for more widespread and more public debate and review, particularly in light of the fact that the PJCIS includes no members of the crossbench or Greens. To that end, this amendment carves out from the sunset the bill's review of operation provision section 187(9) by the PJCIS but ensures that if the bill sunsets and comes to be re-enacted, it will be debated by all of us in this place. It is also Liberal Democratic Party policy that, if draconian laws are to be enacted, they be sunned. It is part of the liberal tradition that fewer, better-drafted laws be enacted. Forcing parliaments to revisit earlier bad law goes some way towards achieving this, if only by reminding parliament not to produce rubbish laws in the first place.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:39): The government opposes this amendment. Proposed section 187N provides for quite a detailed scheme for the review of the operation of the relevant part of the act. The review was to be conducted by the Parliamentary Joint Committee on Intelligence and Security. The period by which the review must commence and by which it must be concluded, which are both in the near future, are specified. It is routinely the role of the PJCIS to review the operation of legislation of a national security character, which is what this legislation is. It would be unusual—I am not sure if it would be unprecedented, but it would certainly be unusual—for the review of legislation of this kind to be conducted by any other organ of the parliament other than the PJCIS. Its reports, of course, are public and will be able to be debated in this chamber at the appropriate time. The government sees no persuasive reason for departing from the orthodox position that when one is dealing with the review of operation of new elements of national security legislation, the PJCIS is the appropriate organ to conduct that review.
Senator JACINTA COLLINS (Victoria) (20:40): For the same reasons, we will be opposing this amendment.

Senator XENOPHON (South Australia) (20:40): I indicate that I will be supporting this amendment. I think it is fair to say that the PJCIS does not have the same sorts of powers as the United States committees on intelligence have in the House of Representatives or the Senate. I think that this is a warranted safeguard in the circumstances, so I will be supporting this amendment.

Senator LUDLAM (Western Australia) (20:41): On behalf of the Australian Greens, I indicate that we support Senator Leyonhjelm's amendment for the reasons that he has expressed quite eloquently for a while. The PJCIS was quite literally a boys' club when Mr Clare and Mr Dreyfus substituted on it to more closely observe the bill that they had carriage of on behalf of the opposition. It was a committee comprised entirely of middle-aged white men.

The government, having eliminated the crossbench spot, I would at least pay tribute—and I think Senator Brandis was part of this committee when he was there—to the role that Mr Andrew Wilkie played as somebody who had spent some considerable years as a member of the intelligence community as the crossbench member of the PJCIS. That crossbench spot, which has never been held by the Greens, was eliminated by this government when they came to power. Since then it has operated as something of a closed shop.

I think this parliament, as Senator Leyonhjelm has identified in this amendment, is by far a more appropriate place to hold the debate on the sunsetting of a bill with the gravity of this. Unwinding data retention provisions of a future parliament if one moved to do so, I think, this is a serious conversation that should be held in this parliament. It is certainly going to be technically and procedurally, potentially quite difficult to do. The PJCIS is not at all the appropriate place to do so. Too frequently it has acted as a captive. I have seen any number of interviews that the present chair of the committee has conducted where he is asked for a rationale of why he has come to one view or another, and he just says, 'Because ASIO said so,' or 'Because the Federal Police want it.'

It is not the role of an oversight committee to simply act as some kind of relay service for demands of the intelligence community or the police. No matter how hard they work or how diligently they carry out their duties, it is the role of that committee principally and of this parliament in general to balance the demands of agencies seeking more powers to conduct their responsibilities and the expectations of the citizenry as a whole, so we do not end up living in a police state. Quite frankly, the PJCIS, in my view, has not always upheld that extraordinarily important responsibility, and I would argue that the shape this bill has arrived in tonight is precisely an example of how that committee has let us down.

Obviously it is a matter of record, but I do not believe this bill should pass into law at all. If we are going to be debating sunset provisions and the fact that at some stage we might expect that this thing is withdrawn from the statute books, the place for that debate to happen is this parliament. We will be supporting the amendment.

Senator JACINTA COLLINS (Victoria) (20:44): I could not let Senator Ludlam's reference to the gender issue go by without some comment. We do have one other female senator participating to some extent in this debate. It would be remiss of me not to highlight
that the two Labor participants on the joint committee vacated their positions so that the relevant frontbenchers could ensure that Labor applied diligent consideration to this bill. Those committee members were Senator Wong and Ms Plibersek.

From my observations of the debate today I am really quite confused about what Senator Ludlam thinks might be the gender issues that are relevant. I would also have to disagree significantly with his characterisation of the committee's considerations. The recommendations, and the 74 consequent amendments that the government has accepted, highlight the detailed consideration and the good work done by this committee.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:45): I join with Senator Collins's observations on this rare occasion. Senator Ludlam, speaking as a middle-aged white man to you, another middle-aged white man, I do not think the gender or the age demographic or the ethnicity of the members of the Parliamentary Joint Committee on Intelligence and Security has any bearing at all on their capacity to deliberate wisely in the interests of the Australian people. The remark was quite a silly one, I am bound to say.

The Parliamentary Joint Committee on Intelligence and Security is arguably the most respected committee of the parliament, and always has been. It is usually, or in general, comprises the most senior members drawn from both sides of politics. And at the time this proposal was developed, Senator Ludlam, it also contained an Independent, Mr Andrew Wilkie—by the way, another middle-aged white man—whose views you seem not to find as offensive, notwithstanding his exotic gender, age demographic and ethnicity.

People like Senator John Faulkner from the Labor Party and Mr Phillip Ruddock from the Liberal Party—people who had seen long experience in portfolios related to matters of national security and intelligence—have always been the gravamen or weight of this committee. And it is very poor form of you, Senator, to reflect upon the committee.

Senator Xenophon, I know you are enamoured of American models. The PJCIS does not have the same powers as the American senate intelligence committee—that is true—but this Senate does not have the same powers as the US senate, for that matter. We have different systems, and I would encourage you not to be so enamoured of the American system merely because it is the American system. Not that I equate you with the subject of this song, but I remind you of the quatrain of the Lord High Executioner in The Mikado, who speaks of 'the idiot who praises, with enthusiastic tone, all centuries but this, and every country but his own'. You should not assume that just because it is American it is better than what we have in Australia.

Senator XENOPHON (South Australia) (20:48): I am not sure whether I should be offended or complimented! At least when the Attorney-General calls me an idiot he does so quoting The Mikado. I think I might need to quote something from the Sex Pistols—or the Dead Kennedys, perhaps; another punk band—but I think I would get in trouble with Hansard. I am more punk than opera when it comes to dealing with these matters.

I do not want my position in respect of the American system to be misrepresented. There are many things about the American system that I have real concerns about, but I do give credit to the Americans that in so far as there appears to be a greater level of scrutiny—including a court, albeit sitting in secret—in terms of intelligence matters. I do not think I am
verballing the Attorney-General by saying that he is nodding. It is a different system but the principles are the same: our intelligence services ought to be subject to a decent level of scrutiny. And I do not think that is idiotic, whether you are quoting The Mikado or not.

In relation to the issue of the membership of the PJCIS, I am also a middle-aged—maybe late middle-aged, at 56—white man. I am of Southern European descent, so I may have olive-tinged skin. But I want to make this point: the PJCIS does not include any representation from any of the 18 crossbenchers in this place. There are nine separate groupings—10 Greens and eight separate members representing different groups or different independent perspectives. And it worries me that they are not represented.

I would ask the Attorney-General, having graced us with a quote from The Mikado, whether he concedes that there is a restrictiveness in the membership of the PJCIS. Would he consider, from the government's point of view, giving an opportunity for crossbenchers to be participating members on certain inquiries from time to time if there is a resolution of this place in order to allow that participation.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:50): It is not really my place to reflect upon the composition of the PJCIS other than to make the point that it comprises, generally, senior and respected members from both sides of politics. When Mr Wilkie was a member of the PJCIS in the last parliament I thought he made a useful and well-informed contribution to its deliberations, for which I thank him. As I said, the genesis of the bill we are debating tonight was the inquiry in which Mr Wilkie was a participant. The report which was the genesis of this bill was a unanimous report. I would be the last person, Senator, to depreciate the value of Independent crossbench members of parliament.

Senator LUDDLAM (Western Australia) (20:51): Is that why you knocked him off the committee? I am perplexed as to the point you are trying to make. I would agree that he did make a valuable contribution to the committee. I therefore wonder—maybe this is seen as a bit of a digression—why you knocked him off the committee.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:51): I did not knock anyone off any committees. The committee was reconstituted. I left the committee at the same time as Mr Wilkie, Senator Ludlam. Committees can be constituted in different ways.

The committee at the moment comprises—so far as I can see—very respected members from both of the major parties. Whether an independent or a crossbench member or a minor-party member should have a permanent spot is a debate that one could have, as one often debates the composition of committees. The composition of the committee, at the moment, is as it is and I think it has done a very good job.

If I may say so, notwithstanding your rather slighting and ungenerous remarks about him, I think the member for Wannon, Mr Tehan, is an exemplary chairman with whom I have worked very closely. Mr Tehan is a former foreign-service official and a former trade representative of this country and he knows a great deal more about these matters than some other people I can readily think of, Senator Ludlam.
Senator XENOPHON (South Australia) (20:52): I cannot let go of The Mikado! I am very grateful to my senior adviser who, fortunately, happens to be a relatively young female—she happens to be white though—and my retort on The Mikado is Britney Spears: 'Hit me, baby, one more time!'

I do want to ask the Attorney if he will rule out, as a matter of principle, the 18 members of the crossbench of this place having, from time to time, representation on the PJCIS as a participating member.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (20:53): Senator Xenophon, your cultural references are opaque to me. It is not for me to rule in or rule out what ought to be the appropriate composition of a joint committee of both houses of this parliament.

The TEMPORARY CHAIRMAN (Senator Bernardi): The question is that the amendment moved by Senator Leyonhjelm be agreed to.

The committee divided.

(The Temporary Chairman—Senator Bernardi)

<table>
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<th>Ayes .................15</th>
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<tr>
<td>Noes ..................32</td>
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<td>Majority...............17</td>
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**AYES**

Di Natale, R
Lazarus, GP
Muir, R
Rice, J
Wang, Z
Whish-Wilson, PS
Xenophon, N

Hanson-Young, SC
Leyonhjelm, DE
Rhiannon, L
Siewert, R (teller)
Waters, LJ
Wright, PL

**NOES**

Back, CJ
Birmingham, SJ
Brown, CL
Bushby, DC
Collins, JMA
Fawcett, DJ
Fifield, MP
Ketter, CR
Macdonald, ID
McEwen, A (teller)
McKenzie, B
Moore, CM
O'Sullivan, B
Seselja, Z

Bernardi, C
Brandis, GH
Bullock, J W.
Cameron, DN
Edwards, S
Fierravanti-Wells, C
Johnston, D
Lines, S
Mason, B
McGrath, J
McLachlan, J
O'Neil, DM
Ruston, A
Singh, LM
Question negatived.

Senator LEYONHJELM (New South Wales) (21:01): I move LDP amendment (9) on sheet 7661:

(9) Schedule 1, page 22 (after line 15), after Part 1, insert:

<table>
<thead>
<tr>
<th>Part 1A—Amendments relating to authorisations</th>
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<tbody>
<tr>
<td><strong>Telecommunications (Interception and Access) Act 1979</strong></td>
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<tr>
<td>1AA Section 178 (heading)</td>
</tr>
<tr>
<td>178 Authorisations for access to existing information or documents</td>
</tr>
<tr>
<td>1AB Subsection 178(3)</td>
</tr>
<tr>
<td>(3) The authorised officer must not make the authorisation unless he or she is satisfied that the disclosure is reasonably necessary for the enforcement of a serious contravention.</td>
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<tr>
<td>1AC Section 179</td>
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<td>1AD Paragraph 186(1)(b)</td>
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</tbody>
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This amendment is designed to ensure that access to privacy-intrusive telecommunications data is permitted only for serious crimes. The bill was clearly intended with a national security remit: serious crimes. Any extension beyond terrorism and national security should only be to crimes that are in the upper range of seriousness in all Australian jurisdictions, such as child pornography offences. I do not wish to see metadata used to pursue trivialities. That is what happened in the UK, with the RIPA law. The thought of spying on people for their unpaid rates or the heinous crime of comparing petrol prices is ridiculous. That is very likely the main use to which this metadata will be put, unless this amendment is passed.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:02): We had this debate last night in the early committee stages, and I fundamentally disagree with what Senator Leyonhjelm has said. Senator Leyonhjelm is fearful that the authorities will devote their resources to pursuing relatively trivial or inconsequential offences or regulatory breaches. It is not conceivable, as a matter of common sense, that they would do so.

The purpose of this legislation is to enable the capacity of the law enforcement, the national security agencies and, in addition, the principal economic regulators—the ACCC and ASIC—to investigate and apprehend serious crime. That is what they are going to do. You say, Senator Leyonhjelm, ‘What if they pursue a trivial matter?’ As a matter of common sense, that is unlikely. But, equally, it is bad legislative practice to prescribe in legislation thresholds above or below which law enforcement agencies should exercise their investigative powers. That is just bad practice.
The issue was looked at by the second PJCIS report, the one that reported on 27 March. Let me read into the record the conclusions of the committee at paragraph 6.187 and the following two:

The Committee has considered very carefully the views expressed that telecommunications access should be limited to sufficiently serious matters, such as serious contraventions of the law or serious national security issues.

... The Committee notes that the level of intrusion into privacy incurred by accessing telecommunications data will vary depending on the particular circumstances, including the nature and volume of the telecommunications data accessed. The Committee also notes the complexities in balancing the competing public interests of individual privacy with enforcement of the law and protection of national security.

... On balance, the Committee considers that the requirement in section 180F should be replaced with a more stringent requirement for the authorising officer to be satisfied on reasonable grounds that the particular disclosure or use of telecommunications data being proposed is proportionate to the intrusion into privacy.

That amendment has been made. That is the one in which the issue has been dealt with, Senator Leyonhjelm. The government opposes your amendment.

Senator JACINTA COLLINS (Victoria) (21:05): Following on from Senator Brandis’s comments, let me add that the amendment would standardise the threshold for access to retain data with the threshold under the Telecommunications (Interception and Access) Act for access to stored communications under warrant. As Senator Brandis highlighted, the Parliamentary Joint Committee on Intelligence and Security did consider this issue but did not come to a conclusion that the threshold for access should be altered in the way proposed here. But it did recommend, as it recommended in 2013, that there be a further examination of whether and how the various thresholds in the T(IA) Act might be standardised.

This goes to the point that I made in my second reading contribution—that in some respects we have the cart before the horse. Had the government proceeded with the recommendations around the T(IA) Act, our considerations here might have been facilitated. So, unfortunately, this amendment is premature without that consideration by the parliamentary joint committee. For that reason, Labor will not be supporting it.

Senator WRIGHT (South Australia) (21:06): I ask whether the Attorney-General is aware of the 20th report of the Parliamentary Joint Committee on Human Rights, another of the parliament’s joint committees which are of high standing. The report says:

... the committee’s major concern was that there appear to be no significant limits on the type of investigation to which a valid disclosure authorisation for existing data may apply.

That is at paragraph 1.196 of its 20th report, in this parliament. It goes on:

The committee notes that the government has not accepted the committee’s recommendation that, to ensure a proportionate limitation on the right to privacy—

under human rights law—

an appropriate threshold should be established to restrict access to retained data to investigations of specified threatened or actual crimes that are serious, or to categories of serious crimes such as major indictable offences.

Were you aware of that, Attorney-General; and what is your response?
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:07): Yes I am, and I do not agree with it.

Senator WRIGHT (South Australia) (21:07): Perhaps I could clarify why the Human Rights Committee is so concerned and then perhaps ask the Attorney to expand on why he does not agree with it. The committee's recommendation that retained data be accessed only for the purposes of investigating complex or serious offences is not reasonably characterised as imposing an arbitrary threshold on access to retained data; rather, such a requirement would ensure that the scheme in fact did not represent an arbitrary and disproportionate limitation on the right to privacy. The concern that I have and that the committee has, as expressed in its report, is that while the Attorney-General seeks to reassure us that, although there are very wide and potential broad uses of the retained data under this bill, we are not to worry about it because the agencies would not waste their time accessing that data for trivial reasons, the trouble is that there is nothing to prevent that in the act, as far as my understanding goes. If I am wrong on that then I would like to know.

Senator LEYONHJELM (New South Wales) (21:09): Attorney, I am somewhat bewildered. You have told us that the metadata retention regime is only to be used for investigation or enforcement of serious offences. The PJCIS says that is what it is intended to be used for. My amendment says nothing more than a disclosure is reasonably necessary for the enforcement—not even the investigation, but the enforcement—of a serious contravention, and I understand 'serious contravention' is understood, of the law. What exactly is the problem?

Senator Brandis: I am sorry, what exactly is the question?

Senator LEYONHJELM: You want to ensure the retained metadata is only used for the investigation or enforcement of serious offences. The PJCIS says the same thing. The bill as it is written does not say that is what must occur. My amendment will say that is what must occur. Why are you opposed to the amendment?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:10): I think I dealt with that, if I may say so, when I tried to answer your question the first time. It is a question of proportionality, you are right. The purpose of these amendments is to deal with serious crime, that is true. The principle of proportionality is enshrined in the bill. This was looked at by the PJCIS and I read to you the PJCIS's considerations that led them to conclude that the way in which the matter had been dealt with by the bill was appropriate. I agree with the process of reasoning of the PJCIS. I do not think your amendment is necessary, and I do not really think I can take it any further.

Senator WRIGHT (South Australia) (21:11): Attorney-General, you refer frequently and understandably to the recommendations of the PJCIS. Did the PJCIS assess the bill in the context of the conventions under international law to which Australia has signed up?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:11): Senator, as you know, the conventions to which Australia has acceded are not, without specific enactment, part of Australian domestic law. That being said, Australia is observant of...
its international human rights obligations. There is nothing in the International Covenant on Civil and Political Rights, which is the instrument with which I am familiar and which would seem to bear most directly on issues of privacy, that comes readily to my mind that is inconsistent with a scheme of mandatory metadata retention. Indeed, there has been some loose talk about a decision of the European Court of Justice in April of last year concerning the European Data Protection Directive, where the European Data Protection Directive was struck down. But people who marshal that event as some kind of rhetorical proof of the validity of their argument that a data retention scheme violates human rights standards always omit to mention that the European Court of Human Rights held, in striking down the European data directive, that it did so on the ground of proportionality. It held that if the data retention schemes of member nations of the EU were crafted conformably to the matters set out in its reasons for judgement then it would not have struck them down.

In other words, what the European Human Rights Court held was that it was possible to have a mandatory data retention scheme that was compliant with human rights standards, including European human rights laws. Most member states—not all, but most—including the United Kingdom, I might say, with whose Attorney-General I have discussed this matter, have subsequently enacted complying data retention schemes. The point I make is that the issue is one of proportionality, as the European Court of Human Rights recognised, and an appropriately crafted mandatory metadata retention scheme can be, and in the European case is, human rights compliant. Proportionality is one of the values that underlie this bill and the way in which the bill will be given effect to by the agencies, and I am quite satisfied, by parody of reasoning with the European Human Rights Court in the case of the European data directive, that this bill is also compliant.

**Senator WRIGHT** (South Australia) (21:15): I am actually really intrigued by the way in which you say, Attorney, that the principle of proportionality is enshrined in this bill. We know that metadata can reveal very significant information about a person's life, associations, habits and preferences and therefore significantly limits the right to privacy. But this proposed scheme would allow access to metadata for two years for the investigation of minor offences, including offences attracting only monetary penalties. Am I right, or is that wrong?

**Senator BRANDIS** (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:15): When you say only monetary penalties, there are some very, very serious breaches of the law that attract only monetary penalties. In my own field of professional experience in trade practices law, until very recently, there were only monetary civil penalties available under the Trade Practices Act, as it then was, for the most egregious market fixing and cartelisation conduct. I think in anyone's language conduct like that is a very, very serious breach of the law, but the penalties were only monetary. So the fact that the penalties may only be monetary does not indicate at all that the conduct being investigated is not grave.

**Senator WRIGHT** (South Australia) (21:16): Attorney-General, as it is currently drafted, if the amendment that is being put by Senator Leyonhjelm—and a similar amendment being put by Senator Ludlam—is not agreed to, am I right in thinking that there is nothing in this bill to prevent the proposed scheme allowing access to a person's metadata for up to two years for the investigation of minor offences, including minor traffic offences or copyright infringements?
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:17): For a start, we are not concerned with civil liabilities so, as you should know, Senator, copyright infringement is a civil wrong. This scheme only gives the criminal law enforcement agencies and the principal economic regulators the power to access metadata. So that is the first point.

The second point: you really trivialise the argument, with all due respect, Senator Wright, when you imagine that people like the Australian Federal Police, the Australian Crime Commission, the state and state and territory police forces and anticorruption authorities are going to use this very complex investigative tool to chase traffic fines. Honestly and truly, Senator Wright, please bring a bit of common sense to this debate.

Senator WRIGHT (South Australia) (21:18): That is not the question that I asked; I asked: is there anything in this bill to prevent that from occurring? It is you who referred to the principle of proportionality. What we have here is actually a bill which allows far greater powers and possibilities, irrespective of how agencies choose to utilise it, than is arguably necessary for the objective for which the bill is ostensibly designed to achieve.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:18): Senator Wright, first of all, you said, wrongly in the contribution you just made that the bill contains new powers; the bill contains no new powers. The bill contains an obligation and it limits by three-quarters the number of agencies which can have access to metadata and it limits in various ways, which are not part of the present law, the capacity of those agencies to access that metadata. It contains new oversight measures and protections, which we debated last night, and it is a little tedious to have to repeat the point I made to you ad nauseam last night.

I should also direct your attention to proposed section 180F of the bill, which requires officers to be satisfied that access to data is proportionate, having regard to the gravity of the matter that is the subject of the investigation. I explained before that proportionality is one of the values enshrined in the act. I did not give you the section reference: there it is.

Senator WRIGHT (South Australia) (21:20): So you have again invoked the notion of proportionality, which of course is intrinsic to the way international law applies in terms of the analysis of domestic law like this. What do you say then to the fact that the Parliamentary Joint Committee on Human Rights states that the committee considers that the response that you provided to that committee in response to requests for information that was made about this very issue of proportionality has not established that these kinds of minor crimes warrant the extent and degree of interference with the right to privacy that the scheme imposes.

The report goes on to say:

That is, they do not appear to be sufficiently serious to justify such an interference as being proportionate to the stated legitimate objective of the scheme. Indeed while the response focuses on the need for mandatory data retention—

and that is the new aspect to the bill, of course—
in relation to complex investigations, serious crime and national security, access to retained data under the scheme will not be restricted to such investigations.
Attorney-General, if that is the legitimate objective for which this bill is being proposed, why is it that you will not agree to have those proportional limitations actually enacted by way of the amendment that is being proposed here?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:21): Because it is done in another way, Senator, which I have been trying to explain to you. With all due respect, it advances the argument not one iota for you to quote a report to me that expresses a view which is a contested view. We know that some people have that view and we know that others have a different view. The point is not to make the trite observation that there are different points of view here. The point, surely, is to explain the rationale of your critique and for me to explain to you the rationale for why the bill has been prepared the way it has.

Remember, Senator, that what this bill does is amend the Telecommunications (Interception and Access) Act. The Telecommunications (Interception and Access) Act already has a provision, section 180F, which, as it is currently written, reads:

**180F Authorised officers to consider privacy**

Before making an authorisation … in relation to the disclosure or use of information or documents, the authorised officer considering making the authorisation must have regard to whether any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable, having regard to the following matters:

(a) the likely relevance and usefulness of the information or documents;

(b) the reason why the disclosure or use concerned is proposed to be authorised.

This bill inserts, as well, a number of other criteria to which regard must be had by proposed subparagraph (aa):

(aa) the gravity of any conduct in relation to which the authorisation is sought, including:

(i) the seriousness of any offence in relation to which the authorisation is sought; and

(ii) the seriousness of any pecuniary penalty in relation to which the authorisation is sought; and

(iii) the seriousness of any protection of the public revenue in relation to which the authorisation is sought; and

(iv) whether the authorisation is sought for the purposes of finding a missing person;

So that is your answer, Senator. We are inserting a range of new considerations to which regard is to be had but, most particularly for the purposes of your inquiry and, indeed, Senator Leyonhjelm's inquiry, the new criterion specified in (i) is:

(i) the seriousness of any offence in relation to which the authorisation is sought;

So the concept of proportionality that I have mentioned to you is captured and explained in section 180F.

Senator WRIGHT (South Australia) (21:25): I have one more question on this. It is really, I suppose, to make sure that it is clearly on the record that the joint committee of this parliament which was established to assess legislation as against Australia's international law obligations has recommended that to avoid the disproportionate limitation on the right to privacy that would result from disclosing telecommunications data for the investigation of any offence, the bill be amended to limit disclosure authorisation for existing data to instances where it is reasonably necessary for the investigation of specified serious crimes; categories
of serious crimes; or the investigation of serious matters by the Australian Securities and Investment Commission, the Australian Taxation Office and the Australian Competition and Consumer Commission. That was a unanimous recommendation of the committee. Why are you not prepared to place weight on that recommendation, Attorney?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:26): Because I agree with the PJCIS and I do not agree with the contrary conclusion of the human rights committee, for the reason that I have explained: different committees look at different issues from different perspectives. This is a piece of legislation which has a law enforcement and national security purpose. It has been examined by the PJCIS. That is a committee with the expertise in this particular field, and it is a bipartisan committee which has twice now unanimously reported on this. On the first occasion, the committee included Mr Wilkie, who you might recall is an independent member of the House of Representatives and who was once an analyst with the Office of National Assessments. On both occasions, the committee unanimously came to a view that the balances, the criteria, the architecture and the oversight mechanisms contained in this bill were appropriate.

You have referred to the issue of proportionality. I have pointed out to you how the issue of proportionality and the requirement, the actual statutory mandate, to have regard to the seriousness of the offence under investigation is actually included in the TIA act by this bill.

Senator LUDLAM (Western Australia) (21:27): I want to take us back briefly. I will say at the outset that I cannot let get Senator Brandis get away with the comments that he made about the Court of Justice of the European Union and the findings that it made on 8 April 2014. I am well aware that I am not a lawyer, and so I am also well aware that Senator Brandis is likely to treat what I am about to say with massive condescension. You are free to fire away, as you tend to do.

I am going to read verbatim from the press release that the Court of Justice of the European Union issued on finding that the European Data Retention Directive was invalid:

The Court of Justice declares the Data Retention Directive to be invalid

It entails a wide-ranging and particularly serious interference with the fundamental rights to respect for private life and to the protection of personal data, without that interference being limited to what is strictly necessary.

The court goes on to say:

The Court takes the view that, by requiring the retention of those data and by allowing the competent national authorities to access those data, the directive interferes in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data. Furthermore, the fact that data are retained and subsequently used without the subscriber or registered user being informed is likely to generate in the persons concerned a feeling that their private lives are the subject of constant surveillance.

It is language remarkably similar to that adopted by our very own Parliamentary Joint Committee on Human Rights, which was looking at these issues, not through a lens of what the security agencies are demanding but through a lens of fundamental human rights, including the right to privacy. The cold-blooded way in which Senator Brandis has just gone ahead and said he has set aside the views where these issues are looked at through a human
rights lens and wholeheartedly adopted the views of the committee that looks at these things through a lens of what ASIO wants is remarkable.

Senator Brandis made a very important point about proportionality. I am glad that he brought it forward, in that he is effectively—I am paraphrasing a little bit—arguing that data retention could well have been considered proportionate by the European courts had the way that the directive was implemented at a national level in national parliaments and congresses been done a little bit differently. It is an important point and it is one on which Senator Brandis is quite correct. But when the court was considering proportionality, it considered a couple of issues as to whether national parliaments and legislatures had to take proportionality into account. The grounds, from which I will quote very briefly, are fascinating. I quote again from the press statement:

Firstly, the directive covers, in a generalised manner, all individuals, all means of electronic communication and all traffic data without any differentiation, limitation or exception being made in the light of the objective of fighting against serious crime.

What do you know? One of the proportionality thresholds that the European court thought was important and that Senator Brandis just brought to our attention is effectively gravity of conduct, that if you are going to place the population under blanket surveillance the measures should really only be used in light of the objective of fighting serious crime. Senator Brandis, in the same breath, rejected Senator Leyonhjelm's amendment that would effectively deal with that issue of proportionality. The judgement continues:

Secondly, the directive fails to lay down any objective criterion which would ensure that the competent national authorities have access to the data and can use them only for the purposes of prevention, detection or criminal prosecutions concerning offences that, in view of the extent and seriousness of the interference with the fundamental rights in question, may be sufficiently serious to justify such an interference.

Again, gravity of conduct. In that same clause, the court goes on to express, and this is important:

In particular, the access to the data is not made dependent on the prior review by a court or by an independent administrative body.

Get a warrant, is effectively what the European court said. Thirdly, on the data retention period, it noted:

… the directive imposes a period of at least six months, without making any distinction between the categories of data on the basis of the persons concerned or the possible usefulness of the data in relation to the objective pursued.

On all three grounds, the Australian government's bill—supported blindly, wilfully and, I would say, recklessly by the Australian Labor Party—fails the same tests of proportionality that Senator Brandis drew to our attention. There is no chance that the Australian bill as presently legislated would pass the threshold tests that were stated in black and white by the European courts. Feel free to unload, Senator Brandis. I have no doubt that you are quite looking forward to it.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:32): I will try and reply to the points you have made, Senator Ludlam. I hope not to be condescending to you; I will just try and express myself accurately and carefully. I am very familiar with the
European Court of Justice's decision on 8 April 2014, because I actually introduced reference to it into this debate. I am familiar with the press release from which you have quoted and I will quote you some other passages that you chose to omit. I find, Senator Ludlam, forgive me for being fussy about this, that I prefer when considering the decisions of courts to read the judgements rather than press releases, and I have read the judgements as well.

The point I was making to your colleague Senator Wright, which I thought was a straightforward point but which I will make again lest it not be understood, is that although the European Court of Justice struck down the European data retention directive, it did so on specified grounds relating to proportionality. It did not decide, in fact it specifically said that it was not deciding, that a mandatory data retention regime, properly designed, was contrary to European human rights standards. So it struck down that particular mandatory data retention regime embodied in the European data directive on the ground that, to use the vernacular, it went too far—it violated the test of proportionality. But, at the same time, it held that states could develop mandatory metadata retention regimes that would not violate the test of proportionality or otherwise violate the European human rights charter. Instructively, you did not read these passages from the press release in the contribution you just made. From page 2:

It states—

that is, the court's judgment, because this is a precis of the judgment:

It states that the retention of data required by the directive is not such as to adversely affect the essence of the fundamental rights to respect for private life and to the protection of personal data. The directive does not permit the acquisition of knowledge of the content of the electronic communications as such and provides that service or network providers must respect certain principles of data protection and data security—
as this bill does. The press release goes on to say:

Furthermore, the retention of data for the purpose of their possible transmission to the competent national authorities genuinely satisfies an objective of general interest, namely the fight against serious crime and, ultimately, public security.

And then it goes on to say:

However, the Court is of the opinion that, by adopting the Data Retention Directive, the EU legislature has exceeded the limits imposed by compliance with the principle of proportionality.

I do not want to accuse you of intellectual dishonesty, Senator, but I find it remarkable that you would assert the proposition you just asserted, reading from the document from which you just read, omitting the most important qualification, which makes my point and entirely answers yours.

Furthermore, Senator Ludlam, and Senator Wright, who also addressed this issue, the European data retention directive was judged by the European Court of Human Rights against the European human rights charter. We do not have an Australian bill of rights. We do not have that instrument as part of our domestic law. We do not.

Senator Ludlam: Let's get one. Let's get on with it. Let's fix that.

Senator BRANDIS: At least you acknowledge that we do not. By the way, having read the judgement, not merely the press release, I can inform you, Senator Ludlam, that to a very large degree the determination of the European Court of Human Rights in that particular case
turned upon the application of particular provisions of the European human rights charter. That European data directive would not have suffered the same fate had it been subject to review by an Australian court.

Lastly, if one is concerned about the application of Australian human rights law, I know we have had much discussion—perhaps a little too much discussion—in this chamber recently about Professor Gillian Triggs, President of the Australian Human Rights Commission. You may or may not—

Senator Ludlam: Why are you bringing that up?

Senator BRANDIS: I will tell you why I am bringing up Professor Triggs, Senator Ludlam—because Professor Triggs was a witness before the second PJCIS hearing and she, in fact, addressed herself to this very issue. This is what Professor Triggs thought—from a human rights point of view, speaking as the President of the Australian Human Rights Commission—about this bill. It is summarised in paragraph 2.148 of the committee’s report. It says:

Emeritus Professor Gillian Triggs, President of the Australian Human Rights Commission, drew a distinction between the magnitude of the privacy intrusion associated with access to telecommunications data by law enforcement and national security agencies, which she characterised as ‘powerful’, compared to the mandatory collection and retention of telecommunications data by a third-party service provider, which she characterised as ‘small’.

This legislation creates a collection and retention obligation, which in the view of the sainted Professor Gillian Triggs has small—small; her word, not mine—human rights implications.

The TEMPORARY CHAIRMAN (Senator Dastyari): The question is that amendment (9) on sheet 7661 moved by Senator Leyonhjelm be agreed to.

The committee divided. [21:44]

(The Temporary Chairman—Senator Dastyari)

Ayes ....................16
Noes .....................33
Majority ..................17

AYES

Di Natale, R
Lazarus, OP
Ludlam, S
Milne, C
Rhiannon, L
Siewert, R (teller)
Waters, LJ
Wright, PL

Hanson-Young, SC
Leyonhjelm, DE
Madigan, JJ
Muir, R
Rice, J
Wang, Z
Whish-Wilson, PS
Xenophon, N

NOES

Back, CJ
Brown, CL
Bushby, DC
Cash, MC
Edwards, S
Fifield, MP

Brandis, GH
Bullock, J.W.
Cameron, DN
Dastyari, S
Fawcett, DJ
Gallacher, AM

CHAMBER
Question negatived.

Senator LUDLAM (Western Australia) (21:47): I am going to withdraw Australian Greens amendment (21) on sheet 7669. It is not identical to the amendment that was just disposed of, but if the Labor Party has pre-emptively decided to fold and the Attorney-General has pre-emptively decided to ignore the evidence then I do not think it is worth persisting with it. Our amendment substantially traverses the same matters that we have just been debating at length in Senator Leyonhjelm's amendment, so we will withdraw amendment (21).

Senator LEYONHJELM (New South Wales) (21:47): by leave—I move Liberal Democratic Party amendments (10), (11), (14), (15) and (17) to (25) on sheet 7661 together:

(10) Schedule 1, item 1C, page 23 (line 26), omit "journalist information warrants", substitute "protected class warrants".

(11) Schedule 1, item 1C, page 23 (line 28), omit "journalist information warrants", substitute "protected class warrants".

(14) Schedule 1, item 5, page 29 (lines 9 and 10), omit the definition of journalist information warrant.

(15) Schedule 1, item 5, page 29 (after line 12), after the definition of Part 4-1 issuing authority, insert:

protected class: each of the following is a protected class of persons:

(a) Australian legal practitioners (within the meaning of the Evidence Act 1995);

(b) journalists (within the meaning of section 126G of the Evidence Act 1995);

(c) health practitioners (within the meaning of the Health Practitioner Regulation National Law);

(d) any other class of professional determined by the Minister under subsection (7).

protected class warrant means a warrant issued under Division 4C of Part 4-1.

(17) Schedule 1, page 30 (after line 2), after item 5, insert:

5A At the end of section 5

Add:

(7) The Minister may, by legislative instrument, determine a class of professional for the purposes of paragraph (d) of the definition of protected class.

(18) Schedule 1, item 6E, page 31 (lines 27 and 28), omit "journalist information warrant", substitute "protected class warrant".

(19) Schedule 1, item 6F, page 32 (lines 7 and 8), omit "journalist information warrant", substitute "protected class warrant".

CHAMBER
(20) Schedule 1, item 6G, page 32 (lines 21 and 22), omit "journalist information warrant", substitute "protected class warrant".

(21) Schedule 1, item 6H, page 33 (lines 1 and 2), omit "journalist information warrant", substitute "protected class warrant".

(22) Schedule 1, item 6L, page 33 (line 23) to page 43 (line 28), omit the item, substitute:

6L After Division 4B of Part 4-1

Insert:

Division 4C—Protected class warrants

Subdivision A—The requirement for protected class warrant

180G The Organisation

(1) An eligible person (within the meaning of subsection 175(2) or 176(2), as the case requires) must not make an authorisation under Division 3 that would authorise the disclosure of information or documents relating to a particular person if the eligible person knows or reasonably believes that particular person to be:

(a) a member of a protected class; or

(b) an employer of such a person;

unless a protected class warrant is in force in relation to that particular person.

(2) Nothing in this section affects by implication the kind of person in relation to whom a warrant (other than a protected class warrant) may be issued under this Act.

180H Enforcement agencies

(1) An authorised officer of an enforcement agency must not make an authorisation under section 178, 178A or 180 that would authorise the disclosure of information or documents relating to a particular person if the authorised officer knows or reasonably believes that particular person to be:

(a) a member of a protected class; or

(b) an employer of such a person;

unless a protected class warrant is in force, in relation to that particular person, under which authorised officers of the agency may make authorisations under that section.

(2) An authorised officer of the Australian Federal Police must not make an authorisation under Division 4A that would authorise the disclosure of information or documents relating to a particular person if the authorised officer knows or reasonably believes that particular person to be:

(a) a member of a protected class; or

(b) an employer of such a person.

(3) Nothing in this section affects by implication the kind of person in relation to whom a warrant (other than a protected class warrant) may be issued under this Act.

Subdivision B—Issuing protected class warrants to the Organisation

180J Requesting a protected class warrant

(1) The Director-General of Security may request the Minister to issue a protected class warrant in relation to a particular person.

(2) The request must specify the facts and other grounds on which the Director-General considers it necessary that the warrant be issued.
Further information

(1) The Minister may require the Director-General of Security to give to the Minister, within the period specified in the requirement, further information in connection with a request under this Subdivision.

(2) If the Director-General breaches the requirement, the Minister may:
   (a) refuse to consider the request; or
   (b) refuse to take any action, or any further action, in relation to the request.

Issuing a protected class warrant

(1) After considering a request under section 180J, the Minister must:
   (a) issue a protected class warrant that authorises the making of authorisations under Division 3 in relation to the particular person to which the request relates; or
   (b) refuse to issue a protected class warrant.

(2) The Minister must not issue a protected class warrant unless the Minister is satisfied that:
   (a) the Organisation’s functions would extend to the making of authorisations under Division 3 in relation to the particular person; and
   (b) the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality that relates to the protected class of which the person is a member, having regard to:
      (i) the extent to which the privacy of any person or persons, or any duties of confidentiality, would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant; and
      (ii) the gravity of the matter in relation to which the warrant is sought; and
      (iii) the extent to which that information or those documents would be likely to assist in the performance of the Organisation’s functions; and
      (iv) whether reasonable attempts have been made to obtain the information or documents by other means; and
      (v) any submissions made by a Public Interest Advocate under section 180X; and
      (vi) any other matters the Minister considers relevant.

(3) A protected class warrant issued under this section may specify conditions or restrictions relating to making authorisations under the authority of the warrant.

Duration of a protected class warrant

A protected class warrant issued under section 180L must specify the period (not exceeding 6 months) for which it is to remain in force. The Minister may revoke the warrant at any time before the end of the specified period.

Discontinuance of authorisations before expiry of a protected class warrant

If, before a protected class warrant issued under this Subdivision ceases to be in force, the Director-General of Security is satisfied that the grounds on which the warrant was issued have ceased to exist, he or she must:
   (a) forthwith inform the Minister accordingly; and
   (b) takes such steps as are necessary to ensure that the making of authorisations under the authority of the warrant is discontinued.
Subdivision C—Issuing protected class warrants to enforcement agencies

180Q Enforcement agency may apply for a protected class warrant

(1) An enforcement agency may apply to a Part 4-1 issuing authority for a protected class warrant in relation to a particular person.

(2) The application must be made on the agency's behalf by:

(a) if the agency is referred to in subsection 39(2)—a person referred to in that subsection in relation to that agency; or

(b) otherwise:

(i) the chief officer of the agency; or

(ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subsection (3).

(3) The chief officer of the agency may, in writing, nominate for the purposes of subparagraph (2)(b)(ii) an office or position in the agency that is involved in the management of the agency.

(4) A nomination under subsection (3) is not a legislative instrument.

(5) The application may be made in writing or in any other form.

Note: The Electronic Transactions Act 1999 deals with giving information in writing by means of an electronic communication.

180R Further information

(1) The Part 4-1 issuing authority may require:

(a) in any case—the chief officer of the agency; or

(b) if the application is made, on the agency's behalf, by a person other than the chief officer—that other person;

to give to the Part 4-1 issuing authority, within the period and in the form specified in the requirement, further information in connection with the application.

(2) If the chief officer or other person breaches the requirement, the Part 4-1 issuing authority may:

(a) refuse to consider the application; or

(b) refuse to take any action, or any further action, in relation to the application.

180S Oaths and affirmations

(1) Information given to the Part 4-1 issuing authority in connection with the application must be verified on oath or affirmation.

(2) For the purposes of this section, the Part 4-1 issuing authority may:

(a) administer an oath or affirmation; or

(b) authorise another person to administer an oath or affirmation.

The oath or affirmation may be administered in person, or by telephone, video call, video link or audio link.

180T Issuing a protected class warrant

(1) After considering an application under section 180Q, the Part 4-1 issuing authority must:

(a) issue a protected class warrant that authorises the making of authorisations under one or more of sections 178, 178A and 180 in relation to the particular person to which the application relates; or

(b) refuse to issue a protected class warrant.
(2) The Part 4-1 issuing authority must not issue a protected class warrant unless the Part 4-1 issuing authority is satisfied that:
(a) the warrant is reasonably necessary for whichever of the following purposes are applicable:
   (i) if the warrant would authorise the making of authorisations under section 178—for the enforcement of a serious contravention;
   (ii) if the warrant would authorise the making of authorisations under section 178A—finding a person who the Australian Federal Police, or a Police Force of a State, has been notified is missing;
   (iii) if the warrant would authorise the making of authorisations under section 180—the investigation of an offence of a kind referred to in subsection 180(4); and
(b) the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality that relates to the protected class of which the person is a member, having regard to:
   (i) the extent to which the privacy of any person or persons, or any duties of confidentiality, would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant; and
   (ii) the gravity of the matter in relation to which the warrant is sought; and
   (iii) the extent to which that information or those documents would be likely to assist in relation to that matter; and
   (iv) whether reasonable attempts have been made to obtain the information or documents by other means; and
   (v) any submissions made by a Public Interest Advocate under section 180X; and
   (vi) any other matters the Part 4-1 issuing authority considers relevant.

180U Form and content of a protected class warrant
(1) A protected class warrant issued under this Subdivision must be in accordance with the prescribed form and must be signed by the Part 4-1 issuing authority who issues it.
(2) A protected class warrant issued under this Subdivision may specify conditions or restrictions relating to making authorisations under the authority of the warrant.
(3) A protected class warrant issued under this Subdivision must specify, as the period for which it is to be in force, a period of up to 90 days.
(4) A Part 4-1 issuing authority must not vary a protected class warrant issued under this Subdivision by extending the period for which it is to be in force.
(5) Neither of subsections (3) and (4) prevents the issue of a further warrant under this Act in relation to a person, in relation to which a warrant under this Act has, or warrants under this Act have, previously been issued.

180V Entry into force of a protected class warrant
A protected class warrant issued under this Subdivision comes into force when it is issued.

180W Revocation of a protected class warrant by chief officer
(1) The chief officer of an enforcement agency:
   (a) may, at any time, by signed writing, revoke a protected class warrant issued under this Subdivision to the agency; and
   (b) must do so, if he or she is satisfied that the grounds on which the warrant was issued to the agency have ceased to exist.
(2) The chief officer of an enforcement agency may delegate his or her power under paragraph (1)(a) to a certifying officer of the agency.
Subdivision D—Miscellaneous

180X Public Interest Advocates

(1) The Prime Minister shall declare, in writing, one or more persons to be Public Interest Advocates.

(2) A Public Interest Advocate may make submissions:
   (a) to the Minister about matters relevant to:
      (i) a decision to issue, or refuse to issue, a protected class warrant under section 180L; or
      (ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant; or
   (b) to a Part 4-1 issuing authority about matters relevant to:
      (i) a decision to issue, or refuse to issue, the warrant under section 180T; or
      (ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant; or

(3) The regulations may prescribe matters relating to the performance of the role of a Public Interest Advocate.

(4) A declaration under subsection (1) is not a legislative instrument.

(23) Schedule 1, item 6V, page 46 (line 11) to page 47 (line 29), omit the item, substitute:

6V At the end of Division 6 of Part 4-1

Add:

182A Disclosure/use offences: protected class warrants

(1) A person commits an offence if:
   (a) the person discloses or uses information; and
   (b) the information is about any of the following:
      (i) whether a protected class warrant (other than such a warrant that relates only to section 178A) has been, or is being, requested or applied for;
      (ii) the making of such a warrant;
      (iii) the existence or non-existence of such a warrant;
      (iv) the revocation of such a warrant.
Penalty: 15 penalty units.

(2) A person commits an offence if:
   (a) the person discloses or uses a document; and
   (b) the document consists (wholly or partly) of any of the following:
      (i) a protected class warrant (other than such a warrant that relates only to section 178A);
      (ii) the revocation of such a warrant.
Penalty: 15 penalty units.

182B Permitted disclosure or use: protected class warrants

Paragraphs 182A(1)(a) and (2)(a) do not apply to a disclosure or use of information or a document if:
   (a) the disclosure or use is for the purposes of the warrant, revocation or notification concerned; or
   (b) the disclosure or use is reasonably necessary:
      (i) to enable the making of submissions under section 180X; or
(ii) to enable a person to comply with his or her obligations under section 185D or 185E; or
(iii) to enable the Organisation to perform its functions; or
(iv) to enforce the criminal law; or
(v) to enforce a law imposing a pecuniary penalty; or
(vi) to protect the public revenue; or
(c) in the case of a disclosure—the disclosure is:
   (i) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the Inspector-General of Intelligence and Security Act 1986; or
   (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act; or
(d) in the case of a use—the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under the Inspector-General of Intelligence and Security Act 1986; or
   (e) the disclosure or use is with the consent of the person to whom the warrant relates; or
   (f) the disclosure or use is in the public interest.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the Criminal Code).

(24) Schedule 1, item 6X, page 48 (line 1) to page 49 (line 36), omit section 185D, substitute:

**185D Notification etc. of authorisations**

*The Organisation*

(1) If a protected class warrant is issued under Subdivision B of Division 4C of Part 4-1:

   (a) the Director-General of Security must, as soon as practicable, give a copy of the warrant to the Inspector-General of Intelligence and Security; and

   (b) the Minister must, as soon as practicable, cause the Parliamentary Joint Committee on Intelligence and Security to be notified of the issuing of the warrant.

(2) If an authorisation under Division 3 of Part 4-1 is made under the authority of the warrant, the Director-General of Security must, as soon as practicable after the expiry of the warrant, give a copy of the authorisation to the Inspector-General of Intelligence and Security.

(3) If:

   (a) the Inspector-General gives to the Minister a report under section 22 or 25A of the Inspector-General of Intelligence and Security Act 1986; and

   (b) the report relates (wholly or partly) to one or both of the following:

   (i) a protected class warrant issued to the Organisation;

   (ii) one or more authorisations referred to in subsection (2) of this section;

   the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.

(4) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Inspector-General on:

   (a) a protected class warrant; or

   (b) an authorisation or authorisations;

   to which a report referred to in paragraph (3)(b) of this section relates.
Enforcement agencies

(5) If a protected class warrant is issued to an enforcement agency:

(a) if the agency was the Australian Federal Police:

(i) the Commissioner of Police must, as soon as practicable, give copies of the warrant to the Minister and the Ombudsman; and

(ii) the Minister must, as soon as practicable after receiving a copy, cause the Parliamentary Joint Committee on Intelligence and Security to be notified of the issuing of the warrant; and

(b) otherwise—the chief officer of the agency must, as soon as practicable, give a copy of the warrant to the Ombudsman.

(6) If an authorisation under Division 4 of Part 4-1 is made under the authority of the warrant, the chief officer of the agency must, as soon as practicable after the expiry of the warrant, give a copy of the authorisation to the Ombudsman.

(7) If:

(a) the Ombudsman gives to the Minister a report under section 186J of this Act; and

(b) the report relates (wholly or partly) to one or both of the following:

(i) a protected class warrant issued to the Australian Federal Police;

(ii) one or more authorisations, referred to in subsection (6) of this section, that were made by one or more authorised officers of the Australian Federal Police;

the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.

(8) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Ombudsman on:

(a) a protected class warrant; or

(b) an authorisation or authorisations;

to which a report referred to in paragraph (7)(b) of this section relates.

(25) Schedule 1, item 6Y, page 51 (lines 16 to 21), omit paragraphs 186(1)(i) and (j), substitute:

(i) the number of authorisations, referred to in paragraph (e) of this subsection, that were made under protected class warrants issued to the agency under Subdivision C of Division 4C of Part 4-1; and

(j) the number of protected class warrants issued to the agency under that Subdivision during the period; and

This is a group of amendments which has the rationale of establishing a warrants regime which not only protects journalists and their sources but is also to protect other persons who normally handle confidential information and whose communications, therefore, attract privilege under the ordinary laws of evidence. That is why I have called them in these amendments 'protected class warrants', as in protected under the ordinary laws of evidence. To that end, I have imported the definition of 'journalist' used in the Evidence Act 1995 and which is used in other legislation in shield laws.

The Evidence Act's definition of 'journalist' ensures that freelancers are covered. The definition in the bill is so narrow that a journalist who hops between blogging and writing articles for, say, The Drum and The Australian does not enjoy warrant protection. I am aware that the Australian Media, Entertainment and Arts Alliance is unhappy with the complete exclusion of bloggers. Even my warrants regime would not address all that organisation's
concerns; however, as I have said repeatedly, even if all my amendments were passed this would still be bad law. I have done my best within the constraints of the bill before us today.

Of greater import, the warrants regime I have developed defends the important principle of legal professional privilege. Law societies throughout the country have pointed out that retained metadata could allow inferences that undermine legal professional privilege to be drawn—when a given lawyer has been contacted, the identity and location of clients and witnesses, the number and type of communications and so on. The scenario repeatedly presented—and highly likely, in my view—is that, when a whistleblower seeks legal advice before contacting a journalist, as the bill currently stands the journalist's communication may be confidential but the lawyer is exposed. The information obtained, of course, could be used in the interviewing of a suspect as evidence tending to indicate guilt.

All my protected class definitions are taken from the Commonwealth Evidence Act 1995. Although they have not represented themselves to me as strongly as lawyers and journalists, I have also included health practitioners as defined in Commonwealth law. Doctors know the most intimate details of their patients' personal lives, so it seems bizarre that they not be protected by a warrants regime as well. I should note in particular that amendment (17) allows the class of protected persons to be added to. This bill is extremely intrusive and I could well imagine an addition to the class becoming necessary at some point in the future.

I will just explain some of the details of the amendments. Amendment (10) is a name change. Amendment (11) is a name change. Amendment (13), which we will be dealing with subsequently, inserts the definition of 'journalist' from the Evidence Act 1995. Amendment (14) is a name change. Amendment (15) inserts the definition of 'protected class' from the Evidence Act. Amendment (16) inserts a definition of 'source' from existing shield laws. Amendment (17) allows the class of protected persons to be added to. Amendments (18), (19), (20) and (21) are name changes.

This running sheet also includes (17) to (25). Amendment (22) marks the commencement of the detailed structure of my proposed protected class warrants regime. The steps to be undertaken are clearly set out in the document circulated in my name. However, I will provide some background to what I am proposing. I do add the caveat that the system I propose is far from ideal—the government gets to choose the public interest advocates, for example—but it does represent a genuine improvement.

I wrestled for some time with how best to treat ASIO in legislation like this. I recognise that an intelligence agency has a different, albeit sometimes overlapping, role from the police and other law enforcement agencies. To that end, proposed sections 180G, 180K and 180L adapt the system of ministerial authorisations already in the bill but introduce further safeguards, including an enhanced role for the public interest advocates and a stronger public interest test. I have also been particularly concerned to ensure that the buck always stops with an elected person—in this case, the relevant minister. It is quite improper for an unelected civil servant to be making decisions of this nature. Proposed sections 180H, 180Q and 180R, by contrast, apply to enforcement bodies other than ASIO and take a more familiar form. Once again I have introduced more safeguards and oversight, enhanced the role of the public interest advocates and developed a strong public interest test.

Amendment (23): one of the most draconian provisions in the bill is the offence attaching to unauthorised disclosure of the issuance of a journalist information warrant. As it stands, the
penalty is two years and there is no public interest defence. This is clearly meant to prevent journalists from talking to each other and, in certain respects, to participate in their own surveillance. However, I recognise that the offence protects those whose information is being accessed from having that fact disclosed to the world, the disclosure which, in itself, could be prejudicial to the person concerned. Once the warrants scheme is expanded, as I propose, then there are legitimate reasons why the existence of a warrant should not be disclosed— that is, prejudicing the investigation or reputational damage to the targeted person. In order to balance these legitimate public interests against public debate about the operation of the data retention scheme, I have also amended 182B to include a further exception, namely, an exception where the disclosure is with the consent of the particular person whose data is being accessed. This ensures that the information of an individual is protected when in the hands of state agents, but that the individual still has the power to release the information if they so choose. I have also added a public interest test and lowered the penalty to 15 penalty units.

Amendments (24) and (25) set out in detail my proposed reporting and oversight regime. Once again, the document I circulated is largely self-explanatory and shows how reporting is made to the PJCIS, the IGIS and the Ombudsman. I have been particularly keen to ensure that the number of warrants issued, authorisations made and reports given are made publicly available on the basis, as I have said previously in this place, that sunlight is the best disinfectant. Proposed subsections (1) to (4) of amendment (24) apply the regime to ASIO. Proposed subsections (5) to (8) apply it to the AFP. Amendment (25) is a name change.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (21:56): The government opposes these amendments. At an earlier stage in the committee debate, all of the issues raised by these amendments were addressed, and I do not want to detain the chamber by rehearsing at length arguments that we canvassed for more than an hour last night. But let me briefly summarise why the government does not support these amendments.

The bill in the form in which it ultimately came to the Senate contained in division 4C a very thorough system of protections for journalists and their sources. Senator Leyonhjelm's amendments would go further, but it is the view of the government that the legislation in its current form fully protects those interests. It does so in several ways. Firstly, unlike access to the metadata of any other citizen, access to the metadata of a journalist has to be by warrant. Secondly, there is a special procedure specified or mandated for accessing the metadata of a journalist that does not apply to any other citizen. First of all, authorisation to seek a warrant to access the metadata has to be made by the minister. That does not apply to any other citizen. Then an application has to be made to a court.

When a decision is made by ministerial authorisation for the issuance of a warrant for access to a journalist's metadata, a long series of tests that apply to no other citizen apply in the case of a journalist. The test, for example, which the minister must have regard to before authorising an application for a warrant against a journalist, which is set out in proposed section 180L(2), deals extensively with the public interest. So you say you are proposing a public interest test, Senator Leyonhjelm, but a public interest test—a very thorough public interest test—is already in the legislation. Lastly, by proposed section 180X, there is uniquely created the role of a public interest advocate.
In no other area of the law, where information is accessible upon the issuance of a warrant, is there provision for a public interest advocate to enter the argument and maintain why a warrant ought to be issued. This is unique; it is unique to this legislation and it is unique to journalists. Those four respects—the requirement for a warrant in the first place, the requirement of a double application to the minister and the courts, the public interest test and the unique office of public interest advocate—are protections that exist nowhere else in the laws governing access to metadata that apply to journalists, which the government has introduced.

Senator Leyonhjelm, you ask rhetorically whether the public interest advocate is going to be appointed by the government, as if that is a shocking thing. Who else is it going to be appointed by? The executive government appoints statutory officers. For those reasons, we do not agree with the additional provisions that you would have us adopt in relation to journalists. The thing that your amendment does, and it lacks any rational basis, is the introduction of the so-called protected class warrant to extend beyond journalists to lawyers and doctors and their respective clients and patients. I explained this last night, Senator Leyonhjelm; let me have another go. Although the government did not initially think it was necessary to have these provisions about journalists, I understand the point that access to metadata could reveal a journalist's source. It could, because metadata includes, for example, telephone numbers so that if a particular journalist telephoned a particular source—although the content of that conversation could not be accessed because of the prohibition against accessing conduct in section 187A—nevertheless it would be enough to reveal or expose the journalist's source, if the fact of the communication between the journalist and the source were able to be established.

In relation to the lawyer-client privilege, the thing that is protected is what passes between the lawyer and client. What information the client gives lawyer for the purposes of seeking advice and what advice the lawyer gives the client are not secrets. Which lawyer acts for which client is not governed by legal professional privilege. That is usually a matter of public record; certainly in a court case it is. The interest that is protected by the lawyer-client privilege is content, not identity; and, as I have explained to you ad nauseam, Senator Leyonhjelm, this bill contains an explicit prohibition on access to content, so there is absolutely no prejudice to the principles of lawyer-client privilege or legal professional privilege, as it used to be known, by this legislation because that which those principles seek to protect are already protected by the prohibition against accessing conduct in section 187A—nevertheless it would be enough to reveal or expose the journalist's source, if the fact of the communication between the journalist and the source were able to be established.

The third category of information you seek to include is doctors and their patients. That has never been regarded by the law as being on the same footing with the relationship between lawyers and their clients as a class of information which the law will protect. It is revealing that you are not able to refer to any statute which enshrines that principle in your draft amendment. I thought perhaps there may be such statutory provision in some Australian state or Territory—I am not aware of any, but it is certainly not the general law. Senator Leyonhjelm, the reasons we would protect journalists' sources—that is, to conceal their identity—are already served by the government's amendments in part 4C. The reason we do
not support extending the amendment to the relationship between lawyers and clients is because the interest that protects, content, is already categorically prohibited from being accessed under the bill.

Senator LUDLAM (Western Australia) (22:05): This amendment comes somewhat out of order for us. I would like to explain how we are intending to proceed. The Australian Greens have a very similar amendment that proposes a protected class warrant effectively. I will explain why in a moment, but for us this is very much a fallback measure. We are persuaded, and I will speak to it when we get to it on the running sheet, by the government's protections, adopted with massive reluctance. Let's acknowledge that you, Senator Brandis and the government, were dragged kicking and screaming to these amendments as a result of negotiations, which broke down after the PJCIS had already concluded and which dragged on and delayed Senate debate for the better part of last week. Since Mr Dreyfus has joined us for the remainder of this evening's debate, let's give credit where it is due; you did not want these provisions in the bill. You had to be dragged kicking and screaming to put them in the bill. The PJCIS made no such recommendations. Those negotiations were conducted entirely outside the ambit of the committee. So it is remarkable that you come in here ensuring us that we have protection for journalists and sources when you did not want them in the bill. In fact, the Prime Minister—and I suspect yourself, too—had said that you do not believe these amendments should exist at all, that you only did it in order to get the compliance of the Australian Labor Party.

We are not persuaded that these amendments are sufficient, and that is why I describe even this amendment of Senator Leyonhjelm's as something of a fall-back position. Shortly I will be introducing and debating an amendment that would require and provide, as 11 or 12 jurisdictions in Europe do at the moment, a level of judicial oversight for access to telecommunications data or metadata. I will speak to that amendment in detail when we get there.

For the time being, I foreshadow that I will let our amendments (1) to (13) on sheet 7670 lapse when we get to them and I will discuss our reasoning now; it is a shame it has been debated out of order. If our amendment for getting a warrant across the whole population fails, because that is what I believe the law should provide, then we would effectively propose a protected class warrant as is proposed here by Senator Leyonhjelm, and by us later on the running sheet.

The amendments include a class of protected professionals. Law enforcement agencies should need a warrant to access the metadata of these so-called protected professionals. Also, we believe the role of the public interest advocate, which crudely mirrors the role of public interest monitors in Queensland and Victoria, should apply to a wider range of professionals than journalists. People more eloquent than myself and people who have got long experience in the press gallery here and elsewhere have quite sharply critiqued the amendments. They said that effectively you have made a tougher front door and you have thrown some procedural hurdles in the way of warrantless access of journalists' metadata, but of course the back door is wide open. If you are trying to hunt down who is leaking embarrassing information on the horrific conditions on Manus Island, for example, you can scrape the phone and internet records of those employees that you think might be communicating with
journalists and that will give you what you are after. No warrants need to be applied for as the back door is still, in fact, wide open.

I would acknowledge that it would be formidably difficult to draft an amendment that would coherently catch that kind of behaviour. Actually, I would call into question the actions of a government that suddenly seems to be so interested in tracking down journalists’ sources. Senator Brandis, I think you were among those who voted unanimously for Commonwealth shield laws to provide protection precisely against that kind of behaviour. But of course, warrantless metadata access to potential sources makes these shield laws almost obsolete. This proposition that Senator Leyonhjelm has advanced extends these protections—inadequate as I would argue that they are—to other classes of professionals including lawyers. We did traverse this briefly last night, so I will not detain us for long. The President of the Law Council of Australia, Mr Duncan McConnel, put it the following way:

There is no apparent public policy basis for recognising the need to safeguard confidential journalists’ sources, while not also protecting confidential and privileged information between lawyers and their clients. People who engage a lawyer need to know their communications are confidential and that legal professional privilege is not lost under the proposed Data Retention Bill. The confidentiality of client-lawyer communication is a long-held common law right and we need to be vigilant to protect it. It is not difficult to envisage situations where client-lawyer telecommunications data would reveal a range of information that could compromise confidentiality and even legal professional privilege.

I will pause here and point out that Mr Duncan is well aware that the bill, in black and white, precludes the acquisition of content from the range covered by the bill. So Mr Duncan is absolutely well aware that it is simply telecommunications data or metadata that has been caught here, rather than content. I think, Senator Brandis, that you went to that in an earlier comment.

For example, Mr Duncan goes on:

… what would happen if a whistle-blower seeks legal advice prior to, or during communication with a journalist? Under the proposed amendments, the journalist’s communication may be confidential, but what of the communications between a journalist or journalist’s source and the lawyer? Data could allow inferences to be drawn from whether a lawyer has been contacted; the identity and location of the client, lawyer and witnesses; the number of communications and type of communications between a lawyer and a client, witnesses and the duration of these communications.

… The Law Council’s position is simple: lawyer communications deserve the same level of protection as that afforded to journalists.

Mr Duncan let it go there, but I of course would add 'the same level of protection to that afforded to everyone in the country.'

The Law Institute of Victoria president, Katie Miller, puts it this way:

In many cases it is very important to keep confidential and protect even the fact that a lawyer is in contact with particular people. Any mass retention of communications data between lawyers and their clients could threaten the necessary trust between lawyers and their clients, allow an issue of sensitivity to be inferred or revealed and undermine the ability of lawyers to advocate on behalf of their clients.

In both cases the word 'inferred' or 'inferences' is used, and that is the difference between tapping somebody's phone and listening in and transcribing their conversations as opposed to making maps of where they are and who they are in contact with over extended periods of time. We are well aware that agencies that would be enabled by this bill not merely to continue the status quo. Let us get that out of the way, because this is the status quo that
prevails at law at this time, I am very well aware of that. What the government and the
opposition are proposing to do is to bolt on new warehouses of material that do not exist at the
present time, thus entrenching a very bad situation.

The agencies that are empowered to retrieve this material on a warrantless basis can then
feed that data into very sophisticated network mapping tools that allow them to establish,
more or less in real time, where people are and who they are communicating with. They can
then potentially cross-match that with other records such as open-source social media
publication, for example, and various other kinds of material—all of it without a single
warrant needing to be issued. That is why we believe that journalists and their sources should
not only be covered; lawyers should be covered and medical professionals should be covered.

Effectively, even though we have approached it legislatively in different ways we support
the intent of this amendment. We would have moved it in a slightly different way if our
amendment had been dealt with first. I strongly believe that all Australians should be afforded
the protection of warranted surveillance rather than warrantless surveillance and that, if it is
not accepted, that at the very least these professional classes of people and those who they
serve should be protected.

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-
President of the Executive Council, Minister for Arts and Attorney-General) (22:14): Senator
Ludlam, your reference to an article by a Mr Duncan I assume is an intended reference to an
article by a Mr Duncan McConnel, the president of the Law Council of Australia, whom I
know. The article appeared in The Australian newspaper last week.

If you read Mr McConnel’s article with care you will see that Mr McConnel does not
purport to state the law of legal professional privilege. Nor does he purport to say that the
provisions of this bill are at variance with the principles of legal professional privilege. What
he basically says—as does the president of the Law Institute of Victoria, whom you have
quoted—is what lawyers would like.

Being a lawyer of some 30 years standing, I want to share with Senator Ludlam what might
be a penetrating glimpse of the obvious. Every now and again, lawyers make claims in their
own interests. Because we are but human, every now and again lawyers say self-serving
things. I know this might come as a shock to you, Senator Ludlam, but it is true! I am sorry,
Mr Chairman, it is true. I have known lawyers to say self-serving things—I have! I do not
want to attack your innocence, Mr Chairman, at your great age and at this hour of the night,
but it is true: I have known lawyers to say self-serving things!

The reason Mr McConnel cannot be taken to be stating the application of the laws and
rules governing legal professional privilege or lawyer-client privilege is that if he were doing
so he would have referred to the Full Federal Court's decision in Carmody v McKellar.
Carmody v McKellar dealt with the issue of whether interception under section 45 of the
T(IA) Act violated the principles of legal professional privilege. The court held that those
principles could not be construed so that merely the authorisation of an interception was a
violation of the principle of legal professional privilege. So, a fortiori, Senator Ludlam, if an
interception under the T(IA) Act has been held by the court not to violate the principles of
legal professional privilege, then how can access to metadata—merely details of the
communication, which specifically prohibits access to the content—be regarded as doing so?
As I pointed out to Senator Leyonhjelm, those principles protect that which passes between the lawyer and the client. That is what they do. And, as I also pointed out to Senator Leyonhjelm, these are exclusionary rules. So even if, in the inconceivable circumstance that access to metadata somehow, by inference, disclosed content, that could not be admissible against the interests of a party seeking to exclude it from evidence, in any event. It could not happen.

So, Senator Ludlam, I could direct you to the relevant chapter of Cross on Evidence, which sets these principles out very clearly. Perhaps you could take a couple of hours to read it for yourself. However, rest assured that the amendment that Senator Leyonhjelm propounds and that you contend for, is entirely unnecessary, because there is no set of circumstances in which the content of a communication between a lawyer and their client could be accessed under this regime.

Senator XENOPHON (South Australia) (22:19): I can tell the Attorney-General that my copy of Cross on Evidence is 36 years old, so I presume there have been other editions since that time. I think I did evidence in 1980 at the Adelaide Law School. I would like to make an observation—and it is by no means a criticism of Senator Leyonhjelm, because he has done some terrific work in relation to this, and I am grateful to him and Senator Ludlam for the work they have done. In the Law Council's submission to this bill, under the heading 'Client legal privilege and confidentiality', there are paragraphs 97 to 106, and it makes two recommendations. The submission talks about the importance of client legal privilege. It says:

Client legal privilege is a right for a client of a lawyer not to have their communications associated with legal advice or impending litigation disclosed without their consent.

That is the axiomatic principle. It notes at paragraph 98:

The Law Council's Client Legal Privilege Committee has noted that although telecommunications data alone may not reveal the content or substance of lawyer/client communications, it would, at the very least, be able to provide an indication of whether:

- a lawyer has been contacted;
- the identity and location of the lawyer;
- the identity and location of witnesses;
- the number of communications and type of communications between a lawyer and a client, witnesses and the duration of these communications.

The Law Council of Australia also makes the point—this is important, so that Senator Leyonhjelm's amendment is not in anyway misrepresented—at paragraph 99 of its submission:

... client legal privilege does not attach to legal advice which furthers the commission of a crime.

I do not want there to be any suggestion out there, or people thinking, that this is, in some way, encouraging nefarious activity.

I am not sure whether I am still a member of the Law Council of Australia but I am sure they will contact me if I have misunderstood their submission. It does not seem that what they are saying is suggesting that metadata retention would facilitate a breach of legal professional privilege. They are indicating some 'nervousness'—for want of a better word—about whether it is appropriate to have that information about whether a lawyer has been contacted, the identity and location of a lawyer, or the identity and location of witnesses. It is not actually
about the content of the communication, which cannot be disclosed; it is about related matters. I assume that that is what Senator Leyonhjelm’s concerns are about. It is not about the content of the communications. I just want to put that in context, because it seems that the Law Council is not saying that this will breach legal professional privilege, but it is saying that it will lead to the identification of whether legal advice has been sought and the identity of witnesses. I am expressing my nuanced concerns on this. What protection will there be of the identification and location of witnesses and the lawyer, and the number of communications between the lawyer and the client or witnesses and the duration of these communications—in what circumstances would that be used in the context of this data retention bill?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (22:22): I think what you meant to say, Senator Xenophon, is: in what circumstances could it be used? Let me just make the fundamental point that that is what this bill is about. This bill is about criminal investigation of serious crime: terrorism, paedophilia, transnational and organised crime. That is what the bill is about. As I said in a radio interview last week, I do not know any journalists who are terrorists or paedophiles or transnational organised criminals, and I am pleased to say I do not know any lawyers who are either. As you rightly say, there is a crime-fraud exception to the rules of legal professional privilege and, as you rightly say, the Law Council does not appear to be saying that the bill violates those criminals. Because of the reasons I have explained, you have understood this, Senator Xenophon. They do not.

In the event that in the course of a criminal investigation there were access to metadata—let us say, of a lawyer—the fact that the lawyer had been in communication with a client could conceivably be disclosed, because the fact of a communication as opposed to the content of a communication may be revealed by the metadata which is the subject of the retention obligation. The duration of that communication could also be disclosed, but those things are not—for all the reasons I have explained more than once now—within the ambit of the protected confidential relationship between the lawyer and the client.

Senator LEYONHJELM (New South Wales) (22:24): When I was explaining my concerns in this respect, explaining why I think the protected class warrants are justified, I did not say that legal professional privilege would be invaded. I recognise that content comprises that element of legal professional privilege and it would not be retained. What I said was: law societies have pointed out that retained metadata could allow inferences that undermine legal professional privilege to be drawn, arising from whether a given lawyer has been contacted, the identity and location of clients and witnesses, the number and types of communications and so on.

As you quite rightly say—and I understand you have said it twice; I do not think that justifies ad nauseam—I understand what you are saying. The point about it is that it is not only journalists’ sources that need to be protected. There are undoubtedly instances where clients contacting lawyers without the content of that communication being revealed could undermine legal professional privilege.

Just while I am on my feet, as we are nearly out of time, I would point out that you were somewhat scathing of my suggestion of the public interest advocate not being appointed by the government, and who else could it be appointed by—parliament is the alternative.
Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (22:26): Statutory officers are not appointed by parliament. Tell me one statutory officer who was appointed by parliament? That is elemental to the separation of the functions of the three branches of government that these are appointees of the executive government. To cut to the chase, those who represent the interests of the legal profession—and I am a member of the Law Council of Australia myself—would like there to be a protection which is broader in scope than the current principles of legal professional privilege provide for.

I can understand why lawyers might like that but you are, in fact, embracing a view that the scope of legal professional privilege is, as it has been understood and explained by the courts for years—indeed, literally centuries—should, by this bill, be significantly extended. I do not accept that.

Senator JACINTA COLLINS (Victoria) (22:28): I might use the remaining time to indicate that Labor believes the current warrants regime protecting journalists is sufficient. I would like to note at this stage in the discussion that the journalist-source relationship is distinct from other professional relationships protected at law in that the very fact of contact between a source and a journalist is at the core of the protected confidence.

Senator XENOPHON (South Australia) (22:28): This is further to the Attorney's contribution a couple of moments ago on the issue of the circumstances in which the communications, the metadata, of a lawyer and a lawyer's client or witnesses could be used. Can the Attorney assure us that the inferences the Law Institute of Victoria is concerned about would lead to an erosion of the general principle of legal professional privilege?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (22:29): The disclosure of content, which is what legal professional privilege protects, would be a violation of the principle. That is why what this bill categorically does is prohibit the collection of content. I have not read actually the submission by the Law Institute of Victoria, so I find it hard to comment on it specifically. I did read the Mr Duncan McConnell's op ed. But it is enough, I think, to bear in mind that if content were captured then that could be a violation.

Progress reported.

ADJOURNMENT

The PRESIDENT (22:30): Order! I propose the question:

That the Senate do now adjourn.

Native Title

Senator SMITH (Western Australia) (22:30): In the available time this evening, I would like to focus on an issue that I would contend is among the most significant financial issue facing Western Australia and of particular significance for pastoralists in my home state. Native title is a complex issue that has a greater impact on Western Australia than any other Australian jurisdiction. It is worth placing the present situation in some historical context.

On 3 February 1994, shortly after the Native Title Act was passed by the federal parliament, the then Labor Prime Minister Paul Keating wrote to the Western Australian Premier of the day, Richard Court, pledging that the Commonwealth would bear ‘the lion’s
share of the burden for compensating for native title'. The offer made was that the Commonwealth would fund up to 75 per cent of the compensation costs arising from the validation of past acts on determined native title land.

Five years later under a coalition government, on 22 August 1998, that position was reconfirmed with the then Prime Minister, Mr Howard, writing to the Premier of Western Australia, again Mr Court, stating that the Commonwealth would fund 75 per cent of all future native title compensation as well as validation of past acts.

Almost two years after Labor returned to federal office in August 2009, the Commonwealth Attorney-General advised the Western Australia government that there would be a suspension of the deal that had been reached between the states and the Commonwealth in relation to the funding of native title compensation due to the global financial crisis. In May 2011, the Western Australian Premier Colin Barnett received a letter from the then Prime Minister, Ms Gillard, which advised him that the federal government would no longer honour the agreement and that $241 million of debt arising from the Commonwealth's 2009 decision to suspend the deal would not be paid to Western Australia.

Separate to this issue is the question of funding for respondents in native title claims, which was another area in which the former Labor government sold out the interests of Western Australian pastoralists. Following the decision of the High Court in the Mabo No. 2 case in 1992, the Commonwealth enacted the Commonwealth Native Title Act 1993. That legislation sets out the various processes through which native title can be recognised and protected. Section 213A of the Native Title Act 1993 provides financial assistance for native title respondents for reasonable legal representation and disbursement costs incurred in native title proceedings, including funding for native title officers. That assistance remained in place for almost 20 years through the Keating, Howard and Rudd governments and for the bulk of the Gillard government.

However, a system that had provided a measure of stability and certainty for nigh on two decades was ended by the stroke of a pen on 1 January 2013, when the Gillard government withdrew funding assistance for respondents in native title claims. This meant that henceforth, respondents were required to fund their own legal representation and to pay for their own legal costs. At the same time, the Gillard government withdrew its funding for native title officers, which had a huge impact on the pastoral and commercial fishing sectors across Western Australia, and forced some primary organisations to withdraw from native title proceedings.

As a senator for Western Australia, I was exceptionally pleased when early in the life of this coalition government, Attorney-General Senator Brandis announced that this government would be restoring funding for respondents in native title claims. It was announced that from 1 January 2014, the Abbott government will be providing $2.2 million over two years to assist people who demonstrate that a native title claim is likely to have a significant impact on their interests. This includes pastoralists, local councils, commercial fishers and miners, as well as native title officers. The reinstatement of this funding allows for fair and equitable finalisation of existing native title claims, and will hopefully alleviate the uncertainty that arose when the Gillard government suddenly changed the rules in the middle of the game. Yet, as I said at the beginning of my contribution, this is a complex issue, and the reinstatement of funding does not in and of itself resolve all those complications, which I will highlight in a moment.
It is worth bearing in mind that there are about 100 unresolved native title claims in the pastoral regions of Western Australia, of which 85 are active claims that affect 513 pastoral leases across Western Australia. The vast bulk of these claims are over land that falls within the federal electorate of Durack, of which I am the patron senator. In Western Australia all native title claims are determined in the Federal Court with the Western Australian state government as first respondent. As the only native title rights that can coexist with a pastoral lease are those that are not inconsistent with the rights of the pastoralists, pastoralists hold existing interests in Crown land concurrently with native title holders and, as such, they have a real interest in native title claims. Thus, it stands to reason that, just like native title claimants, they too should be given a reasonable opportunity to be heard in Federal Court on matters in connection with native title proceedings.

The optimal outcome for all parties involved in native title claims is for them to be resolved through mediation rather than litigation, utilising Indigenous Land Use Agreements—voluntary agreements that primarily relate to land access. These agreements are registered and held by the National Native Title Tribunal. They bind all persons who hold native title to the agreement, whether they were parties or not.

The native title mediation process can often provide the only occasion on which all relevant stakeholders have an opportunity to meet and discuss any issues or concerns about the relationship between coexisting native title rights and interests and pastoralist rights and interests. Over the past two decades, both pastoralists and native title claimants have found this process useful as it promotes successful outcomes, generally reached in a non-adversarial manner. Due to the remoteness and vast distance covered by WA's pastoral region, it can often be practically and financially difficult for individual pastoralists to participate in native title proceedings. This has led to the establishment of group representation, utilising native title officers from recognised industry representative bodies funded through the Native Title Respondent Funding Scheme. In WA the only recognised body for the pastoral industry is the Pastoralists and Graziers Association. In Queensland it is AgForce, and in the Northern Territory it is the Northern Territory Cattlemen's Association. The involvement of a key industry representative body ensures effective coordination and management of pastoral interests and thereby facilitates the resolution of native title matters. Without this form of group representation there would be significantly more individual respondents to native title claims, which would increase divisions in the community and make consent determinations in particular more difficult to achieve.

Following the withdrawal of funding by Labor in 2013, native title representative bodies established various processes to reduce the amount of funding previously used through legal representation, primarily by assuming the lead role in instructing lawyers on all matters; restricting the use of lawyers to only those instances where clear legal advice was required; and obtaining quotes on each legal matter when required. After the reinstatement of funding for native title respondents by the Abbott government in 2013, there were significant changes over the previous scheme, with funding going directly to legal representatives and limited funding for representative organisations. This has, in my view, hampered the capacity for effective group representation in native title determinations. In the case of Western Australia, this is further complicated by the fact that the state has recently revised its approach to
consent determinations and will no longer provide a position paper to respondents summarising its view of the suitability of a claim for a consent determination.

The state of Western Australia has indicated that it now wishes for native title claimants to engage directly with respondents. As a result of this, pastoralists will require further support from their representative bodies. Without continued funding support, pastoralists and their representative organisations will be unable to continue in their role as coordinating the pastoral response to native title claims. Ultimately this will disadvantage both pastoralists and native title claimants, not to mention the native title process, which is at its most effective when conducted in a non-adversarial manner. Resolving this issue in a manner satisfactory to all parties will be challenging but is not impossible given the genuine goodwill that I believe exists across all sides of the native title process. As a senator for Western Australia I look forward to playing my part in working with colleagues to secure funding for group representation after 1 January 2016 so that our native title framework operates in a manner that is fair and provides certainty to all parties.

Centenary of Anzac

Senator WHISH-WILSON (Tasmania) (22:40): There have been many speeches in this place and around the world that reflect upon the Centenary of Anzac commemorations. Politicians on all sides will talk of the sacrifice and bravery of the ANZAC diggers, nurses and other military personnel. It is right we do so, but it is also the right opportunity to seek the meaning of this sacrifice and question what was achieved by the Great War and how we should best honour and learn from the deaths of so many brave ANZACs. The lessons of history are critically important to us today if we are to avoid the mistakes of the past.

I would like to start this speech on what the centenary commemoration of Anzac means to me by reading an inscription written by my brother, David, with input from my father, Tony, a Vietnam veteran, and myself. This is now inscribed on the new City of Canning War Memorial on the Wish for Peace wall near the Grove of Reflection in Perth, Western Australia. The inscription reads:

For those of us spared the terrors of war, to be worthy of our dead, is to remember them. It is to remember that they died, the men and women of this community, in their thousands, in faraway lands, interred in the ground upon which they perished.

It is to remember those who loved them; their fathers and mothers, wives, children and friends. It is to remember that the pain in the hearts of those who loved them, who lived after them, never healed; the promise of their lives together, unfulfilled.

It is to remember that many who returned were also harmed, so that they and their families continued to suffer. When we wish for peace it is to remember that the lasting meaning of their suffering—their warning to those who follow remains unheeded so long as there is war.

For while their service has now ended—their battlefields covered over with meadow, field and forest, jungle and desert sand—let us make of their absence a powerful presence. May we forever hold them in our minds, and the loved ones they left behind.

On 25 April thousands of Australians will travel to Turkey to commemorate 100 years since the landing of Australian and New Zealand forces on the beaches of Gallipoli. I will not be going, as I plan to visit France in 2018 for the commemoration of the battle for Villers-Bretonneux. This is because I have already been to the Western Front, with my father and my brother, carrying my great grandfather Clarence Hemphill’s war diary, and I want my children
to experience what I saw, and felt—the extraordinary emotions: the sadness, the shock, the revelations, the perspective on the futility of war—when I walked across the biggest mass grave on the planet, 765 kilometres from the French Somme to the Belgium-Germany border, a place we now call the Western Front.

Australia suffered 60,000 dead and 156,000 wounded in the Great War, and, as my Great Aunt Polly recently told me, the hidden emotional and psychological scars of the war, which were never reflected in the statistics, ran very deep in many thousands of veterans and the families of returned soldiers. In her area of Scottsdale, Tasmania, Polly explained to me, 'An entire generation of children grew up without fathers; even though many were present physically, they were still missing.'

So, what exactly does it mean to commemorate 100 years of Anzac? Why do we choose to do this as a nation? Do we do this for the right reasons? These are important questions to answer. Commemorating means paying respects by remembering and honouring the sacrifice of Australians and New Zealanders who fought and/or died in the Great War. To me, 'commemorate' does not mean to celebrate or to glorify war. We must be careful to avoid this. The two words are easily confused. The commemoration of Anzac must be more than simply a ritual; it must have meaning.

In a recent public Anzac Day address, the late Peter Underwood, the former Governor of Tasmania, made it clear that while honouring the dead and injured was important, on its own it was not enough on Anzac Day. Governor Underwood said:

Anzac Day is a day on which we should also ask those hard questions about the meaning of wars, their causes and outcomes in order to become resolute about peace as well as resolute about fighting when fighting is a genuinely necessary and unavoidable act of self-protection.

And if we do that, Anzac Day will become even more meaningful because after all, that was what the dead thought they were dying for.

He put it another way in an earlier speech:

Remembrance and honour alone will neither bring nor preserve the peace for which they thought they died.

And it is not just governors; veterans have echoed these sentiments. In 2012 Bill Denny, of the South Australian RSL, said of the centenary commemoration:

The over-arching obligation we have when we anticipate any Anzac commemoration is to truly recognise and accept the brutality, senselessness and futility of war.

That is from a veteran today, but you might be surprised to hear a quote from the opening of the Australian War Memorial, on 11 November 1941, by Australia's then Governor-General, Lord Gowrie, a Victoria Cross winner and a severely wounded veteran of the Great War. Whilst praising the heroic efforts of Australian soldiers and their willingness to sacrifice for the cause they believed in. He stated:

...now the war had lasted for four years. It was responsible for the death of over 8 million able bodied men. It was responsible for the wounding and maiming of many, many millions more. It caused universal destruction, desolation, distress without bringing any compensating advantage to any one of the belligerents. It was a war which settled nothing, it was a war in which all concerned came out losers.

We should not forget that quote when we reflect upon this year's commemoration. We should also remember on 25 April this year that we are still in an open-ended war in Iraq—if the
history of the West's involvement in Middle Eastern wars is anything to go on, there will be few winners and nothing permanent may be settled from this military conflict.

The senselessness of the Great War is best reflected in the questionable reasons for its occurrence. To date, I have seen very little of the Anzac commemoration's public focus on this topic. Where is the dialogue or messaging on the reasons—the madness and hysteria—and leadership failures that led the world into a war that killed 37 million people, three million of them 'unknown soldiers' whose bodies were never even recovered? It was a war that helped set up another world war, which years later claimed another 85 million lives.

Much has been written over the past 100 years on what caused this hideous and appalling conflict that killed so many people. Possibly the best synthesis I have read is 1914: The Year the World Ended, written last year by the highly respected historian Paul Ham for the commemoration of the 100th anniversary of the commencement of the war in August 1914. Building on a century of analysis by writers such as Niall Fergusson and Barbara Tuchman, Ham states in the book's conclusion that 'World War I was an avoidable nightmare ... an unnecessary exercise in collective stupidity and callousness launched by profoundly flawed and emotionally unintelligent men ... that determined the direction of the 20th century'. Ham points the finger of blame for this avoidable war directly at politicians and governments, who he claims were 'wide awake, sentient decision makers who collectively manufactured the war'. He wrote:

Europe's rulers and political leaders knew something most of their people didn't, a war was coming. A few powerful, old, aristocratic men brought war on the world from behind closed doors, free from the scrutiny of a fully enfranchised public or an uncensored press and then for four years, European governments compelled millions of young men to go to war, to die, to be terribly mutilated, gassed or mentally ruined. They have used propaganda, plan lies, white feathers, threats and political expedience to goad, threaten, terrify and humiliate men into uniform.

Ham also strikingly stated in the book's conclusion:

Only a legal construction distinguished the Great War from the government sponsored mass murder of youth.

I would like to finish with a another quote from the speech by the late Governor Peter Underwood. He was referring to a quote from Winston Churchill from a few weeks following Armistice Day in 1918. He said:

Mr Churchill's exhortation to us is that we seek out on this anniversary, with the most intense care, every detail of the struggle that was the Great War. Implicit in that exhortation is that we seek the truth, the truth of the causes of war, the truth of what happened during and after the war, and the truth of what we have done to avoid there being another war like it.

Until we seek the truth we cannot begin to pay proper homage and respect those who have fallen in service of this country.

Governor Underwood also had a novel idea that we should declare the centennial year of the start of the war to end all wars as 'the year of peace'. This is something important to reflect on—a focus on peace, an alternative means of resolving conflict in our society in our commitment to the fallen. I believe this is the 'powerful presence' referred to in the inscription that my family have written that we should make from the absence of our fallen Anzacs.
I seek leave to have the remainder of my speech incorporated in *Hansard*. I would like to thank the Government Whip for giving this consideration in the unusual circumstances that we have.

Leave granted.

*The remainder of the speech read as follows—*

Could the invasion of Iraq over a decade ago, the subsequent war and the region's descent into barbaric, bloody chaos, have been an 'avoidable nightmare'? Was it also a failure of leadership and a few powerful politicians in an executive, away from scrutiny and a fully enfranchised public, that delivered us to this war?

It is critical at this commemoration we should reflect upon the causes of all war, just as much as we reflect upon the many acts of bravery and sacrifice in war. A war avoided, is tragedy foregone.

Mr President I have stood at Tyne Cot Cemetery on the battlefields of Passchendaele, and imagined, for just the briefest of moments, transporting myself to the fear, violence and horror of the Great War. Believe me, the cemetery and its confronting visitor centre is an easy place to imagine such an apocalypse.

I had an understanding that this was a place where your biggest fight would have not just been for your life, or that of your mates, but for your own humanity, and your sanity. Brutalised, dehumanised, fighting hand to hand and living to kill for months on end, year on year, mates dying, crying, deafening noise, shock, blood, mud, going barking mad. I got a sniff, and it was terrifying. Many of the real stories I read, from veterans, talked of how cheap life became on the Western front.

On this note it is worth reflecting on what Prime Minister Paul Keating stated about the First World War, that it was, "when the horror of all ages came together to open the curtain on mankind's greatest century of violence, the twentieth century."

Given the horrors and sheer scale of this war, which I better understand after visiting France, it is also worth reflecting on the late Peter Underwood's concerns about the dangers of ANZAC day commemorations becoming a "soft focus event."

The Governor said, "Time has passed. Memories soften with the passage of time. They blur, they lose their sharp and painful edges."

Mr President, ANZAC Day and ANZAC mythology cannot be allowed to lose its sharp edges. My visit to France, and the reminder of my great-grandfather's secret diary, will help keep the edges sharp for me.

But what about to others – especially younger Australians?

It was explained to me recently that the popularity of ANZAC Day dawn ceremonies is only a recent phenomenon, because in decades past many veterans' families were still struggling with the "sharp and painful edges," the side-effects of war. This included family breakdowns, alcoholism, domestic violence, mental illness and other side effects of Post-Traumatic Stress Disorder (PTSD) experienced by many veterans. I note these hard edges to the remembrance are seldom discussed today in relation to the ANZAC legend. At least not from what I have seen.

While these same side-effects still prevail today with veterans from recent conflicts such as Vietnam and Afghanistan, they are also virtually invisible, and not given the attention they deserve. These diggers, many suffering PTSD, should also be in our thoughts on the 25th April, and I have supported veterans' group *Soldier On* in their bid to have an extra minute's silence to respect PTSD and other mental illness suffered by the walking wounded as a result of recent conflicts. This is an important recognition of the true cost of war and violence that is still being paid today.
Whilst on the subject of today's younger veterans, I recently read, "The Long Shadow of the ANZACs" by Captain James Brown, an Afghanistan veteran. He rejects, as other veterans do, the expenditure of many millions of dollars on ANZAC commemoration planning on what he describes as:

"A discordant, lengthy and exorbitant four year festival of the dead."

He suggests that ANZAC commemorations should be silent and respectful, and outlines that Australia's obsessive focus on the ANZAC myth obscures the reality of service and reduces the quality of public debate about the role and use of Australia's Defence Force.

Captain Brown documents the many negative aspects of ANZAC's long shadow including:

- a growing gap between myth and reality in the public understanding of what someone in the Defence Force actually does,
- a reticence of politicians to question individual deployments or even the standard performance of the military,
- undue pressure on the serving personnel to live up to the ANZAC model.

To many the ANZAC 'model' is the laconic image of relaxed, cheeky, tall bronzed Aussies, who took it all in their stride, were brave and fearless, who stuck by their mates through thick and thin, who distinguished themselves and Australia. My grandfather's diary is very telling in this respect. His early writings did support much of this myth. I will read a few brief excerpts from his diary.

June 13 – August 26, 1916

"It was a grand sight: the star shells lighting up the place all along the line mostly used by Fritz to see where our chaps were attacking. After the bombardment had lasted some hours and our little band of drivers were gradually getting smaller for cars were beginning to go out on their errand of mercy to collect wounded and what was once a tall stalwart very Australian hero (for heroes they are, every one of the Infantry) now laying on a stretcher broken and shattered by German shrapnel or shell, but still contented, the first words they ask the Doctor: "How long will it be before I'm coming back to my comrades"?

"Never a word about the pain of his wound. They are grand.

"They would be exhausted then and worn but not an ounce of give-in in them.

"Our First came out of the trenches dirty unshaven, clothes torn and gaunt-looking, but they were victorious and were singing. These sons of Australia that had faced death a thousand times are something to be proud of. I'll take my hat off to them every day."

I can't help wondering what Clarence would have said if he had known his words would be read out in the Australian Senate nearly 100 years after they were written on the battlefields of France.

But the diary also suggests an almost split personality, from the enthusiastic young man before the horror of the Somme, to the hardened man who wrote 'cynical and bitter' annotations to his diary near the war's end, admonishing himself for his earlier naivety and stupidity.

Speaking of 'splits' Mr President, lastly let's not forget on the 25th April that the Great War split our entire young nation. If our 'national identity' was born in the Great War, suggesting we all came together 'as one' following the beaches of Gallipoli and the fields of France, then part of this national identity is that we are a people sceptical of fighting in foreign wars, beyond our shores.

This ANZAC commemoration must reflect that we were deeply divided and questioning of our commitment to the Great War. The 1916 and 1917 referendum votes on conscription, in which conscription was rejected, are an example of how much the war tore the fabric of Australian society apart.

And war still divides us today.
In conclusion, on this important day, the 25th of April, we must acknowledge our brave ancestors who fought and died not just to win the war, but to win the peace.

The war to end all wars. Looking back over the last century the world has collectively failed in this regard. It seems it is easier to win wars than the peace.

Governor Underwood understood this, referring to a quote from Winston Churchill just a few weeks following Armistice Day in 1918:

"Mr Churchill's exhortation to us is that we seek out on this anniversary, with the most intense care, every detail of the struggle that was the Great War. Implicit in that exhortation is that we seek the truth, the truth of the causes of war, the truth of what happened during and after the war, and the truth of what we have done to avoid there being another war like it.

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Governor Underwood also had a novel idea that we should declare the "centennial year of the start of the war to end all wars, the year of peace."

This is something important to reflect on, a focus on peace, and alternative means of resolving conflict in our society as our commitment to the fallen.

I believe this is the ‘powerful presence,’ referred to earlier in the inscription, that we should make from the absence of our fallen ANZAC's.

**National Parks**

**Senator LEYONHJELM** (New South Wales) (22:50): On the weekends and in other recreational time, our freedom to enjoy the great outdoors is unnecessarily hampered by the meddling of Commonwealth, state and local governments. Today I want to make a bold claim and propose a bold solution on behalf of both the Liberal Democrats and the Outdoor Recreation Party, our sister party in the New South Wales election. The bold claim is that Australia's national parks are chronically mismanaged by both Commonwealth and state governments. National parks are not protected from feral animals, weeds, rubbish, bushfires or vandalism. These problems are pervasive. Whole mountainsides are covered by mats of impenetrable weeds, undergrowth often fuels massive bushfires and the paucity of native wildlife is such that Tim Flannery describes our parks as 'marsupial ghost towns'.

The bold solution of the Outdoor Recreation Party and the Liberal Democrats is twofold. First, people should be allowed to use national parks for a much wider range of recreational activities than is currently the case. Second, most of our national parks should be privatised.

Australia has over 1,000 national parks comprising 28 million hectares, which accounts for about four per cent of our land area. A further six per cent of our land area is protected in state forests, nature parks and conservation reserves. In our national parks, commercial activities such as farming are prohibited. Even the humble and environmentally friendly business of beekeeping to produce Australia's delicious and distinctive honey is substantially restricted. Indeed, all human activity is strictly controlled. Few dare to challenge the assertion that humans are the main environmental threat and should be kept out as much as possible. Many national park users are disenfranchised and excluded through prohibition and regulation. Even worse, few people in power engage with the numerous groups of knowledgeable and outdoor oriented people who are willing to help.

Local communities adjacent to parks along with hunters, fishers, campers, fossickers, trail bikers, horse-riders, kayakers, four-wheel drivers, bushwalkers and many more are prepared
to volunteer time and effort for better managed and more inclusive national parks. Instead, they are largely ignored. Long-time former CEO of Parks Victoria, Mark Stone, used to say that parks could not be managed successfully without the support of local communities and stakeholders. He was right. Governments will never have sufficient funds to do all that is required and certainly do not have the expertise or local knowledge necessary to manage parks via central planning.

In the UK, national parks make up a similar share of the land area as in Australia. In England, they account for 9.3 per cent of the land area; in Wales, 19.9 per cent; in Scotland, 7.2 per cent. But that is where the similarity ends. Much land within UK national parks is owned by private landowners, including farmers. The thousands of people who live in villages and towns within those parks plus organisations like the National Trust, the Royal Society for the Protection of Birds, various wildlife trusts, the Woodland Trust, English Heritage and Historic Scotland.

The management of UK national parks is also profoundly different. Whereas ours are subject to central command and control—mainly by state governments—each park there has its own national park authority. While these authorities sometimes own bits of land, they work with all landowners to protect the landscape. National park authorities are run by boards comprised mainly of locals. They employ staff who work in offices, fieldwork stations and visitor centres, and have many volunteers who undertake jobs such as leading guided walks, fixing fences, dry stone walling, monitoring historic sites and surveying wildlife. Every authority is obliged to produce a national park management plan setting out a five-year plan for the park. Local communities, landowners and other organisations are asked for their opinions and help in achieving the plan.

Farming plays a key role in shaping the landscape of UK national parks. Sheep are common in the more hilly and more rugged areas, while there is some cropping in lower areas. Quite a few farms in national parks have diversified by opening farm shops to sell their produce direct to visitors or by opening their farms to school trips. They are also given preference in grant applications for environmental projects.

In 2013, I visited a farm in the Lake District National Park in England. It ran sheep and also had a farm shop and cafe. It was not a source of riches but it supports a farming family adequately well. The farmer explained that there were areas of the farm where he was subject to a range of constraints on such things as grazing, fencing, pasture renovation and use of fertiliser, and where tree preservation was a higher priority. In other areas, he was free to farm as he chose, receiving the same agricultural subsidies as farms outside the park but additional grants for tree planting, maintenance of dry stone walls and other environmental initiatives. Critically, he had to allow access to his land for a number of outdoor pursuits. He took enormous pride in the fact that he was a custodian of both a productive farm and an environmental legacy for the benefit of future generations, including his own children. He was adamant that both productivity and environmental values had been enhanced under his care.

When something is owned by everyone, it is effectively owned by no-one. That is the problem facing Australia's national parks. Management is centrally controlled, governments can never employ enough public servants to manage them properly and there is little volunteer involvement. Nobody is personally responsible. This means feral animals and
weeds run rampant while bushfires are more serious and difficult to prevent. Imagine if the UK approach were adopted in Australia. Imagine if significant parts of national parks were privately owned and managed by locally run boards in accordance with locally agreed management plans. Imagine if land were farmed where viable and tourism were encouraged, with some of the money currently used for park management offered as incentives for owners to preserve environmental values. Would the environment be any worse off than it is under a policy of locking it up and looking at it through binoculars, with just a privileged group of park staff having free access?

Recruiting volunteers on a large scale to address specific problems such as track clearing, pest animal and weed control or species monitoring could save taxpayers millions and deliver vastly superior environmental outcomes. As it stands, biodiversity and environmental values in Australia’s national parks are in decline. Using the skills and enthusiasm of volunteers in local communities and park users to address basic management tasks would be one way to address this decline. As Professor Flannery went on to say:

The truth is that things are now so dire that we cannot afford to persist with business as usual; a change of direction is essential…

Farmers would have a strong incentive to control feral pests, such as goats, pigs, foxes, rabbits and cats. Their presence in the parks would also help keep tracks open and detect problems. The proceeds from selling the park, with environmental caveats, could be used to upgrade visitor facilities and fund research.

The very idea of this offends some people, not least the public sector unions that represent national park employees. But it is not radical. As the United Kingdom shows, it is perfectly feasible. Australia is a big country with plenty that is unique. But we are not so unique that we cannot learn from others. National parks are for people as well as nature. We should never forget that.