



COMMONWEALTH OF AUSTRALIA

SENATE

Hansard

TUESDAY, 21 AUGUST 2012

CORRECTIONS

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Tuesday, 28 August 2012

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SITTING DAYS—2012

Month	Date
February	7, 8, 9, 27, 28, 29
March	1, 13, 14, 15, 16, 19, 20, 21, 22
May	8, 9, 10
June	18, 19, 20, 21, 22, 25, 26, 27, 28
August	14, 15, 16, 20, 21, 22, 23
September	10, 11, 12, 13, 17, 18, 19, 20
October	9, 10, 11, 29, 30, 31
November	1, 19, 20, 21, 22, 26, 27, 28, 29

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**FORTY-THIRD PARLIAMENT
FIRST SESSION—SEVENTH PERIOD**

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Leader of The Nationals—Senator Barnaby Thomas Gerard Joyce

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Christopher John Back

The Nationals Whip—Senator John Reginald Williams

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Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	TAS	30.6.2017	LP
Back, Christopher John	WA	30.6.2017	LP
Bernardi, Cory	SA	30.6.2014	LP
Bilyk, Catryna Louise	TAS	30.6.2014	ALP
Birmingham, Simon John	SA	30.6.2014	LP
Bishop, Thomas Mark	WA	30.6.2014	ALP
Boswell, Hon. Ronald Leslie Doyle	QLD	30.6.2014	NATS
Boyce, Suzanne Kay	QLD	30.6.2014	LP
Brandis, Hon. George Henry, SC	QLD	30.6.2017	LP
Brown, Carol Louise	TAS	30.6.2014	ALP
Bushby, David Christopher	TAS	30.6.2014	LP
Cameron, Douglas Niven	NSW	30.6.2014	ALP
Carr, Hon. Kim John	VIC	30.6.2017	ALP
Carr, Hon. Robert John (3)	NSW	30.6.2014	ALP
Cash, Michaelia Clare	WA	30.6.2014	LP
Colbeck, Hon. Richard Mansell	TAS	30.6.2014	LP
Collins, Jacinta Mary Ann	VIC	30.6.2014	ALP
Conroy, Hon. Stephen Michael	VIC	30.6.2017	ALP
Cormann, Mathias Hubert Paul	WA	30.6.2017	LP
Crossin, Patricia Margaret (1)	NT		ALP
Di Natale, Richard	VIC	30.6.2017	AG
Edwards, Sean	SA	30.6.2017	LP
Eggleston, Alan	WA	30.6.2014	LP
Evans, Hon. Christopher Vaughan	WA	30.6.2017	ALP
Farrell, Donald Edward	SA	30.6.2014	ALP
Faulkner, Hon. John Philip	NSW	30.6.2017	ALP
Fawcett, David Julian	SA	30.6.2017	LP
Feeney, David Ian	VIC	30.6.2014	ALP
Fierravanti-Wells, Concetta Anna	NSW	30.6.2017	LP
Fifield, Mitchell Peter	VIC	30.6.2014	LP
Furner, Mark Lionel	QLD	30.6.2014	ALP
Gallacher, Alexander McEachian	SA	30.6.2017	ALP
Hanson-Young, Sarah Coral	SA	30.6.2014	AG
Heffernan, Hon. William Daniel	NSW	30.6.2017	LP
Hogg, Hon. John Joseph	QLD	30.6.2014	ALP
Humphries, Gary John Joseph (1)	ACT		LP
Johnston, Hon. David Albert Lloyd	WA	30.6.2014	LP
Joyce, Barnaby Thomas Gerard	QLD	30.6.2017	NATS
Kroger, Helen	VIC	30.6.2014	LP
Ludlam, Scott	WA	30.6.2014	AG
Ludwig, Hon. Joseph William	QLD	30.6.2017	ALP
Lundy, Kate Alexandra (1)	ACT		ALP
Macdonald, Hon. Ian Douglas	QLD	30.6.2014	LP
Madigan, John Joseph	VIC	30.6.2017	DLP
McEwen, Anne	SA	30.6.2017	ALP
McKenzie, Bridget	VIC	30.6.2017	NATS
McLucas, Hon. Jan Elizabeth	QLD	30.6.2017	ALP
Marshall, Gavin Mark	VIC	30.6.2014	ALP
Mason, Hon. Brett John	QLD	30.6.2017	LP

Senator	State or Territory	Term expires	Party
Milne, Christine Anne	TAS	30.6.2017	AG
Moore, Claire Mary	QLD	30.6.2014	ALP
Nash, Fiona Joy	NSW	30.6.2017	NATS
Parry, Stephen Shane	TAS	30.6.2017	LP
Payne, Marise Ann	NSW	30.6.2014	LP
Polley, Helen Beatrice	TAS	30.6.2017	ALP
Pratt, Louise Clare	WA	30.6.2014	ALP
Rhiannon, Lee	NSW	30.6.2017	AG
Ronaldson, Hon. Michael	VIC	30.6.2017	LP
Ryan, Scott Michael	VIC	30.6.2014	LP
Scullion, Hon. Nigel Gregory (1)	NT		CLP
Siewert, Rachel Mary	WA	30.6.2017	AG
Singh, Hon. Lisa Maria	TAS	30.6.2017	ALP
Sinodinos, Arthur (2)	NSW	30.6.2014	LP
Smith, Dean Anthony (4)	WA	30.6.2017	LP
Stephens, Hon. Ursula Mary	NSW	30.6.2014	ALP
Sterle, Glenn	WA	30.6.2017	ALP
Thistlethwaite, Matthew	NSW	30.6.2017	ALP
Thorp, Lin Estelle (6)	TAS	30.6.2014	ALP
Urquhart, Anne Elizabeth	TAS	30.6.2017	ALP
Waters, Larissa Joy	QLD	30.6.2017	AG
Whish-Wilson, Peter Stuart (5)	TAS	30.6.2014	AG
Williams, John Reginald	NSW	30.6.2014	NATS
Wright, Penelope Lesley	SA	30.6.2017	AG
Wong, Hon. Penelope Ying Yen	SA	30.6.2014	ALP
Xenophon, Nicholas	SA	30.6.2014	IND

- (1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.
- (2) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice H. Coonan, resigned 22.8.11), pursuant to section 15 of the Constitution.
- (3) Chosen by the Parliament of New South Wales to fill a casual vacancy (vice Hon. M. Arbib, resigned 5.3.12), pursuant to section 15 of the Constitution.
- (4) Chosen by the Parliament of Western Australia to fill a casual vacancy (vice J. Adams, died in office 31.3.12), pursuant to section 15 of the Constitution.
- (5) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. B. Brown, resigned 15.6.12), pursuant to section 15 of the Constitution.
- (6) Chosen by the Parliament of Tasmania to fill a casual vacancy (vice Hon. N. Sherry, resigned 1.6.12), pursuant to section 15 of the Constitution.

PARTY ABBREVIATIONS

AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Liberal Party;
DLP—Democratic Labor Party; LP—Liberal Party of Australia; NATS—The Nationals

Heads of Parliamentary Departments

Clerk of the Senate—R Laing

Clerk of the House of Representatives—B Wright

Secretary, Department of Parliamentary Services—C Mills

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Title	Minister
Prime Minister	The Hon Julia Gillard MP
<i>Minister Assisting the Prime Minister on Digital Productivity</i>	<i>Senator the Hon Stephen Conroy</i>
Minister for Social Inclusion	The Hon Mark Butler MP
<i>Minister Assisting the Prime Minister on Mental Health Reform</i>	<i>The Hon Mark Butler MP</i>
Minister for the Public Service and Integrity	The Hon Gary Gray AO MP
<i>Minister Assisting the Prime Minister on the Centenary of ANZAC</i>	<i>The Hon Warren Snowdon MP</i>
<i>Cabinet Secretary</i>	<i>The Hon Mark Dreyfus QC MP</i>
<i>Parliamentary Secretary to the Prime Minister</i>	<i>Senator the Hon Jan McLucas</i>
Treasurer (Deputy Prime Minister)	The Hon Wayne Swan MP
Minister for Financial Services and Superannuation	The Hon Bill Shorten MP
Assistant Treasurer	The Hon David Bradbury MP
<i>Parliamentary Secretary to the Treasurer</i>	<i>The Hon Bernie Ripoll MP</i>
Minister for Tertiary Education, Skills, Science and Research (Leader of the Government in the Senate)	Senator the Hon Chris Evans
Minister for Industry and Innovation	The Hon Greg Combet AM MP
Minister for Small Business	The Hon Brendan O'Connor MP
<i>Minister Assisting for Industry and Innovation</i>	<i>Senator the Hon Kate Lundy</i>
<i>Parliamentary Secretary for Industry and Innovation</i>	<i>The Hon Mark Dreyfus QC MP</i>
<i>Parliamentary Secretary for Higher Education and Skills</i>	<i>The Hon Sharon Bird MP</i>
Minister for Broadband, Communications and the Digital Economy (Deputy Leader of the Government in the Senate)	Senator the Hon Stephen Conroy
Minister for Regional Australia, Regional Development and Local Government	The Hon Simon Crean MP
Minister for the Arts	The Hon Simon Crean MP
Minister for Sport	Senator the Hon Kate Lundy
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Minister for Defence Materiel	The Hon Jason Clare MP
Minister for Veterans' Affairs	The Hon Warren Snowdon MP
Minister for Defence Science and Personnel	The Hon Warren Snowdon MP
<i>Parliamentary Secretary for Defence</i>	<i>The Hon Dr Mike Kelly AM MP</i>
<i>Parliamentary Secretary for Defence</i>	<i>Senator the Hon David Feeney</i>
Minister for Immigration and Citizenship	The Hon Chris Bowen MP
Minister for Multicultural Affairs	Senator the Hon Kate Lundy
Minister for Infrastructure and Transport (Leader of the House)	The Hon Anthony Albanese MP
<i>Parliamentary Secretary for Infrastructure and Transport</i>	<i>The Hon Catherine King MP</i>
Attorney-General	The Hon Nicola Roxon MP
Minister for Emergency Management	The Hon Nicola Roxon MP
<i>Minister Assisting on Queensland Floods Recovery</i>	<i>Senator the Hon Joe Ludwig</i>
Minister for Home Affairs	The Hon Jason Clare MP
Minister for Justice	The Hon Jason Clare MP
Minister for Families, Community Services and Indigenous Affairs	The Hon Jenny Macklin MP
Minister for Disability Reform	The Hon Jenny Macklin MP
Minister for Housing	The Hon Brendan O'Connor MP
Minister for Homelessness	The Hon Brendan O'Connor MP
Minister for Community Services	The Hon Julie Collins MP
Minister for the Status of Women	The Hon Julie Collins MP

Title	Minister
<i>Parliamentary Secretary for Disabilities and Carers</i>	<i>Senator the Hon Jan McLucas</i>
Minister for Foreign Affairs	Senator the Hon Bob Carr
Minister for Trade and Competitiveness	The Hon Dr Craig Emerson MP
<i>Parliamentary Secretary for Trade</i>	<i>The Hon Justine Elliot MP</i>
<i>Parliamentary Secretary for Pacific Island Affairs</i>	<i>The Hon Richard Marles MP</i>
<i>Parliamentary Secretary for Foreign Affairs</i>	<i>The Hon Richard Marles MP</i>
Minister for Sustainability, Environment, Water, Population and Communities (Vice-President of the Executive Council)	The Hon Tony Burke MP
<i>Parliamentary Secretary for Sustainability and Urban Water</i>	<i>Senator the Hon Don Farrell</i>
Minister for Finance and Deregulation	Senator the Hon Penny Wong
Special Minister of State	The Hon Gary Gray AO MP
<i>Minister Assisting for Deregulation</i>	<i>The Hon David Bradbury MP</i>
Minister for School Education, Early Childhood and Youth	The Hon Peter Garrett AM MP
Minister for Employment and Workplace Relations	The Hon Bill Shorten MP
Minister for Early Childhood and Childcare	The Hon Kate Ellis MP
Minister for Employment Participation	The Hon Kate Ellis MP
Minister for Indigenous Employment and Economic Development	The Hon Julie Collins MP
<i>Parliamentary Secretary for School Education and Workplace Relations</i> (Manager of Government Business in the Senate)	<i>Senator the Hon Jacinta Collins</i>
Minister for Agriculture, Fisheries and Forestry	Senator the Hon Joe Ludwig
<i>Parliamentary Secretary for Agriculture, Fisheries and Forestry</i>	<i>The Hon Sid Sidebottom MP</i>
Minister for Resources and Energy	The Hon Martin Ferguson AM MP
Minister for Tourism	The Hon Martin Ferguson AM MP
Minister for Climate Change and Energy Efficiency	The Hon Greg Combet AM MP
<i>Parliamentary Secretary for Climate Change and Energy Efficiency</i>	<i>The Hon Mark Dreyfus QC MP</i>
Minister for Health	The Hon Tanya Plibersek MP
Minister for Mental Health and Ageing	The Hon Mark Butler MP
Minister for Indigenous Health	The Hon Warren Snowdon MP
<i>Parliamentary Secretary for Health and Ageing</i>	<i>The Hon Catherine King MP</i>
Minister for Human Services	Senator the Hon Kim Carr

SHADOW MINISTRY

Title	Shadow Minister
Leader of the Opposition	The Hon Tony Abbott MP
<i>Shadow Parliamentary Secretary Assisting the Leader of the Opposition</i>	<i>Senator Cory Bernardi</i>
Shadow Minister for Foreign Affairs	The Hon Julie Bishop MP
Shadow Minister for Trade (Deputy Leader of the Opposition)	
<i>Shadow Parliamentary Secretary for International Development Assistance</i>	<i>The Hon Teresa Gambaro MP</i>
Shadow Minister for Infrastructure and Transport (Leader of The Nationals)	The Hon Warren Truss MP
<i>Shadow Parliamentary Secretary for Roads and Regional Transport</i>	<i>Mr Darren Chester MP</i>
Shadow Minister for Employment and Workplace Relations (Leader of the Opposition in the Senate)	Senator the Hon Eric Abetz
Shadow Minister for Employment Participation	The Hon Sussan Ley MP
Shadow Attorney-General	Senator the Hon George Brandis SC
Shadow Minister for the Arts (Deputy Leader of the Opposition in the Senate)	
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Shadow Minister for Childcare and Early Childhood Learning	The Hon Sussan Ley MP
Shadow Minister for Universities and Research	Senator the Hon Brett Mason
Shadow Minister for Youth and Sport (Deputy Manager of Opposition Business in the House)	Mr Luke Hartsuyker MP
<i>Shadow Parliamentary Secretary for Regional Education</i>	<i>Senator Fiona Nash</i>
Shadow Minister for Indigenous Affairs (Deputy Leader of the Nationals)	Senator the Hon Nigel Scullion
Shadow Minister for Indigenous Development and Employment	Senator Marise Payne
Shadow Minister for Regional Development, Local Government and Water (Leader of the Nationals in the Senate)	Senator Barnaby Joyce
Shadow Minister for Regional Development	The Hon Bob Baldwin MP
<i>Shadow Parliamentary Secretary for Northern and Remote Australia</i>	<i>Senator the Hon Ian Macdonald</i>
<i>Shadow Parliamentary Secretary for Local Government</i>	<i>Mr Don Randall MP</i>
<i>Shadow Parliamentary Secretary for the Murray-Darling Basin</i>	<i>Senator Simon Birmingham</i>
Shadow Minister for Finance, Deregulation and Debt Reduction (Chairman, Coalition Policy Development Committee)	The Hon Andrew Robb AO MP
Shadow Special Minister of State	The Hon Bronwyn Bishop MP
Shadow Minister for COAG (Chairman, Scrutiny of Government Waste Committee)	Senator Marise Payne (Mr Jamie Briggs MP)
Shadow Minister for Energy and Resources	The Hon Ian Macfarlane MP
Shadow Minister for Tourism	The Hon Bob Baldwin MP

Title	Shadow Minister
Shadow Minister for Defence	Senator the Hon David Johnston
Shadow Minister for Defence Science, Technology and Personnel	Mr Stuart Robert MP
Shadow Minister for Veterans' Affairs and Shadow Minister Assisting the Leader of the Opposition on the Centenary of ANZAC	Senator the Hon Michael Ronaldson
<i>Shadow Parliamentary Secretary for Defence Materiel</i>	<i>Senator Gary Humphries</i>
<i>Shadow Parliamentary Secretary for the Defence Force and Defence Support</i>	<i>Senator the Hon Ian Macdonald</i>
Shadow Minister for Communications and Broadband	The Hon Malcolm Turnbull MP
Shadow Minister for Regional Communications	Mr Luke Hartsuyker MP
Shadow Minister for Health and Ageing	The Hon Peter Dutton MP
Shadow Minister for Ageing	Senator Concetta Fierravanti-Wells
Shadow Minister for Mental Health	<i>Dr Andrew Southcott MP</i>
<i>Shadow Parliamentary Secretary for Primary Healthcare</i>	<i>Dr Andrew Laming MP</i>
<i>Shadow Parliamentary Secretary for Regional Health Services and Indigenous Health</i>	
Shadow Minister for Families, Housing and Human Services	The Hon Kevin Andrews MP
Shadow Minister for Seniors	The Hon Bronwyn Bishop MP
Shadow Minister for Disabilities, Carers and the Voluntary Sector (Manager of Opposition Business in the Senate)	Senator Mitch Fifield
Shadow Minister for Housing	Senator Marise Payne
<i>Shadow Parliamentary Secretary for Supporting Families</i>	<i>Senator Cory Bernardi</i>
<i>Shadow Parliamentary Secretary for the Status of Women</i>	<i>Senator Michaelia Cash</i>
Shadow Minister for Climate Action, Environment and Heritage	The Hon Greg Hunt MP
<i>Shadow Parliamentary Secretary for Environment</i>	<i>Senator Simon Birmingham</i>
Shadow Minister for Productivity and Population	Mr Scott Morrison MP
Shadow Minister for Immigration and Citizenship	
<i>Shadow Parliamentary Secretary for Citizenship and Settlement</i>	<i>The Hon Teresa Gambaro MP</i>
<i>Shadow Parliamentary Secretary for Immigration</i>	<i>Senator Michaelia Cash</i>
Shadow Minister for Innovation, Industry and Science	Mrs Sophie Mirabella MP
<i>Shadow Parliamentary Secretary for Innovation, Industry, and Science</i>	<i>Senator the Hon Richard Colbeck</i>
Shadow Minister for Agriculture and Food Security	The Hon John Cobb MP
<i>Shadow Parliamentary Secretary for Fisheries and Forestry</i>	<i>Senator the Hon Richard Colbeck</i>
Shadow Minister for Small Business, Competition Policy and Consumer Affairs	The Hon Bruce Billson MP
<i>Shadow Parliamentary Secretary for Small Business and Fair Competition</i>	<i>Senator Scott Ryan</i>

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Tuesday, 21 August 2012

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

BUSINESS

Rearrangement

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (12:31): I move:

That government business order of the day no. 3, Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012, be postponed till the next day of sitting.

Question agreed to.

BILLS

Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010

In Committee

Debate resumed.

Senator LUDLAM (Western Australia) (12:31): Last night I put on notice by way of questions to the Parliamentary Secretary for Defence and/or the department a fairly large amount of material. I am wondering, at the outset, whether the minister can provide us with any answers that might have been submitted overnight or this morning.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:32): The answer is no—we do not yet have it.

Senator Ludlam: Nothing?

Senator FEENEY: I think no is the easiest answer. There is some publicly available material that I have looked at but, in terms of a formal response to questions on notice, we do not have an answer for you this morning.

Senator LUDLAM (Western Australia) (12:33): That makes it difficult to proceed. One of the things I was after—probably the most important—concerned the references I provided last night. I do not understand why this would not have been forthcoming during the morning, unless it was not given priority, but I sought the minister's advice on whether the government agrees with the statements made in three reference documents that I provided last night about the number of cluster weapons and submunitions that were fired into Iraq in 2003, and which Australian SAS, Regular Army and RAAF forces supported that action. Let us pick up those ones in particular. Has the minister been given the opportunity, or has anyone else bothered, to look at those documents and assess whether they are accurate or not?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:34): I have looked at advice given by the Congressional Research Service to the US Congress on 27 June 2012, and that may very well be a document Senator Ludlam is familiar with. In any event, it uses statistics that are the same as those he has cited. So I think for the purposes of this morning, subject to me getting formal advice from the department the only information I have before me is that the statistics Senator Ludlam is using are right. This document talks about 13,000 munitions by US and United Kingdom forces in the first three weeks of the conflict in 2003. For the purposes of today I am happy to take those statistics as agreed between us.

Senator LUDLAM (Western Australia) (12:35): I thank the minister—he has left himself some wriggle room in case figures come back that are different. The other question of great consequence that I put to him last night was whether I am correct in assuming that the Royal Australian Air Force flew close support for the US units that were using those weapons on the way into Baghdad. I listed a number of cities and towns along the way. I believe that is of central importance in this debate.

For senators who were not present and for those in the gallery who might be listening, this debate went quite late last night. If we asked 100 Australians randomly in the street whether we should support the Convention on Cluster Munitions, 100 people would come back and say of course we should. We heard unanimous support from government and coalition senators last night, saying it is timely that we sign onto this instrument.

Unless the minister can persuade me otherwise, I believe that under the convention as it is sought to be embedded in domestic law and as currently drafted Australian military units could directly support, for the sake of argument as it appears to have happened before, US military units firing cluster weapons into areas indiscriminately, leaving these things littering the landscape. It would not be prevented by the drafting of the bill before us. We had a lot of debate about this last night, and I sought to have some matters taken on notice to see if they could be clarified.

The central fact of the matter is that there is nothing in the drafting of this bill that would prevent exactly that situation from occurring again—not in Iraq, obviously, but in any other battlefield that we find ourselves co-deployed with US military units. We could be directly planning and supporting missions in which cluster weapons are used, which would violate not just the spirit but also the letter of the convention. If it turns out I am wrong, I will sit down and we can close out this debate and get on with it—but the drafting of the bill as it is presently formulated would allow precisely those things to occur.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:37): I do not really have much to add to where we got to in the debate last night, Senator Ludlam. I will repeat the position we reached. The events in 2003 occurred well before the convention, so obviously Australia, at that time, did not have any obligations under the convention. We have not made any assessment about how current convention obligations might have affected military operations in 2003.

I repeat the point I made at the conclusion of last night—that in the view of the government this convention, and our support for it, is an important step forward. We believe the interoperability provisions found in this legislation are critically important both to the workings of the treaty itself and to Australia's alliance relationship with the United States. As I also said last night, if interoperability provisions like this were not found in the bill and were not countenanced by the convention, that would, in our judgement, greatly weaken the convention and support for it. You would be creating a situation in which any nation which had an alliance relationship with any one of the United States, Russia, China, Iran, India, Pakistan, Brazil or a plethora of other nations might feel unable to support the convention. We think that would reduce the value of the convention—we would be dealing with a convention with far fewer signatories and which therefore exerted far less influence towards the creation of an international norm where these weapons are not used. There is nothing new in all that, Senator Ludlam—I am simply repeating the case I put to you last night.

Senator LUDLAM (Western Australia) (12:39): I indicate to senators that we are still asking general questions about the bill, as was Senator Xenophon last night. I want to move us through and get to our amendments. We will return to this issue briefly when I move the amendments which will fix this gap in the bill—a gap the parliamentary secretary did not quite concede exists but which I strongly contend does.

I will to move on to the second of the three primary areas of concern I identified last night: the transiting and stockpiling of cluster weapons in Australia. We are not concerned about that being done by Australians—because, as we have established, Australia want nothing to do with these things, and that is a sound principle—but by an ally. This conversation is not academic, it is not abstract and it is not hypothetical. We have invited, we discovered last November, the United States Marine Corps to establish a presence in the north. I have also had it confirmed—I think, at the last estimates hearings—that the United States Air Force has been invited to establish a presence at Tindal. There are obviously ongoing discussions occurring which we are not party to—no-one in the Australian public is—concerning the US naval

presence in Cockburn Sound in the south-west of WA and Queensland residents will also be aware that there are discussions occurring about US military presence at Australian facilities.

I do not want to get caught up in a debate about what is and what is not a base. It is quite clear that the US presence in Australia, as it is ramped up, will be flying under an Australian flag. That is something the Australian government has decided is important for the optics of the arrangements, I suspect. Nonetheless, the US military will be stationed here in various forms. They will be parking materiel and equipment here. So it is not good enough that the bill, as it is drafted, exempts the military personnel of states which are not party to the convention from its prohibitions while they are on Australian territory.

We can go, if the parliamentary secretary chooses, to the operative part of the bill. It allows states which are not party to the convention, but which are engaged in military cooperation with the ADF, to stockpile cluster munitions in bases, aircraft and ships in Australia. Let us start there. Parliamentary Secretary, you can either treat Darwin as a case study or you can keep your answer in the abstract if you prefer, but I want to know how this bill is going to operate. Will it be unlawful for the US to stockpile cluster weapons in transit from place to place on Australian soil?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:42): Firstly, I repeat that there are no US bases in Australia. There are joint facilities.

Senator Ludlam: I asked you not to do that.

Senator FEENEY: I am resisting the temptation to head down that road, too, Senator Ludlam. I also make clear that Australia has never had stockpiles of these weapons. I know you understand that, Senator Ludlam, but it is important to put it on the record.

I repeat that the bill uses the language found in the convention. For our part, we say that the bill, in its intent and in its operation, effects everything the convention is intended to effect. The convention itself permits military cooperation and operations between states parties and countries not party to the convention. That is a point worth highlighting, I think. Such military cooperation or operations may entail the use by foreign countries of their own assets on Australian territory or the entry of foreign ships or aircraft into Australian territory.

The defence which is found in proposed section 72.42 protects foreign military personnel of countries which are not party to the convention while such personnel are in Australia. This section obviously takes into account that Australia engages in military cooperation and operations with some countries which are not party to the convention—obviously the United States is one of those. But those kinds of military

cooperation and joint operations are expressly permitted by article 21 of the convention. The defence in the bill recognises that foreign military personnel are not required to comply with an international legal obligation to which their own country has not consented. I think that is reasonably straightforward. It is essential that Australia be able to continue to cooperate with countries which have not signed the convention.

The government has made clear that it has not and will not permit other countries to stockpile cluster munitions in Australia. I trust that is an important undertaking for you to have on the record, Senator Ludlam.

There are currently no foreign stockpiles of cluster munitions in Australia and, as a matter of policy, the government confirmed on 23 November 2011 that it has not and will not authorise such stockpiling. The government will confirm this commitment in a public statement at the time of Australia's ratification of the convention and in Australia's annual statements under the convention.

Senator LUDLAM (Western Australia) (12:44): I suspect this is slightly unorthodox, but as we have representatives of the coalition here this afternoon—you might want to seek some advice from your shadow spokesperson—I invite the coalition to establish what their policy is. The problem with not embedding this in law, which is the reason we turn up here, is that policy decisions can change. Policies can change according to political whim and they can change with a change of government. So I invite the coalition to put on the record whether it is their policy, should they win government, to also prohibit, not in law but in policy, the stockpiling of cluster weapons in the possession of other states.

Senator FIFIELD (Victoria—Manager of Opposition Business in the Senate) (12:45): I am sure that our relevant shadow and his office are tuned in at the moment and that when they are next in the chamber they will oblige you.

Senator LUDLAM (Western Australia) (12:45): Thank you for that. Yes—who would want to miss it! How could you possibly not be watching! Minister, why has it been decided to embed this commitment as a policy undertaking rather than simply write it into the law, as many other state parties have done?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:46): Because the bill is designed to give effect to the Convention on Cluster Munitions, and so the bill keeps faith with the convention. What we are now talking about is a question of policy that goes above and beyond the convention. The government obviously has a firm view, a view that should give you comfort, that I think is aligned with your own view, but that is a matter of

policy. It is not something that is required or sought in the convention itself.

Senator LUDLAM (Western Australia) (12:46): Minister Feeney, Austria has stated:

... foreign stockpiling of cluster munitions on the national territory of States Parties is prohibited by the Convention. ... Should a State Party to the Convention allow a foreign state to stockpile cluster munitions on its territory, this action would be in violation with the provision entailed in Article 1 paragraph c that prohibits assistance ...

Does the minister or his advisers agree with that view?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:47): Austria has taken that position. Obviously, it is utterly entitled to take that position. I can only repeat the Australian government's view, which is that we have introduced legislation into this parliament that keeps faith with the convention and the requirements of the convention, and we have not seen the need to go above and beyond the convention in that particular regard.

Senator LUDLAM (Western Australia) (12:47): So the minister has not endorsed the Austrian position?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:47): No.

Senator LUDLAM (Western Australia) (12:47): That is extremely concerning. Colombia noted:

The government 'absolutely rejects ... any manner of ... storage of foreign cluster bombs in Colombian territory' ...

Guatemala wrote that it considered:

... the stockpiling of cluster munitions of other countries in the territory of a State Party to the Convention, as well as the investment in its production is prohibited according to Article 1 of the Convention.

Slovenia stated:

'[In] our view the Convention ... contains the prohibition of ... stockpiling of cluster munitions by third countries on the territory of each State Party. Therefore, such activities are illegal and not allowed on the territory of the Republic of Slovenia.'

The Australian government have said: 'No, trust us. We won't let that happen, not on our watch.' We do not yet have a position from the coalition. But I take no comfort whatsoever from that. The Minister for Defence could stand up the day after tomorrow and say, 'We changed our minds,' and this legislature would be able to do nothing about it. Why has Australia taken a position that is so contrary to that of these other signatories? Why are we maintaining this wriggle room? I do not understand. I trust the minister when he tells me that that is not something the Australian government would do, but I do not understand why we are leaving this loophole wide open in the law. This is our opportunity to fix it.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:48): It is not a loophole,

Senator Ludlam. This is a piece of legislation that keeps faith with the convention and encompasses the interoperability provisions that we need as a matter of practical application to our alliance with the United States. And I do not accept that the government are out of step with other countries in the way you have asserted. Obviously, you have plucked out some examples, but there are of course many other examples we could talk about. We could talk about China, Russia and the Republic of Korea. We could talk about Israel. We could talk about Egypt, India and Pakistan. Clearly, this is a complicated question and there are different and complicated circumstances in different parts of the world. The government are ensuring that the convention is faithfully implemented by Australian law, and as a matter of policy we are telling you how we intend to realise that. Australia's interpretation of the convention is similar to that of other governments, including those of the United Kingdom, Canada and France, and each country implements its obligations in accordance with its domestic processes and requirements. I do not pretend to be an expert on how Guatemala or Austria makes its decisions and reaches its conclusions about this matter, but I can certainly talk about how Australia has done so. The government are very proud of the fact that we have supported this convention, brought legislation to this parliament that would give life to our support for ratifying the convention.

Senator LUDLAM (Western Australia) (12:50): Minister, the operative part of the bill that I am referring to, section 72.42, states, as you are no doubt aware:

Section 72.38—

which is the fairly comprehensive list of things that are prohibited—

does not apply to the stockpiling, retention or transfer of a cluster munition that:

(a) is done by:

(i) a member of the armed forces of a foreign country that is not a party to the Convention on Cluster Munitions—

for example, the US would be caught by that—

or

(ii) a person who is connected with such forces as described in subsection (2) and is neither an Australian citizen nor a resident of Australia ...

So serving personnel with the US Marine Corps, for example, or their contractors, are explicitly allowed to stockpile these weapons in Australia under that section of the act. Why?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:51): The government do not support deleting section 72.42. We say that the effect of deleting section 72.42 would be that visiting military personnel of countries who are not party to the

convention would be prohibited from any conduct relating to cluster munitions while in Australia, and this would significantly limit Australia's ability to undertake military cooperation and operations with such countries, as permitted by the convention. The amendment you propose would also have the effect of requiring those personnel to comply with an international legal obligation to which their sending country has not consented.

Proposed section 72.42 of the bill gives practical effect to the range of conduct permitted by article 21 of the convention. Deleting section 72.42 would limit Australia's ability to cooperate with countries not party to the convention, as permitted by article 21 of the convention. Australia engages in military cooperation and operations with countries not party to the convention, both overseas and in Australia, with the United States obviously being the outstanding example. Maintaining interoperability with the United States and other coalition forces is central to the protection of Australia's national security and international security.

I cannot help but again assert the point that you are asking something of this Senate which is not asked of us by the convention itself and which would not apply elsewhere or in military alliance relationships, whether they be with China, Russia, Pakistan, India or whoever. There are currently no foreign stockpiles of cluster munitions in Australia and, as a matter of policy, we have confirmed that we will not authorise such stockpiling. We say that deleting section 72.42 would render the interoperability provision in the convention meaningless. That, of course, would have the effect of seriously damaging our alliance relationship with the United States. We have all talked about why that would be undesirable. So notwithstanding the defence found in proposed section 72.42, we say visiting forces would not be excused from prosecution if they use, develop, produce or acquire cluster munitions in Australia.

Senator LUDLAM (Western Australia) (12:53): I am happy to cede the call to Senator Birmingham because I know he wanted to be here for the debate last night and I have put a question through your duty senator inquiring into coalition policy, which I know is a bit unorthodox, because the Australian government is refusing to enshrine a fairly important point into law. Parliamentary Secretary, what flexibility is created by giving us the policy undertaking that we have now, which you have indicated will go into writing when we formally ratify? What do we gain by doing that? What flexibility do we gain? What would be possible, given that undertaking in policy, that would not be possible if we simply removed these offending clauses? I do not understand how making a policy commitment to not stockpile these weapons here is any different from a strategic or operational point of view from enshrining

it in law. If there is no difference, let us just put it into the bill.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (12:54): This is not about flexibility; it is about this bill achieving its purpose, its intent—that is, supporting the convention and meeting the requirements of the convention. We think it is entirely appropriate and that, indeed, the most effective way to deal with matters outside that single purpose is to deal with them as matters of policy. While we might differ about the means, we do not differ about the ends. Our policy is clear and it will be repeated in the regular transparency requirements that the bill engenders. We say that the bill is meeting its core purpose—that is, to meet the requirements of the convention.

Senator BIRMINGHAM (South Australia) (12:55): I had hoped to make a contribution on this bill during the second reading debate but unfortunately was unable to do so due to conflicting commitments. I do not propose to give a speech here on the second reading and abuse the committee process. I have not had a chance, unfortunately, to review all of last night's *Hansard* or Senator Ludlam's questions to necessarily pursue lines of questioning with the minister that would not potentially overlap what Senator Ludlam has done, but I do want to put a couple of things on the record. There is very strong interest across the chamber in ensuring that not just the detail of the Convention on Cluster Munitions but also the intent of the Convention on Cluster Munitions is adhered to by this and future governments.

This was an agreement negotiated by governments across party lines, a negotiation which commenced under the Howard government and was continued and ultimately finalised under the Rudd government. Australia's desire to be part of this follows in a very proud tradition, which I think we need to uphold in this country, of leading the world in looking at weapons that have particular negative humanitarian consequences from their use. An outstanding example is the leadership role Australia played historically in relation to the debate on the use of landmines. There are many parallels which can and should be drawn and I hope there will be further parallels in future to which we can look to see that Australia's success in leading the world, in condemning, reducing and eliminating wherever possible the use of landmines, is replicated by Australia ultimately leading the world in condemning, reducing and ultimately eliminating, hopefully, the use of cluster munitions.

This bill, as you can tell by its date, has been around for some time. It was introduced into the parliament back in 2010. That is evidence of the fact that there have been not just formal parliamentary inquiries around this legislation but concerns expressed across parties and from outside the parliament through

different organisations as to whether this bill does entirely meet the detail of the treaty and the agreement on cluster munitions and, of course, the intent of the Convention on Cluster Munitions.

I highlight just one of the submissions to the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry, held way back in January 2010, a submission from the Australian Red Cross. The Red Cross highlighted a number of concerns which have been the subject of at least some of questioning I managed to pick up on in the debate today and I am sure were subject to speeches and questioning last night, concerns about whether the bill in particular addresses issues of interoperability and stockpiling in a manner which puts appropriate boundaries around Australia's engagement.

The Red Cross submission says:

Paragraphs 3 & 4 of Article 21 outline the manner in which States Party may engage in military cooperation with States not Party to the Convention and paragraphs 1 & 2 of Article 21 impose positive obligations on States Party to amongst other things "make its best efforts to discourage States not party to this Convention from using cluster munitions." It is important then to read the two parts of the Article together and ensure that the implementation of paragraphs 3 & 4 do not conflict with paragraphs 1 & 2.

The Red Cross argues that this bill does not achieve a balance in the application of the different paragraphs and articles of the convention. If the parliamentary secretary feels that he has anything to add on how the bill does in fact successfully balance or attempt to balance the two requirements in the convention to accept issues around cooperation while Australia makes its best efforts to discourage the use of cluster munitions, I would welcome any further assurances that he can provide. The Red Cross did recommend and urge that the relevant sections of the legislation, in particular section 72.41, be construed more narrowly and use words that are used elsewhere in the world. As the submission says, this could be done:

... for example by having it apply only to "mere participation" and acts that are unintended or inadvertent or that only have a remote or indirect relationship with the prohibited conduct.

The Red Cross also highlighted—and this has been addressed in the debate—some concerns around stockpiling, maintenance and transit of cluster munitions in Australian territory, and I note the assurances that the parliamentary secretary has given there. I had a chance to have a quick look at the parliamentary secretary's closing speech in the second reading debate, and I understand that Senator Ludlam was just questioning whether the government has committed as a matter of policy to not authorising and not allowing such stockpiling of cluster munitions. I understand also that the parliamentary secretary said that the government will confirm its commitment in a

public statement both at the time of Australia's ratification of the convention and in Australia's annual transparency report under the convention.

I am not sure—and perhaps he can explain—how the public statement that the parliamentary secretary has committed to make at the time of Australia's ratification of the convention will differ from the statement he made in the second reading debate. Perhaps he can also explain why, if there is to be any difference, that statement is not being made now as part of this legislative process to provide the comfort which many seek that Australia upholds a strong position on not allowing stockpiling.

Senator Ludlam posed a question on that front to the opposition and, as he knows, it is not my role within the opposition to commit the opposition to such a policy. However, he can have this individual senator's assurance that I expect that the opposition would continue with such a clear policy if the government were to honour its word—and Senator Feeney's word—in this legislative process. I hope that, the government having at least set a standard at a minimum level with this legislation—which some will say is not adequate—and then having gone further in government policy as the parliamentary secretary is committing to do, a progression occurs and that there is never a backward step and that changes to policy only further strengthen Australia's commitment to the elimination of the use of cluster munitions.

I emphasise that, whilst I still have some concerns about whether the bill meets all of the assurances that the government gives, I think it is important that we recognise that Australia's involvement in the convention through this bill is a very significant step forward in eliminating cluster munitions from the world, and I hope that all senators who approach the matter with good intent ensure that in the years to come we hold the government of the day to account for ensuring that Australia's good intentions are reflected and honoured through our actions and not just our words. I invite the parliamentary secretary to respond to any of the issues I have raised.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:04): I take up the invitation, Senator Birmingham. I repeat that the government thanks the opposition for supporting the Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010. I guess that the opposition has reached the judgement, as have we, that this bill gets the balance right. Obviously both we and the opposition come to the table with the understanding that we want to keep faith with the convention and that this bill does represent a step forward but that we are at the same time practically minded in that we wish to make sure that the convention does not have the effect

of severing our alliance arrangements with the United States.

I repeat that we will be making a statement on cluster munitions, which you, Senator Birmingham, have talked about. The detail in the statement will be absolutely aligned with the undertakings I have given, and government policy will be expressed in the terms I have put them in this debate. I think that a lot of the detail that your question asked for I dealt with last night, and I commend the transcript to you for some of the detail about the balance in proposed sections 72.41 and 72.38 in particular.

I think that we have got the balance right and have said very plainly that this bill realises the convention, that matters above and beyond will be dealt with as a question of policy and that our policy is clear and well understood.

Senator BIRMINGHAM (South Australia) (13:06): I thank the parliamentary secretary. I certainly will return to the *Hansard* from last night. Can the parliamentary secretary please explain to me what form the public statement he is referring to will take? Is there an example that you can give us, Parliamentary Secretary, of what form this commitment via public statement will take so that we have some understanding as to the strength that people can attribute to it as part of Australia's undertakings?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:07): When this instrument has been ratified and lodged, the Australian government will make a public statement and that public statement will be in line with the undertakings I have given this chamber. Thereafter the bill itself requires that there be an annual transparency report, and that annual transparency report would repeat the undertakings given in the public statement at the time of ratification.

Senator BIRMINGHAM (South Australia) (13:08): I thank the minister and I certainly understand in relation to the annual transparency report the commitment being made by the government. Essentially, the public statement could be the form of a ministerial statement to the House; it could be in the form of a media release; it could be literally anything that contains the words 'public statement'?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:08): Yes, that conforms with my understanding.

Senator LUDLAM (Western Australia) (13:08): The minister has used the term 'authorisation' of weapons being stockpiled or transited through Australia. I also thank Senator Birmingham; I guess we can only hope that in the unlikely event that there is a change of government next year he ends up as the defence minister and then we can hold him to his word—which I absolutely believe; I know he cares a

great deal about these issues. However, we have even less from the coalition than we have from the government. From the government we have a hypothetical policy statement that may be announced at some future stage down the track; from the coalition we have Senator Birmingham assuring us that he loathes these weapons as much as anybody else and would not want to see them stored here.

I am interested to know how we would actually prevent it. How is this going to work in practice? When US warships that may or may not be nuclear armed transit through Australian ports, the US Navy has a policy of neither confirming nor denying that the ships are carrying nuclear weapons. To what degree would we even know about the weapons on these vessels or aircraft moving through Australian waters or airspace, stabled temporarily at Tindal air base or wherever else, in order to issue an authorisation in the first place?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:09): Firstly, there is nothing hypothetical about our policy. Our policy is our policy and it is plain. The government strictly monitors the presence of cluster munitions and other explosives on Australian territory. Ships and aircraft owned by foreign armed forces that transit through Australian territory are required to advise the quantity of explosives that they have on board to enable appropriate explosives safety requirements to be met—that is, to ensure that the ship or aircraft is berthed or parked in an appropriate location—and it is standard practice to require such vessels to advise of the total net explosives quantity of munitions that they have on-board rather than the actual type and quantity of specific munitions.

All munitions owned by foreign armed forces that are stored on Australian soil are required to be managed as Commonwealth explosives, in accordance with the Explosives Act 1961 and its subordinate regulations and codes. This requires specific approval for the storage and transportation of these munitions and their inclusion in Defence information holdings. Additionally, munitions are stored in Defence facilities licensed to store explosive ordnance and are managed on the computer system for armaments. As a consequence of that Defence both approves and has full visibility of all foreign armed forces munitions that are stored on Australian soil.

Senator LUDLAM (Western Australia) (13:11): I thank the minister. Does that not apply to nuclear weapons? Is that simply a blank box, or is that information provided to the Australian government but just not then provided to people?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:11): We are now creeping outside the scope of this debate. Let me say, in a very off-the-cuff way, that as I comprehend it what I have

just described is how Australia deals with munitions, not nuclear weapons. There is a relevant treaty—the South Pacific Nuclear Free Zone Treaty—and that bears on the issue of nuclear weapons as well.

Senator LUDLAM (Western Australia) (13:12): To come back to the topic of cluster weapons, then, correct me if I am wrong but we are given an inventory of the total amount of ordnance but not broken out by weapon type, so we would not necessarily know if the 14-foot-long cylinder was a single device or in fact was 10,000 small submunitions. Maybe I misunderstood your comment: do we actually know, broken out by weapon type, what is stored on Australian soil? Let us start with that before we deal with naval or air assets. What degree of detail is provided to Australian authorities?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:13): I think your understanding of that is correct. We will not be aware of cluster munitions that are aboard foreign planes or vessels transiting through Australia, but we are required to be and we are aware of all munitions stockpiled in Australia, as I described, and we will prohibit the stockpiling of cluster munitions in Australia. The convention does not contradict that approach—it does not go to transiting vessels or planes. As I have described, that is consistent with the convention.

Senator LUDLAM (Western Australia) (13:14): Minister, in the instance of an aircraft that was not passing through Australian airspace but was in fact parked at Tindal in the NT for a period of three or four months and the aircraft had these weapons on board, would they be required to report the existence of the different kinds of munitions in that case?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:14): The circumstance of that individual aircraft would be taken on a case-by-case basis and it would be dealt with by the government on the basis that we prohibit the stockpiling of cluster munitions in Australia.

Senator LUDLAM (Western Australia) (13:14): I thank the minister for that. I think it is still remarkably unsatisfactory. Nothing that the minister has said—and I know you are being as helpful as you can, Minister—has given me any comfort whatsoever as to why we should take this policy commitment, which could be reversed on a whim either by his government or by the one that may or may not follow, when we could simply put an amendment, so I will do so shortly down the track. Chair, I think it might assist the chamber if I formally move the first amendment and we actually start moving through these.

The ACTING TEMPORARY CHAIRMAN (Senator Boyce): We are in your hands, Senator Ludlam, as to how we handle the amendments. The

only thing is that the last of your amendments, No. 6, needs to be moved separately.

Senator LUDLAM (Western Australia) (13:15): I will speak to each of them in turn. I now move amendment (1) on sheet 7084, which relates to intention:

(1) Schedule 1, item 1, page 3 (line 28), omit paragraph 72.38(2)(c), substitute:

(c) the first person knew or should have known that the act would be done.

It is not a matter that I have discussed at length so I will briefly describe for the benefit of senators why I am doing this. This amendment is to the section of the bill that relates to promoting acts with cluster munitions, so it goes to our positive obligations under the terms of the convention. A person commits an offence if a person knew or should have known that the act would be done. That is common language for recklessness. This bill sets a very high threshold for liability requiring that a person intended that an act be done in order to be liable for one of the offences. This refers specifically to proposed section 72.38. Under this standard, individuals would not be liable for conduct if, for example, they were aware that their conduct would result in cluster munitions use—so there is knowledge—or in a substantial unjustifiable risk of use, so recklessness. Using an intention standard in 72.38, this makes it very difficult to hold individuals liable for use, production, transfer and stockpiling of cluster munitions or assistance with these prohibited acts. This is even if they knew or should have known that their conduct could lead to one of these activities. This result is in direct opposition to JSCOT's recommendation to prevent inadvertent participation in the use, or assistance in the use, of cluster munitions by Australia. So I hope the minister can see the distinction that I am drawing here even though it may seem to be a fine one. It is between inadvertent participation and reckless participation. I will remind the chamber, because I am still open to referring this bill back to JSCOT as we discussed last night, that JSCOT, in its report No. 103 of 2009, said:

... The Committee also acknowledges concerns regarding the potential for Australia to inadvertently participate in the use or assist in the use of cluster munitions, despite the provisions of the Convention. The Committee is concerned that some of the terms contained in the Convention are not clearly defined and may provide an avenue by which Australia could participate in actions which may contravene the humanitarian aims of the Convention. The Committee therefore considers that the Australian Government and the ADF should address these issues when drafting the domestic legislation required to implement the Convention, and when developing policies by which the personnel of the Australian Defence Force operate ...

The Committee recommends that the Australian Government and the Australian Defence Force (ADF) have regard to the following issues when drafting the legislation

required to implement the Convention ... , and when developing policies under which the personnel of the ADF operate:

- the definition of the terms 'use', 'retain', 'assist', 'encourage' and 'induce' as they apply in Articles 1, 2 and 21 of the Convention on Cluster Munitions;
- preventing inadvertent participation in the use, or assistance in the use, of cluster munitions by Australia; ...

To cut to the chase, this amendment implements that latter recommendation by JSCOT. This amendment would effectively implement that in full. I know—and I spoke at length on this last night and earlier this afternoon about the facts—how horrified I was to discover that what I thought was lazy drafting or inadvertent loopholes that have crept into the bill were actually deliberately placed there at the behest of the United States government, as was demonstrated by the release of the state department cables by WikiLeaks. In this instance I think perhaps it is simply poor drafting. I do not sense any underlying conspiracy here and I am merely attempting to improve the drafting to tighten up what I believe leaves us very open to a very wide interpretation or a very high bar being put in place. So I commend this amendment to the chamber.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:19): The government's position is that we agree with your understanding that the proposed amendment is intended to alter the standard of fault which applies to an element of the offence of assisting, encouraging or inducing the commission of a prohibited act from 'intention' to 'knowledge'. As indicated, the government does not support your proposed amendment, being the amendment of the Greens Party. As currently drafted, the bill will ensure that all conduct that is prohibited by the convention is the subject of a criminal offence under Australian law. The offences in the bill have been drafted on the basis of a reasonable interpretation of the convention. We consider that a reasonable interpretation of the convention is that a person who assists, encourages or induces another person to undertake prohibited conduct must also intend that the prohibited conduct be done. This interpretation is consistent with the object and purpose of the convention, which is to prohibit the use of cluster munitions. I repeat, Senator, that, as we discussed last night in the committee stage, I think it is entirely unremarkable that Australia consulted with its alliance partner, the United States, and developed a common position insofar as we could maintain our commitment to support the convention while sustaining that alliance. I think, as I said to you last night, there are no revelations in WikiLeaks worthy of that name, rather the mundane conduct of diplomacy between friends.

Senator LUDLAM (Western Australia) (13:21): The minister may find it mundane that a party to the convention would be doing the bidding of a party not

to the convention that actively deploys and uses in military conflicts these weapons. So as for developing a common position—and maybe I did not quite make myself clear last night—how does the Australian government come to a common position when our objectives are diametrically opposed? The Australian government is telling the public that it wants to see these weapons eradicated from the face of the earth. The United States military has still deployed and used these weapons on civilian populations in recent conflicts. So how exactly do we reconcile and come to a common position in that instance?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:21): It is actually very straightforward. Again, I think we are retracing ground that I covered last night. Clearly the government has supported this convention, as indeed has the opposition and the Greens, because we are all committed to the eradication of cluster munitions. Of course, if it were possible, we would also sign a convention that outlawed war. But, tragically, we live in an international environment where things are not quite so simple. While we are resolved to not use, not stockpile, not consider the use of cluster munitions, that is not a view that is shared by a range of countries. You obviously speak of the United States, but there are many others. If you were to insist, as you seem to be, that every country that signs this convention must walk away from its alliance relationships and any view that its military should be interoperable with its major alliance partners, then I would submit that you would not simply see the allies of the United States disadvantaged but of course you would be creating a set of circumstances whereby none of the powers or the allies would sign this treaty and it would be, if you will forgive the phraseology, dead on arrival. It would be a dead letter treaty.

We are committed to changing international norms. We are committed to eradicating these weapons. But it is a nuanced business. Of course, one must also comprehend that for some countries the banning of cluster munitions may simply mean a bigger investment in artillery and rocket barrages. These things are not simple. And while they are a little easier for us because our view is clear and we do not face a territorial threat and these are not weapons we have ever used or ever stockpiled and we have no intention of ever doing so, we understand that the equation in other parts of the world is not so simple. So again I would put it to you that if we were to follow your formula we would find a convention with fewer signatories and we would find a convention that in fact has less of an impact rather than the greater impact you seek.

The TEMPORARY CHAIRMAN (Senator Boyce): The question is that the amendment moved by

Senator Ludlam to schedule 1, item 1, paragraph 72.38(2)(c) be agreed to.

Question negatived.

Senator LUDLAM (Western Australia) (13:21): I think the chamber should have reconsidered that one. However, I will move to Greens amendment (2) on sheet 7084:

(2) Schedule 1, item 1, page 3 (after line 29), after subsection 72.38(2), insert:

(2A) An entity regulated by the Australian Securities and Investments Commission or by the Australian Prudential Regulation Authority commits an offence if it directly or indirectly:

- (a) provides funds to a person or an entity; or
- (b) invests funds in an entity;

involved in the development or production of cluster munitions or explosive submunitions.

This is not an issue we have canvassed at length, so I will just briefly speak to it. This amendment relates to the ban on investment. I presume Senator Feeney will shortly jump up in response and assure me that I am misreading the bill, but in fact we have taken advice from the people who actually manage and run the funds and they have said that this is a flaw. This is not, I think, something we are doing at the behest of the United States government, unlike the other, clear faults we have introduced in the bill. Again, I would be inclined to place this in terms of a drafting error, but maybe I am just naive.

The bill should explicitly ban investment because it assists with a prohibited act. I struggle to see how that could be a controversial statement. Many other countries specifically ban direct and indirect investment in cluster munitions in their legislation. By 'indirect' we mean an investment in a parent company that may, through a company that it has a holding in, in fact be manufacturing components or manufacturing cluster weapons themselves. There are not a large number of companies in the world who manufacture these weapons. Most of them, indeed, are subsidiaries of the big arms manufacturers. Perhaps those are the entities in whom this amendment should be dedicated to.

The Treaties Committee recommended at recommendation (2) that the legislation should prevent investment. It is fairly clear. It is supported by the Australian Council of Superannuation Investors who proposed this in its submission to the Senate inquiry. I would encourage all senators to go back and have a look at what the financial community thinks of this bill. Their evidence was compelling. They said that in order to comply with the spirit of the CCM and the recommendation of the Parliamentary Joint Standing Committee on Treaties that the bill must restrict the ability of cluster bomb producers to secure any capital from Australian investors by 'making it illegal for

Australian investors to provide financing to such companies'.

We propose that the restriction applies to all Australian institutions regulated by ASIC or APRA. Under our proposal these institutions will be prohibited from lending to companies that produce cluster bombs. In addition, the institutions will be prohibited in trading in securities or investing moneys—their own or on behalf of clients—in companies that produce cluster bombs. Finally, under our proposal the bill will contain a schedule with a list of such companies that will be updated by the Commonwealth as required.

A number of countries have legislation which directly prohibits the manufacture and financing of cluster munitions. I will go through a list of those briefly, but let me just test first of all whether there have been any second thoughts, either on behalf of the government or the coalition, that in fact this is the easiest of the loopholes to close. Senators would be aware through the length of the debate thus far that perhaps the other issues are complex; this one is pretty simple: we do not want to be enabling the financing, direct or indirect, to companies producing cluster weapons. I hope that is an uncontroversial statement. Could I get an indication, please, from the minister if the government intends to support this Greens amendment that would simply tighten up the investment criteria, as the Australian Council of Superannuation Investors have advised. If Senator Humphries wants to indicate a position on behalf of the coalition, I would be grateful as well.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:28): No, I am afraid, Senator, the government does not support the proposed amendment. The government repeats its view that this bill gives full effect to the convention—the convention that represents the agreement of the international community on prohibiting cluster munitions. We understand that the proposed amendment would make it an offence for a company to invest in any company that develops or produces cluster munitions, regardless of the investor's knowledge or intent in making that investment, and regardless of whether the invested funds actually assist in the development or production of cluster munitions.

It is the government's view that such an amendment is inconsistent with the convention and inconsistent with the primary purpose of this bill, which of course is to give effect to the convention. The bill uses the same language as the convention to ensure that all conduct that is prohibited by the convention is the subject of a criminal offence under Australian law. The convention does not prohibit all forms of investment in companies that develop or produce cluster munitions. Rather, the convention prohibits the provision of assistance, encouragement or inducement in the development or

production of cluster munitions. Some acts of investment would fall within the scope of the convention's prohibition on assistance where the investment in fact assess the development or production of cluster munitions, but any acts of investment that are prohibited by the convention will fall within the scope of the offences in the bill.

The proposed amendment may have potentially wide-ranging effects. Human Rights Watch has estimated that more than 85 companies produce cluster munitions or their key components, and many of these companies of course produce other non-prohibited products. Financial institutions that provide credit for loan facilities to these companies would be in breach of the proposed amendment, and we say that is unworkable and that it goes beyond the scope of the convention itself.

Senator HUMPHRIES (Australian Capital Territory) (13:30): I am not sure it is the intention of standing orders to facilitate questioning of the opposition in the course of the committee stage of the debate on a bill, but I will oblige without setting a precedent and indicate that the opposition will not be supporting this amendment or, for that matter, any of the other amendments moved by Greens today—in the case of this amendment, for reasons similar to those that were offered by the minister.

Senator LUDLAM (Western Australia) (13:30): So when I finally move this motion the Senate will be voting to keep a loophole open that the financial community wants closed—just so that we are well aware that. A number of countries have legislation which directly prohibits the financing and manufacturing of cluster weapons. Australia is going to stay outside that framework and that is profoundly shameful. Luxembourg in 2009 passed its Convention on Cluster Munitions ratification law, and article 3 of that law contains a ban on investments and states:

All persons, businesses and corporate entities are prohibited from knowingly financing cluster munitions or explosive submunitions

In 2008, Ireland's Cluster Munitions and Anti-Personnel Mines Bill explicitly prohibited investment of public money in producers of cluster munitions. In 2009 the New Zealanders, whose enabling legislation I have referenced previously, included a prohibition on investment in companies that manufacture cluster munitions and they are clear about what sort of financing is prohibited—namely:

... assets of every kind, whether tangible or intangible, moveable or immoveable, however acquired; and includes legal documents) or instruments (for example bank credits, travellers' cheques, bank cheques, money orders, shares—

and so on.

The Netherlands in 2011 passed a motion that called for the prohibition of direct and demonstrable

investments in companies that produce, sell or distribute cluster munitions. The UK government issued a ministerial statement in 2009 confirming that 'under the current provisions of the bill, which have been modelled upon the definitions and requirements of the convention, the financing of cluster munitions would be prohibited. The provision of funds directly contributing to the manufacture of these weapons would be prohibited.' Lastly, Belgium produced a schedule in its legislation, and article 2 of that legislation reads:

Also prohibited is the financing of a company under Belgian law or under the law of another country, which is involved in the manufacture, use, repair, marketing, sale, distribution, import, export, stockpiling or transportation of anti-personnel mines and or sub-munitions within the sense of this act, and with a view to distribution thereof.

To this end The King shall, no later than the first day of the thirteenth month following the publication of this act, prepare a public list

(i) of companies that have been shown to carry out an activity as under the previous paragraph;

(ii) of companies holding more than half the shares of a company as under i) and;

(iii) of collective investment institutions holding financial instruments of companies as designated in i) and ii).

So here is a fairly explicit example of the sort of behaviour that Senator Feeney just said we could not possibly bring to bear in an Australian legislative context because companies that manufacture these hideous weapons might also manufacture consumer white goods. Who knows? And we would not want to impact upon them! Actually, I believe we would. That is precisely why we would bring an instrument like this into law: to stigmatise and try to strangle financial oxygen to exactly that kind of behaviour. Either we oppose the manufacture and distribution of these weapons or we do not. Minister, would you briefly provide us with the government's view on why it is good enough for the state parties that I have just listed to do this but, somehow, not possible here in Australia.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:34): I am happy to respond, Senator. Each signatory to the convention is implementing its obligations under the convention in accordance with its domestic processes and requirements. Some countries—for example, Guatemala, Lebanon, Madagascar, Malawi, Malta, Rwanda and Zambia—consider that article 1 of the convention by implication prohibits all forms of investment in companies that develop or produce cluster munitions. Other countries consider that the convention does not prohibit investment but have nonetheless enacted legislation prohibiting all forms of investment in companies that develop and produce cluster munitions—for example, Belgium and, as I think you cited, Luxembourg.

In the case of Belgium and Luxembourg this legislation was not enacted on the basis of any legal obligation arising under the convention. Countries are not precluded from deciding as a matter of policy to adopt measures regarding investment that go beyond those in the convention. Other countries, such as Austria, Germany and the United Kingdom, have not included a prohibition on investment as part of their legislation to implement the convention. I will conclude by saying that, when one looks at the cases around the world, we see some variation, and I repeat the government's view that what we have before us is a bill that keeps faith with the convention and enacts the requirements of that convention as its primary purpose.

Senator LUDLAM (Western Australia) (13:35): In closing, Madam Temporary Chair—and then I will ask you to put the question if there are no other contributions—the Greens agree with Human Rights Watch, who state:

The Bill should explicitly ban investment because it assists with a prohibited act, that is, the production of cluster munitions. Production cannot be curtailed and cluster munitions eliminated if a state party allows direct or indirect financial support to manufacturers of the weapons. Because private investors often provide important financial support to such companies, the ban should extend to private funds.

As I have mentioned a couple of times, the Australian Council of Superannuation Investors provided evidence to the foreign affairs, defence and trade committee that was compelling. In their submission they pointed out that there is no known direct investment in cluster munitions occurring anywhere in the world. On the other hand, direct investment is the only type of investment that would be captured under the current legislative wording. In other words, we are prohibiting a practice that does not exist, but on the kind of practice that does exist—that is, indirect investment in parent companies that have subsidiaries producing these devices—this bill is silent.

I could have seek an undertaking that the minister believes that, and maybe I have misunderstood his comments. ACSI observed that for the avoidance of doubt 'the current drafting will have no practical effect on the financing of cluster bomb production'. Minister, before we put this question to the vote, is it the government's understanding that the current wording of the bill does preclude indirect investment in cluster weapons? Perhaps that could have some bearing on the way in which the courts interpret future actions which are brought to bear.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:37): The bill gives effect to the convention in Australian law and is guided and limited by the convention. The bill provides that a person or entity commits an offence if they intentionally assist, encourage or induce a person or entity to develop or produce cluster munitions. This

offence would, for example, apply to a person who intentionally provides financial assistance to an entity so that the entity can develop or produce a cluster munition. However, accidental or innocent acts of assistance, encouragement or inducement will not fall within the offences in the bill.

For example, the person who contributes to a superannuation fund which includes investments in companies that may develop or produce cluster munitions would not fulfil the elements of the offence in the bill. The offences in the bill utilise the criminal code standard fault element of intention. The standard fault element should be applied unless there is a reason to depart from it.

Senator LUDLAM (Western Australia) (13:37): Minister, if I can put my question to you directly: if I invest in company A, which does not manufacture cluster weapons but which does have a holding in company B, which does manufacture cluster weapons, am I in breach of this bill when it is enacted or not?

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:38): It would really be of no assistance, and indeed might even be entirely counterproductive, for me to try and provide advice around a scenario like that. There are battalions of folk who are better equipped to manage those sorts of questions in due course. What I can do here, and what I have done, is to articulate our policy and the fact that what we have before this Senate is legislation that keeps faith with the convention. Our view is that you are trying to accomplish certain policy ends that are not found in the convention, and which we say are outside the gamut of this legislation as a consequence.

Senator LUDLAM (Western Australia) (13:38): So I can invest in a shell company that does not manufacture cluster weapons but owns entities that do, and the minister somehow wants us to believe that that is in keeping with the spirit of the convention? It is not—it is just not. I am not sure that there is any value either in asking anybody who might still be listening to this debate to pursue this any further, because I think that on the key question the minister has been unable to comfort us—that I can invest in a company that has nothing to do with cluster munitions apart from the fact that it owns a subsidiary entity that does manufacture them, but that will not be in breach of this bill. Why even bother having investment criteria in here? As ACSI pointed out—and these are the people in the industry who know exactly how this game works—the bill as drafted has no practical effect because we do not invest in companies that directly manufacture these weapons, we are investing in the entities that own them as subsidiaries. On that, this bill is silent.

Unless the minister has anything to add, my take away from this debate is that the provisions as drafted will have no practical effect at all. That is certainly

what the Australian Council of Superannuation Investors believe. The minister has given us no evidence this afternoon that they are incorrect. If the minister has had nothing further to say, that is fine—I will let the chair put the question to the chamber.

The ACTING TEMPORARY CHAIRMAN (Senator Boyce): The question is that Greens amendment (2), to insert subsection (2A) into 72.38(2) in schedule 1, item 1 be agreed to.

The Senate divided. [13:44]

(The Acting Temporary Chairman—Senator Boyce)

Ayes 10
Noes 32
Majority 22

AYES

Di Natale, R	Hanson-Young, SC
Ludlam, S	Milne, C
Rhiannon, L	Siewert, R (teller)
Waters, LJ	Whish-Wilson, PS
Wright, PL	Xenophon, N

NOES

Back, CJ (teller)	Bernardi, C
Bishop, TM	Boyce, SK
Brandis, GH	Brown, CL
Bushby, DC	Cameron, DN
Carr, RJ	Colbeck, R
Crossin, P	Edwards, S
Farrell, D	Feeney, D
Furner, ML	Gallacher, AM
Hogg, JJ	Johnston, D
Ludwig, JW	Lundy, KA
Marshall, GM	McEwen, A
McKenzie, B	McLucas, J
Moore, CM	Pratt, LC
Singh, LM	Smith, D
Stephens, U	Thistlethwaite, M
Thorpe, LE	Urquhart, AE

Question negated.

Senator LUDLAM (Western Australia) (13:47): I suspect that this will be among the least controversial of the amendments that the Greens have proposed to this bill and it is also one with which I have the least issue. This is simply a technical amendment. The Greens amendment here is section 2239 of the bill which is about the acquisition and retention was raised by the minister in terms of what stockpiles the ADF can hold. What we are seeking to do is ensure that the minimum number of munitions are held by Australia that is absolutely necessary for training purposes.

The text of the bill currently reads that the minister may authorise in writing specified members of the ADF or other specified Commonwealth public officials to acquire or retain cluster munitions for one or more of the following purposes. The Greens amendment simply adds the words 'minimum number' and 'absolutely necessary'. So I will make very clear at this

point that this part of the bill proposes that we could acquire cluster munitions that have the Greens support. I have seen at our Minhad air base in the UAE, with ADF personnel showing a visiting party of rather naive MPs from the other side of the world exactly what this could do to people, how it sounds when they go off, how they are incorporated into improvised explosive devices and how we can protect the local population and of course our own troops in the field from these horrific weapons, so I can understand the requirement for training purposes. We are not proposing to modify the list of reasons we might retain the things. We recognise that they are not for deployment and that that is not the intention of this part of the bill.

Nonetheless I think these amendments still have merit. The words 'minimum number' and 'absolutely necessary' provide very clear and explicit guidelines. We are not going to propose buying crate loads of these materials. We are holding onto, as I think the minister expressed in the debate last night, a handful of legacy weapons, many left over from the Russian invasion of Afghanistan and a handful of newer weapons simply to familiarise our forces going into Afghanistan or elsewhere with what these weapons can do and what they look like.

I commend this amendment to the Senate on the understanding that we are not seeking here to modify the basic premise of this part of the bill but simply to provide a hard and fast cap to reduce any residual ambiguity that this is for anything other than training purposes.

I move amendment (3):

(3)Schedule 1, item 1, page 4 (lines 18 and 19), omit "to acquire or retain specified cluster munitions", substitute "to acquire or retain the minimum number of cluster munitions absolutely necessary".

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:50): The government does not support the proposed amendment as we believe it is not necessary to include this requirement in the legislation. Article 9 of the convention allows state parties to take legal, administrative or other measures to implement the convention including the creation of regulations. The government intends to reflect the minimum number requirements in regulations that we believe are an appropriate way to implement the convention. The regulations will reflect the requirement of the convention that the amount of explosive submunitions retained or required by a state party shall not exceed the number absolutely necessary for the purposes permitted in the convention and, Senator, you have spoken to those.

Factors that must be taken into account in decision making, such as the minimum number requirement, can be included in regulations rather than legislation. Proposed subsection 72393 states that regulations may

prescribe the requirements relating to authorisation by the minister under subsection 72392. The regulations will reflect the requirement in paragraph 6 of article 3 of the convention that the amounts of explosive munitions retained or acquired by a state party shall not exceed the minimum number absolutely necessary for the purposes permitted in the convention. As you have said, Senator, those purposes are the development of and training in cluster munitions detection, clearance or destruction techniques and the development of cluster munitions countermeasures. These permitted purposes are the same purposes for which an authorisation can be granted under section 7239 of the bill.

Senator LUDLAM (Western Australia) (13:52): I commend this amendment to the chamber.

The CHAIRMAN: The question is that amendment (3) on sheet 7084 moved by Senator Ludlam be agreed to.

Question negatived.

The CHAIRMAN: Senator Ludlam, do you wish to proceed with amendment (4)?

Senator LUDLAM: Chair, I certainly do. I can think of nothing that I would rather do. I move amendment (4):

(4)Schedule 1, item 1, page 5 (after line 7), at the end of section 72.39, add:

This amendment is also effectively a technical amendment and will go to amendments (5) and (6), I suspect, after question time, which go to the deeper substantive issues of why we would allow the ADF to continue to plan and conduct missions in which these weapons were used and then again in amendment (6), which relates to transit and stockpiling of these weapons on Australian soil.

Amendment (4), however, simply goes to our belief that the minister should submit an annual report to the Secretary-General of the United Nations that details the matters which we were referring to just before. So the minister or his or her delegate under this amendment would be required to submit a report annually to the Secretary-General of the United Nations for each year in which cluster munitions are retained, acquired or transferred by no later than 30 April of the following year. This report, we believe, should include information on the planned and actual use, type, quantity and lot numbers of cluster munitions acquired or retained under the subsection.

Minister, this is nothing more nor less, in my view, than simply modelling best practice. This is modelling good behaviour. Each state party and those non-state parties that are eventually brought within the ambit of the convention should be encouraged to have precisely this practice. I suspect that long after all state parties have joined this convention and long after these

weapons have been banned from the arsenals of the world—and we all, I think, look forward to that day—there will still be in places like Afghanistan, Laos, Vietnam and across former battlefields in Africa and elsewhere tens and hundreds of thousands of these weapons scattered about and there will still be a requirement for defence forces and mine-clearing personnel to retain stockpiles of these weapons. This is something that is going to have to remain in perpetuity. So I understand why we will need to retain very small numbers of these weapons for training purposes, but I believe we should get into the practice now of modelling best practice behaviour, which means accurate reporting to the S-G of the United Nations about exactly what stockpiles we are holding and why. If that practice is reflected in those of other states party to the convention, I think we will all be better off. I commend this amendment to the chamber.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:54): Senator Ludlam, the government does not support this proposed amendment, and again we say that it is not necessary to include this requirement in legislation. Article 9 of the convention allows state parties to implement the convention through legal, administrative or other means as appropriate. And, as with its reporting obligations under other international legal instruments, Australia will comply with its reporting obligations under the Convention on Cluster Munitions—and we talked a bit about those last night and again today—without the need for those obligations to be set out in legislation.

The CHAIRMAN: The question is that amendment (4) on sheet 7084 moved by Senator Ludlam be agreed to. Question negatived.

Senator LUDLAM (Western Australia) (13:55): I move amendment (5):

(5) Schedule 1, item 1, page 6 (lines 7 to 31), omit section 72.41, substitute:

72.41 Defence—participation by Australians in military cooperation with countries not party to Convention on Cluster Munitions

A person who is an Australian citizen, is a member of the Australian Defence Force or is performing services under a Commonwealth contract does not commit an offence against section 72.38 by merely participating in military cooperation or operations with a foreign country that is not a party to the Convention on Cluster Munitions.

Note 1: A defendant bears an evidential burden in relation to the matter in this section: see subsection 13.3(3).

Note 2: The expression *offence against section 72.38* is given an extended meaning by subsections 11.2(1) and 11.2A(1), section 11.3 and subsection 11.6(2).

Note 3: This section relates to paragraphs 3 and 4 of Article 21 of the Convention on Cluster Munitions.

This amendment quite clearly goes to what is probably the most flawed part of the bill. Amendment (5)

fixes—I do not even know if 'loophole' is an accurate term—a structural sabotaging of the very intent of the convention that we are designing this legislation to enact. So I think calling it a loophole is simply too generous. Calling it a loophole would allow you to imagine that perhaps it was inadvertent and that it had got in there by mistake, and we now know that that is clearly not the case.

The section this amendment seeks to fix allows Australian troops to actively assist countries that have not signed up to the convention to deploy and use these munitions. This occurred in Iraq when the convention did not exist in 2003, and we have discussed that extensively. I would be interested to know whether anybody in the department has bothered to chase up any of the questions I put on notice last night about the weapons platforms that the United States government uses to put these weapons into the field, because that will be helpful information when we come to debating the amendments around stockpiling and transit. But, in particular, I put some specific questions through you, Minister, last night about whether F18 pilots flew close support missions for US ground forces that were using cluster weapons against civilian populations. I would invite the minister now, as the clock runs down towards question time, to address whether he knows that is the case or not.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (13:57): As I said, Senator, as we commenced today, those are issues on which I have undertaken to get back to you. We have taken those questions on notice. Of course, I guess a nuanced but important one is that we would not say, and I suspect you would not say, that they were used against civilian populations. But as to how and when they were used in the course of 2003, we are awaiting advice.

With respect to your amendment more broadly, the proposed amendment is intended to replace the interoperability defence currently found in the bill and, as a consequence, the government does not support the proposed amendment. We talked a lot last night and today about that interoperability defence. The government does not consider that the defence that applies to mere participation accurately gives effect to the convention. Such an amendment would therefore be inconsistent with the purpose of the bill, which is of course to give effect to that convention. The convention does not prohibit mere participation or unintended or inadvertent participation in acts by a non-state party that would be prohibited to a state party. The bill uses the same language as the convention—a point I keep making because it should engender your confidence in the bill—to ensure that all conduct that is prohibited by the convention is the subject of a criminal offence under Australian law. Further, the term 'mere participation' is not defined and would be subject to interpretation. Creating a defence

for mere participation ignores the limitations placed by the convention on the kinds of activities that can be undertaken in the course of military cooperation in operations with countries not party to the convention.

Creating a defence or mere participation also risks removing criminal liability for a broader range of conduct than is permitted by the convention. Again, I say the bill uses the same language as the convention to ensure that the bill accurately reflects the provisions found in the convention and reflects international agreement on the prohibition of cluster munitions.

Senator LUDLAM (Western Australia) (13:59): Chair, I seek your guidance, as the clock runs down, as to whether you want to take us straight into question time. I strongly dispute the statement that the minister has just made and will persist with this amendment when we come back from question time. But I am aware that the President is in the chamber and I am happy to move forward, if you believe that is the best way.

The CHAIRMAN: Do you want me to put the question? I have enough time to put that question.

Senator LUDLAM (Western Australia) (13:59): I absolutely do not want you to put the question, because I am totally unsatisfied with the response that the minister has put to us.

Progress reported.

DISTINGUISHED VISITORS

The PRESIDENT (14:00): Before proceeding to questions without notice, I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from the Solomon Islands led by the Prime Minister, Gordon Darcy Lilo. On behalf of all senators, I wish you a warm welcome to Australia and in particular to the Senate.

Honourable senators: Hear, hear!

QUESTIONS WITHOUT NOTICE

Carbon Pricing

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:00): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to her answer to a question from Senator Cormann yesterday in which she compared carbon pricing in Europe with that in Australia. Is the minister aware that under the European Union's ETS the EU expects to impose a 1,974 million tonnes of carbon cap on emissions in 2013? At current market prices of A\$9.10 per tonne, the value of these permits would be \$18 billion. Given that there are 512 million people in countries covered by the EU's ETS, this means that Europeans will pay just \$35 per person in carbon taxes in 2013. In contrast, Labor expects to raise \$7.7 billion in revenue from the sale of permits this financial year,

equating to \$340 per Australian. Does the minister accept that, in per person terms, Australia's carbon tax is at least nine times bigger than Europe's ETS?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:01): I certainly accept that the most expensive climate policy on offer is that which Senator Joyce supports, which is \$1,300 per household every year—\$1,300 every year in more tax as a result of the cost of your policy. So if the senator really cares about per capita or per household costs, perhaps he should explain to the electors—it is not New England, is it; whichever one he is going to get eventually in his mind—why it is that he supports a policy that will cost them more.

Senator Joyce: Mr President, I raise a point of order on relevance. The question is: does the minister accept in per person terms that Australia's carbon tax is at least nine times bigger than Europe's ETS? That is the question for the minister for sending people to Manus Island and Nauru.

The PRESIDENT: Order! I do draw the minister's attention to the question. The minister has one minute 20 seconds remaining.

Senator WONG: I know there is a lot of sookiness with the blokes on that side who do not like any scrutiny of their policy failure. Every time we mention the fact that their policy will cost more, they want to jump up and say, 'That is not relevant to the debate.' Well, the debate is about how you get to five per cent; that is the debate. We on this side have an economically responsible policy with tax cuts and additional benefits through the pension and family tax benefits system, all of which you oppose. You want to impose a higher cost on the economy, a higher cost on pensioners, a higher cost on families through your policy. In terms of the international situation, I would invite Senator Joyce to read the recent report from the Climate Commission which has been released, which concludes that 90 countries representing 90 per cent of the global economy have committed to reduce their carbon pollution and have policies in place to achieve their reduction. Many of these countries rely on a market-based mechanism and by next year around 850 million people will be living in a country, state or city with an emissions trading scheme, including countries like the UK, Germany, France, Sweden, Norway, New Zealand and Switzerland. Those are the relevant international facts. I know that Senator Joyce does not want to acknowledge that. *(Time expired)*

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:04): Mr President, I ask a supplementary question. Why does the minister persist in comparing Labor's carbon tax with countries that generate most of their electricity from renewable hydro sources? For instance, yesterday she compared us to Norway, which gets 98 per cent of its electricity from

hydro, and with Sweden and Switzerland, which get 40 per cent of their electricity from nuclear? How does the minister defend her comparison to countries that are so unlike Australia, or is she proposing that we make new dams or build nuclear power plants?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:04): I am still reeling. I think it is relevant to get the facts on the table. You obviously disagree. I think it is relevant to get the facts on the table about the prices that are part of your policy, about the prices which are in place in other parts of the world and about the relative costs of the government's scheme versus your scheme. We do believe that is relevant. Those opposite may choose to ignore these facts. I know that the senator does regularly ignore these facts. But the reality is that the world is acting on climate change. The coalition are committed to the same policy objective. Senator Joyce might have missed that, but they have committed to the same policy objective. The difference is that their policy will cost families more.

Senator JOYCE (Queensland—Leader of The Nationals in the Senate) (14:05): I have a further supplementary question, Mr President. I refer to the fact that the regional greenhouse gas initiative in the United States has just raised \$6 per person for the year. The New Zealand government has forecast carbon revenues of less than \$35 per person in 2012. China expects any carbon price to start below \$2 a tonne. Can the minister name any country in the world which raises anywhere near \$340 per person that Australia does, or are we just going to be stuck with the biggest carbon tax in the world?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:06): I certainly cannot name a country that has a price of \$1,300 per household for every year for a decade, but that is what we have got on offer over there—\$1,300 per household for every year out to 2020 to get to the same target as the government, just because those National Party members are running economic policy over there and the Liberal Party under Mr Abbott have walked away from a market mechanism and a price on carbon to a scheme funded by taxpayers, administered by bureaucrats and costing Australians more. That is the reality. That is the highest cost scheme on the planet.

Senator Joyce: Mr President, on a point of order on relevance. I have directly asked the question: can the minister name any country in the world that is going to pay more than \$340 per person per year? I can understand why she would be upset with the National Party having its say. After all, from the Left of the doormats of the Labor Party, I can understand why she would be upset.

The PRESIDENT: Order! That is now debating it. There is no point of order. The minister has 27 seconds remaining.

Senator WONG: I do not accept the senator's figures. If he wants to go down the per capita route then he would know that we are also the highest per capita emitter of any advanced economy in the world. I would suggest to him that you cannot have it both ways if you want to go down the per capita route, and that is the reality. The more important issue is this: he has signed up to the same target. His policy costs families more.

DISTINGUISHED VISITORS

The PRESIDENT (14:08): Order! I draw to the attention of honourable senators the presence in the chamber of a parliamentary delegation from the United Kingdom led by the Right Honourable the Lord Grocott MP. On behalf of all senators, I wish you a warm welcome to Australia and, in particular, to the Senate.

Honourable senators: Hear, hear!

QUESTIONS WITHOUT NOTICE

Solomon Islands

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (14:08): My question is to the Minister for Foreign Affairs, Senator Bob Carr. Can the minister update the Senate on the progress of the Regional Assistance Mission to the Solomon Islands?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:08): I wish to acknowledge the distinguished presence in the chamber of the Prime Minister of the Solomon Islands, the Hon. Gordon Darcy Lilo, and his delegation. We are honoured to have the Prime Minister visit Australia as a guest of government. Prime Minister Lilo is no stranger to this country. He studied under an AusAID scholarship at the Australian National University. The Prime Minister's visit comes directly after my visit to the Solomon Islands last weekend.

I was pleased to see the progress that Solomon Islands has made. With the help of RAMSI—the Regional Assistance Mission to Solomon Islands—since 2003 we have seen domestic revenue collected by the Solomon Islands government grow at an annual approximate average of 20 per cent between 2006 and 2011, allowing essential services to continue. There has been improved debt sustainability, measured by debt to GDP ratio, from 23 per cent to 18 per cent, seeing it well below the accepted benchmark of 30 per cent. Over 2,500 public servants have trained in the last three years in better administration and financial management. The country is stable, the economy is growing, people's lives are getting better—this could be a description of Australia under the present

government. I know that is the view the opposition is forming as I rehearse these encouraging figures—and many challenges remain, but the Solomon Islands and its people have more opportunities and brighter prospects for its future.

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (14:10): Mr President, I ask a supplementary question. Can the minister advise the Senate of RAMSI's transition?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:11): Australia has been proud to lead RAMSI. It has been a great regional endeavour. All Pacific Islands Forum countries have contributed personnel and shared its success. Based on the firm foundations of its achievements, RAMSI is now in transition. In consultation with the Solomon Islands and our regional partners, we are planning for the withdrawal of RAMSI's military component in the second half of 2013. Civilian activities will transition to Australia's bilateral aid program and the program of other donors. A robust RAMSI police presence will continue, building the capacity of the Solomon Islands Police Force. Australia's strong commitment to our bilateral partnership with Solomon Islands will continue. As I said at the weekend, we will be there as long as the people of Solomon Islands need us. (*Time expired*)

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (14:12): Mr President, I ask a further supplementary question. Can the minister advise the Senate of the future focus of Australia's aid program to the Solomon Islands?

Senator BOB CARR (New South Wales—Minister for Foreign Affairs) (14:12): Our development partnership with the Solomon Islands is strong. Over 2012 to 2013, Australia's aid to the Solomon Islands will: firstly, help over 150,000 children stay at school by supporting tuition-free basic education; secondly, will improve access to clean water and sanitation for 15,000 people in rural communities; and, thirdly, will build over 370 kilometres of road to improve access to markets and generate employment. This builds on our success to date. Australia's aid has helped to ensure that 86 per cent of women now deliver their babies with a skilled birth attendant present. It has reduced malaria to 46 cases per 1,000 people in 2011, down from 199 in 2003. More than 140,000 young Solomon Islanders got an education in 2011. (*Time expired*)

Carbon Pricing

Senator BIRMINGHAM (South Australia) (14:13): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to reports in our hometown paper, the *Adelaide Advertiser*, that indicate local footy clubs are facing a

\$30,000 to \$50,000 a year increase in their electricity bills, partly as a result of the carbon tax.

Government senators interjecting—

Senator BIRMINGHAM: That's not my care, that one—

The PRESIDENT: Order! Can we leave the football season alone? Senator Birmingham.

Senator BIRMINGHAM: Thank you, Mr President. It says they are facing a \$30,000 to \$50,000 increase in their electricity bills, partly as a result of the carbon tax, and that as result they may need to axe or reduce their involvement in programs that promote community and school involvement in sports. I ask the minister: is the government providing any direct assistance under its carbon tax package to the West Adelaide Football Club, Central Districts Football Club or South Adelaide Football Club to assist with their increased costs and ensure they are not reducing local community programs?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:14): Can I take this opportunity to congratulate Senator Birmingham on his appearance on *Q&A* for the first time last night. I have to say, judging from—

The PRESIDENT: Senator Wong, come to question.

Senator WONG: I will come to the question. I just thought that the chamber should be aware that I think he did very well. I suspect, however, from the tweets, that Senator Cameron might have bested him. I am very happy to take a not entirely unexpected question from Senator Birmingham. As he would know—and he was careful to word his question perhaps a little more subtly than Senator Joyce would have been capable of—it is misleading to attribute the entire electricity price rise experienced by clubs or in fact any other entity to the carbon price. I am advised that the Minister for Climate Change and Energy Efficiency's office spoke to West Adelaide Football Club this morning, who confirmed that around half of the price rise quoted today was due to network costs.

It is the case, and this government has been—

Senator Abetz interjecting—

Senator WONG: I will take the interjection, because—

The PRESIDENT: Order! Ignore, the interjection, Senator Wong.

Senator WONG: But, Mr President, it is so tempting!

The PRESIDENT: It might be tempting, but address the chair and address the question.

Senator WONG: Through you, Mr President, as I said, it is misleading—

Opposition senators interjecting—

The PRESIDENT: Order! Senator Wong is entitled to be heard in silence.

Senator WONG: It is misleading to attribute the entire price rise to the carbon price. I would point out two things. One is that the Treasury modelling did estimate the impact of the carbon price on sport and recreation at about 0.3 per cent. That is about 20c a week. That did include the impact on football clubs. The government did assume cost pass-through in its assessment of the Household Assistance Package, which provides, as the chamber would know, about \$10.10 in assistance through tax cuts and increased transfer payments. In addition, football clubs may be eligible to apply for the Community Energy Efficiency Program, a \$200 million funding stream for community organisations to retrofit facilities.

Senator BIRMINGHAM (South Australia) (14:16): Mr President, I ask a supplementary question. I refer the minister to reports from last week, also in the *Advertiser*, that indicate the Belair Hotel has faced a 45 per cent jump in the off-peak component of its monthly power bill due to the carbon tax, resulting in a rise in costs of more than \$4,000 for July alone, partly attributable to the carbon tax, which is impacting on its ability to sponsor or support community events. Is the government providing any direct assistance to any South Australian hotel or club to meet their additional carbon tax costs and to support the maintenance of community programs?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:17): This question was asked last week by the member for Boothby, and a number of us know the Belair Hotel reasonably well. I think Senator McEwen might know it pretty well, to be honest with you; she still lives up in the hills. I understand from the information that was provided as a result of the member for Boothby's question that, of the increase in that off-peak rate to which the senator referred, the overall carbon price effect was less than 10 per cent of the overall electricity bill. There were significant increases in network charges, which, I am advised, added over \$1,300 a month to the hotel's electricity costs. So, again, this is another one of those situations where the carbon impact is a particular amount. The government has assessed that in terms of its assistance to consumers, but of course there are obviously substantial increases driven by network costs.

Senator BIRMINGHAM (South Australia) (14:18): Mr President, I ask a further supplementary question. Given the minister has failed, despite all of Labor's rhetoric about carbon tax compensation, to identify one piece of assistance given to local footy clubs, other clubs generally or pubs in her home state, will the minister confirm that these organisations simply have to wear the costs associated with Labor's

carbon tax? Isn't it an inevitable consequence of the increased carbon tax costs that support for worthwhile local community programs by these clubs will be reduced?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:19): I do not agree with the premise of the question, and that was not the answer I gave. The difficulty is that Senator Birmingham is writing the questions before he hears the answers and is writing the questions with complete disregard for the facts. He might want to know that over 300,000 pensioners in South Australia will receive an additional \$338 extra per year if they are single and up to \$510 per year for couples combined in their pension payments, more than 127,000 families in South Australia will receive assistance through their family assistance payments, more than 19,000 self-funded retirees will receive additional assistance, more than 56,000 job seekers will get additional assistance per year, more than 25,000 single parents in SA will get an extra \$289 and more than 27,600 students in SA will get additional assistance under our package but will not get a single cent—just more tax—under yours, Senator.

Education Funding

Senator WRIGHT (South Australia) (14:20): My question is to the Minister representing the Minister for School Education, Early Childhood and Youth. Yesterday the Prime Minister told the independent schools association that all independent schools would receive an increase in funding under the government's plans. Will the minister make the same commitment to an increase in funding for all public schools?

Senator KIM CARR (Victoria—Minister for Human Services) (14:20): Thank you very much for the question, Senator Wright. The government has made it very clear that all schools in Australia—nearly 10,000 of them—will receive extra funding, whether they be Catholic schools, whether they be independent schools, whether they be public schools. What I can say to you, Senator, is that the great hallmark of the Labor Party in this country has been our commitment to education. Our No. 1 priority has been education.

I can say this to you, Senator: what attracted me to join the Labor Party in the mid-seventies was our commitment under the Whitlam government to equality of opportunity for all Australians. Education, of course, is the critical vehicle by which that has been done. That has remained our consistent position right throughout modern times: our commitment to ensure equality of opportunity for all Australians.

That is why this government has doubled the level of investment to \$13.9 billion, compared to the \$8.5 billion under the Howard government that was spent on school education.

What we have seen on the other side of the chamber is a fundamental commitment to injustice.

Only yesterday the Leader of the Opposition made it very clear in terms of education funding when he said:

So there is no question of injustice to public schools, if anything the injustice is the other way.

The view of the opposition is that public schools get too much money. The opposition position is that public education is overfunded. That is the measure. We talk a lot about class politics in this country; we are seeing something of their class politics here. *(Time expired)*

Senator WRIGHT (South Australia) (14:22): Mr President, I ask a supplementary question. Thank you for your answer, Minister. The Gonski recommendations are about improving our education system. They are designed to provide every child in Australia with the best educational opportunities, irrespective of their background or where they live. Does the minister agree that our public schools should be the benchmark for good-quality education in Australia and that they are the only way of guaranteeing that every child can access the very best educational opportunities throughout the country?

Senator KIM CARR (Victoria—Minister for Human Services) (14:23): Labor have always believed that education is very, very important. Our critical priority in government has been investment in education. We are committed to ensuring that every child in this country gets a fair go. Public education in this country is dependent on the proposition that everybody who walks through the door is entitled to a place—everybody who walks through the door gets a place in public schools. That is the big difference in terms of the education system. There is no discrimination in public education. Our commitment is to ensure that every child gets a fair go and in particular that state education—public education—is properly funded to ensure that there is genuine equality of opportunity for all Australians in this country. That is the premise of a decent country. That is the premise of a social democracy.

Senator WRIGHT (South Australia) (14:24): Mr President, I ask a further supplementary question. The opposition spokesperson on education, the member for Sturt, Christopher Pyne, is quoted today as saying the opposition will increase funding to all schools. The opposition has previously announced proposed cuts to education totalling \$2.8 billion. Can the minister explain how it would be possible to increase funding to all schools at the same time as making such cuts?

Senator KIM CARR (Victoria—Minister for Human Services) (14:25): The opposition plan to cut funding for schools and, on the latest count, it will be by \$2.8 billion. You are correct in that number, Senator Wright. We have heard a lot about their attitudes to teachers. We have heard a lot about their attitudes to

trade training. We have heard a lot about their attitudes to TAFE cuts, which we are now seeing throughout the states. For instance, in the state of Victoria we are seeing, when Liberal governments get into office, massive cuts—550 people out of the education department in Victoria. We have seen the cuts in Queensland. There is a long and established pattern. Under Jeff Kennett we saw the closure of over 300 schools in my state. We have seen a pattern of behaviour towards public education exhibited by the conservative party in this country that goes back generations. This is the standing orders of the Liberal Party when it comes to cutting the budget. They start with the schools and particularly with public education. There is no doubt in my mind that they will implement that promise—\$2.8 billion in cuts. *(Time expired)*

Carbon Pricing

Senator EDWARDS (South Australia) (14:26): My question is to the Minister representing the Minister for Climate Change and Energy Efficiency, Senator Wong. I refer the minister to reports that Pete's Fish Farm, a rainbow trout producer in Kalangadoo in the south-east of her home state of South Australia, will close within the next 12 months as a result of increases in their electricity costs. Their electricity rate has increased from 27.7c to 36.39c a kilowatt hour following the introduction of the carbon tax, making their business unviable. What is the government's message to businesses like Pete's Fish Farm, which, as a result of the carbon tax, cannot afford the increases in their power prices and as a consequence will close their business?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:27): I do not have personal knowledge of Pete's Fish Farm at Kalangadoo.

Senator Ian Macdonald interjecting—

Senator Bernardi interjecting—

Senator WONG: There is an echo at the end of the chamber.

Honourable senators interjecting—

The PRESIDENT: Order! When there is silence we will proceed. Senator Wong.

Senator WONG: I do not have personal knowledge of the fish farm at Kalangadoo to which the senator refers, but I suspect my response on this issue would be the same as it has been on every other—

Senator Ian Macdonald: You couldn't care less.

Senator Ryan interjecting—

Senator Feeney: They could answer their own questions.

Senator WONG: Yes, we could just allow Senator Macdonald to answer, I suppose. It could be an

interesting conversation between him and Senator Edwards.

The PRESIDENT: Senator Wong, ignore the interjections.

Senator WONG: I suspect my answer on this would be the same as on other issues. The first point is on materiality. You have to be careful in suggesting that the entirety of an electricity price increase is as a result of the carbon price because self-evidently and demonstrably that is untrue. I have gone through that. Even Mr Turnbull and the opposition spokesperson have also recognised this, that the majority of price increases that people have experienced in the last few years have been as a result of network costs, not as a result of the carbon price.

The second point is that the government did assume that there would be costs passed through, that there would be an impact on the consumer price index of about 0.7 per cent. In fact, for food it was less. That has been factored into the Household Assistance Package. In response to Senator Birmingham, I went through the hundreds of thousands of South Australians who will get assistance under the government's clean energy future package, which is obviously relevant to the question the senator asks. If the senator does care about jobs, I would hope he recognises that under this government we have seen 810,000 jobs created. *(Time expired)*

Senator EDWARDS (South Australia) (14:29): Mr President, I ask a supplementary question of the minister. On the point of materiality of entirety, as the minister coins it, I refer the minister to the fact that the owner of Pete's Fish Farm described the carbon tax as 'the final nail in the coffin, with no hope of passing on the additional cost to consumers'. Given that the Prime Minister said yesterday that small businesses should just pass on the costs of carbon tax to consumers, does this confirm that Labor does not understand small business or that it just does not care?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:30): The government does understand the circumstances of many of Australia's small businesses, which is why we wanted to provide a tax cut to them, which was opposed by those opposite. That is why we put in place an instant asset write-off and an increased tax break for small business, which were opposed by those opposite. If the senator does not know, he has been committed by his shadow finance minister to revoke that, to impose a tax hike on small business. The government understands the needs of small business and big business, which is why we have a loss carry-back policy funded in the last budget, the vast majority of which will be to the benefit of small businesses which, by a great margin, will be the majority recipients, in Treasury's assessment, of that tax assistance and that tax break.

All of these things were opposed by those opposite, so if the senator wants to come in here and lecture us about small business I suggest he goes to them and explain why he thinks they should pay more tax.

Senator EDWARDS (South Australia) (14:31): Mr President, I ask a final supplementary question. Given the carbon tax will make margins for small businesses even lower, resulting in many business owners walking away from the businesses they run and the people they employ, how many more victims will the carbon tax have to claim before the government axes this cruel tax?

Senator WONG (South Australia—Minister for Finance and Deregulation) (14:32): I suggest that with the words of that question the senator has demonstrated the confected outrage from a bloke who is part of a party that have said: 'We're not going to pass on a company tax cut with a head start for small business. Oh, no! We don't want that. We don't want a tax break through an instant asset write-off for small business. Oh, no! We don't want that. We don't want loss carry-back for small business. Oh, no! We don't want that!' To come in here and give us a lecture about why small business is doing it tough when they have stood in the way of the policies of this government to give tax breaks to small business, when they are going to go to the next election and say to all small businesses: 'Guess what? We're going to give you a tax hike,' I think how genuine a person is or is not is demonstrated by the policy position they are holding.

Education Funding

Senator THORP (Tasmania) (14:33): My question is to the Minister representing the Minister for School Education, Early Childhood and Youth, Senator Kim Carr. Can the minister inform the Senate of the nature of the government's investments in Australia's public schools?

Senator KIM CARR (Victoria—Minister for Human Services) (14:33): I thank the senator for her question and I acknowledge her longstanding expertise in education. The government is very proud of the money it has invested in schools, whether they be public, private or catholic. As I have already indicated, on our watch investment has doubled. What we are seeing now, if you look at table 2.5 in Budget Paper No. 3, is that in the next four years the government will provide an estimated \$20.9 billion to state governments to support state education services in government schools. Of that, \$17.8 billion will go to government schools under the national schools special-purpose payments.

I specifically draw the Senate's attention to the fact that we are providing \$1.5 billion to lift the performances of the most disadvantaged schools in the Commonwealth. We are investing record levels in all public schools. And this is at the moment—that is,

before the Gonski response has been implemented. There are nearly 2.3 million Australian children in those schools—two-thirds of the children of this generation.

Senator Brandis: Tell us about the class war and the hit list.

Senator KIM CARR: Lord Brandis, you ought to know something about class war when it comes to education.

The PRESIDENT: Order! Senator Carr, you will refer to another senator by their correct title.

Senator KIM CARR: Sure, when Senator Brandis lines up the support for Mr Abbott's cuts to public education he will recognise that 85 per cent of Indigenous children attend public schools; 83 per cent of children from remote and regional areas attend public schools; 80 per cent of students from the lowest income brackets attend public schools; and 78 per cent of students with a disability attend public schools. These are the people you are attacking when you say there is an injustice in the level of support for public education. *(Time expired)*

Senator THORP (Tasmania) (14:35): Mr President, I ask a supplementary question. How does the government respond to concerns that students in public schools get more than their fair share?

Senator KIM CARR (Victoria—Minister for Human Services) (14:36): Mr Abbott said yesterday:

So there is no question of injustice to public schools here. If anything, the injustice is the other way.

He made the statement that we are, in fact, providing an injustice when we talk about public education support at this moment. This is a position that would seriously weaken public education in rural and regional Australia. This is a position that would seriously undermine the capacity of this country to remain at the level of equality we have provided. I ask a simple question: of the \$17.8 billion for special-purpose payments to the states, how much would be cut to provide justice under a Liberal government?

Which schools would be cut? Which groups of disadvantaged Australians would miss out as a result of the policies of Mr Abbott, if they were ever implemented? Because that is the proposition he is advancing. There is an injustice in the level of support that he wants to right and that means cuts. *(Time expired)*

Senator THORP (Tasmania) (14:37): Mr President, I have a supplementary question. Is the government confident that its investments can be justified in the context of a tough fiscal climate?

Senator KIM CARR (Victoria—Minister for Human Services) (14:37): The Labor point of view is that there can be no higher priority than spending on education. This is the basic premise on which we

operate. What we say is you do not take money off the poor to give to the rich. We actually say that every Australian is entitled to a fair go. What we have seen, for instance in Victoria where there is a Liberal government—a real example of real action—is that 3,600 staff have been cut from the public service, 550 from the education department with \$19 million cut from schools and staff bonuses for struggling families. In Victoria some \$300 million has been cut from TAFE funding.

In Queensland we have seen a similar pattern where the Premier of that state argues that there should be 20,000 fewer public servants. He has already got rid of 7,000 of them. We know what Jeff Kennett's attitude is from when he said that all state budgets need to be 'savaged'—that was the word he used. *(Time expired)*

Live Animal Exports

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (14:38): My question is to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig. Can the minister confirm that the Indonesian government has effectively halved the quota for both live cattle and boxed beef exported from Australia over the last 12 months, and that it is now imposing a five per cent import tariff on all cattle from Australia and demanding a pedigree certificate for all commercial breeding stock sent to Indonesia? Will the minister admit that these trade restrictions are as a direct result of him suspending the shipment of live cattle to Indonesia last year, and will he advise what action the Australian government is taking to restore this critically important trade in both live cattle and boxed meat with our nearest trading partner?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:39): I thank Senator Back for his question. Can I say that Australia has a strong relationship with Indonesia, and our governments continue to work together. In July, I travelled to Darwin to take part in a meeting with the Indonesian government, as part of a wider Australian government delegation to discuss the broader bilateral relationship. I also joined the members of the Indonesian government delegation, led by President Yudhoyono, at a lunch hosted by the Australia Indonesia Business Council. While in Darwin I also met with the agricultural industry to discuss trade with Indonesia and domestic opportunities across a number of agricultural commodities, including the live cattle trade. Market access issues were raised and were high on the agenda, as was the call from the Indonesians for domestic investment from the Australian industry. The Australian government encourages mutually beneficial investment in the Indonesian agricultural sector, and that strengthens the bilateral arrangement.

Turning to the specific issues raised about cattle consignments, DAFF is aware that at least one consignment of Australian breeder cattle has not been released to the Indonesian importers by Indonesian authorities, and the department understands that the Indonesian authorities are seeking clarification of the pedigree of these animals. The Australian government has not been notified of any changes to Indonesia's requirements for information about the pedigree of imported breeder cattle. The Australian government does not certify the pedigree of breeder cattle for the Indonesian market. These are directly commercial matters. The government is consulting with the Australian livestock exporters on the issue and will make appropriate representations to the Indonesian government if necessary. In terms of the live cattle import tariffs, I am aware of industry concerns. *(Time expired)*

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (14:41): Mr President, I have a supplementary question. Is the minister aware of reports that Indonesian government ministers have stated they now intend to import beef and buffalo meat from so-called foot-and-mouth-disease-free zones in affected countries such as Brazil and from India whose herds are endemic for foot-and-mouth disease? Can he explain what measures he is taking to prevent such action, given the high risk of diseases such as foot-and-mouth disease, contagious bovine pleuropneumonia and meat-borne diseases affecting humans which will reach Indonesia and possibly Australia?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:42): I thank Senator Back for his continued scare campaign across these areas. The Australian live—

Opposition senators interjecting—

The PRESIDENT: Order on both sides!

Senator LUDWIG: The Australian live export trade to Indonesia and other markets continues to support jobs, families and communities right across regional Australia. The government's reforms place animal welfare at the heart of the live export trade. This new system does provide to the supply chain with a range of support for the control of the animals that leave Australia for foreign markets. We have a system in place that identifies us, to ensure that we have secure supply chains. Those opposite are arguing against a secure supply chain. What they want is poor animal welfare outcomes. *(Time expired)*

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (14:43): Mr President, I have a second supplementary question. This is a secure supply chain. Will the minister confirm that Indian buffalo meat is being packaged and labelled as 'product of Australia' then sold illegally into Indonesia,

and that the catalyst for this highly damaging trade is in direct response to the doubling and even trebling of beef prices in Indonesian villages due to the cut in supply of beef from Australia due to the minister's actions?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:44): Again, Senator Back wants to dwell on a scare campaign. If he has any evidence of this then he should provide it to the relevant authorities. What is important to recognise is that this government continues to support the live animal export industry. We continue to ensure that it manages its animal welfare issues.

Those opposite want to ignore that. Those opposite would ensure that poor animal welfare outcomes would result. They would ensure that the trade would not have a bright future. They would make sure that the industry would not be able to have an animal welfare outcome, and that is the position that the opposition have taken. Of course, one of the animal welfare outcomes that the opposition want to do is take away the supply chain, and they want to ensure that the supply chain does not ensure that animal welfare outcomes are dealt with. All they want to do is harp on with the negative scare campaign on this industry. *(Time expired)*

Environment: Koalas

Senator WATERS (Queensland) (14:45): My question is to the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, Senator Conroy. Last night's *Four Corners* program highlighted the plight of our national icon, the koala. It showed how tragically koala populations in New South Wales and Queensland are crashing—

Honourable senators interjecting—

The PRESIDENT: Order on my right and on my left! Senator Conroy is entitled to hear the question and Senator Waters is entitled to be heard.

Senator WATERS: Last night's program showed how koala populations in New South Wales and Queensland are crashing, threatened by climate change, disease, dogs and rampant land clearing from both urban development and mining. In April this year, Minister Burke gained the ability to protect koalas from big developments in Queensland, New South Wales and the ACT when koalas were added to the federal threatened species list following a Senate inquiry into koalas instigated by the Greens. Minister Burke said on *Four Corners* 'the only reason we've had to intervene at all is that the states on their own have allowed numbers to continue to go into freefall'. So why, through April's COAG agreement, has the government agreed to hand off federal responsibility for threatened species, including koalas, right back to

the states, who are the ones sending koalas to extinction?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:46): I thank the senator for her question. The Gillard government is committed to the protection and recovery of the koala, one of Australia's iconic species. Koalas hold a special place in our community. That is why we have taken action to help protect the koala.

Honourable senators interjecting—

The PRESIDENT: Order on both sides! Senator Waters is entitled to hear the answer. When there is silence we will proceed.

Senator CONROY: That is why we have taken action to help protect the koala for future generations by listing it as a vulnerable species under national environmental law. The Queensland, New South Wales and ACT koala populations continue to be under serious threat from habitat loss, vehicle strikes, dog attacks and disease.

Honourable senators interjecting—

The PRESIDENT: Order! I repeat again Senator Waters is entitled to hear the answer.

Senator CONROY: These populations have been listed as a vulnerable species. This listing gives the koala an extra layer of protection. The koala is, as I have said, a national icon and national protection provides for consistent treatment of the koala under national environmental law and standards, rather than the previous state by state based approach. Any new developments likely to have a significant impact on koalas in Queensland, New South Wales and the ACT must be assessed and approved under national environmental law. As a result of listing, a national recovery plan is being developed for koalas within Queensland, New South Wales and the ACT. The recovery plan will be multijurisdictional and will present a stronger scientific basis for the protection of the species. The Australian government has been leading a national environmental law reform process through COAG. The COAG agreement is about streamlining the processes to give ministers answers on environmental decisions in a better time frame. It is about the state governments having to raise their standards to the Commonwealth standards. This Labor government has absolutely no intention of allowing any state to use the COAG process as a way of lowering environmental standards. *(Time expired)*

Senator WATERS (Queensland) (14:50): I thank the minister for his answer. I ask a supplementary question. The koala has been estimated to contribute over \$1 billion annually in tourism dollars. Minister

Burke said last night that state processes were sending koalas on a path of extinction in the wild, which he said was absolutely not good enough and that that was why we had—

Honourable senators interjecting—

The PRESIDENT: Order! Continue, Senator Waters.

Senator WATERS: Minister Burke said that that was why we had environmental regulation. So what does the minister say to tourism operators about the federal government now ditching its new responsibilities to look after koalas and leaving their survival to the whim of the states, those same states which have driven the huge decline in koala numbers?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:51): We reject the premise of that assertion. This government is serious about maintaining environmental standards, including for the koala and its habitat. The Gillard government has committed \$300,000 of new funding under the National Environmental Research Program to find out more about koala habitat. This funding will be used to develop new survey methods that will improve our knowledge of the quality of koala habitat using remote sensing and will help fill important data gaps to enhance our understanding and ability to protect the species. Over \$10 million was approved under the first round of the biodiversity fund for six projects in New South Wales and one in Victoria aimed at rehabilitation, restoration and linking of koala habitat. If there is any further information on the question I will seek that from Minister Burke.

Senator WATERS (Queensland) (14:51): Mr President, I ask a further supplementary question. Why is the government so eager to abandon its responsibility to protect our nationally significant environmental matters like koalas, other threatened species, migratory species, National Heritage places and Ramsar wetlands? How, given the consistent poor record of the states to protect those places or to comply with standards that already exist, can you possibly think that is consistent with our international obligations?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:51): As I said, I and this government fundamentally reject the assertions that are the premise of that question. It is not true. I have just outlined on behalf of Minister Burke a whole range of protections and made the absolute point—and I will make it again—that we will not allow the lowering of

standards as part of this process. We will not allow it, and we will not allow the Greens to represent that that is the case. If there is any further information that the minister might like to respond to, I will seek that for you.

Workplace Relations

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (14:52): My question is to the Minister representing the Minister for Employment and Workplace Relations, Senator Ludwig. I refer to reports that Dean Mighell, boss of the ETU, a significant donor to the Australian Labor Party and to the Australian Greens, is the subject of an internal audit for the sale of the majority stake in an ETU financial advisory firm for a 10th of its value, a potential loss of half a million dollars of union members' funds? And further, that statements made by Mr Mighell that the ETU continue to receive funds have been contradicted by Mr Tony Devlin who took full control of Southern Alliance Financial Services? Is Fair Work Australia investigating these matters to ensure that union members' funds are not being misspent and, if not, why not?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:53): I thank Senator Bushby for his question. In terms of the Victorian Electrical Trades Union allegations, under this government the regulation of registered organisations and financial service providers has never been stronger. We have recently amended the Fair Work (Registered Organisations) Act to require that officers must disclose material personal interest in a matter that relates to the affairs of their organisational branch and that obligation extends to the officer or a relative of the officer. Organisations and branches must disclose this information to members. We have introduced tough new laws to tackle conflict of interest in financial planning and superannuation. Changes made also require organisations and branches to disclose payments that have been made to related parties of the organisation or branches and other persons or bodies. A 'related body' is defined to include entities that are controlled by organisations or officials of the organisations.

Trade unions are overwhelmingly professional and democratic and they represent the interests of members in a highly effective way. Australia has had a long and free independent trade union movement that is representative of and accountable to its members. Trade unions are overwhelmingly, as I said, professional, democratic and highly effective.

The CEPU has advised Fair Work Australia of Federal Court proceedings and FWA is monitoring—

The PRESIDENT: Order! Senator Abetz, on a point of order?

Senator Abetz: The question was about the ETU—
Senator Kim Carr interjecting—

Senator Abetz: and the question was whether or not Fair Work Australia was investigating the matter to which Senator Bushby referred in his question.

Senator Conroy: It is a broad question.

Senator Abetz: It is not a broad question at all, Mr President.

The PRESIDENT: I am listening closely to the answer, Senator Abetz. I do not believe there is a point of order at this stage.

Senator LUDWIG: What I was going to go on to say before Senator Abetz provided his lack of knowledge across industrial relations is that FWA is independent of government and the Libs should understand that by now. *(Time expired)*

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (14:56): Mr President, I ask a supplementary question. I refer to reports that bosses of the Australian Maritime Union, which is affiliated with and a major donor for the Labor Party, are hindering police and government efforts to clean up the ports following allegations of rampant corruption, crime, gangs, armed smuggling and drugs. Is Fair Work Australia investigating these matters as possible contraventions of the Fair Work (Registered Organisations) Act?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:56): I thank the senator for his ongoing interest in industrial relations. Dealing with news reports today concerning allegations—perhaps it is worth while finalising the Victorian ETU matter—are the subject of Federal Court proceedings. This government is on the side of accountability for representative organisations. We have proposed and have moved the Fair Work Act to deal with that. If there are allegations of impropriety then they should be reported to the relevant body so they can be investigated. If the senator has information that is relevant then he should refer the matter; he should not sit on it and use it in question time. I am confident that Fair Work Australia, as an independent body, will independently investigate matters that, if you say are true, can be raised and put to it. *(Time expired)*

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (14:58): Mr President, I have a further supplementary question. I note the minister and his answer to the primary question mentioned the CEPU, so I refer to concerns about the bosses of the CEPU, also a Labor donor, engaging in unauthorised rule changes, a huge budget deficit and money being spent on private motor vehicles and other things. Is Fair Work Australia investigating these matters as

possible contraventions of the Fair Work (Registered Organisations) Act? In relation to all of these matters, will Fair Work Australia be as speedy as they were with their investigation into the Health Services Union!

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (14:58): I thank the senator for his question. As I was saying, if he does have evidence of the serious allegations that he raises he should provide them to the relevant authority. I am confident that Fair Work Australia, according to its charter, will investigate all those matters, if they have substance and are brought to their attention.

I will ask Minister Shorten if there are further matters that he wishes to respond to on the second supplementary question.

Broadband

Senator GALLACHER (South Australia) (14:59): My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Has the minister seen the recent statement by Jeremy Hunt about the UK's ambition for broadband and does this have implications for Australian broadband policy?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (14:59): I thank the senator for his question. In an article in the *Australian Financial Review* today the member for Wentworth has again used the plan of BT in the UK as the model for his broadband policy. The UK minister responsible for communications, Mr Jeremy Hunt, does not seem to agree with his Conservative colleague on the importance of broadband policy. Yesterday, Minister Hunt emphasised the need to get broadband policy right. Here is what Mr Hunt had to say:

My nightmare is that when it comes to broadband we could make the same mistake as we made with high speed rail.

When our high speed rail network opens from London to Birmingham in 2026 it will be 45 years after the French opened theirs, and 62 years after the Japanese opened theirs. Just think how much our economy has been held back by lower productivity over half a century.

We must not make the same short-sighted mistake. He went on to say, 'We must never fall into the trap of saying any speed is enough. Today's super fast is tomorrow's super slow.' Minister Hunt went on to respond to a House of Lords committee, saying:

... they suggest that fibre to the cabinet is the sum of the government's ambitions. They are wrong. Where fibre to the cabinet is the chosen solution, it is most likely to be a temporary stepping stone to fibre to the home.

That is right, 'a temporary stepping stone to fibre to the home'. Mr Hunt has demonstrated the short-sighted

vision of those opposite, particularly the short-sighted, cowardly approach that those down in that far corner are showing on behalf of their constituents.

Senator GALLACHER (South Australia) (15:01): Mr President, I ask a supplementary question. Can the minister advise whether fibre to the node has been considered by the Australian government, and is the minister aware of fibre-to-the-node developments in other markets close to Australia?

Senator Birmingham interjecting—

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (15:02): Yes, you are right, Senator Birmingham, but the government did initially consider an FTTN solution.

Senator Birmingham interjecting—

Senator CONROY: As senators would be aware, and Senator Birmingham is interjecting, we went to tender but could not find a commercial partner for that solution. But more significantly the expert panel, with some of Australia's finest minds in telecommunications, that evaluated the tender advised the government that FTTP was the future for broadband—to the premises. 'FTTN is a costly diversion from the optimal path of fibre to the home and does not offer value for taxpayers' dollars.' That is what the experts said. I know the experts are not people whom those on the other side might take any notice of but, just like the New Zealand government, who abandoned midstream their fibre to the node bill to build fibre to the premises, Mr Turnbull and those opposite are being— (*Time expired*)

Senator GALLACHER (South Australia) (15:03): Mr President, I ask a further supplementary question. Is the minister aware of any other countries where fibre-to-the-premises networks are being built?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy, Deputy Leader of the Government in the Senate and Minister Assisting the Prime Minister on Digital Productivity) (15:03): Mr Turnbull told us to look at the UK. Mr Turnbull told us to look at New Zealand. We have seen that both of those countries are turning to fibre to the premises. But Mr Turnbull did not mention France. You might ask why he did not mention France, because France is building a fibre-to-the-home network to 15 million French citizens by 2020. Does Mr Turnbull know about France? Let me turn to Mr Turnbull's declaration of interests, which he has just released about his personal investments. Did he invest in British Telecom? No. Has he invested in New Zealand Telecom's Chorus? No. Did he invest in French Telecom and its fibre-to-the-home network? Yes. Mr Turnbull knows a business when he sees it,

but what he should be doing is putting his mouth where his money is—in fibre to the home. *(Time expired)*

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Carbon Pricing

Live Cattle Trade

Senator BIRMINGHAM (South Australia)
(15:05):

I move:

That the Senate take note of the answers given by the Minister for Finance and Deregulation (Senator Wong) and the Minister for Agriculture, Fisheries and Forestry (Senator Ludwig) to questions without notice asked by Senators Birmingham, Edwards and Back today relating to the carbon tax and to the live export of cattle to Indonesia.

In listening to Senator Wong, the Prime Minister and everybody in the government at present I have to say that I am starting to wonder a few things about the carbon tax package. I am starting to wonder why there is any so-called compensation attached to the carbon tax package at all. I am starting to wonder, when I look at the budget papers and see that they claim that the carbon tax will generate billions of dollars annually in revenue, how that is the case and whether there is in fact a gigantic mistake in the budget papers. When I listen to the Prime Minister, when I listen to Minister Wong and when I listen to ministers or members across this government, I am left with the impression that the carbon tax has no impact at all. I am left with the impression that it is not having any cost impact anywhere on anything. It seems that every time a question is asked all we hear from the government—all we hear from the Prime Minister, from Minister Combet, from Minister Wong or from anyone else—is that the price rises are the fault of the states. These price rises are all the fault of the networks. It is all the fault of anything else except, of course, the government's own carbon tax.

We know that this is just a falsehood. We know that the government is misleading the Australian people through this claim, through this pretence that all cost rises are somehow the result of anything other than the carbon tax. How do we know this? We know it because we have the facts to demonstrate it. We have the facts, and those facts stem originally from the government's own Treasury modelling, modelling that demonstrated the carbon tax would cause a nine per cent rise on electricity prices and that would then be felt with further increases over subsequent years. Has that modelling proven to be true? By and large it has. How do we know that? Because we have the facts of what has happened state-by-state to electricity prices since the carbon tax.

We know that in New South Wales, yes, prices have gone up 18.1 per cent. It is correct to say that is not all

attributable to the carbon tax, but 8.9 per cent of that increase is attributable to the carbon tax. So because of Labor's carbon tax, power prices in New South Wales are now 8.9 per cent higher and they of course will keep going up and up and up with the carbon tax. We know that in Queensland the estimate is that of the 13.1 per cent increase in electricity prices, 11 per cent of that is attributable to the carbon tax. So Queenslanders are paying 11 per cent more on their electricity bills as a result of the carbon tax. We know that Western Australians are paying 9.1 per cent more. People here in the ACT, they are paying 14.2 per cent extra on their electricity bills as a result of the latest carbon tax. The state with the smallest increase in electricity prices as a result of the carbon tax is my home state. In South Australia, the carbon tax has only just pushed prices up, apparently, by about 4.6 per cent. Why? Because we already had the highest electricity prices in the country. We already were more dependent on wind and higher cost sources of energy to start with, and that means that we still have the highest prices in the country.

So for all that we hear from those opposite—and from Minister Wong, as we did today in question time, where she tries to pretend carbon tax or electricity price rises are somebody else's fault—the evidence is speaking for itself. The government's modelling has been correct. People are facing a 10 per cent price rise across the board as a result of the carbon tax. Whether it is sporting clubs, as I asked the minister about today, whether it is pubs or clubs generally, whether it is small businesses—none of them get any compensation. The minister could not identify a single club or a small business today that was receiving any compensation as a result of these price rises, but all of them are facing real price rises.

Senator McEWEN (South Australia—Government Whip in the Senate) (15:10): I too would like to contribute to this debate today, this motion to take note of answers in question time, and put to rest some of the outrageous claims made in particular by Senator Birmingham and Senator Edwards. It is disappointing to see those two South Australian senators continue on the scare campaign which has been perfected by their leader, Mr Abbott. I see they have joined the parade around the country where Mr Abbott talks down the economy, where he talks down the jobs that are being created in Australia by this government and where he frightens people into believing that pretty soon we are going to have Armageddon. Last time I looked, Whyalla was still there and doing pretty well.

The opposition neglect to tell the people of Australia the whole story of the policy of tackling climate change. They certainly forget to tell the people of Australia that they too actually believe in reducing harmful carbon emissions and that they have a policy to do that and to achieve exactly the same targets in

reducing carbon emissions that the federal government has. They went to the last election with that policy as well. It is just that they have a different way of going about it. Their way of going about it is to slug every household in Australia with a bill of \$1,300 for their ridiculous and inefficient direct action plan. It is very disappointing that Senator Birmingham, who used to be a moderate in this place, has turned to the dark side when it comes to tackling climate change. He has to spout the position of his leader, which we know he probably does not really believe.

The opposition is also pretty good at neglecting to tell Australians that in fact we are in good shape here, compared to other countries. Senator Wong said in one of her answers today that under this government 800,000 new jobs have been created in Australia under this government. There are record investments in the pipeline in Australia, particularly in mining and especially in our home state of South Australia. We have low unemployment and we are on track to return the budget to a surplus. These are things that we should be proud of; we should not be talking them down.

The opposition also do not tell Australians the real story of why electricity prices are increasing. We know that average electricity bills went up by 50 per cent in the last four years—before the carbon price. The most important driver of power prices going up is investment in network infrastructure. And now every consumer, for every \$100 you pay on your power bill, \$51 of that is to go towards the cost of infrastructure. And, yes, that is because state governments have neglected to build infrastructure. And we could probably go back through the history of South Australia and pinpoint the time when the Liberals privatised electricity as when infrastructure was not built because of the privatised system. And now our state governments are having to play catch up in that space.

Treasury modelling shows that under a carbon price there will of course be a moderate increase to the cost of living for average households and small businesses. We have never hidden that fact. We have put in compensatory mechanisms to deal with that fact, including an average increase in household payments of \$10.10 per week, which is to outstrip the \$3.30 average increase in a household bill. We also put in place lots of mechanisms to assist small businesses to deal with the increased cost from the price on carbon, and that includes the \$6½ thousand instant asset write-off, which I can tell you is very popular in small businesses that I talk to around the place. I remind Australia's small businesses that they can make a claim for that asset write-off for every asset purchase that they make.

We also know that power cuts are quite a small component of the average small business costs. But in

this whole debate we should not forget the reason for the carbon price is so that the big polluters—less than 500 or so companies in—pay for polluting. Yes, they will pass on some of those costs and the government has acknowledged that and put in place numerous mechanisms to offset the small costs that are passed on down the line. It would be nice if the federal opposition told the truth instead of continuing the scaremongering campaign that they have waged ad nauseam. Australians are beginning to understand that they are dealing with people who fail to tell the truth. (*Time expired*)

Senator EDWARDS (South Australia) (15:15): I rise to take note of answers given by Senator Wong. In one of her answers she made reference to the inaugural appearance of my colleague Senator Birmingham on *Q&A* last night. I must say that, when she awarded Senator Birmingham's performance a second to that of Senator Cameron, I was astounded because if you had not been a participant in the Australian political race or an observer of it you would not have known whether Senator Birmingham had two of his other parliamentary colleagues sitting alongside of him in Senator Cameron and former minister in a Labor government Graham Richardson. I thought they all put in a very good performance in a great critique of this current Labor government. On that basis I thank Senator Birmingham for his leadership in that debate on the ABC.

I do also concur with Senator Birmingham's remarks asking where this mysterious \$7.8 billion is going to come from. We ask questions of the Labor Party or the Minister representing the Minister for Energy and Climate Change about where it is going to come from. Apparently it is not going to come from anybody, but we are going to have this compensation package which is going to fix anything anyway. Every time we ask a question about Pete's Fish Farm or the Blair Hotel or the clubs in South Australia or Western Australia or Queensland, we hear it is just going to be fixed with assistance. I notice that there was reference to 300,000 pensioners getting compensation but no reference at all the clubs of those community organisations which rely so heavily on the energy costs. There is the fact that the impact of rising energy costs—which we all acknowledge by your very own modelling, as Senator Birmingham quite rightly pointed out—varies from state to state but is a massive impost on small business.

The jig is up. I reckon Robert Gottlieb belled the cat this morning in his 10:49 AM article, 'Why the carbon tax does not work'. He refers to:

A group of Nobel laureates and other top experts who combined to form the Copenhagen Consensus believe that the world's emphasis on emissions reductions by carbon pricing and similar mechanisms is simply not going to work. They propose a cheaper but more radical global solution.

The Labor Party and their policymakers should listen to that. The article goes on:

The Copenhagen consensus was formed in Denmark to bring together top global knowledge to determine the best way to allocate funds to solve particular problems.

Gottliebseisen says of the group:

When it comes to carbon, they concluded that because electricity had become essential to the current living standards of a vast number of people on the globe, simply pricing electricity at higher levels would not make an enormous difference to usage.

They said this in reference to people trying to climb out of their poverty:

They concluded that the most economic way to reduce global poverty was to make sure that pre-school children have sufficient nutrition. Without pre-school nutrition, adult capabilities are greatly reduced and they are much less productive members of the community.

This is a big issue for those on the other side and I do not hear it acknowledged at all. We need energy. This is sort of the carrot and stick approach except the government has the stick. I commend the report to everybody. They conclude by summarising that standards of living will be increased with the use of energy. However, we need to do development and research for better ways of renewable energy rather than to tax out of existence what we have.

Just in reference to Senator Wong's other answers, she talked about the tax cuts and the asset write-offs and the carryback of losses. I can guarantee you in my business experience a one per cent tax cut on a business that is not making any money. Pete's Fish Farm at Kalangadoo is not making any money. (*Time expired*)

Senator STERLE (Western Australia) (15:20): I was not going to mention it, but I did not see *Q&A* last night and I am sure the senators in this place did their parties proud. I had something far more important to do than watch *Q&A*. I had to sort out my sock drawer.

I rise to take note of a question from Senator Back to Minister Ludwig. I heard the comment, 'What would he know, he is a vet?' I do have admiration for Senator Back. I work closely with him when he is dishing it up to me as I am walking out of the chamber as he did the other day quite fairly. You got one in for free, Senator Back--through you Mr Deputy President—but we will have the chance to square the ledger somewhere along the line.

In terms of the live export trade, I do stand in this building as a very proud senator for Western Australia. Those who do know my whereabouts—and hopefully not as many as I think might—know that I proudly haunt the Kimberley. At every opportunity I am in the Kimberley. Whether it be in the west or the east, the live export trade is very topical. Live cattle and beef are the main industry in the Kimberley. It is not the

only part of Western Australia for those who might not know. There is also the Pilbara.

I also know that when the live export ban was on and the Rural, Regional Affairs and Transport References Committee conducted a number of inquiries around the Top End of Australia and also one here, in Canberra, I made sure that I was in Broome to hear from the pastoralists—not only the Kimberley pastoralists and the Pilbara pastoralists but also the 22 Kimberley Aboriginal pastoralists—who were affected. They have their own little association, headed by Billy Lawford from Bohemia Downs. I know the drama that the ban on the live export trade created.

I honestly say, with my hand on my heart, that I know the pain that it would have given the minister to have to put that ban on. But let us just talk about that ban—the ban that lasted a month. Yes, it did get everyone jumping who had an interest in live export, and they are not only the pastoralists but also others who rely on cattle for a living. They are the numerous truckies, trucking companies, truck drivers, auto electricians, tyre suppliers, fencing suppliers and local shops in those regional and rural towns, as well as a host of other businesses. Let me talk about this from the west Kimberley perspective—the towns of Broome and Derby. People think that Broome is bubbling. It is the dry season, which is normally the height of the tourist season. Tourism is really suffering. Trust me: they are suffering. The high Australian dollar is making it very hard for them. But I also have to tell you, Mr Deputy President—and I know that Senator Back will back me on this—the pearling industry is all but defunct there. They are struggling. So the live export of cattle is very important.

I think the way that everyone has jumped on the government has been unfair. Let us take a couple of steps back to what I call the 'shocking behaviour' on behalf of Animals Australia and the RSPCA—and I will tell you why. It was right of them to bring to the attention of the government the mistreatment of animals, but they sat on that information for months. For months and months, they sat on it. If they had been fair dinkum, they would have been in here that quick that they would have burnt the carpet trying to get to the minister's office.

I stand in support of the live cattle industry, but I would much rather see a more active boxed-meat industry. Nothing would give me greater pleasure than to go back to my old trucking days when there was an abattoir in Kununurra, an abattoir in Wyndham, an abattoir in Broome and an abattoir in Derby. There was also one, but not for cattle, in Carnarvon. And I also think Port Hedland might have had some activity around there. I remember all those meatworkers and businesses that relied on the live export cattle trade.

I fully stand shoulder to shoulder with the government on its decision to put the ban on because we had to lift our standards. There are no ifs or buts about it. When I was at the PGA conference in Broome in June, I said that it would have been lovely if we could have done it without having to put a ban on. The sad reality is that we had to put the ban on. We had to lift the treatment of animals in Indonesia to world-class standards. I understand that the Indonesians have put some pressure on Australian growers. But I can tell you from the PGA in Broome that they are confident that their export figures will return to pre-ban days. *(Time expired)*

Senator BACK (Western Australia—Deputy Opposition Whip in the Senate) (15:25): I thank Senator Sterle for the support he gave the industry last year. Had he not given it such support, the industry might not have been returned quite so quickly. But I do remind Senator Sterle again that I did write to the minister in the days before he made the decision to suspend the trade, and I invited the opportunity to speak with him at length so that he could avert doing that.

But the matter of greatest concern to me today is that, when I put my questions to Senator Ludwig, whose answers I wish to take note of today, I was raising with him matters of enormous concern to biosecurity in this country. Only yesterday did he answer a Dorothy Dixier from Senator Moore in which he very proudly spoke of his role in protecting biosecurity in this country. When I raised with him the very real threats of a return of foot-and-mouth disease to Indonesia and, subsequently, to this country and the possibility of a return to this country of contagious bovine pleuropneumonia, a disease that took us some 130 years to eradicate, all he could come back and say to me was 'a scare campaign'. This is the minister who has responsibility to the Australian community for one of our most important industries.

The third highest revenue export income earning industry for this country is agriculture. For Minister Ludwig to stand up here and claim this side of the house, and particularly me, a veterinarian of some 40 years' experience, has no interest in biosecurity or in animal welfare matters is a deep insult to me. It is an absolutely deep insult to me. I raised with him the question of whether or not he is aware and can he confirm that beef is being illegally repackaged as 'product of Australia' and being brought into Indonesia from India—a country which is rife with foot-and-mouth disease and, indeed, contagious bovine pleuropneumonia. The only retort he could give back to me was that he regarded that as a scare campaign.

Let me debunk, if I can, a theory which was put around this time last year about the live export trade, which is that, if the live export trade were discontinued

in any country of any type, it would be replaced with chilled or frozen—in other words, boxed meat. We know from our experience with Saudi Arabia in the 1980s, when we lost the live export trade of sheep to Saudi Arabia for political purposes, there was a concurrent drop-off and cessation of boxed beef and sheepmeat sales to Saudi Arabia. I will have more to say about Saudi Arabia in coming days.

What we see evidence of at this very time is that the Indonesians are punishing Australia because of the act by Senator Ludwig in suspending the supply of protein to low socioeconomic Indonesian families last year. The reprisals are many. We see the reprisals, do we not, in the attitude of the Indonesians towards our attempts to solve the asylum seeker problem. We see it in the efforts of the Indonesian government now to accept the notion of accepting beef from the United States. This is a market that is on our doorstep. Would the Americans be keen to get into the Indonesia trade? Of course they would. Do we have a freight advantage? Yes, we do. But what is going to happen now as a direct result of the insult visited upon Indonesia following the actions of Senator Ludwig? These were actions that he did not need to take, I emphasise. We have a circumstance now in which the number of live cattle has been reduced this year to 283,000 animals—this is down from 770,000 in 2009. At the same time, we are also see a halving of the amount of boxed chilled beef going into Indonesia. This is exactly in line with what we saw Saudi Arabia do years ago.

As I have raised the point, another country that Indonesian government ministers have said they will seek to import beef from is Brazil. Not all of Brazil has foot-and-mouth disease. There are so-called foot-and-mouth-disease-free zones. But we know that the leakage of movement of live cattle from foot-and-mouth-disease zones into zones which are free of foot-and-mouth-disease are very wide and loose. I repeat the fear which has been expressed by the veterinary profession and throughout the community that if we end up accepting beef from those countries into Indonesia, those diseases will return to Indonesia, and with our porous borders we will end up with them in Australia.

Question agreed to.

Koalas

Senator WATERS (Queensland) (15:30): I move:

That the Senate take note of the answer given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to a question without notice asked by Senator Waters today relating to the protection of koalas.

I do not know how many folk had the opportunity to see the *Four Corners* program on the ABC last night, which documented the plight of our national icon. It

was very alarming, and it exposed the fact that populations are crashing along those eastern states, particularly in my state of Queensland, where we have seen mulga lands populations and koalas in the so-called koala coast drop by up to 80 per cent in 10 years. That is an unbelievably rapid decline and it demonstrates just how urgent this problem is.

I was pleased that the former Leader of the Greens, former Senator Bob Brown, was successful in getting a Senate inquiry up into the status of koalas and their health and the need for their protection federally. That Senate inquiry recommended some action and ultimately it culminated in the federal minister listing the koala on our threatened species lists. While it was a very sad day for that to have to happen, it does at least mean that the federal government can now do something to try and protect the koala and turn around that trajectory that is on a pathway to extinction. That happened in April this year and it meant that Minister Burke now has the power to do something to stop or to put conditions on big developments in koala habitat that are going to have a significant impact on koalas in Queensland, New South Wales and the ACT. Minister Burke, I thought quite wisely and correctly, last night acknowledged on the program that 'the only reason we have had to intervene at all is that the states have on their own allowed numbers to continue to go into free fall'. He is exactly right. Under the states' watch we have seen koala populations completely bottom out and they are on a path to extinction in Queensland and New South Wales.

My question to the Minister representing the Minister for Sustainability, Environment, Water, Population and Communities, the answer to which I found a little unsatisfactory, was why on earth, when the minister himself is acknowledging that the states are sending koalas to extinction, would the minister give away these new powers that he now has to protect koalas right back to those very state governments that are obliterating koalas and koala habitat? It makes absolutely no sense to me. I was eager to understand the government's reasoning and unfortunately I still remain perplexed as to the logic behind that decision. As listeners might know, in April the Prime Minister capitulated to big business and state Premiers and agreed to hand off much of the federal government powers to protect the environment, hard-fought powers that have taken a good 30 years to gain and to expand. With one stroke of a pen, responsibility for threatened species, for migratory species, for Ramsar wetlands and for National Heritage places was all signed over to the states come March next year.

Folk might recall that last week I spoke in the chamber about the terrible record the states have in upholding their obligations to protect the environment and the fact that they cannot even comply with existing standards to do that. I am absolutely floored and

flabbergasted as to why the federal government would have any trust that a government at the state level can do its job to protect the environment. It is something that I think the Australian public would be outraged at. What is the point of stepping up and protecting koalas and then shortly thereafter agreeing to give that power right back to the states, which are sending them on that trajectory of extinction? I will continue to raise this issue as it seems there is no good reason behind the government's position and unfortunately no inclination to change that position.

I would urge Australians who are concerned about koalas or who are concerned about our internationally significant wetlands, our migratory species and our heritage places—the Kimberley is a great example—to write to the Prime Minister, to write to federal minister Tony Burke and to write to their local MP and ask them to reconsider this decision to wash their hands of responsibility for those key icons and key species. The states have shown they will not protect the environment, they will not make those hard decisions, they will simply give developers and miners everything they want. Short-term profits will reign supreme and future generations will feel the loss of those environmental icons. If you are concerned about Australia's environment, please let the government know that they must change their mind about handing off their powers to the states, which will trash the environment and send our species to extinction.

Question agreed to.

PETITIONS

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

Tessa Nilo National Park

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

The petition of the undersigned shows:

We need to urgently address the situation of the Sumatran Elephants

Your petitioners ask/request that the Senate:

Speak to the Australian Government to encourage the Government of Indonesia to prevent the illegal destruction of Tessa Nilo National Park, in Riau Province. Tessa Nilo is one of the last homes of the Sumatran Elephant (and Sumatran Tiger), but this supposed protected area is rapidly disappearing as a result of illegal logging and the encroachment of agricultural plantations that surround the park.

by **Senator Pratt** (from 220 citizens).

Marriage

In support of Marriage as currently defined in the Marriage Act (1961)

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

Noting the following:

- that marriage is currently defined in the *Marriage Act* (1961) as being *the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.* each element of which is essential to the integrity of marriage and each of which was inserted in to the *Marriage Act* on a bipartisan basis in 2004;
- that marriage is one of the great institutions on which our society is built;
- that marriage provides for a stable family and is the umbrella under which children are nurtured and grow; and
- that marriage is worthy of protection and support

We, the undersigned petitioners, call on the Senate to support the definition of marriage as currently contained within the *Marriage Act* (1961)

by Senator Parry (from 30 citizens).

Petitions received.

NOTICES

Presentation

Senator Siewert to move:

That the following matter be referred to the Community Affairs References Committee for inquiry and report by 27 March 2013:

Australia's domestic response to the World Health Organization's (WHO) Commission on Social Determinants of Health report, *Closing the gap within a generation*, including the:

- (a) Government's response to other relevant WHO reports and declarations;
- (b) impacts of the Government's response;
- (c) extent to which the Commonwealth is adopting a social determinants of health approach through:
 - (i) relevant Commonwealth programs and services,
 - (ii) the structures and activities of national health agencies, and
 - (iii) appropriate Commonwealth data gathering and analysis; and
- (d) scope for improving awareness of social determinants of health:
 - (i) in the community,
 - (ii) within government programs, and
 - (iii) amongst health and community service providers.

Senator Moore to move:

That the Community Affairs Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 11 September 2012, from 12.30 pm.

Senator Bishop to move:

That the Economics Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Thursday, 23 August 2012, from 3.30 pm.

Senator Back to move:

That the time for the presentation of the report of the Education, Employment and Workplace Relations References Committee on its inquiry into the allowance

payment system be extended to Thursday, 29 November 2012.

Senator Bernardi to move:

That the Senate—

(a) notes the Treasurer's promise in the 2011-12 Budget to create half a million new jobs over the next 2 years; and

(b) calls on the Government to keep its promise to create half a million new jobs by 1 June 2013.

Senator Birmingham to move:

That the Senate—

(a) believes a free press is central to accountability and transparency in government; and

(b) rejects proposals for new government-appointed arbiters of news media content or government-imposed fines on news media content.

Senator Siewert to move:

That the Senate calls on the Government to:

(a) examine the new evidence presented by Dr Salisbury, that there are archaeologically and culturally significant but insufficiently documented dinosaur footprint trails right along the Dampier Peninsula coastline, including at the site of the proposed James Price Point gas hub precinct;

(b) commission further science that will identify the extent of the dinosaur footprint fossils in the proposed James Price Point gas hub precinct and the impact that construction of a gas hub would have on these fossils; and

(c) undertake a full environmental, social and heritage impact assessment of the James Price Point gas hub precinct proposal.

Postponement

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Whish-Wilson for today, proposing the disallowance of the Small Pelagic Fishery Total Allowable Catch (Quota Species) Determination 2012, postponed till 22 August 2012.

BUSINESS

Rearrangement

The following item of business was postponed:

Business of the Senate, notice of motion No. 1, by Senator Whish-Wilson relating to the small pelagic fishery.

Consideration of Legislation

Senator JACINTA COLLINS (Victoria—Manager of Government Business in the Senate and Parliamentary Secretary for School Education and Workplace Relations) (15:36): On behalf of Senator Feeney, I move:

That the government business orders of the day relating to the Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2011, the Customs Amendment (Anti-dumping Improvements) Bill (No. 2) 2012 and the Customs Tariff (Anti-Dumping) Amendment Bill (No. 1) 2012 may be taken together for their remaining stages.

Question agreed to.

COMMITTEES

Public Accounts and Audit Committee

Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (15:37): I, and also on behalf of Senator Bishop, move:

That the Joint Committee of Public Accounts and Audit be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 12 September 2012, from 11 am, followed by a public hearing to take evidence for the committee's inquiry into the review of Auditor-General's reports.

Question agreed to.

Public Accounts and Audit Committee

Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (15:37): I, and also on behalf of Senator Bishop, move:

That the Joint Committee of Public Accounts and Audit be authorised to hold a private meeting otherwise than in accordance with standing order 33(1), including a private briefing, during the sitting of the Senate on Wednesday, 19 September 2012, from 11 am to 12.15 pm, followed by a public hearing to take evidence for the committee's inquiry into the review of Auditor-General's reports.

Question agreed to.

Cyber-Safety Committee

Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (15:37): I, and also on behalf of Senator Bilyk, move:

That the Joint Select Committee on Cyber Safety be authorised to hold public meetings to take evidence for the committee's inquiry into cyber-safety for senior Australians during the sittings of the Senate, from 4.15 pm, as follows:

- (a) on Wednesday, 22 August 2012; and
- (b) on Wednesday, 12 September 2012.

Question agreed to.

Treaties Committee

Meeting

Senator McEWEN (South Australia—Government Whip in the Senate) (15:37): I, and also on behalf of Senator Birmingham, move:

That the Joint Standing Committee on Treaties be authorised to hold public meetings to take evidence for the committee's ongoing review of tabled treaties during the sittings of the Senate, from 10 am to 1 pm, as follows:

- (a) on Monday, 10 September 2012; and
- (b) on Monday, 17 September 2012.

Question agreed to.

MOTIONS

Russia

Senator XENOPHON (South Australia) (15:38): I move:

That the Senate—

(a) notes that:

(i) on Friday, 17 August 2012, Ms Yekaterina Samutsevich, Ms Nadezhda Tolokonnikova and Ms Maria Alyokhina, members of the Russian band Pussy Riot, were each sentenced to 2 years in jail after being found guilty by a Russian court of 'hooliganism motivated by religious hatred' following a performance which was critical of President Vladimir Putin in Moscow's Christ the Saviour Cathedral,

(ii) the Russian Orthodox Church described what the women did as 'sacrilege' but also requested clemency be shown to the convicted women, and

(iii) Amnesty International has stated that, while the women's protest may have been offensive, their sentence was a 'bitter blow to freedom of expression'; and

(b) expresses its concern at the severity of the sentence and the seeming intolerance of freedom of expression in Russia.

Question agreed to.

Otitis Media

Senator SIEWERT (Western Australia—Australian Greens Whip) (15:38): I seek leave to amend general business notice of motion No. 862 standing in my name relating to otitis media.

Senator McEWEN (South Australia—Government Whip in the Senate) (15:38): Mr Deputy President, I am not objecting but I am unaware as to whether we have seen the amended motion.

The DEPUTY PRESIDENT: I understand it has been circulated in the chamber, Senator McEwen.

Leave granted.

Senator SIEWERT: I move the motion as amended:

That the Senate—

(a) Acknowledges that this week is Hearing Awareness Week and recognises that poor hearing health outcomes are a significant challenge to Closing the Gap for Aboriginal and Torres Strait Islander peoples.

(b) Notes that Otitis Media is a serious childhood disease that disproportionately affects Aboriginal and Torres Strait Islander children and, left unaddressed, can lead to poor life outcomes.

(c) Calls on the Government:

(i) To take a cross-disciplinary approach to Otitis Media in young people;

(ii) Commit to tackling Otitis Media and its associated educational and social impacts as a national problem and working collaboratively with the States on a holistic, sustained, cross-disciplinary approach to addressing this issue and its effects;

(iii) Facilitate the interaction between health, education and family support programs that address the impacts of

Otitis Media and focus funding towards programs that foster cross-disciplinary action.

Question agreed to.

Norman, Mr Peter

Senator DI NATALE (Victoria) (15:39): I seek leave to amend general business notice of motion No. 861 standing in my name relating to Mr Peter Norman and the 1968 Olympic Games.

Leave granted.

Senator DI NATALE: I move the motion as amended:

That the Senate—

(a) recognises the achievements of Peter Norman who won the silver medal in the 200m sprint at the 1968 Mexico City Olympics;

(b) acknowledges his brave action in the cause of racial equality by wearing an Olympic Project for Human Rights badge during the medal ceremony as African-American athletes Tommie Smith and John Carlos famously gave the 'black power' salute;

(c) apologises to Peter Norman and his family for the failure to acknowledge his brave act and the failure to invite him as an official guest to the Sydney Olympic Games.

Senator DI NATALE: I seek leave to make a short statement.

The DEPUTY PRESIDENT: Leave is granted for one minute.

Senator DI NATALE: I wish to thank Andrew Leigh in the lower house for introducing a similar motion, which I think is a really important motion, as it speaks about the Peter Norman story. It is a story that has not been told in Australia. In the 1968 Olympics, Peter Norman decided to take a stand. He took a stand in the moment against injustice and racism. He took it despite the consequences that flowed from that. It is a really important Australian story that has not been told. We need to make sure that this is part of the Australian story. I would like to see us go from today, to move beyond simply acknowledging the wrong that has been done, and make something positive of his story. We would like to see an award recognising the achievements and the bravery of Peter Norman for what he has done in the name of sport.

Question agreed to.

Russia

Senator MILNE (Tasmania—Leader of the Australian Greens) (15:41): I move:

That the Senate—

(a) notes:

(i) three members of the Russian group Pussy Riot have been sentenced to 2 years imprisonment for 'hooliganism' and 'homosexual propaganda' following a non-violent performance,

(ii) the Governments of the United States of America, Britain, France and Germany have denounced the sentences as disproportionate,

(iii) several laws recently passed in Russia restrict freedom of expression, severely punish dissent, ban pride marches and restrict gay rights, and

(iv) several Russian opposition leaders, including Mr Garry Kasparov and Mr Sergei Udaltsov, have been arrested for rallying in defence of Pussy Riot; and

(b) calls on the Government to express its concerns to the Russian Government regarding the intimidation and prosecution of opposition activists and the disproportionate sentence given to Pussy Riot.

Notice of motion altered on 20 August 2012 pursuant to standing order 77.

Question agreed to.

Asylum Seekers

Senator HANSON-YOUNG (South Australia) (15:42): I move:

That the Senate—

(a) calls on the Government to immediately:

(i) increase the Humanitarian Program to 20 000 as recommended by the Report of the expert panel on asylum seekers (Houston report), dated August 2012, in recommendation 2, and

(ii) make available an additional \$70 million to fund programs in support of a regional framework for improved protections, registration, processing, integration, resettlement and returns as per recommendation 3; and

(b) calls for immediate disclosure of the Government's implementation timeframe for the remaining Houston report recommendations.

The DEPUTY PRESIDENT: The question is that the motion moved by Senator Hanson-Young be agreed to.

The Senate divided. [13:47]

(The Deputy President—Senator Parry)

Ayes 10

Noes 29

Majority 19

AYES

Di Natale, R
Ludlam, S
Rhiannon, L
Waters, LJ
Wright, PL

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

NOES

Birmingham, SJ
Cameron, DN
Edwards, S
Feeney, D
Furner, ML
Kroger, H (teller)
Madigan, JJ
Mason, B
McKenzie, B

Bushby, DC
Collins, JMA
Farrell, D
Fifield, MP
Gallacher, AM
Lundy, KA
Marshall, GM
McEwen, A
McLucas, J

NOES

Moore, CM
 Parry, S
 Pratt, LC
 Smith, D
 Thistlethwaite, M
 Urquhart, AE

Nash, F
 Polley, H
 Singh, LM
 Stephens, U
 Thorp, LE

Question negatived.

MATTERS OF PUBLIC IMPORTANCE**Education Funding**

The DEPUTY PRESIDENT (15:49): The President has received the following letter from Senator Fifield:

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

The Gillard Government's Gonski school funding model which threatens to slash funding to one in three Australian schools and its continuing failure to provide education certainty for students and parents.

Is the proposal supported?

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

The DEPUTY 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 MASON (Queensland) (15:49): What is it about the Australian Labor Party and this government? The implementation of the Gonski review says more about the Labor Party and indeed the Labor government than I ever wanted to know. Listening this afternoon to my old friend Senator Kim Carr in question time answered any unresolved questions I had about Labor and education. They have still learned nothing from the past, sadly. They are still fighting—as Senator Carr is—the class warfare of post World War II Australia, still believing that behind every little Catholic primary school lurks a King's School or a Geelong Grammar and still believing that only wealthy Australians send their children to non-government schools. The Australian Labor Party still believe that, and of course they are wrong.

The Labor Party are wrong, Mr Deputy President, but you know about my generosity with the Australian Labor Party. I am prepared to forgive the fact that their history is very poor. They do not understand history; they have never understood it. But what I cannot bear about the government is their total failure to implement their own policies effectively. As an amateur historian I forgive them, but as a legislator I am afraid I cannot forgive them. They have failed.

This government has handled the Gonski review appallingly. Its approach has been incompetent and chaotic. The soft spot for this government over the last five years has been the implementation of its own policies—the failure to effectively implement. We have witnessed everything, of course, from the NBN to pink batts. It has been a shambles. In fact, sometimes it has been an expensive and a very deadly shambles. But let us not go there this afternoon, because I am not in the mood for it. I could recite all those horrors, but I shall spare the chamber this afternoon.

However, I will not spare the chamber a couple of the horrors from my area of education. Senator Carr spoke about education, I concede, with passion this afternoon and a certain amount of belligerent eloquence. In fact, the implementation of Labor's education policies has been a shambles. It started off with computers in schools with Mr Rudd saying before the 2007 election that laptops will be the toolboxes of the 21st century. Actually it was not a bad idea, but the implementation was a shambles. What happened? The government discovered that in fact they did not have the money. They had not assessed the actual cost of the computers and the necessary infrastructure. The scheme was totally underfunded. In the end, of course, Labor state governments and parents and teachers of non-government schools had to come to the party.

That was the first one, the beginning of the education shambles. So much for the revolution. In the end, the Commonwealth had to spend twice as much money as it thought it would. Five years later, this year I asked at budget estimates about it, and I was told that only eight out of 2,650 high schools have been connected by the Commonwealth to high-speed fibre broadband, which was at the heart of the government's promise. So much for the Rudd government's education revolution.

Then we had the national curriculum, and that was a shambles. Why? First of all, it was heavily politicised. Sadly, too many of those on the cultural left politicised the national curriculum. Not a good idea, not very clever. But even forgetting that, because I am in a good mood, what happened? The implementation became a shambles. There have been numerous delays. What was supposed to happen? On the face of it, a national curriculum was not a bad idea, but a few years on it was put back again because the state governments thought, 'This might actually be bad for our kids. This curriculum is not a positive.' In fact, the former New South Wales state Labor government thought the national curriculum was a step back for the schoolchildren of New South Wales. Again, another shambles.

What is the granddaddy education shambles of them all? The Building the Education Revolution—who could ever forget what a total shambles that was? Let's

just face it: the school halls that were built by state governments cost somewhere between 30 and 50 per cent more than equivalent buildings constructed by independent or Catholic schools. That is an indictment. Those school halls cost from 30 to 50 per cent more than they would have if they had been built by independent schools or by Catholic schools. That is a disgrace.

What is even worse is that, finally, the Auditor-General said that the bureaucracy, the Commonwealth Public Service, did not have the oversight mechanisms, the wherewithal and the expertise to assess whether the value for money was good. The Public Service did not know whether the Commonwealth was getting good value for money. That, in a sense, was the heart of the entire problem. But, today, my friend Senator Carr said, 'There has been an education revolution.'

We have spent something like \$1½ billion of taxpayers' money more than we should have on school halls. We spent billions more on computers and on the national curriculum—somewhere around \$20 billion. What has been the outcome of the education revolution? Our test results internationally have gone backwards—\$20 billion on the education revolution and our scores internationally have gone backwards. I call that an education devolution. All that money and the test results have gone backwards. But apparently I am a doomsayer. 'It will all be okay because Mr Gonski and the Gonski review will fix it all.' That is what I am now told.

You would think that the government would have done some modelling, wouldn't you, Deputy President, about the effect that the Gonski model would have on schools? At budget estimates, I asked the government for their modelling. 'Have they done any modelling?' They had not done it for the BER, but I thought they may have done it for Gonski. Guess what? I was told that they had not done any modelling about the effect of Gonski on the 10,000 schools in this country—no modelling at all. Now, we know why no modelling was done. The government are very cunning, but we know why. It is because there is a new hit list—3,254 schools will be worse off, one-third of Australia's total number of schools. Of those 3,254 schools, more than two-thirds are government schools.

Senator Thorp: Rubbish.

Senator MASON: Yes, they are. Over 2,330 of those 3,254 schools are government schools. Two-thirds of those schools are government schools and they will be worse off. So much for the rhetoric and the pandering today from Senator Carr, my old friend. Most of those schools are government schools. How much worse off on average will they be? Mr Deputy President, I will tell you, just between you and me, each of those schools will on average be half a million

dollars worse off. That is what this government will do to government schools.

Senator Jacinta Collins: Mr Deputy President, I rise on a point of order. Senator Mason is misleading the Senate. I ask you to call him to order.

The DEPUTY PRESIDENT: That is a debating point, Senator Collins. Senator Mason.

Senator MASON: Mr Deputy President, you might ask why the government went down the road of the Gonski review. I will tell you why. Ever since the Menzies government believed that the Commonwealth should aid Catholic and independent schools, the Labor Party have been driven by a pathetic class envy and an ideological vengeance. They do not like the idea of government supporting non-government schools, even though without it the taxpayer will be far worse off. Most of the schools the Commonwealth government supports are systemic, poorer Catholic schools, and it is time the Australian Labor Party learnt that.

They have never got over the fact. Most are not Kings, Geelong Grammar or anything like it. In the past we have had to put up with Mr Latham's hit list—

Senator Jacinta Collins: Where did you go to school, Brett?

Senator MASON: and now we have a new, far more sophisticated hit list made up of 3,200 schools, two thirds of which are government schools, and everyone should be afraid.

Senator STEPHENS (New South Wales) (16:00): Senator Mason is completely shameless this afternoon. To think that we could be in here having this debate and he could be talking to us about Catholic systemic schools! Let me remind the Senate that this is the 50th anniversary of the school aid debate, which happened down the road in Goulburn, and we have been celebrating the victory of it ever since. It was all about funding schools.

This matter of public importance that we are debating today indicates quite a lot about the sense of confusion and disarray that the opposition is in about the Gonski report. Of the messages that have come out this week, on the one hand we had the shadow spokesperson saying that the opposition will not support but repeal the Gonski recommendations and any legislation that is put in place and, on the other hand, we had the Leader of the Opposition yesterday telling the independent schools not only that public schools were funded enough but also that if there was any injustice it was against private and systemic schools. Let us see if we can get some kind of sense coming from the opposition on what has been an extraordinary debate.

When we think about Australia as a knowledge nation, let us give credit to those eminent people who contributed to the Gonski review. That was a serious

attempt, 40 years after the Karmel report, to transform our education sector and to ensure that we have an education system that will work for children into the future. As for the notion that this is only about funding, if we go to the model of funding what does the Gonski review say? It says that the Howard government's SES model for funding private schools based on their SES as determined by the census data was flawed, and it was widely criticised because around half of the non-government schools received more than they would otherwise have been entitled to, leaving ordinary Australian taxpayers about \$800 a year out of pocket. The Gonski review and the critique of the report say that the Gonski model is far more attentive to the needs of government schools and in the spirit of public education generally than was the coalition's SES model.

Senator Mason came in here today and I honestly believe I could see his nose growing—Pinocchio, here we come! It was an outrageous abuse of the parliament to pretend—the question Senator Mason did not answer was: where did he go to school? Let us be very clear, this motion is a fear-mongering motion suggesting that there are going to be schools closed and funding to one in three Australian schools slashed. It is absolutely wrong. It is absolute rubbish. The Gonski review recognised the challenges we have in inequality of funding in our school system and made some serious responses and recommendations. We as a government have not articulated our position finally. We have said that we are looking to implement the recommendations in the interests of schools, communities, parents and learning—isn't that what schools are all about?

The whole notion that the Gonski report was a series of isolated recommendations is a nonsense. The recommendations show a significant strategy to address the challenges that we have in our schools. In the forward estimates those challenges are estimated to be about \$5 billion a year. That is a serious challenge for all of us but it is a serious challenge that is about the Australian nation. It is about school reform. It is about the integration of funding between Commonwealth and state. It is about identifying what targets need to be supported where there is significant disadvantage. I would have expected Senator Mason, who is in here as a champion of schools and school education, to be supporting the Gonski reforms and recommendations knowing that teachers are out there trying to do their best. They are doing a great job but they need to be supported, and class size is probably a good place to start.

Senator WRIGHT (South Australia) (16:05): I am pleased to be able to stand up here and talk on this matter of public importance about one of the most important issues confronting Australia, and that is the quality of our education system. I am quite despondent

about the way the debate has deteriorated so rapidly, especially over the last few weeks.

If we think about the antecedents to the Gonski review into the funding of schools in Australia, we wonder why it was tasked with the important job of having a serious overhaul of the system. That was because we knew, and have known for a significant period, that we have, essentially, an inequitable system of school funding in Australia. It is a system that has been cobbled together over time, with opportunistic, political, ad hoc decision making about how we fund our school systems. We also know—and this is probably one of the main reasons that there was an impetus to having this review take place—that performance in Australian education systems has been slipping seriously, especially in the last decade.

So it is really disingenuous, first of all, for Senator Mason to suggest that that was something the current government is responsible for. By my calculations, that was happening on Prime Minister Howard's patch. We know that since 2000 there has been a serious decline in the way Australian students are performing by international standards. Our scores on the PISA tests—the Program for International Student Assessment—have shown that where we were pretty proudly performing in literacy, mathematical literacy and scientific literacy, over the last nine years we have seriously declined in those.

Clearly that really poses a dilemma for a nation that it is facing serious challenges in the 21st century for which we need the best educated population that we can have.

But let's go back to the Gonski review. As Senator Stephens pointed out, that is an eminent panel of people. There has been no scuttlebutt or impugning of their credentials. When the review was released publicly in February, it was generally met with great respect because there was clearly a great amount of research and erudition behind the findings of that review. In absolute good faith those people, who are all highly experienced in education and highly motivated to reform Australia's discredited education funding system, came up with what is essentially a blueprint for generational change that is based on principles of consistency and fairness. Almost unanimously the initial report was greeted with respect and great consideration. Many commentators on public education and education generally in Australia have welcomed not only the findings in that report which confirmed what many people were already concerned about but also the really clear-eyed, fair, logical proposal as to how to reform the system.

We know, as I said, that the precursors to the review were that there was concern there is an inequitable system and that our performance standards are slipping. What did the review find? The review found

that there is clearly an inequitable system: that the system is broken, it is illogical, it is not transparent, it is underfunded and essentially it is unfair. The review found too that performance is indeed slipping, both internationally and within Australia. Worst of all, the review found something that is to our eternal shame, and that is why I cannot be flippant about this, even if that is the tone of the debate today. This finding is that in Australia children's opportunity to reach their full potential is nothing to do with their inherent ability; it is about the opportunity that they have, the schools they attend, and the ability of those schools to do the job that we need them to do if we are going to educate our population for this century.

Clearly we know that there are performance gaps across Australia that are causally linked to advantage. These gaps are not linked to inherent ability. I do not buy the idea that children in particular areas that we can map are somehow less able than children who live in more advantaged areas. We actually know it is about the resources available to the schools and the schools that are available for those kids to attend. We know that children who are experiencing disadvantage are going to need additional supports at school to help them to reach their full potential. I cannot understand how anyone could argue with the basic proposition that comes out of the Gonski review, which is that we absolutely need to provide a fair, level playing field so that every single kid in Australia has the opportunity to reach their full potential. It is not only fair and right for each and every kid, it is obviously what a clever, smart and fair society would do.

I would like to go to an email that I received yesterday from a parent in Victoria that really touched me, because she was watching the debate that has been going on and spoke from the heart. In a sense, this email sums up some of the important aspects of this debate, which is knowing that the public education system still educates the vast majority of our kids and educates the vast majority of those children who are going to experience some disadvantage and some difficulty in achieving their full potential, whether it be because they are from low-socioeconomic backgrounds, they are Indigenous kids, they are being educated in remote schools, or they are children with a disability—80 per cent of children with a disability are educated in our public schools. Whatever the reason, it is clear that if we are going to fund schools on the basis of need then a significant amount of additional funding—it has been estimated we will need \$5 billion or more to bring us up to less than the OECD average—is needed to go to schools on the basis of need and to those schools that are going to be looking particularly at educating kids from disadvantaged backgrounds.

The person who wrote to me said that her children attend or have attended a country college in Victoria,

and her eldest daughter and son both achieved strong results in year 12 which saw them accepted into their first preferences for uni. She said: 'We have a daughter in year 9 and a son in year 6.' She has been on the school council for 12 of the last 13 years, including three years as the chairperson. In that little country school, the number of pupils in the secondary section hovers around 100 to 110. There are currently 13 students, she thinks, who have been taken out of that school to go to private boarding schools—so they have been required to board away from home. She said: 'That is over 10 per cent of our potential funding gone from both the community and the school, making it increasingly difficult for our local school to provide the breadth and depth of curriculum to the students that remain.' But she went on to say: 'Our school is exemplary. It is led by an inspiring principal who is driven by her desire for all students to have every opportunity to receive their best. They offer a wider curriculum than they should be able to, and they do this for the good of the students. We often have students achieving ATARs in the 90s, and have a high percentage of students that go on to either further study or full-time employment.'

She goes on to make the point that she understands that people have a choice and choose to send their children away because of traditional sporting reasons, but she also raises the issue that some parents now, because of the divisive, discrediting and unseemly argument that is going on, believe that they cannot exercise a real choice by sending their kids to public schools. That is partly because public schools have been underfunded and partly because there is an attempt to divide the community, I think, and to sell an idea that to get an education now it is necessary for those who have the means to send their children away from the public education system and to private schools. She goes on to say: 'My husband and I are proud products of the public education system and we choose for our children to also be a part of this system,' because she also thinks that it is good for all the students at the school and for the community as a whole. She said that her children by going to this school learn how to learn and to value all members of society, rather than being removed from those who may be seen to be a part of the fragmentation where you end up having different classes of society being educated in different ways.

She says, 'I know my children can reach their goals with hard work and the continued support from us and the school.' I think she is a good example of someone who understands the importance of having a universal, quality public education system so that all children have the opportunity to be educated together and have the opportunity to reach their best potential. We need to get on with Gonski, so no more delay and no more division from the coalition! Let us just get on and do

what Gonski has told us we know we need to do for the sake of our kids.

Senator NASH (New South Wales—Deputy Leader of The Nationals in the Senate) (16:14): So yet another policy mess and policy shambles from the Labor government! It is a bit like Alvin and the Chipmunks as the hits just keep on coming. Every time we turn around there is another policy disaster from this government. We all want better outcomes for students, we all support better state schools and we all support better independent schools. In a better world we would all like to see funding increased for schools right across the board. But the world under this Labor government is not in that perfect place. Gonski is a mess. It is an absolute mess. When you start looking at why it becomes absolutely crystal clear that this government has absolutely no idea. There is absolutely no detail about how this is going to work, how this is going to be implemented and where the modelling is. We are completely in the dark.

My very good colleague Senator Mason was far too modest to actually quote himself when he was discussing the questioning that he had been doing in the previous Senate estimates. I am not so modest, because it is very important that we have this on the record. Senator Mason was asking the committee what the financial impact would be of the new modelling on Australian schools—a very sensible question. We then get an interchange between him and Ms Paul, the secretary:

Ms Paul: We do not really have any results to offer at this point—

and this is at the end of May, so this is a few weeks ago—

But if you want me to take it on notice and keep you posted on it, I am happy to do so.

Senator MASON: The department is not able to tell the committee what the financial impact of the proposed—

Ms Paul: That is right—not at this point. That is because of the work that is still underway, which was recognised by Gonski as being unfinished work, as it were.

Senator MASON: We should not labour the point, as it were, but that is where the rubber will hit the road, I think it is fair to say.

Ms Paul: Absolutely. I agree with you there.

Senator MASON: I was going to ask you to provide a breakdown of the financial impact under the proposed new modelling for all Australian schools,—

a very intelligent question—

but you have not done that. Are you going to do that?

It gets better:

Ms Paul: In due course, I suppose.

This is just a part of an excerpt of the answers to the very good questions that Senator Mason was asking. Just a few weeks ago that is all the detail that the

coalition was able to get, and it goes on in much the same vein and it is certainly in *Hansard* for anyone to see. That is all we could get in terms of the detail of the modelling and how this is going to work. A \$6.5 billion—well, who knows?—a year program and not a single scrap of detail from the government on how it is going to work! And how is the government going to pay for it? This is \$6.5 billion a year we are expecting. How much are the feds going to pay? How much are they going to expect the states to pay? I expect that the government or the Prime Minister will say: 'This is wonderful. We're going to implement it now, states. Would you mind coughing up most of the money?' They will say, 'I haven't got it.' Look at New South Wales: they are floundering after 16 years of Labor in New South Wales and they are struggling with that legacy of debt that the Labor government left them. Where are they going to come up with the money from?

Senator Mason: Queensland's bankrupt.

Senator NASH: Thank you, Senator Mason. We have got a federal government with a debt of \$241 billion and a record in waste that is second to none. Perhaps if they had not wasted so much money, Senator Mason, they might be able to free up a little bit of money to put to something like education reforms. We have seen the Home Insulation Program with the pink batts with \$2.5 billion mismanaged. We have seen greens loans and Green Start, with the \$175 million Green Loans Program mismanaged and eventually dumped. There was the Solar Homes Program with a \$850 million blow-out. The list goes on and on and on. So it is no wonder there is no money being talked about. It is no wonder the government is not saying, 'By the way here we have got the money to do this. It's no problem at all with.' We have no idea who is going to pay for it. What is it going to do to the Treasurer's \$1.5 billion wafer-thin surplus? How is it going to impact on the surplus? Schools have absolutely no certainty—none—and it is about time this government got its act together and started giving this country some decent policy. We saw the Prime Minister say this yesterday, telling the Independent Schools National Forum:

Every independent school in Australia will see their funding increase under our plan.

Thank you very much but I am not going to believe anything this Prime Minister has to say anymore. I would be far more likely to believe in fairies at the bottom of the garden and I would probably have more respect for fairies at the bottom of the garden. Senator Mason, you would well know that the PM's track record on promises is not actually that crash hot, so why should we believe the Prime Minister when she says:

Every independent school in Australia will see their funding increase under our plan.

This is a Prime Minister who said she had no plans to challenge Kevin Rudd, none at all. In May 2010 the Prime Minister was quipping to the media:

There's more chance of me becoming the full-forward for the Dogs than there is of any change in the Labor Party ...

Well, that is history for you, isn't it? Then of course there was the one that everybody knows and understands very well:

There will be no carbon tax under the government I lead.

What do we have now? We have a carbon tax. So tell me, Senator Mason, what do you think? Do you think there is any chance of there being truth in this statement:

Every independent school in Australia will see their funding increase under our plan.

Senator Mason: No, I don't.

Senator NASH: I don't think anybody in this nation believes what the Prime Minister says.

The DEPUTY PRESIDENT: Senator Nash, could I suggest that you do direct your comments to the chair and not directly to Senator Mason.

Senator NASH: He is such an excellent recipient of my comments though, Mr Deputy President. Who would believe anything that the Prime Minister has to say anymore—the Australian people do not. They do not believe what the Prime Minister says. I hope she is right, I hope she is correct and I hope all the schools have a funding increase but we have absolutely no idea—

Senator Thorp: You're right about that!

Senator NASH: and we have no expectation that the government could deliver any of this. Thank you, Senator, I will take that interjection. We have no idea what the government has in store for us. We have no idea expectation that the government can even deliver this even if they turn it into some coherent policy, which it clearly is not at the moment. We only have to look at the track record of policy disasters: computers in school, the NBN, border protection, Fuelwatch, GROCERYchoice, the live export mess and the list goes on and on and on. So why would anybody have any faith or any trust that they could deliver Gonski even if they could turn it into some coherent policy—which sadly I expect they will not be able to do.

The leaked modelling on the weekend— isn't it interesting? We are told, Senator Mason, that there is no modelling, there is nothing in any form we can give you, there is nothing we can see. But, funnily enough, things just turn up, don't they?

Senator Jacinta Collins interjecting—

Senator NASH: What Senator Mason said earlier is absolutely right: these schools are going to be worse

off. What really aggravates me and disappoints me is it is schools like this: Dubbo School, Farrer Memorial Agricultural High School, Bonalbo Central, Nimbin Central, Broken Hill North, Lismore Public School, Cootamundra Public School, Canowindra High School, Tullamore Central School—regional public schools. We on this side of the chamber are not going to sit here and let this government do anything in any way, shape or form that is going to undermine regional schools, undermine any of these schools, because we on this side of the chamber, we in the coalition, believe in a better future for Australian students and we are the ones that will be able to provide that for them.

Senator THORP (Tasmania) (16:21): I am a little perplexed as to the tone of some of the contributions we have had over the last few minutes. In fact, I felt like I was back in the classroom a bit and was about to ban you from any more red cordial, Senator Mason! Forgive me as a new member of this place, but I wondered whether even relevance was something that should be taken into account. The proposition that we are talking to today says:

The Gillard Government's Gonski school funding model which threatens to slash funding to one in three Australian schools and its continuing failure to provide education certainty for students and parents.

That was the so-called topic, talking about slashing funding to schools in Australia. To do that is based on a completely base motive. All that is trying to do is instil fear—not that those on this side of the House are unused to the fact that it is the main tactic of those opposite to try to instil fear, whether or not it is a gainful, meaningful addition to any decent debate. The Prime Minister has said on many occasions and in many forums that no school will be worse off under the funding model of the Gonski review. How much clearer can you be than that? As opposed to what was said by the Leader of the Opposition yesterday at the Independent Schools National Education Forum:

Overall, the 66 per cent of Australian school students who attend public schools get 79 per cent of government funding. The 34 per cent of Australians who attend independent schools get just 21 per cent of government funding. So there is no question of injustice to public schools here. If anything, the injustice is the other way. If anything, the injustice is the other way.

That was not my repetition; that was the Leader of the Opposition's, as you would recognise. So we need to say to ourselves: who is creating the fear campaign here? Who is frightening school parents and school communities? It is not the Gillard government threatening to slash funding; it is Mr Abbott. Rather than trying to embrace the wonderful principles that go behind the Gonski review that were so well articulated by Senator Wright, Mr Abbott is trying to frighten school communities, which I find completely reprehensible.

Why do we need a review into school funding? All of us are representatives of our own communities. All of us know that there are schools in our area that by a sheer fluke of where they happen to be physically placed, the socioeconomic status of the parents who send their children to that school, through the concentration of the number of children who do not have English as their first language or it is not the first language spoken at home, because of the concentration of children in a particular area who may or may not have disabilities, because of the concentration of children who have an Indigenous background—the list goes on. There is a lot of inequity in the system, and the Gonski review recognised that. In fact, the Gonski review found that the way we fund our schools is illogical, lacks transparency and is not focused on achieving the best results for our students, and it recommended a new way of funding for all schools that would include a set amount of funding per student with extra money for students and schools that need it most, including kids from poorer backgrounds, students with disability, remote and small schools, Indigenous students and those with limited English proficiency.

So what is it about? It is about equity. It is about recognising that every one of the children in this country, regardless of where they live or what family background they come from, has the right to a high-class education. I really seriously doubt that senators opposite would refute that. How are we going to do that? If we have a funding model that recognises those inequities across our school system, we need to have a system whereby there is a core amount of funding for each individual student and then a degree of loading on top of that that would also recognise the special needs of those students and the extra resources that have to be put into making sure they reach their potential. Not all of our students come to school from the same starting point. Some students live in homes that are able to provide rich life experiences, they are well nourished, there are no questions about good health, nutrition, sleeping, warm clothing, shelter—all those issues. Some of our students come to school ready and eager to learn. They also often have reading and writing skills and they are proficient sometimes in a second language. They have been introduced to sport, art, dance, drama and they are ready and willing to get into education and thrive. Not all kids have that opportunity.

If that opportunity is not provided by the education setting then it is our responsibility as a country to make sure that we address those inequities through the way we fund, resource and staff our schools. That is all Gonski is talking about. I think it is a principle that anyone who cares about the wellbeing of all Australian children should applaud and recognise.

To question the commitment of this government to education is quite disingenuous because, when you compare and contrast the actions and commitments of the Rudd and then Gillard Labor governments in recent times with the statements we have had coming from those opposite, they are in stark contrast. In my community we are seeing a whole new cohort of people entering trade training in order to get better jobs in the future. The trade training centres are providing a fantastic service to the people in those communities. There is \$1.2 billion for 374 projects, which will benefit over a thousand school communities, yet those opposite have said they are going to abolish them.

We are investing over \$15½ billion in skills and training over the next four years. We had 90,200 apprentices starting a trade in 2011 alone; yet, over the three years 2005 to 2008, the coalition spent just \$6.8 billion, created only 85,000 new apprentices and pledged to cut a billion dollars from vocational training. That is the kind of compare and contrast of a value system about education that we see mirrored in the contributions from people in this place.

But I have an even bigger concern about education. My state of Tasmania relies very heavily on GST revenue. I stand to be corrected but I think figure is as high as \$1.5 or \$1.6 back from income tax receipts that come from Tasmania. We are looking at a review—coming from those opposite, from statements that have been made in my state and also in the state of Western Australia—that could see that formula changed. If the formula were to be changed to a dollar-for-dollar value in my state of Tasmania, that would see over \$600 million per year ripped out of our community, ripped out of our state's profits. What is that money spent on? It is spent on education. My state of Tasmania is going through a period of very tight fiscal restraint at the moment and we do not need to have the spectre of more GST cuts hanging over our head.

I wish the Leader of the Opposition in the Senate were here today because I would like him to commit as a Tasmanian that he will not stand by and see \$600 billion—

Senator Mason: Million.

Senator THORP: Million, sorry—\$600 million ripped out of our state coffers per year, affecting every single one of our schools around the state and every single one of our students. Gonski is a fantastic model but we have to have the money to pay for it. I would like to hear Senator Abetz, a fellow Tasmanian, say very loudly and clearly to the Leader of the Opposition, 'I will not stand by and see the GST revenue ripped out of Tasmania, ripped out of our schools and out of the potential of every one of our Tasmanian children.'

Senator KROGER (Victoria—Chief Opposition Whip in the Senate) (16:33): I am really pleased that

we have had a number of school groups listening from the public galleries today, and one group has just moved on, because they heard and witnessed firsthand the absolute hypocrisy of those on the other side. I will first of all turn to the comments that Senator Wright made earlier on. It was like watching the trailer for a new *Alice in Wonderland* production because what she actually said, and the kids upstairs in the public gallery actually heard, was that 'a child's education outcome is a 100 per cent product of advantage'. Her words were that any child's education outcome was purely down to advantage and not, to quote her words again, 'inherited ability'.

I do not know about you, Senator Mason, and I have not read as many books as you have—I have not studied and taught from as many learned books as you have—but I have certainly read enough to know that there are many in history who have had and have demonstrated an inherited ability. Let us start with Albert Einstein, whom we all know about. To suggest that people like him did not develop their ability through anything other than advantage is just extraordinary. Let us think of an even more immediate person, the Australian pianist David Helfgott—as if you could suggest that it was because of advantage that he developed the skills he did rather than because of inherited ability. It really was extraordinary Alice in Wonderland stuff.

The concern we have with the Gonski review is not the fact that we need to look at ways in which we can strengthen the education system in Australia—no-one on this side of the chamber has ever suggested that. I have to pay tribute to Senator Thorp because it is about the quality and choice in education. We must do everything we can to strengthen choice in education so that parents have an opportunity to ensure that they can give their children the best chance in life, the best shot at life, and the way to do that is through education, by giving them a hand up rather than a handout through life.

The big issue with the Gonski review is that, as we saw in the over 3,000 schools that get funding under the proposal he has put, there are insufficient funds unless funds are taken out from somewhere else and put into those schools that need greater investment. We know that this is just not going to happen, because we have billions of dollars here that, according to the Gonski review, need to be invested in education. We have billions of dollars that have to be invested NDIS and we have billions of dollars that need to go into border protection and propping up the policies of the government in that regard. So we know that this is an absolute furphy. It just is not going to materialise. This is something that the Gillard Labor government will never, ever have to implement.

Why is that? Because there is no way that they will be able to deliver on this before a federal election.

I am also reminded of the words that Senator Carr used in question time in response to a question today. It was Senator Kim Carr—I will qualify it—the fighter from the left, who used the term 'class warfare' not once, not twice but three times in a response to a question today. Why is that? Because we know that the old guard from the left in the Labor government that sit on that side of the chamber are still driving this. They have not got over the fact that Australia and the world have moved on since the fifties. They have not; they are still trying to perpetuate class warfare. We have seen this in recent months with Treasurer Wayne Swan trying to demonise those who are wealth creators in this country, who provide tens of thousands of jobs for hard-working Australians. They are trying to demonise the wealth creators as the evil bogeymen of this world.

This is what we are concerned about here. Whenever a Labor government start discussing funding for schools, their innate socialist approach to education rises to the fore and we know that it is all about stripping funding from independent or Catholic schools and propping up other government schools. We are not about stripping money from government schools; we want to make sure that all schools are properly funded to provide choice for parents.

In closing, there is a school in Croydon. It is a school for disabled kids. It provides education for more than 100 kids—it is something like 110 kids. Under the Gonski review proposal that school would lose its funding—it is a government school—to the tune of \$2,884,667. So this school that is absolutely critical in Croydon, in the electorate of Deakin, would lose more than \$2.8 million. They would be \$2.8 million worse off. It is a secondary school that caters for students who have experienced difficulty for various reasons, who cannot find an education other than— (*Time expired*)

Senator THISTLETHWAITE (New South Wales) (16:40): One of the greatest pleasures of being a senator is having the opportunity to visit many schools throughout New South Wales and to witness firsthand the fine work of teachers, the talents of our students, the staff who work at schools and of course the parents involved in education. Throughout the last 12 months, my time as a senator, I have had the great privilege of opening throughout New South Wales many Building the Education Revolution facilities—a \$16 billion program implemented by this government to build new school halls, to build libraries, to build science and computer laboratories and to build cultural and sporting facilities and make our schools better places to learn.

The BER program is summed up by this story. A few months ago I was at Dunedoo public school in

central New South Wales. I was doing a BER ceremony, and at the conclusion of the ceremony an afternoon tea took place. The deputy principal left during the ceremony and came back during the afternoon tea and said: 'Sorry I had to leave. I just had to take a physics class with two of our students.' I said, 'Only two students in your physics class?' She said that, because they had a new BER classroom with a wonderful new Smart Board, these students, the two students of Dunedoo public high school, were now able to take a physics class via the internet, via video link-up with other public schools in that area. This is the first time that this school has been able to offer physics to students because the facilities simply were not available and the teachers were not available. One of those students could be the next Qantas pilot or the next scientist that our country develops because they have had the opportunity to undertake this education at that school. Education is all about opportunity and it is the Labor government that is delivering and expanding opportunities for students in Australia.

Those opposite often whinge and complain in this place about the Building the Education Revolution program. But in all of my travels to schools throughout New South Wales I am yet to hear one teacher, one parent or one student complain about the new facilities that they have at their school for their children and for their children's education. In fact, all we get is praise.

The other phenomena that I have noticed at BER ceremonies in recent times is the increasing appearance of the local coalition member of parliament. So despite the fact that they will come in here and criticise the program, who turns up for the BER ceremony? None other than the local coalition MP. And you can bet your life, Senator Williams, that when the photo is taken and the plaque unveiled who manages to weasel their little head into that photo? None other than the local coalition MP! They are always out there at those BER ceremonies. On occasion I have even seen some of those coalition MPs speak at some of these BER ceremonies and offer praise in front of parents and students about the BER program because they know how popular it is and how well it has served our schools.

I am happy to come into this place and debate Senator Fifield's motion about education because the one thing that the Gillard government have done more of is invest in a better education for students. And we will continue to improve our schools. That is what the Gonski review and program is all about. It is about ensuring that funding will increase over time, but the increase will be allocated in a fair manner that ensures that we are bringing up those who are disadvantaged. So the claim on the motion that funding will be cut is simply false.

But there is no need to dwell on this because the Australian public will understand that; they will understand because they know our commitment to increasing funding for education. They see it in their community. They see it at their child's school. They see it in the increasing educational infrastructure that we have been building in schools.

They see it in the new computers that their children have access to. They see it in the vast new array of subjects that their children are able to undertake because of this government's investment in education. If they had read the Gonski review—and they should have because one of their own, Kathryn Greiner, was a member of the panel—they would know that the Gonski review is all about increasing funding to schools throughout Australia and reducing disadvantage.

When it comes to education, this Labor government's record speaks for itself. The Building the Education Revolution had \$16 billion invested in new school infrastructure for every school throughout the country. We have increased university funding. We have introduced a national curriculum. We have introduced a NAPLAN testing regime to ensure that our children have a regular check on their literacy and numeracy. We have introduced trade training centres—a record investment in the vocational education and training sector—and we have introduced greater accountability and information for parents through the My School website. Couple that with increasing investment in laptops for schools and students throughout Australia. We have doubled the amount of funding for school education since we came to government. It is almost double the amount that the Howard government invested in education. That is our record and we are happy to stand on it. We are happy to debate education in this place on any occasion with those opposite because we believe in education and in investment in education and we have a better record than the coalition.

In fact, the Australian public may well ask, 'What do we know about the coalition's education policy?' We do not know anything about it because they do not have a policy at the moment. They have not announced it publicly but there have been leaks from their cabinet about \$70 billion worth of cuts to the federal budget. You can bet your life that education will be one of those government departments that will be in for a massive cut when it comes to them preparing their election costings. Why do we know this? It is simple.

We only need to look at what has occurred in each of the states where the Liberal Party has come to government over recent times. In my home state of New South Wales the cuts to education funding began almost immediately. They started off by leaving disabled students stranded on the first day of the school

year in 2012 because the education minister and the department had not bothered to renegotiate the contract for transport to school for disabled kids. They followed that up with cuts to education in the recent state budget. Some cut right to the bone, in particular funding for special needs and disabilities.

Braddock Public School lost \$95,000 in funding for students with disabilities and special needs under the state government's new Every Student, Every School policy—wonderful use of Orwellian language there by the New South Wales Liberal Party. It is one of 272 New South Wales public schools that will have fewer teacher aides and less access to special needs teachers for students with disabilities including autism and mental health issues. That is the record of the Liberal Party in government when it comes to education in New South Wales. They followed it up with more cuts not only in the schools sector but also to vocational education and training. New South Wales funding for school infrastructure has been cut by \$14.3 million in the last New South Wales budget. TAFE infrastructure was slashed by \$13 million in one year alone, bringing a total of \$40.9 million cut from the New South Wales technical and further education budget.

Then we have a look at what is going on in other states, in particular Queensland. If you ever want a better advertisement to vote Labor, have a look at what is going on in Queensland. 'Can Do' Campbell Newman certainly can do. What he can do is take an axe to a state government budget, take an axe to education funding.

Senator Brandis interjecting—

The ACTING DEPUTY PRESIDENT (Senator Furner): Order! Senator Brandis, you know interjections are disorderly.

Senator THISTLETHWAITE: Thank you, Mr Acting Deputy President. They have cut class sizes, have cut teachers and they have cut funding. I quote from a newspaper story:

The latest savagery towards the state schools Fanfare band competition and music extension program known as MOST beggars belief and has attracted justifiable public outrage.

Senator Brandis: Who said that?

Senator THISTLETHWAITE: That is from the *Courier Mail* by Sue Wighton. That was on 30 July this year. *(Time expired)*

AUDITOR-GENERAL'S REPORTS

Report No. 1 of 2012-2013

Consideration

The following orders of the day relating to reports of the Auditor-General were considered:

Report no. 1 of 2012-13—Performance audit—Administration of the Renewable Energy Demonstration Program.

DELEGATION REPORTS

Visit to Europe and Israel

The ACTING DEPUTY PRESIDENT (Senator Furner): I present the report of the Australian parliamentary delegation to the European Parliament and institutions and bilateral visit to Israel, which took place from 20 April to 4 May 2012.

COMMITTEES

Corporations and Financial Services

Committee

Report

Senator WILLIAMS (New South Wales—Nationals Whip in the Senate) (16:51): On behalf of Senator Boyce, I present the report of the Joint Committee on Corporations and Financial Services on the statutory oversight of the Australian Securities and Investments Commission. I move:

That the report be printed.

Ordered that the report be printed.

Senator WILLIAMS: by leave—I move:

That the Senate take note of the report.

Question agreed to.

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

Leave granted; debate adjourned.

Foreign Affairs, Defence and Trade Joint Committee

Report

Senator McEWEN (South Australia—Government Whip in the Senate) (16:52): At the request of Senator Moore, I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade on Australia's human rights dialogues with China and Vietnam. I seek leave to move a motion in relation to the report.

Leave granted.

Senator McEWEN: By leave—I move:

That the Senate take note of the report.

Question agreed to.

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

Leave granted; debate adjourned.

Public Works Committee

Report

Senator McEWEN (South Australia—Government Whip in the Senate) (16:53): At the request of Senator Gallacher, I present the Parliamentary Joint Committee on Public Works report No. 4 of 2012 referrals made May 2012. I seek leave to move a motion in relation to the report.

Leave granted.

Senator McEWEN: By leave—I move:

That the Senate take note of the report.

Question agreed to.

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

Leave granted; debate adjourned.

DOCUMENTS

Tabling

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

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

National Capital and External Territories Committee

Tabling

The ACTING DEPUTY PRESIDENT (Senator Furner): A message has been received from the House of Representatives informing the Senate of the appointment of Mrs Griggs to the Joint Standing Committee on the National Capital and External Territories in place of Mr Secker.

BILLS

Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012

Assent

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

Criminal Code Amendment (Cluster Munitions Prohibition) Bill 2010

In Committee

Debate resumed.

The TEMPORARY CHAIRMAN (Senator Furner): The committee is considering the Criminal Code Amendment (Cluster Munitions Prohibitions) Bill 2010 and Greens amendments (5) on sheet 7084 moved by Senator Ludlam.

Senator LUDLAM (Western Australia) (16:55): We now come to the two remaining substantive amendments. I hope by now I have managed to persuade Senator Feeney that it is not enough for this chamber to unite in failure to vote down these Greens amendments but that in fact we still have the opportunity, as the clock runs down, to correct two grievous flaws in the bill such that the civil society groups who have shepherded this convention from inception to signing are now saying that they would rather Australia did not ratify, that they would rather this legislation did not pass. I suspect that, if the following two amendments (5) and (6) that we are now

debating on sheet 7084 were to pass, that opposition would turn to support and that the Australian government could genuinely hold its head high and collect the accolades that it would deserve.

I understand there is a conference that the minister would want to be able to present our credentials to in the matter of this convention, but he would be doing it in the context of the groups who have been supporting the process and the convention will be opposed to the passage of this legislation. I think that is a tremendously sad indictment on the way that the Australian government has put the interests of the United States, which seeks to continue to deploy these horrific weapons, against the interests of the people who are maimed and killed by these weapons. I cannot be much more blunt than that. In fact, what we are seeing is a systematic sabotage of the convention. These are not accidental loopholes. These are not drafting errors.

Senator Feeney, I am reluctant to move to ask the chair to put the question on amendment 5, which relates specifically to interoperability, without some definition on the question that I put on notice last night and again early in the afternoon when we reconvened about the degree to which the Royal Australian Air Force supported operations in which the US used cluster weapons on their way into Baghdad. I wonder whether you could provide us any information.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (16:57): First things first, perhaps, Senator. I do have some preliminary information for you on that last point, so let me move directly to that. Please regard this as a preliminary response taken on notice. We may come back to you with further particulars. What I have for you as of this moment concerns the provision by Australia of air support to the United States during the 2003 Iraq conflict. I firstly note that the following information was provided by the Department of Defence in response to a question by Senator Ludlam during the 2011 budget estimates hearings, and so I guess I might be about to repeat information you have already received on notice as a consequence of those estimates hearings.

In 2003 Defence was aware that the US and other coalition partners had cluster munitions and that it was possible these would be used during combat operations in Iraq. While the use of munitions by Australia's coalition partners was subject to general international humanitarian law considerations, the use of cluster munitions was not prohibited at that time. The Australian Defence Force provided a range of air capability during that operation. This included FA18 Hornet aircraft in the air combat patrol and strike missions, AP3C Orions conducting maritime patrol and surveillance, C130 Hercules providing intratheatre

airlift and the B707 conducting strategic lift. Australia does not possess operational stocks of cluster munitions and Australian FAA18 aircraft did not use cluster munitions in Iraq.

I also have a preliminary response regarding your question about which weapons systems and on which platforms the United States military deploys cluster munitions. The government's response is that the Australian government does not comment on other government's specific military capabilities.

Having said that, I did note in that open source document from the Congressional Research Service I cited earlier today that there was some analysis by the US Congress on that very question. I will happily pass Senator Ludlam a copy of that. In essence I think it said that every single US airframe might be applied to the task. I will get that to him when I find it.

I might briefly respond to some of the more, dare I say it, political points that Senator Ludlam made before he asked those two specific questions of me. Senator Ludlam has obviously heard from me on several occasions about the reasoning behind the Australian government adopting the approach that it has. We will be holding our head high; we are proud of the fact that we are supporting the convention. We believe it is an important step forward for the international community and we will be proud to be a part of it. For the reasons I have already articulated I think any philosophy that says we would rather have 100 per cent of nothing than 80 per cent of something is misconceived, and, if there are those organisations that now say the convention would be better off not going ahead, I guess all I would say to them is that this is a constructive, practical and real way forward and I fear the alternative strategy would lead us to achieving nothing whatsoever.

Senator LUDLAM (Western Australia) (17:01): I thank the minister for providing answers to those questions—or an answer to the first, at least, if not the second. If I have misled the minister or if he has misconstrued the comment that I made, can I make it clear that the civil society groups, including principally the Cluster Munition Coalition, are not saying that we would be better off without the convention. I apologise if that was the impression that I gave. They are strongly of the view that we are better off without Australia as a party under the formulation that has been drafted into this bill.

One of the reasons they believe that—I suppose the belief is twofold—is that it means that Australia effectively has ratified the convention while undermining its fundamental objectives. Secondly, should this legislation be taken as template legislation by other parties seeking to ratify the convention, our bad habits would then be spread around the world. So it is not that they are against the convention; it is that they are against the way in which the Australian

government has sought to interpret it. That really is the key issue.

The minister has now confirmed at two different times the key substantive issues that I put to him last night. Firstly, he was reasonably confident that the reports that I cited last night and tabled for senators were reasonably accurate, at least to within an order of magnitude, in terms of the places and the number of weapons that were fired into those Iraqi settlements at the time of the operation that the Australian government supported. I think the figures from last night, from memory, indicated that upwards of two million submunitions were fired into metropolitan areas, and there was an extraordinary death and injury toll attendant on that. The minister has confirmed for us that Defence—I suppose that is on whose behalf he was replying, or at least the Attorney-General's Department—are reasonably comfortable that those reports are accurate. Secondly, he has just confirmed for us that the Royal Australian Air Force flew support missions for the United States military while it was dispersing those weapons into Iraq. My question for the minister now—this is the question on which most of my arguments on this bill hinge—is whether that behaviour would be unlawful under the terms of this bill.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:03): I think we are unfortunately going around in circles a little. I have addressed myself to that question previously: I am not going to embark, and I think it would be foolhardy for any government to embark, on a process where we applied our current obligations to military operations that occurred some nine years in the past. I do not think that serves any useful purpose.

As for Senator Ludlam's contention that the interoperability provision undermines the convention, of course the government rejects that. We say the bill is utterly consistent with the convention, and in fact we have used the language of the convention in crucial places inside the bill so that it conforms precisely with the convention and its intent. Again I repeat that we say the interoperability provision means that we can proudly stand behind this convention while retaining our alliance relationship with the United States. If his proposition were to be advanced then ultimately it would mean that Australia would have to choose between the convention and the US alliance. That is a nonsense.

Senator Ludlam likes to talk about the US military—that is his cause celebre when considering this bill—but I remind him that the United States as I understand it has not used cluster munitions since 2003, and that is not a boast that other powers can make. The United States does not stand alone in this space and I invite Senator Ludlam to have a wider field

of vision. Australia's alliance relationship with the United States should be but one of many facets that deserve his attention.

Senator LUDLAM (Western Australia) (17:05): I will, perhaps surprisingly, accept the minister's admonishment. The reason I focus on the United States is that that is the party behind which we marched into one theatre of conflict after another in the latter half of the 20th century and early in the 21st century. I am absolutely happy to acknowledge that a number of other parties who have not sought to join this treaty have used these disastrous weapons in war. The minister seeks to cast my field of vision wider, but I am well aware that there are many other states in the world who have either sought to sabotage or undermine the convention or not joined it, intending to stand outside it and continue to deploy these weapons in war. When I was in Afghanistan, I was shown cluster munitions that they are still digging out that were dropped during the Soviet invasion of Afghanistan. They still kill and maim people.

I have no illusions whatsoever about the United States somehow standing alone against the rest of the world. The point I have been making and the reason I have focused obviously on the United States is not that they need to be singled out as the only power left deploying these weapons, but they are the only power I am aware of who deployed them while actively engaged beside the ADF. That totally undermines the objectives of the convention.

It is not just that we would remain interoperable—I understand and believe those reasons are legitimate—but that we would plan and conduct operations with the US in which cluster weapons were used. Believe me: if we get into a conflict and are standing shoulder to shoulder with troops from the Russian army firing cluster weapons into metropolitan areas and—not targeting, because these weapons cannot be targeted—damaging civilian populations, I suspect that not only I, but Senator Feeney as well, would have strong views about it.

The reason we have spent so much time debating the example of the United States is that we have a live case study before us. You have not been able to tell me that this bill, should it come into force, would prevent exactly those things which happened in 2003 from occurring again. There is nothing in the bill which would preclude assets of the Royal Australian Air Force, pilots, from flying close support operations for US units using cluster weapons. If that is the case then, quite frankly, there are clauses in this bill which are not worth the paper they are printed on. Stand up and saying that we totally support the articles of the convention is, I think, directly misleading if those articles would not preclude the kinds of behaviour we saw in 2003.

On a number of occasions the minister referenced article 21 of the convention and you have also said the language in the bill is identical to articles from the convention. Normally, obviously, that is accepted practice and the sort of thing we would support. I wonder, though, whether the minister has heard of a gentleman called Earl Turcotte. He is somebody I greatly admire. He is the former head of the Canadian delegation. The Canadians and the Australians were two of the delegations, as identified in the WikiLeaks cable drop, who were running around behind the scenes trying to line up countries as diverse as those in central Africa, Vietnam—which is so thoroughly offensive that it is difficult to know where to start—and a number of other countries to do the bidding of the United States government so that the US could continue to deploy these weapons. I know the minister will refute that suggestion but I am going to continue to make it because I think it is self-evidently true.

Mr Turcotte largely wrote article 21—the key principle, the key get-out clause the government has relied upon. He then resigned from public service in Canada because of the way Canada and Australia are now wilfully misrepresenting his work. That is, between ourselves and, arguably, the government of Canada, we are going directly against what he had argued in good faith for. He said:

It is critically important to note—

I have made this point a couple of times in this debate, but Mr Turcotte does it much more eloquently—

that the interoperability provision contained in paragraph 3—in the article the minister has cited—

is heavily restricted by the categorical prohibitions contained in paragraph 4 not to develop, produce, otherwise acquire, stockpile, transfer or use cluster munitions or to expressly request the use of cluster munitions. Paragraph 3 is further restricted by the positive obligations on States Parties contained in paragraphs 1 and 2 of the Article—

which the minister probably now knows by heart—

including: to notify States not party of obligations under the Convention,—

which we have done—

to encourage States not party to become party to the Convention,—

which we have not done—

to promote the norms it establishes and to make best efforts to discourage States not party to this Convention from using cluster munitions.

Apart from the fact that the horrific area effect of these weapons was the same in 2003 as it is today, you could perhaps forgive, in a legalistic and technical sense, the Australian government, on the eve of the invasion of Iraq—the shock and awe campaign—for not tugging at the sleeve of Uncle Sam and saying: 'Hold on. Are you aware that these weapons are horrific and take a massive civilian casualty toll, particularly on children?'

You could perhaps forgive the Australian government for not doing that because there was then no written instrument which told us to do so. Now there is.

I come back to a question which I think the minister responded to somewhat ambiguously. What have we done to make best efforts to discourage states not party to this convention from using cluster munitions—apart from making sure the loopholes the US was demanding actually found their way (a) into the convention and (b) into the bill? Earl Turcotte went on to say:

Article 21 clearly does not allow activities during combined military operations with States not Party that would obviate or qualify the fundamental object and purpose of the Convention. Quite the opposite, it reinforces them, while ensuring that the armed forces of States Parties are not held legally liable for activities contrary to the Convention which may be carried out by the forces of States not party.

That is where I think the minister has set up some straw man arguments in saying that everybody would walk away if we had our way and these amendments were carried. Quite clearly, we are not trying to do that. We want everybody in the tent, including those who, maybe through some change of administration down the track, might decide that their current posture is simply a terrible mistake and that these weapons do not have military utility or that that utility is vastly outweighed by the suffering these weapons cause.

I have quoted from Mr Turcotte at some length because he resigned after seeing the framing language he got into article 21 of the convention turned around, abused and wilfully misinterpreted by countries such as Australia. That, I think, is the sharp end of this debate. Minister, I will put a question to you and then we will move to the amendment. Were you aware that the framer and the drafter of article 21 had resigned in disgust because of how wilfully his work and his words have been misinterpreted by governments such as ours.

Senator FEENEY (Victoria—Parliamentary Secretary for Defence) (17:13): It is a matter of public record, so I am, in the broad, aware of it. I think I have put the government's position on this very plainly and there is no point in me restating it. On the question of what non-legislative steps Australia has taken to give effect to the convention, I would remind Senator Ludlam that, while Australia is not yet a party to the convention, we have already taken steps to give effect to it, including by supporting efforts to encourage the universalisation of the convention internationally, particularly in our own Asia-Pacific region, and recognising the positive contribution which civil society plays in encouraging broad participation in the convention. Australia continues to support the Cluster Munition Coalition to undertake advocacy and universalisation work, including in the Asia-Pacific. I think, Senator Ludlam, the issues between us have been well canvassed and I suspect that, having well understood one another's position, we have not yet

reached an accord. The government will obviously oppose the amendment.

Senator LUDLAM (Western Australia) (17:14): I thank the parliamentary secretary. We will have to agree to profoundly disagree. But I commend this amendment firmly to the chamber and hope that Senator Scullion has arrived just in time to bring some good sense to the coalition's position and support Greens amendment (5).

The TEMPORARY CHAIRMAN (Senator Furrer): The question is that Greens amendment (5) on sheet 7084 be agreed to.

The committee divided. [17:19]

(The Chairman—Senator Parry)

Ayes	10
Noes	31
Majority	21

AYES

Di Natale, R	Hanson-Young, SC
Ludlam, S	Milne, C
Rhiannon, L	Siewert, R (teller)
Waters, LJ	Whish-Wilson, PS
Wright, PL	Xenophon, N

NOES

Bishop, TM	Brown, CL
Bushby, DC (teller)	Cameron, DN
Crossin, P	Farrell, D
Faulkner, J	Feeney, D
Fierravanti-Wells, C	Furner, ML
Gallacher, AM	Ludwig, JW
Lundy, KA	Madigan, JJ
Marshall, GM	McEwen, A
McKenzie, B	McLucas, J
Moore, CM	Parry, S
Polley, H	Pratt, LC
Scullion, NG	Singh, LM
Smith, D	Stephens, U
Sterle, G	Thistlethwaite, M
Thorp, LE	Urquhart, AE
Williams, JR	

Question negatived.

Senator LUDLAM (Western Australia) (17:21): This is the last Greens amendment. The Greens oppose section 72.42 in schedule 1 in the following terms:

(6) Schedule 1, item 1, page 6 (line 32) to page 7 (line 28), section 72.42 **TO BE OPPOSED.**

I advise the Senate that I am going to speak to it only briefly because Senator Feeney and I have already canvassed these issues at great length. So, for senators who just came into the chamber and are not sure what you just voted on, we just voted to assist the United States government to continue dropping cluster weapons, which is a great shame because that is directly in contravention of the convention.

The amendment we will shortly put to the vote is about allowing the US government, or others, I guess—as Senator Feeney quite rightly pointed out, it is not just the United States that deploys these awful things—to host them in Australia. The bill explicitly permits the hosting, stationing and stockpiling of these weapons on Australian soil; however, we were told earlier in the day that it is government policy that this not occur. The bill as drafted—and the drafters of the bill would not have done this by mistake; this is not lazy language; this is something that has been thought about and has been drifting around for at least two years that we are aware of—explicitly permits these materials to be stockpiled on Australian soil. We have the minister's word and we have a commitment that at some stage in the future, probably in the next couple of weeks, I guess, there will be a statement made which will enshrine this vague commitment in some sort of policy.

We still have not yet heard the coalition's policy. I recognise this is a bit unusual but I might see whether I can get Senator Scullion's attention as we go. We are aware that policies and governments change. It is more difficult to change a law, which would then need the consent of both houses of this parliament, than it is to flip a policy decision, which could of course occur overnight. The minister will be well aware of this.

Senator Scullion, if I could interrupt your conversation—which is no doubt deeply engrossing!—to ask you to put a coalition policy on the record, because this is something the Australian people need to know. The Australian government has refused to do it. Should the coalition win government, would it be the policy of the coalition to allow stockpiles of cluster weapons to be permitted on Australian soil? Senator Scullion, you can take that on notice if you wish. You are obviously within your rights to completely ignore me. But, in the event that the coalition hold government at some stage in the future, the law will allow US forces in Darwin—obviously, a town close to your own heart—to store these hideous weapons within four or five kilometres of your electorate office. This is something that obviously you would be very keen to know.

What is coalition policy on the storage or transit of cluster weapons through Australian airspace, waters or on Australian soil? This is not an academic question. This base is under establishment. It is the joint facility, if that is the accepted language. It is established now—the first contingent of US Marines is here.

I should acknowledge that the Minister for Defence did say as long ago as November 2011 that the government would make a statement when Australia ratified the convention that the government will not approve the stockpiling of cluster munitions here. So the law explicitly says that it can happen; government

policy is that it will not. What is coalition policy? Be aware that a lot of people are listening to this debate. If the coalition chooses not to put a policy on the public record, people will have to interpret that as they can.

I recognise I have put you on the spot, Senator Scullion. This debate still has some way to run. If you could indicate whether you would be able to get us a position, even if you are not certain what it is, I would greatly appreciate it. You will shortly be voting, I suspect, against an amendment that would close that loophole and enshrine in law what Senator Feeney says is the government's position anyhow and it would certainly be the Australian Greens' position. The government says it will not approve the stockpiling of cluster weapons here. If that is the intention, put it in the bill. That is all we are asking and that is what this amendment would do.

Why do we still have in this legislation clauses that explicitly permit countries not party to the convention to stockpile these weapons here? If we are for their eradication, that has nothing to do with interoperability; that is about enabling the deployment of the weapons, which is specifically and formally precluded under article 1 of the convention that we say we are signing.

I said this in my second reading speech, but it does bear repeating. The Harvard International Human Rights Clinic has made this very clear. This is akin to allowing Australian military personnel to load and aim the gun as long as they did not pull the trigger. If that is the case, at least let us say that that is what is going on here. Michelle Fay of the Cluster Munition Coalition has said today in a piece on the website onlineopinion.com.au:

The government has created a confusing situation where it says it will not approve foreign stockpiles but it has drafted legislation which plainly allows such stockpiling to occur. So the Greens amendments strike this material from the bill.

Senator Scullion, I would welcome an indication from you as to whether or not you are able to put a coalition position on the record so that the Australian people are clear, if at some unlikely future time there is a change of government—who knows; these things happen—whether or not the policy will stand or will be overturned.

The CHAIRMAN: Senator Ludlam, before I call any other senator who wishes to speak, I should have pulled you up earlier: comments should be directed to the chair, not directed to senators across the chamber. I appreciate we are in the committee stage, but I remind the Senate of that.

Senator LUDLAM: Thank you, Chair. I will shortly ask you to put the question, but just to be clear: we have no position from the coalition. We have a position from Senator Birmingham, who was good enough to say he would object. We have a policy

vacuum from the coalition, as we do in some other rather important areas. We have a policy commitment from the government which stands in direct contradiction to the drafting of the law. So people will have to make of that what they will. I have certainly made up my mind. I commend this amendment to the chamber.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (17:27): This is an opportunity for the government to put its position in respect of the amendment. We do not support the amendment. The effect of deleting section 72.42 would be that visiting military personnel from countries who are not party to the convention would be prohibited from any conduct relating to cluster munitions while in Australia, significantly limiting Australia's ability to undertake military cooperation operations with such countries as permitted by the convention. The proposed amendment would also have the effect of requiring those personnel to comply with an international legal obligation to which their sending country has not consented. The practical effect would be that it clearly would seek to bind other countries. For the record, I think it is worth saying that there are currently no foreign stockpiles of cluster munitions in Australia, and as a matter of policy the government confirmed on 23 November 2011 that it has not and will not authorise such stockpiling.

Senator LUDLAM (Western Australia) (17:29): Then, Minister, I fail to understand why you would leave this structural and deliberate loophole in the bill that permits the kind of behaviour that you then ask us to take in good faith you will now allow. It is very strange. People will have to draw their own conclusions as to why the bill specifically permits and authorises behaviour that you then put your hand on your heart and say will not happen. I have no confidence that the Australian government will not then find a reason to change their minds and it will be out of the hands of this legislature. Senator Scullion has been unable to put anything on the record on behalf of the coalition. So, if there is a change of government, again it will have to come back through this chamber. This is a serious opportunity missed to fix a flaw.

In closing my contribution to the debate—I will not seek to speak on the third reading but instead make some remarks now, before the question is put on this final amendment—I will mention a few things that come to mind about the overall framing of this bill. We have a number of obligations under the Convention on Cluster Munitions that we are not only failing to uphold but also deliberately and quite deceptively sabotaging. There are concerns that the language used in the drafting of this bill can be cut and pasted and used in legislation in other countries. Australia will then be pointed to as a responsible country which has

done the right thing; meanwhile, the flaws in this bill will find themselves replicated in other jurisdictions. We have an obligation to notify other states parties, such as the United States government and others—as Senator Feeney has reminded us—to stand down cluster weapons and to remove them from their arsenals. We have done no such thing. We have notified the US government that we will be signing the convention, but we have done nothing at all to encourage the United States to get rid of cluster weapons. We have written a bill that allows us to assist another force to use cluster weapons in joint operations with Australian forces in direct contravention of the articles of the convention that we are signing. We have written a bill that will allow another power to stockpile cluster munitions here—that is, we will allow Australia to be a forward deployment post for cluster weapons on their way to being used in some theatre of war around the world in direct violation of the articles of the convention. Finally, we have left open a loophole to permit indirect investment in companies which are making cluster munitions.

Why are we bothering? What is the purpose of this legislation? It really pains me to have to advise my colleagues to vote against this legislation when this should be a proud moment—which could have come much faster—in which all sides of politics line up and congratulate the Australian government on bringing the convention forward through the bill. Instead, we have created a bill that has been critiqued here and around the planet by organisations and people who have themselves worked so hard to put the bill together. I will briefly name a number of them.

These folks have been of a great deal of assistance to us as the debate on this legislation has drawn to its rather ignoble end. In particular I mention John Rodsted and Mette Eliseussen, Lorel Thomas, Sister Patricia Pak Poy, and Matthew Zagor and Mark Zirnsak from the Uniting Church in Melbourne. These folks in Australia have done an enormous amount of work, and I am afraid that they can take no joy in the fact that this bill will pass unamended despite strong reservations hinted at by people such as Senator Birmingham, from the coalition side. I think it is really appalling that dissent within both of the major parties has been squashed. It is just the Greens—and, I presume, Senator Xenophon—on the final vote who are left standing. Internationally, I pay respect to Nobel laureate Jody Williams, to Steve Goose, to Mary Wareham and to Bonnie Docherty, who was woken at five in the morning in DC to provide information for the Senate debate on this legislation.

Last but not least, I cannot finish this without acknowledging the tireless work of Michelle Fay, who has provided information, arguments and evidence not just to me but also to many people on all sides of politics in this building. Through her long hours of

hard work, she has made a lot of people think, but somehow we have not been able to bring you collectively to act. Michelle and others have brought great integrity and passion to bear in representing the views of the people who have been maimed and the families of those who have been killed by these horrific and indiscriminate cluster weapons, which everybody in this chamber insists that they want to see abolished yet we leave flaws in this bill as a result not of careful drafting but of deliberate instruction—and that, I think, is a tragedy. To Michelle and others I say: your arguments and your evidence have convinced me and my Greens colleagues. I thank you and I apologise to you and to all of those who have worked to bring the convention to bear on this legislation. Most importantly, I apologise to those maimed and injured by cluster weapons that the Australian Senate will now be complicit in weakening this important convention. I commend this final amendment to the chamber.

Senator XENOPHON (South Australia) (17:34): I will make a final contribution because there may not be another opportunity. I support this amendment as I have the other Greens amendments. But these amendments have failed, so I cannot in good conscience support this bill. This bill gives a veneer of respectability to a quite indecent set of arrangements. The defences contained in this bill basically give the United States carte blanche to use cluster munitions. The convention, which Australia has signed up to, is clear and quite explicit: its purpose is to get rid of cluster munitions—the submunitions and the ordnance that do not explode—because of the devastating impact they have. In some cases, 30 per cent of cluster munitions fail to explode, and five per cent of American-made cluster munitions fail to explode. My concern is that there are so many loopholes and so many outs in this current bill that the bill is rendered largely ineffective.

I pay tribute to Senator Ludlam for the tireless and tremendous work that he has done on this legislation. He has flown the flag for those groups who have genuine concerns and are basically saying that this legislation is worse than nothing because it gives a veneer of respectability to a very indecent industry—that is, the manufacture of cluster munitions. Last night in the Senate we had an extensive debate about the sorts of defences that could be used in the legislation, and I do not think the responses were satisfactory. I do pay tribute to Senator Feeney, who flew the flag for the government last night; I think that Senator Ludwig has only recently taken over.

This legislation does not do what it purports to. There are so many loopholes, so many outs, so many exemptions and so many defences that it really is an insult to the convention to which Australia has signed up to ban cluster munitions.

The CHAIRMAN: The question is that section 72.42 stand as printed.

The Senate divided. [17:40]

(The Chairman—Senator Parry)

Ayes 28
Noes 10
Majority 18

AYES

Back, CJ	Boyce, SK
Brown, CL	Bushby, DC
Cameron, DN	Cash, MC
Edwards, S	Farrell, D
Faulkner, J	Furner, ML
Gallacher, AM	Kroger, H
Ludwig, JW	Madigan, JJ
Marshall, GM	McEwen, A
McKenzie, B	McLucas, J
Moore, CM	Parry, S
Polley, H (teller)	Pratt, LC
Scullion, NG	Smith, D
Sterle, G	Thistlethwaite, M
Thorp, LE	Urquhart, AE

NOES

Di Natale, R	Hanson-Young, SC
Ludlam, S	Milne, C
Rhiannon, L	Siewert, R (teller)
Waters, LJ	Whish-Wilson, PS
Wright, PL	Xenophon, N

Question agreed to.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry and Minister Assisting on Queensland Floods Recovery) (17:43): I move:

That the bill be now read a third time.

The DEPUTY PRESIDENT: The question is that the bill be read a third time.

The Senate divided [17:47]

(The Deputy President—Senator Parry)

Ayes 29
Noes 10
Majority 19

AYES

Bishop, TM	Boyce, SK
Brandis, GH	Brown, CL
Bushby, DC	Cameron, DN
Cash, MC	Edwards, S
Farrell, D	Faulkner, J
Furner, ML	Gallacher, AM
Kroger, H	Ludwig, JW
Madigan, JJ	Marshall, GM
McEwen, A	McKenzie, B
McLucas, J	Moore, CM
Parry, S	Polley, H (teller)

AYES

Pratt, LC
Smith, D
Thistlethwaite, M
Urquhart, AE

Scullion, NG
Sterle, G
Thorp, LE

NOES

Di Natale, R
Ludlam, S
Rhiannon, L
Waters, LJ
Wright, PL

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

Question agreed to.

Bill read a third time.

Cybercrime Legislation Amendment Bill 2011

Second Reading

Debate resumed on the motion:

That this bill be now read a second time.

Senator BRANDIS (Queensland—Deputy Leader of the Opposition in the Senate) (17:50): This is a bill to make the amendments necessary to facilitate Australia's accession to the Council of Europe Convention on Cybercrime, known as the Budapest Convention. Amendments require carriers and carriage service providers to preserve telecommunications data for specific persons when requested to do so by domestic agencies or by the Australian Federal Police on behalf of foreign countries. In addition to the Council of Europe members, the Budapest Convention has been acceded to by the United States, Canada, Japan and South Africa. The convention was tabled in this parliament on 1 May 2011 and it is the subject of a report by the Joint Standing Committee on Treaties.

The convention is the first international treaty on crimes committed either against or via computer networks. It deals particularly with online fraud, child pornography and the unauthorised access, use or modification of data stored on computers. The convention's main objective is to pursue a common criminal policy by adopting consistent legislation and fostering international cooperation.

The bill makes amendments to the Telecommunications Act 1987, the Telecommunications (Interception and Access) Act 1979, the Mutual Assistance in Criminal Matters Act 1987 and the Criminal Code Act 1995. The principal effects of the amendments are: to require carriers and carriage service providers to preserve the stored communications and telecommunications data of specific persons when required by certain domestic agencies or when requested by the Australian Federal Police on behalf of certain foreign countries to do so; to ensure Australian agencies are able to obtain and disclose telecommunications data and stored

communications for the purposes of a foreign investigation; to provide for extraterritorial operation of certain offences in the Telecommunications (Interception and Access) Act; to amend the computer crime offences in the Criminal Code so that they have adequate scope; and, finally, to create confidentiality requirements in relation to authorisations to disclose telecommunications data.

The Joint Standing Committee on Treaties' report, while recommending accession to the convention, identified a number of concerns that would arise from any enabling legislation. In addition to the loss of autonomy in future domestic law reform on the issue, there are concerns about privacy and jurisdictions in particular, to which I will turn.

Dealing first with the issue of privacy, submissions to the Joint Standing Committee on Treaties complained that the convention does not contain sufficiently robust privacy and civil liberties protections to offset the increased surveillance and the information sharing powers that it implements. The powers governing the real-time collection and preservation of computer data were identified as being of particular concern. However, powers for mass surveillance activity, such as wire tapping or eavesdropping, are not enhanced by the legislation because the amendments are limited to telecommunications legislation, which requires the issue of a warrant, and do not extend to surveillance devices. Disclosure of real-time data is limited to investigations relating to a criminal offence punishable by at least three years' imprisonment. In addition, the acts to be amended by this bill contain their own fairly robust privacy safeguards and accountability mechanisms.

On the question of jurisdiction, the proposed legislation may have some effect on state and territory governments because some of those governments do not currently criminalise activity but they will be bound by amendments to the cybercrime offences in the Criminal Code. The government of Western Australia, for instance, submitted that:

It is important to note that accession to the convention should not create further bureaucracy, which could act to stifle established links between agencies, particularly those formed at a state level. WA police already have strong ties with a number of service providers in attempting to tackle cybercrime. It would be detrimental if accession to the convention were to erode those links.

I note, however, that there is a savings clause in the Criminal Code which provides that Commonwealth computer offences are not intended to limit or exclude the operation of any law of a state or territory. This clause will have continuing effect. Despite those concerns, the bill has been welcomed by the information technology sector. Given the nature of computer based offences, there is a need for a

mechanism to detect and preserve evidence that is, by its nature, ephemeral and easily moved. International cooperation and mutual assistance is vital in respect of crimes that are not constrained by national borders.

The bill was referred, as well as to the Joint Standing Committee on Treaties, to the Joint Select Committee on Cyber-Safety, which reported on 18 August last year. The committee made 13 recommendations for amendments. Let me summarise them briefly: one, that the thresholds that apply to the issuing of a stored communication warrant under the Mutual Assistance in Criminal Matters Act for the Telecommunications (Interception and Access) Act for an investigation into a serious foreign offence be the same threshold as applies to domestic Australian offences; two, that the Attorney-General investigate whether the proposed part 3A of the mutual assistance act may prevent stored communications warrants being available to foreign countries for investigation into child sexual exploitation; three, that subsection 8(2) of the mutual assistance act be amended to include an additional discretionary ground to decline a request where the requesting country's arrangements for handling personal information do not offer privacy protection substantially similar to those applying in Australia; four, that the proposed section 180F of the Telecommunication (Interception and Access) Act be amended to elaborate more precisely the requirement that the authorising officer consider and weigh the proportionality of the intrusion into privacy against the value of the potential evidence and needs of the investigation; five, that proposed sections 180A(5) and 180C(2) of the Telecommunication (Interception and Access) Act be amended to ensure that, in determining whether a disclosure of telecommunications data to a foreign country is appropriate in all the circumstances, the authorising officer must give consideration to the mandatory and discretionary grounds for refusing a mutual assistance request under section 8 of the mutual assistance act; six, that the disclosure of telecommunications data to a foreign country in the context of police assistance at the investigative stage and in relation to criminal conduct that may attract the death penalty must only take place in exceptional circumstances and with the consent of the Attorney-General and the Minister for Home Affairs and Minister for Justice; seven, that the bill be amended to elaborate the conditions of disclosure of historical and existing telecommunications data to foreign countries, including in relation to retention and destruction of the information and express prohibition on any secondary use by the foreign country; eight, that the Attorney-General investigate the desirability and practicality of a legislative requirement that data subjects be advised that their communications have been subject to an intercept, stored communications warrant or a data disclosure if that advice could be given without

prejudice to an investigation; nine, that the proposed new section 186(1)CA of the telecommunications interception act be amended to require that the Australian Federal Police report to the minister on the number of authorisations for disclosure of data to a foreign country, the identity of those countries and any evidence that disclosed data has been passed on to a third party; ten, that the Attorney-General consult with the telecommunications industry, statutory authorities and public interest groups to clarify and agree on the data handling and protection obligations of carriers and trade service providers; eleven, that the bill be amended to require carriers and trade service providers to destroy preserved and stored data when that information is no longer required for a purpose under the telecommunications interception act unless it is required for another legitimate business purpose; twelve, that the exemption of small internet service providers from the Privacy Act as small businesses be reviewed by the Attorney-General with a view to removing the exemption; and, finally, thirteen, that the Attorney-General's Department consult widely with carriers and carriage service providers to ensure that the bill when enacted can be implemented in a timely and efficient manner.

I will return to the last of those recommendations in a moment.

It is a matter of some concern to the opposition that the government would proceed to bring this bill before the Senate without making any formal response to the joint committee's report, which was tabled more than a year ago—that is, the report of the Joint Select Committee on Cyber-Safety, not the Joint Standing Committee on Treaties. The failure of the government to respond to that committee's report is characteristic of a government which trumpets its commitment to being open and consultative—in contrast to its admittedly chaotic, impulsive and paralysed processes—without even paying lip service to a joint select committee of this parliament on such important legislation as this. I am, however, pleased to note that the government has circulated amendments to give effect to most of the substantive recommendations of the joint parliamentary committee on cyber-safety to which I have referred. Those amendments all have the coalition's support.

However, as I foreshadowed, the joint committee's 13th recommendation—that is, that the Attorney-General's Department consult widely with carriers and carriage service providers to ensure that the bill, when enacted, can be implemented in a timely and efficient manner—is very important and must be given effect to. The Attorney-General's Department has advised that it is of the view that the legislation can be implemented within the time frame contemplated by its provisions and that, if carriers and carriage service providers are unable to comply, stopgap measures will be acceptable

and the Attorney-General's Department will not insist on strict compliance.

The views expressed to the coalition by the carriers and carriage service providers is that this is a simplistic approach which provides cold comfort to them. It also fails to take into account the additional expense to which carriers and carriage service providers will be put to comply with what we are advised is a totally unrealistic time frame. We understand that these companies have in place cost-recovery arrangements with the Commonwealth and its agencies, but the government fails to acknowledge the expenses to be incurred by these companies, both in making fast-track alterations to their systems and in the assistance they provide to law enforcement agencies free of charge as good corporate citizens.

Ultimately, the coalition has been forced into a fairly unacceptable choice: to take the government at its word—always a risk with this government—or to support amendments that might further delay the implementation of important law enforcement legislation. On this occasion, and on balance, we have decided with some hesitation to take at face value the government's assurances that interim measures will be acceptable and that carriers and carriage service providers will not be put to unnecessary expense in an effort to comply with the legislation. With the lengthy passage of time it has taken the government to bring this bill before the Senate, some of those concerns have been slightly ameliorated. However, the government is on notice that the carriers and carriage service providers remain anxious about the implementation of the bill and will be bringing any departure from those assurances to the notice of the opposition and we, in turn, will be bringing them to the notice of the parliament. With those reservations, I indicate that the coalition will support the bill with the amendments that have been circulated.

Senator LUDLAM (Western Australia) (18:03): I have listened with interest to the comments of Senator Brandis and I rise to make some additional comments on behalf of the Australian Greens. We share some of the reservations that Senator Brandis expressed, so we certainly look forward, Senator, to your support for our amendments, which actually give effect to precisely some of the reservations.

I will put one additional reservation on the record at the outset. The Attorney-General, to her credit, has initiated quite a far-reaching inquiry into powers of the national security agencies, particularly with regard to surveillance powers, online and offline. The areas that are of greatest interest to me and that would seem to flow as having the greatest consequences from the terms of reference that the joint committee has put together substantively impact on the matters within this bill.

My first comment in response to the Cybercrime Legislation Amendment Bill 2011, which has been around for a very long time, is that this is now seen as actually being quite pre-emptive. This cuts directly across the inquiry that the Attorney-General, in good faith, has put to the Australian people and to the joint committee. Ironically enough, yesterday was the closing date for submissions. Today we are just going to go ahead and legislate a big slab of it without having bothered to read the submissions. These matters are directly related. These are not tangential issues. We are asking the Australian people to consider far-reaching expansions of surveillance powers, data sharing, data retention and sharing material with overseas governments.

Here is a bill which, if we were to sit down, let the speaking order collapse and not put up any questions—the coalition is clearly not going to put up anything of a fight—would pass, before the joint committee has even had a chance to read the submissions. I respect the fact that this bill has been around for a while. I am not suggesting that this is some kind of ambush that has just dropped out of nowhere out of the sky. It does have some history to it. But it has been floating around for over a year, and my question is why it is being passed now, before the joint committee has been given the chance to do its work and before the public has been given the opportunity to give evidence.

Nonetheless, this bill is before us now. My proposition is that the debate simply be adjourned until such time as that committee has done its work. How are we to take the government in good faith as actually interested in the views of the general public—people who have profound problems with the way that this government is proceeding—and take its assurances seriously if, while that inquiry is underway, we are legislating a big slab of it here tonight?

The bill was referred to the Joint Select Committee on Cyber-Safety in June 2011. That committee, of which I am a member, reported in August 2011, so it is now a year, I am a bit dismayed to realise, since that committee handed down its unanimous findings, holding up a red flag and saying, 'This bill in its current form has some very severe problems.' I have enjoyed working on the Select Committee on Cyber-Safety. It is a bit unusual that a bill would have been referred to it, but in this instance it was. The committee had profound problems with the way that the bill was drafted, and it was unanimous. We signed on. We would have gone a bit further and we put a couple of additional propositions to the committee.

But the Joint Select Committee on Cyber-Safety said: 'Hold. This is not ready to be legislated.' In response, the government has not only ignored the findings of that committee; it has, as Senator Brandis quite correctly indicated, failed to provide a response and is

now going ahead and legislating, despite the fact that serious reservations have been expressed by the unanimous report of that committee.

Some of the concerns I have are basically mechanical. I join Senator Brandis in acknowledging that technology moves on. This space is moving very rapidly. Law enforcement agencies need to conduct their important work in tracking and prosecuting organised crime, politically motivated violence, offences against children and so on in qualitatively different ways through telecommunications media that were simply not possible before. I have no objection to the fact that, yes, this is a space in which the law lags and there will need to be a process whereby we update legislation to ensure that our law enforcement agencies have the tools they need to do this extremely important work. However, commensurate with that, we need to ensure that privacy protections remain in place. While we hear a great deal from law enforcement agencies about how their powers have failed to keep track with the expanding ways in which people are communicating with each other, there has been virtual silence on the fact that our privacy protections and our human rights protections have also failed to keep track. No such urgency is displayed.

The inquiry by the Senate Legal and Constitutional Affairs Legislation Committee into privacy protection is working its way through a phone-book-sized batch of amendments with no end in sight. There is no apparent urgency being displayed there about protecting people's privacy online, but there have been repetitive invocations to this chamber to urgently amend and expand surveillance powers. We have concerns about privacy implications and we have real concerns that this legislation actually goes significantly further than the European convention to which we are seeking to accede. There is nothing in that convention about some of the powers that we find in this legislation. This is where I think this debate gets muddled. Legitimate expectations that the government will protect Australian children from abuse online and protect all Australian citizens from organised crime or politically motivated violence are somehow used as a shield for a vastly expanded set of agendas which have nothing to do with those legitimate concerns and those legitimate expectations.

We also have some technical concerns which have been transmitted to us by the carriers and the telco sector about how these powers will be practically applied. Through this bill and also through the national security inquiry—which has touched off something of a storm of outrage online, and I get the sense that the Attorney-General is already keenly aware of this—the intelligence and policing agencies are seeking to outsource to the telco sector responsibilities for data storage and data retention so that it can be used for evidence later. That imposes costs and major technical

issues on the carriers that they will then have to pass on to their customers. We do not hear anything from the opposition about a great big new tax on telecommunications—on every tweet you send, on every email you receive, on every Skype chat you have—but that in effect is what it is.

If we are forcing and compelling internet service providers and phone companies to retain all of this data for unknown periods of time, to enable it to be crossmatched, to enable it to be used in court to those sorts of standards of evidence, who is going to pay for that? It will not be the Federal Police. It will not be ASIO. It will not be the other agencies that are pushing for these powers. It will be us, all of us, through increased costs of telecommunications. Again, let us get a hold of what are the legitimate expectations of all Australians in being protected from violence, organised crime and other forms of abuse perpetrated online. Let us grab that agenda with both hands. But let us also be very clear about other agendas that might be advancing at the same time and make sure that we are aware of what they are.

The joint select committee spent a lot of time thinking about the fact that this legislation unnecessarily dumps quite a principled stand, a cross-party stand, on the death penalty that our government will actually cooperate with. This bill is effectively about sharing Australian telecommunications data with law enforcement agencies of other states around the world, those who are also signatories to the European convention. We do not have the death penalty in Australia; we have not for quite some time. There is no political will to reinstate it. In fact, I think all Australians would abhor that the state would murder its own citizens for committing certain kinds of crimes. I think Australia has been quite a constructive global player on the abolition of the death penalty worldwide. Nonetheless, this bill explicitly allows intelligence to be shared with foreign law enforcement agencies for capital crimes. That is something that we can fix. That is something that the cybersafety committee spent a lot of time thinking about. We have an amendment to this bill that would allow that loophole to be closed.

We have concerns about the extent to which this bill is not really about cybercrime at all. Cybercrime includes bank fraud, phishing, taking over computers with malicious software and that kind of thing, and using the internet to transact certain forms of crimes that were not possible before. This is a standard and reasonably accepted definition of cybercrime, although obviously a very broad definition. When we get to the committee stage of the bill, I will put some questions to the minister about the fact that this legislation is actually about the prosecution of all crime and has nothing to do with cybercrime. This is about the tracking of phone calls, emails, Skype chat, social media or any form of communication in pursuit of

anything at all—whether it be a crime or not—and has nothing to do with cybercrime. That is a very small subcategory of the range of offences that would be able to be pursued and the range of materials that would be able to be transmitted to foreign law enforcement agencies on Australian activities, including for things that may not even necessarily be crimes in this jurisdiction.

It also essentially lowers the bar on telecommunications intercepts. Again, this is something that I will put to the minister when we get to the committee stage to make absolutely sure that I am clear about what is going on here. At the moment, in order to intercept telecommunications, the offence has to attract a seven-year penalty and above. That is a serious crime. Things like terror offences attract those sorts of penalties. Organised crime and other crimes of violence attract those very severe penalties. Most Australians would understand that if the police are targeting those kinds of offences, there is a legitimate expectation that they should be able to tap a phone, with the judicial oversight of then having to seek a warrant for a serious offence. Those are the two things about which I think there is a general consensus in Australian society, that it is legitimate and appropriate that messages and communications be intercepted given those conditions.

This bill, of course, lowers that bar.

After this bill is passed all of our data can be captured and held, pending a warrant, on the basis of an offence that attracts only a three-year penalty. Obviously, this radically expands the categories of offences that can be caught. If my understanding is incorrect I look forward to the minister correcting the record a little later in the debate. And all this before the joint committee on intelligence and security has provided its views on this very subject! That is pretty ironic. The deadline for that was yesterday.

We share very serious concerns that were expressed by the former ombudsman about the lack of clarity on the essential role that his office would perform with regard to these amendments and the significant changes that are proposed. This bill was sent to the cybersafety committee for inquiry and the committee consulted with experts. We held hearings and we heard from technical experts in the fields of IT, privacy and law, and the committee formed the view, as I did, that the privacy protections in this legislation needed to be extended. The committee also became convinced that there were reasons for amendments to be made so that we do not disclose telecommunications data to foreign countries where the death penalty is possible, and that we would be seeking some kind of assurance, from the government that this material was being transferred to, that the death penalty would not be pursued. That is an undertaking that we should be able to ask for.

The government chair of the committee, when presenting the report, said the following:

If adopted we believe these changes will go a long way in allaying any fears of unwarranted intrusions into privacy or unjustified sharing of data with foreign countries.

Well, what do you know? The amendments have been rejected; they have not even been discussed. Perhaps we will get the minister to go through the reasons for that. In my meetings with the attorney's office subsequent to that report being handed down, the amendments were treated entirely dismissively. It is quite regrettable that 11 out of the 13 recommendations have been dismissed in this fashion. I value the committee system. I enjoy committee work and I know that it is one of the things that attracts many people to this chamber as opposed to the other place—we get the time to do due diligence on legislation.

I must say that, in my brief four years here, I have found the attorney's office is one of the worst in terms of assuming that it has simply got it right and everybody else must be wrong. The Attorney-General's office, by far, under successive ministers, is the most resistant to ideas that did not originate from within its own domain. It then becomes a responsibility of this chamber to examine what the committee has brought forward and to consider whether those proposed amendments might not be a good idea.

I briefly quote from the JSCOT report:

... the Committee holds concerns about the lack of transparency in the review process for this important treaty, in particular, the lack of timely advice to the Committee and the lack of public exposure and certainty about necessary amendments to support Convention obligations.

We are aware that the agenda has moved on significantly since that work was done, but no further information has been provided. It will be our job, as this debate unfolds during this evening and tomorrow, to ensure that those answers are put on the table. This is quite a poor process that leaves considered and consensus recommendations not only unimplemented but also completely disregarded.

Even Premier Colin Barnett—and it would be pretty rare that I would stand up in here and agree with something that the Western Australian Premier has said—and the Victorian Attorney-General called for the bill to be delayed. The former Premier of Queensland questioned its passage. There are mainstream concerns that I am trying to reflect tonight about the passage of this bill. Now we see a vastly larger expansion of surveillance powers proposed by the Attorney-General, and I do not think it is appropriate that this bill is debated in that context.

I will go through some of these matters in detail when we get to the committee stage, but now I come to some of the specific matters that were raised with us. One was Telstra, ironically enough, who warned the

committee that the new obligations on them to preserve data were beyond business needs and would place significant burdens on carriers and service providers in the form of cost and manpower. While the government has extended the time Telstra had to prepare, it is not enough, and we have drafted an amendment to fix that. I am very interested to hear what the government's view is on whether the industry is telling it that they are not going to be ready to bring it. Despite the fact that that submission was made a year ago, I suspect that when push comes to shove we will find that we are imposing formidably difficult obligations on telcos to trap this data and to make it available to law enforcement agencies across such a broad band.

In case senators believe that this is simply about a narrow range of phone calls and emails and so on that would be read by intelligence agencies, that is not the case. From the most recent figures that we have, which is the 2010-11 financial year data, there have been somewhere in the realm of a quarter of a million requests for telecommunications data. This is not the communication itself; this is the data that surrounds it—for example, the time that you sent the email, your IP address when you made that Skype call, or your latitude and longitude when you walked down the street and bought a coffee—because smartphones, for the benefit of those MPs who are carrying them, will record in quite fine-grained detail where you are, when you are there, whether you are using the phone or not, whether the phone is switched on not; these devices are keeping track of where people are. This is a category of data that did not even exist when the telecommunications access regime was drafted, and so it has slipped completely under the radar. There is no seven-year threshold for access to that. There is no three-year threshold. There is no threshold at all. And so a quarter of a million of these requests were made in the most recent year for which we have accurate data. This has now become a pervasive problem, and I do not hear the clamour in government circles for fixing that loophole, so the Australian Greens will attempt to do so. We have an amendment afoot that we will move to this bill that does just that.

I note that I have a second reading amendment and I will come to that towards the end of the debate. This has been circulated, and effectively goes to the Telecommunications (Interception and Access) Act. I will be interested to hear whether or not senators believe that this second reading amendment might have been pre-empted by the Attorney-General's review. As I said, I acknowledge and appreciate that that review is underway—that, rather than simply ramming them through this place as a bill, the attorney has had the good sense to put these broad terms of reference to the Australian people and hear what people think.

But this second reading amendment simply says that there should be a holistic review of the

Telecommunications (Interception and Access) Act to work out in part whether the act is to continue to regulate effectively communications technologies and the individuals and organisations that supply technologies and communication services. In particular, this review would take a look at whether the surveillance powers that are available to the agencies in question are proportionate to the kinds of things that they are attempting to track. By that I mean the criminal penalty thresholds, which most Australians would support.

In order to have your phone tapped or your latitude and longitude recorded and distributed to intelligence and policing agencies, you should be accused of something. There should be some judicial oversight, and you should be implicated in some kind of crime. But as it is at the moment, and where this national security inquiry is going, all Australians are being treated as suspects, not citizens. That is something on which I call the Liberal Party to go back and examine their roots. You are meant to be the party that supported individual liberties over the power of the government. This goes back hundreds and hundreds of years. Where are you? We need you now. We need those values to come forward. I do not think it is appropriate that all Australian citizens are treated as suspects, as guilty until proven innocent: 'We'll just retain all this data in case you turn out to be implicated in some hideous crime down the track.' It is not the Australian way. Again, we appear to be taking our lead from the United States, which is starting to adopt distinctly authoritarian strands. I think we deserve better than this and I look forward to the debate as it unfolds.

Senator POLLEY (Tasmania—Deputy Government Whip in the Senate) (18:23): I rise to make a contribution on the Cybercrime Legislation Amendment Bill 2011. It was not all that long ago, I remember, that I would receive a 'pay' envelope containing cash. And later my wages were paid by cheque. That was a time when we were worried about our cheques being stolen or lost in the mail—not that those are not concerns now. But times have really changed, especially in the last 20 years. These days, salaries are paid by direct deposit into a bank account. But that is only the tip of the iceberg.

As can be read on the Australian Institute of Criminology website, our daily lives have seriously changed. The convergence of computing and communications technologies has changed dramatically the nature of our lives, at least for those of us who live in a developed country. We are able to do our shopping and banking from home, work and be paid electronically, and engage in leisure activities using computers. Government benefits are also able to be processed electronically and a wide range of services delivered online. The process of reducing

information to electronic streams of '0s and 1s' that are stored on computers has enabled people to communicate more effectively and at a lower cost than in the past. It has also meant that geographical boundaries are able to be crossed more easily. This has enhanced the process of globalisation of the economy and social life enormously.

But these same technologies that have provided so many benefits have created enormous opportunities for various offenders. Fraudsters are able to communicate with each other in secret, disguise their identities in order to avoid detection and manipulate electronic payment systems to obtain funds illegally. They are also able to target a wide range of potential victims throughout the world, all from the comfort of their home or office. The risk of fraud is one of the principal barriers to electronic commerce systems becoming widely accepted in the community. It is believed to be one of the most under-reported offences in Australia, with fewer than 50 per cent of incidents being reported to police or other authorities.

This bill, the Cybercrime Legislation Amendment Bill 2011, will facilitate the accession to the Council of Europe Convention on Cybercrime, also known as the Budapest Convention on Cybercrime or just the Budapest Convention. This is the first international treaty seeking to address computer crime and internet crimes by harmonising national laws, improving investigative techniques and increasing cooperation among nations. It was drawn up by the Council of Europe in Strasbourg, with the active participation of the Council of Europe's observer states: Canada, Japan and China.

The convention aims principally at harmonising the domestic criminal law provisions of offenders and connected persons in relation to which is in electronic form; and setting up a fast and effective regime of international cooperation. To date there are 47 signatories to the convention, with 32 of those signatories having ratified this commitment. These signatories include many European states as well as Canada, Japan, the USA and South Africa.

The Joint Select Committee on Cyber-Safety considered this legislation. However, another report by the same joint select committee—an interim report in June 2011 called 'High-wire act: Cyber-safety and the young'—gives some insight to the scope of the cybercrime issues that now face our youth: cyberbullying; cyberstalking; sexual grooming; sexting; illegal and inappropriate content; privacy and identity theft; technical addictions; online promotion of inappropriate behaviour—for example, use of drugs, alcohol, suicide, anorexia; and child pornography and exploitation. These are just some that are listed. We are all aware of instances where these social abuses have ended tragically—suicide after cyberbullying; or people charged with possessing thousands, even

millions, of child pornographic images. Then there are concerns such as cyberterrorism—which, in general, can be defined as an act of terrorism committed through the use of cyberspace or computer resources. Various governments are even concerned about cyberwar. Then most types of organised criminal activity can be cited—drug trafficking, fraud and theft.

I return to this bill. The review of the Cybercrime Legislation Amendment Bill 2011 by the Joint Select Committee on Cyber-Safety made 13 recommendations, but the bill was manifestly supported. The areas covered by the recommendations included: issues of mutual assistance—stored communications and disclosure of prospective data to foreign countries; police assistance to foreign countries—historic and existing telecommunications data; reporting and oversight; industry data handling and privacy obligations; and industry implementation.

However, the main concerns the committee raised regarding the bill relate to:

- the management of preserved information by carriers,
- the lack of a requirement to delete preserved information once a notice ceases to be in force,
- a number of specific aspects of the provision of assistance to foreign agencies, including the provision of assistance in possible death penalty cases.

The government has considered the recommendations from the Joint Select Committee on Cyber-Safety's report on this bill and welcomes their recommendations. Twelve of the 13 recommendations have been supported in the bill or in government amendments. The recommendation relating to the discretion to reject mutual assistance requests where foreign information handling laws differ from domestic law will not be accepted. Making an assessment of foreign privacy laws is not practicable and would cause substantial delays. Additionally, the bill and the Mutual Assistance in Criminal Matters Act 1997 already require an assessment of the privacy impact on any person and create limitations on how the foreign country can deal with the information.

I come to the explicit privacy considerations. This bill introduces a requirement for privacy considerations when authorising the disclosure of historic telecommunications data to ensure that privacy considerations are taken into account for every disclosure of telecommunications data. The government's amendments provide detailed guidance to officers about the factors and privacy considerations which must be weighed before making an

authorisation. This proposal responds to recommendation 4 of the committee.

I refer to the strengthened reporting requirements. The government amendments would strengthen the reporting requirements for instances where the AFP has disclosed existing or prospective information or documents to a foreign country. The proposed government amendments require the head of the AFP to give the minister an annual report that includes the number of disclosures that were made to each country. Consistent with international practice, sensitive information that could compromise international investigations and the strength of Australia's cooperative relationships with foreign law enforcement agencies will not be made publicly available, but will be included in the report to the minister. This proposal responds to recommendation 9 of the committee.

I come to the delay of ongoing preservation notices. The government amendments will delay the application of the ongoing preservation notices provisions until 90 days after royal assent. Industry currently provides historic preservation to agencies on an informal basis, and therefore can already comply with the requirement to preserve historic telecommunications data. The government amendments will provide industry with sufficient time to ensure compliance with requests for ongoing preservation. Industry has flexibility in compliance because the bill does not prescribe any particular capability or methodology for enabling preservation.

I come to the technical amendments as to the threshold for provision of prospective telecommunications data. The government amendments regarding the availability of prospective telecommunications data would ensure consistency of thresholds and access for domestic and foreign purposes and will ensure Australia is compliant with article 33(2) of the convention. As the bill is currently drafted, prospective telecommunications data is available domestically for the investigation of 'serious offences' and for offences punishable by at least three years imprisonment. For foreign purposes, prospective telecommunications data is only available for the investigation of a foreign offence that is punishable by at least three years imprisonment. In many cases, offences that meet the definition of 'serious offence' would also meet the requirement of being punishable by at least three years imprisonment. However, as the definition of 'serious offence' in the Telecommunications (Interception and Access) Act 1979 includes some offences punishable by less than three years, there may be some offences that would meet the domestic threshold, but not meet the foreign threshold. This difference in threshold would breach article 33(2) of the cybercrime convention. The government's amendments will remove this differential threshold and ensure Australia's compliance with the

convention. On the basis of the amendments that are being proposed by the government and the recommendations by the Joint Select Committee on Cyber-Safety, I support this bill and recommend it.

Senator MASON (Queensland) (18:34): The Cybercrime Legislation Amendment Bill 2011 essentially amends a number of acts, including the Mutual Assistance in Criminal Matters Act 1987 and the Telecommunications Act 1987, to ensure that Australian legislation is compliant with the requirements of the Council of Europe Convention on Cybercrime in order to facilitate Australia's accession to that convention. Madam Acting Deputy President, you would be aware that on several occasions I have spoken on bills that impact or indeed potentially impact on the privacy of citizens, and I do so again today. But, firstly, I will make a few preliminary observations.

I note in passing Senator Ludlam's remarks before about threats to privacy that are emerging in the context of national security, and he is quite right to suggest that the Liberal Party in particular and indeed no parliamentarian can escape that debate. The Liberal Party, as the good senator reminded the Senate and reminded in particular the Liberal Party, was founded on the balance of power between the state and the individual, and he is quite right to suggest that in the past the resolution of that balance and the resolution of that tension have generally fallen, for the Liberal Party, toward the individual, and that will be a matter that we will have to pursue and debate in earnest no doubt in the future because it is not just a debating point; it actually defines the role and the relationship of citizens in this country to the state and to the government. So it is a huge issue and a very important one, and I acknowledge Senator Ludlam's eloquent contribution.

The Council of Europe Convention on Cybercrime is the first significant international attempt to coordinate law enforcement pertaining to crimes committed using computers and the internet—sadly, perhaps the fastest expanding area of criminal activity, which ranges from Nigerian scams perpetrated by teenagers from internet cafes right throughout Africa to professional hacking jobs directed at major financial institutions. In addition to computer related fraud and, indeed, violations of network security, the convention also addresses issues such as copyright infringement and, of course, as Senator Polley mentioned, child pornography.

Globalisation of the economy and globalisation of culture has also brought about the globalisation of crime. Mobile devices, computers, networks and satellites that link us all and enable us to connect to each other and indeed transmit ideas to each other—products and money around the world in the blink of an eye—also enable criminals to do just the same.

They also provide criminals rich opportunities to take advantage of others. In a global village, all crime can be local, even if it is perpetrated not by armed floods straight out of gangster movies but by some corrupted nerds ensconced in the twilight of their bedroom, whether it be in Paris, Singapore, Lagos, Bucharest or indeed Sydney. With these new realities in mind, the bill among other provisions requires carriers and carriage service providers to preserve communications and data for specific persons when requested by Australian law enforcement authorities, even if this request is on behalf of foreign law enforcement authorities. This ensures that these authorities can obtain and disclose this stored information for the purposes of investigation.

With these new powers, however, come vast new responsibilities. While the convention seeks to control cybercrime, it does also allow for the safeguarding of rights. Article 15 states that human rights must continue to be upheld and enforcement powers and procedures under the convention must respect the right to free expression, the right to access information, the right to privacy and other similar rights.

Despite these guarantees the convention did create some disquiet, I think it is fair to say, both overseas and indeed here in Australia, particularly among privacy advocates. I think Senator Ludlam has indicated that this evening. It is not surprising, as the convention and the bill which gives it effect in Australia seeks to expand the powers of both law enforcement and intelligence agencies to access, gather and share people's private data and indeed their private communications.

For example, the Law Council submitted that the new section 180F in the Telecommunications (Interception and Access) Act 1979 is inadequate to safeguard personal privacy. That was their contention. The proposed section 180 F merely asked that an authorising officer 'have regard to' privacy impacts. The Law Council rightly submitted that this could be satisfied by merely ticking a box on a form and submitted the following to be inserted in the bill:

Before making an authorisation, an authorised officer must be satisfied on reasonable grounds that the likely benefit to the investigation which would result from the disclosure substantially outweighs the extent to which the disclosure is likely to interfere with the privacy of any person or persons.

The Australian Privacy Foundation in their submission had a more general complaint. They submitted:

As currently drafted, the Bill does not specifically differentiate between traffic and content data and instead merely refers to 'stored communications', which is in fact not defined. The use of this phrase is unnecessarily broad and increases the scope or unwarranted privacy intrusions into personal communications where preservation and disclosure

of traffic data alone could be sufficient in terms of an ongoing investigation.

That was the submission of the Australian Privacy Foundation. It also has to be noted that the bill leaves it to the Attorney-General to decide whether to assist foreign law enforcement agencies where the offence committed carries a death penalty in the country concerned. The Joint Select Committee on Cyber-Safety recommended that the Attorney-General should make such a decision jointly with the Minister for Home Affairs and Justice and that these decisions should of course be registered.

I hope that the Attorney-General will exercise her powers wisely and carefully, and I am sure she would. So far all the signatories to the convention, most of them European countries, are democracies with, let's face it, very reasonable protections of human rights. I think that is fair to say. It is perhaps unlikely that any dictatorship and gross human rights violators will at any point in the near future decide to bind themselves to the convention. However, should that happen, we would not want to see Australian law enforcement agencies having to play a part in enforcing the convention at the behest of foreign authorities who are using cybercrime laws to in fact quash domestic political dissent. I do not think anyone in this Senate would want to see that. While this may sound like an unlikely and indeed even a far-fetched scenario, we should nonetheless keep such possibilities in mind.

Contrary to some very overenthusiastic claims I believe that developments in information technology will not necessarily lead us to some cyberutopia. I do not believe it necessary will. Information technology, just like any other technology, is neither intrinsically good nor bad; it is essentially neutral. Whether it is put to good or bad use is a matter of human intent. Certainly mobile devices, the internet and fast and cheap connections have empowered the individual. That much is true. But also that technology has also empowered the state and surveillance.

For every instance where oppressed peoples mobilise themselves and world opinion through Twitter, Facebook and YouTube there is another instance of a government that uses essentially the same technologies to increase its powers of surveillance and control over its own people. We have seen that in the People's Republic of China in the recent past and also during the Arab Spring. I do not think I am overstating it. I think it is fair to say that those technologies can be used both by advocates of democracy and by authorities seeking to quash dissent. Technology can be used both ways.

Under our Constitution the parliament has the power to determine the rights of Australian citizens. This places an enormous burden on members of parliament to be diligent and cautious whenever legislation is

introduced that looks to curtail the rights of Australians. This is the case even where it is thought necessary to achieve a greater good, like the stamping out of crime. Some governments curtail freedom and human rights as an end in itself. Many governments and many states, particularly during the 20th century, have done just that. They have curtailed freedom and human rights as an end in itself. We in Australia are fortunate to have governments which might on occasion curtail freedom and human rights, that is true, and I think that we all accept that, but only as a means to a laudable end, and even then they have striven to maintain the right balance between the means and the ends. That is the perpetual conundrum of democracy. It is not an easy balance but it is one we have to strive for.

While the coalition does support the bill, it is a shame that the government did not have more regard to the recommendations of the Joint Select Committee on Cyber-Safety or to the detailed submissions of the Law Council and others. None of us should ever cease trying to get the balance just right.

The ACTING DEPUTY PRESIDENT (Senator Moore): I see Senator Xenophon is rushing to the door. The papers are being shuffled, Senator Xenophon, while you come to take up your speaking right. You have four minutes.

Senator XENOPHON (South Australia) (18:47): Thank you, Madam Acting Deputy President. I am surprised that Senator Mason did not use his full 20 minutes. It is quite uncharacteristic of him.

Senator Mason: It is.

Senator XENOPHON: I was actually shocked. I told my staff, 'He'll keep talking as he usually does.' I think it is a first for Senator Mason, isn't it, not to use his full 20 minutes? The Cybercrime Legislation Amendment Bill is an important piece of legislation and the issue of cybercrime is one which challenges law enforcement agencies throughout the world. This bill does attempt to tackle this, and I note that my colleague Senator Ludlam, from the Australian Greens, will be moving a number of amendments in relation to it. I have a particular interest in relation to cybercrime and the tragic case of Carly Ryan, who was murdered several years ago in Adelaide by a person she met online who purported to be somebody completely different and completely misrepresented his age to her. She tragically agreed to meet with him and the consequences of that led to her murder. Sonia Ryan, her mother, has run a courageous and relentless campaign about cybersafety, and we should all be grateful for the work of the Carly Ryan Foundation and her family and loved ones, who honour her memory.

I put up legislation that was not successful in this place that related to issues of misrepresentation, so that, if a person misrepresented their age to a minor, it

was qualified in those terms, that in itself would be an offence. At the moment, you need to prove an intent for a prurient purpose, in a sense. That is very problematic for our law enforcement agencies, and I think it is worth raising in the context of the committee stages of this bill because I believe it shows how the internet—which is a force for good in terms of communications and bringing people together, of telemedicine and the whole range of wonderful things that the internet can do—can be a source of allowing criminal activities, of allowing predators to ply their trade, in a sense, much more easily.

The ACTING DEPUTY PRESIDENT (Senator Moore): Order! The time allotted for this debate has expired.

Debate interrupted.

DOCUMENTS

Consideration

General business orders of the day relating to government documents were called on but no motions were moved.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Moore) (18:50): Order! There being no further consideration of government documents, I propose the question:

That the Senate do now adjourn.

2/40 Battalion

Senator BUSHBY (Tasmania—Deputy Opposition Whip in the Senate) (18:51): I rise this evening to make a contribution to remembering the sacrifice in 1942, some 70 years ago, that members of 2/40 Battalion made in the defence of Australia. In 2006, the 2/40th's historian, Peter Henning, said:

Although the 2/40 Battalion made up a significant proportion of Tasmanian prisoners-of-war and about a third of Tasmanian AIF casualties in the Second World War, there are few memorials to them and scant public awareness of their history.

I acknowledge that two members of the House of Representatives, Messrs Hubert Anthony in 1946 and Dick Adams in July 2004, have both made special mentions of the 2/40th in speeches to parliament. I also thank Peter Henning for his authorship of *Doomed* and Mrs Sue Beard of Moonah in Tasmania—a relative of a battalion soldier—for their assistance in putting together this speech.

The 2/40 Battalion was almost entirely comprised of Tasmanians and was formed in response to lobbying by veterans of Tasmania's 40th Battalion who had served in the World War I. The nominal roll, which was prepared by those who survived service in the 2/40th, provides details of those young Tasmanians who volunteered: their age, employment, religion,

where in Asia these soldiers served and their fate. Amongst those who joined the 2/40th was the then headmaster of Launceston Church Grammar School, Norman H Roff, who was killed in action in Timor, leaving a wife and two young children.

The bulk of the enlistees 'took the King's shilling' in mid-1940 and their typical age was between 19 and 21, meaning that any of the currently living survivors of the 2/40th should be aged 92 or older. But if anecdotes are correct, perhaps the one or two 14 year olds who enlisted might still be living at age 86 or 87. In fact, recently the *Advocate* newspaper carried a story that one of the younger members of the 2/40th, Fred Brett, was less than fulsome in disclosing his age on enlistment, and that he had celebrated his 16th birthday whilst in Changi prison.

Having assembled in mid-1940 in Brighton, Tasmania, the battalion trained for the next six months in their home state, prior to their transfer to Bonegilla, near Wodonga, where they joined other battalions in the 23rd Brigade of the 8th Division. There followed a train and truck journey that took them to Adelaide, Alice Springs and the Hudson bombers of RAAF's 2 Squadron.

MP Hubert Anthony in his speech to the House in 1946 spoke about the conditions which the 2/40 Battalion had to endure in Timor. He purported that the battalions in Sparrow Force were not adequately armed or prepared for this battle and backed up these assertions with a report made by then Brigadier Lind, who was in charge of Gull Force, which can be accessed digitally on the Australian War Memorial website. Lind suggested that an inquiry into these circumstances should be made in order for someone to be held accountable and that all information held by the government and the armed forces should be made public to all Australians. No such inquiry was ever held.

A period of eight months was available but not utilised for the battalion to receive adequate resources in the way of armament and personnel, as well as for lines of communication to be opened with the Netherlands East Indies naval and air support. There was no form of air support, as the RAAF squadron left when invasion was imminent, and artillery support was very limited, as was back up arms and munitions. Japanese forces numbered 23,000 against about 4,000 Allied troops.

As a consequence of all these weaknesses in preparations, support and manpower, the 2/40th was ill-prepared to meet a more numerous, professional, and well-equipped Japanese force, which included tanks, and which landed by sea and air on 20 February 1942. In three days of fighting the 2/40th suffered 84 dead and 132 badly wounded. Japanese casualties were even more serious. Despite their valiant efforts, when the Japanese delivered the 2/40th commanding officer Lieutenant Colonel Legatt an ultimatum to either

surrender or be bombed, there was little choice. Consequently, the bulk of 2/40th became prisoners of war. Some members escaped inland, others were later captured, and some joined Australian commandos in the hills and were subsequently evacuated in December 1942. However, the great majority of the 2/40th joined the 22,000 Australian POWs in South-East Asia.

According to Australian War Memorial records:

... the 2/40th prisoners spent the first seven months of their captivity interned in a camp at Usapa Besar. A small party of senior officers was shipped to Java on 26 July and the rest of the prisoners on Timor followed in September.

From Java, the 2/40th prisoners were dispersed throughout Japan's conquered territory. Over 500 of the men from Sparrow Force were sent to Singapore and then off to work on the infamous Burma-Thailand railway. Some of the 2/40 men embarked on two ships in January 1943 bound for Moulmein in Burma. American bombers tragically sunk the ship transporting the Dutch POWs and damaged the *Moji Maru*, which was carrying the Australians, killing seven. Major LJ Robertson, OC of the 2/6 Field Company, commended a handful of prisoners for the assistance that they gave to the organisation and rescue of the Dutch survivors. One of those mentioned was Corporal Wallace Imlach, concrete worker, of the 2/40th who before the war lived in Myrtle Bank near Launceston. Most of the 2/40th Battalion who worked on the railway joined it from the Thai end and hence they no doubt were involved in Hellfire Pass and Hintok viaduct construction, which are now well known to many Australians. Other members of the 2/40th made the long sea journey to Japan to work in labour camps.

The impact of this chapter of World War II on Tasmania was indeed widespread, with losses felt within friendship groups, sporting clubs and families and these losses are still being remembered. The Tasmania Cricket Association news journal of 24 April 2012 exemplifies this. I will read extracts of the 2/40th references:

One member of the 2/40th Battalion was a powerful left hand batsman from Myalla named Les Allen. Allen, the Uncle of the not then born former Sheffield Shield wicket-keeper Les Allen, held one of the highest scores for Myalla Cricket Club, 222 not out against Boat Harbour at Boat Harbour, one of only four known double centuries for the old club.

As the Japanese attacks on Timor increased and the 2 Squadron withdrew, the airfield was razed and the 2/40th retreated inland having had its main supply line by road cut. Amid mounting pressure, the 2/40th surrendered in what became a choice of "surrender or be bombed" leaving Pte. Allen a prisoner of war along with most of the group.

After seven months as a POW, Allen and 266 other Australians were being transferred to Japan along with America and British troops, one of 772 on board the cargo ship SS Tomahoko Maru.

Not displaying flags to show that there were Australians on board and only 40 miles from Nagasaki, the Tomahoko and her convoy was attacked by the US. Allen was one of the 560 on board who did not survive the attack.

Allen's cousin, Jack Moles, was also part of the 2/40th. The pair parted company before getting on the convoy thinking that if separated they had a 50/50 chance that one would get home. Moles served the remainder of the war as a POW and returned home after the war.

When Myalla resumed after the war, Doug, who had only watched one match his elder brother had played, was old enough to play and went on to better his lost brother by scoring 224 not out also against Boat Harbour. Incidentally, the only match Doug watched featuring his brother was the game where Les made his 222 not out.

By the time the war had ended the battalion had lost 264 of its original 920 men. Despite their valiant efforts, members of the 2/40th do not appear to be recognised as they should in Tasmania. The Launceston branch of the RSL has an honour board which lists the names of the 264 of the 2/40th who paid the supreme sacrifice. More recently, on Anzac Day 2012 a plaque was unveiled in North Motton, near Ulverstone. The message on this memorial is a simple one: at the top of the plaque is an Australian flag and the oval colour patch of white over red, which was proudly displayed by every 2/40th digger.

Then there is written:

In Honour of the men of the 2/40th Battalion 'Sparrow Force'—Tasmania's own—Lest we Forget.

It is important that I record that this plaque is the result of the perseverance of a committee of Ulverstone residents who raised money via cake and raffle sales. There is also a memorial at Green's Beach which is a life-size wood carving of a 2/40 digger standing under a palm tree. All sides of politics would no doubt agree with me that war memorials are vital in honouring the service of men and women for Australia.

I was pleased to read an article in the *Mercury* last month which detailed plans for a memorial to the 2/40 Battalion in Hobart and I made contact with one of the driving forces behind the push—a Mrs Susan Beard, whose uncle Dennis Scanlon was a member of the battalion but passed away in 2006. The article quoted 91-year-old Doug Jack, a member of the battalion, who was a prisoner of war for 3½ years. Mr Jack's simple request is to see a memorial in Hobart before he and his fellow surviving veterans pass away. Lloyd Harding and Jack Bowden join Doug Jack as the three surviving southern Tasmanian members of the battalion. For the benefit of those three in particular, I am pleased to inform the Senate that the Hobart City Council has approved the group's request for a memorial in the vicinity of other war memorials near Anzac Parade.

The group behind the push for the Hobart memorial hopes to have this memorial established by December,

pending the outcome of an application to the Department of Veterans' Affairs. It is thought that Tasmania has around 15 surviving members of the battalion. Mrs Beard has provided an insight into the special connection they have and they still meet every year on the Sunday nearest to 23 February, on Anzac Day and at Christmas. She says they meet as the 2/40 Battalion. I urge my fellow Tasmanians in parliament as well as their state counterparts to help spread the story of the 2/40 Battalion.

Centenary of Canberra

Senator LUNDY (Australian Capital Territory—Minister Assisting for Industry and Innovation, Minister for Multicultural Affairs and Minister for Sport) (19:01): All members of the Australian parliament are aware, I am sure, that Canberra's big centenary year of celebration, commemoration and conversation is only a matter of months away. There is no doubt that the days clustered around 12 March 2013 will be absolutely full of events and activities for the whole community. There will be major announcements, a specially commissioned symphony, fine food, fine company and plenty of fun and festivities all around the lake. And that is only in the single beautiful autumn month of March.

On Canberra's 99th birthday a few months ago, courtesy of the centenary preview brochure, we got an inviting taste of the full 12-month program. The centenary's creative director Robyn Archer and her hard-working team have established something truly special for this city and for the nation.

The build-up years to 2013 have been a wonderful part of the ride so far. Since 2008, Canberra has meaningfully recognised a succession of key dates. There were the years of the so-called 'Battle of the Sites' to find the best possible place to locate the new national capital—a city that then Governor-General Lord Denman imagined would resemble 'the City Beautiful of our dreams'. Then there were the tricky challenges of the city survey, as well as the torturous, five-year trek to determine the borders of the Federal Capital Territory. Water access and supply a hundred years ago, as now, loomed large. The first Commonwealth infrastructure had to be conceived, confirmed and created.

Yet no date commemorating the busy activity before 1913 can equal the high significance of 23 May 1912. That was the day of the announcement to the world of the names of the prizewinners in the international design competition for what was called, in the original documentation of the Department of Home Affairs in 1911, 'the Federal Capital City of the Commonwealth of Australia'. I have the privilege of delivering my speech in Romaldo Giurgola's remarkable building, this beautiful Parliament House, just months after the exact centenary day of the original Canberra

competition announcement. For me, in my home town, this is a symbolic occasion to cherish.

The multitude of stories surrounding the design competition a century ago are now a part of folklore. There were the four international expositions in the Australian colonies in the last decades of the 19th century that dramatically raised the bar of local expectations and local expertise. There were also the talented Federation founding politicians from right across the continent who embodied the determination and ambition necessary to build a capital from the ground up; a capital that would be as the inspired instructions of the Minister for Home Affairs, Hugh Mahon, memorably prescribed:

... a beautiful city, occupying a commanding position ... embracing distinctive features which will lend themselves to the evolution of an object, not only for the present, but for all time.

Then there were the switched-on design professionals of the era—those architects, engineers and surveyors who made it their business to meet in Melbourne in May 1901, intentionally to coincide with the opening of the first Commonwealth parliament. They did this in order to encourage the nearby politicians to embrace the highest standards of city design for a new capital which section 125 of the Australian Constitution confirmed would be built.

The Prime Minister at that time and throughout the key centenary years, Labor's Andrew Fisher, understood the importance of symbols to the new nation. He wanted a distinctively Australian Coat of Arms, complete with a kangaroo and an emu. He wanted a currency replete with Australian images and icons and a national capital where, as he put it in his fine speech on 12 March 1913:

... the best thoughts of Australia will be given expression to.

Then there was the Minister for Home Affairs in that talented second Fisher Labor Government between 1910 and 1913, the legendary King O'Malley who was extroverted, eccentric, sometimes outlandish, but a man determined never to be upstaged by anyone or anything. It was King O'Malley who took charge of the design competition and international controversy soon followed. He would make the rules, first announced in April 1911. He would have the last say on the winner and placegetters in the competition; and he would determine the design to be implemented.

The process evolved into something far more coherent and transparent than that, but it remained sufficiently contentious that no fewer than two Australian architecture institutes and the prestigious Royal Institute of British Architects boycotted the competition. Despite this, despite the errors of judgement and despite the unwanted prominence of personality, arguably the three best designs in the 137 announced entries were awarded the prizes—each of

them absolutely committed to the idea of the 'City Beautiful'.

Third was France's Alfred Agache, who would go on to re-design Rio de Janeiro and give us the iconic city so much admired today. Second went to the internationally renowned Finnish architect and town-planner, Eliel Saarinen. And first place, as we know, went to the visually stunning entry No. 29—originating in arguably the most progressively designed city in the world at that time, Chicago, and submitted by Walter Burley Griffin, in close collaboration with his wife and professional partner, Marion Mahony Griffin.

On this day last year, the Acting Director-General of the National Archives of Australia, Stephen Ellis, accepted on behalf of his institution a 're-discovered national treasure'—the 16th and last rendering, the last drawing, the missing drawing, in the original suite of extraordinary panels that comprised the visionary Griffin entry. The 16th drawing, the 'Key to the View from the Summit of Mt Ainslie', was believed by the professional design community in Australia to be either lost or destroyed. Through a succession of fortunate circumstances, it turned up—to be unrolled on the dining room table of Dr David Headon, who happens to be one of my advisers and also the Centenary of Canberra's History and Heritage Adviser.

Dr Headon's continuing passionate interest in Canberra's rich past recently led to a second, even more significant discovery. On 23 May, less than a month ago, and on the precise centenary day of the international competition announcement, Chief Minister of the ACT, Katy Gallagher, handed back to Minister Simon Crean, representing the Commonwealth and the National Archives of Australia, the last precious piece of the Griffin entry puzzle. Accompanying the 16 drawings in that original Griffin suite was a 29-page, unevenly typed prose document, outlining the Griffins' interpretation and explanation of their design panels. The National Archives has, presently, two original 'copies' of this document, the significant blue-spirit copies—but not the precious original. But now they have the original. The original was immediately put on public show in the Presiding Officers Gallery here, in the parliament—and what a provocative document it is. It breathes the human history of that time, and it will soon be given long overdue conservation attention by the National Archives of Australia staff.

So while we will relish the substance and subtleties of the National Capital story throughout 2013, it is also important to continue to illuminate this story with meaningful social, cultural and political contexts. The build-up years have enabled this to happen. In a dynamic and meaningful way, we have been alerted to the vital, ongoing role played by the national treasure house, our cultural institutions—their nurturing and

fertilising of the nation's memory—and to the need for all of us to play our part, no matter how small, in the rich narrative of Australia's national capital. A mature democracy demands no less and a citizenry respectful of its past would settle for no less.

I look forward to the program of events that has been forecast and worked so hard upon by Robyn Archer and her team for the centenary of the national capital celebrations. I think it will be a true celebration that will be able to be shared by every single Australian, with pride, enthusiasm and an eye to the future, as always.

New South Wales: Coalmining

Senator RHIANNON (New South Wales) (19:10): Last Friday I joined Australian Greens leader, Christine Milne, in Newcastle to meet with Hunter community groups and residents who are actively opposing the expansion of Newcastle harbour's coal export capacity with a fourth coal terminal, dubbed T4. Newcastle harbour is already the world's largest coal port, exporting climate change to the world. The expansion of mining and the export of coal out of the Hunter, with 180 million tonnes of coal forecast to move through Newcastle harbour each year, will see the further transfer of Australia's natural wealth into the pockets of largely foreign-owned mining companies. There is enormous opportunity in the Hunter for governments to drive the transition to clean energy and innovation; instead, the coal boom continues unabated—a policy that robs the region of jobs that would help build a sustainable future.

Hunter residents are bearing the negative impacts of the mining boom through poor health outcomes, degraded landscapes, loss of agricultural lands, damaged water resources and affected homes and businesses. For many years in the Hunter there has been a community campaign supported by the Greens about the environmental and public health impacts of coalmining. People are particularly concerned about uncovered coal trains that for years have rumbled through their suburbs to the coal port, leaving a growing legacy of respiratory problems and health concerns. The Newcastle *Herald*, which has taken up this campaign, dubbed 'The big cover-up', and has presented a series of reports on coal-dust related health problems.

Senator Christine Milne and I were presented with briefing papers from 13 key community groups and individuals, representing people from across the Hunter region. They have added their voice to this public health campaign. We were very moved by both the seriousness of their concerns and the breadth and depth of the expertise they have developed on planning, transport, sustainability, environmental pollution and health issues affecting people in the Hunter. I would like to share with you some of their concerns today.

The Stockton Community Action Group raised their concerns about a number of incidents that have occurred in the past 12 months and that demonstrate the health burden these people experience, often on a daily basis. There was the emission of hexavalent chromium from Orica, the leaking of arsenic into the Hunter River by Orica, the release of ammonium into the surrounding suburbs by Orica, and Koppers release of naphthalene into the surrounding suburbs. All this has occurred in the last year, along with the increasing levels of coal dust in Stockton that correlates with an increase in the volume and height of coal piles. Then there was the very disturbing cancer cluster that was identified amongst workers at Port Waratah Coal Services in July this year.

The Stockton Community Action Group was represented by Kate Johnson. She spelled out the need for us to look at the cumulative impact from the contaminants in the groundwater and in air at the Kooragang Island site, which could be the site for T4 coal loader if it goes ahead. She summed it up very clearly when she stated: 'Our concerns relate to our health and general wellbeing. We live in a beautiful place and we want to keep it that way.'

Then we heard from the Correct Planning and Consultation for Mayfield Group. This group has more than 500 members, who were represented by Claire Charles. She again spoke about the problems with the national port strategy. So while a number of the issues that these people spoke to us about concerned planning issues controlled by the state, they clearly intersect with federal responsibilities.

One thing that they mentioned on a number of occasions was how major projects like the cement terminal and the Mastelle bulk fuel terminal are being approved prior to the concept plan and meantime the national port strategy is not assisting to get the balance right here. I want to emphasise that this is not about getting rid of the industrial development in this area; it is about getting the association and the balance right. These people recognise and are very proud of the industrial contribution Newcastle has made but they know that that does not have to be at the cost of their own health.

We also heard from Doug Lithgow, the president of the Parks and Playgrounds Movement. He spelt out that for over two centuries there has been port related development in the Hunter River estuary and that future port developments need to set a historic marker and provide a turning point in the way development is imposed on the natural environment of the Hunter River estuary. I found his contribution very interesting in describing how industry butts up against internationally recognised wetland under the Ramsar Convention.

There was a very useful contribution that meant a lot to me as I am a keen birdwatcher from the Hunter Bird Observers Club. Ann Lindsey detailed the impact that these developments are having on local bird populations. To give you one startling figure, across New South Wales, according to a study by the World Wildlife Fund in 2007, around 30 million birds, comprising mostly woodland and forest birds and including species of honeyeaters and babblers that are under threat of extinction in New South Wales, died between 1998 and 2005 as a result of the approved clearing of native vegetation in New South Wales. That is a reminder of why we need to be so careful in how this development proceeds.

We also heard from the Hunter Community Network, which is an alliance of community groups in the Hunter Valley. They gave a very good summary of the federal issues that are impacting on the communities they work with. They named those as the function of accountability of the Australian Rail Track Corporation, the lack of national standards of measuring PM 2.5 and PM 1 dust particles, the subsidies to the mining industry, threats to other export industries from the region such as wine and thoroughbred horses, and the cumulative loss of species with national environmental significance. These were issues that many of the groups we work with raised with us on that day.

We also heard from the National Parks Association of New South Wales, the Tighes Hill Community Group, the Maryville Community Group, and the Great Lifestyle of Wickham, which has a great acronym: GLOW. It was also a privilege to hear from David Horkan, the Newcastle Citizen of the Year for 2012. He spelt out the need for there to be greater awareness amongst locals of the challenges they were facing in terms of both social and community problems. It was a valuable contribution to our deliberations on that day. We also heard from Lock the Gate, which is addressing the issues to do with coal seam gas. At the moment they are involved in the very important action with the blockade at Fullerton Cove. That was another major issue of concern. What was so impressive was that these groups between them bring together thousands of locals who are becoming active on the issue.

Another one of the big groups that spoke to us on the day was the Coal Terminal Action Group. They spelt out issues of concern on the need for a rigorous assessment of the T4 proposal by the environment minister. One of the big fears of the community groups is that T4 will be approved without the Commonwealth comprehensively fulfilling its EPBC responsibilities. Again that issue about the coal dust came up and there was a call for the adoption of a national standard for PM 2.5, and a very good suggestion that the Greens have also been taking up: that the federal transport funding of \$3.5 billion for coal rail infrastructure

should be withheld until the coal wagons are covered and the dust lost minimised. That issue is causing such stress along the rail line expansion which is occurring in the Hunter. I particularly congratulate CTAG, the Coal Terminal Action Group, for an extensive survey that they carried out in the Newcastle area. They door-knocked almost 500 households in Newcastle and there were a number of online respondents. The survey results clearly show that 77 per cent of residents, including some residents who work in the industry, do not want any more coal loaders in Newcastle. Fewer than 10 per cent of residents want more coal loaders. Dust, health and pollution are the people's top concerns, with dust mentioned more than twice as frequently as any other issue. Noise and traffic are the second and third most frequently mentioned concerns. Thirty-nine per cent report that they or a member of their household suffer from a respiratory ailment and one-third of these people consider that the ailment is caused by coal.

I appreciate the briefings these organisations provided to Senator Milne and me on Friday. We are very informed and look forward to continuing to work with them. (*Time expired*)

Murray-Darling Basin Plan

Senator XENOPHON (South Australia) (19:21): I rise tonight to speak on an issue of great importance not just to my home state of South Australia but to the entire nation, and that is the Murray-Darling Basin Plan. By the end of this year the Minister for Sustainability, Environment, Water, Population and Communities, the Hon. Tony Burke, will present the final Murray-Darling Basin Plan to the parliament. There is no question that we need a plan for this river system but I have grave concerns about whether the plan in its current form will be able to achieve any of its key objectives.

I have made this point countless times before but I believe it is pertinent to reiterate it now: governments do not own the environment. They do not own the lakes, they do not own the rivers; they are simply custodians of these environmental treasures. And when it comes to taking care of this treasure, the Murray-Darling Basin system, we as custodians have done an appalling job. But as custodians we now have an obligation to do the right thing with this great river system and the right thing by the communities that rely on it.

I, like many others in this place, worry that this plan will not meet its key environmental, economic and social objectives. In fact, I worry that we are not even close. The latest version of the Murray-Darling Basin Plan, which was released on 6 August, again proposes a sustainable diversion limit of 2,750 gigalitres for the Murray-Darling river system. This is the same sustainable diversion limit put forward by the Murray-

Darling Basin Authority in various drafts of the basin plan, although it is worth noting that it is significantly less than the proposals of the guide to the proposed basin plan. The guide suggested the minimum would be 3,000 gegalitres. This watered-down plan—no pun intended—is now offering the environment far less than what was the absolute minimum just 18 months ago, without revealing the real basis for this new magic number. Not only is the lack of transparency in this regard alarming and brash, but it is also particularly concerning given the weight of evidence that suggests that 2,750 gegalitres will not go even close to flushing the two million tonnes of salt from the system each year.

I refer to the work of the Wentworth Group of Concerned Scientists, which comprises some of Australia's best and most decorated environmental scientists and engineers. They state:

Our fundamental objection is that none of the 2011 draft Basin Plan documents provide even the most basic information as to the volumes or timing of water that are required to give a reasonable prospect of achieving these objectives.

The Goyder Institute, which again comprises leading scientists from the CSIRO, Flinders University, the University of Adelaide and the University of South Australia, concluded that:

... the ecological character of the South Australian environmental assets, as defined in current water management plans, is unlikely to be maintained under the Basin Plan 2750 scenario.

Further, a CSIRO review of the draft plan, released in November 2011, found that a 2,800 gegalitre scenario met only 21 per cent of the hydrological targets prepared by the authority with high certainty and 24 per cent with low certainty. The list goes on.

These groups have joined a score of others in urging the Murray-Darling Basin Authority—the MDBA—to undertake urgent modelling of higher water recovery targets. Not only does that appear to have fallen on deaf ears, but it also seems such suggestions have been viewed with virtual derision by the authority, the department and the minister.

I, like many others in this place, do not want to criticise for the sake of criticising. I want a basin plan that will work. But, as many other colleagues in this place have begged, please just show us the science. I am happy to be wrong, which, I concede, may be an unusual trait for a member of parliament, but show us this figure, how we reached it, and show us how it would be enough to keep the Murray mouth open and flush two million tonnes of salt—enough to fill the MCG from the turf to the top—out of the system each year. Explain to us why ground water extractions are slated to increase to over 17 hundred gegalitres—17 hundred billion litres. In the absence of total

transparency, how can we as parliamentarians make an informed decision when we are asked to vote on this plan later in the year?

I also have serious concerns regarding the transparency and fairness of the federal government process for awarding taxpayer-funded grants of funding to irrigators. In June 2012, the Australian National Audit Office report headed *Administration of the private irrigation infrastructure operators program in New South Wales* raised some serious concerns about the operation of this program, which is a key component of the federal government's \$5.8 billion Sustainable Rural Water Use and Infrastructure Program. Alarming, the ANAO's report concluded that all applications for funding rounds 1 and 2 of the New South Wales program:

... did not contain sufficient detail to facilitate a thorough assessment, particularly in relation to addressing the economic/social criteria, environmental criteria and the projects' cost-benefit analyses.

That is a staggering \$649 million of taxpayer dollars to projects that had not undergone a cost-benefit analysis. Not only this, the report also concluded that the department had not established baselines from which to measure water efficiency improvements nor identified the quantity of water savings that would be returned to the environment based on these taxpayer-funded investments.

Unfortunately, such appalling mismanagement is not an isolated issue. The Victorian Ombudsman's report into the Foodbowl Modernisation Project, which attracted \$1 billion of federal funding, found that the project allocated:

... substantial funding although it had not undertaken a business case and feasibility studies critical to assess and evaluate investment options.

It is extraordinary that so much money can be wasted without a proper cost-benefit analysis.

South Australian irrigators have applied for funding under a number of federal government programs, most notably the Sustainable Rural Water Use and Infrastructure Program, but as they capped their water diversions in 1969—that is what South Australia did—and invested in irrigation efficiency measures out of their own pockets, to a large extent they have been deemed too efficient to qualify. For example, the Renmark Irrigation Trust, the central irrigation trust in the Riverland in South Australia, is already in the order of 97 per cent plus efficient, according to research conducted by the Charles Sturt University International Centre for Water. There is a clear lack of flexibility in the use and criteria of the infrastructure fund which disadvantages early adopters and, in particular, those in regions such as the Riverland. The Riverland irrigators that I know have done the right thing for many years—people like Jim Baleros, and Mick Puntiero, who I

have got to know very well. They have done the right thing but, instead of being rewarded for it, in a sense they are being punished for it under this proposed plan.

In October 2010, the approval rate for projects in South Australia was less than 50 per cent and I am advised by irrigators in the Riverland that the success rate has not improved since then. I am advised that, as at July 2011, out of this \$5.8 billion fund, only \$14.4 million had been allocated to private irrigator grants in South Australia. But not only are the upstream irrigators getting money for jam, they are also getting to keep half the water they save. That in itself is very problematic because it distorts the water market in the sense that what the MDBA is saying and what the government is saying is that the in-valley target to meet for South Australia is 101 gigalitres plus a further 971 gigalitres from the southern-connected basin, of which South Australia is a part.

In Senate estimates on 23 May I had an interchange with Dr Rhonda Dickson from the Murray-Darling Basin Authority, who I accept works particularly hard for the authority, has a difficult job to do and is a decent person. But I am concerned that the response of, the position of, the authority is to say that their current proposal is to have a market based approach so that, for South Australian irrigators who wish to sell some or all of their entitlement, it will be done through market mechanisms.

The problem is this: if you distort the market by virtue of the infrastructure fund—the \$5.8 billion fund that South Australian irrigators could hardly access—then you distort the way that water is bought back for the environment. It will put those irrigators at a significant disadvantage; it will skew the buyback market dramatically against South Australia. South Australia must receive recognition of its past efforts in adhering to the cap, but this has not been addressed in any version of the proposed basin plan. For the authority to glibly say, 'Everyone says they're more efficient in other regions; that shouldn't be a factor,' is quite unfair and must be addressed.

Time is short. I will have much more to say about this in the weeks and months to come, but the plan in its current form will not secure South Australia's future. It will not protect our wetlands, our ecosystems and our wildlife. It will do nothing for our irrigators and it will have catastrophic consequences for my home state of South Australia in its current form. It needs to be amended. It needs to be fair.

Tasmania: Mining Industry

Senator URQUHART (Tasmania) (19:31): There are Tasmanians doing it tough. The downturn in the forestry and manufacturing industries and in pockets of the agriculture industry has hit Tasmanian workers and their families hard. Our economic growth rate is not high enough, our workforce participation rate is too

low and our unemployment rate is too high. There is a net loss to Tasmania, particularly a loss of skilled workers, because of the mining boom. These workers leave behind established communities for dongas in the desert. We, as the state of Tasmania, educate and train many workers who are then lost to the interstate mining industry. But not all highly skilled workers from Tasmania can get mining jobs. I hear of too many Tasmanians who are facing tremendous difficulties in securing jobs in the mining industry in the states of WA and Queensland.

People often say that there is no hope left in Tasmania, that all the jobs are drying up and that they have to try and move interstate and find work. As to that, I point to the record \$4.5 billion worth of private sector investment, growing at a faster rate than any other non-mining state, and I highlight that local businesses have invested more than \$1.4 billion in machinery and equipment over the past year at a growth rate more than double the rest of the nation.

Tasmanians have the desire, the skill and the courage to move our state forward. This is why I wanted the government caucus Spreading the Benefits of the Resources Boom subcommittee to hear from Tasmanians. The subcommittee, established through the hard work of my colleague and comrade Senator Doug Cameron, is tasked with investigating the serious challenges faced by government in seeking to spread the benefits of the mining boom. With our resolve to weather all storms, it was vital for the subcommittee to visit Tasmania.

As a part of its national consultations, the subcommittee came to Hobart. We met with representatives from the mining industry, employer and union representative groups, as well as state and local government representatives and the community sector. There are five major mine sites in Tasmania: Mount Lyell, which mines copper and gold, has been operating for over two centuries and has recently discovered extensions; Henty Gold, which has been operating since 1996; Rosebery, which mines five economic minerals, has been operating for over a century and uses the natural environment as a natural hedge, mining tin when profitable or copper and lead when needed; Grange Resources at Savage River, which mines magnetite ore, which after significant processing is economic; and Renison tin mine, which has been operating for over a century.

In mining and minerals processing, Tasmania exported about \$1.6 billion worth of product last year. This accounts for over 55 per cent of Tasmanian exports. Logically, any long-term plan for Tasmania needs to include a strong mining industry and, with that, access to minerals. And Tasmanian miners are looking at expanding. In 2011-12, around \$200 million is expected to be spent on capital expenditure, while

mineral exploration is expected to be over \$3½ billion in the same period, a lot of money for a small state of 500,000 people.

In 2010-11 around \$500 million was spent on goods and services for the operations of Tasmanian mines. Of that, about \$350 million was contracted to Tasmanian businesses. This is evidence that Tasmanian miners have a strong commitment to the Tasmanian supply chain. There are over 1,200 workers who are directly employed in mining in Tasmania. Maintenance is mostly contracted, mainly to about 350 local contractors. The permanent workforce at Tasmanian mine sites is almost exclusively local and there is an extremely low turnover of labour. Operational staff prefer to stay with their families, enjoying the relatively high incomes and either basing their families on the West Coast or to the north on the coastline, which encompasses Smithton, Wynyard, Somerset, Burnie, Penguin, Ulverstone and Devonport. Wages are around \$100,000 a year, well above the average incomes in both Tasmania and Australia.

The mining boom has put pressure on the availability of professionals, who are going to Queensland and Western Australia. Tasmanian miners have filled these labour shortages with professionals—geologists, surveyors, accountants and engineers—from Peru, the Philippines, China, India, Chile and Ireland, just to name a few. There is a great geotechnical engineering degree at the University of Tasmania, and the ARC Centre of Excellence in Ore Deposits, CODES, was established at the University of Tasmania in 1989. CODES is regarded as a global leader in ore deposit research, with connections to the University of Queensland, the University of Melbourne, the Australian National University and the CSIRO.

These graduates often see the wage potential in other locations and leave Tasmania. There are a number of apprentices on mine sites in Tasmania, but after getting their qualifications these workers also often leave Tasmania. Mining companies are also always looking at upskilling the existing workforce through the delivery of specialised certificate I through to certificate IV courses. But after we have schooled them for 14 years, then supported them through university or an apprenticeship for another four, there needs to be a way for Tasmanians to reap some rewards. There is the potential to train apprentices in north-west Tasmania utilising the existing stable workforce.

Given the negative effect of the mining boom on Tasmania, there should be reciprocal obligations on the industries and governments who benefit from the training of skilled workers in Tasmania—that is, those companies that are profiting from the eighteen years of training provided by Tasmania to their workforce

should provide some contribution to the training of other Tasmanians.

Through the discussions in Hobart, the committee formed the proposal for the establishment of a national mining and engineering skills hub in Tasmania. This skills hub would provide opportunities for Tasmanians to upskill and undertake apprenticeships within Tasmania and subsequently work in either Tasmania or interstate. The skills hub will be assisted by the rollout of the National Broadband Network, with Tasmania the first state to be completed. Importantly, the discussions led to a view of the committee that the skills hub should be funded by the mining industry and supported by the federal and the state governments, who are receiving the benefits of the export of Tasmanian skills.

There is a solid mining industry in Tasmania with a relatively steady workforce, diverse ore deposits and quality educators such as UTAS, the Australian Maritime College and the soon to be re-established TAFE Tasmania. I am strongly of the view that the parties who benefit from the training of skilled workers in Tasmania should make a financial contribution to a national mining and engineering skills hub in Tasmania. This will benefit the national economy and facilitate spreading the benefits of the boom to Tasmania. We also need a good process to facilitate the passage of Tasmanians into mining job opportunities in Western Australia and Queensland on a fly-in fly-out basis.

I heard stories of the tremendous difficulties Tasmanians face when trying to get their foot in the door for a mining or associated job. One worker who came along with his union was Grant. Grant is an aluminium fabricator and body builder by trade. He also holds certificates for scaffolding and DLI welding as well as a medium-rigid licence. After hearing of other workers at his factory signing up with mining companies for work, Grant went to Western Australia to look at opportunities for work in the mining industry. In Perth, he attended a mining expo. Amazingly, the 10 companies he spoke to were not interested as he had no experience in the mining industry. Yet he had been utilising the same skills required in mining construction and had more experience than he could fit onto a piece of paper. He was disheartened with mining opportunities and came back to Hobart.

After the media coverage from the committee hearing, I was contacted by a Tasmanian civil contractor, Leigh. We had a great discussion about Leigh's experience in the industry in terms of both building construction and training former forestry workers for entry into the mining industry. Through Leigh's ideas, experience and connections, he has added confidence that the proposal for a mining and

engineering skills hub in Tasmania has merit and can achieve the goal of securing work for Tasmanians in the mining industry. Highly skilled workers from Tasmania's industries want a piece of the mining boom. While a lot are trying, many are not being given the opportunities in the mining industry. We need to help people have the right hand to help. We need to provide the right training for these amazing records of prehistoric life.

Tasmanians have the desire, the skill and the courage to move our state forward. I will continue to push hard for the establishment of this skills hub in Tasmania, to give Tasmanians the job-ready skills and experience they need to enter the mining industry.

Dampier Peninsula

Senator SIEWERT (Western Australia—Australian Greens Whip) (19:40): I rise tonight to speak about the imminent threat posed to a unique part of Australia. It is a stretch of the pristine Kimberley coastline, which tells the story of our planet and our country from 130 million years ago. It has a record of our planet that was formed at a time when Australia, Antarctica and New Zealand formed a single land mass. This area stretches 200 kilometres along the Kimberley coast and provides us with evidence of a diverse range of ancient habitats and the fossilised footprints of the dinosaur inhabitants of that area. Some of the largest, if not the largest, ever to walk this earth have left footprints in this place. The isolation of the geography, climate and lack of human interference, and, many of us would argue, the custodianship of the traditional owners have resulted in a historical record of outstanding quality and immeasurable value, one that we are only just discovering.

One hundred and thirty million year old prints are found in the Broome sandstone along the rocky coastline from south of Broome to the end of the Dampier Peninsula, including of course James Price Point. It is surreal to think that an area so old and so important is now under threat for resource development, yet we have no full idea of its unique value; it is still being discovered. The proposed development of the Browse LNG processing hub intersects with this area of the coastline, bringing with it people, pollution, development and an opening up of this area—this in the name of progress when alternatives exist for this particular processing plant.

The evidence of dinosaur footprints on the north-west coast is in fact not a new discovery. However, the tidal zones which see some of these sections of the trackways covered by water for much of the day and much of the year mean that documenting these materials has taken a long time and continues to take some time, and as I understand we are only touching the tip of the iceberg with what we have seen so far. In many sections, there is only a window of two or three hours per day to look at these trackways and to look at the footprints. In fact, some cannot even be seen until very low tides. Therefore, you need to use these

valuable hours very carefully to identify, photograph and create casts of the prints. Like many archaeological processes, this identification and discovery has not progressed quickly, although at various times it is reported that girl guide groups, volunteers and even the people have the right hand to help. We need to provide the right training for these amazing records of prehistoric life.

A number of scientists have dedicated their time to this, but most have not been able to secure the sustained grant funding or support or interest over the years from governments to complete this work.

However, all this is changing as people realise what an invaluable area this is. Dr Steven Salisbury of the University of Queensland's School of Integrative Biology has undertaken a significant amount of work to document this site, mostly in a volunteer capacity, and will be releasing a major paper on this work later this year. Some of the beginnings of his work, and also that of Dr Tony Thulborn, has recently been articulated in a *New Scientist* article.

Some initial findings offer a taster of what we can expect to hear about in the future. These were presented in Broome on Saturday night of the weekend just past, at Notre Dame University in Broome. These findings have demonstrated that this area was a regular pathway for at least four types of dinosaurs, perhaps many more, and that there were significant interaction between them. The work of Dr Salisbury has been complimented, with prior work done by Dr Tony Thulborn which has also been documented in *New Scientist* this month. As Dr Salisbury has said:

Before we've even had a chance to work any of this stuff out, we're facing the possibility of losing it.

He likens the area to a jigsaw puzzle: different environments, each with a range of tracks, plants and other fossils. It is a unique area that is apparently incredibly rare on an international scale, all the more so because it has remained untouched and isolated until now. This will not be the case, of course, if the proposed Browse hub becomes a reality, given the proximity of the proposed development to the prints. In fact, I have been there and seen some of these footprints—it is an amazing experience—and the tracks of the pipelines of the development will be smack in the middle of some of the most important trackways and prints at this site. Ambiguity should not exist about something so important. We should not be putting something so important at risk.

Aspects of the National Heritage Council's recommended approach to the heritage listing of these dinosaur footprints is not well defined. The queries remain about the boundaries of the heritage area; what is in, what is out, and what trackways and footprints are in there? The boundaries leave uncertainty about whether or not the heritage area does, in fact, cover the footprints. This is because the outside marine boundary

has been tied to the tideline, and in that environment it varies a lot. It has been left up to the developer to define the boundaries. One wonders how the protection system works in this country. The location of the heritage area falls largely short of the area marked for development, avoiding the overlap, which presents further questions about the development. We are extremely concerned that this development will impact on the dinosaur footprints. Both Dr Salisbury and the Murdoch University Cetacean Research Unit in Western Australia have voiced their concerns about the processes undertaken in different assessments on this project. The EPA assessment is being strongly questioned by many in the community because of the way it was carried out.

These footprints are a unique window to our prehistoric history. This area is also important because it is one of the only places—if not the only place—in the world where Aboriginal culture intersects with our prehistoric history, and with dinosaur footprints and trackways. The dinosaur footprints and trackways have been woven into the song cycles of the custodians and traditional owners of this land. These song cycles go up and down the coast and stretch into central Australia. I have seen one of these dinosaur footprints and have been told the story about this particular footprint and fossil, and how it is integral to and wound into the song cycles and the culture of the traditional owners of this land.

This is one of the most important areas for dinosaurs and archaeology not just in Australia but also internationally, one of the only areas in the world where dinosaurs have helped form the landscape, and we are only just beginning to understand this unique and invaluable archaeological cultural site. And now we have a gas hub that does not need to be located at James Price point—smack in the middle of what will turn out to be one of the most important sites for dinosaur footprints and trackways. We have understood only the tip of the iceberg in terms of the value of this site. We are going to be losing it, if this proposal goes ahead, before we even know what is there. How is that intelligent decision making in the year 2012?

London Summit on Family Planning

Senator MOORE (Queensland) (19:50): In July this year women and men gathered together at the London Summit on Family Planning. The summit was designed to support the UN Secretary-General's global strategy for women's and children's health—Every Woman Every Child. This event was shadowed by sister events in Sydney, Brussels and Washington, and through the marvellous effect of social media—most of which I do not understand—we at the Sydney event, which was a wonderful time, were able to see images of women gathered in these various places, all with a

single focus: to look at the issues of every woman and every child.

It has generated a unique opportunity for global commitment to expand accessible, voluntary and quality family planning services. The summit focused on equity and rights, highlighting the need for freedom of access to a range of contraceptives for married and unmarried women, marginalised communities and teenagers—indeed, for anyone, anywhere, who sought to have that choice.

This summit supported and built on innovative public, private and civil society partnerships which are needed to work together to transform the lives of women and girls. One of the driving forces of the summit was the amazing work of the Bill & Melinda Gates Foundation, a truly wonderful example of an innovative public-private partnership. This foundation is guided by the belief that every life has equal value. The foundation sees its mission as helping all people lead healthy and productive lives. The foundation's global health and development programs are dedicated to the mission by ensuring that life-saving advances with a strategic focus on family planning reach those who need them most.

At the global level the foundation seeks to promote family planning as indispensable to achieving the Millennium Development Goals—as you know, Madam Acting Deputy President Stephens, we have spoken many times in this place on the importance and the urgency of the Millennium Development Goals. The foundation invests an extraordinary amount of money in raising the awareness of the importance of family planning among donors, governments and the private sector to enhance the efficiency of contraceptive procurement and distribution, thus engaging donors, governments and civil society to better coordinate efforts and increase resources to fund family planning.

It is predicted that the greatest future global population growth will occur in towns and cities in developing countries. For the first time, in 2008, the urban share of the world's population reached 50 per cent. Urban populations, particularly in Africa and South Asia, are predicted to double between 2000 and 2030. Urban births are concentrated amongst the poorest populations, and a significant number of these births are unintended. Also the maternal, infant and reproductive health status of the urban poor is comparable to—or worse than, in some cases—that of rural residents. The reason I am stating this is that often the focus of aid and concern is on rural parts of countries. Whilst that remains important, one of the major issues at the summit was looking at urban communities as well. This is not a competition; it is ensuring that needs are identified clearly and the

response from the government, civil society and the UN is to those needs.

I have not met Melinda Gates, but she is an extraordinary woman. She explained the priorities to the audience of the London summit. We were able to hear this speech while sitting in our Sydney location. She said:

Family planning is a priority for the Bill & Melinda Gates Foundation ... we are increasing our investment in family planning by \$560 million over the next eight years. That amounts to a doubling of our current investment, bringing the total figure to more than \$1 billion from now until 2020.

She went on to say:

The Gates foundation has not prioritised family planning by accident.

The core of Melinda Gates's contribution was made to women across the world when she said:

We have devoted a lot of time and effort to studying family planning programs. The data about both the breadth and depth of their impact is extremely compelling. Helping women gain access to contraceptives saves lives. It improves the health of mothers and children. It increases children's school attendance. It leads to more prosperous families. At the national level, it has even been linked to GDP growth.

The outcome is that the family planning summit 2012 successfully raised resources to deliver contraceptives to an additional 120 million women, at an estimated cost of US\$4.3 billion. Donors made new financial commitments amounting to US\$2.6 billion, exceeding the summit's financial goal. These resources, principally funded by country governments through their health budgets, and supported through contributions from consumers and external donors, need to be sustained at the local level.

I am so proud that Australia was one of the key donors. Australia plans to spend an additional \$58 million over five years on family planning, doubling annual contributions to \$53 million by 2016. This commitment will form a part of Australia's broader investments in maternal, reproductive and child health of at least \$1.6 billion over five years to 2015, subject to budget processes. In July, on the eve of the London Summit on Family Planning, the Minister for Foreign Affairs, Senator Bob Carr, announced Australia would double its aid funding for family planning services in developing countries to \$50 million a year by 2016 as part of a global campaign to prevent unwanted pregnancies and save around 200,000 lives. In addition, Australia would commit to a global effort to raise up to \$2 billion for family planning services. By being part of the global commitment, we were able to put our own contribution and, in many ways even more importantly, to build awareness amongst other donor countries of the importance of this cause. As we know, the dollar at the moment is very, very fragile and people are calling on demands from budgets across the world. To have this international contribution and

commitment at the London Summit on Family Planning reflects a knowledge and awareness of what our world needs to make a difference. The world's women and families will thank the donors by acknowledging that we will make a real difference in their lives.

We understand this is not the first global conference about poverty reduction or women's rights, and it cannot and must not be the last. At the turn of the century Australia, along with 189 other countries, adopted the Millennium Development Goals through the Millennium Declaration, and we are moving rapidly towards the 2015 end-date. No-one believes that every goal will be achieved by 2015, but what we can identify and show is the commitment by countries across this world to make change. And what we need is an effective evaluation of the changes that have occurred and to identify where we have not met the goals. It is not a sign of failure to say that we have not met every goal. It is a genuine challenge to every country to ensure that we see where we need to move forward to ensure that the women and children of this world will be the major beneficiaries of the changes to which we are all committed.

The work done at the Family Planning Summit in London and the commitments made by governments and philanthropists like Bill and Melinda Gates through their foundation will extend the hopes of the Millennium Development Goals to reduce poverty and, importantly, to improve maternal and reproductive health. Family planning will be strengthened by integrating it into a larger reproductive, maternal and newborn and child health strategy and linking it into the important HIV services to support and strengthen the continuum of care while filling critical gaps in access to family planning. Consequently, we will accelerate progress on MDG4, reducing child mortality, and MDG5, improving maternal health, including the important MDG target 5B, universal access to reproductive health, and then of course looking on to MDG6. We are playing the game of 'which MDG?' and moving forward.

There has been progress, and forums like the summit show that progress but also put down the challenge for all of us. I am proud that Australia is taking its place on the international stage by committing to being part of this future. We also need to raise this certain point: it is one thing to make commitments to be a donor but it is another thing to put the money in. So these groups need to continue to have support and encouragement, because the numbers are not immaterial; they are real and if we are going to make a difference this money has got to be provided.

Defence

Senator HUMPHRIES (Australian Capital Territory) (20:00): I rise tonight to talk about the

parlous situation of the defence budget of Australia. It does not need an alarmist to look at the situation of Australia's funding of its defence needs and come to the conclusion that we have a serious problem in this country sustaining a capability to deal with any challenges that Australia might face in the defence space in the immediate future.

The Labor Party came to power in 2007 promising big things for defence. It commissioned almost immediately a white paper designed to reinvigorate Australia's investment in its Defence Force, which it claimed had been neglected. In due course, in 2009, the white paper was duly published and this white paper was a blueprint for a massive purchase of hardware and other resources for the Australian Defence Force: a \$275 billion shopping list with an almost complete renewal of the platforms used by defence proposed over a 20 year period. So Force 2030 was inaugurated with much optimism.

We can debate whether the purchasers and the platforms proposed at that time were the best ones but we cannot debate the fact that the mission was a grand one. Unfortunately, almost immediately this vision began to unravel. At every budget subsequent to the launch of the white paper in 2009 the Labor Party began to cut the size of the budget, and this was on top of the Strategic Reform Program, which had parallel savings being made in defence supposedly to be redirected towards better investment in equipment while that white paper program was being implemented. Something in the order of \$15 billion to \$20 billion has been cut from the defence budget in the intervening years since the launch of the white paper. In 2012 the largest cuts to defence were experienced. The 2012 budget delivered cuts of \$5 ½ billion in Australia's defence spending. I ask the Senate to bear in mind that this falls against the background of a white paper which was put together the global financial crisis at a time when Labor knew that there were going to be big challenges in being able to fund this program; but Mr Rudd decided that it was imperative that Australia launch this major new program to reinvest in the Defence Force. Yet at every subsequent opportunity at every budget delivered since that time sustained cuts have been made to that defence budget such that serious doubt is now being entertained by every serious observer of Australia's defence capability as to whether Australia will be in a position to be able to deliver that. Dr Mark Thomson, in his 2012-13 Australian Strategic Policy Institute *Defence Analysis*, said:

The plans set out in 2009 are in disarray; investment is badly stalled, and the defence budget is an unsustainable mess.

So three years after launching this bold new vision it is, in the words of one of the more credible observers of the defence arrangements, 'an unsustainable mess'.

We have seen defence's share of gross domestic product fall to its lowest level in Australia since 1938, so in 74 years it is the lowest level of investment in defence. Defence spending has dropped as a percentage of gross domestic product from 1.74 per cent in 2009 to 1.56 per cent this financial year and it will drop further in 2013-14 to 1.49 per cent. Things like the ADF Gap Year program have had to be cancelled as a result of the way in which the government has proceeded to attack the defence budget. This was a program which was able to offer people a new way of understanding what life in the ADF might be like and which was particularly effective in attracting more women to the Australian Defence Force.

Major capital acquisitions in defence are being cut by 20 per cent over the next two years, a \$2 billion cut over that period of time. The consequences for particular areas of defence purchasing are very clear. The most serious perhaps of these is the decision to defer for a further period of time a decision which ought to have been made at least a year ago, being the decision on what to do to replace the Collins-class submarines. Labor has wasted four years sitting on its hands, unable to make the key decisions that will bring that particular capability into being.

The 2009 white paper outlined plans for 12 conventional submarines at a cost it has been estimated subsequently at \$36 billion. But Labor's latest decision has not been to proceed with that particular concrete decision about what to purchase and when but simply to commission further studies. One gets the overpowering impression that the Labor Party would rather leave that decision for another government to make after the next federal election.

The joint strike fighter purchases have been pushed back. The decision to purchase self-propelled artillery, one that was described in the government's own white paper of 2009 as the preferred option for sound reasons of capability protection and cost, has been dumped. At least \$11 million of taxpayers' investment in that program to secure that new capability has simply been flushed down the toilet. The Chief of the Defence Force made it clear that it had to be sacrificed for reasons of money and not for any tactical or strategic reasons. The Armidale-class boats have experienced such heavy use in Australia's northern waters that they are being significantly compromised and Navy's patrol boats will not be returned to full capability until July 2013 because of that very heavy use.

In light of all of that, unsurprisingly, earlier this year a few days before the federal budget the government announced under cover of other developments that it was going to replace the vision of the 2009 white paper with a further white paper to be produced—surprise, surprise!—after the next federal election. It was an

admission that the vision of 2009 was totally and utterly dead.

That is bad enough for the future of the Defence Force. It has had a resonance in morale in the Defence Force. It has also had a very serious resonance in defence industry in Australia, an industry which ought to have been growing in the last four or five years in the light of the government's plans to expand but in fact has been contracting. A paper leaked from the Department of Innovation, Industry, Science and Research a few weeks ago talked about the devastating effect of delayed decisions on defence acquisition. At said that a significant number of defence firms, small to medium enterprises in Australia, are not sustainable and there is a risk that many of these clients will not survive let alone drive innovation and become globally competitive. Business advisers have provided varying forecasts for their clients' futures ranging from concerned that only 50 per cent will survive long-term and only 20 per cent will be profitable.

Given the size of the challenge Australia took on in 2009, to declare, as the government's advisers have, that up to half of the small to medium enterprises working in the sector are at risk of failing is an absolute and utter disgrace.

This government has trashed defence spending; it has trashed defence capability. Few observers of our Defence Force cite a serious capacity for the Defence Force to meet the kinds of challenges that we have met in recent years in places such as the Solomon Islands and East Timor. That is a parlous and unacceptable state of affairs which must be laid squarely at the feet of successive ministers for defence in this government and governments under this Prime Minister and the previous one who simply were not interested enough in defence to secure Australia's Defence Force into the future.

Equality

Senator WRIGHT (South Australia) (20:11): I rise tonight to speak on equality, the important notion that people are of equal value and worthy of equal respect and are entitled to be treated as such. I want to explore what it means to me and why I believe we must work towards eliminating discrimination and promoting equality in all aspects of Australian society. I am going to discuss how we need to strengthen our laws, our policies and programs so that they embody principles of equality and other important human rights standards.

Enhancing equality will increase people's participation in society, heighten their productivity and lead to improved education and health. Achieving equality and equity should be a central goal, then, of any government, as it will benefit all Australians. Put simply, equality is for everyone.

But what is equality and what does it mean? Equality is about ensuring that individuals and groups

are treated fairly and equally. In this way everyone, regardless of their background or their personal characteristics, can have access to opportunities and essential standards of living that will enable them to reach their potential and live a fulfilling life. It is a simple, commonsense concept about treating people with courtesy and decency. It is just how we all expect to be treated by our friends, peers, colleagues, employers or strangers.

Equality means that men and women receive equal wages for work of equal or comparable value or nature. It means that people can marry the person they love without experiencing discrimination because of their gender or sexual orientation. It means that people will not have their application for a rental property rejected because their bond is supplied by the department of housing, for instance. It means that a five-year-old girl cannot be refused admission to a government funded kindergarten on the basis of her parents' same-sex relationship.

Growing up in Australia in the 1970s, equality was a developing principle. As a young woman I often experienced a lack of choice is due to my gender. I knew it was unfair and I knew it was wrong. I always challenged those incidents and, as time passed and as our community developed a better understanding of how equality was important, I was able to imagine a world where many of those petty and large instances of discrimination would cease to occur. They would come to be considered unacceptable and then in some cases totally absurd.

A landmark decision for me and one that brought the idea of equality into strong relief for Australian society was the celebrated case of Deborah Jane Wardley, who took on Ansett Airlines in 1976 when I was 15 years old. For those of my vintage her name is still legendary, but younger Australians may need to know that she was a gutsy woman who just would not take no for an answer. She obtained her pilot's licence at 18 and logged 2,600 flying hours by the time she was 23. At 24 she then applied to train as a pilot with Ansett Airlines, Australia's second-biggest airline at the time. The founder of the airline, Reg Ansett, was determined not to have a female pilot and repeatedly rejected her applications for a position in the pilot training program over a period of two years. Deborah Wardley challenged Ansett at law and the case was heard by the newly formed Victorian Equal Opportunity Board.

Ansett argued that it was not excluding women pilots based on their gender but for reasons that now seem laughable, although they were seriously put at the time—among them, that women were unsuitable to be pilots because of their menstrual cycle and because pregnancy or childbirth would disrupt a woman's career to the point where it would endanger safety and

incur extra costs for the company. These were the legal arguments of a leading Australian company in the late 1970s. It was not really all that long ago.

Wardley won her case but her fight was not over. It was not until Ansett had appealed unsuccessfully to the Victorian Supreme Court and then to the High Court and attempts by Reg Ansett to sack her and then not assign her to training that she finally made her first commercial flight for Ansett in 1980. She went on to fly jet aircraft and, as of 2007, she was a senior airbus captain with KLM.

As a young woman who was contemplating studying law these cases resonated with me. I found inspiration and developed confidence in our justice system through cases like Wardley and Ansett. Cases like that challenge systemic injustices and use the law to create positive and progressive social change and better outcomes for everyone. Despite this, there is no doubt that improved progress towards gender equality is needed in Australia. Women continue to experience inequality and sexual harassment in the workplace. For example, in August 2010, women earned 16.9 per cent less per week on average than men, with the total earnings gap increasing to 34.8 per cent per week when taking into account part-time and casual work.

A 2008 survey by the Australian Human Rights Commission found that 22 per cent of women aged between 18 and 64 had experienced sexual harassment in the workplace in their lifetime—22 per cent, or nearly one in four. These statistics show that, for women, the workplace continues to be a major site of discrimination and sexual harassment. In a more recent case in Victoria, a youth suicide prevention initiative known as WayOut, which provides services to homosexual young people in rural Victoria, was refused accommodation and services by a Christian youth camps facility. WayOut took the case to court, alleging that its booking was refused on the basis of the sexual orientation of the proposed attendees. In that case, Supreme Court Justice Hampel found:

The conduct of the respondents in refusing the booking was clearly based on their objection to homosexuality. They are entitled to their personal and religious beliefs. They are not entitled to impose their beliefs on others in a manner that denies them the enjoyment of their right to equality and freedom from discrimination in respect of a fundamental aspect of their being.

Whilst it is reassuring to know that the law can in some instances be used to redress discrimination, it is of great concern that such discrimination still exists in society today, and the law does not always afford protection against discrimination either. The case I mentioned earlier that involved the four-year-old girl being refused permission to a government funded kindergarten on the basis of her parents same-sex relationship is a disgraceful example of the law perpetuating harmful discriminatory practices.

Religious schools are exempt from certain aspects of antidiscrimination legislation and, as a result, the form of discrimination in this case, although clearly unfair and unreasonable and penalising a young Australian child, remains lawful.

Discrimination on the basis of race, culture and ethnicity also remains prevalent in our society. VicHealth has conducted important research into the impact of discrimination on people's health, and has found that one in two people of non-English-speaking background and three in four Indigenous Australians report experiencing race based discrimination in their lifetimes. So discrimination can be extremely debilitating, with affected individuals and their families experiencing serious health, social and economic consequences. Research undertaken by VicHealth has found that exposure to discrimination is linked to anxiety and depression and can also increase the risk of developing a range of other mental health and behavioural problems.

Inequality also contributes to poorer educational results, lower productivity and lower workforce participation. In contrast, research by the University of Melbourne and the Victorian Equal Opportunity and Human Rights Commission has found that more equal societies have been associated with better public health and education outcomes and that equal opportunity in labour markets has positive economic benefits. The evidence is clear: more equal societies are healthier, happier and more socially cohesive.

Clearly, we should be working towards eliminating discrimination and promoting equality in Australia. We need to take action to ensure that our laws, policies and practices effectively tackle discrimination and promote equality in all aspects of public life. The government has started this process through the consolidation of the Commonwealth antidiscrimination laws. Whilst the government is keen to streamline laws and reduce the regulatory burden, the consolidation process must go further to strengthen and improve our equality laws so that they are brought into line with Australia's international human rights obligations. The federal government needs to show leadership and vision on this. If the government is serious about creating a fairer and more inclusive Australia, it must urgently release an exposure draft of a federal equality act that aims to bring Australia in line with its international human rights obligations. It is time for equality to be a priority. Equality is for everyone.

Vidal, Mr Gore

Senator FAULKNER (New South Wales) (20:20): Madam Acting Deputy President, you might recall that last night in the chamber I spoke about the life and work of Gore Vidal, who died on 31 July this year at the age of 86. Despite being a prolific novelist, satirist and autobiographer, most agree that it was in the essay

that Vidal produced his greatest work. Like his hero Montaigne, the form suited his personality and purpose. Whereas the novel required Vidal to submit his voice to his characters, in the essay he could unashamedly put his intellect on display and let his personality permeate the page.

Publications like the *New York Review of Books*, the *New Yorker*, and the *Nation* became outlets for his intellect and his art, mediums with the requisite intellectual rigour and relevance to allow him to comment on the events of the day. He wrote widely, humorously, intelligently but often maliciously. In 1982 a collection of his essays, *The Second American Revolution*, won the National Book Critics Circle Award for Criticism. In 1993 he won the National Book Award for Nonfiction for his collection *United States: Essays 1952-1992*.

And while Vidal was a lover—of literature and the life of the mind—he was also a tremendous fighter. Throughout his life he maintained a collection of famous feuds with other public figures. During the 1968 Democratic Convention in Chicago, as protestors battled with police outside the amphitheatre, Vidal battled rhetorically with conservative commentator William F Buckley inside. Vidal called Buckley a 'crypto-nazi'. Buckley called Vidal a 'queer'. Norman Mailer was also a favourite target. They once met backstage at the *Dick Cavett Show* after Vidal had just written a scathing review of Mailer's latest book. An argument ensued in which Vidal got the better of his opponent. Mailer headbutted Vidal in frustration, to which Vidal responded with the quip, 'Once again, words failed Norman Mailer'.

But Vidal's interest in politics and public life was not purely academic. Not content to watch from the sidelines, he twice ran for national office. On the first occasion he ran as the Democratic candidate in New York's 29th District. He lost in what was a conservative stronghold, but he polled a respectable 43.3 per cent of the vote. He ran again in 1982 for the Senate nomination in the California Democratic Primary, running second to then Governor of California, Jerry Brown.

Vidal's politics were perhaps too complex for the machinations of modern democracy. For Vidal, intellectual freedom was synonymous with political sovereignty and so for him notions of left and right were irrelevant. As Kaplan wrote in his introduction to *The Essential Gore Vidal*:

... he embraced a conservatism so radical that to the conservatives he was no conservative at all. And his radicalism was so conservative, so rational, so much an expression of enlightenment utopianism, that to the doctrinaire radicals he was no radical either.

Vidal believed in the primacy of America's Constitution and Bill of Rights, and he shaped his

politics accordingly. His fealty to these documents was born of a faith in the genius of America's founding fathers. He once argued:

The United States was founded by the brightest people in the country—and we haven't seen them since.

Like his grandfather, he was a strict isolationist. That was a principal that shaped much of his critique of American foreign policy. As my colleague Senator Bob Carr wrote upon hearing of Gore Vidal's death:

He embodied an anti-imperial tradition that goes back to Mark Twain—representing an isolationist viewpoint that once ran deep in America. Gore Vidal believed no foreign war justified a single American life and this view was his fundamental political commitment.

Vidal's privileged heritage bequeathed to him an intimate knowledge of the institutions and characters of establishment America, and he used that knowledge to shine a light onto what he believed were the hypocrisies and inconsistencies of these institutions and individuals. In his novel *Julian*, the emperor, on attaining the emperorship, observes:

Wherever there is a throne, one may observe in rich detail every folly and wickedness of which man is capable, enameled with manners and gilded with hypocrisy.

Gore Vidal dedicated much of his writing life to uncovering the folly, wickedness and hypocrisy of the powerful. He did this with prose both brutal and beautiful. It is a loss for all of us that a writer of his flair, his wit and his clarity is no longer with us. Farewell, Gore Vidal.

Environment

Senator BOYCE (Queensland) (20:29): Last week I spoke in this place about the Gillard government's proposal to increase the marine park reserves of Australia so that we have the world's largest national park. I want to speak again on this topic and give more information because I believe the proposed increase network of marine parks is an issue that, if the current proposal goes ahead, will have a devastating effect on Australia's fishermen, industries that rely on Australia's fishermen—both commercial and recreational—and all of the industries that hang off those, as well as consumers.

Around 90 per cent of the Australian population eat seafood, of which currently 72 to 75 per cent is imported. This percentage will increase if the government's proposal to create the world's largest marine reserve goes ahead after 10 September this year. The wonderful tradition of local fish—including regional specialties from each area—which is an integral part of our heritage and the Australian way of life, will be a thing of the past for most people. The question Australians need to ask themselves is: do they want to continue eating Australian wild caught seafood harvested from our own waters or are they content with settling for imported seafood from oceans that are not

as clean or where the fisheries are not as well managed and where the fishing industry is not as well regulated?

In a nutshell, this proposal means that Australians are at very real risk of losing their food security, losing access to a completely renewable and vital source and losing the option of buying fresh, wild caught Australian fish. There is also the matter of sending hundreds of Australian fishers out of business. The question is: why is this radical proposal on the table? I keep hearing that it is a done deal. Overseas billionaires tell us that. The proposal is still on the table because Australians are being conned by a slick and expensive advertising campaign largely funded by overseas groups and peddled by Green groups in Australia. It is the Greens who keep this Labor government in office. To stay in power this government is prepared to do whatever it takes, even if that means selling Australians short and selling our environment short. We know the proposal has nothing to do with conservation and the environment, and no amount of spin by Labor will change that fact.

Australian fisheries are recognised as being amongst the healthiest and best managed in the world according to the UN Code of Conduct for Responsible Fisheries. The Australian Fisheries Management Authority has demonstrated that Australian fisheries have been consistently ranked amongst the world's best in independent reports by international experts in peer reviewed journals. Our oceans are not under threat. Our fisheries are amongst the best in the world because of the green credentials of our fishers and our superbly managed waters. Even the conservation groups running this disgraceful campaign admit that commercial fishing has not adversely affected the Coral Sea. So why are the Gillard government and environment minister Tony Burke proposing to lock Australian fishers out of it?

Last week I pointed out that, if the proposal goes ahead, 77.6 per cent of east coast Queensland waters will be in marine parks. That is almost eight times the international benchmark of 10 per cent. More Queensland waters will be locked up in marine park areas than any other waters in the world. Once we are locked out of our own fishing grounds, we will have to import even more seafood from countries such as Vietnam, Taiwan and Malaysia. Apart from the concerns over the management of these fisheries, how ethical is that when there are growing populations of Vietnamese people suffering from protein deficiency because Vietnamese fishers are finding it more productive to get cash for exports rather than sell their harvest locally? It borders on obscene that Australia, which has the third largest fishing zone in the world and the healthiest fisheries in the world, is deciding whether we will reduce the amount of local catch available to Third World countries nearby.

The threats to Australia's marine ecosystems do not come from fishing. They come from pollution and introduced organisms. We do not knock down mangroves to establish fishing grounds; we do not overfish species to provide seafood, whereas it has been known that other countries will do this. They will knock down mangroves, they will overfish their oceans. Our management of the oceans has been so effective that not a single species of marine fish has been reported extinct as compared with 27 terrestrial mammals, 23 birds and four frogs.

Australian fishers have gone to a great deal of trouble to keep their green credentials by using demonstrably sustainable fishing methods. To give an example, the longline fishers in the Coral Sea since 2002 have had an observer program which works in two ways. They carry an observer from the Australian Fisheries Management Authority onboard. The observer's task is to collect data on catch composition—species and size. They also monitor bycatch, or unintentionally caught non-target species, and they collect information on discarded species—that is, unsaleable species. To complement the observer program, there have been trials and adoptions of electronic monitoring where vessels are fitted with a number of strategically placed cameras that record what the human observer sees. This electronic monitoring is able to be viewed post voyage.

The important thing here is bycatch. The bycatch could be a threatened, endangered or protected species. Neither the observer program nor the e-monitoring program to date have discovered any matters of concern with the target catch or threatened, endangered or protected species. Fishers carry specialised equipment which they have invested in but will not be doing so while the current uncertainty exists around their businesses. Fishers have training in the identification, handling, recovery and release of threatened species, in particular in relation to Coral Sea turtles. The monitoring has proven that if the fishers catch sea turtles, there are almost no interactions and the turtles are returned to the sea after being tagged for research purposes. The industry has participated with researchers in this satellite tagging program.

The program has given the researchers valuable insights into what these turtles do. This information would not be available to these researchers without the cooperation of the longline fishers. We have the most stringent observer program in the world, and the majority of it is funded by the fishers themselves through their levy base. The states also have observer programs which cover prawn trawlers. They use turtle excluder devices—TEDs—which have proven effective in eliminating their impact on marine turtles. It is in our fishers' interests to protect the ocean habitat. Whatever sustainability challenges we have given

fishers, they have responded. Other countries who fish in sections of the Coral Sea do not have programs anywhere near as stringent as Australia's. Submissions will close on 10 September 2012.

I am interested to know why there was a half-page ad placed in the *Courier-Mail* last weekend congratulating Australia on its decision 'to establish a fully protected Coral Sea Marine Reserve'. There were 12 people named in the ad. It was placed by the pompously named 'Ocean Elders'—English, American, French, Canadian and one Australian. They included the likes of Richard Branson and musicians Jackson Browne and Neil Young. What exactly have they to say about Australia's food supply? And how dare they use the term 'ocean elders' when the only elders who have a right to a view about fishing in Australia are our own Indigenous elders.

The environment minister attacked me in parliament yesterday. He used the term 'lie' but he was told by the Acting Speaker, Ms Burke, that he could not say that, and so then he accused me of using 'fake information' and an incorrect map. The map, in fact, came from his own website, as did the information. I suggest that he look to himself and stop placating the Greens no matter what the cost to the industry. (*Time expired*)

Wind Farms

Senator MADIGAN (Victoria) (20:39): I seek leave to speak for 20 minutes.

Leave granted.

Senator MADIGAN: During the last 12 months, many people have shared their concerns with me about industrial-scale wind farms in their neighbourhoods. They include farmers, conservationists, Landcare members, field naturalists and others. In my experience, most of the people upset by inappropriate, industrial-scale wind farm developments are not climate change sceptics. They are not deriding the need to reduce carbon emissions but rather trying to bear witness to the reality of industrial-scale wind farms in their neighbourhoods. They have learned that wind turbines are not a neutral technology. Large-scale wind farms can and do cause a range of serious problems. The planning of wind farms must be done very carefully. Without due care, inappropriate wind farm developments adversely impact the people living nearby, can severely damage the biological environment and impair the visual landscape. In order to assimilate these truths, based in common sense and sound conservation principles, we must stop thinking about wind farms in an ideological way and start paying attention to the facts.

When politicians and government officers embrace the orthodoxy that 'wind farms are intrinsically good in all situations', their decision making becomes distorted. They stop seeing and hearing the facts. Their critical faculties become impaired as do the assessment

processes under their control. Whole communities of people and wildlife are now being stranded by processes that are not working properly and are not assessing the facts in an objective, impartial manner. A striking example of this orthodoxy is the highly controversial and totally inappropriate wind farm proposed for Bald Hills in South Gippsland. This proposal was approved in 2004-06 by the Commonwealth and Victorian governments after a contracted battle starting in 2002. The site for the erection of 52 large wind turbines, up to 135 meters tall—that is, 52 turbines each taller than the Sydney Harbour Bridge—is right in the middle of a significant wetlands and flora conservation area on the South Gippsland coast. The site directly abuts the Cape Liptrap Coastal Park, the Bald Hills Nature Conservation and Wetlands Reserve and the Kings Flat Nature Conservation and Flora Reserve.

Mr Acting Deputy President, I seek leave to table a 1982 letter from the then Victorian Department of Conservation, Fisheries and Wildlife Division to the local Shire Secretary. It supports the Shire's application for National Trust funding to purchase land parcels to help establish and extend these nature conservation areas. I quote from the letter:

... without doubt—

this land—

can readily be converted to a wetland of great importance to a wide range of waterbirds. The location is on a flyway used by many species between eastern and western Victoria and will attract many birds as it will be one of the few wetlands in this region. ... The proposed wetland is close to the Tarwin River and Andersons Inlet, both important feeding grounds for water birds and will create a safe roosting and breeding site which, at present, are very scarce in this region.

After thirty years of continuous efforts by local people and organisations to protect this high value conservation area, home to numerous species of birds, the message from today's Victorian and Commonwealth governments is: 'Bad luck. Who cares if an established roosting and breeding site becomes unsafe? Who gives a damn about birds, wetlands and flora conservation when we're in the business of approving wind farms?' Who gives a damn, indeed? Who cares about the 296 recorded bird species living, roosting, breeding and flying around Bald Hills, Anderson's Inlet, Cape Liptrap and Waratah Bay? Who cares that 21 are threatened species in the Cape Liptrap area; 31 are listed species under the Flora and Fauna Guarantee Act; 97 are listed as migratory under the Environment Protection and Biodiversity Act and that two of these are listed as endangered, including one critically endangered and one vulnerable; 40 are listed under the Chinese-Australian Migratory Bird Agreement, or CAMBA, for short; 45 are listed under the Japanese-Australian Migratory Bird Agreement, or

JAMBA, for short; and three are listed under the Bonn Convention on Migratory Species?

Mr President, I seek leave to table a list of the 296 bird species identified in this South Gippsland area and their status under state, Commonwealth and international laws and agreements. It was prepared in 2006 by local conservationist and wind farm objector, Mr Andrew Chapman.

Is the Commonwealth environment minister, Tony Burke, concerned that the continuing government approval of the Bald Hills wind farm is causing Australia to breach its international obligations to protect migratory species listed under JAMBA, CAMBA and the Bonn Convention? I have written to Minister Tony Burke expressing my concern, asking him to 'call in' this project and stop it. I have also advised him that I have written to the Japanese and Chinese governments about Australia's apparent breach.

I now stand beside that long list of objectors to the Bald Hills wind farm development, running to many hundreds of individuals, as well as the following organisations: the Australian Conservation Foundation; the Westernport Bird Observers Club; Bird Observers Club of Australia; the Prom Coastal Guardians Inc.; Tarwin Landcare Group; the National Trust of Australia; the Victorian National Parks Association; Parks Victoria West Gippsland District; South Gippsland Conservation Society; Tarwin Valley Coastal Guardians; Latrobe Valley Field Naturalists Club; Australian Plants Society Victoria; Kilcunda-Powlett River Foreshore Committee Inc.; South Gippsland Shire Council; and Inverloch Residents and Ratepayers Association.

Back in 2004 the Victorian assessment panel heard so-called expert evidence from an environmental consultancy firm hired by the then wind farm proponent. The consultants identified only 81 bird species, using field surveys conducted between 8am-ish and 5pm-ish. These observation times do not happen to coincide with the hours kept by many birds. The consultants limited their observation to 24 days, in the 12 months of a long drought period. A conflicting opinion made to the panel by another expert witness was that eight to 10 years of bird survey work was needed to develop a robust understanding. The panel criticised the consultancy's reports, concluding:

This is a body of work that is approaching the threshold beyond which it cannot be used for effective, rationally based public decision making.

... at this stage insufficient information to allow proper assessment against the criteria of no impact on species listed under the Environment Protection and Biodiversity Conservation Act or the Flora and Fauna Guarantee Act.

Regardless, the then Victorian Minister for the Environment, Mary Delahunty, approved the wind

farm proposal. When the federal environment minister at that time, Ian Campbell, intervened to 'call in' the proposal on bird protection grounds, he found himself on the end of a good public kicking by the then Victorian Attorney-General, Rob Hulls. Here we have dodgy assessments approved by some politicians pushing the belief that wind farms are intrinsically good in all situations. Anybody who gets in the way is stomped on.

Since 2006, the original proponent has sold on its approval to build the wind farm to a wholly owned subsidiary of Mitsui and Co. Will a wind farm at Bald Hills significantly reduce Mitsui's carbon footprint? Mitsui and Co. are joint owners and operators of five coal mines across Queensland and New South Wales, exporting coal to Japan and elsewhere as fast as they can dig it up and ship it out. Mitsui are major developers and exporters of gas, part owners of Woodside offshore petroleum and other developments. Mitsui were party to the catastrophic failure of the BP rig in the Gulf of Mexico. In the 2011-12 financial year, Mitsui and Co. energy businesses generated some \$A20.78 billion in income. On their website, Mitsui describe some of their energy business goals:

Our Energy Business Unit 1 aims to maintain a well-balanced energy resource portfolio and to enhance its trading and marketing activities while establishing a stable supply system to meet growing energy demand.

Mitsui's core oil and gas assets for exploration, development and production are based in the Middle East, South-east Asia, Oceania and the Americas. In Oceania, we have operations in the Enfield and Vincent oil fields. In the coal business, we have been developing and expanding our coal mining holdings in Australia, and have been increasing total production volumes. We are pursuing the stable supply of nuclear fuels in view of the long-term need for nuclear power generation. We are also pursuing development of non-conventional energy resources including shale gas/oil, and new technologies such as commercialization of clean coal technology.

I may be just a blacksmith, Mr President, but Mitsui does not sound too concerned about reducing the carbon footprint of its energy businesses. Quite the opposite. A wind farm at Bald Hills will not reduce Mitsui's carbon footprint. However, it may mislead some people by green-washing the fact that Mitsui's carbon footprint seems to be getting bigger.

I would like to conclude with some comments drawn from submissions made by a local South Gippsland ecologist called Lucas Bluff. In his 2004 objection to the Bald Hills wind farm he said:

The effects of climate change on the living world are very difficult to predict. However, the changes will be dramatic and they are already beginning to occur. Species will need to disperse freely in order to survive the effects of climate change.

He cites a number of scientists, already expressing concern about species being driven harder by climate

change to migrate 'through landscapes that human activity has rendered increasingly impassable'.

The pressures of climate change on species are driving them away from the heat. We saw evidence presented last week of tropical fish species appearing in Tasmanian waters. We need to think about the same plight of migratory birds: more birds moving south along their flyway and directly into the proposed Bald Hills wind farm. I call on the federal government and Minister Tony Burke to intervene and to stop this harmful project.

The PRESIDENT: Is there any objection to the tabling of the document? There being no objection, the document is tabled.

Wind Farms

Senator EDWARDS (South Australia) (20:53): Mr President, I seek leave to speak for 20 minutes. I doubt I will be done in that time.

The PRESIDENT: There being no objection, leave is granted for 20 minutes.

Senator EDWARDS: It seems our moons are in alignment between Victoria and South Australia, Senator Madigan, because I too rise on to speak on wind energy. You could probably head it: 'Blowing away the spin of renewable energy developers pocketing taxpayers' cash—the money-go-round'. I have a different take on the same issue but, nonetheless, I think we are probably talking from the same song sheet.

I rise tonight to talk about the proliferation of wind farms in South Australia and the adverse impacts they are having on my home state. I do not come to this issue from a perspective of whether or not there is a health impact from the noise of turbines or blades, rather that Australians are paying dearly for this renewable source of power. More than half the wind power installed to date across this nation has been in South Australia. Proponents of wind farms claim these are now generating 31 per cent of the electricity from 534 turbines in South Australia, but they never acknowledge this growth is being driven artificially.

Renewable energy certificates have enabled the developers of wind farms to maximise their returns because of the Gillard government's commitment to 20 per cent of Australia's electricity coming from renewable sources by 2020. Electricity retailers are legally required to purchase a set number of large-scale generation certificates each year. One LGC equals one megawatt hour of generated renewable energy electricity. The market price for LGCs can fluctuate daily and has varied between \$10 and \$60 in the past. The end result is that South Australians are paying the highest electricity prices in the nation. Power charges have risen by more than 40 per cent since 2007 and are

expected to increase by another 30 per cent over the next two years.

I have welcomed an academic's critique of wind farms because consumers and taxpayers need to know how much this form of renewable energy is costing them. I refer to the statement of the University of Adelaide's climate change professor, Mr Barry Brooks, who said:

There's no guarantee that building wind farms will bring down power prices. It certainly hasn't to date ...

Wind costs a lot of money to build and then it has to be financed and then paid off and when the wind's not blowing it has to be backed up by something like gas. It's not cheaper than gas or coal right now; it would be more expensive...

It's not going to bring down the cost ...the overall trend is clearly that power prices are going to go up.

Senator Madigan, you would strike a chord with those comments. These remarks by Professor Brooks highlight that wind energy has its limitations. They are a factor in why South Australians are being charged some of the most expensive electricity prices in the world, behind only Denmark and Germany. Apologists try to blame sharply rising power charges on the need to replace ageing poles and wires, but infrastructure costs do not account for all of those increases.

Wind farm developers have concentrated on South Australia because of the benevolent planning guidelines of the Rann-Weatherill Labor governments, unmatched by any other Australian state. These planning policies have allowed turbines to be erected only one kilometre from houses with no rights of appeal by landowners. It is extraordinary stuff! Because of tougher regulations in Victoria, three developers want to erect 220 turbines along the Limestone Coast, not far from you, Senator Madigan, in the south-east. These projects are known as Woakwine, Green Point and Allendale East—I am sure you know them. However, a development assessment panel of the Goyder Council at Burra in South Australia's mid north have held out. They rejected the 41-turbine Stony Gap wind farm proposal submitted by the power company, TRUenergy. But TRUenergy said it had strong grounds to appeal against the decision—a first under the state government's wind farm legislative reforms.

The five-person panel from the Goyder Council voted three-two against it on the basis of health concerns relating to noise. But TRUenergy said its application met all the state planning requirements. I am sure it did. It is appealing against the decision in the Environment Resources and Development Court. TRUenergy has also applied to the Clare and Gilbert Valleys Council to add six turbines to its Waterloo wind farm near Clare, my home town.

On 3 August, what was said to be the biggest wind farm in South Australia was announced—the \$479

million Snowtown II project, involving 90 turbines with blades a record 108 metres long. A major player in the proliferation of wind farms in South Australia is Pacific Hydro, a company under the control of trade union industry superannuation funds that have close links to the Gillard government. Pacific Hydro operates the 27-turbine Clements Gap wind farm near Crystal Brook and now wants to erect 42 turbines at Keyneton, east of Angaston, which is close to the iconic Barossa Valley. It also has a \$350 million plan to develop the Carmody's Hill wind farm at Gulnare, north of Clare, 170 kilometres from Adelaide.

The company has targeted wind power projects to take advantage of the large-scale renewable energy certificates and taxpayer subsidies that it and other promoters are getting from the Commonwealth. The Clean Energy Council, which is the umbrella organisation for the renewable energy companies, conveniently overlooks that, without the certificates and taxpayer subsidies, wind power would be twice as expensive as coal or natural gas. One critic of wind farms has claimed that a three-megawatt capacity wind turbine that generates at the most \$150,000 worth of electricity a year is eligible for guaranteed subsidies of \$500,000 a year.

Senator Madigan interjecting—

Senator EDWARDS: That is right, Senator Madigan; you are right across this as well. On those figures, the Clement Hill wind farm is worth \$13.5 million a year to Pacific Hydro and \$21 million to Keyneton once its turbine blades are turning in the wind. By law, electricity distribution companies have to take power generated from renewable energy before either coal or gas, except for times when the wind does not blow and, if it is too hot or too breezy, the wind turbines are switched off. A renewable energy company relies on the certificates to bump up whatever it gets from the distributors from the sale of wind generated electricity, and one ex-union heavy has worked out how best for consumers and taxpayers to direct their money to his organisations.

The chairman of Pacific Hydro is Garry Weaven, a one-time assistant secretary of the Australian Council of Trade Unions, who decided that going into the superannuation industry was a much more lucrative career choice than that of a federal Labor MP. Pacific Hydro is owned by Industry Super Holdings through the IFM Australian Infrastructure Fund. IFM, or Industry Funds Management, which Mr Weaven was the founder of, manages assets with a total value of \$29 billion for around five million fund members. Unions claim they do not control these industry funds, pointing to 50 per cent employer representation on the boards, but it is the union, Labor-linked officials who call the shots.

Besides Garry Weaven in Industry Super Holdings, other notable officials are: Bernie Fraser, the former chair and Treasury secretary under Labor PM Bob Hawke, also appointed as a Governor of the Reserve Bank; Anna Booth, former secretary of the Textile, Clothing and Footwear Union and currently chair of Slater and Gordon, the law firm where the Prime Minister used to be a partner; and Anne De Salis, a former staffer to Paul Keating. Four of the seven have an identifiable Labor background.

Mr Weaven has said the investment in Pacific Hydro was an excellent decision. That is an understatement. Renewable energy certificates are giving tremendous returns to the companies involved, but it is at everybody else's expense. Industry SuperFunds took out a double-page spread on pages 2 and 3 of the News Limited state newspapers on 20 August—only yesterday—and these paid ads make the point that Industry SuperFunds have pioneered direct investment in long-term assets like wind farms. Also, the industry-union superannuation funds will soon have more money to invest in wind farms with Labor, increasing the superannuation guarantee from nine per cent to 12 per cent by 2020. These funds have perfected the money-go-round.

According to Ray Evans and Tom Quirk in the July *Quadrant* article 'The Ruinous Privileges of Renewable Energy', it is said the union super funds have \$3 billion invested in Pacific Hydro, almost 10 per cent of their entire portfolio, and that Pacific Hydro would collapse if the mandatory renewable energy target scheme was repealed. Now, the state government has approved the \$900 million proposal to put up 105 turbines at Hornsdale, between eight and 24 kilometres north of Jamestown. The application was lodged on 26 October last year, not long after then Labor Premier Rann eased restrictions on the development of wind farms to give backers more certainty, while removing third party appeal rights.

The promoter, Investec Bank, sure knows how to influence the right people. It sponsored the Wallabies-All Blacks rugby union Bledisloe Cup test match in Sydney on 18 August. On its website, Investec is offering a 5.3 per cent guaranteed return on fixed deposits for 90 days. That is much more generous than what Australia's big four banks or even government bonds are offering. Investec Australia, chaired by the respected businessman David Gonski, is obviously relishing the financial benefits of renewable energy certificates. The Greens-Gillard government has expanded the framework and the investment bank is taking advantage of the commercial opportunities. It already has two wind farms in Western Australia and Victoria.

In South Australia, nearly 1,300 megawatts of wind power have been approved and are awaiting

construction. Hornsdale alone will account for up to 315 of those megawatts. Boosters of wind farms brag about how much they have expanded in South Australia, yet they want electricity consumers to ignore how much power prices have increased. No matter the excuses, the two are inextricably linked—and taxpayers and consumers are being gouged. This has prompted SA Liberal shadow planning minister, Mr David Ridgway, to chair a parliamentary inquiry into any link between the number of wind turbines and the enormous electricity bills in South Australia.

Cameron O'Reilly, chief executive of the Energy Retailers Association of Australia, revealed what has been going on. He stated:

Reserving 20 per cent of generation through the Renewable Energy Target for technologies like wind has undermined the principles of an electricity market based on marginal cost. Investors would quite rightly cry foul if the RET were abandoned.

We are paying more for our power because of the influence of the renewable energy proponents on the federal and state Labor governments and the Greens.

South Australia has an average electricity price of 28.6c per kilowatt hour. Yet the Clean Energy Council claims that renewable energy, specifically wind, is only responsible for two per cent of consumer's bills. Excuses include an upsurge in rooftop solar panels, the South Australian electricity network is big in area and extra network costs due to the additional spending required to upgrade ageing poles and wires. But these factors do not camouflage the part played by renewable energy certificates. Renewable energy should not be dependent on subsidies forever to sustain the wind farm industry.

This form of renewable energy is a long way from being a baseload supplier of power when it is needed most at peak demand. Wind only contributed 60 megawatts during maximum demand in the summer of 2011, although at times during the week either side of that maximum demand output reached 873 megawatts—in other words, when the power is most required, you cannot depend on wind farms to supply it. It is all very well for wind farm developers to be talking up the potential of their industry, but there is a lack of transmission lines with spare capacity to take the energy generated from additional wind farms.

Those pushing for the expansion of the wind farm industry point to possible areas that could be developed along the Yorke and Eyre peninsulas and on Kangaroo Island. However, these areas have plenty of wind but do not have much spare transmission capacity. ElectraNet, the transmission network service provider, stated in its annual report last year that the capacity to export such energy was limited because of the restrictions of the interconnector, and this was already particularly noticeable during period of light load and

high-wind conditions—in other words, the wind farms are generating excess power at times when there is reduced demand within this state and it cannot be sent elsewhere because of limited transmission capacity, so it is not being used.

The proponents of the wind industry want the government to fund the development of greater transmission capacity within South Australia plus a connector interstate to offload that unused green power. It is all very well for wind farm developers to be talking up the potential of their industry, but there is a lack of transmission lines with spare capacity to take the energy generated from additional wind farms. The wind farms are generating excess power at times when there is reduced demand within this state and it cannot be sent elsewhere because of limited transmission capacity.

There has been pressure for the renewable energy certificates to be wound back since the carbon price was introduced on 1 July at \$23 a tonne. For renewable energy to be anywhere near the price comparable with either coal or gas, the carbon price would need to be more than \$50 a tonne and over five times what the unregulated world market in Europe is trading at right now. The only guarantee is that the price of electricity will keep on increasing.

In South Australia, the average yearly household electricity bill has gone from \$770 in the mid-1990s to more than double that at about \$1,600 today. This is the time for all Australians to put this matter at the forefront of the political agenda, lest we slip further behind in cost of living terms and business competitiveness. Renewable energy certificates might have been needed to kick-start a fledgling wind power industry but not anymore. As we can see by the topics raised in this adjournment speech, wind energy in both South Australia and Victoria is on the political agenda, and I urge the government to undertake an urgent review.

Senate adjourned at 21:11

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No. 14 of 2012—Information provided by life insurers and friendly societies under Reporting Standard LRS 100.0, LRS 120.0, LRS 210.0, LRS 300.0, LRS 310.0, LRS 330.0, LRS 340.0, LRS 400.0, LRS 420.0 and LRS 430.0 [F2012L01705].

Autonomous Sanctions Act—Select Legislative Instrument 2012 No. 204—Autonomous Sanctions Amendment Regulation 2012 (No. 1) [F2012L01707].

Customs Act—Select Legislative Instrument 2012 No. 196—Customs (Prohibited Imports) Amendment Regulation 2012 (No. 2) [F2012L01711].

Fair Work Act—Select Legislative Instrument 2012 No. 197—Fair Work Amendment Regulation 2012 (No. 2) [F2012L01708].

Fisheries Management Act—Bass Strait Central Zone Scallop Fishery (Closures) Direction No. 1 2012 [F2012L01713].

National Consumer Credit Protection Act—Select Legislative Instrument 2012 No. 201—National Consumer Credit Protection Amendment Regulation 2012 (No. 2) [F2012L01706].

National Health Act—Instrument No. PB 59 of 2012—National Health (Residential Medication Chart) Amendment Determination 2012 (No. 1) [F2012L01715].

Retirement Savings Accounts Act—Select Legislative Instrument 2012 No. 202—Retirement Savings Accounts Amendment Regulation 2012 (No. 2) [F2012L01709].

Road Safety Remuneration Act—Select Legislative Instrument 2012 No. 198—Road Safety Remuneration Regulation 2012 [F2012L01712].

Superannuation Industry (Supervision) Act—Select Legislative Instrument 2012 No. 203—Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 3) [F2012L01710].

Tobacco Advertising Prohibition Act—Select Legislative Instrument 2012 No. 199—Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1) [F2012L01714].

Tabling

The following government documents were tabled:

Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 April to 30 June 2012.

National Broadband Network Companies Act 2011—Review of the operation of the Freedom of Information Act 1982 insofar as it applies to documents held by NBN Co. Limited—Report by Stuart Morris QC, dated 29 June 2012.

National Health and Medical Research Council—Review of the implementation of the strategic plan 2010 to 2012.

Treaties—Multilateral—Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (Tokyo 11 November 2004)—Text, together with national interest analysis.

QUESTIONS ON NOTICE

Asmar, Ms Diana

(Question No. 1859)

Senator Abetz asked the Minister for Employment and Workplace Relations, on notice, on 18 May April 2012:

- (1) On what date did the Minister or anyone in the Minister's office last meet with Ms Diana Asmar.
- (2) At what location did the meeting take place.
- (3) When was the last time the Minister or anyone in the Minister's office had telephone contact with Ms Asmar.
- (4) Who initiated the telephone contact.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

Minister Shorten is on the public record as at 26 April 2012 as having not seen Ms Asmar for about a year.

"Mr Shorten said he...had not seen Cr Asmar for about a year."

Australian Financial Review, 26 April 2012.

None of the Minister's staff have had a meeting or telephone contact with Ms Asmar since he became Minister for Employment and Workplace Relations.

Fair Work Australia

(Question No. 1899)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, in writing, on 25 June 2012:

Will the Minister intervene in the modern awards review by Fair Work Australia and seek a new award for 'Green Jobs' or 'Green Collar Workers'; if not: (a) why not; and (b) which award will apply to these workers.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

I will not be intervening in the two year review of modern awards to seek a new award for 'Green Jobs.' The review is already underway and as set out in subitem 6(2) of Schedule 5 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 must consider whether the modern awards:

- (a) achieve the modern awards objective; and
- (b) are operating effectively, without anomalies or technical problems arising from the Part 10A award modernisation process.

As 'Green Jobs' could be undertaken in a number of different industries and occupations, the modern award that applies to the relevant industry or occupation would apply.

Employment and Workplace Relations

(Question No. 1912)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, on Notice, on 25 June 2012:

With reference to the unanswered questions on notice nos 1558, 1761, 1809 and 1814:

- (1) Why does each question on notice remain unanswered.
- (2) Why does the Minister take longer than 30 days to respond to questions on notice.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

The Department of Education, Employment and Workplace Relations and my office give all parliamentary questions the expected level of attention required. When questions are complex and detailed, or require information not easily obtainable and input from several sources across the department, this causes delays in providing answers to these questions.

The outstanding questions on notice have now been tabled.

Qantas: Grounding of Fleet

(Question No. 1913)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, in writing, on 25 June 2012 :

With reference to the grounding of the Qantas fleet in October 2011, was the Minister privy to the teleconference of ministers that determined the Government's action; if so, who else was on the teleconference.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

Yes. The issue of which other Minister's were involved has been dealt with in public statements by Minister Evans and Minister Albanese.

Employment and Workplace Relations

(Question No. 1986)

Senator Abetz asked the Minister representing the Minister for Employment and Workplace Relations, on notice, on 6 August 2012:

With reference to the Budget estimates hearings of the Education, Employment and Workplace Relations Legislation Committee in May 2012 and the answers to questions nos EW0045 13 and EW0042 13 taken on notice during the hearings:

- (1) Did the Minister or the Minister's office approve each answer.
- (2) Did the Minister or the Minister's office make any amendments to either of the answers as drafted.
- (3) When was each answer first provided to the Minister's office.
- (4) When did the Minister approve each answer.
- (5) Can a copy of the signed briefs be provided; if not, why not.

Senator Ludwig: The Minister for Employment and Workplace Relations has provided the following answer to the honourable senator's question:

- (1) Yes
- (2) No
- (3) EW0045_13 was provided to the Minister's Office 6 July 2012 and EW0042_13 was provided to the Minister's Office 4 July 2012.
- (4) 16 July 2012
- (5) There is no brief attached to the answers to Questions on Notice as they are approved electronically through the Department's Parliamentary Document Management System.

Child Sex Abuse

(Question No. 1995)

Senator Wright asked the Minister representing the Minister for Health, upon notice, on 6 August 2012:

- 1) How many payments, involving reparation of any kind for child sexual abuse, have been made since 1996 involving Medicare and/or the Health Insurance Commission.
- 2) What is the total amount of these payments.
- 3) Was any other entity involved in the payments or agreements leading to payments; if so, who and what proportion of the payments did such entities pay.
- 4) Did any of the payments involve secrecy agreements; if so, were any such agreements ever a condition of the payments.
- 5) Did any payments involve waivers of the right to make any future claims.

Senator Ludwig: The Minister for Health has provided the following answer to the honourable senator's question:

Medicare benefits are paid for a range of clinical services that may be relevant to the treatment of the health consequences of child sexual abuse including general practitioner, psychiatry and psychology services. Neither the Department of Health and Ageing or the Department of Human Services record information about the cause of the health problem that led to the need for the Medicare funded service. Hence no data are available. There are provisions under state and territory legislation that mandate notification of child sexual abuse to child protection authorities.