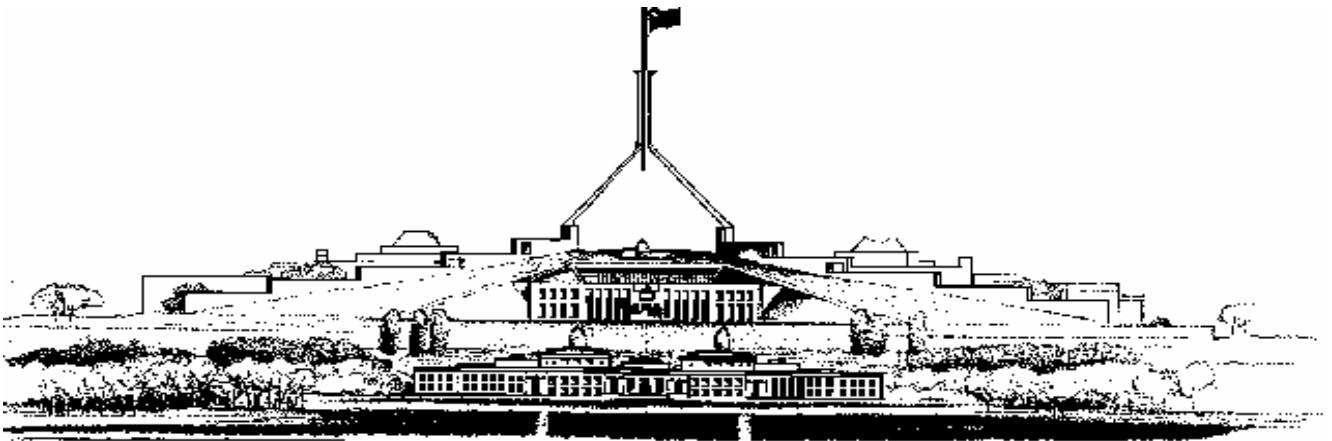




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**Senate**

**Official Hansard**

**No. 11, 2009**

**Wednesday, 16 September 2009**

FORTY-SECOND PARLIAMENT  
FIRST SESSION—SIXTH PERIOD

BY AUTHORITY OF THE SENATE



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Month	Date
February	3, 4, 5, 9, 10, 11, 12
March	10, 11, 12, 16, 17, 18, 19
May	12, 13, 14
June	15, 16, 17, 18, 22, 23, 24, 25
August	11, 12, 13, 17, 18, 19, 20
September	7, 8, 9, 10, 14, 15, 16, 17
October	26, 27, 28, 29
November	16, 17, 18, 19, 23, 24, 25, 26

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**FORTY-SECOND PARLIAMENT  
FIRST SESSION—SIXTH PERIOD**

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Her Excellency Ms Quentin Bryce, Companion of the Order of Australia

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*President*—Senator Hon. John Joseph Hogg

*Deputy President and Chair of Committees*—Senator Hon. Alan Baird Ferguson

*Temporary Chairs of Committees*—Senators Guy Barnett, Cory Bernardi,

Thomas Mark Bishop, Carol Louise Brown, Patricia Margaret Crossin,

Michael George Forshaw, Gary John Joseph Humphries, Annette Kay Hurley,

Stephen Patrick Hutchins, Gavin Mark Marshall, Julian John James McGauran,

Claire Mary Moore, Stephen Shane Parry, Hon. Judith Mary Troeth and Russell Brunell Trood

*Leader of the Government in the Senate*—Senator Hon. Christopher Vaughan Evans

*Deputy Leader of the Government in the Senate*—Senator Hon. Stephen Michael Conroy

*Leader of the Opposition in the Senate*—Senator Hon. Nicholas Hugh Minchin

*Deputy Leader of the Opposition in the Senate*—Senator Hon. Eric Abetz

*Manager of Government Business in the Senate*—Senator Hon. Joseph William Ludwig

*Manager of Opposition Business in the Senate*—Senator Stephen Shane Parry

**Senate Party Leaders and Whips**

*Leader of the Australian Labor Party*—Senator Hon. Christopher Vaughan Evans

*Deputy Leader of the Australian Labor Party*—Senator Hon. Stephen Michael Conroy

*Leader of the Liberal Party of Australia*—Senator Hon. Nicholas Hugh Minchin

*Deputy Leader of the Liberal Party of Australia*—Senator Hon. Eric Abetz

*Leader of the Nationals*—Senator Barnaby Thomas Gerard Joyce

*Deputy Leader of the Nationals*—Senator Fiona Nash

*Leader of the Australian Greens*—Senator Robert James Brown

*Deputy Leader of the Australian Greens*—Senator Christine Anne Milne

*Leader of the Family First Party*—Senator Steve Fielding

*Chief Government Whip*—Senator Kerry Williams Kelso O'Brien

*Deputy Government Whips*—Senators Donald Edward Farrell and Anne McEwen

*Chief Opposition Whip*—Senator Stephen Shane Parry

*Deputy Opposition Whips*—Senators Judith Anne Adams and David Christopher Bushby

*The Nationals Whip*—Senator John Reginald Williams

*Australian Greens Whip*—Senator Rachel Mary Siewert

*Family First Party Whip*—Senator Steve Fielding

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### Members of the Senate

Senator	State or Territory	Term expires	Party
Abetz, Hon. Eric	TAS	30.6.2011	LP
Adams, Judith Anne	WA	30.6.2011	LP
Arbib, Hon. Mark Victor	NSW	30.6.2014	ALP
Back, Christopher John <sup>(3)</sup>	WA	30.6.2011	LP
Barnett, Guy	TAS	30.6.2011	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	30.6.2011	LP
Brown, Carol Louise	TAS	30.6.2014	ALP
Brown, Robert James	TAS	30.6.2014	AG
Bushby, David Christopher	TAS	30.6.2014	LP
Cameron, Douglas Niven	NSW	30.6.2014	ALP
Carr, Hon. Kim John	VIC	30.6.2011	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	30.6.2011	ALP
Coonan, Hon. Helen Lloyd	NSW	30.6.2014	LP
Cormann, Mathias Hubert Paul <sup>(2)</sup>	WA	30.6.2011	LP
Crossin, Patricia Margaret <sup>(4)</sup>	NT		ALP
Eggleston, Alan	WA	30.6.2014	LP
Evans, Hon. Christopher Vaughan	WA	30.6.2011	ALP
Farrell, Donald Edward	SA	30.6.2014	ALP
Faulkner, Hon. John Philip	NSW	30.6.2011	ALP
Feeney, David Ian	VIC	30.6.2014	ALP
Ferguson, Hon. Alan Baird	SA	30.6.2011	LP
Fielding, Steve	VIC	30.6.2011	FF
Fierravanti-Wells, Concetta Anna	NSW	30.6.2011	LP
Fifield, Mitchell Peter	VIC	30.6.2014	LP
Fisher, Mary Jo <sup>(1)</sup>	SA	30.6.2011	LP
Forshaw, Michael George	NSW	30.6.2011	ALP
Furner, Mark Lionel	QLD	30.6.2014	ALP
Hanson-Young, Sarah Coral	SA	30.6.2014	AG
Heffernan, Hon. William Daniel	NSW	30.6.2011	LP
Hogg, Hon. John Joseph	QLD	30.6.2014	ALP
Humphries, Gary John Joseph <sup>(4)</sup>	ACT		LP
Hurley, Annette Kay	SA	30.6.2011	ALP
Hutchins, Stephen Patrick	NSW	30.6.2011	ALP
Johnston, Hon. David Albert Lloyd	WA	30.6.2014	LP
Joyce, Barnaby Thomas Gerard	QLD	30.6.2011	NATS
Kroger, Helen	VIC	30.6.2014	LP
Ludlam, Scott	WA	30.6.2014	AG
Ludwig, Hon. Joseph William	QLD	30.6.2011	ALP
Lundy, Kate Alexandra <sup>(4)</sup>	ACT		ALP

Senator	State or Territory	Term expires	Party
Macdonald, Hon. Ian Douglas	QLD	30.6.2014	LP
McEwen, Anne	SA	30.6.2011	ALP
McGauran, Julian John James	VIC	30.6.2011	LP
McLucas, Hon. Jan Elizabeth	QLD	30.6.2011	ALP
Marshall, Gavin Mark	VIC	30.6.2014	ALP
Mason, Hon. Brett John	QLD	30.6.2011	LP
Milne, Christine Anne	TAS	30.6.2011	AG
Minchin, Hon. Nicholas Hugh	SA	30.6.2011	LP
Moore, Claire Mary	QLD	30.6.2014	ALP
Nash, Fiona Joy	NSW	30.6.2011	NATS
O'Brien, Kerry Williams Kelso	TAS	30.6.2011	ALP
Parry, Stephen Shane	TAS	30.6.2011	LP
Payne, Marise Ann	NSW	30.6.2014	LP
Polley, Helen Beatrice	TAS	30.6.2011	ALP
Pratt, Louise Clare	WA	30.6.2014	ALP
Ronaldson, Hon. Michael	VIC	30.6.2011	LP
Ryan, Scott Michael	VIC	30.6.2014	LP
Scullion, Hon. Nigel Gregory <sup>(4)</sup>	NT		CLP
Sherry, Hon. Nicholas John	TAS	30.6.2014	ALP
Siewert, Rachel Mary	WA	30.6.2011	AG
Stephens, Hon. Ursula Mary	NSW	30.6.2014	ALP
Sterle, Glenn	WA	30.6.2011	ALP
Troeth, Hon. Judith Mary	VIC	30.6.2011	LP
Trood, Russell Brunell	QLD	30.6.2011	LP
Williams, John Reginald	NSW	30.6.2014	NATS
Wong, Hon. Penelope Ying Yen	SA	30.6.2014	ALP
Wortley, Dana Johanna	SA	30.6.2011	ALP
Xenophon, Nicholas	SA	30.6.2014	IND

- (1) Chosen by the Parliament of South Australia to fill a casual vacancy vice Amanda Eloise Vanstone, resigned.  
(2) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Ian Campbell, resigned.  
(3) Chosen by the Parliament of Western Australia to fill a casual vacancy vice Christopher Martin Ellison, resigned.  
(4) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

#### PARTY ABBREVIATIONS

AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Liberal Party;  
FF—Family First Party; LP—Liberal Party of Australia; NATS—The Nationals

#### **Heads of Parliamentary Departments**

Clerk of the Senate—H Evans

Clerk of the House of Representatives—I C Harris

Secretary, Department of Parliamentary Services—A Thompson

## **RUDD MINISTRY**

Prime Minister	Hon. Kevin Rudd, MP
Deputy Prime Minister, Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion	Hon. Julia Gillard, MP
Treasurer	Hon. Wayne Swan MP
Minister for Immigration and Citizenship and Leader of the Government in the Senate	Senator Hon. Chris Evans
Minister for Defence and Vice President of the Executive Council	Senator Hon. John Faulkner
Minister for Trade	Hon. Simon Crean MP
Minister for Foreign Affairs and Deputy Leader of the House	Hon. Stephen Smith MP
Minister for Health and Ageing	Hon. Nicola Roxon MP
Minister for Families, Housing, Community Services and Indigenous Affairs	Hon. Jenny Macklin MP
Minister for Finance and Deregulation	Hon. Lindsay Tanner MP
Minister for Infrastructure, Transport, Regional Development and Local Government and Leader of the House	Hon. Anthony Albanese MP
Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate	Senator Hon. Stephen Conroy
Minister for Innovation, Industry, Science and Research	Senator Hon. Kim Carr
Minister for Climate Change and Water	Senator Hon. Penny Wong
Minister for the Environment, Heritage and the Arts	Hon. Peter Garrett AM, MP
Attorney-General	Hon. Robert McClelland MP
Cabinet Secretary, Special Minister of State and Manager of Government Business in the Senate	Senator Hon. Joe Ludwig
Minister for Agriculture, Fisheries and Forestry	Hon. Tony Burke MP
Minister for Resources and Energy and Minister for Tourism	Hon. Martin Ferguson AM, MP
Minister for Financial Services, Superannuation and Corporate Law and Minister for Human Services	Hon. Chris Bowen, MP

**[The above ministers constitute the cabinet]**



**RUDD MINISTRY—*continued***

Minister for Veterans' Affairs	Hon. Alan Griffin MP
Minister for Housing and Minister for the Status of Women	Hon. Tanya Plibersek MP
Minister for Home Affairs	Hon. Brendan O'Connor MP
Minister for Indigenous Health, Rural and Regional Health and Regional Services Delivery	Hon. Warren Snowdon MP
Minister for Small Business, Independent Contractors and the Service Economy, Minister Assisting the Finance Minister on Deregulation and Minister for Competition Policy and Consumer Affairs	Hon. Dr Craig Emerson MP
Assistant Treasurer	Senator Hon. Nick Sherry
Minister for Ageing	Hon. Justine Elliot MP
Minister for Early Childhood Education, Childcare and Youth and Minister for Sport	Hon. Kate Ellis MP
Minister for Defence Personnel, Materiel and Science and Minister Assisting the Minister for Climate Change	Hon. Greg Combet AM, MP
Minister for Employment Participation and Minister Assisting the Prime Minister on Government Service Delivery	Senator Hon. Mark Arbib
Parliamentary Secretary for Infrastructure, Transport, Regional Development and Local Government	Hon. Maxine McKew MP
Parliamentary Secretary for Defence Support and Parliamentary Secretary for Water	Hon. Dr Mike Kelly AM, MP
Parliamentary Secretary for Western and Northern Australia	Hon. Gary Gray AO, MP
Parliamentary Secretary for Disabilities and Children's Services and Parliamentary Secretary for Victorian Bushfire Reconstruction	Hon. Bill Shorten MP
Parliamentary Secretary for International Development Assistance	Hon. Bob McMullan MP
Parliamentary Secretary for Pacific Island Affairs	Hon. Duncan Kerr SC, MP
Parliamentary Secretary to the Prime Minister and Parliamentary Secretary for Trade	Hon. Anthony Byrne MP
Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion	Senator Hon. Ursula Stephens
Parliamentary Secretary for Multicultural Affairs and Settlement Services	Hon. Laurie Ferguson MP
Parliamentary Secretary for Employment	Hon. Jason Clare MP
Parliamentary Secretary for Health	Hon. Mark Butler MP
Parliamentary Secretary for Industry and Innovation	Hon. Richard Marles MP

## SHADOW MINISTRY

Leader of the Opposition	The Hon. Malcolm Turnbull MP
Shadow Minister for Foreign Affairs and Deputy Leader of the Opposition	The Hon. Julie Bishop MP
Shadow Minister for Trade, Transport, Regional Development and Local Government and Leader of The Nationals	The Hon. Warren Truss MP
Shadow Minister for Broadband, Communications and the Digital Economy and Leader of the Opposition in the Senate	Senator the Hon. Nick Minchin
Shadow Minister for Innovation, Industry, Science and Research and Deputy Leader of the Opposition in the Senate	Senator the Hon. Eric Abetz
Shadow Treasurer	The Hon. Joe Hockey MP
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House	The Hon. Christopher Pyne MP
Shadow Minister for Infrastructure and COAG and Shadow Minister Assisting the Leader on Emissions Trading Design	The Hon. Andrew Robb AO, MP
Shadow Minister for Finance, Competition Policy and Deregulation	Senator the Hon. Helen Coonan
Shadow Minister for Human Services and Deputy Leader of The Nationals	Senator the Hon. Nigel Scullion
Shadow Minister for Energy and Resources	The Hon. Ian Macfarlane MP
Shadow Minister for Families, Housing, Community Services and Indigenous Affairs	The Hon. Tony Abbott MP
Shadow Special Minister of State and Shadow Cabinet Secretary	Senator the Hon. Michael Ronaldson
Shadow Minister for Climate Change, Environment and Water	The Hon. Greg Hunt MP
Shadow Minister for Health and Ageing	The Hon. Peter Dutton MP
Shadow Minister for Defence	Senator the Hon. David Johnston
Shadow Attorney-General	Senator the Hon. George Brandis SC
Shadow Minister for Agriculture, Fisheries and Forestry	The Hon. John Cobb MP
Shadow Minister for Employment and Workplace Relations	Mr Michael Keenan MP
Shadow Minister for Immigration and Citizenship	The Hon. Dr Sharman Stone
Shadow Minister for Small Business, Independent Contractors, Tourism and the Arts	Mr Steven Ciobo

**[The above constitute the shadow cabinet]**

### **SHADOW MINISTRY—*continued***

Shadow Minister for Financial Services, Superannuation and Corporate Law	The Hon. Chris Pearce MP
Shadow Assistant Treasurer	The Hon. Tony Smith MP
Shadow Minister for Sustainable Development and Cities	The Hon. Bruce Billson MP
Shadow Minister for Competition Policy and Consumer Affairs and Deputy Manager of Opposition Business in the House	Mr Luke Hartsuyker MP
Shadow Minister for Housing and Local Government	Mr Scott Morrison
Shadow Minister for Ageing	Mrs Margaret May MP
Shadow Minister for Defence Science and Personnel and Assisting Shadow Minister for Defence	The Hon. Bob Baldwin MP
Shadow Minister for Veterans' Affairs	Mrs Louise Markus MP
Shadow Minister for Early Childhood Education, Childcare, Status of Women and Youth	Mrs Sophie Mirabella MP
Shadow Minister for Justice and Customs	The Hon. Sussan Ley MP
Shadow Minister for Employment Participation, Training and Sport	Dr Andrew Southcott MP
Shadow Parliamentary Secretary for Northern Australia	Senator the Hon. Ian Macdonald
Shadow Parliamentary Secretary for Roads and Transport	Mr Don Randall MP
Shadow Parliamentary Secretary for Regional Development	Mr John Forrest MP
Shadow Parliamentary Secretary for International Development Assistance and Shadow Parliamentary Secretary for Indigenous Affairs	Senator Marise Payne
Shadow Parliamentary Secretary for Energy and Resources	Mr Barry Haase MP
Shadow Parliamentary Secretary for Disabilities, Carers and the Voluntary Sector	Senator Mitch Fifield
Shadow Parliamentary Secretary for Water Resources and Conservation	Mr Mark Coulton MP
Shadow Parliamentary Secretary for Health Administration	Senator Mathias Cormann
Shadow Parliamentary Secretary for Defence	The Hon. Peter Lindsay MP
Shadow Parliamentary Secretary for Education	Senator the Hon. Brett Mason
Shadow Parliamentary Secretary for Justice and Public Security	Mr Jason Wood MP
Shadow Parliamentary Secretary for Agriculture, Fisheries and Forestry	Senator the Hon. Richard Colbeck
Shadow Parliamentary Secretary for Immigration and Citizenship and Shadow Parliamentary Secretary Assisting the Leader in the Senate	Senator Concetta Fierravanti-Wells

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*Wednesday, 16 September 2009*

**The PRESIDENT (Senator the Hon. John Hogg)** took the chair at 9.30 am and read prayers.

#### **PARLIAMENTARY CONDUCT**

**The PRESIDENT** (9.31 am)—During question time on 15 September 2009 Senator Evans took a point of order and alleged that Senator Cormann had been ‘making a series of gestures towards government ministers’. I indicated that I had not seen the alleged conduct complained of, and I undertook to review the videotape and report back to the Senate if necessary. The video recording of proceedings in the chamber does not show the alleged activity, as the recording shows only the senator asking the question and the minister answering.

During the discussion on the point of order Senator Cormann indicated that he was counting with his fingers the number of questions that were being asked. An occasional incident of such activity, like an occasional interjection, may not be disruptive of the proceedings and out of order, but it is obvious that if the making of gestures became a regular feature of debate in the chamber, and if many senators frequently engaged in that activity, it would be disruptive of the proceedings and not conducive to orderly debate. Successive presidents have ruled that it is not in order to hold up newspapers or placards with slogans or to display objects or to wear clothing bearing slogans. The basis of these rulings is that such activity would not only be disruptive of orderly debate but would allow senators to intervene in debate other than by receiving the call from the chair and participating in debate in accordance with the rules of the Senate. Frequently making hand gestures would obviously be disorderly for the same reason.

I therefore ask senators not to engage in that kind of conduct, but to observe the standing orders relating to the orderly conduct of question time and other proceedings.

**Senator CORMANN** (Western Australia) (9.33 am)—Mr President, I seek leave to move a motion that the Senate take note of your statement.

**Senator Carr**—Is the senator seeking leave to make a short statement, which is, I understand, the convention?

*Opposition senators interjecting—*

**Senator Carr**—Another gesture, Senator! And if it is for a short statement, the government will agree.

**The PRESIDENT**—I cannot respond. I can only state what I believe Senator Cormann raised. He sought leave to take note of the statement that I have just made. That is what leave was being sought for.

**Senator Carr**—I ask if the senator is seeking leave to make a short statement.

**Senator CORMANN**—I seek leave to make a statement for no more than five minutes.

Leave granted.

**Senator CORMANN**—I thank you for the statement that you made this morning. If you had not made the statement I would have sought leave to make a personal explanation and to claim that I had been misrepresented because, in making the point of order yesterday, Senator Evans indicated that I had made some gestures at ministers. I did nothing of the sort.

What essentially happened was that I was counting down how many questions Senator Pratt was trying to fit into one minute. The reality is that it has been a habit that government senators asking dorothy dixers, in particular to Minister Carr, go out of their way to fit as many questions into one minute as possible. Indeed, the questions were as

long as the minister's answer. I do not think that that is in the spirit of question time.

I have reviewed the video, as you have, Mr President, and you would have noted that Senator Pratt, in asking her initial question, was actually counting down the number of questions that she was asking. Indeed, even though the clock started a bit late she ran out of time—so many questions had been prepared by the minister's office for government senators to ask the minister. I made the point during question time yesterday that this is just entirely an abuse of parliamentary process. Question time is about the opposition scrutinising the activities of government.

There is a very clear objective behind all of this. The government is aiming to waste time during question time; it is aiming to run down the clock in order to minimise the number of questions that can be asked by the opposition during question time. As Senator Pratt was running through question after question after question, all of which had been prepared in the minister's office for her, I was making the point, through counting down the number of questions that were being squeezed into this one minute, that Senator Pratt and the government were engaging in a deliberate strategy to waste time.

There have been suggestions that I made gestures at ministers. Nothing could be further from the truth. In the media it was suggested that somehow I was responding to an interjection by Senator Sterle. I can reassure the Senate that I could not hear what Senator Sterle was saying. I had no idea what Senator Sterle was saying. The only thing I knew was that Senator Pratt was running down as many questions that she could squeeze into one minute as possible. The minister then had one minute to answer. Senator Pratt had more questions given to her by the minister's office than the minister could actually answer in one minute. It is a very obvious at-

tempt by the Rudd Labor government to avoid the scrutiny of the Senate during question time.

I draw the attention of the Senate to the fact that, when the Prime Minister makes points, whether it is in the House of Representatives or during press conferences, he is often seen to be doing this. How often have we seen the Prime Minister counting down—one, two, three, four? I bet there is footage of press conference after press conference where exactly that has been happening. Mr President, I do thank you for your statement. But if, through my gestures, and through the point of order that was raised by Senator Evans, I have been able to draw attention to—

*Honourable senators interjecting—*

**The PRESIDENT**—Order! Constant interjection is disorderly. Senator Cormann is entitled to be heard.

**Senator CORMANN**—Thank you, Mr President. If, through my actions yesterday, and through the point of order that was raised by Senator Evans, I have been able to draw attention to a very deliberate practice of the government to avoid scrutiny during question time, if I have been able to draw attention to the fact that they are trying to run down the clock during question time to avoid questions, then I am very happy with what happened yesterday. I think the government should reflect on what the spirit of question time is all about. And I think Senator Carr in particular, and his staff, his hollowmen back in his office, who are preparing the questions for government backbenchers to ask him, should reflect very carefully on whether it is in the spirit of question time for them to prepare 20 questions to be asked to fill out the one minute available, according to the system that is in place.

That was the point I wanted to make this morning. I do thank you, Mr President, for the statement you have made. But I just



wanted to clarify: I did not gesture at ministers; I was counting down the questions that Senator Pratt was trying to squeeze into one minute.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (9.39 am)—I seek leave to make a short statement. I do not need long.

**The PRESIDENT**—Leave is granted for five minutes.

**Senator LUDWIG**—As I have indicated, I do not need long. I only want to make the short point that, Mr President, you have made a ruling in relation to this morning. I am not going to prolong the agony for the opposition. The ruling is—

*Opposition senators interjecting—*

**Senator LUDWIG**—I might simply point out that, of course, the standing orders are in place. The standing orders have been in place for some time. It is available, if the opposition do not like the standing orders, to take them back to the Procedure Committee—because, ultimately, it is their standing orders that they have sought to impose on this Senate. If the opposition do not like them then they are at liberty to take them back to the Procedure Committee to have them dealt with.

**Senator ABETZ** (Tasmania) (9.40 am)—Mr President, I seek leave to make a short contribution of, what, 90 seconds?

**Senator Forshaw**—No!

**Senator Jacinta Collins**—No!

**The PRESIDENT**—Order! I am entitled to hear Senator Abetz. Is leave granted?

Leave granted.

**Senator ABETZ**—I thank the Senate. Firstly, I could, somewhat tongue in cheek, say it is very culturally insensitive of the minister for immigration to require a European not to speak with their hands! But I will

not go down that track, other than to say, Mr President—

**Senator Marshall**—If he'd just speak with his hands, we'd be happy!

**Senator ABETZ**—That is all he was doing, in fact. The Leader of the Government in the Senate, in his point of order, asked you whether Senator Cormann's behaviour was unparliamentary. I believe Senator Cormann is entitled to a statement from you that his behaviour was not unparliamentary and that the record be cleared. Mr President, I would invite you to rule accordingly.

**Senator FERGUSON** (South Australia) (9.41 am)—I seek leave to make a very short statement, just to correct a matter that was raised by Senator Ludwig.

Leave granted.

**Senator FERGUSON**—Senator Ludwig, in his contribution, referred to the fact that these were the opposition's standing orders and procedures that were put in place for question time. I remind Senator Ludwig that in fact no-one in this chamber has a majority. Unless a majority of members of this Senate approve of a proposal before the Senate, it is not accepted. So a majority of senators in this place believe that the current procedures that apply to question time should be those that the Senate operates under. I would like—

**Senator Carr**—And now you don't like them!

**Senator Bernardi**—No. We just don't like your babble—that's all! Your babbling brook of the Left; that's what it is.

**The PRESIDENT**—Order! Senator Ferguson is entitled to be heard in silence.

**Senator FERGUSON**—So, can I say that, whenever it comes to the decisions of how Senate question time should be conducted, it is a matter for the whole Senate to decide—and the whole Senate has decided

that these are the procedures that should operate at question time. So I would like to correct the impression that Senator Ludwig would like to give, that it is the opposition's question time procedures.

**The PRESIDENT**—Are there any further senators seeking the call?

**Senator Abetz**—On a point of order, Mr President: will you be coming back to the Senate, indicating whether or not Senator Cormann's behaviour was unparliamentary?

**The PRESIDENT**—I was just about to address that issue.

**Senator Abetz**—Thank you.

**The PRESIDENT**—I believe the statement that has been issued by me canvasses the full matters that were raised yesterday in question time. I will be making no further statement.

**AUSTRALIAN CITIZENSHIP  
AMENDMENT (CITIZENSHIP TEST  
REVIEW AND OTHER MEASURES)  
BILL 2009**

**In Committee**

Consideration resumed from 15 September.

**Senator FIERRAVANTI-WELLS** (New South Wales) (9.43 am)—I move opposition amendment (1) on sheet 5925 revised:

- (1) Page 5 (after line 27), at the end of the bill, add:

**Schedule 2—Amendments relating to additional categories**

***Australian Citizenship Act 2007***

**1 After subsection 21(8)**

Insert:

*Australian public interest*

- (9) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) granting a certificate of Australian citizenship to the person would be in

the Australian public interest because of exceptional circumstances relating to the applicant; and

- (b) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application; and
- (c) the person has met the requirements of subsection (2A).
- (10) As soon as practicable after the end of each financial year, the Department must publish on its website and present to each House of the Parliament a list of all the persons who received citizenship under subsection (9) during the year and the reasons for the decision.

*Individuals employed overseas*

- (11) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) at the time the person made the application, the person is engaged in work that requires them to regularly travel outside Australia; and
- (b) the person was engaged in that kind of work for a total of at least 2 years during the period of 4 years immediately before the day the person made the application; and
- (c) the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application; and
- (d) the person was present in Australia for a total of at least 480 days during the period of 4 years immediately before the day the person made the application; and
- (e) the person was present in Australia for a total of at least 120 days during the period of 12 months immediately before the day the person made the application; and
- (f) the person has demonstrated they would suffer significant hardship or

disadvantage if they did not receive citizenship; and

- (g) the person was a permanent resident for the period of 12 months immediately before the day the person made the application; and
  - (h) the person was not present in Australia as an unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application; and
  - (i) the person has met the requirements of subsection (2A).
- (12) As soon as practicable after the end of each financial year, the Department must publish on its website and present to each House of the Parliament a list of all the persons who received citizenship under subsection (11) during the year and the reasons for the decision.

## 2 After section 22

Insert:

### **22A Minister's decision—Australian public interest**

- (1) The Minister's decision under subsection 24(1) in relation to a person who is eligible to become an Australian citizen under subsection 21(9) cannot be delegated.
- (2) In making a decision referred to in subsection (1) the Minister must give consideration to the fact that the applicant's becoming an Australian citizen would be of benefit to Australia.

*Ministerial discretion—administrative error*

- (3) For the purposes of paragraph 21(9)(b), the Minister may treat a period as one in which the applicant was not present in Australia as an unlawful non-citizen if the Minister considers the applicant was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

### **22B Minister's decision—individuals employed overseas**

- (1) The Minister's decision under subsection 24(1) in relation to a person who is eligible to become an Australian citizen under subsection 21(11) cannot be delegated.
- (2) In making a decision referred to in subsection (1) the Minister must give consideration to the fact that the person would suffer significant hardship or disadvantage if they did not receive citizenship.

*Confinement in prison or psychiatric institution*

- (3) Subject to subsection (4), the person is taken not to satisfy paragraph 21(11)(c) if, at any time during the 4 year period mentioned in that paragraph, the person was:
  - (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.

- (4) The Minister may decide that subsection (3) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

*Ministerial discretion—administrative error*

- (5) For the purposes of paragraph 21(11)(g), the Minister may treat a period as one in which the person was a permanent resident if the Minister considers that, because of an administrative error, the person was not a permanent resident during that period.
- (6) For the purposes of paragraph 21(11)(h), the Minister may treat a period as one in which the person was not present in Australia as an unlawful

non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

**3 Subsection 24(1A)**

Omit “or (8)”, substitute “, (8), (9) or (11)”.

**4 Subsection 24(2)**

Omit “or (7)”, substitute “, (7), (9) or (11)”.

First, in relation to additional categories, I just say at the outset that we have sought to have discussions with the government in relation to this to express our concerns. The citizenship legislation introduced on 25 June this year was referred to committee on the same day, and then on 31 August Minister Evans wrote to the Leader of the Opposition advising him of his intention to move certain amendments to the bill, without providing copies of those amendments. At that time, the bill was being considered by the Senate Standing Committee on Legal and Constitutional Affairs and, as a consequence of that, those amendments—indeed, including amendment (4), which had been reported in the press as a way to fast-track citizenship for athletes, and provisions in relation to offshore workers—were not actually scrutinised by the committee. That is regrettable. Regrettably, those amendments were not released until 14 September and, of course, we are debating that now.

The point that I would like to make is that it is very clear from the media reports in relation to this that this issue has been around for a couple of years. Indeed, if you look at the *Australian Financial Review* of 1 September, there is a comment by Mr Craig Tiley, from Tennis Australia, who said he is delighted with the changes. Of course, we had not yet been advised of that, but the minister saw fit to make the announcement. Mr Craig Tiley

said that, during the last couple of years, Tennis Australia had been in regular discussion with the government regarding the quandary that faces some tennis players. So could I just put on the record that for two years this has been an issue for the government and, all of a sudden, we are doing a major review of the citizenship legislation. The committee did not even get the amendments and then, all of a sudden, we are presented with a supposed fait accompli so that we can assist some athletes who have a problem in getting their citizenship.

This has been a very rushed situation. We know why it is rushed. It is rushed because a Russian ice skater, Ms Borodulina, who was the subject of media reports, has to obtain Australian citizenship by 22 September if she is to be eligible to compete for Australia at the 2010 Winter Olympics. From our perspective, the coalition does not believe that access to citizenship in Australia should be manipulated to allow non-citizen elite athletes to represent Australia on the grounds that they are medal prospects. In reality, this is not about the person in question. I understand that there are other people, including a tennis player, potentially in this situation. We are concerned that the minister is aiming to codify a shortened residency requirement, which in effect has been nominated by two sporting bodies. The government will say this is not an amendment about athletes, that it is really much broader, but in the end the schedules will refer to the Australian Olympic Committee and Tennis Australia, so it is very clear that this is an amendment about athletes.

Our amendments go to using a very limited avenue, not just for athletes. There are potentially other individuals who could be in circumstances where this is going to be necessary. I will come to that in a moment. We have reservations about compromising the integrity and value of citizenship in order

that somebody who could potentially win a medal or a tennis cup for Australia is suddenly fast-tracked and a whole raft of changes are brought in, couched and camouflaged in other ways, but ultimately for that specific objective. There could be individuals who may well find themselves pushed out of a team because a better, non-citizen performer from another country is keen to represent Australia. It was interesting to see that, when the announcement was made on 31 August, the minister, in the company of the ice skater, said he hoped that the changes would lead to more gold medals for Australia at sporting events, but the next day the AAP reported the minister saying, 'No, it's not,' when asked if the new measures were a grab for gold.

The coalition's amendments go to reintroducing a ministerial discretion allowing a variation in citizenship requirements for noncitizens whose fast-tracked citizenship can be shown to be in the national interest but who must still pass the citizenship test. Most importantly, that intervention would not be able to be delegated and any decision would need to be published on the departmental website and tabled in parliament annually. The amendment proposes that granting a certificate of Australian citizenship to the person would be in the Australian public interest because of exceptional circumstances. That is an important criterion that adds a degree of transparency that we think is going to be necessary. Of course, there are consequential amendments that come from that. As I said, it is a non-delegatable decision-making process to be undertaken by the minister.

Regarding the government's foreshadowed amendments (1) to (3) on sheet BM241 revised, relating to offshore workers, these amendments discount the residency requirements for citizenship for professionals whose work takes them regularly offshore. We offer

an amendment to the bill to create a second, limited ministerial discretion which allows residency concessions for offshore workers who demonstrate significant hardship or disadvantage, with eligibility for intervention consideration only after they have been normally resident in Australia for four years prior to their application and have spent a minimum of 16 months of those four years in Australia—and, of course, they must also pass the citizenship test. The minister's intervention would not be able to be delegated and any decision would have to be both published on the departmental website and tabled in parliament annually. We believe that this is a fair and just alternative for those who may have strong ties to Australia and who may, for example, have lived in Australia for some time, have Australian relatives and make a significant contribution to Australian society.

Our proposed amendment entitles individuals employed overseas to similar consideration to that foreshadowed by the government. We set out certain parameters, which I have broadly outlined, and they are more specifically defined. Again, we offer a transparency process—because the important criteria here is that the person would suffer significant hardship or disadvantage if they did not receive citizenship. We feel that that limits the discretion of the minister and will apply only to a very limited category of persons.

The government's amendments create this new special residence requirement. They create a whole new category, a whole new framework, a whole new appeals structure and a whole new avenue by which people can enter Australia. I have to recognise that when this measure was originally proposed it was exclusively focused towards sportspeople and athletes and now at least has been couched in more generic terms to pertain to persons engaged in activities that are of

benefit to Australia. Yes, there may be similarities, but the reality is that, when you look at the schedules and at the organisations that would be listed, we really are talking about sporting bodies. This regime could equally be established to relate to persons engaged in particular kinds of work requiring overseas travel.

The government will say that in the past there was a discretion which was removed because there had been abuse of this discretion within the department. I clearly understand that that abuse may well have occurred because it was a delegated power. We think that conferring a non-delegable decision-making power on the minister under such limited and confined circumstances will afford the necessary degree of transparency and oversight that will enable it to be used only in those very exceptional circumstances. Take, for example, a scientist—somebody who spends a lot of time overseas. Of course there is a public interest in exceptional circumstances being recognised because that scientist may spend a lot of time overseas. I just mention that by way of example. There could be other situations where the applicant undertakes activities that mean that he or she spends a lot of time outside Australia but there are also exceptional circumstances that are, in effect, one-off. Our amendment recognises that there may be very limited exceptional circumstances where this power could be used in the Australian public interest.

To conclude, it is a pity that the Senate through its Legal and Constitutional Affairs Legislation Committee was not afforded the opportunity for proper scrutiny of this. It is very clear from media reports, and particularly some letters to the editor that I have come across, that there is concern in the public that we would be seen to be manipulating the system to cater for the specific circumstance I discussed earlier. I have no doubts

that the time frame that has been provided by the government, in its proposed item 22A, is specifically targeted to assist this particular person because she needs citizenship by 22 September so that she can compete at the Olympics. We think that, from a broader perspective, if we are talking about exceptional circumstances where there is a public benefit, that is a different ball game to creating a whole new framework which is really going to make it easier for fast-tracking an individual applicant or group of individual applicants. On that basis, I ask the Senate to consider the opposition's amendment as a compromise which does address those exceptional needs but does not create a much broader framework for potential abuse.

**Senator HANSON-YOUNG** (South Australia) (9.59 am)—I would just like to indicate that the Greens will not be supporting the opposition's amendment. Having said that, I understand where the opposition are coming from. I have raised similar concerns. But I believe that the amendments put forward by the government deal with the majority of our concerns, so we will be supporting those amendments rather than the opposition's.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (9.59 am)—I want to take this opportunity to explain why the government will not be supporting the opposition's proposal. Essentially, the Senate is being asked to accept that the minister should have personal discretion to give citizenship to a person, if it would be in Australia's public interest to do so, because of the exceptional circumstances of the case—as long as the applicant was not present in Australia as an unlawful non-citizen at any time during the two-year period immediately before the day on which the applicant made the application.

This proposal provides extraordinarily broad discretion. It contains no permanent residence requirement. It is not proposed that spending time in Australia prior to the application be a condition. There is no requirement with regard to a character assessment. There is no requirement for the applicant to reside in or to maintain a close and continuing association with Australia. It is a fly-by-night scheme. These are all standard requirements that you would expect when it comes to the question of conferring citizenship. Indeed, this amendment would likely create an industry for migration agents and vexatious citizenship applicants. The minister would have to consider them all on the basis of personal discretion. Where is the justice in that?

The proposed amendment is similar to the discretionary arrangements that are contained in the 1948 act, which was repealed with the introduction of the 2007 act. That was repealed because it was difficult to administer in a transparent and objective manner and it was open to misrepresentation and fraud. On the other hand, the government amendments for a special residence requirement for people engaged in specific activities provide a specific legal framework and a very clear eligibility requirement. These will ensure that special residence requirements are used appropriately and are only applied to the groups of people for which they are intended. They will ensure that applicants have spent some time in Australia and have an ongoing connection with the country. The coalition is talking about broadening discretion.

On the other hand, their other proposal before us regards any child, regardless of their immigration status, being able to apply for citizenship. They are suggesting that that discretion should be removed. I can only presume that the opposition are well intended here. People will use this discretion

when they have exhausted all other options, including ministerial intervention, and when removal from Australia is imminent. While the coalition are correctly supporting closing one door, it would appear that they are looking to open yet another. So their approach is quite inconsistent.

The government is seeking through this bill to provide for special residence requirements for certain persons who need to be Australian citizens in order to engage in specific activity that would be of benefit to this country and where there is insufficient time for them to satisfy the current requirements of section 22 of the Australian Citizenship Act. The measures proposed provide for special residence requirements for certain persons who are unable to satisfy the current residence requirement of section 22 to engage in particular kinds of work requiring regular travel outside of Australia. They also provide for the current residence requirement in section 22 of the act to be defined as the 'general residence requirement', to distinguish it from the special residence requirement that would otherwise apply.

The provision for certain ministerial discretions in relation to administrative error and confinement in prison or in psychiatric institutions that already exists in the act will apply in relation to the special residence requirements. The amendments proposed by the government say that the minister may approve a person becoming an Australian citizen when the person is not present in Australia if the person satisfies the other requirements. The government is proposing that there be special residence requirements that provide the right balance in facilitating Australian citizenship for those who are unable to meet the general residence requirement due to the nature of their occupation, who genuinely call Australia home and who wish to formalise that relationship with Australia by becoming an Australian citizen. I

ask the Senate to reject the opposition's amendment.

Question put.

The committee divided. [10.10 am]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	32
Noes.....	<u>34</u>
Majority.....	<u>2</u>

#### AYES

Abetz, E.	Adams, J.
Back, C.J.	Barnett, G.
Bernardi, C.	Birmingham, S.
Boswell, R.L.D.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Cormann, M.H.P.	Eggleston, A.
Ferguson, A.B.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Kroger, H.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Parry, S.	Payne, M.A.
Ryan, S.M.	Troeth, J.M.
Trood, R.B.	Williams, J.R. *

#### NOES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Conroy, S.M.	Crossin, P.M.
Farrell, D.E.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
Hutchins, S.P.	Ludlam, S.
Marshall, G.	McEwen, A.
McLucas, J.E.	Milne, C.
Moore, C.	O'Brien, K.W.K. *
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Wortley, D.	Xenophon, N.

#### PAIRS

Boyce, S.	Wong, P.
Joyce, B.	Evans, C.V.
Nash, F.	Lundy, K.A.
Ronaldson, M.	Ludwig, J.W.
Scullion, N.G.	Faulkner, J.P.

\* denotes teller

Question negatived.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (10.13 am)—by leave—I move government amendments Nos (1), (2) and (3) on sheet Bm241 revised:

- Clause 2, page 2 (at the end of the table), add:
- Schedule 2 The day this Act receives the Royal Assent.
- Schedule 1, heading, page 3 (line 1), at the end of the heading, add "**relating to citizenship test review etc.**".
- Page 5 (after line 27), at the end of the bill, add:

#### **Schedule 2—Amendments relating to special residence requirement**

##### ***Australian Citizenship Act 2007***

#### **1 Paragraph 21(2)(c)**

Omit "residence requirement (see section 22)", substitute "general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)".

#### **2 Paragraph 21(3)(c)**

Omit "residence requirement (see section 22)", substitute "general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)".

#### **3 Paragraph 21(4)(d)**

Omit "residence requirement (see section 22)", substitute "general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)".



**4 Subsection 22(1)**

Omit “*residence requirement*”, substitute “*general residence requirement*”.

Note: The heading to section 22 is replaced by the heading “**General residence requirement**”.

**5 After section 22**

Insert:

**22A Special residence requirement—persons engaging in activities that are of benefit to Australia**

(1) Subject to this section, for the purposes of section 21 a person (the *applicant*) satisfies the *special residence requirement* if:

- (a) the following apply:
  - (i) the applicant is seeking to engage in an activity specified under subsection 22C(1);
  - (ii) the applicant’s engagement in that activity would be of benefit to Australia;
  - (iii) the applicant needs to be an Australian citizen in order to engage in that activity;
  - (iv) in order for the applicant to engage in that activity, there is insufficient time for the applicant to satisfy the general residence requirement (see section 22); and
- (b) the head of an organisation specified under subsection 22C(2), or a person whom the Minister is satisfied holds a senior position in that organisation, has given the Minister a notice in writing stating that the applicant has a reasonable prospect of being engaged in that activity; and
- (c) the applicant was present in Australia for a total of at least 180 days during the period of 2 years immediately before the day the applicant made the application; and
- (d) the applicant was present in Australia for a total of at least 90 days during the period of 12 months im-

mediately before the day the applicant made the application; and

- (e) the applicant was ordinarily resident in Australia throughout the period of 2 years immediately before the day the applicant made the application; and
- (f) the applicant was a permanent resident for the period of 2 years immediately before the day the applicant made the application; and
- (g) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application.

*Confinement in prison or psychiatric institution*

- (2) Subject to subsection (3), the applicant is taken not to satisfy paragraph (1)(c) if, at any time during the 2 year period mentioned in that paragraph, the applicant was:
  - (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the applicant.
- (3) The Minister may decide that subsection (2) does not apply in relation to the applicant if, taking into account the circumstances that resulted in the applicant’s confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the applicant.

*Ministerial discretion—administrative error*

- (4) For the purposes of paragraph (1)(f), the Minister may treat a period as one in which the applicant was a permanent resident if the Minister considers that, because of an administrative error, the applicant was not a permanent resident during that period.

- (5) For the purposes of paragraph (1)(g), the Minister may treat a period as one in which the applicant was not present in Australia as an unlawful non-citizen if the Minister considers the applicant was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

**22B Special residence requirement—persons engaged in particular kinds of work requiring regular travel outside Australia**

- (1) Subject to this section, for the purposes of section 21 a person satisfies the *special residence requirement* if:
- (a) at the time the person made the application, the person is engaged in work of a kind specified under subsection 22C(3) and the person is required to regularly travel outside Australia because of that work; and
  - (b) the following apply:
    - (i) the person was engaged in that kind of work for a total of at least 2 years during the period of 4 years immediately before the day the person made the application;
    - (ii) for the whole or part of that 4 year period when the person was engaged in that kind of work, the person regularly travelled outside Australia because of that work; and
  - (c) the person was present in Australia for a total of at least 480 days during the period of 4 years immediately before the day the person made the application; and
  - (d) the person was present in Australia for a total of at least 120 days during the period of 12 months immediately before the day the person made the application; and
  - (e) the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application; and
  - (f) the person was a permanent resident for the period of 12 months immediately before the day the person made the application; and
  - (g) the person was not present in Australia as an unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application.
- Confinement in prison or psychiatric institution*
- (2) Subject to subsection (3), the person is taken not to satisfy paragraph (1)(c) if, at any time during the 4 year period mentioned in that paragraph, the person was:
- (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (3) The Minister may decide that subsection (2) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.
- Ministerial discretion—administrative error*
- (4) For the purposes of paragraph (1)(f), the Minister may treat a period as one in which the person was a permanent resident if the Minister considers that, because of an administrative error, the person was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period

but, because of an administrative error, was an unlawful non-citizen during that period.

**22C Special residence requirement—legislative instruments**

- (1) The Minister may, by legislative instrument, specify activities for the purposes of subparagraph 22A(1)(a)(i).
- (2) The Minister may, by legislative instrument, specify organisations for the purposes of paragraph 22A(1)(b).
- (3) The Minister may, by legislative instrument, specify kinds of work for the purposes of paragraph 22B(1)(a).

**6 After paragraph 24(5)(a)**

Insert:

- (aa) the Minister is satisfied that the person did not satisfy the special residence requirement referred to in section 22A or 22B; and

***Australian Citizenship (Transitionals and Consequential) Act 2007***

**7 Item 5B of Schedule 3**

Omit “*residence requirement*”, substitute “*general residence requirement*”.

**8 Application**

The amendments made by this Schedule apply in relation to applications made on or after the commencement of this Schedule.

Question put.

The committee divided. [10.19 am]

(The Chairman —Senator the Hon. AB Ferguson)

Ayes.....	33
Noes.....	<u>31</u>
Majority.....	<u>2</u>

**AYES**

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Conroy, S.M.	Crossin, P.M.

Feeney, D.	Fielding, S.
Forshaw, M.G.	Furner, M.L.
Hanson-Young, S.C.	Hogg, J.J.
Hurley, A.	Hutchins, S.P.
Ludlam, S.	Marshall, G.
McEwen, A.	McLucas, J.E.
Milne, C.	Moore, C.
O’Brien, K.W.K. *	Polley, H.
Pratt, L.C.	Sherry, N.J.
Siewert, R.	Stephens, U.
Sterle, G.	Wortley, D.
Xenophon, N.	

**NOES**

Abetz, E.	Adams, J.
Back, C.J.	Barnett, G.
Bernardi, C.	Birmingham, S.
Boswell, R.L.D.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Cormann, M.H.P.
Eggleston, A.	Ferguson, A.B.
Fierravanti-Wells, C.	Fifield, M.P.
Fisher, M.J.	Heffernan, W.
Humphries, G.	Johnston, D.
Kroger, H.	Macdonald, I.
Mason, B.J.	McGauran, J.J.J.
Minchin, N.H.	Parry, S.
Payne, M.A.	Ryan, S.M.
Troeth, J.M.	Trood, R.B.
Williams, J.R. *	

**PAIRS**

Evans, C.V.	Boyce, S.
Farrell, D.E.	Coonan, H.L.
Faulkner, J.P.	Nash, F.
Ludwig, J.W.	Joyce, B.
Lundy, K.A.	Ronaldson, M.
Wong, P.	Scullion, N.G.

\* denotes teller

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

**Third Reading**

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (10.23 am)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**AUTOMOTIVE TRANSFORMATION  
SCHEME BILL 2009**

**Consideration of House of Representatives  
Message**

Message received from the House of Representatives returning the bill and informing the Senate that the House has disagreed to the amendment made by the Senate and desiring the reconsideration of the amendment.

Ordered that the message be considered in Committee of the Whole immediately.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (10.23 am)—I move:

That the committee does not insist on the Senate amendment disagreed to by the House of Representatives.

How things have changed. In 2002, Senator Minchin said that ‘economies our size would kill to have the sort of car industry we have and that we would be mad to do anything to put it unduly at risk’.

Today, madness reigns. Far from killing for the car industry, the opposition is now trying to wring the life out of it. There is a lot I could say about the Liberal Party’s double standards, its political point-scoring and its indifference to the security and the wellbeing of working Australians, but frankly I think the people of this country will figure that out for themselves.

Instead, let me talk about the radical departure from practice of those opposite and focus on the facts about this legislation. The opposition says that the Automotive Transformation Scheme lacks transparency. They are wrong, plain wrong. In the last year and a half, I have made assistance to the car industry more transparent than it ever was during the 12 years of Liberal Party rule.

In 2007-08, for the first time ever, my department published a breakdown of support provided by the previous government’s Automotive Competitiveness and Investment Scheme. Last night, we heard a lecture from the member for Groom, a lecture about the question of transparency. He had the power to publish the information when he was minister. He had that power since 2003 and he never used it. Not once did the Liberals in government provide the level of disclosure that this government has already provided. We have made ACIS more transparent. We have finetuned the legislation to make the Automotive Transformation Scheme more transparent again. Those amendments have already been accepted by both the House of Representatives and the Senate.

We are proposing that my department’s annual report include the total amounts of capped and uncapped assistance paid to participants in the scheme each year. This is appropriate for a program that provides structural support for strategic investment in research and development and in plant and equipment and the production of motor cars. The disclosure requirements are different for programs that award grants for specific projects, such as the Green Car Innovation Fund. Senator Abetz has tried to blur this distinction with his remarks in this chamber and outside. The opposition is proposing that the government should report assistance to individual companies.

I come back to the question: why didn’t they do this when they were in government? They had the power to do it. Why didn’t they act on it? Not once did they disclose this information. Why not, if it was such a red-hot idea then? Not once did they come close to providing the level of detail this government has provided since last year. We are told by the opposition that the big change all comes down to the imaginary difference between a cash and a duty credit scheme. They say that

there was no need to give people that level of information when they were in government because the ACIS only dispensed credits, not cash. That is pure humbug, complete and total nonsense.

ACIS duty credits worked like cash. Each one of them had a face value, a dollar value. Companies amassed these credits and used them to offset the customs duty payable for vehicles and components imported into Australia. If they had more credits than they needed, they sold them. The credits were tradeable. In other words, they converted the credits directly into dollars and cents and the opposition knows that perfectly well. They have always talked about the cash value of ACIS—always. You never, ever heard a Liberal minister say that it was a credit scheme. We always heard that the scheme was at a cash value.

When announcing the current scheme in 2002, Minister Macfarlane boasted it would 'deliver \$4.2 billion to the industry over 10 years'. That is what he said in every public statement he made on the scheme. Now the opposition is suggesting that we need one level of disclosure for cash and a much lower level of disclosure for an instrument that functions in every material aspect exactly like cash. Quite clearly, the opposition's arguments are self-serving nonsense. They are demanding more transparency from Labor than they provided themselves because our scheme offers cash payments. They are demanding it simply to try to get a cheap populist headline because of their inherent hostility to the automotive industry, because of their contempt for jobs in this industry, because of their contempt for investment in this industry and because of their failure to understand the significance of this industry to the Australian economy, particularly in Victoria and South Australia. The Liberals profess to understand business, but their proposal is an anathema to business.

Project grants are competitive. Applications are assessed, and decisions by government to fund projects are made on merit. That is what we do with the Green Car Innovation Fund moneys. Project applications are published and recognised because of their competitive nature. The ATS is an entitlement scheme. The ATS partially reimburses participants for their investments in innovation, modernisation and the production of passenger motor vehicles. The total amount provided to the car manufacturers to component producers, toolers and the automotive services sector for each ATS will be disclosed, but we will not be providing the business plans of every one of the 193 companies that participate in this scheme. As the federation of automatic products manufacturers have explained—

**Senator Abetz**—Automotive.

**Senator CARR**—You understand what it means, do you? That is a big discovery. The Federation of Automotive Products Manufacturers have explained that the Liberal amendments 'would require sensitive information to be made public, thereby undermining the commercial decision-making processes and the investment decisions'. On Monday night Senator Abetz grappled at length with the fact that companies are willing to make public some details about their operations but not others. He seemed to detect some sort of conspiracy operating on this matter. Senator Abetz might know more about conspiracies than the average senator, but in this instance he is either betraying his ignorance of how business works or being completely disingenuous. Every company makes information public. They shout some things from the rooftops, but they keep some things confidential. Even when he was a suburban lawyer, there were some things about his business he made public and some things he did not. This is an elementary fact of market life.

The automotive industry is highly integrated, and making public sensitive information about industry assistance has the potential to compromise commercial negotiations and decisions about where and when to invest. Remember: this is an industry in Australia that is doing much better than everywhere else in the world but is highly international. So we are not talking just about domestic competition; we are talking about international competition. What Senator Abetz is asking this government to do is betray trade secrets to competitors and companies further along the supply chain. This would have a particularly detrimental effect on small Australian based component manufacturers who are naturally weaker in their bargaining positions.

The Greens complained that the government is offering assistance to international car makers, but that did not stop them voting for the amendment that would give car makers an undue advantage in their negotiations with local suppliers. Their interest in domestic companies seems to wane when it comes to providing assistance to international companies in those negotiations.

Regulations to be made under this bill will give the minister discretion, just as under the old bill, to publish details of the assistance received by individual companies should the need arise. A similar provision, I repeat, was in the ASIS legislation but never, ever used. I have already said it once: we used that provision already in the case of Mitsubishi, and we will do it again in the public interest.

Senator Abetz tried to rationalise the Liberal Party's latest backflip in terms of their appreciation of how this industry actually works by saying, 'While certain things were done under the Howard government, we do look afresh at things in opposition.' Having had a fresh look, what does the opposition really see? This is its chance this morning to

have a fresh look at the position it has argued. Does it see that it can put thousands of jobs and massive investment at risk with impunity? Does it see that it can turn a vital industry into a political plaything and never face the consequences? Or does it see that it can jeopardise people's livelihoods and leave others to pick up the pieces? The Liberal Party may be relishing its newfound sense of irresponsibility, but the government is focusing on the ideas, on the jobs and on the industries of the future. That is why the Automotive Transformation Scheme has been developed. That is what it is all about. And that is why we are calling on this Senate to pass this bill in a carefully considered manner, now that it has come back to us from the House of Representatives.

**Senator ABETZ** (Tasmania) (10.37 am)—One thing that the minister in his long parliamentary career has still not learnt is that hyperbole is no substitute for substance. There is no doubt that we on this side support the automotive sector. We have said we support the legislation. The only issue at stake here is the issue of accountability and transparency. I say to the minister and I say with great respect to the auto sector at large: you are not showing long-term leadership for the benefit of this sector if you think that you can keep on getting away with doing deals behind the scenes without the sort of transparency that the Australian people have come to expect. You are making short-term gain but for long-term pain for this sector. There is out there in the community what I have described previously as 'auto fatigue'. The Australian people are starting to question more and more how it is that we as a nation are borrowing huge sums of money and then giving \$6.2 billion over the next decade or so to the automotive sector.

Do you know the answer to the question: why it is a good investment? It is a good investment if you have transparency and if you

require the minister to provide to this parliament on an annual basis the economic benefits, the environmental benefits and the workplace skills benefits that come from that taxpayer investment. But if you do not want to make it known to the Australian people it shows that you cannot really sustain and make the argument.

Turning quickly to the sector, let me say that the FCAI and FAPM are well served by their representatives in Mr McKellar and Mr Reilly. They do a fantastic job for their sector. But guess what? If grants are at stake and you do not have to disclose the grants, what do you expect those particular people might say? They might actually say, 'We in fact do not want disclosure.' I can understand that that is their argument and I say to them with the great respect that I hold them in: this is not a good long-term position for the sector. Whilst they might get short-term gain today, it will add to their ongoing long-term pain. I read in the media just this morning, I think, that Mr McKellar—for whom I have a great regard—said:

I could point to a range of circumstances (in other subsidised industries) where confidentiality is respected.

I sought in the second reading debate to get from the minister an indication as to where else that applied. No examples were given. Instead of all the hyperbole this morning, I would have expected the minister to come up with concrete examples of where government grants are not disclosed. He has not given us examples in any way, shape or form. The reason? There is none; there is no example.

What is more, my office then rang Mr McKellar saying, 'If you can point to a range of circumstances, please name them.' I am sorry to say to this place—and I do not need any hyperbole for this—that unfortunately Mr McKellar could point to none, other than

a Victorian Labor government scheme. This is the way state Labor does business. State Labor has come to Canberra and that is the way it now does business in this place. A minister in the Victorian Labor government appointed former Labor Premier Steve Bracks at \$550 a day for a review of the automotive sector. Guess what that former Labor Premier decided in that review? He decided that we needed an automotive ombudsman. Guess who got that job? It was none other than the former Labor Premier Mr Steve Bracks. This time round he is going to be paid \$1,100 per day, if my maths is correct. Wait for the ombudsman's recommendation for another position—which he will undoubtedly get as well—at \$2,200 a day. This is the dovetailing of interests of state Labor and the automotive sector. It is not good for transparency, especially in circumstances where the Australian taxpayer is asking more and more whether this investment is really paying dividends. I would like to think that this investment is paying dividends, and that is why I have no difficulty in saying: disclose to the public who is getting the grants and on what basis.

You can go through textiles, clothing and footwear—a similar sector—and all the grants are publicly announced. When I was minister for fisheries and forestry all grants were publicly announced. The trade minister under Export Market Development Grants had all grants publicly announced. So you have got to ask the question: why hide it in this sector? We have not been given a reason. The industry body could not provide one. Mr Reilly, who represents the FAPM, said that the opposition amendment was unworkable. Unfortunately, that is the sort of hyperbole you expect. When you then ask, 'Why would it be unworkable?' there is nothing further in the statement that tells us why it would be unworkable. I say again and put on the record that both Mr Reilly and Mr McKellar

are good representatives of their sector, and they have argued well for their sector. But I am not sure that it is in the long-term interests of their sector for them to say that the automotive industry is so different that it is worthy of \$6.2 billion of taxpayer funding but that the grants should not be announced publicly.

I also indicate that when the minister had a \$35 million plan for Toyota to assemble a hybrid vehicle in Australia to announce—a huge and substantial business plan—there was no confidentiality required. Indeed, the minister flew himself all the way to Japan and made a huge announcement: ‘What a great fellow I am! We have partnered with Toyota to assemble a hybrid vehicle in Australia.’ Where was the business disadvantage there? There was none; it was a good media opportunity. The \$149 million given to General Motors was also announced with a lot of fanfare. It was a huge business plan announced in relation to the Delta platform. There was no difficulty there. Changing the format of their manufacturing in Australia is a substantial change in business plan. It was publicly disclosed that the taxpayer was going to make \$149 million available to it. So there is a lack of consistency in the minister’s approach. Of course, that is what we have come to expect from this minister.

He then tells us that the former government did not disclose the grants that were made to the sector. That is wrong. Grants were made known. But it was previously under a credit scheme, which is completely and substantially different to a grant scheme, as the minister well knows. Those sort of credit schemes have not been publicly disclosed, but the automotive sector and the government, for whatever reason, said it would be better to move from a credit system to a grants system. I accept that. That is their judgement and we are happy to accept that judgement call. But, having made that

judgement call, they have got to take the whole package and with every single grant there has to be disclosure.

In the time remaining in this committee stage, I ask the minister whether the disclosure that he says he will provide will show the division between capped and uncapped schemes. He says the answer to that is yes.

**Senator Carr**—I will answer you in a minute. Get to your full list of questions.

**Senator ABETZ**—I also ask him about if this amendment is to be voted down. Once again, it is not about the amount of money; it is only about transparency. I ask him to refer to page 129 of the June 2009 edition of the standing orders of the Senate, under item 14, where the Senate has voted and required that:

There be laid on the table, by each minister in the Senate, in respect of each department or agency administered by that minister ... by not later than 7 days before the commencement of the budget estimates, supplementary budget estimates and additional estimates hearings:

A list of all grants approved in each portfolio or agency, including the value of the grant, recipient of the grant and the program from which the grant was made.

Was the minister aware of that Senate order? Did he tell the auto industry of this Senate order when he told them it would be better to have a grants scheme rather than a credit system? Methinks not. Given the bizarre sensitivity of the auto sector to making these grants public, I ask them rhetorically: would they expect the minister to defy this Senate order? I want to know whether the minister will defy the Senate order in relation to this. Why wasn’t that included in the second reading speech? This government promised transparency. Remember Operation Sunlight—everything was going to be shown openly and publicly; we were going to have freedom of information and you name it; it was all going to happen under ‘Sunbeam Rudd’. Well, the clouds have come over



quickly, and they are very dark clouds. We are not going to have any sun shone in relation to these particular grants, which the Senate in fact requires. This has been an order of the Senate for well over 12 months now. As the ATS was being developed, the minister must have been aware of his obligations. Did he tell the industry sector that this would be an obligation and ask whether they would be happy for that obligation to be met—and, if not, whether this was the best way to go?

The minister has asserted that we somehow want to put at risk all the jobs in the auto sector. No, we do not. Transparency does not put anything at risk, other than the integrity of his argument. I think that might be one of the reasons why the minister might be concerned. Let me simply say that, when we left government, we had unemployment at 3.9 per cent. Do not say that we are not concerned about jobs. We had a job-creating record second to none in the modern world—indeed, in modern Australia as well. So do not come into this place suggesting that we will jeopardise jobs because we will not. We believe in integrity and transparency, and I will be most interested to hear the minister's response to the questions that I have raised.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (10.51 am)—The questions that have been asked by Senator Abetz are easily refuted. Yes, we will be providing advice on capped and uncapped parts of the scheme, and we have indicated that on many occasions. The government have already increased the level of transparency from your administration of the scheme in our administration of the scheme. We have required even higher levels of disclosure under the new scheme. So the ratcheting up of transparency has occurred under this government, not under yours, Senator. Not once did your government provide the level of disclosure that this govern-

ment has provided. This bill will make more information available on the operation of the Automotive Transformation Scheme.

Senator, you asked me in what other areas we make payments to companies without disclosing them. The R&D tax concession scheme that we run—which, if I recall correctly, something like 6,800 individual firms are registered with—is governed by a piece of legislation which prohibits revealing the detail of assistance, because R&D spending is a sensitive market issue. If I recall rightly, that legislation was actually dealt with under your government and you never amended it, you never sought to change it. It is a specific provision that I am prevented from disclosing support for companies in terms of R&D arrangements.

In regard to the question of the Senate standing orders, what I think you have failed to appreciate, Senator, is the difference between a competitive grants scheme, which we have disclosed and on which we have provided much greater detail than you ever did, and an entitlements based scheme. I put to you, Senator, the analogy of unemployment benefits. Why don't we provide a full list of payments to the unemployed in this country, individual by individual? Under your interpretation, that is what you would expect me to do. We do not do that, and the Senate standing orders do not require us to do that. The Senate standing orders refer to the payments made as part of the grants arrangements of the government. We are providing payments to the automotive industry. It is an entitlements based payment scheme. By requiring me to reveal that information, Senator, you are requiring me to reveal the business plans of individual companies, to give up genuine commercial secrets that ought to be confidential. It would seem to me that the new Liberal Party does not believe that there is such a thing as a commercial-in-confidence transaction. It seems to take the

view that there is no such thing as a genuine commercial secret. That is a perverse view of the way in which market systems operate.

**Senator ABETZ** (Tasmania) (10.55 am)—I always love it when a left-wing senator hectors a conservative senator about how the market operates and their understanding of business matters. I would invite the minister to explain in full detail what advice will be provided. You indicated, Minister, that advice would be provided—well, how much? When? Will it be a one-sentence statement in an annual report or will it be more detailed? Let's not use weasel words and try to fob off the substantive question by throwing the word 'advice' in with a whole spray of hyperbole.

In relation to disclosure of R&D tax concessions, if we are to believe that this Labor government now believes that tax concessions are grants then I dare say that Senator Carr believes that anybody that gets a tax concession or a tax deduction is receiving a grant. That is a nonsense, silly argument. I trust you thought of that one all by yourself, Senator Carr—I doubt the department would have provided you with such information. Clearly tax concessions are not straight-out grants. Everybody knows that and everybody knows that the credit system that used to apply for the automotive sector was not a grants scheme. Similarly, on your argument about unemployment benefits, Senator, you went from the sublime, in relation to the R&D tax concessions, to the ridiculous, in relation to unemployment benefits. You cannot make the substantive argument as to why these beneficiaries of taxpayer grants should not be publicly disclosed as per the Senate order.

You must, undoubtedly, have advice from somebody to tell me that the Senate order does not apply. Can I advise the minister and the Senate that I do have advice, which

reads: 'I can see no reason why payments of assistance made under the proposed Automotive Transformation Scheme would not be covered by the terms of that order'—'that order', of course, referring to the one passed on 24 June 2008, which I have previously read into the *Hansard*. I ask the minister to table his advice in relation to that or, if he has none, to tell the Senate on what basis he made that assertion. Methinks it is like the unemployment benefit and R&D tax concession analogies—plucked out of the air in fright, hoping that somehow it might give him a feather to fly with in this debate. There is clearly no substance in his arguments on these matters.

Let me discuss the issue of the sensitivity of R&D, research and development, and the argument that we should not make any of those sorts of grants publicly available because it would disclose business plans. I would believe the minister but for his senior colleague the member for Grayndler, who on 6 July 2009 issued a media release in which he talked not about big multinational companies but about very small businesses in his own electorate, one of which received \$38,000:

... to develop a strategic marketing plan and to research and create better operational/financial procedures for the business. This includes mentoring, updating the communications strategy (an overhaul of the website) and business processes.

What an unwarranted disclosure, an outrageous disclosure, of a small business's business plan for getting money for research and development. How dare the member for Grayndler make such an announcement. You see, Minister Carr, your argument falls flat—out of the mouths of your own Labor ministerial colleagues. In the press release, he went on to talk about a \$36,550 grant:

... to consolidate a brand identity—  
very important for business—

and develop an e-commerce profile through a new e-business system and website.

He was broadcasting to the world at large how the company were going to change their mode of operation, how they were going to do business differently. Then there was another one, a grant for \$47,600:

... to purchase EMS hardware—  
very specific—

and software in conjunction with appointing a business coach to assist in scoping, strategy and procedure manual development and to undertake a system evaluation. These activities will result in improved production productivity.

If it is such a sin to announce government grants for R&D to help small businesses become more competitive, more productive and more efficient, why is it that it is only in the automotive sector that we cannot have the details announced? I am one of those old-fashioned people who in general terms believe that, if you have a rule, it is beneficial if at all possible to apply it across the board, and we in the coalition are of the view that all grants should be publicly disclosed. The minister fell back on the hoary argument that under the ACIS we did not do that. We did not, for one good reason: they were not grants; they were a credit scheme, like R&D tax concessions.

In then trying to suggest that the unemployed were somehow akin to a small business, I think the minister had a point, because with their economic management there is going to be a bigger and bigger crossover between small business and the unemployed—due to their mismanagement. But I think that is as far as the analogy goes, and to suggest that unemployment benefit payments are related to these grant schemes is really stretching credulity. What it does disclose without doubt is that the minister does not have any substance to attack these transparency measures.

I repeat: we support the automotive sector and we support the jobs in the manufacturing sector. But I do detect within the economic commentator community as well as the community at large a growing resistance to these huge sums of money being made available to the automotive sector. So as shadow minister I asked myself a pretty fundamental question: how can we best inoculate against that? The best way to inoculate against that is to put as much information as possible out into the marketplace, have transparency and accountability, and show what the taxpayer return is in real terms, in genuine terms, in relation to the economic sustainability of this sector, the environmental sustainability of this sector and also the workplace skill development in this sector.

I would be very interested in hearing, if the minister could advise us, from whom he obtained advice that the Senate standing order that I read out does not apply to the Automotive Transformation Scheme. I trust it was not from the Clerk Assistant, Procedures, in this place.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (11.04 am)—I repeat, Senator Abetz: if you want to go to the question of motive, why you are doing this, I think it is a legitimate point to argue. You say you support the automotive industry and the 200,000 associated jobs—the 200,000 Australians who earn their living from it—and you support it because it makes such a huge contribution to this country's research and development and such an enormous contribution to our exports. You say you support all that, but you do the very thing that you know will most undermine that industry.

Senator Abetz, what you are seeking to do is appeal to that right-wing element in the Liberal Party that actually hates this industry, that is fundamentally hostile to this industry.

You want to appeal to the editorial writers in the *Financial Review* and the *Australian*. It will not save you from the problems you are facing in terms of your approach to your job, the Grech matter or anything else. It will not save you one little bit, because people will go to the heart of what you are really about, and you are about undermining this industry. You are about undermining investment, you are about undermining confidence and you are about undermining jobs for Australians. And this is at the time of the worst possible economic circumstances this industry has had to face since it began in this country—the worst possible circumstances, when competition is at its fiercest and when the difficulties faced by this industry are the most acute.

The fact that we have actually come through this crisis in the shape that we have is down to this government's ability to work effectively with the industry, so that General Motors Holden has not been treated the way that Opel has, or the way in which we have seen the Scandinavian subsidiaries of Ford treated. Why has that happened? It is because we have been able to develop the appropriate partnerships and get the investment we need—and that is against the determined opposition of people like you, Senator Abetz, and other conservatives within the media who have a fundamental hostility towards the automotive industry and the people who work in it. Be under no illusion, Senator; you will be held responsible for this. You will bear the consequences of your hostility. You cannot speak out of both sides of your mouth simultaneously, because you will be found out.

Senator Abetz, you take a sharply different view from your leader in this place and that is well known. Senator Minchin made a statement on 14 December 2002 and he was not thanked for this then. Mr Costello was furious with this statement because he shared

your views and hostility towards the automotive industry. Senator Minchin made the point:

Economies of our size would kill to have the sort of car industry we have got and we would be mad to do anything to unduly put that at risk.

That is exactly what you are doing here today. You asked me on what authority do I say that entitlements grants are different from discretionary grants. Why don't you have a look at regulation 3A of the Financial Management and Accountability Act? It clearly defines what a grant is and distinguishes it from an entitlement payment. That is what we are doing here.

Senator Abetz, I know you think you are a bit of a Perry Mason and you have come up with some killer point but what you have sought to do is aim a bullet at the heart of the industry in the name of a populist claim about disclosure and transparency. You are only too happy to work in the interests of our foreign competitors to achieve that outcome. You are only too happy to work in the interests of those who are seeking to undermine this industry. You seem to have this view that motor cars grow on trees. Where do they come from?

Governments all around the world provide assistance to the automotive industry because they know its importance. We are one of 15 countries in the world that has the capability to go from the point of inspiration right through to the showroom floor. How do we do that? Senator Abetz, you seemed to have failed to understand the basic lessons on how a country of our size achieves this. How do we achieve that? How do we sustain the 200,000 Australians earning their living out of this? How do we sustain the production of vehicles of world-class standard? We do not do that by playing political games with the lives of Australians. Senator Minchin understood the principle; you do not. I ask you to

talk to your colleagues from South Australia and see what they have got say about the consequences of what you are seeking to do.

You are suggesting to us that tax concessions are not grants because they are entitlements. I could not agree more. Payments made under the ATS are not grants, in the sense that they are entitlement payments and not covered by the Senate standing order. The points you quoted from Mr Albanese were from the government's announcement for stronger guidelines for the Competitive Grants Program to overcome the corruption that you built into the regional rorts program. That is right—they were about regional grants. They had to be strengthened because of the way in which your government acted in the regional rorts campaign, which demonstrated your total culpability when it came to the alleged disclosure of your political partisanship in rorting a discretionary grants scheme.

That is why we want those disclosed and why we have strengthened the guidelines. That is exactly what this government is doing. We are strengthening transparency but we understand the difference between a competitive grants scheme and an entitlements scheme. We understand that there is genuine commercial-in-confidence information. That is why I do not reveal the detail of every conversation I have with companies in this country. I would hazard a guess that the reason that Mr Macfarlane followed the same practice is because he had the same advice that I had: that to do the contrary is going to kill jobs. Your search for the cheap headline is about killing jobs.

**Senator Cormann**—On a point of order, Temporary Chairman, the President this morning ruled that repeated finger gestures were disorderly. The minister has been making repeated gestures at the opposition frontbench. I ask you to call the minister to order.

**The TEMPORARY CHAIRMAN (Senator Ryan)**—Senator Cormann, there is no point of order. I will keep an eye on proceedings in the chamber.

**Senator ABETZ** (Tasmania) (11.12 am)—Given Senator Cormann's point of order, it may well be advisable for the President to review his statement but we will see how that develops later on. I have news for the minister about the so-called regional rorts that he referred to. The grants that I referred to, and which were announced by the member for Grayndler, his senior colleague, were in fact grants under the Australian government's Textile, Clothing and Footwear Small Business Program. So much for his argument there: here we have small businesses having their grants disclosed publicly and exactly for what competitive purpose those grants were made.

I think I have been accused of treason, amongst other things, in this spray of hyperbole but as I said at the outset, this minister is well known for his hyperbole and his great difficulty in grasping the substance in any debate. He thinks rhetoric is somehow a substitute for facts in any debate. Mere repetition does not obviate the need for facts and detail in discussions of this nature. I set out at the very beginning that we support the automotive sector. We support the legislation before us. In fact, we have not even amended one of the bills and have allowed it through. The only thing that we seek is some added transparency.

I understand now what the minister is saying: he will be defying Senate order 14 of continuing effect that was passed over 12 months ago. We now have that on the record. He still has not fully detailed what advice will be provided; nor has he detailed to this place whether he told the automotive sector what a smart idea it would be and what the consequences would be of changing from a

credit scheme to a grant scheme which would have these disclosure impacts. He was accusing me of supporting foreign companies and trying to put a dagger through the heart of the industry and all that sort of hyperbole. It is all great rhetoric, but did it answer the questions that I raised? Absolutely not.

If you were genuinely concerned about the future of this industry, you would engage in a sober, considered and mature debate on the actual points raised and not just use every opportunity that you could to get to your feet to have a spray at me personally—might I add, against standing orders, but so be it. Even if you are able to chop me off at the knees with all your personal attacks, you do not make yourself a bigger man and you do not do any favours for the industry and the sector. Underlining everything that the minister has said is this: any transparency that we are seeking, which is supported—bizarrely, if I might say so—by the Greens and Senator Xenophon—

**Senator Carr**—The Greens are past masters at attacking the car industry. I don't know why you would—

**Senator ABETZ**—There he goes again. We see another example of the minister making a cheap political jibe, unable to get into the actual detail of what is before us. The thesis of the minister's contribution is this: if you allow transparency in this sector you will be undermining it. Can I say that that is the biggest vote of no confidence I have seen in any sector. For the minister responsible for this sector to say, 'If we were to allow transparency it would undermine it,' reinforces all those prejudices out there in the community that I expressed my concern about. That is why I said to the leadership of this industry and to the minister that if you want to have a long-term view of this industry, if you want to provide genuine, long-term support for

this industry, you will say that every act of transparency is another brick in the wall of support for this industry because the evidence will be stacking up to show that the taxpayers' money is being well invested in this area.

The fact that you and, unfortunately, the industry—at this stage, at least—are shying away from that transparency says to the average punter listening to this debate that if it were all made transparent some of the arguments that have been put out would not have the mortar between the bricks to hold them up for the long term. When you build a brick wall without the mortar to set those bricks in place, one on top of the other, to make the argument, all you need is a little push and the whole wall collapses. Sure, you can build a wall a lot quicker without putting mortar in between the bricks. You can do it a lot quicker and say: 'What a hero am I! Look at the wall I've built.' Some of us take a more conservative approach and say that if you want that wall to stand, to withstand the vicissitudes of economic perils and the vicissitudes of changing taxpayer sentiment, you put the mortar in between the bricks. In our parliamentary democratic system, you do that through transparency. If I and the coalition are to stand accused of seeking to put a dagger through the heart of the industry because we want this brick wall to stand and to withstand the vicissitudes and the winds of change and other things that might buffet against it, so be it. But the short-term rhetoric, the flourishes of hyperbole that we have witnessed, do not actually put that cement in between the bricks and do not strengthen the minister's arguments.

I put on the record that what it will mean for the long term is a poorer outcome for the automotive sector. That is something that I personally and all my coalition colleagues do not want to see. If we have the transparency and accountability that we are seeking with

this amendment, the minister will have to come into this place on an annual basis to say how this investment is leading to economic sustainability, and an argument will have to be made for that. My view is that if the minister cannot point out the economic sustainability, the environmental sustainability or the workplace skills improvements, then—you know what?—it gives this place and the industry a great opportunity to ask how we can reconfigure it so that the Australian taxpayer gets even better value for each dollar invested.

Make no mistake, \$6.2 billion is a lot of money to somebody like me. It might not be to the minister. I accept that when you are running a \$350 billion debt for this country \$6 billion sounds like a very small amount. It is about two per cent of it—if my maths is right—but it is nothing of any great significance to the government. I am sorry, but to the coalition it is. We say that that investment is a good one just as long as we monitor it, just as long as we have transparency and just as long as we have accountability. Personal attacks or rhetorical flourishes by the minister will not undermine that fundamental principle of accountability. What the minister may well achieve today is a win in this place. He may achieve that, but it will not be a long-term win for the industry.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (11.22 am)—I was asked a specific question regarding the nature of the reporting. Section 27A of the bill states:

The Secretary must include the following in the Department's annual report for a financial year:

(a) the total amounts of capped assistance and uncapped assistance paid to ATS participants under the Automotive Transformation Scheme during the 12 month period ending on 31 March in the financial year;

(b) details of the progress of the Australian automotive industry towards achieving economic sustainability, environmental outcomes and workforce skills development.

That is already in the bill—and it brings into serious question, Senator Abetz, why you are doing this.

**Senator ABETZ** (Tasmania) (11.22 am)—The clause that the minister just read out is labelled 27A, which suggests it was an afterthought—an insertion. The minister should be open and say to the Australia people that the clause was inserted into the bill in response to the coalition amendment. He has come some of the way in relation to recognising the need for this transparency. The minister says, 'This is a government decision and initiative and we are going to be so much better off,' but let him admit—and I am sure the minister will not admit it—that the record will show that that amendment was put into the legislation as a result of the coalition going public with three proposed amendments, two of which the government accepted to an extent that we were happy with. The third one has not been met sufficiently, we believe.

If the total amounts of capped and uncapped assistance are provided, I assume that will indicate two figures. I would like the minister confirm that in the annual report, despite 193 different grants potentially being made, only two figures will be stated. As a result, in relation to 27A(b), which relates to the details of the progress of the Australian automotive industry, we will be just given generalised statements rather than details of the real successes where some dollars were spent with a lot greater benefit and return than in other areas. That is what the community wants to know. When you know that sort of detail, you can rejig the scheme to provide and drive even greater productivity, greater efficiencies, greater job security, greater ex-

port markets and all the things that we wish for this sector.

So I ask the minister whether I am correct to say that the total amounts disclosed will in fact be two amounts. If not, how many amounts will be disclosed?

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (11.25 am)—Under the provisions that I have already discussed, there will be figures for capped and uncapped assistance. There will be figures for the component providers, figures for the toolmakers and figures for the service providers.

**Senator ABETZ** (Tasmania) (11.25 am)—I thank the minister for that answer. Can the minister indicate where in clause 27A that is set out?

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (11.26 am)—Those particular details will be set out in the regulations and have been the subject of—

*Senator Abetz interjecting—*

**Senator CARR**—Senator Abetz, I have already announced those details.

**Senator Abetz**—When?

**Senator CARR**—They are on the public record—and it is the current practice as well.

**Senator ABETZ** (Tasmania) (11.26 am)—Just because something is current practice does not mean that, given the change in this legislation, the minister cannot come into this place at a later time and say, ‘I am abiding by the legislation.’ As I read it at this stage, all it says is that capped assistance and uncapped assistance will be advised. Now we are being told all of a sudden about the toolmakers, the component makers and whoever else and that it will be split up even further. I welcome that as a further development in transparency. We know that but for our public call for greater transparency

clause 27A would not be in the bill. We also know now, courtesy of the minister, that there may be certain things in the regulations, which, of course, makes my point very strongly: this is once again coathanger legislation where we are told, ‘Trust us with the regulations to do the right thing.’

Our scheme had about 120 pages of legislation; Senator Carr’s scheme only has 20 pages or thereabouts. Of course, his regulations will be a lot more detailed and we as a parliament will not have the capacity to amend them. That is why this is also very much a fundamental principle, because we as a Senate will only have the opportunity to accept or reject the regulations. We cannot amend.

I am also interested to know whether the minister did actually inform the sector as to the consequences of them coming under a grant scheme.

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (11.28 am)—The question of coathanger legislation is customary practice here and has become increasingly customary practice—

**Senator Abetz**—Under Labor.

**Senator CARR**—No, under you as well. I have a long list of bills that were presented to this chamber as coathanger legislation.

**Senator Abetz**—Table it.

**Senator CARR**—I will ask the department to provide you with additional information.

*Senator Abetz interjecting—*

**Senator CARR**—Senator, you are being unbelievably petty-minded. The question of the transparency provisions is one where I think we have highlighted that you are seeking to exploit what you see as a populist manoeuvre for base political reasons. Our position on transparency has been way in excess of anything you did when in government.



The powers we are putting into this bill are the same powers that were in the previous bill. You are seeking to appeal to that element within the press gallery which is fundamentally hostile to this industry, and you are making assertions that there are some secrets that we are seeking to prevent public disclosure of, as if there is no such thing as commercial in confidence for any other part of business.

The Automotive Transformation Scheme, as outlined in this bill, provides for much higher levels of transparency than has ever been the case. At a time of acute international pressure on the Australian industry, we would have a reason to expect the opposition not to take the dog-in-the-manger attitude that you have taken. I say to you, Senator: the reason the industry has expressed concerns about your approach is that they understand what is in the interests of the industry and the 200,000 people in this country who depend upon it. It is unfortunate that you do not. I can only repeat to you, Senator, that you abide by the advice of your leader, who in 2002 made a point about what it would take to damage this industry. I trust you will reconsider your position when this matter is put to the chamber.

**Senator ABETZ** (Tasmania) (11.31 am)—I resume, to finish the debate. We as a coalition do not believe that transparency equals undermining. Senator Carr must have a strange dictionary or thesaurus if he thinks that ‘transparency’ is a synonym for ‘undermining’. We believe that transparency would add to the robustness of the debate about support for the sector, but I note that on two occasions the minister has provided the usual hyperbole, the spray, but not the detailed information that I had sought. Time is getting on so I will not pursue the matter further, other than to indicate that this is an unfortunate short-term decision by the government

which is not within the long-term interests of this sector.

Question agreed to.

Resolution reported; report adopted.

## **BUSINESS**

### **Rearrangement**

**Senator CARR** (Victoria—Minister for Innovation, Industry, Science and Research) (11.33 am)—by leave—I move:

That the government business order of the day relating to the Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009, be called on immediately.

Question agreed to.

### **HEALTH INSURANCE AMENDMENT (EXTENDED MEDICARE SAFETY NET) BILL 2009**

#### **In Committee**

Consideration resumed from 9 September.

Bill—by leave—taken as a whole.

**Senator CORMANN** (Western Australia) (11.34 am)—It is important to remember that what we are debating here today in the Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009 is one of many broken promises of the Rudd Labor government in the health portfolio. Before the last election we were promised the world in health. The Prime Minister said he had a plan to fix public hospitals. The Prime Minister said that he would enter a new era of cooperative federalism in health. The Prime Minister said that he would maintain and retain the existing policy framework in support of the private health system. One other thing that the government said was that they would not reduce the extended Medicare safety net. I briefly quote from the Minister for Health and Ageing Nicola Roxon’s press release dated 22 September 2007, which said:

Federal Labor understands that Australian families are already under pressure ... It is these costs of living pressures that have made the safety net necessary and with about one million people each year receiving some cost relief from the safety net, Federal Labor will not put more pressure on family budgets by taking that assistance away...

This legislation is about exactly that. The government is introducing caps. The government is taking action which will lead to increased out-of-pocket expenses for patients who seek access to certain healthcare services, such as those in relation to IVF, obstetrics, eye surgery and a series of other things. So it is a broken promise. After the government announced it during the budget, the minister said that it was only targeted at doctors charging excessive fees and that patients, such as IVF patients, would not be worse off. As soon as she made that comment, no doubt somebody would have actually sat the minister down and said, 'Let us have a look through those figures; that statement actually does not stack up'—because, after having made that statement, she never repeated it.

We have some fundamental issues with this legislation. It is an empty vessel; it is a framework. What really matter are the determinations and the regulations that are putting flesh on the bone. In fact, 95 per cent of this debate has not been about the bill at all; it has been about what is in the determinations and the regulations. Non-government senators in this chamber—the Greens, Senator Xenophon, Senator Fielding and coalition senators—have acted together to force the government to table a final draft of the determinations and the regulations before the Senate would be prepared to consider this bill. That was important because, unless we were able to review and scrutinise what was in the determinations and the regulations, we could not make a proper judgment on the effect that this legislation would have on

patients. This time round we have been able to do that. We have had the leverage, given the need for approval of this legislation. There has to be a positive vote in both houses of parliament to pass this legislation. Because we insisted on not dealing with this legislation until we were able to review the detail in the determinations and the regulations, the government had no choice but to comply with the Senate's resolution. On this occasion, because of the pressure that we as non-government senators applied to the government and, more importantly, because of the pressure patient support groups and healthcare professionals applied to the government, the minister had to backflip. She had to do a significant backflip on those items under the determination relating to IVF and assisted reproductive technology treatments.

Despite what the minister said initially and despite her assurances, it became very clear that patients would be worse off. Families who needed access to IVF treatment would be worse off under the original plan put forward by the Minister for Health and Ageing. The Minister for Health and Ageing has a track record of getting it wrong. The Minister for Health and Ageing has a track record of saying one thing and then not being able to come through with it when a little bit of scrutiny is applied to it. This is because she does not do her homework. Again and again, because of the scrutiny that has been applied in this chamber and in the Senate estimates process, the minister has been forced back to the drawing board. There was the \$105 million budget cut to chemotherapy treatment, which was supposed to come into effect on 1 July 2009. Because of the pressure put on the minister by healthcare professionals, cancer patient support groups and the Senate, the minister had to go back to the drawing board. To this day, she has not been able to come up with a way to make that

budget cut work without hurting patients. To this day, there is no plan on the table as to how the government will implement that budget cut.

I want to make a broader reflection. The government made the following commitments before the last election: 'We're not going to water down the extended Medicare safety net. We're not going to take the private health insurance rebate away.' The government's excuse to break that promise now is: 'We've got a global economic down turn. There's a global financial crisis. That is the justification as to why we have to make the billion-dollar cuts in the health portfolio.' The government are spending like drunken sailors everywhere, except in the health portfolio. People who need timely access to affordable quality health care are being asked to pay the price for Labor's reckless spending. We have waste and mismanagement in the education portfolio—the waste and mismanagement with the Julia Gillard memorial halls program. We have the cash splashes. We have the government borrowing money to give it away to people who are overseas, to people who are in jail and to people who are dead. The government are wasting money left, right and centre but, when it comes to the health portfolio, people who need access to quality health care are being asked to pay the price.

The opposition welcome the government's backflip on IVF related Medicare items, in response to the impact that its legislation would have had on families needing access to IVF treatment. However, we do have some concerns with the figures. There is some magic pudding at play here. The government has agreed to increase the key MBS item No. 13200 in relation to IVF by about \$1,000. There are about 36,000 IVF procedures a year. If you look at the figures for the last five to six years, the number of procedures goes up by about 3,000 every year. If you

increase the cost of that rebate by \$1,000, that is an additional cost of roughly \$36 million to \$39 million a year.

The minister announced the backflip. On 3 September, she announced that the government had reached an agreement with stakeholders to restructure items. This meant increasing the Medicare rebate for some items, increasing the caps for other items and introducing new Medicare rebate items in relation to IVF. We welcomed the backflip, but we said to the minister, 'We want to have a discussion with you about the numbers.' The minister said: 'We've done all of this. Families are going to be better off but there will be no impact on the budget bottom line. We will preserve the \$451 million saving from this measure, even though we have increased the Medicare rebate for people needing access to IVF treatment, even though we have introduced new Medicare items and even though we have increased the caps for some items.' We said: 'That's great. You've obviously come up with a very creative way of doing this. Can you please explain it to us?' After the minister tabled the regulations, we said that we would like a briefing from the department. That briefing took place the next morning. We asked the department the very simple question, 'Can you tell us what the impact is going to be on a yearly basis for each year of the forward estimates?' The department's replied: 'No. We don't have that information. We were asked to come here at very short notice but we might be able to provide it to you on notice down the track.'

That was Wednesday a week ago, in the morning. Then came Wednesday, Thursday, Friday, Saturday, Sunday and Monday. No advice came back to us until the Monday. Of course, that advice did not include anything remotely close to an answer to the question we had asked. So we went back to them and said, 'We want to know what the impact of

the increased cost of the Medicare rebate is going to be and what the impact on your budget bottom line will be.' We understood why the government tried to hide that this was a backflip. We understood why they tried to make people believe that this was going to be budget neutral. We had some suspicions. So we said to the government, 'We want to see the detail.' In the end, we got back some information, the historical data, for all of the IVF related Medicare items that were currently in the system—that is, utilisation, annual costs, et cetera.

Moving forward, item 13200 will be broken down into three items. The government made the point: 'We have broken it up into three items and for one subitem we have reduced the rebate. We think we will make some savings and they can offset the additional expense.' We asked the obvious question: 'Can you tell us what you expect to be the utilisation for each of those items moving forward so that we can understand why you can make the point that this will not have an impact on the budget bottom line? Item 13200 is going to cost you nearly \$40 million more per annum, based on the decision you have made, unless you can tell us where you think you are going to make the savings.' The answer from the department was: 'We can't give you that information. That is secret information. We can't share it with you.'

In the end, with prodding and testing, the only answer we were able to get from the government was: 'Trust us. We're from the government. We are telling you that the budget bottom line is not going to be any worse off. We are giving you our guarantee and our assurance that the budget bottom line is not going to be any worse off.' For the opposition, quite frankly, that was not good enough. Given the track record of this government, given the number of budget measures that this Minister for Health and Ageing

in particular has got it wrong on, we were not prepared to take the government on trust. In my opening remarks in the committee stage of the debate, I flag that the opposition will move an amendment. The effect of that amendment will be that, for any of the determinations the government want to make under this legislation to become effective, the government will need the approval of both houses of parliament—that is, we are not prepared to take the government on trust. This legislation is an empty vessel. It is framework legislation.

The thing that puts meat on the bone—the thing that determines what impact this legislation will have on patients and how much worse off patients will be—is what is in the determinations and regulations. Given that fact and given the experience even in the lead-up to this debate, the coalition is of the view that we as a parliament should not give the government a blank cheque. This time around we were able to force the government into a backflip in some areas where they got it wrong because they needed our support to pass this legislation—at least they needed the support of enough non-government senators to get it through this parliament. Next time around, once this legislation is in place—and unless our amendment is passed—the government will be able to introduce regulations, to make decisions that will result in patients being worse off, without us first having to give the government approval. We do not think it is enough to go through the process of disallowable instruments in relation to these matters. They are a bit clumsy in any event when it comes to MBS items because it is very difficult to unscramble bad decisions in the context of MBS regulations. I hope I will get a further opportunity to contribute to this debate.

**Senator SIEWERT** (Western Australia) (11.49 am)—As I indicated during my speech in the second reading debate, the

Greens have some concerns with the Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009. We are particularly concerned with issues around out-of-pocket expenses. As I articulated during my speech in the second reading debate, those expenses are \$15 billion a year. We have always had concerns around the Medicare safety net, believing it to be a blunt instrument. We are concerned that this extended Medicare safety net legislation will also be a blunt instrument trying to deal with out-of-pocket expenses. We acknowledge that, as Senator Cormann articulated, thanks to the combined pressure of the community and the parliamentary process, the government have moved to address issues around IVF, for example. However, this has not dealt with the overall fact that our medical expenses are escalating. We still have very significant out-of-pocket expenses.

I articulated the Greens' position during the second reading debate, saying that we were also concerned about the impact of the changes on the cataract cap and acknowledging that that was an interaction between the changes to the scheduled fee and the cap process. We are particularly concerned that that area of this legislation is going to have an impact on a group of people who can least afford to pay out-of-pocket medical expenses. I appreciate the fact that the government is trying to fix up what is, quite frankly, a messy situation. It is going to result in there being a group of people who will bear the brunt. They will have to either doctor shop or, as I said earlier, negotiate the costs with their medical practitioner—when they will be in the worst possible position to do that. While we appreciate that the government is trying to deal with this issue, we do not necessarily think that this has been the best approach and we believe that this parliament—both the House of Representatives

and the Senate—needs the ability to review the instruments before they take effect.

So I indicate that at this stage we are in favour of supporting Senator Cormann's amendment, because we do have those very significant concerns. I have some specific questions I would like to ask the minister about the impact of certain measures, but I will leave that until we are discussing the specific amendments. The Greens, as I said, are more disposed to support this legislation now than we were previously, but that is conditional upon the amendments presently before the chamber being dealt with. We maintain our very significant concern that we need to see evidence from the government that they are dealing with other out-of-pocket expenses overall. This is not going to fix it. It is only a partial fix and we think it is a blunt partial fix. We want to hear from the government about what they are doing about the impact this is having on those people in the community who have not had their issues adequately dealt with by the government—for example, low-income families and the impact which the changes relating to cataracts will have on them. We also want an explanation from the government about what else they are doing to address the huge issue of out-of-pocket expenses, which we believe this legislation does not adequately address.

**Senator CORMANN** (Western Australia) (11.53 am)—by leave—I move opposition amendments on sheet 5923.

- (1) Schedule 1, item 3, page 4 (line 23), before "The", insert "(1)".
- (2) Schedule 1, item 3, page 4 (after line 31), at the end of section 10B, add:
  - (2) A determination made under subsection (1) does not come into effect until it has been approved by resolution of each House of the Parliament.

I thank Senator Siewert for her comments indicating that the Greens are inclined to

support our amendment. In moving the amendments, I re-emphasise that the opposition have also indicated to the government that we are inclined to support this legislation. We have some concerns about the figures, particularly given the backflip on IVF, which we have welcomed, but there will be an opportunity in 12 months time to review whether our concerns were well founded or whether the government, as we believe, got it wrong.

Our support for the legislation, however, has two important provisos. Those provisos are: (1) that this amendment is successful and (2) that the Rudd government in general, and the Minister for Health and Ageing, Nicola Roxon, in particular, find it in their hearts to make one more change to this legislation and that is in relation to the Medicare benefits schedule item No. 42740, which relates to injection of a therapeutic substance into the eye. We understand it is a measure that will save \$16 million over the forward estimates. Given the \$14 billion budget which is the Medicare benefits schedule, \$16 million over four years is a very, very small amount.

This measure will have a significant impact on the treatment of the cause of macular degeneration through injections of the drug Lucentis into the eye. The extended Medicare safety net reimburses patients, not doctors. The government, through this measure, will now shift costs of treatment of macular degeneration to patients. Treatment of macular degeneration with Lucentis is only available in a limited number of public hospitals. It is not available in New South Wales, for example. The patients who cannot afford the increased costs may stop treatment and risk blindness. Savings of \$16 million associated with this measure is insignificant when compared to the waste and mismanagement in other areas of government spending, but it would have a considerable impact on pa-

tients. Some may go blind unnecessarily as a result. There will also be increased falls, fractures and associated hospitalisations. Macular degeneration is the leading cause of blindness in Australia. It affects one in seven Australians over the age of 50, with the incidence increasing with age, and it is responsible for 48 per cent of severe vision loss in Australia.

As I said, this is one of the last sticking points between the opposition and the government. We had hoped that, through our discussions, we would have been able to convince the government to see the light, dare I say. A few of us were at a dinner on Tuesday night organised by Vision 2020. Senator Faulkner gave a very, very good speech about how important it is to ensure access to quality health care which can help prevent blindness. He gave a very personal account of his own experiences which touched everyone in the room at the time. I would call on Senator Faulkner to prevail on the Minister for Health and Ageing to reconsider this aspect of this measure. I am calling on Senator Faulkner quite deliberately because I was very touched by his very personal account at the Vision 2020 dinner earlier in the week, where he explained and focused on the importance of this sort of treatment to prevent blindness.

I will give some further justification for the importance of this amendment. As I said earlier, we do not want to give the government a blank cheque. They will tell us, 'Oh well, the regulations are a disallowable instrument,' but as a regulation that is a disallowable instrument it comes into effect when the government introduces it. We have to make a decision after the event to stop it. Experience, even with this legislation now, shows that unless we had had the ability to force the government to reconsider the impact of the measures that they are pursuing on patients they would have gone ahead with

the way the budget measure was originally envisaged and patients needing access to IVF would have been hurt. The only reason we were able to force the government to come back to this chamber and table the determinations and regulations was that this legislation had not been passed yet. In a year's time, if the government wanted to pass further determinations, they would be able to do so and only if we had a majority in this chamber after the event would we be able to stop it and the MBS item numbers are very difficult to unscramble.

This government have a bad track record when there is too much government power. I have already spoken about the stuff-up in relation to the \$105 million budget cut on chemotherapy. We are well aware of the stuff-up in relation to the IVF treatment. Let us just reflect on something that happened during the debate on the increased tax on alcopops. I urge Senators Siewert and Xenophon to listen carefully, because I know that ultimately a particular decision was made. But let us just reflect on what happened. The government used an important administrative process, the tariff proposal process, to introduce a tax increase. Whatever we think about the merits of that, they then played it right to the last minute. They had that tax running for 12 months before they eventually, at the last minute, came to this chamber to seek validation. And guess what? The Senate rejected it. The government did not have the support of the Parliament of Australia to increase the tax. What did the government do? Immediately after the Senate rejected that tariff proposal they turned around and introduced another one. Presumably, if the Senate had not made a decision a month or two later, that would have also been in effect for 12 months—irrespective of the explicit wishes of the parliament. I have previously mentioned that I think that was an abuse of government power and arguably a contempt of

the parliament because the government acted against the explicit wishes of the parliament at that time.

From that point of view, given the experiences we have had with the Minister for Health and Ageing in particular across a range of areas, we cannot trust this government with too much power: one, because they stuff up by not doing their homework; two, because at times we have to force them back into this chamber to face scrutiny about the impact of their measures on patients; and, three, because there has been an experience over the last 12 months where they have actually abused the power of the government to make decisions under administrative arrangements in spite of any decision of the parliament to which the government is accountable. With those few remarks I commend to the Senate the two amendments I have moved.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (12.02 pm)—What is becoming quite clear is that we are just experiencing another delaying tactic by the opposition on this legislation. I can appreciate the desire of the parliament to have adequate scrutiny of it. The government fail to see how a determination does not already provide for this. But we can assume that those opposite are concerned about parliamentary scrutiny. Parliamentary scrutiny is appropriate under the legislation. It does provide for delegated legislation. It does ensure that there is the ability of parliament to disallow legislation. There is a process in place for that. There is also a committee that deals with regulations and ordinances. There is also scrutiny of delegated legislation. There is a process in the parliament to deal with a whole range of matters that arise under the Legislative Instruments Act 2003. Sensible processes are then put in place.

It is being suggested that we depart from the accepted principles of how matters are dealt with both by act and regulation in this place and pursue a determination outlined in the amendments moved by the opposition. It is correct to say that they are not new issues. Determinations can be made. They are usually made for a range of reasons. I would submit that they are not for the purposes of this legislation, though. They are usually made for matters such as where you might want a building approval, and you have to ensure that you can deal with it prior to that via determination. But in those instances what we find, and what is lacking in this bill, is that there is no process and that the mechanics are missing as to how it would operate. So we have a dumb amendment, quite frankly, which does not have a way of dealing with simple mechanics about what time line you would expect, how the matter would then be progressed and how you would then have it promulgated. All of those mechanics are missing from this amendment.

That could mean that—whereas with delegated legislation when you have a matter tabled you have a process, and parliament can see what the delegated legislation is, and you have committees of the parliament that can look at it—you also have a process where it can be laid on the table to be dealt with. You then have a position where it has to be laid on the table for 15 days. At the end of those 15 days the process is that if the motion is not dealt with it moves through. If the motion is put on it to disallow then it has the time to run. That means that there are mechanics, the tintacks, about how these matters work. We have before us a bold-faced determination dressed up as amendments without a process attached and without time lines attached for how the matter would progress through both houses of parliament.

I am not going to blame Senator Cormann for perhaps not considering all of those is-

sues. It may have been something that slipped his mind when he turned his attention to how he would construct such a determination. Notwithstanding that, though, there is a range of unanswered questions about how the mechanics would work. I assume Senator Cormann will leave it to the government to work that out should his amendment get up. I am trying to persuade the Greens and Senator Xenophon that it is a dumb amendment. The delegated legislation is the appropriate way of dealing with these things. Yes, it does not give you a positive vote; it does provide you with a negative vote. I understand the difference between those two issues. But in that sense it does provide a process with which we are all familiar for how legislation will operate, how it will be laid before parliament and how we will be able to scrutinise it and make our decisions about it.

This introduces a determination without the mechanics, and that is what this government is concerned about in its support. It does not have the time lines and or the processes that are essential for the determinations to work effectively for the purposes of whatever is behind the amendment in the first place. I assume that is to impute a positive vote in the Senate to ensure that those determinations are made, but I can only assume that because quite frankly the amendment itself does not actually lay that out. I have not really understood the mechanics of how it would operate from the opposition either. If you sign yourselves up to this, if the Greens and Senator Xenophon and Senator Fielding sign themselves up to this, then at some point someone is going to have to work through the mechanics of this and how it will operate.

On that basis I would submit that you should not sign yourselves up to it. You should allow the delegated legislation to operate as it always has in this place. It is a disallowable instrument and it is a sensible



process to adopt. It does not give you a positive vote but then delegated legislation is constructed in that way. If you want a determination, this is not the place you would use it in any event. That would be the second string to my argument. Determinations are familiar and have been used in the past in this place but not in respect of, in my submission, this type without the mechanics that would go with it. We are familiar with them for building approvals so that you do not build a building and then find that it is disallowed subsequently—although for a short period you might start the design and construction, make a whole range of other expenditures and then find that the parliament does not approve. This instance is not caught in that sense and it should not be a determination, in my submission. On the Greens amendment, if it would help, I can foreshadow that we will oppose it.

**Senator CORMANN** (Western Australia) (12.09 pm)—I am more than pleased and willing to explain to the minister how legislative instruments work. A determination under this bill is, and remains for all intents and purposes, a legislative instrument. There is only one single thing that changes, and that is the time any such instrument that may be made by the government in the future will come into effect. I will read out for the benefit of the minister the process that is involved according to the amendment that I have moved. It says:

A determination made under subsection (1) does not come into effect until it has been approved by resolution of each House of the Parliament.

The process that you were so keenly interested in is exactly the same process as for any other legislative instrument. There is one exception, one important exception: it will not come into effect until both houses of parliament have agreed to it.

I remind the Senate again: we are dealing here with a broken promise. We are dealing with one of many broken promises in the health portfolio. Before the election the government promised that they would not reduce the Medicare safety net, and I have read out the media statement of the Minister for Health and Ageing on 22 September 2007, a few weeks before the last election. This is a broken promise which will lead to increased out-of-pocket expenses for patients. Because of the pressure that was put on them by patient support groups, healthcare professionals and the Senate, the government have backflipped on some things, and we seriously and genuinely welcome that. We would like to think that they have still got one more backflip in them—that is, in relation to the injecting therapeutic drugs into the eye measure, which I have outlined.

But the reality is this: if we were to pass this legislation without this amendment, the government would be able to introduce future determinations and these determinations would come into effect before the parliament would have an opportunity to express a view. Given that this is a broken promise in the health portfolio, given the impact that measures under this legislation could have on out-of-pocket expenses for patients, given the impact that this legislation and determinations down the track could have on affordable and timely access to quality health care for patients, we do not think that the government should be able to pursue those measures unless they have a majority in both houses of parliament, and that includes a majority in the Senate. That is the reason why I have moved these amendments. The minister said that this was part of a delaying tactic. Let me just make it very, very explicit: we have been committed to moving this along for some time. It has been the government that have been delaying things.

Their backflip happened on 3 September, a short little while ago. It took the minister five days to formalise her backflip, by tabling the relevant papers in the House of Representatives on 8 September. She tabled those on a Tuesday in the late afternoon. We immediately asked questions, given the minister's assertions that they had increased benefits but that there was not going to be any impact on the budget bottom line. Immediately after the minister tabled those determinations we asked for a briefing. We got it first thing the next morning. At that briefing the department said: 'Sorry. We cannot tell you what the fiscal impact is going to be on a year-to-year basis in terms of the additional expense of increasing particular MBS items. We do not have that information. Sorry. This meeting was called at too short notice.' So, quite constructively, genuinely and with all sincerity, we said: 'Okay. Please go away. Think about the questions we have asked and send us the information when you can.' As I said before, Wednesday went by, Thursday went by, Friday went by, and Saturday and Sunday went by, and we heard nothing. It was Monday when we finally got a piece of paper, which completely ignored the key question that was being asked.

So it is not the opposition wasting time; it is the government wasting time. When we finally got a document that gave us some indication as to what the past cost had been in relation to the MBS items in question, the government was still not prepared to answer the question: what will be the impact of increasing those Medicare benefit items over the forward estimates? That is the information we require to assess whether the minister's assertions are correct. To this day the minister has not been prepared to provide information to the opposition that would help substantiate her assertions that the changes she has made are budget cost neutral.

Irrespective of that, because we are very accommodating people in the opposition, we want to see this legislation get up. We said, 'Okay, we think we have taken this as far as we can. We do not agree with the government's line, 'Trust us, we're from the government, we're here to help and this information is all right.' But let us move on and let us review in 12 months time what the effect on patients and what the effect on your budget bottom line has been. Let us pass this legislation. However, it is subject to this one amendment, and we would like to see you make one more change. If this amendment is successful, and if the government was pragmatic and accepted the amendment in the House of Representatives, I on behalf of the opposition give the commitment that we will facilitate speedy passage of the determinations that need to be approved under this legislation in the Senate this week. This is based on the backflip in relation to the IVF measures and the hope—or anticipation, perhaps—that the government might find it in its heart to make one more small change. It is a small change that will cost \$4 million a year. The cost of increased falls because of people who lose their sight and their vision on the health system will be much worse than the \$4 million cost every year, and, of course, this \$4 million cost is part of a \$14 billion budget.

Given all the waste and mismanagement going on in the government, we do not see why people going blind have to pay the price for Labor's reckless spending. As I said before, I call on Senator Faulkner to have a very close look at the impact of this measure. On behalf of the opposition, I make it very clear that, given the changes that have been made to the IVF part of the determination, if the government were to take one further step in relation to this part of the determination of injecting drugs into the eye, then we as the opposition will facilitate very speedy passage

of the legislation. So there is no suggestion whatsoever that we are holding this up, we want to make sure that you, the government, are held to account for the impact that this broken promise is going to have on patients, for the impact that this broken promise is going to have on timely and affordable access for families needing access to IVF treatment and for the impact that this broken promise is going to have on families needing access to eye surgery et cetera.

The government can deal with this very quickly: just agree to the amendment, cop it, agree that you need a majority in both houses of parliament to impose further burdens on patients across Australia and you will be fine. This week will go very quickly, but if in 12 months from now you want to make patients across Australia pay for your reckless spending yet again then you will not be able to do so unless both houses of parliament agree with you. We think that is an important safeguard for the patients of Australia. That is why, despite your remarks, Senator Ludwig, I hope the Greens and Senator Xenophon will continue to support the amendment that I have moved.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (12.18 pm)—In helping to persuade the Greens and the opposition a little bit more, the Minister for Health and Ageing is prepared to agree to your item 42740, which is the injection of therapeutic substances into the eye if that helps speedy passage of this bill. I do not make it conditional but I do seek the support to not have this determination. But it is not conditional upon that, as I understand it. I am told that it is not conditional. However, I am keen to ensure that we get speedy passage of this bill, so if that prevents you from making another 10-minute speech I would be really happy about it. If that could be a concession you would make, I would be even more enamoured.

**Senator CORMANN** (Western Australia) (12.19 pm)—On that basis, I promise I will just make a very short contribution to make sure that I have understood the minister correctly. I did not want to embarrass Minister Roxon by revealing some of the discussions we have had. I am very pleased to hear that the minister has now put on record that the government will withdraw the measure in relation to item 42740. That will ensure our help in facilitating speedy passage of both the legislation and the determinations this week. However, we do stand by our amendment, because it is good for this time. However, we think that in 12 months time the government could again be in a position of needing to find budget cuts somewhere. Even though we were told that health was a high-priority area before the election, all of the government's major budget cuts are focused on the health portfolio. There is reckless spending everywhere else, but there are budget cuts in the Health and Ageing portfolio. On that basis, we still believe—and we are very grateful for the indication the minister has just given—that, if down the track you want to impose additional costs on patients, additional out-of-pocket expenses, you should not be able to do so unless you have the support of a majority of members in both houses of parliament. That is the effect of this amendment.

**Senator SIEWERT** (Western Australia) (12.20 pm)—I was pleased to hear that the government has reconsidered the macular degeneration issue. I understand it was an issue that would have impacted on a significant number of Australians. We are still persuaded to support these amendments, for a number of reasons. Due to a lack of time, I will not reiterate the points that Senator Cormann has made. When these amendments were first suggested, I did seek some advice about whether this was precedent setting or not because, as has already been explained to

the chamber, it is a change to the way we normally deal with legislative instruments. I was told that this is not a precedent but has occurred before. That was one of the issues that I was concerned about, that this was in some way upsetting normal due process. It is not. I think in this area it is particularly important because this does have such significant ramifications for the healthcare system in Australia.

The disallowance process is a negative process. Essentially a regulation comes into effect until it is disallowed. The legislation about the dental program for those with chronic illness was handled through disallowance of regulation, and that caused all sorts of uncertainty in the community. People did not know whether the dental scheme was on or off. It caused a great deal of upset and uncertainty in the community, with people who were halfway through their treatment not knowing whether it was going to continue and people who were about to start treatment not knowing whether it was going to go ahead.

Given that we are talking about quite sensitive issues around healthcare treatment, it is most appropriate that we consider regulations beforehand rather than afterwards. These are quite contentious procedures. We have just had the debates about IVF, macular degeneration and cataracts, which I do particularly want to ask a question about. We feel that in this instance it is appropriate to have the consultation beforehand. In fact, this would speed the debate, as long as the government managed their legislative process properly. If they have consulted adequately and they are confident they have the support, the changes could be dealt with very quickly, rather than going through an extended consideration using a disallowance instrument. Perhaps the government could see the positive side of this and see that in fact it could help speed the process, if the

government managed the legislative program correctly.

Senator Ludwig asked about the mechanics of this. I think the government know full well how they could manage these changes if they were introduced. It is about managing the consultation process adequately so that it is done beforehand rather than afterwards, unlike what happened with IVF. Big surprise—when they got to the consultation process and had everyone sitting down at the table, they actually came up with a solution that has support. If we believe the government, and I do, that it is in the current expenditure framework, in the guidelines that they set for the previous mechanisms—in other words, it is not costing any more—they have managed to achieve an outcome that everybody seems happy with.

I likewise give an undertaking that, if they do the consultation beforehand, they can bring those changes in here and we will deal with them as expeditiously as we can and not create unnecessary obstructions. That would obviously require work by the government to ensure that they adequately consulted all stakeholders, all those that are affected—including consumers. I think consumers are sometimes left off the list when there is a consultation process. If the government brings those changes in, having adequately consulted, that will help facilitate debate in this place. In this instance we do support these amendments. We understand that we are not setting a precedent and this has occurred before.

**Senator XENOPHON** (South Australia) (12.26 pm)—I indicate that I support Senator Cormann's amendment, despite the pleas of Senator Ludwig that it is a 'dumb' amendment. I think it is important that we put this in context. As Senator Siewert has quite rightly pointed out, if we take the government's approach, once we see these amend-

ments we could have the chaos that we saw with the changes to the dental scheme. I am still very keen that there be a resolution in terms of the intensive dental treatment for chronic illness. That still has not been resolved. I do not think we would have gone down that path if we had taken the approach of ensuring that the regulations came before us for approval.

I think there has been a trend, not just with this government but with the previous government as well, to have more and more emphasis on regulation. The Senate is not being shown details of the government's legislative agenda because the government is relying more and more on regulation rather than legislation. On this approach, Senator Abetz has used the phrase 'coathanger legislation'. Senator Cormann talks about an empty vessel—we do not know what is in the vessel. To use a line that Senator Joyce has used on something else: 'You want me to get married? Well, can I have a look at the bride?'

We need some more information. Too often the devil is in the detail. These are fundamental issues in terms of what the benefits will be for certain Medicare benefits. If benefits are to be cut and consumers disadvantaged significantly, particularly in relation to cataract surgery, IVF and macular degeneration, the regulation ought to properly come back before this place for approval, because it goes to the core of the legislation. Regulations, as I understand it, have been about the implementation of legislation, the nuts and bolts, not about the substance, and the substance here is what these particular benefits and the rebate will be.

I am pleased to hear that there has been movement in relation to macular degeneration. That is welcome. I think Senator Cormann characterised the government's changes in relation to IVF as a backflip. I do not see it in those terms. I see it as the govern-

ment having listened to the various stakeholders, listened to the concerns in the community—

**Senator Cormann**—And changed their mind.

**Senator XENOPHON**—Well, there is nothing wrong with changing your mind, Senator Cormann.

**Senator Siewert**—They've reordered things.

**Senator XENOPHON**—Senator Siewert makes the point they have reordered things—well, the reordering will have the effect of removing the deleterious effects for those seeking IVF treatment, and that is a better outcome from my point of view.

I support the opposition's amendment. Simply trusting the government in terms of the regulations is not satisfactory. That practice undermines the important role of the Senate and I think it is sensible to resist the trend towards it, in particular in relation to this legislation. The key to the legislation is what the rebate will be for certain forms of treatment. I do not think leaving it up to regulation is desirable in this case. I note Senator Siewert says this is not a precedent, and I accept that, but I think we need to be very careful about the extent to which we give away the details of legislation in regulation when they go to the core of the issue.

**The TEMPORARY CHAIRMAN (Senator Forshaw)**—The question is that opposition amendments (1) and (2) on sheet 5923 be agreed to.

Question agreed to.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (12.30 pm)—With the time available I will not call a division. I will just indicate that the government does not support the amendment.

**Senator SIEWERT** (Western Australia) (12.30 pm)—I move Greens amendment (1) on sheet 5909:

- (1) Schedule 1, page 4 (after line 31), after item 3, insert:

**3A After section 10A**

Insert:

**10C Evaluation of the caps measures**

- (1) The Minister must cause an independent evaluation to be conducted of the impact and operation of determinations made by the Minister under section 10B.
- (2) The evaluation must start not later than 1 April 2011.
- (3) The Minister must cause a written report of the evaluation to be prepared.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament by 1 July 2011.

This amendment is to do with an evaluation of the cap measures. As I highlighted in my speech in the second reading debate, we are concerned about the impact that these measures may have and whether they are actually going to deliver the outcomes that are expected or whether they will have negative impacts, one of those for example being—I have a specific question and I am aware of the time so I will make it brief—about the issues around cataract surgery and the cap and its interaction with the scheduled fee. I have been seeking information from the government on this but I want to clarify it. I understand the reasons why the government is introducing the cap on the procedures they have articulated, but on cataracts one of the issues, as I understand it, is the escalation of the cost of out-of-pocket expenses. On the matter of the way the cap is now going to operate, as I understand it, some practitioners have been billing the cost of out-of-pocket expenses and they have been managing the

invoicing as if they were in-hospital procedures.

My concern is that people on low incomes who do not have private health insurance and are unable to afford the cost of out-of-pocket expenses will now have to bear a significant cost. I have several questions for government. Have they got an estimate? Also, what is the estimate of the number of people or low-income families that will be affected by this change in the cap? I am talking about the cap and not the scheduled fee—and of course the cap and the scheduled fee interact.

My concern is that, by changing this, those people who are unable to afford the out-of-pocket expenses but have been covered by the practices that are ongoing—and I can understand why the government wants to change those practices, because they are not appropriate—are going to be significantly out of pocket once the cap, through this measure, cuts in. How many people are affected by that?

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (12.33 pm)—As I understand it we provided some information yesterday morning. We can look to see what additional information we can provide to you this afternoon. There is some data, which we cannot provide, that relates to income data. I am not sure if that is the type of data you may be seeking. We do not collect that type of data. But the data you have asked for is reasonably within our ability to provide, subject to the minister agreeing. We will seek to assist as far as we can.

**Senator CORMANN** (Western Australia) (12.34 pm)—I indicate that Liberal and National Party senators will be supporting the Greens amendment. We think that it is important to have an evaluation of the effect of this broken promise after it has been in place for a little while. On that basis we support the Greens amendment.

**Senator SIEWERT** (Western Australia) (12.34 pm)—I thank the opposition for their support and I also thank Senator Ludwig for his answer. The concern here is to highlight the fact that the information about the number of low-income families that are going to be affected is not available. It highlights the need for this evaluation. We agree that we need to fix up the situation where inappropriate expenses are being claimed and where we are not matching up the reimbursement of expenses with actual expenses et cetera. I can understand all of that. My concern here is that there is a group of people who we very strongly suspect will be adversely impacted by the bringing in of this cap, because they have not got private health insurance and they cannot pay the out-of-pocket expenses. We want to know how many people there are. As I understand it, the government is saying that these people will then join the waiting lists once again, which we already know are extensive and are between 12 and 18 months.

It is important that we have this evaluation so that we can start looking at what the unintended consequences are. If these people are joining the waiting list, are they waiting for a long time, or, because of the changes that are being implemented through this—and I understand that this is where the government is coming from—does the government think the public waiting list will then shrink and they will get dealt with quicker through these changes? I want to know if that is the case. I would appreciate any additional information the government can provide. Senator Ludwig indicated that they probably cannot provide some of that information. We are using that as an example of why we think this evaluation process is very important. I also indicate that the Greens still maintain our concern about the adverse consequences some of these changes are going to have on those who can least afford it.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (12.36 pm)—The short answer is that we will not oppose the amendment in which you seek to ensure that there is an evaluation. On my assessment, the numbers are with you.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

### Third Reading

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (12.37 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

### COMMITTEES

#### Legal and Constitutional Affairs Legislation Committee

#### Meeting

**Senator McEWEN** (South Australia) (12.37 pm)—On behalf of the chair of the Legal and Constitutional Affairs Legislation Committee, Senator Crossin, I seek leave to move a motion to enable the committee to meet during the sitting of the Senate today.

Leave granted.

**Senator McEWEN**—I move:

That the Legal and Constitutional 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 today.

Question agreed to.

### FEDERAL COURT OF AUSTRALIA AMENDMENT (CRIMINAL JURISDICTION) BILL 2008

#### Second Reading

Debate resumed from 11 February, on motion by **Senator Ludwig**:

That this bill be now read a second time.

**Senator BRANDIS** (Queensland) (12.38 pm)—The Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 was introduced at the same time as the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008. That bill provides for the criminalisation of cartel conduct, including penalties of up to 10 years imprisonment, and will necessitate the creation of an indictable criminal jurisdiction in the Federal Court for the trial of offenders. Other Commonwealth offences are heard in the state and territory courts. The Federal Court is to be invested with this jurisdiction because of its extensive experience with civil and quasi-criminal cartel cases under the Trade Practices Act. However, I understand that, where prosecutions involve offences under both the cartel provisions and state and territory law, or other Commonwealth offences to which this bill does not apply, state and territory superior courts will be able to hear those matters without the offences being disjointed.

The amendments proposed in this bill provide for the complex procedural framework required by the new jurisdiction, including the form of indictments, entry of pleas, bail, pre-trial proceedings, empanelment of juries, conduct of trials, sentencing and appeals. The procedural provisions have been modelled upon existing state and territory provisions and will apply in all Federal Court trials regardless of where the trial is being conducted. For the sake of consistency, in this area of the law at least, this is preferable to applying the procedural and evidentiary provisions of the state or territory in which the proceeding is being conducted.

While the criminalisation of serious cartel conduct, and the creation of the framework to deal with it, has the opposition's support, we have serious reservations about two as-

pects of this bill. The first of these concerns the accused person's right to silence. Proposed section 23CF requires an accused who takes issue with a fact, matter or circumstance disclosed in the prosecution's case to state the basis for doing so. This may compromise the accused person's right to silence. The justification stated in the explanatory memorandum is that this will permit the court to narrow the issues to be dealt with at trial. However, in the opposition's view, efficiency is not an adequate justification for disposing with age-old rights, especially such important human rights as the right of an accused person to remain silent. Alternatives exist, using examples from other Australian jurisdiction. A provision such as that applicable in New South Wales could be adopted, which allows such a procedure unless it will cause prejudice to the defence. Alternatively, there should be no adverse consequences flowing from the accused person's non-disclosure, as is the practice in Victoria.

The second issue which concerns the opposition is the presumption in favour of bail, which has also existed under our law since ancient times. The proposed section 58DA provides that, if the court refuses to grant bail, the accused cannot make a subsequent application unless there has been a significant change of circumstances. This is a more onerous provision than the bail provisions applying in any other Australian jurisdiction. Proposed section 58DB is also silent as to whether there is any presumption in favour of bail. In other jurisdictions there generally is a presumption in favour of bail, except in certain defined circumstances. There is also no provision in this bill for the court to provide reasons for refusing bail.

The right to silence and the presumption in favour of bail are among the individual human rights recognised and protected by our common law for centuries. For a gov-



ernment such as this one, which paints itself as having a human rights focus, it is curious, to say the least, that its first attempt at a federal criminal jurisdiction would sweep away rights recognised since Magna Carta.

The bill was referred to the Senate Standing Committee on Legal and Constitutional Affairs on 4 December 2008 for inquiry and report by 20 February 2009. Submissions were received from, among others, the Attorney-General of New South Wales, the Law Council of Australia, the Law Institute of Victoria and the Criminal Bar Association of Victoria. The submissions were highly critical of the provisions I have mentioned, and the committee's report and recommendations reflect those concerns.

I am pleased to see, therefore, that the government has responded appropriately by circulating amendments on sheet PM308. The amendments relatively provide that the pre-disclosure obligations of the accused are limited to alibi or impairment defences—the same as is required in state criminal jurisdictions—and only the general basis upon which an accused takes issue with a fact or matter in the prosecution's case. This will not entail an obligation to disclose the details or evidentiary basis of any aspect of the defence.

The situation in respect of claims to legal professional privilege under the disclosure regime has also been clarified to ensure that this vital safeguard is not compromised. The sanctions in respect of non-compliance with the pre-trial disclosure regime will also change to provide for these to be a matter of the court's discretion rather than for mandatory sanctions to apply. Finally, the bail provisions will be amended to provide for a presumption in favour of bail and to relax the circumstances in which further bail applications can be made.

Those amendments will have the coalition's support—indeed, it is at the coalition's urging that the government has agreed to make them. They adequately address our concerns. Subject to the amendments being approved by the Senate, the coalition supports the bill.

Debate interrupted.

#### **MATTERS OF PUBLIC INTEREST**

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)**—Order! It being almost 12.45 pm, I call on matters of public interest.

#### **Organised Crime**

**Senator HUTCHINS** (New South Wales) (12.44 pm)—Organised crime is a blight on our society. In the past year in Sydney we have seen drive-by shootings, fire bombings, bikie-gang brawls in broad daylight and, only two weeks ago, an execution in the streets of Cremorne, a suburb better known for its harbour views than its gangland connections. To my Victorian and South Australian colleagues, these events are less remarkable, but, to my fellow New South Welshmen and my colleagues from states who are yet to experience the full brunt of organised criminal activities, these are truly concerning developments. There can be no doubt that the heightened activity of these groups is a danger that we need to counteract with the full force of our legislative powers. I raise this matter not in an attempt to scaremonger but, rather, as a warning.

I want to share with the Senate and the Australian people the experiences of a nation very similar to our own. The Irish struggle with organised crime has received very little attention in our local media. I was lucky enough to have a meeting recently with some Irish Gardai, their police force, who shed some light on their ongoing battle with organised crime groups. As the Gardai have continued to take down figures within these groups it seems that local criminals have

taken it upon themselves to unleash an even uglier wave of violence, harassment and intimidation upon each other, and potential threats to witnesses and jurors and even innocent bystanders.

The Gardai I met shared horror stories about the family and friends of jurors and witnesses in gangland trials being gunned down in an effort to coerce them into not giving evidence or making findings of guilt. The story of Ray Collins, a 34-year-old father of two, is just one such example. The Gardai believe that Mr Collins was murdered in retaliation for a member of his family giving evidence against a gang leader. As if that were not horrific enough, the testimony in question was given four years before Mr Collins was murdered. These thugs have no hesitation in taking names now and squaring up later. The passage of time in itself sends a chilling message to any prospective juror or witness, 'Cross us and you can expect us to hurt people close to you—maybe not today, maybe not tomorrow, but it will happen.' I was told that in one case 250 notices were sent out to people to attend for jury service and only nine people turned up.

Gangland violence in the streets of Dublin had become completely out of control. By mid-June this year, there had already been 15 gangland related murders in Dublin. In July, the Deputy Leader of the Irish Labour Party, Joan Burton, had this to say on the state of affairs in Dublin:

There is an unprecedented spate of killings and murders going on in Dublin and on the fringes of the west and the northside of Dublin, which is resulting in a huge loss of human life. People are being gunned down in ways that are reminiscent of Al Capone days in Chicago.

The public living in all of these areas, including in my own constituency, feel utterly helpless.

The Irish had had enough. In this climate, the Irish Minister for Justice, Equality and Law Reform, Mr Dermot Ahern, introduced the

Criminal Justice (Amendment) Bill 2009. This bill made some significant changes to the conduct of organised crime trials. It provided for organised crime offences to be tried in a special criminal court, without a jury, following concerns about jury tampering. This provision was strongly endorsed by former High Court judge, Justice Fergus Flood, who openly doubted the usefulness of the juries in gangland trials.

Further, this bill created a new offence of directing or controlling a criminal organisation, with a maximum sentence of life imprisonment, an amended offence relating to participation or involvement in organised crime, with a penalty of up to 15 years imprisonment, and provides:

Organised crime offences will in general attract higher sentences than the same offences committed by individuals, although the maximum permissible sentence will not be exceeded.

It also allows for the admissibility of the Gardai opinion evidence on the existence and operations of criminal gangs and allows the court to draw adverse inferences from failure to answer questions and failure to account for movements, actions, activities or associations in the context of organised crime offences. Finally, it increases the penalty for intimidation of witnesses or jurors from 10 to 15 years imprisonment and allows the Gardai to detain organised crime suspects for questioning for up to seven days in certain circumstances.

As one would expect, the bill was heavily criticised by civil liberties groups but ultimately passed with an overwhelming majority. President Mary McAleese signed the bill into law on 23 July 2009. Within days of this law being passed, well-known gang leader, Freddie Thomson, Limerick drug dealer, Christy Keane, and a number of other gang leaders fled to Spain for fear of the new offences and the risk of facing the judiciary

rather than a tamperable jury, according to reports by Jim Cusack in *The Independent* and Owen Conlon and Joanne McElgunn in *The Sun*. A source in Conlon and McElgunn's report had this to say:

Keane scarpered to Tenerife and he's told people the move is permanent. Cops suspect he was behind the drugs haul and he's afraid sources will finger him for it and that he'll end up in the Special Criminal Court. Two leading members of the Collopy gang have also fled to Spain. They're all shit scared.

This legislation has been in operation for less than two months, but when the perpetrators are fleeing you know that you are onto something effective. However draconian and undesirable these laws may have been, they are working.

In Australia we are not quite at the point that Ireland was several months ago, but our organised crime situation is worsening by the day. We do not want to get into a situation where laws like the Criminal Justice (Amendment) Bill are necessary, but in order to avoid this situation we need to act swiftly and decisively to stamp out organised criminal activity. That is why I am pleased that the government has introduced the Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009.

Senators in this place do not need to be told what a growing concern organised crime is becoming in Australia. This bill is a proportionate response to that threat. It is, I hope, going to form a firewall of sorts to insulate the Australian community from problems like those faced by the Irish community, who waited too long before confronting their gang bosses with tough legislative powers. This bill will implement part of the national response to the threat of serious and organised crime as agreed to by the Standing Committee of Attorneys-General. By strengthening criminal assets confiscation and inserting unexplained wealth provisions,

the bill will enable law enforcement to follow the money trail and remove the financial incentive for involvement in organised crime. This is a subject that I have raised at length in previous contributions and I am extremely pleased to see action being taken in this area. These provisions will permit a court to confiscate a person's wealth if the person is unable to demonstrate that the wealth was not derived from offences within Commonwealth constitutional power. It reverses the onus of proof, requiring an individual to demonstrate that their cash and assets were obtained through legitimate means or risk the cash and assets being confiscated.

To those who are unfamiliar with the debate, this is not a particularly radical development. The Western Australian and Northern Territory jurisdictions already have similar schemes in force, and I would urge other states and the Australian Capital Territory to follow suit. It is measures like these that will discourage international operators from setting up bases of operation in Australia. Why would a transnational drug operation risk setting up in a jurisdiction where their assets could be seized unless they show a legitimate source? By targeting the money there can be little doubt that we remove the incentive for local involvement in organised criminal behaviour. On top of this critical measure, the bill will introduce model investigative powers for controlled operations, assumed identities and witness identity protection in order to enhance the ability of police to undertake undercover investigations to target organised crime. These measures are part of the ongoing need to revise our legal processes to adapt to the prevailing conditions and circumstances of the battle against criminal activity. Criminals are adjusting to the way law enforcement operates and now it is necessary to shift our methods and protections in order to stay one step ahead.

This bill, in my view, represents a strong, determined, coordinated response to the changing nature of organised crime and its manifestations within Australia. It is only through legislative measures like these and continual revisions and amendments to adapt to developing trends that we can keep our head above water in this fight and, in doing so, avoid ending up in a position that nations like Ireland find themselves.

There is no doubt that we need to cut the oxygen supply to Australian organised crime bosses and remove any financial incentives by confiscating their assets and the assets of their cronies. We need strong monitoring so that we can detect and confiscate the proceeds of crime. We need to show them that this nation does not take kindly to the activities of thugs, thieves, drug dealers and money launderers within its borders. But, most importantly, we need to show them that, as a parliament, we are united and determined to do whatever it takes to maintain law and order and to ensure the safety of law-abiding Australian citizens.

#### **Rudd Government**

**Senator TROOD** (Queensland) (12.55 pm)—The Rudd government is approaching the second anniversary of its election to office. It has been a period of extraordinary change and more than a little turmoil in international affairs. Most notably, of course, the ramifications of the global financial crisis continue to define our predicament. Its economic impact has been the most visible, but it will almost certainly have widespread geopolitical consequences. Considering that Australia has escaped the most severe fallout from the crisis, commentators have been inclined to give the Rudd government high marks for its management of foreign policy. This perspective should not go unchallenged. Certainly there has been plenty of colour, light and movement in the Rudd govern-

ment's policies. Indeed, it has elevated high-profile activism into an art form. Mr Rudd may be seeking to fulfil some of his election promises on foreign policy, but constant adventure and a commitment to change should not be mistaken for achievement. And in foreign policy, as elsewhere in public policy, reform does not necessarily equate with improvement.

I acknowledge and welcome some of the government's foreign policy initiatives. Its strong and continuing commitment to Afghanistan is important. Canberra's contribution to rebuilding the global financial architecture after the ravages of the global financial crisis could prove to be of enduring value. Reform in this arena has long been overdue, and I acknowledge the important role that Peter Costello played in 1997 in ensuring that it was launched. I also agree very strongly with the importance the government attaches to continuity in our relations with the United States.

The central shortcoming of the Rudd government's foreign policy has been an almost excessive and obsessive commitment to grand plans and big ideas. Whether it be the G20 as the central element of the new global financial architecture, Australian diplomacy as 'best in the world', a new Asia-Pacific community, Australia as 'a creative middle power acting as an effective international citizen in enhancing the global and regional order' or an ambitious clutch of other visions for the future, there has been no shortage of seemingly feverish thinking.

Of course, ideas are important in foreign policy. As in any other national endeavour, big ideas can be arresting. But their worth needs to be measured by the results they yield and the costs they impose. Judged by these standards, the Rudd government's foreign policy is seriously wanting because so far the yield has been low and the costs have

been high. Too often international grandstanding has served as a substitute for diligent pursuit of the nation's interests. Far too frequently the Prime Minister's devotion to the presumed virtues of multilateralism has clouded a clear understanding of the value of Australia's unique policy interests. A very crowded policy agenda pursued at an often frenetic pace has placed enormous strains on Australia's already thinly stretched diplomatic resources. Power in the formulation of Australia's foreign policy—indeed, in relation to national security generally—has drifted into the Prime Minister's hands. This has marginalised the influence of other agencies such as the Department of Foreign Affairs and Trade and is largely neutralising the role of key policy ministers. National interest is a talisman that the government attaches to all of its foreign policy endeavours, but Australians have good cause to wonder whether the government has any, even a basic, understanding of the meaning of the phrase. In policy declaration after policy declaration, it is almost never clearly defined and never persuasively argued. How could anyone think seriously, for instance, that it is in Australia's national interest to spend \$11 million on a resident Australian Ambassador to the Holy See when Australia's diplomatic resources are stretched so thinly elsewhere?

Nor has the government succeeded in establishing a set of policy priorities that serve the national interest. Australians are still mystified about why Mr Rudd has so single-mindedly committed so much of Australia's modest diplomatic resources and over \$15 million in pursuit of a seat on the Security Council. And why has the government been so delinquent in giving high priority to the preparation of a counterterrorism white paper, when the threat of international terrorism remains so acute, when Australian lives are under direct threat from it, and when the

need for a coherent strategy is so compelling?

On another front, it is rather alarming how badly Australia's relations with key countries in Asia have been handled since 2007. We have lurched from one policy failure to another, with the result that Australia's relations with Japan, China and India are now in a far worse state of repair than when the coalition left office in 2007. Given the Prime Minister's supposed expertise in foreign policy this is surprising and suggests that there was a great deal that the Australian people did not know about that—and about so much else of the Prime Minister's character—before they entrusted the keys of the Lodge to his, hopefully temporary, care.

Mr Rudd's perverse determination to pursue the Asia-Pacific community idea, against all good sense and opinion, illustrates some of the reasons for the government's problems. It is not surprising that the Prime Minister has placed great store on Australia engaging more deeply with Asia. The policy rests, he has argued, on the fact that in the decades ahead the 'changes and challenges in Asia will be great' and that for Australia engagement is the 'coincidence of several imperatives—geographic, economic and strategic'. It is difficult not to agree with that proposition. But why has Mr Rudd handled this matter so poorly? The Asia-Pacific community idea has all the hallmarks of having been hastily conceived and not fully thought through. A great many questions about the proposal remain unanswered, not least how the new institution would relate to all of the existing elements of the regional architecture. Having come up with a poorly conceptualised idea, the Prime Minister carelessly tossed it into the public domain. No preparations were made and no consultations with any of Australia's regional friends took place.

Given all this, it is hardly surprising that the Asia-Pacific community concept now lies dead in the water and commands no serious support around the region. This idea is going nowhere. Rather than spending more of the government's limited foreign policy budget on bankrolling an international conference in December, Mr Rudd would be well advised to find a dignified way to walk away from the APC and quietly dispatch it into history.

Grandstanding, whether on the regional stage or the wider international stage, may have its allure but it is no substitute for conscientious policy planning and implementation. Being practised in the art of multilateralism should be part of every government's foreign policy armoury, including Australia's. It is not, however, an end in itself, but rather a means to an end.

Multilateral processes can be deeply flawed, as the failure of discipline within the G20 on the issue of protectionism so vividly and clearly demonstrates. The Rudd government's apprehension of these flaws seems disturbingly limited. When the Prime Minister argued not long ago that multilateralism offsets some of the 'brittleness in a foreign policy based on bilateral relations' he had things completely back to front. The truth is that multilateralism will always be brittle and that wise statecraft will always rest on strong bilateral relations kept in good repair. This is a lesson the Rudd government has been slow to learn. Architectures, forms and structures are the preoccupations of its foreign policy.

Finally, it is important to make reference to the resourcing of Australia's foreign policy. In opposition, Labor's foreign policy platform spoke eloquently of the need to ensure that increased resources were provided to the Department of Foreign Affairs and Trade and the needs of Australia's foreign service. The Rudd government has so far failed abysmally in this endeavour. DFAT is

seriously under-resourced and the new government has compounded the problem by its very ambitious policy agenda and its penny-pinching failure to provide any significant increases in funding. As remarked in the Lowy Institute report, *Australia's diplomatic deficit*, earlier this year:

Australia is ill-equipped to secure fundamental objectives internationally that have a direct bearing on all us, let alone to implement the ambitious international agenda set by the Prime Minister, which includes election to the UN Security Council, establishing an Asia-Pacific Community, and re-invigorating nuclear nonproliferation and disarmament negotiations.

All of this is hardly consistent with the Mr Rudd's aspiration that Australia becomes an active and creative middle power on the world stage. Contrary to all lofty expectations, the Rudd government has assumed custody of Australia's foreign relations with a remarkable lack of competence. It has chartered an ambitious role for Australia in regional and global affairs, but failed to articulate a coherent narrative on the way this will advance our national interests.

Many of the new government's policy actions have exhibited a level of incompetence that highlights both sloppy policy formulation and careless policy implementation. Equally, it has failed to make a persuasive case that the aspirations of 'creative middle power diplomacy' can be met from the financial and policy resources currently allocated to it.

#### **Timor Sea Oil Spill**

**Senator SIEWERT** (Western Australia) (1.06 pm)—I rise today to address the issue of the ongoing saga of the oil spill in the Timor Sea from the Montara platform. This oil spill raises a number of questions and has a number of impacts. For a start there is the issue about how it happened in the first place. Of course, we still do not know that. I will come back to that in a minute. It brings

to light the regulatory processes and how this accident occurred: what regulatory processes were in place and did the company stick to them or implement them? That is one area. The other area which is of very significant concern is the environmental impact of the spill and the impact on the fisheries in the area. It also highlights the effectiveness or not of our national oil spill response plan and its coordination.

At the moment there are a number of agencies involved in this oil spill. At the federal level there is AMSA—the Australian Maritime Safety Authority; the Commonwealth Department of the Environment, Water, Heritage and the Arts; the Department of Resources, Energy and Tourism under the auspices of Minister Ferguson; and the Australian Fisheries Management Authority. At a state level in WA you have the Department of Environment and Conservation, the Department of Fisheries; and of course you have the Northern Territory resources department, which is the body under the delegated arrangements under the Offshore Petroleum Act that gives them a regulatory and decision-making authority. So you have at least seven authorities that have some level of responsibility for managing this spill. There is not one person you can go to to find out about this spill. If you want to know about the monitoring that is going on—and I will come back to that—you are told to ask the federal Department of the Environment, Water, Heritage and the Arts. But then they say, ‘But you also have to talk to the WA Department of Environment and Conservation.’ If you want to know about fisheries, you have to talk to AFMA or the WA Department of Fisheries. If you want to know, for example, what the dispersant is, at one stage you had to go and talk to the Sydney Ports Corporation. Who would have thought that you would have to go to the Sydney Ports Corpo-

ration to find out what dispersant was being used in the Timor Sea for this spill?

Right from the start there was a lack of information and a lack of adequate updates to the community. We were told that the spill was a certain size. At one stage it was 30 metres by 15 kilometres. The next update was slightly bigger. There were days when the community was not updated as to the size of this spill. In fact, the Australian Maritime Safety Authority, AMSA, did not update their website until the day after I flew up and said, ‘No, in fact the spill is much bigger than had been first notified to the public.’ AMSA updated their website about the size of the spill and then 24 hours later they updated it again and the spill had suddenly doubled.

There is no adequate provision of information about how much oil is actually spilling into the marine environment. There was not, for at least two weeks, any adequate provision of information about the amount of oil that was leaking into the environment. Based on the company’s own figures in terms of what they expected to be producing from this well field—this well is actually not an exploration well; it is a well nearing production, a capped production well—the expected flow rates from those wells and similar wells was 3,000 to 9,000 barrels per day. The estimate that we were using was 3,000 barrels of oil produced per day. The company has now finally come out and said that they think it is about 400 barrels a day. Unfortunately, there is absolutely no data on which to base that 400 barrels per day figure. It bears no relationship to any information that they have put on their website. There is nothing in their production materials that says that that is a likely figure to be flowing from this well.

Of course, we do not know what has caused the accident—whether there has been

a crack in the well head or whether in fact, as some people have suggested to me, the concrete that lines the well may be leaking. For the company to make an assessment of the amount of oil that is leaking into the environment they obviously need to know what went wrong with the well, which of course we would all like to know. The fact is that there is a significant amount of oil that has been leaking out for nearly 3½ weeks into the Timor Sea around 250 kilometres off the coast of Western Australia. That leak is expected to be going on for the next at least three to 3½ weeks, until the company can, with the West Triton rig, attempt to intercept and stop the flow.

When the leak occurred we also had representatives of the federal government saying on national television the first weekend after it happened: 'You don't need to worry. This is relatively small. It's not going to impact on marine environment.' Of course, it is. The main body of the spill is now covering 25 by 70 nautical miles. I say 'main body' of the spill, because oil is also a sheen in the marine environment for a considerable way south, east and west of what is termed the main body of the slick. If you look at the satellite photos that are available on Sky-Truth, it shows that the spill and the sheen are in fact much bigger than that. The government, through AMSA, says that that in fact is an inaccurate reading from the satellite photos. But the satellite photos that have gone up showing satellite data over a number of days do show the spill getting bigger and do show it stretching a significant way further than AMSA says. Whether that is the interpretation of what is the main body of the spill, I am not sure.

There are significant issues around the environmental impacts of this spill—both the oil and the dispersant. The fact is that as soon as this spill occurred, the oil was obviously going to have a detrimental impact on the

marine environment, as were the dispersants. Dispersants are not biologically inert. In fact, they can have an adverse impact on the environment. We are particularly concerned about the impact that the dispersants will have on the marine species, bearing in mind that listed in the company's own environment plan are 12 endangered and threatened species. Five species of marine turtles use the area, including some that are endangered and threatened, including the flatback green turtle and the loggerhead turtle. And obviously humpback whales use the area extensively. Fishers have reported the detrimental impact of both the dispersants and the oil on marine species. They have seen sick turtles and in fact have collected a dead sea snake.

The issue here is that dispersant may be having a detrimental impact on the marine environment but we do not know, because at this stage there is no monitoring going on. There is no monitoring of the impacts that the dispersal of the oil is having on the marine environment. There is no monitoring of whether in fact the dispersant is staying in the first five or 10 metres of the water column, which is what the authorities believe is happening. At the moment, I understand that there is still no agreement on long-term monitoring. At this stage, there is not a clear understanding of whether the company is prepared for long-term monitoring of the impact of the oil and the dispersant on the marine environment.

One of the issues that is also being raised is to do with what part of the spill is now being misdiagnosed as coral spawn. Just recently, there was coral spawn supposedly sighted some way from the spill. The point is that corals in Western Australia do not spawn at this time of year. Their main spawning time is in April or March, with a secondary spawning around late October or November. The issue is whether that is coral spawn or not. It is very early if it is. With the corals



about to spawn in October-November, what impact will the spill have? What impact is the dispersant going to have? What impact is the oil spill going to have?

This is part of a valuable line fishery. I understand that the particular species fished there include the red emperor, gold band snapper, cods and coral trout. The red emperor is one of the particularly valuable species up there and will be spawning in October-November as well. The concern is what impact this spill and the dispersant will have on that spawning episode and who is monitoring it. As I said, there is no monitoring going on. There is no monitoring of the areas that are separated from the main body of the spill. There is no monitoring as to whether what has been seen is oil or coral spawn. No-one has sampled those—other than the fishers; the fishers have taken some samples—so we do not know.

We know that the dispersant affects plankton, for example. An effective monitoring should have been put in place a couple of weeks ago so that we can measure the short-, medium- and long-term effects. We need to assess the abundance of species in the area, the health of those species and the impacts that both the oil and the dispersant are having on the larvae of the various species that are spawning at the moment. We also need to assess the impacts on the megafauna that are traditionally associated with that area, such as the humpback, the turtle species and the sea snake species.

I am deeply concerned that the review that the government is putting in place will be a very narrow review and will only look at resource management and whether the regulatory process was effective. Assessing that regulatory process is obviously very important. But is our national oil response plan up to date? Does it need reviewing? Was it implemented effectively. AMSA claim that

within four hours of the spill occurring they were notified and had made phone calls within 15 minutes. In the media, it was very strongly reported that planes were not going to be onsite until more than 24 hours later. It is all very well to make phone calls within 15 minutes, but you need to get planes in place and take action. You can be as informed as much as you like, but if you are not actually taking action then that is a significant issue.

I mentioned earlier that there is a lack of a single point to go to for information. You get shuffled around. I have had three different responses to the question that I asked last week about who is responsible for monitoring the impact of this spill on the marine environment. I have had three clarifications of the answer. But I still have not seen the wildlife response plan. I was told last Monday—10 days ago—that a preliminary response plan had been developed and that a further one was being developed. I have asked for that repeatedly for the last 10 days. I still have not seen it. There is still no overall monitoring plan. There is still no plan for the monitoring of the effects of this spill and the dispersant on the marine environment and those marine species. That is still not in place. It has been 3½ weeks since this accident happened. Nobody has been monitoring it; nobody has been taking samples—that is what I have been told. There is no monitoring plan, either for the short, medium or long term, in place. That is not good enough. There is not one place that you can go to to find the information.

The AMSA website has been slow updating information on the spill. It has become a little bit better since some complaints were received about the slowness of the release of information. You have to go to a number of different departments to find out what the situation is regarding the spill. I do not think that is adequate. There has been a downplaying of the potential impact of this oil spill. It

is now the third biggest in Australian history, as I understand it, and it is going to get bigger because this is going to go for another 3½ weeks.

It is important that we have a review of whether the regulatory procedures in place were adequate. But we also need to make sure that we essentially do a 360 degree review of all the aspects to do with this spill. What were the environmental impacts? Have we responded quickly enough? Could other things have been done or put in place? How effective were the responses? It is all very well to look at the regulated responses under the Offshore Petroleum Act and whether they were adequate, but we also need to look at whether the marine plan was adequate. The responses could have been to the letter of the marine plan, but the response plan might not have been adequate, so we need to review that. (*Time expired*)

#### **Steve Irwin Wildlife Reserve**

**Senator FURNER** (Queensland) (1.21 pm)—I rise to speak in regard to some activities that happened several weeks ago in my home state of Queensland. I never thought in my wildest dreams that one day I would be involved in the capture and research of an estuarine crocodile, which was more than 10 feet long, on the muddy banks of the Wenlock River in Far North Queensland with the Irwin family, and experience one of the most beautiful and treasured pieces of landscape in this country. Ever since my youth I have been a keen outdoor person, trekking and camping in many places throughout Queensland and New South Wales. Although I have experienced many beautiful places in state and national parks, I have never seen such a rich and diverse environment as that contained in the Steve Irwin Wildlife Reserve. The reserve covers 135,000 hectares, which is home to rare and threatened plant and wildlife species, includ-

ing six highly vulnerable plant species and four plant species which had never been recorded on western Cape York.

The most spectacular and threatened area of the reserve are the eight perennial springs, of which I experienced three, situated on the bauxite plateau. The springs lie on the margins or along drainage lines within the bauxite plateau, which feature discharge heads ranging from two to 650 metres in linear extent. Research indicates that the springs perform crucial ecological functions at both the local and landscape level. The springs act as a refuge and water source for woodland wildlife species in an otherwise dry landscape during the heat and drought of annual dry seasons. Ranger Barry Lyons demonstrated simply to us the need to retain the bauxite by pouring water over the ground and watching it absorb into the earth like a sponge would gather water. Bauxite, as we know, is permeable and does not absorb water. Therefore the plateau acts as a giant sponge by filtering rainwater during the wet season and slowly releasing it during the dry. We are not talking rocket science here; the springs need the bauxite to survive and the fauna and flora need the springs to see out the dry season. Should the proposed strip mining application proceed, research indicates it would irrevocably alter hydrological characteristics of the bauxite plateau resulting in the extinction and loss of unique species of fauna and flora. The proposed mining lease is for 12,300 hectares on the reserve, which represents just over one per cent of the current bauxite mining interests on the cape.

The three springs we experienced were Bluebottle, Tentacle and Oasis. To say these areas are unique is an understatement. I was following Ranger Barry Lyons and I felt myself trying to step in his footsteps to avoid any destruction to this amazing area. I saw fern forests probably never seen before, diverse and beautiful orchids, tall tree lands

providing nesting for endangered species and unique pitcher plants, which are nationally listed as endangered. Bluebottle Spring is the largest of the perched bauxite springs and meets all seven of the significant ecological criteria. This spring provides a perennial freshwater flow for four kilometres through an otherwise dry landscape to the Wenlock River during the entire dry season. The spring provides a refuge for more than one per cent of the national population of vulnerable plants. In addition to flora, the spring provides food and nesting habitat for the rare palm cockatoo, of which we only saw three, the endangered red goshawk, the vulnerable marbled frogmouth and the rare grey goshawk.

Surveys have been conducted by professionals on various types of wildlife that rely on the existence of the perched bauxite plateau. A total of 41 freshwater fish and seven species of shrimps and crabs were surveyed in 2008. The survey results showed that the aru gudgeon was located in three of the springs, which provided a rare extension as it was thought to only be associated with Aru Island near southern New Guinea and the eastern side of the tip of Cape York. Of the wildlife surveyed, 75 bird, 26 reptile, 16 native amphibian, eight native mammal excluding microbats, and 16 freshwater fish species were recorded in the various springs, which comprised 151 vertebrate wildlife taxa in total.

In relation to the research in this area, Dr J Winter has indicated that the balance of the species are of regional conservation significance as they are Cape York endemic, they are of limited distribution and are suffering declining populations or considered locally threatened due to habitat loss from the development of broad strip mining across the Weipa plateau. Additionally, botanist David Fell has highlighted the role of the perched bauxite springs as isolated refuges for a sig-

nificant range of plants of conservation significance that have formally only been recorded in eastern Cape York, the wet tropics, and/or New Guinea.

To protect this unique environment, Australia Zoo has proposed a management plan which includes strategies such as: establishment of formal recognition of this ecosystem; protection from fire incursion; development of protocols for human and vehicle access, including water and soil hygiene—Australia Zoo has already excluded direct vehicle access, which is a protocol not already followed by those recently associated with the area; ongoing feral pig and cattle control by shooting and trapping where appropriate; ongoing wildlife and botanical surveys with particular emphasis on the wet season and post wet season periods; ongoing monitoring of palm cockatoo nesting activities; ongoing monitoring of established vegetation monitoring plots; undertaking cultural heritage surveys and implementing appropriate management actions as necessary; monitoring all possible measures to ensure a safe distance for the location of any proposed public roads with respect to the potential for poaching and damage by unlawful visitors; undertaking all possible measures to protect the springs and the supporting bauxite land system from proposed bauxite mining; and liaising with the traditional owners on the effective conservation of the springs.

In regard to the Wenlock River, as mentioned earlier, I never thought I would be privileged to be involved in such an experience. When Wes Mannion, Managing Director of Australia Zoo, earlier this year extended an invitation to visit the reserve and said that I would at some stage be involved in the research and capture of estuarine crocodiles, I thought he was joking.

I arrived on the Monday afternoon of the last week in August, after escaping the hot-

test winter day in Brisbane's history, and was greeted by Josh Lyons. After a few bits of business in the town of Weipa and collecting supplies, it was time to head north-east on the 1½- to two-hour four-wheel-drive journey. The journey takes you past extensive mining areas around northern Weipa where the earth has been substantially stripped for the resource of bauxite. After travelling through rough and remote dirt roads, we finally ended up at Stone Crossing on the Wenlock River. To my surprise a large number of the crocodile research team were cooling themselves off in the lower reaches of the river. Terri Irwin was keeping a watchful eye on the water, while Bindi and Robert were playing in the water with the other families.

From here it is a mere short distance to the coolabah campsite which was home for the next two nights. Despite it being several years since my last camping trip, I quickly settled into the familiar routine. Accommodation, of course, was tents backed up by quite surprising creature comforts like a hot shower heated from a fire under a drum, a toilet that actually flushed, a washing machine and lighting powered by a generator between morning and evening, a satellite phone, and great meals with special ingredients cooked by master chef Hannah.

Following a great barbecue on Monday night and a terrific night's sleep, the morning commenced with a chorus of bird calls and breakfast, and we headed for the morning crocodile bag traps upstream. Barry Lyons, head ranger, took us to the first two, which were empty, and looked less than optimistic but the third produced the capture of a new male of over seven feet. Barry has a wealth of knowledge, with 30 years previous experience as a Queensland Parks and Wildlife Service ranger, and he explained different species of plants and wildlife along the way. The bag traps, being out of the water, needed to be dealt with first due to dehydration. Not

long after the rest of the crocodile team arrived and the briefing was given by Briano, this feisty reptile was measured, sexed, tagged with a tracking device and released.

This was the third caught on the Wenlock overnight, with the other two being recaptures and so released. Assessment of whether a croc is a new capture or not is quickly done by tracking signals through the largest remote crocodile-tracking program initiated in the world, using cutting-edge acoustic telemetry. The tracking will run for 10 years, and over 100 crocodiles ranging in size from one to four or five metres will be monitored. It will showcase Australia's expertise in crocodilian research, which is at the forefront of the field, with the key objective being to better understand the ecological roles and functions of estuarine crocodiles so that we are all in a position to understand, conserve and manage these iconic animals.

Meanwhile, plans were afoot for us to travel downstream on the Wenlock River to where a larger croc was awaiting in a floating water trap. My curiosity as to how the trap and croc would be recovered was shortly satisfied when the other team arrived. Within moments, eight of us were pulling the cage and croc out of the river up the muddy bank, being cautious, of course, not to fall into the murky river while performing this part. At this stage the highly professional, experienced and dedicated team sprang into action, securing the top jaws of the croc with rope and bringing the croc out of the cage. From here it is a mad rush to position yourself on top of the reptile so no-one is bitten. Having watched the team in action earlier that morning, I was quite at ease about the safety of both my fellow team members and the croc. Like the morning's catch, the croc was measured, coming in at 10 feet 2.5 inches and identified as a male; a tracking device was inserted and he was sutured and released.

Nineteen new captures and 12 recaptures were the total for this season, bringing it up to 34 crocodiles with tracking capacity over the last two years. With the Wenlock River having the strongest population of crocodiles in Queensland, and crocodiles being listed as a threatened species, this area is an ideal site for research. Professor Craig Franklin, from the School of Biological Sciences at the University of Queensland, competently performed all of the procedural steps, from administering local anaesthetic and inserting the tracking device to suturing the crocodile. Subsequently, after leaving the cape, I understand there were scientists catching and inserting tracking devices into bull sharks in the Wenlock River. In fact, there were a number of groups of scientists making their way to this area to study its fauna and flora.

As can be imagined, Cape York has a wild history, with people like Frank Jardine and his younger brother, Alexander, travelling 1,200 miles through Queensland, from Rockhampton to Somerset, in 1864. They started with 42 horses and 250 head of cattle. The trip took 10 months, during which time the party was constantly harassed by the area's inhabitants—various Aboriginal tribes—as they forced their way through scrub and swamps and crossed at least six large rivers. They reached Somerset on 2 March 1865 with 12 horses and 50 cattle. Frank Jardine claimed to have personally killed 47 people, and the total death toll was over 200. Local elders say the springs in this area are the weeping souls of the elders killed on the lands by the Jardines, and should the springs be affected by mining they would dry up or become muddy.

I hope that, for the sake of this beautiful area, we can find sustainable ways of preserving what is in my view one of nature's gifts so it can be enjoyed by generations to come.

### Superannuation

**Senator HUMPHRIES** (Australian Capital Territory) (1.34 pm)—I want to use this opportunity to comment on a report that was delivered recently by Mr Trevor Matthews. The report was entitled *Review of pension indexation arrangements in Australian government civilian and military superannuation schemes*. The report was actually delivered to the Rudd government in December 2008 but not released to the Australian public as a whole until September 2009. Senators might be aware that the report recommends that there should not be any substantive change to the indexation arrangements for those in Commonwealth civilian or military superannuation schemes—that the present arrangement, where the pensions are adjusted purely according to the CPI, should essentially remain.

This decision has brought out an understandable reaction on the part of many Commonwealth superannuants. These people were told before the 2007 election that a Labor government would review these arrangements and respond to the concerns that many of them had that their case for better indexation arrangements, particularly vis-à-vis the arrangements put in place for age pensioners, be addressed. Consequently, the Matthews report was commissioned and, almost two years after that election, we have on the table the outcome of that process. Of course, it is not merely this review which enlightens us as to the arguments in favour of or against an increase in superannuation indexation. We also have the benefit of at least three reports by Senate committees that have addressed this issue in the last decade.

I think it is true to say that most civilian and military superannuants see their superannuation arrangements as being partly reward for service and partly for accepting lower wages, particularly some years ago

when there was an argument that that was certainly part of the way in which Commonwealth service was structured. In fact, CPI indexation was initiated by a review by Professor Pollard in relation to Commonwealth superannuation arrangements back in 1976.

The superannuants generally comment, and I think they have some basis for this claim, that the CPI does not reflect the totality of the rising cost of living for people in retirement in certain parts of Australia. They point out that others who are the beneficiaries of Commonwealth superannuation arrangements, particularly age pensioners and Commonwealth parliamentarians, have a different basis on which their pension is indexed. They argue that their case for an adjustment ought to be considered in the light of other experiences of Commonwealth generosity towards those other categories.

In his review, Mr Matthews made the point:

... the purpose of CPI indexation for civilian and military pensions has never been to ensure that those pensions keep pace with community standards. This would require productivity gains to be passed on to superannuants.

That is a reasonable point for Mr Matthews to make but it begs the question: on what basis is the decision made to index age pensions by arrangements which account for productivity gains elsewhere in the community, for which arguably age pensioners themselves have not contributed?

Until recently, age pensions were determined on the basis of the CPI or 25 per cent of male total average weekly earnings, whichever was the higher. This government is introducing a further component in that: an indexation test which takes into account the living expenses of those in retirement. The question again needs to be asked why at least that mechanism, that third arm of the test for age pensions, is not being considered for the

indexation of Commonwealth civilian and military superannuants.

In his review, Mr Matthews went on to say ‘the current purpose of indexation is to maintain the purchasing power of pensions’. On one version of this argument the CPI might be said to do that. But it again raises the question: if the Commonwealth has seen fit to improve the living standards of those on age pensions and those who are retirees from parliament, why does it not see itself as having a role in improving the living standards of those on civilian or military pensions?

Mr Matthews does point to the costs of these arrangements and there is no denying that the costs are very considerable. In his assessment, the cost would be \$42 million in 2010-11, \$111 million by 2011-12 and \$911 million for 2019-20. I gather that those are cash costs. It is worth recording that if those pensions were improved there would be a lower net cost. It is very likely that pensioners would be paying more tax, there would be more spending in the economy—which I gather is something that the federal government wants to see more of—and there would be a lower total cost. But there is no getting away from the fact that the costs would be very considerable.

I come back to the point that the Commonwealth has taken it upon itself in recent years to address the improvement of living standards of those in retirement, as it has—at least during the period of the previous government—addressed and improved the standard of living of people in the workforce. I note that the cost of medical imaging, for example, to the federal government each year is something like \$8 billion. The federal government at the present time is spending, as we know, incredibly large amounts of money. One wonders whether a priority such

as this could not have been considered in that process.

It is also worth recording that, on average, Commonwealth superannuants do not, on average, fall into the category of being very generously provided for by their pensions. Commonwealth superannuants can claim a part age pension if their income is below \$40,500 for a single person or \$67,653 for a couple, subject to an assets test. A very substantial proportion of Commonwealth superannuants in fact do access part age pensions because their pension is so low. It is worth recording, though, that with the fall in the share market and the other hazards of the global financial crisis many of these people face the prospect of a very serious decline in their standard of living. Again, I do not believe the Commonwealth can be ignorant of those issues.

I mentioned that there had been a number of previous reviews before the Matthews review. There was one initiated as far back as 1970 by the McMahon government and a review by Professor Pollard and Mr Melville initiated by the Whitlam government. Those reviews have tended not to recommend higher levels of indexation. But we need to contrast those reviews with those conducted by the Senate. Reviews initiated by governments have tended to be very cautious and conservative. Reviews initiated by the parliament have tended to take a different view.

There was a Senate Select Committee on Superannuation and Financial Services in 2001 which recommended that the government consider adopting an indexation method other than CPI in order to more accurately reflect actual increases in the cost of living, relative to community standards. Again, a Senate select committee in 2002 recommended that the government consider indexing benefits to the higher of CPI or MTAWA, in order to allow recipients to

share in the increasing living standards enjoyed by the wider community. I think we will recall that our erstwhile colleague Senator John Watson was involved in both of those inquiries. And in its report in 2008, *A decent quality of life: inquiry into the cost of living pressures on older Australians*, the Senate Standing Committee on Community Affairs specifically and unanimously recommended that the government take some steps to immediately increase indexation—before the report from the Matthews inquiry was available—to address the real issue of falling living standards for those people who were dependent on Commonwealth superannuation arrangements.

We have had a succession of reviews by the Senate which, on each occasion, unanimously have said that we need to address this issue. But, as a result of the Matthews review, the issue is clearly not going to be addressed. I wonder why it took so long to respond to the Matthews report. It was given to the government in December 2008 and not provided to the Senate and the rest of the community until September 2009. I think many Commonwealth superannuants were given the impression that the government was working its way through this issue. Apparently that was not the case. I also need to put on the record very candidly that, although I am very disappointed with the performance of this government with respect to this issue, my own party in government took no better position on this matter. It is a matter of regret to me that we failed to grasp the opportunity, in a growing economy, with strong increases in government revenues, to deal with this longstanding and serious issue. This is unfinished business.

Successive governments have moved to improve the living standards of Australians generally. Age pensioners, those in the workforce, those on low incomes, people with disabilities, people who are carers—all sorts

of individuals within the Australian community have had their standard of living issues addressed by Commonwealth government decisions. Those who are in receipt of Commonwealth civilian or military superannuation pensions have not. That is, in my view, reprehensible. The service of these people to the Australian community needs to be taken into account. These are people who served the Commonwealth government, very often in circumstances that were very difficult indeed. Living in Canberra in the 1950s and 1960s was not quite as comfortable an experience as living in Canberra in the early part of the 21st century is. Many superannuants have, as I said, very low levels of pension and their dependence on other forms of income has made them very vulnerable to changing arrangements in the marketplace.

I urge the federal government not to close the book on this issue. I urge my own party not to close the book on this issue. I hope that we can acknowledge that, in a world where we are seeing greater levels of wealth created, where it is possible to make a decision as a matter of policy to improve the living standards of whole classes of people in our society, we should not overlook one very important group who have provided such enormous service to the Australian community and whose record of achievement is visible to all of us, particularly in a place such as this. I hope for that reason that this issue will remain on the agenda of this and successive governments.

#### **Apprenticeships**

**Senator MARK BISHOP** (Western Australia) (1.48 pm)—I rise this afternoon to talk about the recent launch of the Fast-Track Apprenticeships Program at Swan TAFE in Western Australia. It was my pleasure to attend the launch and also to represent my colleague Ms Julia Gillard, the Minister for Education. At the outset, I need to say that

we on this side are strongly committed to increasing investment in training, but not just any investment, not just some wild splurge on spending. We are committed to investment targeted at addressing skills shortages right across the Australian economy. We also want to increase and deepen the skills capacity of the Australian workforce. Ultimately, the aim is to increase workforce participation and productivity.

In my own state of Western Australia, demand for resources and energy has accelerated over the past decade. However, it is also true to say that at a government level we were not prepared. As demand increased there were chronic skills shortages in key industries. The challenges were and remain: ensuring there are sufficient skilled workers to meet demand and upskilling the existing workforce. This government's Skilling Australia for the Future agenda is a step towards addressing the challenges facing Australia's training system. Over the next five years, funding will be provided for an additional 711,000 training places. Training places will go to existing workers wanting to upgrade their skills. There are also 300,000 places available to job seekers. These are important investments, as we know that the longer someone is unemployed the harder it is for them to find work. Training programs help enormously to break the cycle of unemployment and consequent poverty.

However, investment in training really is only part of the solution. What we want to develop is a truly responsive, demand-driven training system, a national training system that addresses the challenges of: recognising industry skill needs, including in areas of current and emerging skills shortages, particularly in traditional trades; re-engaging with an ageing workforce; providing workers with training that suits their immediate learning needs; and adapting to changing technology and emerging industries. We all know



the training system must be able to equip the workforce with a set of skills that are more flexible and adaptive. For that to occur, we need cultural change and organisational change in how we deliver training programs. In the past, time based delivery models were the norm. However, as we all know, they worked as a disincentive to taking up a trade.

We also have a significant shortfall between the number of apprentices entering apprenticeships and the demand for skilled tradespeople. The challenge is to increase the numbers of suitably qualified tradespeople in industry. At the same time we need desperately to increase apprenticeship completion rates. One way to achieve these objectives is to look at a competency based training model rather than the traditional time based training model. To that end the current government has committed over \$46 million over four years to the Australian Apprenticeship Workforce Skills Development program. This program will support initiatives such as Fast-Track Apprenticeships.

The aim of the program is to support registered training providers to take advantage of new flexibilities. This means removing time based restrictions on apprenticeship qualifications. The program contributes to the initial costs of negotiating with employers to make changes to existing wage structures. This is an important issue, as wage structures need to reflect the cost of accelerated on- and off-the-job training. The program will also contribute to the development of new training material.

I was very pleased our local training provider, Swan TAFE, is at the forefront of the development of accelerated apprenticeship training. Swan TAFE has completed 15 pilot projects and accelerated the learning of many hundreds of apprentices to date. These apprenticeships are in occupational trades such as building and construction, furniture mak-

ing, engineering, automotive, electrotechnology and hospitality. Clearly, these are diverse trades, and employers have sought a varied mix of training methodologies, including competency based training, recognition of prior learning, skills gap training and mentoring. The aim is to maximise training and minimise the cost and the time spent away from work.

Swan TAFE has developed an innovative brokerage model. This model means Swan TAFE is ideally placed to replicate these successes across a broader industry landscape. Charles Darwin University is also a partner in this project. That partnership is providing greater opportunities for apprentices across Western Australia and the Northern Territory. It has enabled apprentices to complete their apprenticeships in a significantly shorter time frame. Funding by the government will enable a further seven projects to start in the immediate future.

Australia, as we all know, has not experienced the rapid increase in unemployment that has become common in a range of Western countries. In fact, our experience of the global financial crisis and the resulting recession the rest of the world has entered is much shallower. That can be directly attributed to this government's response in the very early days of the GFC. The stimulus packages announced last year and earlier this year have created, as we thought they would, their own demand for skilled workers. However, at this stage we should not be complacent. Improving the skill base of our labour pool is an essential ingredient in our ongoing economic recovery. It is also important for our future prosperity.

In my own state of Western Australia we need to get ready for the next wave of growth. Currently, we have over 1,000 operating mine sites, producing over 50 different minerals. Added to that are a further 27 pro-

jects at an advanced planning stage. The projects include the Gorgon expansion and the construction of the multi-user deepwater port at Oakajee outside of Geraldton. There are also non-mining projects coming soon, such as the construction of the National Broadband Network.

Projects such as these reflect the complexity of the future directions of our economy. To take but one example, Gorgon involves much more than just extracting LNG and shipping it to export markets; it also involves industrial scale carbon capture and sequestration. This project is at the cutting edge of science and technology innovation. It will see Australia continue to be a global leader in mining and technology services. We will need a highly skilled, highly competent workforce. As succinctly put by my colleague Mr Martin Ferguson, the Minister for Resources and Energy, 'the successes of tomorrow will be built on the investment we make today'.

**Sitting suspended from 1.57 pm to  
2.00 pm**

#### LEAVE OF ABSENCE

**Senator CHRIS EVANS** (Western Australia—Leader of the Government in the Senate) (2.00 pm)—by leave—I move:

That leave of absence be granted to Senator Wong for the period from Wednesday, 16 September to Thursday, 17 September 2009 inclusive, on account of her attendance at high-level climate change meetings in the United States. The responsibilities that she currently discharges have been shared among other frontbenchers, in accordance with the letters I have circulated to party leaders.

Question agreed to.

#### QUESTIONS WITHOUT NOTICE

##### Telstra

**Senator MINCHIN** (2.00 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy,

Senator Conroy. Will the minister now admit that his threat to break up Telstra is just the latest desperate move by the government to dig itself out of the \$43 billion National Broadband Network hole that it has created for itself, given that its NBN cannot possibly work without Telstra's involvement?

**Senator CONROY**—I thank Senator Minchin for that question, and I congratulate him on what I think by now is probably his 155th press release without troubling the scorer.

**The PRESIDENT**—Please answer the question, Senator Conroy.

**Senator CONROY**—He has made 155 deliveries and he has not troubled the scorer. In the transition to the NBN, the existing regime needs to be reformed to improve competition, strengthen consumer safeguards and remove unnecessary red tape. The historic reforms will fundamentally change existing telecommunications regulations in the national interest. They are critical to future growth, productivity and innovation across the Australian economy. I note that these reforms have been welcomed by the ACCC, consumer groups, telecommunications carriers and other senators in this chamber—even by some members of the coalition.

As I said yesterday, governments of both persuasions have avoided these necessary reforms. This has hindered the development of competition, investment and innovation in our telecommunications industry. It has hurt consumers and small businesses across the country. We are correcting the mistakes of the past, when opportunities to address Telstra's highly integrated market position were missed. For years, telcos, industry experts and the regulator have been calling for fundamental reforms in telecommunications. These reforms address the structures of the telco market today. We cannot afford to wait

for the completion of the NBN. (*Time expired*)

**Senator MINCHIN**—Mr President, I ask a supplementary question. Why is it that Telstra's nine million customers, 1.4 million shareholders and 30,000 employees are the ones being forced to pay the price for bailing the government out of its \$43 billion NBN fiasco?

**Senator CONROY**—It is moments like these that I am drawn to the comments by John Durie in today's *Australian*. In response to this question, I will quote Mr Durie. He said:

... Nick Minchin, is living on another planet ...

The old Telstra stooge needs to develop a new line of argument, and maybe shock us by coming up with his own policy.

**Senator CONROY**—That was from John Durie in the paper today.

*Honourable senators interjecting—*

**The PRESIDENT**—Order! Senator Conroy, please resume your seat. Order! The time for debating this is post question time.

**Senator CONROY**—For the interest of Senator Minchin, this is called an iPhone. It actually produces a graph of the Telstra share price, of where it is today.

**The PRESIDENT**—Senator Conroy, you know that is disorderly.

**Senator CONROY**—What you are able to find on this piece of technology is that the Telstra share price has rebounded. (*Time expired*)

**Senator MINCHIN**—Mr President, I ask a further supplementary question. Despite the share price having recovered, probably because the market does not believe that Senator Conroy could possibly be serious, is it not the case that the government's bungling of its NBN over the last two years has cost Telstra shareholders \$17 billion, as of

right now? That is lost value since Labor came to office.

**Senator CONROY**—That was almost creative by Senator Minchin, because he tried to airbrush his support for, his appointment of, Mr Sol Trujillo out of the *Hansard*. Let me read to the Senate what Senator Minchin had to say just a few months ago on the departure of Mr Trujillo. He said:

Sol has provided strong leadership and vision in transforming Telstra, and has greatly enhanced the company's profile both domestically and internationally.

Under that same regime appointed, supported and finally endorsed by Senator Minchin, we saw the share price of Telstra collapse from \$5.20 to \$3.20. That is in the period for which Senator Minchin said, 'Sol has provided strong leadership.' You just have to look at today's newspapers to understand exactly how out of touch Senator Minchin is. There is an editorial in the *Australian*, and there is comment in the *Advertiser*, the *Daily Telegraph*, and the *Fin Review*. (*Time expired*)

#### Telstra

**Senator BILYK** (2.06 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Can the minister outline to the Senate the consumer benefits that will flow from the government's reform to telecommunications regulation? In particular, what are the issues that the reforms address and how will these impact on Australian consumers?

**Senator CONROY**—I thank Senator Bilyk for her question. Yesterday, the Rudd government introduced historic reforms to the existing telecommunications regime to make it work more effectively in the interests of all Australians. These reforms included measures to address the structure of the telecommunications market and the competition framework by addressing Telstra's high level

of integration and by streamlining and simplifying the existing regulatory framework to provide more certain and quicker outcomes for telecommunications companies. A vibrant and pro-competitive telecommunications industry will promote better consumer outcomes by driving lower costs, higher quality and more innovative services. This view has been widely supported, including by some of those opposite. I note the comments of Senator Williams this morning. Senator Williams's understanding of these issues is clearly superior to those put by the shadow minister. Senator Williams gets out there among people in regional and rural Australia and he understands the failings that were left by the former government. He said, 'In my opinion, in brief, it's good for competition.' How right Senator Williams is. His assessment is supported by key industry representatives, including iiNet Managing Director Michael Malone, who said yesterday:

The big winner from these reforms is the Australian consumer who will be able to gain access to fast, affordable and competitive broadband services.

These views are shared by Vodaphone Hutchison Australia CEO Nigel Dews, who stated:

The separation of Telstra's wholesale and retail business is good news for competition and great news for customers.

*(Time expired).*

**Senator BILYK**—Mr President, I ask a supplementary question. Can the minister further outline to the Senate the benefits to Australian consumers and businesses that will result from the long overdue reforms of a consumer protection framework in the telecommunications sector? For example, what service guarantees and consumer safeguards does the legislation put in place in Australia's national interest?

**Senator CONROY**—This government's reforms will strengthen consumer safeguards to ensure that all Australians, including those in rural and regional Australia, have access to high quality telecommunications services. We will toughen the universal service obligation and the customer service guarantee to ensure that consumers have access to high quality telecommunications services, no matter where they live. Many in the community have expressed concerns about the removal of pay phones. Senator Bushby, for example, has complained that Telstra should not be allowed to remove pay phones from Burnie island—

*Honourable senators interjecting—*

**Senator CONROY**—Bruny Island—there is a typo here. In July, he said that losing access to public phone facilities would raise safety issues. He went on to say—*(Time expired)*

**Senator BILYK**—Mr President, I ask a further supplementary question. Is the minister aware of claims that support the government's reforms to the telecommunications competition framework and consumer safeguards for the benefit of all Australian consumers?

**Senator CONROY**—It is fair to say that the government's decision to introduce the most significant reforms to the telco sector has been met with overwhelming support, including from the regulator and consumer groups. The ACCC Chairman, Graeme Samuel, said in the Adelaide *Advertiser* today:

It is a quantum leap forward in terms of competition. It undoes all the mistakes of previous governments going back to 1992 and it unlocks competition in this sector for the future.

Gordon Renouf, Choice's policy director, said:

Consumers will only gain benefits from improved productivity where there is fair competition among telco retailers.

I also note the comments of Allen Asher, the Chairman of the Australian Consumer Communications Action Network— (*Time expired*)

### Telstra

**Senator MINCHIN** (2.13 pm)—My question is also to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Could the minister explain to the Senate the policy rationale for seeking to prevent Telstra from acquiring additional spectrum for advanced wireless broadband?

**Senator CONROY**—I am happy to reiterate exactly what I said yesterday. What I said yesterday was that, because of policy failings that stretch back over two governments over 20 years, Telstra was allowed to become just about the most vertically integrated telco in the world. It is in all platforms. Many jurisdictions restrict the telco incumbent from being in all of the markets. You are allowed to be in the mobile market; you are allowed to be in the fixed line market. There are many restrictions around the world. As we move out of the copper era into the fibre future, the government have decided that we need to have a greater degree of competition. We want to redress the mistakes made by the two former governments, so we have said that we will restrict Telstra from moving into the next generation of spectrum—which will be auctioned in a few years—to ensure that it cannot dominate every single platform.

What we have seen is that Australians are suffering from the highest prices in the world for broadband, virtually, and the slowest speeds, virtually. That is not acceptable because it is selling out our children, our small businesses, our educational future, our health future and our energy efficiency future. It is selling out all of those sectors, not to mention the potential in growth in aged care ser-

vices online. All of those sectors are waiting to step into the fibre future. They are waiting for the capacity to deliver incredibly exciting new applications that are available overseas. (*Time expired*)

**Senator MINCHIN**—Mr President, I ask a supplementary question. I ask the minister the minister to inform the Senate of the government's estimate of the loss to taxpayers involved in the reduction of the value of spectrum caused by the exclusion of Telstra from future spectrum auctions.

**Senator CONROY**—That is an entirely hypothetical question because Telstra have a choice about how they respond. They can choose to provide an enforceable undertaking to the ACCC and in that instance they would have access to the spectrum. Let us be very clear about this. The premise of the question from Senator Minchin is entirely flawed. There is a choice for Telstra.

**Senator Minchin**—It's in your bill.

**Senator Brandis**—Your policy is in chaos!

*Government senators interjecting—*

**The PRESIDENT**—Order! I need order on both sides. The time for debating this issue is at the end of question time. Continue, Senator Conroy.

**Senator CONROY**—Thank you, Mr President. The whole premise of the question is flawed. As the *Townsville Bulletin* says in its headline editorial, reform is vital. The *Herald* in Newcastle says: 'Telstra feels the heat. Sooner or later something was going to have to be done about Telstra.' (*Time expired*)

**Senator MINCHIN**—Mr President, I as a further supplementary question. I ask the minister why Telstra is being excluded from competing for additional wireless broadband spectrum when wireless broadband is a highly competitive market and Telstra's

competitors have the majority of the market share?

**Senator CONROY**—As I explained in answer to Senator Minchin's first question, this is about the most vertically integrated telco in the world. It is in every platform. It is in cable, in mobile, in fixed; it is in all the platforms. We are saying that it is time to introduce some competition into this market. I read Senator Coonan's quote yesterday. As I repeated yesterday, we should have given a bit more thought to separating before we floated it, but to the country's detriment she was rolled by Senator Minchin—who was interested in nothing more than propping up Telstra and flogging off its shares.

**Senator Coonan**—Mr President, I rise on a point of order as to relevance and truth. I have never, ever said what Senator Conroy said I said. I was talking about the failure of Mr Beazley to structurally separate Telstra two decades ago and Senator Conroy knows that.

**The PRESIDENT**—That is not a point of order; it is a debating issue and it is a matter that can be debated later. If you feel you have been misrepresented, there is a time to stand at the end of taking note of answers to clarify that issue. Senator Conroy, you have 12 seconds remaining.

**Senator CONROY**—As I indicated earlier, the premise for that is that the integrated nature of Telstra as it stands today has led to higher prices and slower speeds and if you want to fix it—(*Time expired*)

#### **Internet Censorship**

**Senator LUDLAM** (2.19 pm)—My question to the Minister for Broadband, Communications and the Digital Economy relates to the government's proposed mandatory net censorship scheme. Can the minister confirm for us whether the trial results are in, whether he is still planning on releasing to the Australian public the trial results in full and

whether his reliance on a small, self-selected group of internet users to trial a mass-deployed compulsory filter qualifies as evidence based policy?

**Senator CONROY**—I thank Senator Ludlam for his question. The live pilot trial into ISP level filtering has recently been completed. The report has not yet been finalised but I have undertaken—and I repeat that commitment—to release it in due course. In the meantime, the existing laws introduced by the Howard government remain in place and, I assume, still have the support of those opposite. Labor took a comprehensive cyber safety policy to the 2007 election. The internet is the most powerful platform for information and entertainment we have known. However, it also has potential dangers. That is why the Rudd government, in the 2008-09 budget, committed \$125.8 million towards our cyber safety plan. This included funding for education, law enforcement and the establishment of a youth advisory group—people aged between 11 and 17 years—to help develop our policy.

**Senator Ludlam**—Mr President, I rise on a point of order as to relevance. I would ask you to draw the minister's attention to the fact that I have not asked him about any of the things he is informing the chamber about at the moment. I ask you to draw his attention to the clean feed mandatory censorship proposal.

**The PRESIDENT**—Unfortunately, Senator Ludlam, there were those in the chamber who drowned out the latter part of your comments, which I could not even hear. Would you repeat your comments, please.

**Senator Ludlam**—Thank you, Mr President. My point of order went to relevance. The minister was busy entertaining the chamber with information which was completely irrelevant to the point of my question. I asked for information about the mandatory

net censorship proposal and the minister's reliance on this evidence in rolling out mandatory net censorship around Australia.

**The PRESIDENT**—On the point of order: I consider the minister to be answering the question. I draw the minister's attention to the fact that there are 44 seconds remaining and, whilst I cannot instruct the minister how to answer the question, I draw his attention to the question.

**Senator CONROY**—As I was saying, one element of the policy includes examining the introduction of ISP-level filtering for material refused classification under the existing National Classification Code. I did recently see a comment from a university professor who knows nothing about actual internet filtering, which I think is the basis on which you are seeking to ask your question about whether or not the basis of the test was valid. I think it was dealt with quite comprehensively by the company that was doing the testing, Senator Ludlam. I think that if you go back and check the clippings, you will find that the criticism made of the validity of the statistical— (*Time expired*)

**Senator LUDLAM**—Mr President, I ask a supplementary question. In estimates hearings on 28 May, the minister assured the committee that he was considering additional accountability measures to guide the material submitted to the ACMA blacklist. Could you inform us of those? Also, you indicated that you would be undertaking genuine public consultation on the very important social policy issues thrown up by this proposal. Can you update us about those commitments and confirm whether they were serious or not?

**Senator CONROY**—Thank you for that supplementary question, Senator Ludlam. Yes, as I indicated at estimates, I have been in discussion with some in the industry about an enhanced practical measure to ensure that

there is confidence that a government minister, or a government bureaucrat, is not the sole arbiter. There have been a number of options floated. As I said at estimates, one option is that the Classification Board may consider all of the possible items for classification. I am considering another option in which an industry based body, together with the government agency involved, could go through and examine material. Another option is a parliamentary committee, which would then undertake the classification process. So there are a number of options that the government is genuinely considering. (*Time expired*)

**Senator LUDLAM**—Mr President, I ask a further supplementary question. Can the minister tell us when those announcements will be made about the additional accountability? Also, can the minister tell us, on the basis of the evidence he has received, which has not yet been made public, what proportion of material which would be classified RC will his filter actually block in comparison with the volume of this traffic exchanged on the internet and through peer-to-peer networks and so on?

**Senator CONROY**—As Senator Ludlam—

**Senator Chris Evans**—Why don't you just email your questions?

**Senator CONROY**—I assure you I have no filter on Senator Ludlam, Senator Evans. As Senator Ludlam well knows, there has never been a suggestion by this government that peer-to-peer traffic would or could be blocked by our filter. It has never been suggested. So for you to continue to make the suggestion that we are attempting to do that just misleads the chamber and the Australian public, Senator Ludlam, and you know better than that. We are not attempting to suggest that the filter can capture peer-to-peer traffic. Regarding the statistics that you sought, I am

sure that sort of information, provided that is what we were testing for as to the exact nature of the RC classification, will be available to you in the report. However, as I have not received the report yet, I am not able to give you much further information at this stage.

#### Asylum Seekers

**Senator SCULLION** (2.26 pm)—My question is to the Minister for Immigration and Citizenship, Senator Evans. Given reports today of yet another unlawful boat arrival into Australian waters, the 32nd such boat arrival since Labor softened our border protection laws and the fourth in little over a week, what does the government propose to do when the Christmas Island detention centre is full?

**Senator CHRIS EVANS**—I thank the senator for his question. I understand his shadow minister in the House of Representatives asked a question about the education revolution, so obviously she is not terribly interested in immigration issues, but I appreciate Senator Scullion's interest. Can I say, Senator Scullion, that thanks to the Howard government we have quite a lot of capacity on Christmas Island. The Howard government built, at the great expense of \$400 million, a new high-security facility with an extra 800 beds. This was in addition to the facilities that were already on Christmas Island. Currently, we have a capacity on the island of 1,100 to 1,200—it depends on the configuration of groups et cetera. As I understand it, as at 15 September there were about 650 people being detained on Christmas Island under our mandatory detention policy. So there is capacity available for responding to any other arrivals.

But the senator raises a perfectly valid point, which is that one could find oneself, as the Howard government did when it had 12,000 arrivals in just over a three-year pe-

riod, having difficulty finding accommodation. As I have indicated publicly on a number of occasions, we have contingency plans in place to provide some extra facility on Christmas Island and capability, as the senator knows, at the Darwin Northern Immigration Detention Centre. I think the capacity of that is 400 or so. So there are plans in place for the contingency of having to respond to further arrivals in large numbers. As any government should, we have put proper planning procedures in place.

**Senator SCULLION**—Mr President, I ask a supplementary question. I thank the minister for his answer, particularly in regard to the Darwin Northern Immigration Detention Centre. Can the minister confirm that Darwin would be the first backup for the detention of further individuals should Christmas Island become full?

**Senator CHRIS EVANS**—There is a range of contingency plans in place which deal with different scenarios. As I have said publicly, and as I have said today, one of our first options for extra capacity is the current immigration detention centre, designed for that purpose, located in Darwin—the northern detention centre. It is the case that, if one were looking for extra capacity, one would probably look to bring people who had first been assessed on Christmas Island and had done a range of checks there onto the mainland at Darwin. But, as I said, there is a range of contingency plans in place for different case loads and circumstances. I made it very clear, though, that the northern detention centre at Darwin is part of our mainland capability, as is Villawood. Those centres represent the capacity that the Howard government left this government to deal with unlawful entry persons. (*Time expired*)

**Senator SCULLION**—Mr President, I ask a further supplementary question. I thank the minister for the answer. I wonder if he



can confirm that unauthorised boat arrivals that are brought to the northern detention centre on the Australian mainland will be entitled to full and immediate access to the Australian legal and social welfare system.

**Senator CHRIS EVANS**—The answer to that is no.

**Senator Cormann**—So you're excising them.

**Senator CHRIS EVANS**—Let me explain. You may have been misled by a couple of press releases Dr Stone put out which actually were factually incorrect—there is a bit of a tradition there. As I indicated to you, persons who have been processed on Christmas Island might then be brought to the mainland if there are capacity needs. They would be treated as offshore entry persons subject to the same legal regime that applied under the previous government. There has been no change to that legal regime. If you are claiming that people are entitled to social security benefits, that is not accurate in terms of their detention. But, again, the legal arrangements in place are exactly those that applied under the previous Howard government. Mandatory detention, offshore processing, excision of the islands: those arrangements are exactly the same.

#### Economy

**Senator CAMERON** (2.31 pm)—In my best Australian accent, my question is to the Minister Assisting the Prime Minister on Government Service Delivery in relation to the nation-building economic stimulus plan, Senator Arbib. Can the minister please outline to the Senate how the Rudd government's economic stimulus plan continues to cushion the economy from the blow of the global recession? Can the minister explain to the Senate how the government's early and decisive action to stimulate our economy has supported Australian jobs and small businesses during these uncertain times? Is the

minister aware of the views of Australian businesses on the economic stimulus plan's impact on their businesses and jobs?

*Opposition senators interjecting—*

**The PRESIDENT**—Senator Cameron, I will have to ask you to repeat the last part of that question. I know that will excite some people. But I could not hear it because of interjections on my left.

**Senator CAMERON**—Can the minister please explain to the Senate how the government's early and decisive action to stimulate our economy has supported Australian jobs and small businesses during these uncertain economic times? Is the minister aware of the views of Australian businesses on the economic stimulus plan's impact on their businesses and jobs?

**Senator ARBIB**—I thank Senator Cameron. Senator Cameron, on behalf of all Labor senators, we love your accent and we love you because you spend your life committed to working families and workers.

*Opposition senators interjecting—*

**The PRESIDENT**—Senator Arbib, just address the question.

**Senator ARBIB**—That is exactly what the stimulus package is about. When Lehman Brothers collapsed—

*Honourable senators interjecting—*

**The PRESIDENT**—Senator Arbib, resume your seat. I cannot hear a word. Order! On both sides I need order so I can hear Senator Arbib. Senator Arbib, continue.

**Senator ARBIB**—As I was saying, when Lehman Brothers collapsed the government acted swiftly and decisively. That is correct. We did it for one reason: to protect jobs. The Australian government working together with business, working together with the trade union movement, has pulled together and the results are there. The facts are clear. We are only one of a handful of countries

that have actually avoided recession. We are the only advanced economy to have recorded positive growth over the past year, and we had the second lowest unemployment of all major advanced economies.

As we have said and as the Treasurer has said, we are not out of the woods yet. The international economy remains fragile. As for domestic figures, ABS figures released yesterday show that housing starts have fallen by 3.7 per cent in the June quarter. That is the fourth straight quarter fall. On top of that, retail sales declined by one per cent over the month to July 2009. It is for those very reasons that we must continue with the stimulus plan and continue with the stimulus strategy. The government is now moving the stimulus into the next phase. We are now moving into the infrastructure phase. Seventy per cent of the stimulus is infrastructure; 35,000 projects are being rolled out over the country over the next 14 months. What does this mean? This means jobs. *(Time expired)*

**Senator CAMERON**—Mr President, I ask a supplementary question. Minister, can you advise the Senate how small businesses and tradespeople are benefiting from the demand generated as part of the infrastructure stimulus package? In particular, could the minister outline—

*Opposition senators interjecting—*

**The PRESIDENT**—Order! Senator Cameron, resume your seat again. Interjections are disorderly, and they take up valuable time in question time. Senator Cameron, continue.

**Senator CAMERON**—Thank you. Now listen carefully. Can the minister advise the Senate how small businesses and tradespeople are benefiting from the demand generated as part of the infrastructure stimulus package? In particular, could the minister outline the flow-on effect from the jobs supported by the infrastructure stimulus pack-

age? Is the minister aware of any particular examples of how the package is cushioning the blow of the global recession on local tradespeople, small businesses and apprentices? And thanks for the nice comments about my accent.

**Senator ARBIB**—Thank you, Senator Cameron. I was saying that the stimulus package is supporting jobs and tradespeople. It is also supporting small business. And in response to Senator Cameron I can confirm that there are thousands of small business-people who are benefiting. They are tradespeople such as Jim Zuma in Cabramatta. In his own words, Jim said that before the stimulus he was spending his days ‘working around the house’. Now he is putting up plasterboard in the very classroom where he learned to read, at the Sacred Heart Primary School at Cabramatta.

*Senator Heffernan interjecting—*

**The PRESIDENT**—Resume your seat, Senator Arbib. Senator Heffernan, it is disorderly to shout across the chamber. I am trying to listen to the answer. Senator Arbib, continue.

**Senator ARBIB**—Thank you, Mr President. As a result, his small business has taken on three other workers and will hire another two in coming months. One of the best things about the stimulus package is the flow-on effect, the multiplier effect. Jim and his co-workers buy their lunch every day at the milk bar and pick up groceries at Woolworths, the newspaper from the local newsagent, breakfast muffins from McDonald’s and coffee from Gloria Jean’s up the road, and that means supporting those jobs in small business too. *(Time expired)*

**Senator CAMERON**—Mr President, I ask a further supplementary question. Is the minister aware of suggestions that the Rudd government’s economic stimulus strategy is no longer necessary and should be rolled

back? In particular, is the minister aware of any alternative plans or priorities regarding stimulus strategies? Can the minister outline the impact that these plans would have on the economy and on employment in particular?

**Senator ARBIB**—Rolling back the stimulus now would be disastrous for jobs and disastrous for small business. It would mean small businesspeople like Jim Zuma would be out of a job. I do note that today is the one-year anniversary of the member for Wentworth taking over the leadership of his party, and it has been one year with no jobs plan—one year with no jobs plan! It is not a surprise, because while they have talked a lot about jobs in the past their true intentions on jobs are now coming to the surface. In April the shadow treasurer said:

Every single sinew of the Government's body must be focused on creating jobs, building jobs.

Just last week, what did he say?

Mr Hockey: How much money needs to be spent to keep people in work?

The journalist: You are saying that it is more important to keep interest rates low than spend money to keep people in work?

Mr Hockey: Yes, yes, that is what we are saying. *(Time expired)*

### Economy

**Senator HUMPHRIES** (2.41 pm)—My question is to the Minister Assisting the Prime Minister for Government Service Delivery, Senator Arbib. It is also about the stimulus package. Is the minister satisfied that the pink batts program is being run efficiently and effectively, free from waste and mismanagement?

**Senator ARBIB**—From day one, when the stimulus package was put in place, Liberal and National Party senators have opposed it. They voted against it. But the one area they have shown absolute contempt for has been the insulation package. We have

heard the words time and time again from Senator Joyce concerning insulation, running down an industry that now is supporting 6,000 businesses—the majority of which are small businesses—and running down local manufacturers. I have spent time with local manufacturers—with the Bradford company, which has gone to 24/7 production, and with Fletcher's organisation, which has gone to 24/7 manufacturing in their Dandenong plant and in their Western Sydney plant. This means jobs.

*Senator Fifield interjecting—*

*Senator Bernardi interjecting—*

**The PRESIDENT**—Order, Senator Fifield and Senator Bernardi! Senator Fifield, it is disorderly to shout across the chamber, as it is for Senator Bernardi.

**Senator ARBIB**—Thank you, Mr President. This means jobs. It also has the multiplier effect in supporting logistics. It has a flow-on effect to the transport sector. It is supporting jobs there. For building services, it is supporting jobs there. These are jobs that obviously Liberal Party senators could not give a damn about. As I said, over 6,000 firms have been registered with the Department of Environment and Heritage to install insulation. That is a huge number—over 6,000. We have installed batts in over 270,000 homes. There is a detailed auditing program in place to ensure that the work is done in accordance with the guidelines. *(Time expired)*

**Senator HUMPHRIES**—I thank the minister for his answer. It was not what I asked for but I thank him anyway. Mr President, I ask a supplementary question. Can the minister advise the Senate what percentage of claims has come in under this program under the \$1,600 cap?

**Senator ARBIB**—I am happy to seek that information for the good senator. Just to finish my previous answer, can I say that Minis-

ter Garrett has in place a proper auditing process. Also, in relation to auditing, the minister has written to every homeowner to ask them for feedback on how the program has proceeded and any issues they have. So this government is undertaking all processes to ensure that the program is rolled out as efficiently and effectively as possible. Again, I remind the Senate that this is about jobs. This is about supporting tradespeople—tradespeople who would otherwise be out of work. The Liberal Party have shown that they have no jobs plan, nor do they care about jobs. As the shadow Treasurer said, 'Really, it is not our priority anymore.' That is the Liberal Party— *(Time expired)*

**Senator HUMPHRIES**—Mr President, I ask a further supplementary question. Are the proper auditing processes the minister refers to picking up the fact that some operators are ripping off consumers and the taxpayer by deliberately inflating insulation prices to maximise the government rebate? Isn't this further evidence that the government is wastefully and recklessly spending taxpayers' money?

**Senator ARBIB**—As I have said, the minister has written to homeowners. There is also a process in place for complaints and, if a complaint against an installer is proved correct, that installer risks being taken out of the program. That means that they will no longer be able to install insulation and receive a government rebate. That is the greatest sanction that this government has against so-called rorting and the greatest sanction that we have against commercial practices that we do not want to see. They will be booted out of the program. That is what the minister is undertaking and that is what the government is undertaking. I note that the good senator did not mention the effects of the program on employment in his three questions because, in the end, they could not care less about the jobs that this program is

creating. They could not care less about the small businesses that this program is supporting. *(Time expired)*

**Mr Chris Jongewaard**

**Senator XENOPHON** (2.47 pm)— My question is to the Minister representing the Minister for Sport, Senator Arbib. On 26 August of this year, Chris Jongewaard was found guilty in the District Court of South Australia on one count of aggravated driving without due care and another of leaving the scene of an accident without rendering assistance, after the vehicle he was driving struck and seriously injured cyclist Matthew Rex. Last Friday, Mr Jongewaard was sentenced to two years imprisonment with a nine-month non-parole period, which I note is being appealed. Last Monday, Cycling Australia held a disciplinary hearing over Mr Jongewaard's suitability to represent Australia in cycling, where Mr Jongewaard was ultimately banned from representing Australia for six months. Can the minister explain why the victim, Matt Rex, himself a former champion cyclist, was not notified of the hearing date, not given an opportunity to make a submission and not notified of the outcome, despite indications given to my office by Cycling Australia that Mr Rex might be included in the process?

**Senator ARBIB**—Thank you, Senator Xenophon, for the prior notice of this question. This is a very unfortunate incident and I am sure it is extremely distressing for Matthew Rex, his family and his friends. I know Senator Xenophon has had a great deal of involvement in this and has also met with the minister. On 11 September 2009, as Senator Xenophon noted, Chris Jongewaard was sentenced to two years imprisonment with a nine-month non-parole period. The minister has also received confirmation that, as a result of the findings of the independent disciplinary tribunal, Mr Jongewaard's member-

ship of Cycling Australia and affiliates has been terminated for a period of six months commencing immediately.

In relation to the specific question, obviously I cannot talk about what assurances Cycling Australia have offered Mr Rex and his family in relation to the tribunal conducted by Cycling Australia into the charge regarding their by-laws. I am advised by the minister that Anthony Nolan SC, the chairperson of the independent disciplinary tribunal, was provided with a copy of the reasons for the verdict as outlined in the legal proceedings by his honour Judge Chivell. This was considered by the tribunal determining if there was a breach of the Cycling Australia by laws.

**Senator XENOPHON**—Mr President, I ask a supplementary question. Can the minister outline what plans the government has to ensure meaningful transparency and accountability on the part of federally funded sports bodies in relation to disciplinary matters?

**Senator ARBIB**—As I mentioned previously, I understand that Senator Xenophon has met with the minister on this matter and that the minister has agreed to send a letter to national sporting organisations reinforcing with them their responsibilities to uphold the integrity of sport, notwithstanding the need to adhere to the principles of natural justice in making selection decisions. The Australian Sports Commission plays a lead role in assisting the sport industry to provide a fair, safe, ethical and inclusive culture within sport and ensure that sport retains its strong integrity base. It is a condition of the commission's funding and service level agreements that national sporting organisations implement, review and regularly update member protection policies and procedures. All funded national sporting organisations must sign these agreements which outline

their responsibilities. Member protection policies aim to promote positive behaviour, ensure compliance with state, territory and federal antidiscrimination and child protection legislation. (*Time expired*)

**Senator XENOPHON**—Mr President, I ask a further supplementary question. Does the minister support calls for an apology from Cycling Australia to Matthew Rex over the way the sporting body has handled this matter?

**Senator ARBIB**—As I said at the start of my first answer, this is obviously a very unfortunate occurrence and it has had a huge impact on those involved. The minister has expressed her disappointment about the decision by the Cycling Australia board to allow Mr Jongewaard to participate in the world championships, including having made representations directly to Cycling Australia.

#### **Building the Education Revolution Program**

**Senator MASON** (2.51 pm)—My question is to the Minister Assisting the Prime Minister for Government Service Delivery, Senator Arbib. I refer the minister to a briefing cheat sheet for government backbenchers relating to Building the Education Revolution that directs Labor members and senators not to deny complaints from schools:

... that they are being forced to use quotes from the State Government that are more expensive than what they could source locally.

Given the minister has on numerous occasions assured the Senate that taxpayers are receiving value for money from the BER, will the minister now admit that projects under the BER are costing taxpayers much more than they should?

**Senator ARBIB**—I am very proud to rise again to speak on Building the Education Revolution, one of the absolute cornerstones of the government's stimulus package. Again, thousands and thousands of trades-

people are working on this program—we are talking about plumbers, electricians and carpenters—and there are flow-on effects to other sectors within the economy.

Can I say to the good senator that of course this is not a program that can be implemented by the federal government alone. We are talking about over 24,000 individual programs in 9½ thousand schools. There is no way that the federal government can do this alone. That is why we are working cooperatively not only with the state governments and the territory governments but also with independent schools and schools in the Catholic system. That is what the government is doing, and the logistical challenges of this are great. If any good senator has ever built or renovated a house they will understand the difficulties in constructing such a mammoth number of schools. That is what the government has undertaken.

But the best part of the Building the Education Revolution is that we are getting school infrastructure that was absolutely neglected by Liberal senators on the other side of the chamber—

*Opposition senators interjecting—*

**The SPEAKER**—Order! Senator Arbib, resume your seat. The time for debating this is at the end of question time. If you have a different view to that being expressed by the minister then the time to debate it is at the end of question time. Senator Arbib.

**Senator ARBIB**—Schools were absolutely neglected by the coalition in their time in office. That is your record—

*Opposition senators interjecting—*

**The SPEAKER**—Order! Senator Arbib, resume your seat. As I said, the time to debate it is at the end of question time. Senator Arbib.

**Senator ARBIB**—Those are the facts. While the rest of the OECD was investing in

education, the Liberal Party and the National Party were taking those funds away— (*Time expired*)

**Senator MASON**—Mr President, I ask a supplementary question. I refer the minister to the suggested response to that complaint, which is:

State and territory authorities and block grant authorities are responsible for managing the application process as it relates to individual schools.

Given that the Rudd government has repeatedly promised to ‘end the blame game’, will this government now take responsibility for the fact that both taxpayers and school communities are not receiving value for money on projects funded under the BER?

**Senator ARBIB**—Well, Matlock over here has found out that the application process was managed by the states—gee, what a surprise! It is well known; it is actually in the guidelines. All Senator Mason had to do was turn on his computer and go to the guidelines and he could have worked that out himself. But in fact he decided to bring that in here, to this Senate, and raise it. It is no surprise. Again, Senator, we are working cooperatively with the states, the territories and the block grant authorities—

*Honourable senators interjecting—*

**The SPEAKER**—Senator Arbib, resume your seat. When there is silence we will proceed. Senator Arbib.

**Senator ARBIB**—I say to Senator Mason: Senator, you wish and your party wishes to roll back the stimulus package. If you wish to do that, come into this room and tell us which schools are going to miss out on funding. Which schools will you cut from the Primary Schools for the 21st Century? That is what it means. You are going to cut funding.

*Honourable senators interjecting—*

**The SPEAKER**—Order! Senator Arbib, resume your seat. When there is silence on both sides we will proceed. Senator Arbib, continue.

**Senator ARBIB**—According to a Liberal interjection, they think it is a bad spend—investing in schools is a bad spend. So tell us which schools you will cut. *(Time expired)*

**Senator MASON**—Mr President, I ask a further supplementary question. Does the minister find it inconsistent that the government is blaming the states for the cost blow-outs while simultaneously erecting plaques and signs that claim all the credit for the Commonwealth government?

**Senator ARBIB**—That is an absolutely ridiculous statement. As I said, we are working with the states, we are working with the territories and we are delivering on the ground. The Liberal Party talk about the mammoth number of complaints. Can I inform the Senate that the Department of Education, Employment and Workplace Relations has received 50 complaints—out of 9½ thousand schools, 50 complaints. So you can talk about the issues, you can nitpick all you want, but the government are delivering. We are delivering for schools and we are ensuring they have the infrastructure they need for the future. At the same time, we are delivering for Australian workers, ensuring they keep their jobs. Again, we are delivering for small business—something that the Liberal Party has given up on.

*Opposition senators interjecting—*

**Senator ARBIB**—You have given up on small business, you have given up on contractors, and if—

*Opposition senators interjecting—*

**The SPEAKER**—Senator Arbib, resume your seat. When there is silence, Senator Arbib will continue. I told you that the time to

debate this is at the end of question time. Senator Arbib, continue.

**Senator ARBIB**—If the Liberal Party want to reduce the stimulus, tell us which schools will miss out. *(Time expired)*

#### Education

**Senator MARSHALL** (2.59 pm)—My question is to Senator Carr, the Minister for Innovation, Industry, Science and Research. Can the minister advise the Senate about the education investments forming part of the government's economic stimulus strategy. How do these investments relate to the rest of the strategy; at what point did the government decide to target spending on education infrastructure as a way of cushioning Australia against the global crisis; which parts of the education system have received support; does support extend to primary, secondary, vocational and university education; and how many Australian schools, teachers and students are expected to benefit from these investments?

**Senator CARR**—Thank you, Senator Marshall. When Lehman Brothers collapsed a year ago, the world stared into an abyss. This government has pulled Australia back from that abyss. It is too early to sound the all clear, especially when so many countries are in deep recession, yet there is no doubt that the government's response has shielded Australia from the worst effects of the global downturn. Our first action was to stabilise domestic financial markets. The next step was to launch a three-stage fiscal stimulus strategy focusing, first, on cash transfers to underpin short-term demand; second, on small-scale shovel-ready infrastructure to support jobs and business; and, third, on long-term investment in nation-building infrastructure. Education has been the focus of the government's stimulus strategy since day one. In September last year, the government announced that it would speed up the imple-

mentation of its three nation-building funds, including the Education Investment Fund. In December, we provided an extra \$1.1 billion—

*Opposition senators interjecting—*

**The PRESIDENT**—Senator Carr, please resume your seat. When there is silence, we will proceed. Senator Carr.

**Senator CARR**—In December, we provided an extra \$1.1 billion for research, teaching and learning facilities, and an extra \$500 million for TAFE. In February, we announced the biggest single investment ever made in Australian schools. That investment delivered new and upgraded classrooms, playgrounds, libraries, halls, science centres and language laboratories around the country. It benefited 9½ thousand schools, it helped a quarter of a million teachers and it helped 3½ million primary and secondary school students. *(Time expired)*

**Senator MARSHALL**—Mr President, I ask a supplementary question. Can the minister further advise the Senate how these investments will contribute to the government's broader policy agenda, in particular its efforts to build stronger communities, a more skilful workforce and more innovative industries?

**Senator CARR**—Our education investments are benefiting not just people in the school, TAFE and university systems. They are benefiting the communities that will use these school halls. They are benefiting employers, who will have access to a better skilled workforce. They are benefiting the industries that will draw on university research to help develop new products, new services and new processes. They are benefiting our colleagues on the opposition benches. They will come in here and they will try to mow down the government's efforts to give Australians a better education, then they will have to go back to their own

electorates, to their own communities, and have to try to claim credit for the government's work. We have seen this again, this morning, with the government's automotive legislation, where the opposition has been through all sorts of contortions and backflips. There have been more backflips than in Circus Oz.

**Senator MARSHALL**—Mr President, I ask a further supplementary question. To what extent are these investments designed with the needs of local communities and local economies in mind, and to what extent have they achieved the government's aims?

**Senator CARR**—Our stimulus strategy is expected to support 210,000 jobs. A lot of those jobs have been underpinned by investments in education, whether it be for 100 construction workers in Newcastle, 12 architects in Melbourne, 250 building people in Canberra, including 50 apprentices, or the 50 tradies and 30 apprentices in Port Lincoln. These are businesses that all over the country are making it clear that they owe their survival to the Building the Education Revolution—businesses in Western Australia, in the Northern Territory, in Queensland and in Tasmania. There are building companies. There are service companies. There are manufacturing companies. Our objective has been to create job opportunities, and that is what we are doing. We are achieving that objective. This is an out-of-touch opposition, and it hates these messages. *(Time expired)*

**Senator Chris Evans**—Mr President, I ask that further questions be placed on the *Notice Paper*.

**QUESTIONS WITHOUT NOTICE:  
TAKE NOTE OF ANSWERS**

**Telstra**

**Senator MINCHIN** (South Australia) (3.05 pm)—I move:

That the Senate take note of the answers given by the Minister for Broadband, Communications



and the Digital Economy (Senator Conroy) to questions without notice asked by Senator Minchin today relating to Telstra.

Today I asked Senator Conroy, as the Minister for Broadband, Communications and the Digital Economy, specifically about the proposed exclusion of Telstra from future spectrum auctions and the consequences of that extraordinary proposal. I draw to the Senate's attention the fact that this is the very key to this whole package of measures brought to the parliament yesterday by the minister. Today the minister comprehensively failed to answer any of the questions we put to him on this issue. He could not and has not given any policy rationale whatsoever for this quite extraordinary decision that the government has taken:

Telstra will be prevented from acquiring additional spectrum for advanced wireless broadband ...

That is the minister's statement, and that is the key to this whole policy formulation, and he cannot give any policy rationale whatsoever for that extraordinary proposition. I also asked him about the cost to taxpayers—

**The DEPUTY PRESIDENT**—Order! Order on my right! There is far too much audible conversation. Would senators please either resume their seats or leave the chamber. Senator Minchin.

**Senator MINCHIN**—Thank you, Mr Deputy President. I asked him about the cost to taxpayers of this remarkable proposal. He could not give me any estimate whatsoever of the cost to taxpayers of what the government is proposing to do. He could not say why Telstra should be excluded from further participation in the wireless broadband spectrum auctions, even though the market for mobile broadband is the most competitive and the one market in the telecommunications field where Telstra does not have a majority. If Senator Conroy is motivated by a

concern about Telstra's market dominance, which is apparently the motivation for breaking this company up, why on earth in the government's policy proposals on restricting Telstra would you pick the one market to restrict Telstra where Telstra is not dominant? This is a market where Telstra's competitors have a majority of the market.

I draw to the Senate's attention that this proposal does have very significant implications for taxpayers. By taking Telstra out of any future auction for spectrum, you obviously reduce the competitive tension available to the government in selling its highly precious spectrum, which is ultimately the property of taxpayers. It must by definition reduce the value of that spectrum, and Senator Conroy today indicated that he has absolutely no idea. I wonder whether the government has made any costing at all of this or whether it has even thought of the fact that this will cost taxpayers. Indeed, Senator Conroy laughably said in his answer that the whole question was hypothetical, despite the fact that it is very clear in his statement and in his legislation that Telstra will be prevented from participating in future spectrum auctions.

I think the non-answers to our questions today expose the real motive behind the government's actions. The government is proposing to use the threat of exclusion from future spectrum auctions as the gun to Telstra's head over the NBN. This whole NBN policy is falling down around the ears of Senator Conroy. It is universally regarded as a complete fiasco. What the government wants to do, and what is nakedly evident from its legislation, is to force Telstra to effectively hand over its fixed line network to the new NBN Co. In his second reading speech, he actually said that the separation that they propose:

... may involve Telstra progressively migrating its fixed line traffic to the NBN over an agreed

period of time and under set regulatory arrangements and for it to sell or cease to use its fixed line assets on an agreed basis.

There we have it. That is what this whole circus, this charade, is about. This is about holding a gun at Telstra's head to force them to come to the table in handing over their fixed line assets to make the NBN viable. The government knows that without Telstra the NBN is simply unworkable and unviable. It has to get hold of Telstra's fixed line network somehow. It showed through the fiasco of the first failed tender that the method of compulsory acquisition, direct and upfront, would cost it some \$20 billion. That is why the first NBN failed and collapsed after 18 months and \$20 million of taxpayers' money. Now the government is going through the back door by using the threat of denial of access to spectrum to force Telstra to come to the table and hand over its fixed line network. This is a naked grab in order to rescue this NBN fiasco from the \$43 billion hole into which it has sunk. Telstra's shareholders are paying the price. They have lost \$17 billion in the value of their shares since this circus of a government came to office.

**Senator WORTLEY** (South Australia) (3.11 pm)—I welcome the opportunity to take note of answers on the issue of telecommunications. During this parliamentary sitting we have sat here in question time and listened to questions being asked by the opposition on the government's economic stimulus package. It was a package that supported jobs and provided to schools and local communities. The package involved making Australian homes more environmentally friendly. It was a package that those opposite voted against. Today we hear a question from Senator Minchin on reforms to the telecommunications regulations and the government's National Broadband Network. We are told that Senator Minchin, the opposition communications spokesman, yesterday

racked up his 150th media release without putting forward a single policy. Senator Minchin was part of a coalition government that put forward 18 failed broadband plans or proposals. We should say proposals because they were not plans.

Yesterday the Minister for Broadband, Communications and the Digital Economy announced reforms to telecommunications regulations here in Australia. We know that these changes will reform existing telecommunications regulations in the interests of Australian consumers and businesses. They will drive future growth, productivity and innovation across all sectors of the economy. In the transition to the National Broadband Network, the existing regime needs to be reformed to improve competition, to strengthen consumer safeguards and to remove unnecessary red tape. The historic reforms will fundamentally reform existing telecommunications regulations in the national interest. These reforms have been welcomed by the ACCC, consumer groups, telecommunication carriers, other senators in this chamber—we know that—and even some members of the coalition. I have some information here from Choice because they have come out in support of these reforms as well. With the minister's announcement yesterday, today and into the future we are correcting the mistakes of the past, when opportunities to address Telstra's highly integrated market position were missed.

Earlier this year, the government embarked on a program to transform Australia's telecommunications industry, in the interests of all Australians, with the largest nation-building investment in our history, the National Broadband Network. Yesterday's announcement builds on this, and it is the next step in revolutionising Australia's communications landscape. These reforms are critical to ensuring that our communications services operate effectively and efficiently in Austra-

lia's long-term national interest. The reforms will address the legacy left by those who privatised Telstra without implementing the necessary reforms. The announcement made yesterday puts forward a series of reforms that provide choice for Telstra. It can stay with its existing assets, as the minister has said—the old copper network—or it can move into the future with the new mobile spectrum and the new applications and technologies that that will bring. The reforms address structural problems in the marketplace while giving Telstra the flexibility to choose its future path.

The issue of shares was also raised today. I am surprised that the opposition would want to go there. Let us not forget that under the regime supported and promoted by those opposite the value of Telstra shares fell. How much did the value of Telstra shares fall by? Under the former coalition government, when the former minister appointed Mr Trujillo to manage Telstra, the value of a Telstra share was about \$5.20. When Mr Trujillo left Australia to return to his home country, a Telstra share was valued at \$3.20. That equals around \$30 billion of lost Telstra value under the former coalition leadership. It is a \$2 per share loss—some \$30 billion in value lost at various points. (*Time expired*)

**Senator BIRMINGHAM** (South Australia) (3.16 pm)—I rise to join this debate on the motion to take note of answers given by Senator Conroy today in relation to the latest chapter in the government's great broadband hoax. That of course is what we are witnessing from this government at present: lots of talk, lots of spin, lots of proposals around how it is going to address broadband, but nothing that the Australian public is going to ultimately see delivered. We have a minister who likes to count, apparently. He likes to count Senator Minchin's press releases. He likes to count what he calls former, failed

broadband plans. He likes to count numbers. We all know that, indeed.

**Senator Bernardi**—I wonder how many friends he's got.

**Senator BIRMINGHAM**—Senator Bernardi asks: 'How many friends has Senator Conroy got?' That depends on whether or not the deal with Senator Carr is still holding. He likes to count all of these things, but the thing is that we are counting too. We are counting the chapters of failure mounting up in the government's broadband proposals. They went to the last election with a plan. They did not have policies in every area. In fact, they were sorely lacking in many areas, but they actually had a policy when it came to broadband. They had their fibre-to-the-node policy. They were going to roll out, for \$4.7 billion, coverage to 98 per cent of Australian homes. This was the great promise that, close to three years ago, the now Prime Minister and the now Minister for Broadband, Communications and the Digital Economy stood there and staked their credibility on—the fact that this was how they were going to fix broadband services for all Australians.

Instead, what did we get? We got a government that came in and spent tens of millions of dollars on consultants and an assessment process only to realise that they had to ditch that process because their promise could not be delivered. It was not feasible; it did not stack up. The government had not done their sums correctly. Rather than doing what any responsible or sensible government would do and going back to basics and thinking about the right telecommunications regulatory environment and the right sort of outcome, the government decided to say, 'Double or nothing.' In fact, it is not double; it is 10 times the amount. The original figure, \$4.7 billion, has become \$43 billion. Yet, quite miraculously, whilst the government

are proposing expenditure of almost 10 times the amount, their new fibre-to-the-home network is now only proposed to cover 90 per cent of Australians. Rather than the grand 98 per cent, it is back down to 90 per cent. You have to wonder what the government are focusing on.

Now the government are coming in and talking about forcibly breaking up and structurally separating one of Australia's largest companies, Telstra. I feel like I have stepped back to some time in the previous century, to a trust-busting debate or, perhaps even more relevantly, a nationalisation debate. We all know the hidden agenda for the government behind all of this. They know that, even with their \$43 billion, they still cannot manage to get their broadband mark 2 plan to work without forcing Telstra to part with large chunks of its current infrastructure to the government's company. The government claim Telstra's structural separation will then provide for a more competitive telecommunications environment. If we are going to have that more competitive environment for investment in telecommunications, why on earth did the government think that they still needed to go ahead with establishing a government company, NBN Co? It is \$43 billion of investment when they are already forking out, at an amazing rate every single day, thousands of dollars that they do not have for executives to build something that they are not currently building.

The policies of the government are all skew-whiff when it comes to broadband. Their focus has been on picking technological winners. They have chosen fixed fibre as the lucky one when mounting evidence to the contrary says that they are not on a winner at all. Hundreds of thousands of Australians every month are making the switch to wireless options. The private sector is making a massive new investment in wireless options. The government's solution, though, is to take

the biggest company in the sector and ban it from making new investment in wireless. Like everything else on broadband, their policy makes no sense.

**Senator MARSHALL** (Victoria) (3.21 pm)—I thought for a fleeting moment then that Senator Birmingham was going to start to outline a policy that the opposition have. He nearly got there. He nearly started to say what they would do if they were in government, but he then backed away from it at a million miles an hour. In his contribution to the debate today he talked about a so-called government hoax and about so-called government hidden agendas. He even had the audacity to complain about us having a policy when we were in opposition. That stands in stark contrast to the present opposition, which has no policy, which does not seem to want to develop one and which does not seem to want to have a debate with the government about competing ideas of policy. They simply want to bag what the government is going to do.

The closest the opposition have come to having a policy is what Senator Coonan, the former communications minister, said to the *Communications Day*, a local industry magazine, on 13 May 2008. I know Senator Conroy quoted some of this, but I want to go through it because Senator Coonan got up and said that she did not say what Senator Conroy had said she had said. It is in the format where questions were put to the former minister and then detailed answers were provided. It is inconceivable that an interview of that nature would not be double-checked by the person giving the interview. If Senator Coonan wants to stand by the statement she has made in the Senate today, she should do so. But if she has in fact misled the Senate then she should come back in here and correct the record.

This is what the magazine article actually says. The magazine puts the question:

If you could have your time in the portfolio again, what would you do differently?

Senator Coonan says a number of things and then says:

... more thought could have gone into a policy that would have separated the network and would have looked down the track at what might happen if you turned a publicly-owned monopoly into potentially a privately owned one.

It was not as if those comments were discreetly tucked away somewhere; they actually ended up being the headline banner. The headline banner on the article, which had a nice picture of Senator Coonan next to it, is 'More thought could have gone into a policy that would have separated the network'.

We take that article at face value. When we link that back into the policy development that the opposition seems negligent in going through, Senator Coonan seems to be the closest one in acknowledging that the previous government actually got it wrong. When they went through the privatisation process they did not look to the future, they did not understand how Telstra would act—

**Senator Bernardi**—You supported the privatisation of Telstra.

**Senator MARSHALL**—I beg your pardon. We did not support the privatisation. This is a problem when you just make things up, put them forward as if you understand and you make some point about it. Let me make it very clear: we did not support the privatisation of Telstra.

**Senator Bernardi**—Yes, you did.

**Senator MARSHALL**—We did not. We rue the day you pushed it through, and so do the Nationals. I think you are confusing us with your coalition allies. They supported it at the end of the day.

**The DEPUTY PRESIDENT**—Order! Senator Marshall, I think you should address the chair.

**Senator MARSHALL**—Mr Deputy President, I am sure that you will recall that the National Party actually voted for the privatisation of Telstra, and I am sure they regret doing so now. They probably regret it more when they look at the remarks of Senator Coonan, who actually regrets not putting more thought into what would happen to a privatised Telstra in terms of its market access and the way it behaves as a monopoly.

The commentary in this area has been very supportive of what the government has done. You only have to go to a couple of commentators. Time is not with me, but I will read what Adele Ferguson says. She states:

... the World Economic Forum recently released a report ranking Australia 17th in the world for availability and use of information and communication technology—well behind many of our trading partners and competitors.

The finger can be squarely pointed at Telstra for this embarrassingly low ranking ... Since the telecommunications sector was deregulated in July 1997, Telstra has acted like incumbent telcos the world over—it has sandbagged the competition to protect its market dominance. It has been able to dictate the speed of uptake in technologies such as broadband, wireless and voice over internet protocol ... No wonder we are considered backward.

How did we get to being considered backward? It was under your watch.

**Senator BERNARDI** (South Australia) (3.26 pm)—It is always a challenge in this place for the Labor side to decide whether to read the scripted speeches, as Senator Wortley did, or to fly by the seat of their pants, as Senator Marshall did. The problem with flying by the seat of your pants, as Senator Marshall has just done, is that, when you do not know what your own policies are,

you make a mess of it. In opposition the Labor Party did oppose the sale of Telstra and cost the taxpayers tens of billions of dollars because they delayed and would not allow the government to get on with the policy. As soon as it was sold and transferred into the Future Fund, they changed their policy and said, 'We now support the sale of Telstra and the privatisation of Telstra,' and they said they would not try to get it back from the Future Fund. That is the truth, and Senator Marshall is clearly unaware of that.

Senator Marshall did not address the issues that Senator Conroy failed to address. Senator Conroy has claimed the prize that is fiercely contested on that side of the chamber—as the most hapless and hopeless minister in a sneaky and underhanded government. Why do I say that they are sneaky and underhanded? Why is Senator Conroy hapless? Let us have a look. He had his failed broadband tender, which was the policy they took to the last election. It failed because they would not allow Telstra to participate in it. Then he came up with his back-of-the-envelope broadband plan in which \$43 billion of taxpayers' money was scheduled with Kevin Rudd in the VIP jet—

**The DEPUTY PRESIDENT**—Order! You should refer to the Prime Minister by his title.

**Senator BERNARDI**—with Mr Rudd, the Prime Minister, probably sometime between complaining about the lack of food and berating the airline stewardess. Senator Conroy is full of broken promises, he has given false hope and he has had demonstrable failure at every turn. Those are the three trademarks of Senator Conroy. Now we have his most audacious plan yet. It is a plan that sends the wrong message to every significant player that is thinking of investing seriously in Australia. With the stroke of a pen and a press conference Senator Conroy said we

will change the laws to advantage the government to make sure that a legitimate private enterprise, with 1.4 million shareholders and 30,000 employees, cannot go about its business.

On the one hand Senator Conroy is saying, 'This is an old technology and Telstra needs to ditch it.' On the other hand he is saying, 'It's technology that we want to put into our yet to be formed NBN telco,' the telco which Senator Birmingham said is spending thousands of dollars every week doing nothing. In fact it is paying its CEO \$40,000 a week when it has no revenue, no real plan, no employees and no customers. It is trying to get an outdated technology from a company that is providing employment to 30,000 Australians.

This sends a very wrong message to investors in Australia. It sends the wrong message to those who think competition should be allowed to reign free. As Senator Minchin said, broadband access is an area where Telstra is not the dominant player. So what is the agenda behind this? Unfortunately, I think it is once again a desperate clutch at power by a desperate government. It is desperate clutch at trying to reassemble some sort of control over the debate around telecommunications in this country.

The debate has raged all around Senator Conroy while he has fiddled. He has fiddled while Rome has burned in this case. He has failed in his broadband tenders. He has failed to protect taxpayers' money. He has failed at every step. The problem we have is that this is going to be a very dangerous precedent, a precedent that offers very little opportunity for significant companies that want to come to Australia or are concerned about making major investments in Australia. It is an investment on whose path Senator Conroy has committed the government and it will perhaps leave the government exposed. It will

leave the taxpayers of Australia in a position where they may have no alternative except government supplied services. That is wrong. (*Time expired*)

Question agreed to.

## NOTICES

### Presentation

**Senator Heffernan** to move on the next day of sitting:

That the report of the Select Committee on Agricultural and Related Industries on the incidence and severity of bushfires across Australia be presented by 26 November 2009.

**Senator Cormann** to move on the next day of sitting:

That the resolution of the Senate of 25 June 2008, as amended, appointing the Select Committee on Fuel and Energy, be amended to omit "21 October 2009", and substitute "30 March 2010".

**Senator Boswell** to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the *Renewable Energy (Electricity) Act 2000* in connection with food processing activities. ***Renewable Energy (Food Processing Activities) Amendment Bill 2009***.

**Senator Cormann** to move on the next day of sitting:

That the Senate—

(a) notes that:

- (i) World Alzheimer's Day, 21 September, is a day when organisations around the globe unite in their efforts to raise awareness about the disease and its impact on our families, communities and nations,
- (ii) in 2010 the first baby boomers will turn 65 years and by 2020 there will be an estimated 75 000 baby boomers with dementia,
- (iii) the prevalence of dementia in Australia is projected to increase from 245 000 today to more than 1.1 million by 2050,

(iv) dementia will have a dramatic impact on health and care costs, with dementia likely to outstrip any other health condition by the 2060s,

(v) in 2005 Australia was the first nation to adopt dementia as a national health priority by implementing the 'Dementia Initiative – making Dementia a National Health Priority' with bipartisan support, and

(vi) in 2010 the Government will determine Australian dementia funding priorities for the next 5 years; and

(b) calls on the Government to:

(i) continue the Dementia Initiative and to support the promotion of prevention, early intervention and diagnosis of dementia, to improve access to community and residential care services and to support dementia research, and

(ii) adopt the twin objectives of a national strategy to improve the provision of quality dementia care for all Australians and to reduce the prevalence and incidence of dementia in the future.

**Senator Hanson-Young** to move on the next day of sitting:

That the Senate—

(a) notes that:

(i) Saturday, 19 September 2009 is National Babies Day,

(ii) this day is about remembering the babies who passed away too soon and celebrating the lives of healthy babies across Australia, and

(iii) 1 in 4 pregnancies end in miscarriage or stillbirth;

(b) recognises the great work of the Bonnie Babes Foundation in providing, among other things:

(i) much needed support and counselling to families struggling with the loss of a baby through miscarriage, stillbirth or prematurity, and

(ii) medical equipment to hospitals for premature babies; and

- (c) calls on the Government to work closely with organisations such as the Bonnie Babes Foundation in assisting with vital medical research projects into pregnancy loss and complications to women's health during and following pregnancy.

**Senator Fielding** to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to ensure that families of Australians reported missing overseas are given essential help and information, and for related purposes. ***Britt Laphorne Bill 2009.***

**Senators Moore and Humphries** to move on the next day of sitting:

That the Senate—

- (a) notes that:
- (i) the right to life is a fundamental human right recognised in:
    - (A) the Universal Declaration of Human Rights, and
    - (B) the International Covenant on Civil and Political Rights,
  - (ii) respect for human life and dignity are values common to all Australians,
  - (iii) abhorrence of the death penalty is a fundamental value in Australian society, and
  - (iv) Australia is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which is aimed at the universal abolition of the death penalty; and
- (b) calls on all governments to follow the example recently set by Uzbekistan, Argentina and Togo and immediately cease all executions.

**Senator Hanson-Young** to move on the next day of sitting:

That the Senate—

- (a) notes that:
- (i) the Socialist Republic of Vietnam continues to apply the death penalty, with at least 19 reported executions in 2008 alone,

- (ii) the right to life is a fundamental human right recognised in:

- (A) the Universal Declaration of Human Rights, to which both Australia and Vietnam are parties, and
- (B) the International Covenant on Civil and Political Rights, to which both Australia and Vietnam are parties,

- (iii) respect for human life and dignity are values common to Australia and Vietnam,

- (iv) abhorrence of the death penalty is a fundamental value in Australian society, and

- (v) Australia is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, which is aimed at the universal abolition of the death penalty; and

- (b) calls on the Government of the Socialist Republic of Vietnam to follow the example recently set by Uzbekistan and Argentina and immediately cease all executions and waive the death sentences of some 59 prisoners currently awaiting execution.

**Senator Siewert** to move on the next day of sitting:

That the Senate—

- (a) notes the intention of the Government to hold an inquiry into the Montara oil spill; and
- (b) calls on the Government to ensure that the terms of reference for the inquiry include:
- (i) the resource management implications of the oil spill,
  - (ii) the environmental impact and potential impact of the oil spill,
  - (iii) an assessment of the management and effectiveness of responses to the oil spill, including coordination across the Commonwealth Government and across jurisdictions,
  - (iv) the provision and accessibility of relevant information to affected stakeholders and the public, and
  - (v) other related matters.



**Senator Milne** to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to introduce an emissions intensity cap and building efficiency certificate trading scheme for non-residential buildings to provide an economic incentive for investment in energy efficiency, and for related purposes. *Safe Climate (Energy Efficient Non-Residential Buildings Scheme) Bill 2009*.

**Senator Bob Brown** to move on the next day of sitting:

That the Senate—

- (a) notes the effort by the President of the United States of America (US), Barack Obama, and his administration to ensure all US citizens have access to affordable health care; and
- (b) commends this course as one Australia has long since undertaken with success and sends assurances to our trans-Pacific neighbours that since Australia adopted universal health care in 1984:
  - (i) life expectancy for males has increased from 72.6 to 79.1 years and for females from 78.7 to 83.5 years,
  - (ii) spending on health care has increased from 0.99 per cent of gross domestic product to 1.19 per cent in the 2008-09 financial year, or from 3.5 per cent of outlays to 4.4 per cent, and
  - (iii) lives have been saved and suffering reduced in Australia.

**Senator Ludlam** to move on the next day of sitting:

That the Senate—

- (a) notes that the United Nations Security Council will hold a summit on nuclear non-proliferation and disarmament on 24 September 2009 with the President of the United States of America, Barack Obama, presiding; and
- (b) calls on the Government to:
  - (i) seize the opportunity presented by participating in the debate,

- (ii) welcome the recent renewed optimism for a world free of nuclear weapons as expressed by the leaders of some nuclear weapons states,
- (iii) affirm the commitment made at the 2000 Nuclear Non-proliferation Treaty [NPT] Review Conference to the diminishing role of nuclear weapons in security policies, and
- (iv) urge all states possessing nuclear weapons to concrete and substantive action towards the elimination of their nuclear arsenals.

**Senator Bob Brown** to move on the next day of sitting:

That the Senate—

- (a) rejects the assertion by the Queensland Premier, Ms Anna Bligh, that the proposed Traveston Crossing Dam will save threatened species like the Mary River cod, Mary River turtle and Australian lungfish from farmer-induced extinction;
- (b) recognises that, to the contrary, the Traveston Crossing Dam presents real threats to these species and others and to the farmlands in question; and
- (c) calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to reject the Premier's crude and misinformed assessment.

**Senator Bob Brown** to move on the next day of sitting:

That, following the sightings of a flock of swift parrots feeding in the forests of southeast New South Wales surrounding Bermagui, the Senate calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to assess the status of these forests as swift parrot habitats and advise Forests NSW accordingly of any need to protect this vital habitat.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (3.36 pm)—I give notice that, on the next day of sitting, I shall move:

That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills

allowing them to be considered during this period of sittings

Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009

Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009, and

Foreign States Immunities Amendment Bill 2009

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

Leave granted.

*The statement read as follows—*

**Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009**

**Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009**

#### **Purpose of the Bills**

The bills amend the Customs Act 1901 to define ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) originating goods, and to amend the Customs Tariff Act 1995 to provide preferential tariffs for AANZFTA originating goods. These amendments implement relevant parts of the ASEAN-Australia-New Zealand Free Trade Agreement.

#### **Reason for Urgency**

The AANZFTA was signed by the Minister for Trade, the Hon Simon Crean MP, and his counterpart Ministers from ASEAN countries and New Zealand on 27 February. The agreement was tabled in Parliament on 16 March and referred to the Joint Standing Committee on Treaties, which recommended that binding treaty action be taken in its report tabled in June 2009 (Report 102).

The AANZFTA will enter into force 60 days after Australia, New Zealand and at least four ASEAN countries have notified other Parties that they have completed their respective internal processes for ratification of the agreement. New Zealand and Singapore have notified AANZFTA Parties of completion of their internal processes and ratifi-

cation by several ASEAN countries is at an advanced stage.

AANZFTA Parties are aiming to have the agreement enter into force by 1 January 2010.

Passage of the bills is sought in the Spring Sittings 2009 in order to give legislative effect to Australia's obligations under AANZFTA and thereby complete Australia's internal processes for ratification of the agreement. Passage of the bills in September will ensure that Australia can submit its notification in a timely manner.

Expeditious completion of Australia's internal processes will also maintain pressure on ASEAN countries to meet the target date of 1 January 2010 for entry into force of AANZFTA and ensure that the economic benefits of the agreement can be obtained for Australian exporters from that date.

**Foreign States Immunities Amendment Bill 2009**

#### **Purpose of the Bill**

The bill amends the Foreign States Immunities Act 1985 (the Act) to permit the Governor-General to modify the application of the Act to foreign States assisting the Government of the Commonwealth or of a State or Territory with a natural disaster or other domestic emergency.

The Act governs the immunity of foreign States from the jurisdiction of Australian courts. Section 9 of the Act states that, except as otherwise provided under the Act, a foreign State is immune from the civil jurisdiction of Australian courts. Section 13 of the Act provides that a foreign State is not immune in proceedings concerning death, personal injury or property damage arising from acts or omissions done in Australia.

The States and Territories are negotiating an agreement with the United States of America for the exchange of fire suppression resources, including fire fighters. The United States requires the agreement to include a clause granting the sending State immunity from tort proceedings arising from the actions of its fire fighters while in the course of duties. Without such immunity, the United States has indicated that it will not

send fire fighters to assist the States and Territories in the upcoming bushfire season.

The bill amends the Act to permit this immunity to be granted to the United States.

Reasons for Urgency

The bill needs to be introduced and passed in the Spring Sittings to amend the Act in time for the States and Territories to finalise arrangements with the United States prior to the upcoming bushfire season.

### Postponement

The following item of business was postponed:

Business of the Senate notice of motion no. 2 standing in the name of Senator Colbeck for today, proposing the disallowance of the Inclusion of ecological communities in the list of threatened ecological communities, postponed till 17 September 2009.

## COMMITTEES

### Appropriations and Staffing Committee

#### Reports: Government Responses

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (3.36 pm)—I move:

That the Senate—

(a) notes that:

- (i) the inclusion of expenditure not for the ordinary annual services of the government in the appropriation bill for the ordinary annual services, which is required to be separated from other appropriations by section 54 of the Constitution, was raised by the Australian National Audit Office and the Appropriations and Staffing Committee in 2005;
- (ii) the matter has been the subject of successive reports by the Appropriations and Staffing Committee and the Finance and Public Administration Committee since that time;
- (iii) the Minister for Finance and Deregulation has not yet carried out an undertaking to provide to the Appropriations

and Staffing Committee proposals whereby this problem might be overcome;

- (b) calls upon the Minister for Finance and Deregulation to provide a substantive response to the Appropriations and Staffing Committee on this matter by 16 November 2009.

Question agreed to.

### MAGILL YOUTH TRAINING CENTRE

**Senator HANSON-YOUNG** (South Australia) (3.37 pm)—I move:

That the Senate—

(a) notes that:

- (i) the young people detained in the Magill Youth Training Centre in South Australia are being held in degrading conditions, and
- (ii) in the assessment of the 2009 Australian Youth Representative to the United Nations (UN), Mr Chris Varney, this represents a breach of the UN Convention on the Rights of the Child;

(b) recognises that:

- (i) in 2006, the South Australian Labor Government acknowledged that the centre was in need of replacement, as it breached modern building codes and occupational health and safety requirements, and
- (ii) the South Australian Government is yet to keep its election promise to build a new facility; and

(c) calls on the Federal Minister for Early Childhood Education, Childcare and Youth (Ms Ellis) to intervene in this urgent matter and ensure that a new centre is built, as promised by the South Australian Government.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (3.37 pm)—by leave—The government understands that there is community concern around the Magill Youth Training Centre in South Australia. There is little doubt that the

building and its facilities are in definite need of an overhaul. As a community, we have a responsibility to these young people to ensure that they are rehabilitated in an appropriate environment. I understand that the South Australian government had committed to building a new centre as part of their most recent budget. However, due to financial constraints caused by the current economic climate, they were unable to fulfil this commitment. Building a new facility to replace the Magill Youth Training Centre should be a priority. I understand that the South Australian government shares this view. Ultimately, this is not a federal matter but a matter for the South Australian government. The Commonwealth Attorney-General is seeking further information about the concerns of the UN youth representative that the conditions in the Magill Training Centre are in breach of the United Nations Convention on the Rights of the Child.

**Senator O'BRIEN** (Tasmania) (3.38 pm)—by leave—The government recognises that the numbers lie in favour of this motion. Given that the coalition and the Greens will vote together on this occasion, the government will not call for a division.

Question agreed to.

#### **TRAVESTON CROSSING DAM**

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (3.39 pm)—I move:

That the Senate calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to make public in the week beginning 13 September 2009 the draft report on the Traveston Dam by Queensland's Coordinator-General.

**Senator LUDWIG** (Queensland—Special Minister of State and Cabinet Secretary) (3.39 pm)—by leave—Minister Garrett's statutory decision-making responsibility for the Traveston Dam proposal will not commence until the Queensland government

formally submits the Coordinator-General's final assessment report. A decision on the proposal will then only be made after thorough consideration of all relevant information in strict accordance with the requirements of the Environment Protection and Biodiversity Conservation Act. The Australian government calls on Senator Bob Brown to make himself aware of and have respect for the proper processes by which environmental decision making occurs. The act includes opportunities for public comment and, in relation to the Traveston proposal, these opportunities have been utilised extensively.

As the minister's track record in relation to this and other proposals demonstrates, he is committed to ensuring that environmental assessment processes are conducted in a rigorous, comprehensive and transparent manner. However, the public release of material relevant to a project will always be carried out in accordance with the proper process under national environmental law. The draft report is a document of the Queensland government, and it is for the Queensland government to decide whether it wishes to release it.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (3.41 pm)—by leave—That was not just waffle; it was also a move by the Minister for the Environment, Heritage and the Arts, Peter Garrett, through Senator Ludwig, to shut the public out of the process of evaluating the social, economic and environmental impacts of the Traveston Dam. People in Queensland and beyond—not least the 1,000 farmers who are going to be dispossessed of their land by the Queensland Labor government process—are vitally interested in it.

The motion simply calls for the report, which the Queensland Coordinator-General has compiled on the Traveston Dam and given to the minister for the environment, to

be made public so that there can be public comment and so that the public knows what the process is. It is a draft report, but I would have thought it was plainly decent in an open democracy for the minister for the environment to release that report. It was given to him for his evaluation and consideration and for his feedback to the Queensland government. Is that process going to take place in total secrecy? If what the government has just said is true, that is the case. There is a deliberated effort by the minister for the environment and his counterparts in the Queensland Labor government to shut the public out. That is not acceptable. The process is open, and it is open to the minister to release this report. The Queensland government should release it. The minister is indicating that, when the final report comes to him, he will not have public input into that either. That is a travesty regarding the Traveston Dam. It is not acceptable. The government should be ashamed of this effort to cut the public out of this process.

**Senator IAN MACDONALD** (Queensland) (3.43 pm)—by leave—The coalition will support this motion. The matters that Senator Brown has raised are very relevant. I also have a concern that the Queensland Premier is lobbying the Prime Minister in relation to this dam. That has been publicly reported and, in fact, has been reported in comments by the Queensland Premier herself. I understand, as I am sure Senator Brown does, what the EPBC Act says. One wonders why the Queensland Premier is petitioning and lobbying the Prime Minister if she does not expect the Prime Minister to have some influence on whether or not approval will be given by the federal minister to this ridiculous, unworkable, stupid and environmentally damaging proposal by the Queensland government. For those reasons, the coalition will be supporting this motion.

**Senator O'BRIEN** (Tasmania) (3.44 pm)—by leave—The government opposes this motion. We recognise that it will be carried with the support of the government and the Greens and we will therefore not call for a division.

Question agreed to.

#### COMMITTEES

##### Education, Employment and Workplace Relations References Committee

###### Extension of Time

**Senator PARRY** (Tasmania) (3.45 pm)—I move:

That the time for the presentation of the report of the Education, Employment and Workplace Relations References Committee on the oversight of the child care industry be extended to 29 October 2009.

Question agreed to.

##### Legal and Constitutional Affairs References Committee

###### Extension of Time

**Senator PARRY** (Tasmania) (3.45 pm)—I move:

That the time for the presentation of the report of the Legal and Constitutional Affairs References Committee on Australia's judicial system and the role of judges be extended to 18 November 2009.

Question agreed to.

#### ENVIRONMENT: EAST GIPPSLAND

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (3.45 pm)—I move:

That the Senate—

(a) notes that:

- (i) Brown Mountain in East Gippsland, Victoria, is a natural treasure with 600-year-old trees (carbon dated) and at least five threatened species, including the long-footed potoroo, the spot-tailed quoll, the Orbost spiny crayfish, the

- sooty owl and the large brown tree frog,
- (ii) the long-footed potoroo and the spotted quoll are federally-listed as endangered and the forests are covered by the East Gippsland Regional Forest Agreement which commits Victoria to 'ecologically sustainable' forest management including biodiversity conservation, and
- (iii) Environment East Gippsland has been granted an injunction restraining VicForests from logging two forest areas at Brown Mountain;
- (b) calls on the Victorian Government to meet its ecological obligations to protect threatened wildlife by halting logging at Brown Mountain; and
- (c) calls on the Minister for Agriculture, Fisheries and Forestry (Mr Burke) and the Minister for the Environment, Heritage and the Arts (Mr Garrett) to ensure that the Victorian Government fulfils its ecological obligations and to inform the Senate, no later than 26 October 2009, of the steps they are taking to do so.

Question put.

The Senate divided. [3.50 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes.....	6
Noes.....	<u>37</u>
Majority.....	<u>31</u>

AYES

Brown, B.J.	Hanson-Young, S.C.
Ludlam, S.	Milne, C.
Siewert, R. *	Xenophon, N.

NOES

Adams, J.	Back, C.J.
Barnett, G.	Bilyk, C.L.
Birmingham, S.	Bishop, T.M.
Brown, C.L.	Bushby, D.C.
Cameron, D.N.	Colbeck, R.
Collins, J.	Coonan, H.L.
Crossin, P.M.	Faulkner, J.P.

Feeney, D.	Ferguson, A.B.
Fielding, S.	Fisher, M.J.
Furner, M.L.	Heffernan, W.
Hurley, A.	Hutchins, S.P.
Ludwig, J.W.	Lundy, K.A.
Macdonald, I.	Marshall, G.
McEwen, A.	McLucas, J.E.
Moore, C.	Nash, F.
O'Brien, K.W.K.	Parry, S. *
Pratt, L.C.	Sterle, G.
Troeth, J.M.	Williams, J.R.
Wortley, D.	

\* denotes teller

Question negatived.

**BANK EXECUTIVE SALARIES**

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (3.53 pm)—I move:

That the Senate—

(a) notes:

- (i) the recent 6 per cent pay rise given to the Commonwealth Bank chief executive, Mr Ralph Norris, providing him a salary package of \$9.2 million at the same time as the bank's annual profit is dropping,
- (ii) that in 2008, in response to the financial crisis, Australian taxpayers guaranteed deposits in the four major banks to the value of \$700 billion, and
- (iii) that tougher rules on banker remuneration was a key topic at the G-20 Finance Ministers' meeting held in September 2009; and
- (b) calls on the Government to regulate the banks and link bank executive salaries to the performance of banks.

Question put.

The Senate divided. [3.54 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes.....	7
Noes.....	36
Majority.....	29

AYES

Brown, B.J.	Fielding, S.
Hanson-Young, S.C.	Ludlam, S.
Milne, C.	Siewert, R. *
Xenophon, N.	

NOES

Adams, J.	Back, C.J.
Barnett, G.	Bilyk, C.L.
Birmingham, S.	Bishop, T.M.
Brown, C.L.	Cameron, D.N.
Colbeck, R.	Collins, J.
Coonan, H.L.	Crossin, P.M.
Faulkner, J.P.	Feeney, D.
Ferguson, A.B.	Fisher, M.J.
Furner, M.L.	Heffernan, W.
Hurley, A.	Hutchins, S.P.
Ludwig, J.W.	Lundy, K.A.
Macdonald, I.	Marshall, G.
McEwen, A.	McLucas, J.E.
Moore, C.	Nash, F.
O'Brien, K.W.K. *	Parry, S.
Polley, H.	Pratt, L.C.
Sterle, G.	Troeth, J.M.
Williams, J.R.	Wortley, D.

\* denotes teller

Question negatived.

**ILLEGAL ENTRY VESSELS**

**Senator HANSON-YOUNG** (South Australia) (3.57 pm)—I move:

That the Senate calls on the Minister for Home Affairs (Mr O'Connor), the Minister for Defence (Senator Faulkner) and the Minister for Immigration and Citizenship (Senator Evans) to conduct a review of the current protocols for the interception of Suspected Illegal Entry Vessels in Australian waters and report back to the Senate by 26 November 2009.

**Senator FAULKNER** (New South Wales—Minister for Defence) (3.57 pm)—by leave—The government is aware of concerns regarding the need for effective protocols surrounding the interception and interdiction of suspected illegal entry vessels. I can inform the Senate in relation to this motion that, in fact, two reviews are currently underway.

The first, announced yesterday by the Attorney-General and the Minister for Home Affairs, is a review of 35 separate pieces of legislation with a view to creating a maritime powers bill. This review will encompass, among other things, the laws surrounding the interdiction, boarding, search, seizure and retention of vessels.

I also advise the Senate of further work being done by Defence. In accordance with standard Defence procedures, an internal inquiry was conducted following the SIEV36 incident. The inquiry report recommends a review of existing policies, procedures and training in relation to the ADF's handling of apprehended vessels. The review is currently underway and is being led by Defence's Joint Operations Command, which is working closely with other relevant stakeholders, in particular the Royal Australian Navy and Border Protection Command.

Senators would note that this motion calls on the Minister for Home Affairs, the Minister for Immigration and Citizenship and the Minister for Defence to hold a government review of these protocols. Given the review activity that is already occurring, the government would not support the motion, which proposes yet another review—that is, if Senator Hanson-Young determines that she intends, bearing in mind these ongoing reviews, to proceed with the motion that has been given formality by the Senate.

**Senator HANSON-YOUNG** (South Australia) (3.59 pm)—by leave—Thank you to the minister for clarifying his position. I guess I feel that if there is already a review, or various reviews, in process there would be no problem with reviewing the protocols and reporting back to the Senate by the given date. Surely we would have the government's support in passing this motion if it were already in the process of doing those reviews. It is simply about clarifying that the

government is reviewing the protocols and that it will report back.

Question put:

That the motion (**Senator Hanson-Young's**) be agreed to.

The Senate divided. [4.01 pm]

(The Deputy President—**Senator the Hon. AB Ferguson**)

Ayes.....	6
Noes.....	<u>37</u>
Majority.....	<u>31</u>

#### AYES

Brown, B.J.	Fielding, S.
Hanson-Young, S.C.	Ludlam, S.
Milne, C.	Siewert, R. *

#### NOES

Adams, J.	Back, C.J.
Barnett, G.	Bilyk, C.L.
Birmingham, S.	Bishop, T.M.
Brown, C.L.	Cameron, D.N.
Colbeck, R.	Collins, J.
Coonan, H.L.	Crossin, P.M.
Faulkner, J.P.	Feeney, D.
Ferguson, A.B.	Fisher, M.J.
Furner, M.L.	Heffernan, W.
Hurley, A.	Hutchins, S.P.
Johnston, D.	Ludwig, J.W.
Lundy, K.A.	Macdonald, I.
Marshall, G.	McEwen, A.
McLucas, J.E.	Moore, C.
Nash, F.	O'Brien, K.W.K.
Parry, S. *	Pratt, L.C.
Sterle, G.	Troeth, J.M.
Williams, J.R.	Wortley, D.
Xenophon, N.	

\* denotes teller

Question negatived.

### MAP OF AUSTRALIAN FOREST COVER

#### Order

**Senator MILNE** (Tasmania) (4.03 pm)—  
I move:

That there be laid on the table, no later than 4 pm on 26 October 2009, a map of Australian for-

est cover using the Kyoto definition of 'forest' for each year since 1990, at the highest available resolution, in any widely used GIS format.

Question agreed to.

**Senator O'BRIEN** (Tasmania) (4.04 pm)—by leave—The government opposes this motion. We note that the opposition and the Greens are voting together on this motion, and that would carry the motion. We will therefore not call for a division.

Whilst I am on my feet, I think I must have been in a time warp during the previous motions when I noted that the government and the Greens were voting together on those motions. It was the opposition and the Greens that were voting together on those motions, as has been drawn to my attention. So I am correcting the record, if I may.

**Senator BOB BROWN** (Tasmania—  
Leader of the Australian Greens) (4.05 pm)—by leave—I did note that the member who has just spoken, Senator O'Brien, did make that curious assertion that it had been the government and the Greens who were voting together. I think it is good that it has been corrected. The motion that he referred to, where the opposition voted with the Greens, was one seeking information. I would have thought the government would have been forthcoming with that information and obviated the motion. Whatever the topic here is, one of the things the Senate has a very strong record on is seeking information out of government when the government moves to block that information being made available. It is very curious that Senator O'Brien wants to point to the opposition for seeking that information and doing its proper job. The opposition is acting entirely properly there, and it is the government who is found wanting.



**GEOTHERMAL AND OTHER  
RENEWABLE ENERGY (EMERGING  
TECHNOLOGIES) AMENDMENT BILL  
2009**

**First Reading**

**Senator PARRY** (Tasmania—Manager of Opposition Business in the Senate) (4.06 pm)—At the request of Senator Minchin, I move:

That the following bill be introduced: A Bill for an Act to amend the *Renewable Energy (Electricity) Act 2000* in connection with emerging technologies.

Question agreed to.

**Senator PARRY** (Tasmania—Manager of Opposition Business in the Senate) (4.06 pm)—I present the bill and move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator PARRY** (Tasmania—Manager of Opposition Business in the Senate) (4.07 pm)—I move:

That this bill be now read a second time.

I seek leave to table an explanatory memorandum in relation to the bill.

Leave granted.

**Senator PARRY**—I table the explanatory memorandum, and I seek leave to have the second reading speech incorporated in *Hansard* and to continue my remarks.

Leave granted.

*The speech read as follows—*

The Government has failed the geothermal industry and other emerging renewable energy technologies with its recent renewable energy legislation.

The Coalition is concerned that the Government's legislation provides more established renewable

energy technologies with an advantage over emerging technologies.

The Coalition raised these concerns during discussions with the Government over the recent renewable energy target (RET) legislation, but the Labor Government remained resolute in its opposition to offering firm support for emerging technologies such as the geothermal sector.

Particularly, we are concerned that the geothermal energy sector will be disadvantaged by the changes as implemented by the Government.

As a Senator for South Australia, I make no apologies for championing the potential of geothermal energy and other emerging renewable energy sources including wave technology.

The Coalition firmly believes a proportion of the Renewable Energy Target should be banded and reserved for emerging renewable technologies including geothermal, wave, tidal, biomass, solar thermal and solar concentrator energy.

This Bill achieves this goal and confirms the Coalition's support for the future of these emerging technologies.

The Government has argued against measures to ensure the deployment of these currently less-developed technologies.

The Minister for Climate Change and Water advised the Senate in August that the geothermal industry has received \$83 million in targeted grant support since the year 2000. Most of this support was under the previous Coalition government.

For instance, in my home state of South Australia, geothermal energy has a great potential for jobs and to provide base load power and this was recognised by the Coalition in Government.

I have visited the Geodynamics operation in the Cooper Basin and strongly support the future of geothermal to the South Australian economy.

The Australian Emerging Renewable Energy Technology Alliance highlighted their concerns in August when they highlighted in a statement that the risk of the RET is that it will result in an "overbuild of wind projects in the early years of the scheme".

This is a particularly important point given the potential of geothermal's contribution to peak and base-load power.

In its submission to the Senate Economics Committee's inquiry into the Renewable Energy (Electricity) Amendment Bill 2009, the Australian Geothermal Energy Association highlighted that "geothermal energy is predicted to be lowest cost renewable energy by the time the RET peaks in 2020, but this is predicated on the industry receiving the appropriate incentives to full develop over the next 10 years".

Geothermal is the only renewable energy with the potential to contribute to baseload capacity, which was a point neglected by the Government's RET legislation.

The Coalition in Government was strongly supportive of geothermal energy and other emerging technologies.

In March 2007, the Government convened the first geothermal energy industry roundtable and agreed to establish a Geothermal Industry Development Framework.

In support of projects across Australia we also allocated significant funding for geothermal energy research and development.

Further, we went to the last election with a firm commitment to support geothermal energy including by contributing funding to a major geothermal power project in South Australia and support for geothermal through our commitment to establish a new National Research Institute for Geothermal Energy and providing funding for specific geothermal energy projects.

Through the Renewable Energy Development Initiative, we had also committed \$5million to KUTh Energy Ltd for geothermal resource mapping and database assistance, in Tasmania and \$5 million for the Perth-based Carnegie Corporation development of CETO wave energy technology, in South Australia.

Our support for emerging renewable energy technologies is confirmed by this Bill and we encourage the Government to support our amendments so that solar thermal energy or solar concentrator energy, geothermal energy, ocean thermal energy, tidal energy and biofuels are not left behind by the RET.

As a South Australian Senator, I remain firmly of the view that geothermal has a role to play in future baseload power generation capacity for our state and the national electricity market and all efforts should be made to support the potential of this technology going forward.

Debate (on motion by **Senator Parry**) adjourned.

## COMMITTEES

### Scrutiny of Bills Committee

#### Report

**Senator PARRY** (Tasmania) (4.07 pm)—On behalf of Senator Coonan, I present the 11th report of 2009 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills *Alert Digest No. 12* of 2008, dated 16 September 2009.

Ordered that the report be printed.

**Senator PARRY**—I move:

That the Senate take note of the document.

I seek leave to incorporate Senator Coonan's tabling statement in *Hansard*.

Leave granted.

*The statement read as follows—*

In tabling the Committee's Alert Digest No. 12 of 2009 and Eleventh Report of 2009, I would like to draw the Senate's attention to several provisions in the Military Justice (Interim Measures) Bill (No. 1).

The Committee is, of course, mindful that this bill and the Military Justice (Interim Measures) Bill (No. 2) have passed both Houses of the Parliament, are considered urgent and contain measures which are interim in nature. Nevertheless, the Committee has sought the Minister's clarification in relation to a number of issues that it considers may adversely impact upon a person's rights and liberties under the Committee's first term of reference.

Proposed new section 145A of the Defence Force Discipline Act 1982, to be inserted by item 103 of Schedule 1 of the bill, provides for an accused person to be notified of the convening of a court martial or reference of a charge to a Defence

Force magistrate for trial (proposed new subsection 145A(1)); and to be given an opportunity to provide particulars of an alibi (proposed new subsection 145A(2)). Under new subsection 145A(2), an accused person has 14 days to provide the particulars, commencing on the day of the making of the order convening the court martial or the referring of the charge to the Defence Force magistrate. This timeframe can be extended with the leave of the Judge Advocate or Defence Force magistrate.

Proposed new subsection 120(1), to be inserted by item 72 of Schedule 1, provides that the Registrar of Military Justice must, 'as soon as practicable' after making an order convening a court martial, cause a copy of that order to be given to the accused person. However, there does not appear to be an obligation on the Registrar to notify the accused of the reference of the charge to a Defence Force magistrate. In addition, there is no explanation as to why the 14 days available to the accused does not run from the date of giving him or her a copy of the order, as opposed to the date of the making of the order.

The Committee considers that new subsections 145A(2) and 120(1) contain serious defects. The Committee is seeking the Minister's advice on why a statutory obligation has not been imposed on the Registrar to notify the accused of the reference of a charge to a Defence Force magistrate; and why the notice period in new subsection 145A(2) does not run from the time of providing a copy of the order or reference to the accused. The Committee also expresses the strong view that these issues should be given proper consideration when the Federal Government legislates to establish a Chapter III court so that the defects may be remedied.

Another provision which has the potential to impact on a person's rights and liberties is proposed new subsection 137(1) of Schedule 1. New subsection 137(1) provides that: 'The Chief of the Defence Force shall if, and to the extent that, the exigencies of service permit, cause an accused person awaiting trial by a court martial or by a Defence Force magistrate to be afforded the opportunity...to be advised before the trial, by a legal officer'. The Committee notes that there is no time limit on when this advice would be pro-

vided. This means, for example, that 14 days for the provision of alibi particulars might elapse before legal advice is available to the accused.

The Committee has abiding concerns about how this provision would operate in practice and considers that appropriate safeguards must be in place to protect an accused person's rights and liberties (for example, in situations where he or she may not be contactable). Further, it is not clear exactly what the phrase 'the exigencies of service' would cover. The Committee has asked for the Minister's advice on precisely what this phrase means and, specifically, whether 'the exigencies of service' would include provision of legal advice as soon as possible after the making of an order convening a court martial or the reference of a charge to a Defence Force magistrate.

Finally, proposed new section 36 of the Defence Force Discipline Appeals Act 1955, to be inserted by item 227 of Schedule 1, enables the Defence Force Discipline Appeal Tribunal, when it is hearing an appeal against a conviction or prescribed acquittal by a court martial or a Defence Force magistrate, to obtain reports to assist in the determination of appeals. Section 36 enables the Tribunal to: 'direct such steps to be taken as are necessary to obtain from the person who was the judge advocate of the court martial or from the Defence Force magistrate, a report giving his or her opinion upon the case, or upon a point arising in the case, or containing a statement as to any facts the ascertainment of which appears to the Tribunal to be material for the purpose of the determination of the appeal'.

The Committee has noted that this gives the Tribunal a broad power and that any failure to comply with the Tribunal's direction may constitute contempt. It is unclear what the provision is seeking to achieve and the explanatory memorandum does not provide any explanation or context. Accordingly, the Committee has sought the Minister's advice in relation to the context and background to the provision, the specific reasons for granting such a broad power to the Tribunal, and whether any alternatives were (or might be) considered.

I commend the Committee's Alert Digest No. 12 of 2009 and Eleventh Report of 2009 to the Senate.

Question agreed to.

**Legal and Constitutional Affairs  
Legislation Committee**

**Report**

**Senator O'BRIEN** (Tasmania) (4.08 pm)—On behalf of the Chair of the Legal and Constitutional Affairs Legislation Committee, I present report No. 2 of 2009 of the committee's examination of annual reports tabled by 30 April 2009.

Ordered that the report be printed.

**MINISTERIAL STATEMENTS**

**Fiscal Policy**

**Senator FAULKNER** (New South Wales—Minister for Defence) (4.09 pm)—On behalf of the Minister for Finance and Deregulation, Mr Tanner, I seek leave to table a ministerial statement on fiscal policy.

Leave granted.

**Senator COONAN** (New South Wales) (4.09 pm)—by leave—I move:

That the Senate take note of this statement.

I wish to make a comment in response to the ministerial statement by the Minister for Finance and Deregulation, Mr Tanner, on fiscal policy. The minister has kindly made it available and in it he makes a number of assertions about the role of stimulus spending and about the opposition's position on the reasons Australia has avoided recession. He asserts:

Those opposite like to believe that the avoidance of recession in Australia is somehow down to good luck. Those opposite argue that the stimulus is not necessary. Those opposite protest that planned spending on infrastructure over the next 12 to 18 months should be withdrawn now and that it is no longer necessary because the crisis is over.

None of those assertions are true. I want to place on record our position, which can be summarised as follows. There are, we contend, many factors which have helped Aus-

tralia avoid recession. The coalition has consistently said that the government's spending was too large and out of all proportion to the task at hand. There has been considerable waste and mismanagement in the government's spending, as we are seeing day after day. The excessive spending will have negative impacts on ordinary Australians through a legacy of debt, higher interest rates and higher taxes.

The minister for finance also makes a criticism of the coalition's record of economic management while in office. It is never clear why the government is so sensitive about the coalition's good record that it has to refer to it endlessly, but it is a matter of record that the coalition ran underlying cash surpluses for 10 years of the 12 years it was an office. When it came into office the ratio of spending to GDP was 25.6 per cent and it was reduced to 24 per cent by the time it left office. When it came into office it inherited a net debt of \$96 billion and when it left office it left no net debt, with \$45 billion in the bank. The Australian economy doubled in size while the coalition was in office. In 1995-96 the nominal GDP was \$518 billion and in 2007-08 nominal GDP was \$1.1 trillion.

The minister for finance also asserts that from 2003 to 2007 there were virtually no savings measures in the budgets, and he is wrong about that too. Let me outline just two of the key long-term savings measures. Firstly, there was the coalition's Welfare to Work initiative and disability support pension reforms in the 2005-06 budget, which were designed to slow the growth in working-age welfare payments. Secondly, there was reform of the Pharmaceutical Benefits Scheme in 2006, which reversed the unsustainable growth and saved \$3 billion over 10 years. The finance minister further asserts that the budget in 2007-08, the final year of the coalition government, was in structural

deficit of about 1.2 per cent of GDP. This is also untrue, and I note that the OECD and IMF data show that the budget was in structural surplus at the end of the coalition government.

Finally, I note the minister for finance's claim that the government is continually running the ruler over spending. It is worth pointing out that before the 2007 election Mr Tanner promised to cut consultancies by \$395 million by 2009-10. What we find, at least on the public record, is that the government has awarded \$885 million of consultancy contracts since the 2007 election, including awarding over half a billion dollars worth last year. These figures confirm that this government is the highest spending government on consultancies in Australia's history.

It is widely recognised that there are a number of factors which have contributed to the standout performance of the Australian economy, and it would be good if occasionally the government would acknowledge this. The finance minister to his credit cites several, including: the hard work of Australian workers and small business owners, and we agree with that; the government's early decisions to guarantee wholesale borrowing by banks and bank deposits, and we recognise the necessity of that, although we questioned the handling of it; the aggressive easing of monetary policy by the Reserve Bank, which certainly had a big impact; and of course the government's stimulus packages, which are what the minister claims. Some of what he claims is probably novel for the government and is welcome recognition. It makes a refreshing change from the rhetoric of the Treasurer and the Prime Minister, who suggest over and over that the government's actions were the sole reason for Australia's relative success.

It is worth referring to an institution as credible as the Reserve Bank that is not prepared to quantify the relative impacts of the factors which have assisted Australia's economic performance. That is very wise because the economy is a very complex beast. Certainly the Reserve Bank is not prepared to attribute all the success to the government's stimulus packages. Indeed, how could it? The Reserve Bank, in its minutes of the 1 September board meeting, said:

Members noted that it was hard to disentangle the contribution that Asian demand, fiscal stimulus and easier monetary policy had each made to the better-than-expected outcomes.

We have noted before, that, in our view, there are at least five key reasons why Australia did not go into recession. Firstly, the government inherited a very-well-performing economy—one of the best performing economies in the developed world. The budget was in surplus. There was no net debt. I have referred to growth being above trend at 4.2 per cent and the unemployment rate was at 30 year lows of around four per cent. Secondly, the Australian financial system was well insulated against global shocks, largely due to financial system reforms implemented by the coalition. Thirdly, the Reserve Bank had implemented massive cuts in interest rates. The RBA reduced the cash rate by 4.25 per cent, from 7.25 per cent to three per cent, one of the largest cuts in the developed world. The cash rate is now the lowest in a generation. Fourthly, Australia's export sector continued to perform remarkably well. Continued strong growth in China has led to export volumes from Australia being maintained at high levels. It was an almost unique position for a developed economy. Most suffered very substantial declines in export volumes due to higher dependence on manufactured goods and their lower exposure to the fast-growing Asian region. Fifthly, the government implemented a stimulus package.

In our view, the government has commenced a program of deficit spending and debt accumulation that far exceeds that required to address the financial and economic shocks. It is a view we formed, and it relates not just to the quantity of spending, which has been out of all proportion to the need, but also to the poor quality of much of the spending. These are themes that we will continue to agitate because we believe that this approach from the government has them absolutely set on the wrong course, which is going to continue to accrue debt and deficit. That is obviously going to mean a big impact on rising interest rates. Borrowed money is the name of the game here. This means that, in due course, it has all got to be repaid with enormous consequences for those who have to meet the debt.

It will be interesting to see whether the government stands by its forecast and debt repayment strategy. The government's position will be updated in MYEFO towards the end of November, but there are certainly very conflicting messages coming out in public statements made by both the Treasurer and the Prime Minister. It is clear that in respect of interest rates the government believes the era of cheap money is simply over. They have acknowledged that if the Reserve Bank comments are to be taken at face value, as indeed they should, emergency interest rate levels will most certainly be on the rise.

The government's overall macroeconomic policy stimulus to the economy is both a function of fiscal and monetary policy. Where the combined stance of these two arms of policy is overstimulatory, as we think it is now, there is a choice as to which arm of policy should be tightened. Fiscal policy stimulus can be reigned in through reduced spending or higher taxes, and monetary policy can be tightened through higher interest rates. The government's fiscal strategy, we think, has simply lost sight of the

impact of debt and deficit, and it is ordinary Australians that will pay the price.

Question agreed to.

## DOCUMENTS

### *Work of Committees*

**The ACTING DEPUTY PRESIDENT (Senator Barnett)**—On behalf of the President, I present *Work of Committees*—Financial year statistics 2008-09; and half-year statistics: 1 January to 30 June 2009.

Ordered that the document be printed.

## COMMITTEES

### Legal and Constitutional Affairs Legislation Committee

#### Membership

**The ACTING DEPUTY PRESIDENT (Senator Barnett)**—The President has received a letter from a party leader seeking to vary the membership of a committee.

**Senator FAULKNER** (New South Wales—Minister for Defence) (4.20 pm)—I move:

That Senator McLucas replace Senator Crossin on the Legal and Constitutional Affairs Legislation Committee on 19 October and 20 October 2009.

Question agreed to.

## FREEDOM OF INFORMATION (REMOVAL OF CONCLUSIVE CERTIFICATES AND OTHER MEASURES) BILL 2008 [2009]

### Returned from the House of Representatives

Message received from the House of Representatives returning the bill without amendment.

**ASIAN DEVELOPMENT BANK  
(ADDITIONAL SUBSCRIPTION) BILL  
2009**

**First Reading**

Bill received from the House of Representatives.

**Senator FAULKNER** (New South Wales—Minister for Defence) (4.22 pm)—I move:

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

Question agreed to.

Bill read a first time.

**Second Reading**

**Senator FAULKNER** (New South Wales—Minister for Defence) (4.22 pm)—I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

This Bill is an important step in delivering on Australia's commitments at the G20 Leaders' Meeting in London in April 2009.

While the global recession had its origins in the financial institutions of the United States and Europe, its impacts have been felt right around the world.

The multilateral development banks, such as the Asian Development Bank (ADB), are playing a critical role in supporting recovery in developing economies and therefore the global economy.

The ADB is also helping to ensure sustained growth and stability in the Asia Pacific region which will benefit Australian exporters and jobs for many years to come.

To ensure the ADB has sufficient capital to support recovery and ongoing sustainable growth in our region, G20 Leaders agreed to support a 200 per cent general capital increase.

The outcomes of the London Summit played an important role in restoring stability to financial markets and restoring economic confidence.

And as we approach the next Leaders' Summit in Pittsburgh, it is important for G20 members to demonstrate that we are delivering on all of these commitments.

Supporting this Bill will enable Australia to demonstrate its leadership globally, as well as supporting recovery from the global recession in our region.

The purpose of this Bill is to obtain parliamentary approval for Australia to take up its allocated subscription to the fifth general capital increase at the ADB at a cost of around US\$197.6 million over 10 years.

Under the general capital increase, Australia is entitled to subscribe to an additional 409,480 shares.

Only four per cent of these shares are required to be paid-in.

As a result of the low paid-in component, the annual cost of the subscription will account for a very small part of Australia's aid program over the ten year payment period.

Australia's contribution towards the general capital increase was included as a capital measure in the 2009-10 Budget and will not impact the underlying cash or fiscal balances.

I believe the economic and political significance of the Asia-Pacific region to Australia, and the important developmental role which the Asian Development Bank is playing, both in its immediate response to the global recession and pursuit towards its long-term Strategy 2020, necessitate Australia's continued support of the Bank.

I commend the Bill.

Debate (on motion by **Senator Faulkner**) adjourned.

**CUSTOMS AMENDMENT (ASEAN-  
AUSTRALIA-NEW ZEALAND FREE  
TRADE AGREEMENT  
IMPLEMENTATION) BILL 2009**

**CUSTOMS TARIFF AMENDMENT  
(ASEAN-AUSTRALIA-NEW ZEALAND  
FREE TRADE AGREEMENT  
IMPLEMENTATION) BILL 2009**

**First Reading**

Bills received from the House of Representatives.

**Senator FAULKNER** (New South Wales—Minister for Defence) (4.23 pm)—I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question agreed to.

Bills read a first time.

**Second Reading**

**Senator FAULKNER** (New South Wales—Minister for Defence) (4.23 pm)—I move:

That these bills be now read a second time.

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

Leave granted.

*The speeches read as follows—*

**Customs Amendment (ASEAN-Australia-  
New Zealand Free Trade Agreement Imple-  
mentation) Bill 2009**

I am pleased to introduce the implementing legislation for the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Free Trade Agreement).

The Free Trade Agreement was signed on 27 February 2009 by the Minister for Trade, the Hon. Simon Crean MP, and representatives of the eleven other Parties to the Agreement, namely New Zealand, and the ASEAN Member States of Brunei Darussalam, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam.

The Customs legislation now being introduced is the administrative process that enables this agreement to become a binding treaty.

I refer Members to the Ministerial Statement made by the Minister for Trade on 17 March 2009 tabling the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area and the accompanying national interest analysis.

The Free Trade Agreement is a comprehensive agreement that will provide Australian exporters and investors with improved export market access, certainty and transparency in ASEAN markets.

This is the largest Free Trade Agreement Australia has concluded. ASEAN Member States and New Zealand together account for 20% of Australia's total trade in goods and services, which were worth \$112 billion in 2008.

The Agreement will reduce or eliminate tariffs across a region that is home to 600 million people and a region with a combined GDP of A\$3.2 trillion.

This means greater job opportunities here in Australia.

The Agreement is also the most comprehensive free trade agreement that ASEAN has concluded. It is more comprehensive and deeper than ASEAN's other free trade agreements with China, Japan and Korea. Importantly, the Agreement is also the first free trade agreement Australia has signed since the onset of the global financial crisis, so it sends a very strong signal that protectionism will not help countries get out of a recession.

The Free Trade Agreement provides for the progressive reduction or, for most products, the elimination of tariffs imposed on Australian goods exported to ASEAN Member States.

Specifically, the Agreement will deliver, over time, elimination of duties on between 90 and 100 per cent of the tariff lines of the more developed ASEAN countries and Vietnam, covering 96 per cent of current Australian exports to the region.

Australia will eliminate, over time, all tariffs on imports from Parties to the Agreement.

The Free Trade Agreement is expected to enter into force on 1 January 2010.

The Joint Standing Committee on Treaties has considered the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area.



The JSCOT Report was tabled on 24 June and recommended that binding treaty action be taken. JSCOT's recommendation paved the way for this important legislation to be passed.

In Bangkok last month, Trade Ministers from ASEAN, Australia and New Zealand renewed political will to redouble efforts to ensure this Free Trade Agreement will come into force by the first of January next year.

It is a milestone for Australia – both for our trade policy and for Australian exporters.

#### **Implementing Legislation**

In order to implement the Agreement, two Acts require amendment – the Customs Act 1901 and the Customs Tariff Act 1995.

The R4205 Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009 contains proposed amendments to the Customs Act 1901. These amendments give effect to Australia's obligations under Chapter 3 of the Free Trade Agreement dealing with rules of origin.

A complementary Bill, the Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009, will amend the Customs Tariff Act 1995 to set out Australia's schedule of tariff commitments.

The Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009 provides the rules for determining whether goods originate in an ASEAN Member State or in New Zealand.

Goods imported by Australia from an ASEAN Member State or New Zealand that meet these "rules of origin" will be able to claim preferential rates of duty under the Agreement.

A rule of origin is specified in the Free Trade Agreement for each tariff sub heading and may require that the goods:

- be wholly obtained or wholly produced in an ASEAN Member State or in New Zealand;
- meet a "general rule"; or
- meet a product specific rule.

The "general rule" dictates that a good must satisfy the requirement of a change in tariff heading or have a regional value content of 40 per cent.

The general rule applies to all products that are not subject to product specific rules.

The product specific rules of origin apply to the goods listed in Annex 2 of the Free Trade Agreement.

In a large number of cases, the product specific rules in Annex 2 require that there be a change in tariff chapter or change in tariff sub heading to determine the originating status of goods. In some instances, the goods in Annex 2 are required to meet a regional value content requirement only or a regional value content requirement combined with a change in tariff classification.

The approach of requiring goods to undergo a change in tariff classification to determine the originating status of goods has been used in other free trade agreements Australia has recently entered into, including with the United States, Thailand, Chile and the amended Australia New Zealand Closer Economic Relations Trade Agreement.

The Bill I introduce today will give effect to a new regional Free Trade Agreement with ASEAN and New Zealand that will complement Australia's existing bilateral free trade agreements with the ASEAN Member States of Singapore and Thailand and with New Zealand.

The Free Trade Agreement will also deliver a significant gain for Australia in relation to ASEAN countries with which Australia does not have bilateral free trade agreements, in particular, the important markets of Indonesia, Malaysia, the Philippines and Vietnam.

The Free Trade Agreement will further Australia's economic integration with the Asia-Pacific, a region with which our nation's economic future and security are closely tied. It will also provide a strong platform and legal framework for Australia's economic engagement with the region for many years to come.

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#### **Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009**

I am pleased to introduce the second Bill relating to the ASEAN-Australia-New Zealand Free Trade Agreement (the Free Trade Agreement).

The Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009 will amend the *Customs Tariff Act 1995* by:

- providing duty-free access for certain goods and preferential rates of customs duty for other goods that qualify for such treatment under the Free Trade Agreement's rules of origin;
- phasing the preferential rates of customs duty for certain goods to zero by 2020; and
- creating a new Schedule 8 to the Customs Tariff Act 1995 to accommodate those phasing rates of duty.

Consistent with Australia's tariff commitments under the Free Trade Agreement, the amendments provide for the elimination of customs duties, on implementation of the Agreement, for many goods that qualify as originating in Australia or New Zealand.

In other cases, the amendments provide for reduced, or preferential, rates of duty for goods originating in ASEAN countries or New Zealand, on implementation of the Agreement. These preferential rates of duty will subsequently and progressively be eliminated, at the latest by the year 2020.

The Free Trade Agreement also provides that the component of Customs duty that is equal to excise duty imposed on alcohol, tobacco and petroleum products, when produced in Australia, will be retained.

New Schedule 8 in the Customs Tariff will be used to specify the preferential and phasing rates of duty. If goods are not specified in Schedule 8, as identified by their tariff classification number, the rate of duty will be Free for those goods.

The Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009 will complement the amendments contained in the Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009, which provides the rules to determine whether a good has originated in an ASEAN country or New Zealand and should therefore qualify for preferential tariff treatment under the Free Trade Agreement.

The Free Trade Agreement will provide greater access to the Australian market for goods originating from ASEAN countries and New Zealand and, reciprocally, will provide greater access for Australian goods in the markets of the ASEAN countries and New Zealand.

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

Threat Abatement Plan for Disease in Natural Ecosystems Caused by *Phytophthora Cinnamomi* (2009)

**THREAT ABATEMENT PLAN FOR  
DISEASE IN NATURAL ECOSYSTEMS  
CAUSED BY PHYTOPHTHORA  
CINNAMOMI (2009)**

**Motion for Disallowance**

**Senator SIEWERT** (Western Australia) (4.24 pm)—I move:

That the Threat Abatement Plan for disease in natural ecosystems caused by *Phytophthora cinnamomi* (2009), made under section 279 of the *Environment Protection and Biodiversity Conservation Act 1999*, be disallowed.

It is actually quite unusual for a member of the Greens to be standing up here moving a motion to disallow a threat abatement plan; usually it is the Greens that are nagging for the development of a threat abatement plan or a recovery plan. However, given the nature of the threat caused by dieback, we believe that this plan needs serious review. It is not adequate as it stands and in all good conscience the Greens could not let such a plan go through without bringing to the attention of the Senate the scale of the threat presented to a wide range of native ecosystems across Australia. Some people think this is just a West Australian issue. I am here to tell you that it is not. This disease threatens native ecosystems and commercial agriculture across Australia. The inadequacy of our current response to *Phytophthora cinnamomi*,

commonly known as dieback, and other *Phytophthora* species—it is not just the *cinnamomi* that is a problem—is both a state and a national threat that needs to be dealt with. The nature of the threat needs to be adequately acknowledged and appreciated.

I have been looking into this issue in some detail. In fact, I have been working on the issue of dieback for a number of years. I have talked to researchers and experts in disease management and I am convinced that the more we find out about dieback, the more we realise that dieback is a much greater threat than is presently appreciated and acknowledged and that it demands a much more comprehensive response than is currently articulated through the threat abatement plan.

Given what we know of the biology of this pathogen and what we have observed in recent years of its behaviour across a wide range of ecosystems, it is very clear that if we continue with the current management practices and resources, which we consider woefully inadequate, we can expect dieback to ultimately occupy every single piece of habitat listed as suitable for its growth and survival. In other words, it will spread everywhere if we do not do something about it.

It is not only our opinion but the opinion of experts that we have consulted that the scale and permanence of the likely impacts of this pathogen mean that *Phytophthora* needs to be ranked within the top three key threatening processes nationally. We are talking about a very serious threat on a scale that is not being acknowledged at the national level and is not being reflected in our national environmental priorities or in the allocation of resources to natural resource management, in particular through the Caring for our Country funding program.

*Phytophthora cinnamomi* is a microscopic soil-borne organism that attacks the roots and

collars of susceptible native plants and also, as I said, some commercial plants. It is believed to have been introduced into Australia by early European settlers, and many native plants have little or no resistance to it. *Phytophthora* is often referred to—and I have been guilty of this as well—as a fungus but is in fact a type of water mould that taxonomically has much more in common with algae species. It produces a number of different types of spores which can be spread easily and rapidly, particularly by disturbance by vehicles and boots, for example, during the wetter months.

While we have tended to conclude that its spread is restricted to wetter areas with higher annual rainfall and soils prone to waterlogging, there is evidence now coming to light that suggests that this is not necessarily the case. I will talk about its impact on the tuart forests and trees in Western Australia a little later.

*Phytophthora* is able to parasitically attack a wide range of plant species across their life cycle. The consequences of infection of a susceptible ecological community include: major disruption of community structure; extinction of populations of some flora species; modification of the structure and composition of ecological communities; massive disruption to primary productivity of these species, including, I will note, their ability to store green carbon; and habitat loss and degradation of dependent flora and fauna. For instance, we think the crash in numbers of the western ground parrot in the Fitzgerald River National Park may be related to the impact of dieback as a loss of its primary habitat and also potentially its loss of its primary food sources. There is also an interaction between plant diseases and other threatening processes.

Recently, we were alarmed to discover that a number of plants and plant communi-

ties that we previously believed to be immune or resistant to different *Phytophthora* strains have become severely affected—and I must note here and remind people that we are not talking about just *cinnamomi* here; there are a number of different species involved in dieback. It now appears that these otherwise resistant plant communities may become susceptible to infection by this pathogen when subject to other environmental stresses such as water or climate stress. It also appears that, once affected by the pathogen, the ability of these plants to resist other environmental threats such as pests may also be compromised.

For example, we have seen some alarming rates of tree dieback in our already threatened coastal tuart forests in the south-west of Western Australia. These live in sandy soils and were believed to be immune to *Phytophthora* dieback. It appears that water stress has reduced the resistance of these plant communities to *Phytophthora* and that the *Phytophthora* has then further reduced the resistance of the tuarts to borer attack, to the point that some communities are being decimated by the combined impacts of water stress, *Phytophthora* and borer attack. This has important implications for the threat *Phytophthora* may pose to ecosystems across southern Australia, where it is known to be present but has yet to result in the kind of extreme decimation of ecological communities that we have seen in south-west Western Australia.

The behaviour of this pathogen varies dramatically, depending on the interaction between particular plant types and communities, particular soils and soil properties, and climate factors. In Western Australia—and I will go into this in a bit more detail later—we have a million hectares already affected by dieback. There is a real danger that *Phytophthora* could spread, and in fact it has already spread quite widely in ecosystems in

south-eastern Australia, without it being recognised as a significant threat because its impacts to date have been less dramatic on those ecosystems and the symptoms have not been widely recognised. However, with climate change projections likely to result in an increase to the range of the pathogen, together with what we have learnt about the interaction between it, other environmental stresses and climate stress, we believe *Phytophthora* could cause even bigger problems into the future.

We believe the national threat abatement plan—which was originally put in place in 2001, reviewed in 2006 and then revised and released in May 2009—is not adequate to address the scale and extent of the threat. I will go into some of the reasons why we believe the threat abatement plan is not adequate at this stage and also talk about how, as we understand it, dieback is affecting states like Victoria, Tasmania and South Australia.

The emphasis of the threat abatement plan as it stands seems to be on the protection of threatened ecological communities, and rare and endangered flora. While we agree that the protection of both these is important, we are concerned that this narrow focus will prove ineffective in preventing the spread of this pathogen. Clearly, if we focus only on protecting threatened species and communities and do not prevent *Phytophthora* from spreading to other adjoining plant communities—which may become threatened themselves, in time—once it does spread to these adjoining areas it will be much more difficult, if not impossible, to stop. In other words, we cannot just concentrate on threatened ecological communities, because in the meantime the rest of the ecosystems around them start getting infected.

We believe that equal emphasis should be given to the protection of areas of susceptible vegetation together with the microbiota,

fungi and animals that remain free of the pathogen and could be protected in the long term. We should intervene before they can fall into the category of a threatened ecological community. Unless we take a more comprehensive and strategic approach, the risk we are facing is what we could refer to as a tragedy of the common, where the most common organisms—which are frequently keystone species that are taken for granted—become infected and threatened and it is too late to take any corrective action.

If you read the threat abatement plan, you will see that the text admits that it only has the status of a guide to resource use in the management of *Phytophthora cinnamomi*. There do not appear to be any mechanisms to compel compliance with these guidelines by any of the three levels of government or in fact by private stakeholders, nor is there any mechanism to provide adequate resources for the management of this disease, and that is the absolutely critical point. In our opinion, the plan has no commitment to action and no resources, which effectively results in it being an empty gesture. We will have a nice plan while dieback spreads across, certainly, Western Australia and the other states. We believe this is a totally inadequate level of response to such a significant and pervasive national threat.

The text of the threat abatement plan clearly states that the success of the plan is dependent on both 'a high level of cooperation' between stakeholders and the allocation of 'adequate resources'. However, to date, neither of these things have been forthcoming. In addition, *Phytophthora* was overlooked in the national priorities listed in the business plan for Caring for our Country and in the funding provided for national resource management activities. There also does not appear to be an audit mechanism within the threat abatement plan by which success can be measured or responsible authorities held

to account. Furthermore, I know from personal communication with some of the community organisations in the south-west of WA that they were told that if they wanted any funding for dieback they needed to get more threatened ecological communities listed—which of course makes our point. We cannot take action just on dieback on the basis of threatened ecological communities; we need to protect the whole of the environment.

In Victoria, climatic and topographic parameters indicate the potential for *Phytophthora* to occur over a large proportion of the state—that is, 60 per cent. Sixty-nine per cent of the parks listed under the Victorian National Parks Act have at least some areas classified as high risk, and 14 parks, mostly in the central and western areas, have greater than a 50 per cent chance of their area being classified as being at high risk of dieback. The study these figures are based on considered only the park and reserve network and did not include other flora and fauna reserves or remnant ecosystems on private land. We should note that many of these smaller reserves in areas of private land have much less controlled access and therefore present both a higher degree of risk and a vector for infection of adjoining reserves.

Very little mapping of dieback has been undertaken in parks and reserves in Victoria, despite such mapping being an essential prerequisite to management. I have recently spoken to some *Phytophthora* experts who recently visited some Victorian parks and interacted with their Victorian colleagues. They told me that they believe the extent of the reported *Phytophthora cinnamomi* infections in Victoria is likely to be underestimated. I have also had reports that there are outbreaks of *Phytophthora* spreading along the lines of the north-south Sugarloaf Pipeline.

In Tasmania the best guesstimate is that tens of thousands of hectares are infected, including significant infections within the south-west wilderness and adjoining conservation zones. Some experts have suggested that, next to logging, *Phytophthora* could present the next biggest future threat to Tasmania's biodiversity and wilderness. From what we understand, there has never been any attempt in that state to map the pathogen infection state-wide. We have also been told that there have been some significant cut-backs in staffing and operational funding within the Tasmanian departments and this may also impact on their ability to manage these threats.

In my home state of Western Australia the area infected with the *Phytophthora* pathogen in the south-west of has been increasing at a rate of close to 20,000 hectares per annum. It has increased from less than 200,000 hectares in the mid-1970s to—as I said earlier—1 million hectares in 2009, with an estimated additional million hectares identified as being at high risk. An estimated 40 per cent of our native species in Western Australia are susceptible, including many of the keystone species within plant communities. Extensive mapping has been undertaken by the WA Department of Environment and Conservation, who have created a dieback atlas. While this is the best survey conducted to date by any state, we know from both personal experience and communication with other land managers that many smaller areas of disease—for example, on private land and smaller reserves—have not been included in that atlas.

Most management activities in WA focus on quarantine and hygiene measures associated with specific activities—for example, mining, forestry and national park access. However, during 2008 about 280 hectares of threatened ecological communities containing rare and endangered flora were sprayed

with phosphite, an effective but very expensive way to treat *Phytophthora* outbreaks in high-value areas. So while that is a solution for very high value areas, according to the experts it is not going to be an effective way to treat, for example, the million hectares in WA that are already affected or the million that are at high risk.

Significant resources have gone into the management of Bell Track, which is a well-known infestation in one of my favourite places, the Fitzgerald River National Park. That is at a cost of around \$2.5 million. We expect to see smaller amounts spent this year on some of the most threatening infestations in Fitzgerald River National Park and further to the east at Cape Arid National Park.

A 2005 study into the economic impacts of *Phytophthora cinnamomi* in WA estimated that the direct cost of degradation caused by this disease amounts to \$127 million per year over the next 50 years. That equates to \$6.36 billion. Of course, this estimate is necessarily limited to those impacts that can be quantified. This means that the estimated monetary impact is conservative because none of the indirect benefits of the value of these natural areas were included, such as the intrinsic value of its biodiversity and the significant impact on tourism. The study also estimated that the loss could be an order of magnitude higher if the spread of dieback damages the ability of our south-west vegetation to store carbon, which is estimated to have a present value of \$12 billion.

To date we have not looked at these issues on a national scale. We need to follow up with this type of analysis in the other states. There have not yet been any field studies to quantify the loss of carbon, for example, either above or below ground caused by a *Phytophthora cinnamomi* infection. I asked Senator Wong, the Minister representing the Minister for Environment, Heritage and the

Arts, about dieback several months ago, specifically about what resources were being invested into dieback and where the abatement plan was.

I was told the abatement plan had just been released. I went to the website to find the abatement plan that had 'just been released', but it had not been; it was not on the website. It was only when my office persisted and contacted the minister's office several times did we get a copy of the abatement plan and it was put up on the website. When I talked to people who were heavily involved in the management and research on dieback I understood that they were not aware that the abatement plan had been released. In fact, many of them had not been consulted for a long time on the finalisation of the threat abatement plan.

I deeply believe we need an abatement plan but the scale of the problem is much bigger than is being recognised in this abatement plan. The level of response is not at a sufficient scale to make it appropriate or effective. We need to take a preventative approach and not just deal with it when it threatens ecological communities. It is too late. It is doing what the environment minister says we should not do: putting the ambulance at the bottom of the cliff. We need to be dealing with the issues before they start falling off the cliff.

We need a strategic approach that protects ecosystems before they are threatened. We cannot hope to protect threatened ecological communities in isolation. The disease simply does not let us do that. We have a threat abatement plan at the moment that has no commitment to action and no resources; therefore, it is an empty gesture. We need to do better on this issue. We need to be linking a threat abatement plan, for example, with our key environment funding program, Caring for our Country.

There were a number of applications made from organisations, particularly in the southwest of Western Australia, for funding to address dieback. There was a project of several million dollars put up and it did not get funded. A few small programs did get funding, but that is nothing near the scale of resources that we need to be investing. We think the government needs to come back to the people of Australia with a threat abatement plan that is effective at the scale we need it to be and commits the resources that we need. It is with a heavy heart that I ask that this threat abatement plan be disallowed because the government needs to do better. (*Time expired*).

**Senator IAN MACDONALD** (Queensland) (4.44 pm)—The threat abatement plan for *Phytophthora cinnamomi* is a very, very important one. I think that, in the broad, all senators would be keen to see a proper plan adopted. I will start just by making some comment on the process, with apologies to the government and the minister at the table and the whip. I understand that it had been indicated this morning that the coalition would be opposing the disallowance motion and voting with the government on it. For that reason, the government has not come prepared to debate in detail some of the queries that I have and some of the issues that Senator Siewert has raised. The coalition had another look at this this morning. I have some interest in this and so do some of my colleagues. We have been persuaded by Senator Siewert's elegance not necessarily that she is correct but that perhaps this does need some further investigation that had slipped my mind when the matter first arose.

I have an interest in this because in a former life I was a minister with responsibility for weeds of national significance. I was also a minister responsible for forestry and promoting the sustainable use of our forests. I understand that it is a very big issue in West-

ern Australia and also in Tasmania but that it does have implications right throughout the country. For those like me who are not precise in the scientific discussion regarding the particular pest, it is related to dieback, as Senator Siewert has said.

What I have suggested—and what I think the whip, with my apologies to everyone, has perhaps also suggested—is that the conclusion of this debate might be better left to another day when there is a minister at the table who is properly briefed in relation to a number of the issues that I want to raise and that Senator Siewert has raised. What has attracted me to Senator Siewert's proposal to disallow the threat abatement plan is the fact that it does appear that Senator Siewert is right when she says that this new plan really contains no action plan, nothing different from what has been in the past, and that there are no resources made available to do what needs to be done. I know the Western Australian government would be very keen to address the issue. It perhaps is not an issue for which they have funding or responsibility. It does seem to me that it is a responsibility of the national government.

I hesitate in saying on behalf of the coalition that we will support the disallowance motion because of uncertainty as to what would happen if this were disallowed. If this were disallowed and there were then no plan whatsoever in place, that would concern me. That was the coalition's original proposition—that even a bad plan is better than no plan. Senator Siewert has said—I do not think she said it in her address to the chamber but in private conversations, and I hope she does not mind me repeating this—that her understanding is that if this plan were disallowed then the existing plan would continue. So there would be a plan in place, but it would send a message to the government that they really need to work with a new plan

of abatement that has serious action provisions and is in some way resourced.

I agree with Senator Siewert, and she with me, in relation to Caring for our Country. That has become a very top-down, bureaucracy-driven plan, as opposed to the previous plan which was in place, which was a bottom-up plan, a plan where the community was involved. The community was very much part of the process and, because of that, it had the support of the community. I am very concerned about the way that the whole Caring for our Country program is going. I think that is symptomatic of what is happening here. As I understand it, this new plan is a fine set of words—not quite the right words—but it does not come with any real provisions for action and it certainly does not come with any commitment to more resources.

What if, in disallowing this plan, we were to say to the government and the department: 'Come back with a new plan that actually means something. Come back with a plan that has some funding to support it and we will all happily support it.' I understand, from what Senator Siewert has said—and I have not been able to independently verify this yet but I have no reason to doubt Senator Siewert on this particular issue—that the experts in the field, the appropriate people, the people who have been doing a lot of research on this issue who have genuine and serious concerns about what is put before us, were not consulted. That may not be correct. I was going to ask the government minister about that, if there had been one here who was properly briefed. I acknowledge at this time that Senator Wong, who would normally be responding to this, is not in the chamber today. Whilst I know that Senator Evans is very able and has great capacity and a broad range of knowledge, I suspect his knowledge of *Phytophthora cinnamomi* is somewhat limited.



**Senator Chris Evans**—I call it dieback.

**Senator IAN MACDONALD**—You are perhaps an expert, then, Senator Evans.

**Senator Chris Evans**—I knew I couldn't pronounce it in the Latin.

**Senator IAN MACDONALD**—I am not sure I am pronouncing it right but, because it is written there, people will know what I am talking about. I would really like the government to come back—if the Senate agrees to adjourn this debate—and give some answers to the questions that Senator Siewert has raised and the points I have made. Can we get a plan that does have some action, that is not just fine words and that is not something you wave around then put in the bottom drawer and forget about? This is a very serious issue for many parts of Australia. It does require a serious response. It has been suggested to me that this is not a serious response.

What I want to know from the government and those who might be able to assist is: if we reject this plan, does the existing plan continue, so we do have a plan in place? I understand from some private conversations I had with Senator O'Brien that their briefing notes say that if this is knocked out then there is nothing. That is different to some other advice I have received, so we need to clarify that. If there is nothing else there when this is knocked out then I am fairly confident that the coalition would reluctantly oppose the disallowance. However, if agreeing with the disallowance will mean that the existing plan continues until a new plan is brought forward then that seems to me to be an appropriate way to go.

It is important that we get the department and the government to sit down and draw up a plan after consultation with the people who know and understand the issues—researchers and the Treasury department. I understand you cannot just say that it needs money—it

has to be dealt with in the budget process—but it would be good if the Minister for the Environment, Heritage and the Arts could make some funding commitment from the huge amounts of money that are at his disposal. I think that would be a good way to deal with it. I am not sure how long it would take to get a new plan. There is probably six months of solid work and there needs to be good consultation with the right people. Then we will get a plan that actually means something. We will end up with not just a threat abatement plan but a plan of action to do something about this serious problem.

I will not hold the Senate any longer. I again apologise to the government for the confused messages they have received, which have left them a bit left-footed. I take full and personal responsibility for that, and I apologise. If we adjourn this debate, we can get some responses and be absolutely sure of the consequences of the rejection of the plan of action and the approval of this disallowance motion and some commitment from the government to detail a plan of action and detail some funding for the future. It may be that, even by taking this action, the government will be able to make some commitments as to plans of action and funding that may satisfy even the mover of this motion.

I conclude by saying that this issue is completely devoid of politics. This is an issue that not every Australian knows a lot about or even a little bit about, but it is very important. We all know about dieback. If this procedure may address that threat then it is worth spending a bit of time properly addressing the issue.

Debate (on motion by **Senator Parry**) adjourned.

Ordered that the resumption of the debate be made an order of the day for the first sitting day of the next session.

**FEDERAL COURT OF AUSTRALIA  
AMENDMENT (CRIMINAL  
JURISDICTION) BILL 2008**

**Second Reading**

Debate resumed.

**Senator ABETZ** (Tasmania) (4.57 pm)—  
At the outset I thank Senator Barnett for allowing me to make a brief and short contribution on the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008. The coalition support this legislation. We were minded to support the amendment that was to be moved by Senator Bob Brown. That amendment would have required the government to maintain the full Federal Court Registry in Hobart as it has existed for some considerable period of time. The amendment proposed by Senator Bob Brown has great merit, and I can indicate that as a coalition we will be supporting it in the future; however, the Attorney-General has indicated to us that, if the amendment were to be supported, the government would not be accepting that amendment and the legislation would then bounce between this place and the House.

The bill we are debating provides the Federal Court with the criminal jurisdiction to deal with the criminality of cartel behaviour under the Trade Practices Act. Senator Bob Brown's amendment is very meritorious and we fully support it, but on balance, having given consideration to the matters at stake, we think the criminal jurisdiction aspect of the Federal Court that deals with the criminality of cartel behaviour is a matter that should take precedence over the issue of the Hobart Federal Court Registry.

It is for that reason that we have now reluctantly withdrawn our support for Senator Bob Brown's amendment—which I trust he has been advised of because I rang his office indicating that—having initially indicated our support. We have withdrawn our support

only because of the dogged approach by the Attorney-General and the Labor government, who said that they would vote against an amendment to this legislation to continue the full Federal Court Registry facilities in Hobart. The Labor Party are now on record saying that they would vote against such a proposal and, what is more, that they would be prepared to delay the criminal jurisdiction bill on that basis. I must say that it shows an unfortunate trend with this arrogant Labor government that they will seek to block any good idea and even hold up very important and vital legislation. Therefore, as a halfway house, we the coalition have decided to move a second reading amendment. I move the second reading amendment standing my name:

At the end of the motion, add:

but the Senate calls on the Government to ensure that:

- (a) at least one Federal Court Registry in each state is staffed on a full-time basis; and
- (b) the complement of staff in each such Registry includes a full-time Registrar.

Senator Bob Brown would undoubtedly be well acquainted with that wording because it is largely plagiarised from the amendment he was proposing to move in the committee stage of this bill. I indicate as a former practitioner in Hobart that the Federal Court Registry and the work that it did, especially under the former registrar, Mr Alan Parrott, was exceptional. The numbers and the processing of Federal Court matters were second to none in the jurisdiction. When we as a Senate passed a motion requesting that these facilities be maintained in Hobart, we had a letter from Chief Justice Black which, with respect to His Honour, did him and the Federal Court no credit where it was suggested that with less they could achieve even more, that by getting rid of a full-time Federal

Court registrar in Hobart they were somehow going to improve the numbers beyond that which they already were. Quite frankly, it defies logic and any rational thought how that could possibly be achieved. Of course, if the Federal Court could achieve better with less in Hobart, one has to ask the question why they cannot achieve better with less in all their other registries around the nation.

With those few words I indicate that we as a coalition are determined that, on the next occasion legislation comes along, we will be moving—and Senator Barnett will talk about this in more detail, given his excellent contribution to the Senate Standing Committee on Legal and Constitutional Affairs and to the access to justice bill—an amendment or, indeed, if Senator Brown were to again move his amendment in relation to that bill, we would be minded to support it. Our concern is that the government have refused any amendment on this occasion to stop the commencement of the criminal jurisdiction bill, which we find to be, in effect, blackmail. They do hold the whip hand in relation to that so we reluctantly accept their position, but we will be persisting with our second reading amendment and then will be supporting a fully-fledged amendment, come the access to justice legislation. I once again thank my colleague and friend Senator Barnett for allowing me to speak before him.

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)**—Excuse me, Senator Barnett. You are standing.

**Senator Barnett**—I am happy to take a point of order, if you would like, Mr Acting Deputy President. I was on the speakers list and I wonder whether you have that list.

**The ACTING DEPUTY PRESIDENT**—I do have that list. I am aware that you are next on the speakers list, Senator Barnett, but I was adopting the convention of going to a

representative from a party other than the opposition.

**Senator Bob Brown**—Mr Acting Deputy President, can I help here? I do not mind. I am very happy for Senator Barnett to go next, and then I will go after him.

**The ACTING DEPUTY PRESIDENT**—Thank you. I just want to make the point that, rather than following the list, which is advisory, I was following what I understand to be the practices of the Senate.

**Senator BARNETT** (Tasmania) (5.05 pm)—I thank Senator Bob Brown for his indulgence. I note that there is an important speech happening in another chamber which is obviously of great interest to members of the coalition. In that regard, I will be as brief as possible. In speaking to the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008, I firstly associate myself with the comments of Senator Abetz and will speak to those aspects of the bill shortly.

Initially, I want to say that the Senate Standing Committee on Legal and Constitutional Affairs delivered a report in March 2009 and provided details in that report with respect to our views on this bill. It is primarily a technical and administrative bill which has the effect of allowing the Federal Court of Australia to exercise indictable criminal jurisdiction which will be given to the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2009. As senators would know, that bill was subsequently passed, so now we are trying to put into operation measures that would allow that bill to be fully and properly implemented.

We held public hearings in Melbourne and Canberra over several days. I want to place on record my thanks to the Senate committee secretariat for their help and assistance and for their good work in delivering a tremendously well put together report. I particularly want to thank the Secretary, Peter Hallahan,

and Monica Sheppard and Cassimah Mackay for their work. This is a really good example of where Senate committees work tremendously well. We delivered a report with eight recommendations and those recommendations in substance have now been taken on board by the government. The government has listened, has responded to that report and has amended the bill accordingly. I want to place on record my thanks to the government for that response and also to the other members of the Senate committee for their deliberations.

The report raised two areas of particular concern. These were the terms in the bill regarding the abrogation of privilege and the issue of bail. With respect to the first issue of pretrial disclosure, the words used in the initial bill were ‘the basis of taking issue’. These would have required the accused to provide further and better particulars rather than to simply say, ‘No, we don’t support the views of the prosecution.’ They would have had to provide further and better particulars regarding the details of their defence. Clearly that is contrary to the common law; it is contrary to the principles that have been espoused in our courts over decades. In relation to the presumption of innocence and the presumption of bail, even with respect to cartels, the government initially wanted to reverse the onus of proof, notwithstanding that these are very serious matters regarding criminal cartels under the Trade Practices Act. Nevertheless, the principle of innocent until proven guilty is very important. It is an age old one that we hold dear here in Australia. In short, the report’s recommendations have been adopted in substance, and for that we thank the government.

The other aspect of this bill concerns the Federal Court and the government’s plans to effectively abolish the position of the Federal Court registrar in Tasmania. This is a very serious matter. It has been brought up many

times in this place. Indeed, it was brought up during budget estimates over a period of many months. As I indicated last week in the Senate, I personally raised this matter with the Attorney-General on his visit to Tasmania last month and I also wrote to him on 10 August 2009. Just last week I received a response—and that response was very disappointing. It confirmed on record the government’s wish to proceed with their plans. The government indicated that they had received advice from the Chief Judge of the Federal Court and that they were acting on that advice. They sent a copy of that letter to Luke Rheinberger and Martyn Hagan of the Law Society, to Senator George Brandis and to the Tasmanian Liberal senators—Senator Eric Abetz, Senator Richard Colbeck, Senator Parry and Senator Bushby—and expressed their views. They also outlined some of the other benefits or initiatives that have been undertaken in Tasmania. Frankly, that is still not good enough. There is strong support for the second reading amendment moved by Senator Abetz, which states:

- (a) at least one Federal Court Registry in each state is staffed on a full-time basis; and
- (b) the complement of staff in each such Registry includes a full-time Registrar.

This is consistent with the amendment foreshadowed by Senator Bob Brown, and I strongly support it.

I flag that a bill is coming our way in the not too distant future, and that is the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009. Our committee is deliberating on that bill; in fact, we are due to report on it tomorrow. Our views will be set out in that report when it is delivered tomorrow. If the government does not respond to the bill and does not do the right thing when it is introduced into this place—that is, if it does not treat Tasmania in the same way that it treats every other state and if it does

not ensure the longevity of the Federal Court Registry in our state—then, as I have said previously, watch this space. We are putting the government on notice that they should fix this.

I also want to flag the correspondence and communications that I have had with the Law Society of Tasmania. I thank them. They are totally committed to the future of the Federal Court Registry in Tasmania and to it being fully serviced with a district registrar. In their correspondence to me, they say that they strongly oppose the government's plans because they will have a significant and deleterious impact on the operations of the Federal Court in Tasmania. They also say that the review that the court has undertaken recommends the abolition of the district registrar in Tasmania and its replacement with services offered from Victoria. That is not good enough. It is not good enough for Tasmania to have its services provided from Victoria. As much as we love our Victorian cousins, that is not good enough. They say that it is wholly unacceptable and place on record their strong objections.

Tasmania is a state of the Federation and, without the presence of a legally qualified registrar in the Tasmanian Registry, the Federal Court will be paying no more than lip service to the Tasmanian community. In fact, they refer to section 34 of the Federal Court of Australia Act 1976. I draw this to the government's and, in particular, the Attorney-General's attention. Section 34 requires the establishment of a registry in each state. Also, section 18N requires that there be a district registrar for each district registry. Whether there is a breach of the law here, I do not know, but we will investigate that. I note that they have made a submission to the access to justice inquiry, which is a Senate Legal and Constitutional Affairs References Committee inquiry. We will have a good look at that. I look forward to a very serious

consideration of their submission and its merits. The government have talked about the annual of savings of \$200,000. That is what they say, but according to the Law Society the review was superficial and deeply flawed.

They say they have consulted widely. Frankly, with respect to the consultations we have had, there are so many people in Tasmania who are opposed to the government's plans that there are too many to list today. In fact, I note that the retiring federal member for Denison, Duncan Kerr, opposes the government's position with respect to their plans for the Federal Court in Tasmania. On behalf of the Tasmanian Liberal Senate team and the coalition, I say we will be supporting the second reading amendment moved by Senator Abetz. We associate ourselves with the views of Senator Bob Brown, noting that we want to sort this matter out and get a result. I hope that we can. I hope the government listen. We have given them plenty of opportunities, but watch this space—we will not give up. We will ensure that Tasmanians are not treated like second-class citizens. I thank the Senate.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (5.15 pm)—I concur with the sentiments of the speeches we have just heard. I will come to those in a moment. The Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 provides the Federal Court with jurisdiction to hear indictable criminal offences relating to serious cartel conduct. It sets up a procedural framework to allow the Federal Court to exercise new powers granted by the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008. The bill creates two criminal offences, which relate to price-fixing and restricting outputs in the production and supply chain, allocating customers, suppliers or territories and bid-rigging by parties which would oth-

erwise be in competition with each other as well. The bill does not remove the current jurisdiction from state or territory courts and it is in addition to the powers of these existing jurisdictions. So the Greens will be supporting this legislation.

On another matter I disagree with my Tasmanian colleagues from the coalition. It needs to be said first that I am very disappointed that the government has decided not to take the opportunity to amend this legislation to ensure that the Federal Court registrar remains with the Federal Court registry in Hobart. The intention of the court is to remove the registrar, effectively to Melbourne. That will leave Tasmania as the only state in the Federation which does not have a registrar. The position is extremely important. It is as important to Federal Court matters in Hobart as it is to Federal Court matters in Adelaide, Perth, Sydney or wherever else. It is not acceptable to me or to any of my colleagues, at least in the coalition—apparently it is acceptable to Labor colleagues in this place—that the registrar should be being removed from Hobart. This brings me to the amendment which I will put before the committee. That amendment would add a clause saying that:

The Governor-General—  
effectively the government—

shall cause at least one Registry in each State to be staffed on a full-time basis, and for the complement of staff in each such Registry to include a full-time Registrar—

to make it clear that no state—and in this case it is Tasmania which is being singularly picked out—will be deprived of its registrar. The amendment, as I have brought it forward, ought to have had the support of the opposition, in view of the fact that the government will not support the Hobart registrar, and I will tell you why. The opposition amendment, which Senator Abetz moved, on

the face of it purports to do the same thing. We heard Senator Abetz read out his amendment when he moved it. I will go again:

At the end of the motion, add:

but the Senate calls on the Government to ensure that:

(a) at least one Federal Court Registry in each state is staffed on a full-time basis; and

(b) the complement of staff in each such Registry includes a full-time Registrar.

It is very similar to my amendment, but with one difference: it ‘calls on’ the government to do that whereas my amendment ‘requires’ the government to do it. And we know that the government is not going to do that. So that second reading amendment will become ineffective, vacuous, an exercise in failure. The good senators who have just spoken have indicated that the government has said that it will not accept such an amendment. I ask you: what is the role of the Senate if we are going to be suborned by the government in that way? We might as well all go home. I do not accept it for a moment.

Senator Abetz earlier indicated coalition support for my proposed amendment but said that it would mean that the bill would be delayed. In other words, the amendment would go back to the House of Representatives, where the government would have to consider it. That is the normal course of events in this parliament. But to say that it would be delayed—really? The bill we are dealing with was introduced to the House on 3 December last year. So we are 10 months down the line. In fact, it did come into this place in February and, as we have just heard, a committee looked at it. It has been in this parliament for 10 months and the government has said to the Liberal Party members opposite, ‘If you support that Greens amendment, there will be a delay to the bill.’ The Liberal Party have said, ‘Well, we won’t then.’ I

mean, really, what is going on here? I find the position now taken by the coalition totally unsatisfactory.

The Senate has the right to amend legislation. That is the constitutional power we have. The Senate was set up to represent the interests of the states. We all know that those interests have been subjugated to the interests of parties as this parliament has evolved in the last century or more. But here is an issue which is very germane to my home state of Tasmania, from where not just two—and Senator Milne will be supporting this amendment, so there will be two—but 10 other senators come. On this occasion, I would have thought they would be supporting the state and ensuring it is not treated differently from the other states when it comes to this important matter of having a registrar at the Federal Court.

Senator Abetz, though, says, 'It may delay the bill.' He says this after 10 months! Really, that is unacceptable. Senator Abetz and his fellow senators on the other side understand that a second reading here—and I will support that, no trouble—has no effect. The good senator says, 'I'll wait till the next bill, and, if Senator Brown moves it, we'll support that one.' I will move this amendment to the next bill that comes up; he named the bill. But, in 10 months time, after the next election and after the registrar has gone, you know what the government is going to say: 'This will delay the bill. We cannot have that.' We are going to have our coalition colleagues saying: 'We'll wait till the next bill.' I cannot believe the naivety of the position taken by Senator Barnett and Senator Abetz. It is better than the position taken by the Labor senators from Tasmania, who have completely collapsed and are not even present for this debate, but it is a position of considered failure and obsequiousness to a process that, obviously, Senator Abetz did not understand.

After 10 months, this bill can withstand an amendment, and the amendment that I will put in the committee stage ought to be supported. I ask my colleagues in the coalition to reconsider this position. I predict that the bill that Senator Barnett was speaking about—which is going to be reported upon tomorrow and which will only come into this house on a timetable set by a government that has taken 10 months to get this bill here—is very unlikely to see the light of day this year as far as Senate debate is concerned. I ask the coalition to very seriously reconsider their withdrawal of support for the Greens amendment. If they do not, the pattern is one of destiny to failure and the loss of the registrar from the Hobart office.

I will introduce this amendment again, but the circumstances will not be different; they will be the same. We ought to be dealing with this now, while this legislation is before us and while we can take action. I predict that the government is not going to hold up this bill over the retention of the registrar in Hobart. The government would accept this amendment. It would be very injudicious of it not to accept it. I cannot understand why the coalition has gone to water on this, and I ask the coalition to reconsider. We will support the second reading and we will support Senator Abetz's non-directive second reading amendment, but I ask the coalition to reconsider its withdrawal of support for the Greens amendment in committee, because that is directive and will require the government to retain the registrar.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (5.26 pm)—I thank the contributors to this debate. The Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 is a very important piece of legislation. I think it is

very important to me to explain what this bill is all about for those listening to the debate. The bill sets up the procedural framework to ensure that the Federal Court can exercise the criminal cartel jurisdiction that will be given to it under the Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2008. These two pieces of legislation are a measure of the government's commitment to dealing with serious cartel conduct. Not only is the government enacting new criminal offences with heavy penalties; we are giving the Federal Court, which has the specialist expertise in dealing with cartel conduct, jurisdiction to deal with those offences. The government are also giving that court the powers and procedures it will need to exercise the new jurisdiction.

The bill contains a comprehensive and balanced set of provisions that will give the Federal Court the full range of powers needed to run a criminal trial, from the pre-trial proceedings right through to bail, empanelling juries, conducting trials and hearing appeals. The bill is the product of extensive consultation with key stakeholders. The procedural provisions are based on the best features of existing state and territory law and will allow the Federal Court to apply consistent criminal trial procedures, regardless of where the trial is held. The Senate Standing Committee on Legal and Constitutional Affairs described the bill as 'essentially well drafted and sound' but was able to identify some areas where there was room for further improvement. The government took those comments into account and has endeavoured to meet the concerns raised by the committee. On behalf of the government, I thank the committee for its report. In due course, I will be moving government amendments to give effect to the committee's recommendations. The recommendations of the committee have all been accepted, except where the recommendation would undermine

the intended operation of a provision in the bill or reduce, rather than increase, the rights given to an accused person.

I will respond now to the issues raised by some of the speakers. The government is not supporting Senator Abetz's amendment for the simple reason that it is completely unrelated to the substance of the bill, which is to confer criminal jurisdiction on the Federal Court for cartel offences. Further, an amendment that directs the courts as to how they should manage their resources is completely inappropriate. It is a long-held principle, accepted by both sides of politics, that federal courts are self administering and that it is their responsibility to determine how to apportion their total appropriation; the parliament should not seek to second-guess the way the court chooses to expend its resources.

There is already a legislative requirement that the court have a registry in every state and territory to ensure that court services are provided to the Australian people. As a result of this requirement, it is not the case that the Tasmanian registry will close. While registrar services will be provided from other Federal Court registries, three staff will continue in the Tasmanian registry in a customer service role. In fact, the court advised that as of 11 September there were only nine active cases before judges and six cases before the registrar in the Federal Court's jurisdiction in Tasmania.

The government understands that this is an issue of great importance for the Tasmanian legal profession and for the people of Tasmania, and I respect the fact that the Tasmanian senators have come here and argued the case today. But, particularly as the removal of the district registrar would mean that Tasmania does become the only state in the Commonwealth without a Federal Court registrar, the government is keen for the



courts to continue to explore more efficient ways of providing legal services to the Australian people while maintaining the quality of services. The court has provided assurances that it will ensure that the court continues to maintain an excellent level of service in Tasmania. The Attorney-General has been advised by the Chief Justice, the Hon. Michael Black AC, that there is no backlog of cases in the court in Tasmania and that the time taken to finalise applications in Tasmania is actually better than the national average. Nevertheless the government is committed to ensuring that the people of Tasmania have access to high-quality legal services. In October the Attorney-General announced the appointment of the Federal Magistrate to the Tasmanian registry of the Federal Magistrates Court.

The challenge that we have before us though is that providing better access to justice is not simply about providing more resources to courts but ensuring that disputes can be resolved quickly and efficiently, preferably before they even reach court. So, in 2009-10 more than \$1 million has been allocated to community legal centres in Tasmania under the Commonwealth Community Legal Services Program and in May 2009 the Attorney-General also allocated additional one-off funding of more than \$170,000 to help community legal centres in Tasmania to enhance their services. This was in addition to more than \$370,000 in additional one-off funds that the Attorney-General approved in April 2008 to assist community legal centres in Tasmania to better serve their clients. Also, under the Family Relationship Services Program the Attorney-General's Department is providing around \$5.8 million of funding annually to community based organisations in Tasmania to provide a range of family relationship services. These include the family relationship centres, childrens contact services, post-separation cooperative parent-

ing services, family dispute resolution services, including regional family dispute resolution, the Parenting Orders Program and the Supporting Children after Separation Program. Again, the Attorney-General sought proposals from community legal centres across the country, including Tasmania, to trial partnerships with family relationship centres in order to better support people dealing with relationship breakdown. Family relationship centres are located in Hobart and Launceston so there is potential for more than \$100,000 to be made available to support the partnership trial in Tasmania. The minister will be making a decision on the successful pilot proposal shortly.

I assure the Senate that the Rudd government is committed to ensuring that all Australians have proper access to justice and the Attorney-General will continue to closely monitor the services provided in Tasmania. If it is the case in six months time that there are service problems in Tasmania in relation to the registry, the Attorney-General has said that he will review this matter again. I commend the bill to the Senate.

**The ACTING DEPUTY PRESIDENT (Senator Forshaw)**—The question is that the second reading amendment moved by Senator Abetz be agreed to.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

#### **In Committee**

Bill—by leave—taken as a whole.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (5.34 pm)—I table two supplementary explanatory memoranda relating to the government amendments to be moved to this bill. The memo-

randa were circulated in the chamber on 13 May and on 16 September 2009.

By leave, I move government amendments (1) to (29) on sheet PM308:

- (1) Schedule 1, item 2, page 11 (lines 4 and 5), omit “, or alternatively, order pre-trial disclosure (see section 23CD)”, substitute “order pre-trial disclosure (see subsection 23CD(1))”.
- (2) Schedule 1, item 2, page 11 (line 15), omit “section 23CD”, substitute “subsection 23CD(1)”.
- (3) Schedule 1, item 2, page 12 (line 1), omit the heading to section 23CD, substitute:
 

**23CD Pre-trial and ongoing disclosure**
- (4) Schedule 1, item 2, page 12 (line 2), before “After”, insert “(1)”.
- (5) Schedule 1, item 2, page 12 (after line 19), at the end of section 23CD, add:
  - (2) The accused must give the following to the prosecutor as soon as practicable after the accused’s first pre-trial hearing before the Court in relation to the indictment:
    - (a) if at the trial the accused proposes to adduce supporting evidence of an alibi—notice of particulars, prepared in accordance with the Rules of Court, of that alibi;
    - (b) if at the trial the accused proposes to adduce supporting evidence that the accused was suffering from a mental impairment (within the meaning of section 7.3 of the *Criminal Code*)—notice of particulars, prepared in accordance with the Rules of Court, of that impairment.

Note: A party may also be required to disclose additional information as a result of other laws (for example, subsection 44ZZRO(2) of the *Trade Practices Act 1974*).
- (6) Schedule 1, item 2, page 13 (line 33), before “The”, insert “(1)”.
- (7) Schedule 1, item 2, page 14 (line 5), omit “basis”, substitute “general basis”.
- (8) Schedule 1, item 2, page 14 (line 11), omit “basis”, substitute “general basis”.
- (9) Schedule 1, item 2, page 15 (lines 1 to 8), omit paragraphs 23CF(i) and (j).
- (10) Schedule 1, item 2, page 15 (after line 12), at the end of section 23CF, add:
  - (2) Paragraph (1)(a) and subparagraph (1)(b)(ii) do not require the accused to disclose details of the accused’s proposed defence.
- (11) Schedule 1, item 2, page 15 (line 23), omit “23CF(k)”, substitute “23CF(1)(k)”.
- (12) Schedule 1, item 2, page 16 (line 20), omit “section 23CD”, substitute “subsection 23CD(1)”.
- (13) Schedule 1, item 2, page 16 (line 23), omit “subsections (2) and (3)”, substitute “subsection (2)”.
- (14) Schedule 1, item 2, page 17 (line 3), omit “or”.
- (15) Schedule 1, item 2, page 17 (lines 4 to 6), omit paragraph 23CH(2)(f).
- (16) Schedule 1, item 2, page 17 (lines 12 to 14), omit subsection 23CH(3).
- (17) Schedule 1, item 2, page 18 (lines 18 and 19), omit “A copy or details of any information, document or other thing is not required to be given under an order under section 23CD”, substitute “Nothing in this Subdivision requires a copy or details of any information, document or other thing to be given”.
- (18) Schedule 1, item 2, page 20 (lines 1 to 34), omit section 23CL, substitute:
 

**23CL Effect on legal professional privilege and other privileges and duties etc.**

*Litigation privilege not an excuse for failing to comply with pre-trial disclosure requirements*

  - (1) A party is not excused from disclosing material under this Subdivision on the basis of litigation privilege claimed by the party in relation to the material.

Note: The party can still be excused from disclosing material on the basis of advice privilege (that is, privilege that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 118 of the *Evidence Act 1995*).

- (2) This Subdivision does not otherwise:
- (a) abrogate or affect the law relating to legal professional privilege; or
  - (b) amount to a waiver of legal professional privilege.

Note: This means, for example, that legal professional privilege will apply for the trial.

*Other privileges and duties unaffected*

- (3) This Subdivision does not abrogate or affect:
- (a) the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or
  - (b) the law relating to public interest immunity.
- (4) This Subdivision does not abrogate or affect the law relating to any duty of a person investigating the accused to ensure that information and other things are disclosed to the prosecutor or the accused.

*Definitions*

- (5) In this section:
- legal professional privilege*** includes privilege (however described) under Division 1 of Part 3.10 of the *Evidence Act 1995*, or a similar law of a State or Territory.

***litigation privilege*** means privilege (however described) that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 119 of the *Evidence Act 1995*.

- (19) Schedule 1, item 2, page 21 (lines 1 to 38), omit section 23CM, substitute:

### **23CM Consequences of disclosure requirements**

*Orders to ensure non-compliance does not unfairly affect the other party*

- (1) The Court may make such orders as it thinks appropriate to ensure that:
- (a) any failure by the prosecutor to comply with an order under subsection 23CD(1) does not cause unfairness to the accused; and
  - (b) any failure by the accused to comply with an order under subsection 23CD(1) does not prejudice the prosecutor's ability to efficiently conduct the prosecution.
- (2) However, the Court must not make an order under subsection (1) if it would result in an unfair trial.

*Certain evidence cannot be adduced at trial unless there is earlier disclosure*

- (3) If the accused fails to comply with subsection 23CD(2) in relation to an alibi, the accused may only adduce evidence of the alibi with the leave of the Court.
- (4) If the accused fails to comply with subsection 23CD(2) in relation to a mental impairment (within the meaning of section 7.3 of the *Criminal Code*), the accused may only adduce evidence that the accused was suffering from the impairment with the leave of the Court.

- (20) Schedule 1, item 2, page 22 (lines 4 and 5), omit "in accordance with an order under section 23CD", substitute "under this Subdivision".
- (21) Schedule 1, item 2, page 22 (line 12), omit "order under section 23CD was made", substitute "entrusted person obtained the protected material".
- (22) Schedule 1, item 2, page 23 (lines 2 and 3), omit "order under section 23CD was made", substitute "entrusted person obtained the protected material".
- (23) Schedule 1, item 2, page 23 (lines 10 and 11), omit "some or all of the material disclosed in accordance with an order under

section 23CD”, substitute “any or all of the material disclosed under this Subdivision”.

- (24) Schedule 1, item 2, page 27 (lines 8 to 20), omit section 23DG, substitute:

**23DG Jury roll for a jury district**

- (1) The Sheriff may prepare a written jury roll for a jury district.
- (2) A jury roll prepared under subsection (1) is not a legislative instrument.
- (25) Schedule 1, item 2, page 32 (lines 1 to 6), omit subsection 23DM(2) (including the notes), substitute:

- (2) The *jury list* consists of:
- (a) the names and addresses; and
- (b) if readily available to the Sheriff—the dates of birth and sex; of persons that the Sheriff selects from the jury roll for the applicable jury district.

Note 1: The jury list may be supplemented under subsection (5).

Note 2: The Sheriff may remove a person’s name from the jury list under section 23DO.

- (26) Schedule 1, item 4, page 82 (line 16), omit “significant”, substitute “material”.

- (27) Schedule 1, item 4, page 82 (after line 30), after subsection 58DB(2), insert:

- (2A) An accused applying for bail during indictable primary proceedings is entitled to be granted bail during the proceedings in relation to an offence against either of the following sections of the *Trade Practices Act 1974*:

- (a) section 44ZZRF (making a contract etc. containing a cartel provision);
- (b) section 44ZZRG (giving effect to a cartel provision);
- unless the Court decides otherwise after considering the matters mentioned in subsection (2).

- (28) Schedule 1, item 4, page 83 (line 22) to page 84 (line 3), omit section 58DD, substitute:

**58DD Bail to be stayed pending appeal**

- (1) If:
- (a) the Court makes a bail order; and
- (b) the prosecutor requests the Court to stay the bail order pending appeal; the bail order is stayed by force of this section for 48 hours.
- (2) If a notice of appeal from the bail order is filed within that 48 hours, the stay of the bail order continues by force of this section until:
- (a) the appeal is finally disposed of; or
- (b) the prosecutor withdraws the appeal in accordance with the Rules of Court; or
- (c) a Full Court orders, under this subsection, that the stay be set aside; whichever happens first.
- (3) If the prosecutor makes a request under paragraph (1)(b), the appeal from the making of the bail order must be dealt with as quickly as possible.
- (4) If a bail order is stayed by force of this section, the Court must, by warrant of commitment, remand the accused in custody for the duration of the stay.
- (5) A warrant of commitment under subsection (4) may be signed by any Judge, the Registrar or any Deputy Registrar, District Registrar or Deputy District Registrar of the Court.
- (29) Schedule 1, item 21, page 103 (line 2), omit “section 23CD”, substitute “subsection 23CD(1)”.

The government also opposes schedule 1 in the following terms:

- (30) Schedule 1, item 32, page 105 (lines 21 to 24), **to be opposed**.

I will speak briefly to these amendments so that we can understand what we have in front of us. There were several issues raised during the Senate inquiry into this bill, which the Attorney-General has taken into account in drafting these amendments. The particular issues, if I could work through them, are as

follows. In response to recommendation 1 of the committee report, the proposed section 23CF would be amended to clarify that the accused is only required to give a general indication of their reasons for disputing the prosecution case against them and is not required to disclose the details of a proposed offence. This addresses the committee's concern that there is no infringement of the traditional rights of the accused. It would ensure that the appropriate balance between the rights of the individual and the public interest by requiring a meaningful disclosure by the accused without disclosing the details of any proposed offence, other than alibi or mental impairment.

It is very important to have a robust and effective pre-trial regime, given that the Federal Court will be dealing with trials for serious cartel offences. These are going to be long and complicated trials which will severely tax the resources of the court, and of course the resilience of the jury. The Federal Court must be given the tools it needs to ensure, as far as possible, issues are addressed and resolved before the case goes to trial so the trial proceedings can concentrate on matters which are genuinely in dispute and not waste time and effort on matters which are not really contested. It is appropriate in this context to impose a requirement on an accused person to say what matters are in dispute and, in general terms, why they are in dispute. That is not an unreasonable step. The bill does not take the next step, which would be to require the accused to give particulars of their proposed defence. That would be a major change to long-recognised rights of accused persons. That does not form any part of this legislation.

The second substantive amendment responds to recommendation 2 of the committee report by amending proposed subsection 23L to clarify that there is no general removal of legal professional privilege. Such

privilege is temporarily overridden, in limited circumstances, at the pre-trial stage. It clarifies the effect of an order of the court requiring the accused to disclose a limited range of documents, such as draft witness statements and expert reports, but not legal advice. This is a limited and focused change to the traditional rules dealing with legal professional privilege. It will avoid any risk that a party who is required to disclose a document in the course of the pre-trial proceedings will be able to refuse to disclose it on the technical grounds that the document was prepared for use in the proceedings and is accordingly covered by litigation privilege. That is an important measure designed to protect the effectiveness and the integrity of the pre-trial process. However, it really does no more than make it clear beyond doubt that, if there is a requirement on a party to disclose a document in the pre-trial process, that obligation overrides any technical claim based on litigation privilege. The provision will have a minimal impact on accused persons because of the limited nature of the material which an accused person can ever be required to disclose at the pre-trial stage. As the bill stands, the only material an accused can ever be ordered to disclose is a copy of any expert report the defence intends to rely on at trial and details of any defence based on alibi or mental impairment. Even then, an accused person will still be able to claim privilege over a document if the document contains legal advice and the document is covered by advice privilege. The bill also makes it clear that the fact that a document has been disclosed in the pre-trial process does not amount to a waiver of any privilege that may apply to it. An accused person will still be able to rely on litigation privilege in other proceedings or at the trial.

In responding to recommendation 3 of the committee report, the Attorney-General has sought an amendment to proposed section

23CM to clarify the consequences of non-compliance with disclosure requirements. The amendment provides a discretion for the court to make such orders as it thinks appropriate to ensure full compliance with any disclosure order. The court's discretion must not be exercised if to do so would result in an unfair trial. If the accused fails to give notice of a proposed defence of alibi or mental impairment, evidence of such matters may only be adduced with leave of the court. The Attorney-General has not accepted the committee's recommendation to allow comment by the trial judge of failure to comply with a disclosure order, as this may impact adversely on the accused. If the bill were changed as proposed it would be open to the judge or prosecutor to comment to the jury when an accused has failed to comply with a pre-trial obligation, and there would always be the risk that the comment could suggest that the accused failed to comply because of a consciousness of guilt.

The final amendments, in relation to bail—relating to schedule 1, item 4—respond to recommendations 6 and 7 of the committee report, where section 58DA of the bill will be amended to clarify the test for a further application for bail by replacing the word 'significant' with the word 'material'. Those words are generally synonymous, but the amendment will avoid any doubt about the intention under the bill. The Attorney-General also proposes to make it very clear that there is a presumption in favour of bail in relation to a serious cartel offence.

I will briefly touch on recommendations 4 and 5 of the committee report. Recommendations 4 and 5 have not been accepted. Recommendation 4 would mean that the court would only be able to receive additional evidence on appeal if the evidence was 'fresh' in the sense that it was not available at the trial. The problem is that there are situations where an appeal court should properly re-

ceive evidence that could have been led at the trial. An extreme example is where a convicted person argues that the defence counsel was incompetent and failed to call evidence that should have been called at the trial. So the recommendation would actually reduce the appeal rights that have traditionally been available to a convicted person.

Recommendation 5 of the committee would have meant that a party who wanted to appeal against an interim ruling made by a trial judge would be able to apply to the full court for leave to appeal. At present a party can only appeal against an interim ruling if they get leave from the judge who made the ruling. An appeal against an interim ruling has the potential to either delay or fragment the trial process. The current provision is designed to ensure that appeals are only ever brought against interim rulings in exceptional cases where the judge who made the rulings is satisfied that there is a proper basis for the issues to be tested on appeal. That recommendation would have given scope for a well-resourced defendant to delay a trial by making repeated applications for leave to appeal against rulings made in the course of the trial.

In relation to amendments (24) and (25), the first of these amendments will clarify the process of preparing jury roles and lists to avoid an argument that the bill assumes that certain regulations will be made before they have been approved. The second amendment is consequential and provides that alternative sources of information can be used if the regulations are not made. This is another issue that came to light when the bill was reviewed following the committee's report.

Amendment (8) will make it clear that the prosecution does not have the power to give the court directions if a bail order is stayed pending appeal. This is another issue that came to light during the committee's consid-

erations. It would not be appropriate for the prosecution to give directions to a judge, and the bill will be amended to make it clear that the provisions do not have that effect.

**Senator BRANDIS** (Queensland) (5.44 pm)—I indicate on behalf of the opposition that the amendments moved by the government, as I mentioned in my second reading speech, are improvements to the legislation. They follow deliberations of the Senate committee and they have the opposition's support.

**The TEMPORARY CHAIRMAN** (**Senator Forshaw**)—The question is that the amendments moved by minister, numbered (1) to (29) on sheet PM308, by leave, be agreed to.

Question agreed to.

**The TEMPORARY CHAIRMAN**—The question now is that item 32 of schedule 1 stand as printed.

Question negatived.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (5.47 pm)—I move government amendment (1) on sheet CJ208:

- (1) Schedule 1, item 3, page 56 (lines 5 to 29), omit subsections 30AE(4) and (5), substitute:
  - (4) In relation to criminal appeal proceedings, a single Judge (sitting in Chambers or in open court) or a Full Court may:
    - (a) join or remove a party to an appeal to the Court; or
    - (b) make an order by consent disposing of an appeal to the Court; or
    - (c) make an order that an appeal to the Court be dismissed for want of prosecution; or

- (d) make an order that an appeal to the Court be dismissed for:
    - (i) failure to comply with a direction of the Court; or
    - (ii) failure of the appellant to attend a hearing relating to the appeal; or
  - (e) vary or set aside an order under paragraph (c) or (d); or
  - (f) give directions about the conduct of an appeal to the Court, including directions about:
    - (i) the use of written submissions; and
    - (ii) limiting the time for oral argument.
- (4A) An application for the exercise of a power mentioned in subsection (4) must be heard and determined by a single Judge unless:
- (a) a Judge directs that the application be heard and determined by a Full Court; or
  - (b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.
- (5) The Rules of Court may make provision enabling an application of the kind mentioned in subsection (2), (3) or (4A) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

This amendment will make it very clear that the court can make interlocutory orders of its own motion in criminal appeal cases. The change was requested by the court in order to avoid any scope for doubt about the extent of the court's powers to manage the conduct of criminal appeals.

Question agreed to.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime

Minister for Social Inclusion) (5.48 pm)—On sheet CJ208, the government opposes items 60-63 in the following terms:

- (2) Schedule 1, items 60 to 63, page 110 (lines 6 to 27), **to be opposed.**

This amendment will remove an item which is no longer required in this bill. The item dealt with civil procedures before the court. A bill has subsequently been developed which deals comprehensively with civil procedures before the court. This bill is currently before parliament: Access to Justice (Civil Litigation Reforms) Amendment Bill 2009.

**The TEMPORARY CHAIRMAN**—The question now is that items 60 to 63 of schedule 1 stand as printed.

Question negatived.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (5.48 pm)—I move Greens amendment (1) on sheet 5932:

- (1) Schedule 1, page 112 (after line 23), after item 74, insert:

**74A At the end of section 34**

Add:

- (3) The Governor-General shall cause at least one Registry in each State to be staffed on a full-time basis and the complement of staff in each such Registry to include a full-time Registrar.

In moving this amendment, I have taken out the comma and the word 'for'. The effect of this amendment is to ensure that the intention of the court to remove the registrar from the Tasmanian office would be effectively disallowed. However, I begin by asking the government about the Federal Court of Australia Act 1976. I draw the government's attention to division 3, clause 18N: 'Personnel other than the Registrar'. Subclause (1) says:

In addition to the Registrar, there are the following officers of the Court:

- (a) a District Registrar of the Court for each District Registry ...

I ask the government if it has legal advice that that section does not require a registrar to be kept in Hobart.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (5.50 pm)—We have indicated that we are not supporting the Greens amendment. I addressed those issues when I spoke to Senator Abetz's second reading amendment. In relation to Senator Brown's specific question, I am advised that the registrar of the Victorian registry will hold the dual role of registrar for the Victorian and Tasmanian registers.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (5.51 pm)—That may well be tested because the legislation requires a district registrar of the court for each district registry. The clear intent of this legislation is that there be a registrar for the district registry and that it will not be somewhere else—a role carried out by somebody else. That said, the amendment I have brought forward addresses the position where the Chief Justice of the Federal Court and the court have decided to remove the registrar from the registry in Hobart to, we are told, save potentially \$200,000, leaving Tasmania with the only Federal Court registry which does not have a registrar. I earlier indicated the importance of that job. In fact, the minister in her submission corroborated my point by her assertion that the court in Hobart was functioning above par in terms of service to the legal community and, indeed, its clients.

We find that a review team was established by the court to look at what were called, rather pejoratively, the three lesser courts in Hobart, Canberra and Darwin. Of



course, the ACT and the Northern Territory are territories, not states, but the ACT's functions of the registrar have been transferred to Sydney and those of Darwin to Adelaide. What is interesting is that the review undertaken by the court, which looked at the so-called 'smaller' registries—that is the term—in Tasmania, the Northern Territory and the Australian Capital Territory, was undertaken, as it turns out, by Michael Wall, the New South Wales district registrar, Sydney being the recipient of the functions transferred from Canberra; by Sia Lagos, the Victorian district registrar, and Victoria will receive the registrar's duties from Hobart; and by Patricia Christie, the South Australian district registrar, and South Australia will receive the duties from the Northern Territory. A coincidence? Yes, perhaps, but what I submit here is that it is nevertheless interesting that the district registrars from the three recipient courts were those who were asked to look at this matter. The district registrar from Hobart was not asked to participate and nor were the district registrars from Queensland or Western Australia.

Four options were put up and the third option was recommended and then accepted by the court. If you look at the third option, it says:

Option 3 is therefore the review team's preferred model. This option would see all small registries managed by a local Registry Manager (formerly the DCS) and all legal work undertaken by staff in the relevant parent registry. Savings aside, advantages of this arrangement for legal work include the capacity to draw on a greater number of staff and a wider range of skills and expertise. Similarly problems associated with staff absences or planned and unplanned leave are minimised. The arrangement is also consistent with the more contemporary approaches to management structure given that it eliminates a layer of management and achieves a flatter organisational structure. In the longer term it will facilitate a more team-based approach to the management of

smaller registries (acknowledging that this already occurs to some extent already). One cost associated with the model would be increased travel costs, resulting from the need for legal staff and the [district registrar] from the parent registry to visit as required.

As a Tasmanian, I find that when you analyse that statement it is saying: we will have a flatter structure administered from Melbourne which flattens Hobart into the structure, and what we will save on the swings we will lose on the roundabouts because there will be increased travel costs.

Indeed, the review team went on to say it:

... understands that, should option 3 be adopted, the [Administrative Appeals Tribunal's] Registrar/CEO has indicated that the [Administrative Appeals Tribunal] legal/case conferencing work would most likely be undertaken by the [Administrative Appeals Tribunal] in Melbourne—

that is, the work from Tasmania. What we have is a dismantling of very important court and tribunal functions in Tasmania, and I predict more will come if this is permitted to occur. It is a very serious derogation of the court's responsibility to have a registrar as well as a registry in each of the states. It should not and cannot be allowed to proceed.

I would add, and my colleague Senator Milne will have something to say about this, that this is absolutely opposed by the legal community in Tasmania and, the more that is heard about it, by the Tasmanian community itself. That it will save money is, I think, a false premise. It will actually add to the expense of people travelling to Melbourne and back where they do not have to do that at the moment. It will cause disruption and create costs of all sorts, which come when you have to do business in another state capital rather than within your own state.

The government itself says that the court is working and facilitating the work for citizens at an above-par rate in Hobart and, curiously enough, seems to think that is an ar-

gument for dismantling it and transferring its functions to Melbourne.

**Senator Abetz**—That will then improve the figures.

**Senator BOB BROWN**—And, of course, wreck the great service that is being done in Hobart. That is what will happen. It is hog-wash.

Now that Senator Abetz is here, and I know he has had an important other matter to attend to, I again appeal to my Tasmanian colleagues to again consider supporting this amendment, because we are not going to get this opportunity for a long time to come. This bill has been before the parliament for 10 months. There is no argument for delay by the government—I do not accept the argument that if this amendment were to be passed it will go to the House and then the two houses of parliament will have to come to an agreement on it. My prediction is that the government will very quickly concede to keeping the registrar in Hobart because it is such a piffling amount that we are dealing with here and it is such an unimportant matter in terms of financial outcomes. Of course, the amendment does not add any impost to the current functioning of the court, and therefore the Senate is quite entitled to make it.

Senator Barnett indicated that there were other bills coming down the line. I do not think the government is going to see those bills come into this place this year or this side of the next federal election. It has taken 10 months for this bill to get to where it is. The two supplementary memoranda accompanying the changes to the bill were moved in this place in May. May, June, July, August, September: that is four months delay.

**Senator Abetz**—Be careful; that's against standing orders!

**Senator BOB BROWN**—Yes, I am being very discreet, Senator Abetz, in pointing out

that it was four months since those two supplementary memoranda came before the Senate. The government is saying, 'You can't have this amendment because it will delay by a day'—because that is all it would take—'this amendment going to the other place and being accepted.'

I say to Senator Abetz and the coalition that the government, if it succeeds in having this amendment turned down today, is simply going to be encouraged in its determination to get rid of the registrar in Hobart and to have the registrar go to Melbourne. Next thing, they will be closing the registry—that requires simply a change of legislation—and I do not think that process should be encouraged at all. This is the opportunity to save the registrar's position in Hobart. I hope the coalition will again come to support this.

**Senator ABETZ** (Tasmania) (6.02 pm)—Can I indicate to the Senate that a lot of what Senator Brown says is absolutely accurate. The decision by the government to go along with the Federal Court bureaucrats in downgrading the Hobart registry of the Federal Court is completely unacceptable and, in the long run, will clearly not improve the administration of justice. Nor will it assist in saving the moneys that are claimed.

Indeed, it is interesting to note that the Federal Court had over \$1 million to spend on rejuvenating one of its courtrooms in Hobart but it does not have enough money to have a fully-fledged registrar! It is like running a hospital and having all the latest equipment but not having any doctors in it. One has to wonder how those decisions and priorities were determined.

One has to wonder how the government has gone along with the Federal Court's decision-making in relation to the Hobart registry, given that the Hobart registry has the best figures—in relation to determination of matters, conclusion of matters et cetera—of

any registry in Australia. We were told by His Honour Chief Justice Black, in his letter in response to the original motion that Senator Brown and I cosponsored in this place, that the figures in Tasmania would actually improve rather than get worse as a result of getting rid of a full-time registrar. That is illogical, with great respect. It does not seem—I have to be careful because I have respect for judicial officers, especially a Chief Justice—that that sort of thought process has the necessary ingredient of logic within it.

If we can do so much more with less, why doesn't he try it at the Melbourne registry, the Sydney registry, the Adelaide registry, the Perth registry? Cut the registries to part-time and see if that improves the figures! Clearly, and with great respect, it was an argument without merit. I will be as neutral as I possibly can. Methinks the chances are that some bureaucrat within the Federal Court system wrote the letter and His Honour unfortunately placed his signature at the foot of the letter. But when the people of Tasmania are served up this sort of diet of nonsense—I will use that pejorative term—then you will not get their support in relation to that decision.

The issue that we as a coalition are confronted with—and I hear the merit of Senator Brown's argument; he and I have been, and I dare say will continue to be, on the same page in relation to this issue—and which exercises our minds is the nearly manic approach of Labor in relation to this proposed amendment. What we have been promised by Labor and the Attorney-General is that if this amendment—worthy as it is—gets carried, Labor will simply delay the introduction of the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill. And this bill is vital, as I understand it from the shadow Attorney-General, to ensure that we have the necessary regime in place to

deal with the criminalisation of cartel behaviour under the Trade Practices Act.

We as a coalition, taking an Australia-wide view, have to make a determination as to whether it would be appropriate to delay this particular piece of legislation in our quite justified pursuit of getting justice for the Federal Court registry in Hobart. We have come to the reluctant conclusion that, chances are, getting the criminal jurisdiction under way for cartel type behaviours under the Trade Practices Act should not be delayed. Can I say to the Attorney-General and to the senator, the parliamentary secretary representing the Attorney-General in this place: it does not crown the Attorney with any glory to say that he would be delaying the introduction of this criminal jurisdiction on the basis of I think at most a \$200,000 saving in the Hobart registry. To say that he would continually bounce the legislation between the two chambers and not allow it to be resolved for months on end I think shows an attitude which is now becoming more and more apparent from this Labor government—that is, absolute arrogance.

However, I am informed, and I am willing to take the government—I don't know why—on face value in relation to this, that there is the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 coming up as non-controversial legislation tomorrow. So we do have the legislation before us. We believe on balance that that legislation is the better vehicle for moving an amendment, given the quite inexplicable, dogged attitude by the Attorney-General. Of course that will necessitate that piece of legislation being taken out of the non-controversial list, but hopefully we should be able to debate it within the next sitting period before Christmas and actually have the amendment dealt with on that occasion.

If Senator Brown were to move the amendment he has moved today again in that legislation he can be assured of coalition support. That would then guarantee its passage. So the issue is whether we delay the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 today or wait for a month. We believe it could have been dealt with today, but due to Labor's dogged approach on this, which defies logic—just as the explanation provided by the Federal Court to this Senate defied logic—we have come to the reluctant position that we will not be supporting Senator Brown's amendment on this occasion.

I have explained the position of the coalition to the president of the Tasmanian Law Society during the course of this afternoon. Whilst it would be fair to say he would wish the amendment to be carried today, he does understand the reasoning and the rationale. He, of course, also understands the reasoning and rationale of the coalition in maintaining its support for a full registry facility in Hobart and our commitment to either move our own amendment or, if indeed, Senator Brown were to move an amendment to the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009, that we would support such an amendment.

The decision by the Federal Court, supported by the Attorney-General, in this quiet dogged manner I do not think covers the Attorney-General with glory. It does him no credit and it will see the diminution of justice services in Tasmania for no actual savings at all. I can assure the Federal Court and the government that this matter will be pursued further at estimates. I am sure we will see cost blowouts—unless, of course, they are able to hide certain figures with airfares and other things, because I cannot see how at the end of the day Labor will be able to justify this decision and the Federal Court will not be able to justify the decision.

To sum up for those listening in and wondering what this might all be about, the Federal Court determined to set up a committee to determine whether or not smaller registries could possibly be amalgamated into larger registries. Surprise, surprise, the Melbourne registrar was on the committee, and guess what? There was no recommendation that staff savings should be made in Melbourne. Somehow, strangely, staff savings could be made in Hobart, because there was an oversupply! When I asked at Senate estimates last time, 'Doesn't it indicate an oversupply of staff in the Melbourne registry if Melbourne staff can handle all the work being generated out of the Hobart registry?', I was given this bizarre response: 'Well, no.' Their arguments simply do not stack up. Either there is a surplus of workforce in the Melbourne registry that can then take over the work generated in Hobart or there is not. If there is not that surplus of workforce, surely it must mean and dictate that they will have to appoint extra staff in Melbourne to replace those that have been set aside in Hobart. That is the logic. It is pretty basic logic. What has happened in the past is, yes, there may have been a bit of a surplus capacity in Hobart, but that was very usefully used to assist the Melbourne registry at times of shortage, and therefore it balanced out exceptionally well. That is what we were told at estimates.

To now turn it around and suggest that we can somehow justify this change, courtesy of a Melbourne official sitting on a review which will increase his empire, is, I must say, not a good reflection by a body that supposedly administers justice. One would have thought that a body like that might actually understand that there is a substantial conflict of interest in having somebody preside or being part and parcel of such a review when the reviewer may be the beneficiary of a large empire. For all those reasons the Fed-

eral Court decision was wrong, the Chief Justice's attempted justification is wrong, and the Attorney-General's denial of the Senate's approach on this is wrong. We as the coalition will fight to ensure that full Federal Court registry facilities are maintained in Hobart. We will seek to do that through the next piece of legislation which we have been advised by the government will be coming up before us very shortly.

**Senator MILNE** (Tasmania) (6.15 pm)—I note with interest that Senator Abetz has just said that the government has not covered itself in glory with this decision. I would agree with that. Certainly the Tasmanian Labor senators, Senators Sherry, O'Brien, Polley, Carol Brown and Bilyk, ought to be in here defending Tasmania's right to have what it ought to have under the Federal Court of Australia Act 1976—that is, not only a registry office but a registrar as well. I would note that Senator Abetz has not covered himself in glory, either, with the disingenuous reason he has given for not supporting an amendment which would actually 'require' the government to maintain the registrar, not just 'call on' the government to do so. He knows as well as everyone else in this Senate that that will not result in anything other than the government saying no. I notice that Senator Abetz said that he was prepared to take the government at face value. He has been taking people at face value pretty often recently. It blew up in his face quite badly the last time he took someone at face value. I would suggest that he consider it a bit more carefully when he says he will take the government at face value.

Does anyone in this Senate seriously believe that, if an amendment were to be passed in the Senate which would require the government to uphold the sentiment behind the Federal Court of Australia Act 1976, they would come back here after going to the House of Representatives and hold up criti-

cal legislation for four months, over a sum of \$200,000? Of course not. It is absolutely disingenuous to say that the coalition will support this amendment if it is brought forward in another bill, because that bill will not be considered before Christmas—long after, if this process continues as it is currently going, the position in Hobart has gone.

I note with interest the minister's response. It demonstrates that she and the government know full well that they are acting contrary to what the law intended. As Senator Bob Brown pointed out, section 34 of the Federal Court of Australia Act requires the establishment of a registry in each state. Section 18N requires that there be a district registrar for every district registry. Therefore it is very clear. The sentiment of the act says you have not only the registry but the registrar. The minister's response was, 'That is why we are now going to title the registrar in Victoria as the registrar of Victoria and the registrar of Tasmania.' So the letter of the law will be fulfilled in that the registry will have a registrar. But in my view it is a complete sleight of hand. You know exactly what you are doing if you suddenly declare the registrar in Victoria to be the registrar of Tasmania and the registrar of Victoria in order. You know that this would be tested under the law otherwise, and that is why you have suddenly put in that position. I would like to know whether the registrar of Victoria and Tasmania is going to get a pay rise, because he or she will now be a registrar for two jurisdictions and not one. I will be interested to know about that.

The second thing I would like to know about is the claim that the saving will be \$200,000. I would like to know what the cost of providing the same services from Victoria is calculated to be. If the government is making a decision to do this and take away the registrar's position from Tasmania, I would like to know what the cost associated with

providing those services from Victoria will be. I would think that in the end it will actually be in excess of \$200,000.

But actually this is more an issue of principle than money, because Tasmania is a state of the Commonwealth. We are part of the Federation. We are the only state whose registrar the government and these Labor senators from Tasmania in the states' house of this parliament are prepared to ditch. It would be wrong, as the Law Society of Tasmania has pointed out, in principle for a federal institution not to have an effective presence in each state capital of the Federation. That is the view of the Tasmanian law society. It is the view of the Tasmanian Greens senators. It is the view of the coalition senators as well, except that the coalition wants to express it as a request and not as an insistence in this federal parliament. It is a matter that should be insisted upon because we are part of this Federation.

I heard earlier this idea of the parent registry, as opposed to the child registry. So now, instead of Tasmania being an equal part of the Federation, Victoria becomes the parent and Tasmania becomes the child, the subset of Victoria. It is a flatter administrative structure to get rid of a registrar in Tasmania. I am sure there would be people who think that it would be a flatter administrative structure to get rid of Tasmania as a state altogether. That would be the logical step, if you are going to follow this principle that the government wants to embark upon, which would take away what is an effective presence in a state capital for a federal institution. That is the reality of what the government has decided to do here, and it is wrong.

Equally, the legal profession in Tasmania were not consulted about this decision, and that is again a sleight on the legal profession in Tasmania. As my colleague Senator Bob Brown pointed out earlier, if we end up in a

situation where the Administrative Appeals Tribunal also moves its operations to Victoria then we will to see a huge amount of cost incurred by other people having to go to Victoria when they should be able to have their matters heard in their home state.

This decision is wrong. It is wrong and it appears to me that, as the Law Society has also pointed out, the review is superficial and deeply flawed. It did not consult the relevant stakeholders. It contains little analysis and there are no figures to support either the \$200,000 saving or what the costs of providing the same service from Victoria will be. It is clear that the minister must tell us that if she is insisting that this is some sort of cost-saving matter. I think you should also recognise that a previous review recommended the retention of the Tasmanian registry of the Federal Court in its current form. That review was a much more thorough assessment and actually included consultation with the appropriate stakeholders. So I think it is entirely appropriate that we deal with the matter now, before the position is removed from Tasmania. It will be much harder after the position has gone to have it restored to its current form. I think it is critical that we go down the path of supporting this amendment now.

Senator Abetz earlier this week moved an amendment, which I supported, in relation to \$3 billion of taxpayers' money for a big subsidy to the car manufacturers. That went down to the lower house, and there was no consideration there about worrying whether or not the government would be held up in its legislative program. Apparently Senator Abetz thought that it was worth taking a stand on getting transparency around grants to General Motors Holden, Ford and Toyota, but he does not think it is worth taking a stand against the government when it comes to actually protecting this position in Tasmania. He knows as well as we know that this

matter will not come back before the parliament for us to have an opportunity to move on an amendment before Christmas, and by then it will all be too late.

Let us get real here. This is the opportunity for the coalition to support the Greens to get this dealt with in the House of Representatives. If the government choose to hold up critical reform of the Federal Court because they want to deny Tasmania a full-time registrar, let them explain that to the legal profession around Australia and to the people of Australia, who will not buy that for a minute. This is a cost-saving measure that the government are just racing through. Worse still, it is an affront to the fundamental principle that Tasmania is a state of the Federation and that it has, as a matter of principle, the right to an effective presence. We are a state of the Federation and we should have an effective presence of a court registrar such as the one we currently have. I am just appalled by the way the government has chosen to get around the interpretation of section 18N. Suddenly naming the registrar in Victoria as the registrar for Tasmania, and therefore saying the registry has its own registrar, is a sleight of hand and people will see it as such.

I would urge the coalition to rethink its position of just 'calling on' the government to do something rather than forcing this back to the House of Representatives and getting this resolved tomorrow, because in reality that is what the government would do. I am really surprised that someone who has been in the Senate as long as Senator Abetz has could fall for the face value explanation that the government has given him. But then we have seen evidence of that in recent times on other matters.

**Senator BRANDIS** (Queensland) (6.26 pm)—I will not detain the Senate for very long, but following the contribution that has just fallen from Senator Milne I do feel that I

ought to rise and come to the defence of my friend Senator Abetz. The remarks made about him by Senator Milne were inaccurate and, I am sorry to say, very, very ignorant. Let us remind ourselves of what the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 before the Senate is concerned with. The bill before the Senate is concerned to invest the Federal Court of Australia with a criminal jurisdiction so as to enable it to deal with criminal prosecutions arising from serious cartel behaviour under the Trade Practices Act. Anyone, particularly people in Tasmania who may be listening to the broadcast, might be forgiven for thinking that this was a bill to deprive the Federal Court of its Tasmanian registrar. It is nothing to do with that.

Paradoxically, notwithstanding the intemperate nature of the language that has fallen from Senator Milne, in fact Senator Milne agrees with the coalition's position. Senator Milne may or may not be aware that there was a second reading amendment carried on the voices a little earlier on in this debate, calling for what Senator Abetz—not you, Senator Milne, but Senator Abetz—has led the charge on all year: to prevail upon the government to rescind its decision to close the Tasmanian registry of the Federal Court of Australia. If the government does change its position, that will be as a result of the advocacy of one senator—not you, Senator Milne, but Senator Eric Abetz.

Be that as it may, we are seized with a bill about cartel criminal jurisdiction. The government has pointed out to the opposition—and, notwithstanding that, I yield to no-one, Senator Milne, in my criticism of the lack of trust one can place in the assurances of Mr Kevin Rudd and some of his ministers—and, yes, nevertheless grown-up political parties actually do deal with one another. I have received through my office an assurance from the Attorney-General, Mr McClelland, whom

I regard as a very honourable person, that the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009, which is currently on the Notice Paper—and which is in fact listed for debate tomorrow in the noncontroversial items of business—if it becomes a vehicle for dealing with this issue, can be removed from the noncontroversial items and brought back onto the Notice Paper very soon, certainly in the next sitting week of the Senate. I have received an assurance to that effect through his officers. My officers have received an assurance from the Attorney-General's officers that that will happen, and I see the parliamentary secretary representing him in this chamber nodding in confirmation that that is so.

Let me say on behalf of the opposition that I accept that assurance. It is as plain as anything can be that the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009, which is a bill of a general rather than a specialist character, is a much more suitable vehicle for an amendment of the kind that the Greens wish to make to the current bill and can be the subject of such an amendment at the time. I suspect it will not be being moved by you, Senator Milne; it will be being moved by Senator Abetz.

**Senator Milne**—It will be too late.

**Senator BRANDIS**—It will not be too late, Senator Milne, so you are wrong about that as well. In fact, I cannot think of a single thing you have said in your extraordinary contribution which was factually accurate. Let me summarise the coalition's position. We believe firmly that the Tasmanian registry of the Federal Court should not be closed and that the registrar's responsibilities should not be taken over by the Victorian registrar of the court. We are prepared to move to amend the appropriate legislation—that is, the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009—to ensure that

that position has statutory sanction. We look for your support, Senator Milne, and the support of the crossbenchers when we do that. We accept the assurance of the Attorney-General through his officers that that legislation, currently listed as soon as tomorrow on the Senate *Notice Paper*, will be dealt with very shortly. As I said before, it will have to be removed from the noncontroversial area of the *Notice Paper*, but it will be placed back on the *Notice Paper* certainly not later than the next sitting week of the parliament. Contrary to your assertion, that will not be too late to effect a statutory reversal of that decision. The coalition is not prepared to delay the legislation currently before the chamber, which invests the Federal Court with criminal jurisdiction to deal with serious cartel offences, in order to achieve that outcome; nor is it necessary to do so. That is the coalition's position. I thank the Attorney-General for his assurance, which we accept. We will move the appropriate amendment to the appropriate bill when it comes before the chamber shortly.

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (6.32 pm)—I thank Senator Brandis for those comments and I concur totally that the problem we have had with this debate on the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008 is that it is seeking to amend, in a very inappropriate way, the important legislation that relates to cartel behaviour and empowers the Federal Court to exercise the criminal cartel jurisdiction that will be given under the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008.

I do accept that this is an issue of great passion for the Tasmanian senators, and I respect their right to come and argue the case. However, this is not the piece of legis-



lation in which to add such a clumsy amendment—and I say that respectfully. It does not fit here. I remind everyone who is listening and who has participated in this debate that it has long been a principle accepted by both sides of politics that federal courts are self-administering.

Senator Milne asked me some questions about cost savings. They are not questions that I can answer for you. They are questions that you should ask the Federal Court in estimates, and I anticipate that that will be the case. That is where the kind of discussion and information that you are seeking will be best presented. I thank everyone for their contributions to this debate and I commend the bill to the Senate.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (6.34 pm)—I ask Senator Stephens, who has just sat down, whether it is true that the event celebrating the end of the registrar in Hobart has just concluded, that the registrar will not be there from now on and that the events of the court removing the registrar from Hobart are moving ahead of the parliamentary events here today and over the last several months. If that is so, it is a matter that should have been reported by the government. I think there needs to be a little bit better information coming to the Senate about the matter.

I just want to take Senator Stephens to task for her statement that this is a clumsy amendment. The amendment is sharp, it is direct, it says exactly what we mean it to say and it would, if passed, have the effect of retaining the registrar in Hobart. If Senator Stephens meant that it is clumsy to attach it to this particular legislation, let me inform the senator that that is the right and proper process in the Senate in government business. The alternative is to wait for private members' time by introducing separate legis-

lation. As Senator Stephens and her colleagues know very well, that is to consign it to the dustbin of total inaction because there is no way a private member's bill would be brought to a debate and vote in this Senate before the next election. If we are to get proper action to save the registrar's office in Hobart, there is no alternative but for us to amend a piece of legislation, as we are moving to amend this piece of legislation, tonight. It is the right and proper thing to do. It is not clumsy. It is time-honoured proper process.

The opposition has said that it deals with other members, including the Hon. Attorney-General, for whom I have a great deal of admiration, as do the rest of the Greens. The difference is that in the race to get something done about this we are not faltering near the finish line. We are putting forward an amendment which would come into effect tomorrow, which is appropriate seeing the district registrar had his last day today, to ensure that that office is kept.

Senator Milne is absolutely correct. In terms of amending another piece of legislation which Senator Brandis says may come up in coming weeks, I remind Senator Brandis there are only three weeks left of sittings on the Senate calendar. The legislation to which he refers will be reported upon by the committee in the Senate tomorrow and may or may not be in the non-controversial section later in the day. I have asked my staff to prepare an amendment for that piece of legislation in the sad anticipation that the coalition is not going to support the Greens amendment to save the registrar tonight, through this legislation.

I ask Senator Brandis: does he have an assurance from the Attorney-General that, amended in the way we anticipate—that is, to save the registrar—the Access to Justice (Civil Litigation Reforms) Amendment Bill

will be dealt with in the Senate and the House before the next three weeks of sittings are exhausted? I ask Senator Stephens: on behalf of the government, will she give the Senate an assurance that that piece of legislation, with the intended amendment, will be dealt with by the Senate and by the House and passed into law before the end of the year?

We are all aware in here that there is one week of sitting in October and two weeks of sitting in November, and we are also all aware of the pressure of the legislative list. There are 20 or 30 pieces of legislation on the list as well, and that is not taking into account the return of the emissions trading scheme legislation, which is highly contentious and may well, of itself, take up many days of debate. I want to hear from the government—

*Senator Brandis interjecting—*

**Senator BOB BROWN**—I will not sit down, Senator Brandis—

**Senator Brandis**—You asked a question.

**Senator BOB BROWN**—Yes, I have asked a question. I have asked a number of questions, and the proper procedure is for them to be answered when I sit down. But that will not be at your injunction; that will be when I am finished and not before.

If the Attorney-General was of a mind to ensure that the anticipated amendment to save the registrar's position in Hobart would be guaranteed, why not accept this amendment tonight and get it through tomorrow? The government has made it clear it does not and will not support the retention of the registrar's position in Hobart. It has the upper hand in all respects, in the timing and in the order of legislation before this place. The opportunity we have is to reverse the decision to abolish the registrar's position in Hobart.

Finally, because I know the government and the opposition want to respond, Senator Stephens has said a number of times that this parliament must not interfere with the court—wrong. The Federal Court of Australia Act 1976 established the court. This parliament established the court. This parliament established the position of registrar in each of the regional offices and established the registries. It is this parliament's power and responsibility to ensure that the law is clear and is carried out. The spirit of that law, and, I submit, the letter of it, is that the registrar should be kept in Hobart.

I believe the court is breaching the spirit of that law by abolishing the position of registrar in Hobart without seeking an amendment through this parliament, without coming to government and getting this act amended. That would be the proper way to do it. It is being done extramurally, outside the parliament, by Justice Black and the court, and that is not acceptable. That is not what the act says, not what it intended and not what we should submit to. The proper process is through this parliament and the proper way of ensuring that that is carried out is by supporting this Greens amendment here and now.

**Senator BRANDIS** (Queensland) (6.42 pm)—Although I do not think it is really for shadow ministers to be responding to questions from crossbench senators, given the way this debate has developed, I will respond to Senator Brown's question to me. As I indicated earlier, the opposition does accept the assurance through the officers of the Attorney-General that the Access to Justice (Civil Litigation Reforms) Amendment Bill, which is the appropriate vehicle for this amendment, will be dealt with by the Senate before the end of the year. It does, as I explained before, have to come off the non-controversial list for tomorrow, but I do accept the assurance that it will be relisted with

priority, and I imagine that that would mean not tomorrow but in the next sitting week.

As to the subsequent fate of the bill in the other place, that of course is a matter for the government, and only the government can control that, just as only the government can control the fate of this bill in the other place, Senator Brown. But, notwithstanding that you are a rather hostile ally on this, I do welcome you to the banner of Senator Eric Abetz in your campaign to save the position of the registrar of the Federal Court in Hobart. It is with that end in view that the opposition has accepted the assurance given to us through the Attorney-General's staff.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (6.44 pm)—How unsatisfactory was that! The opposition has accepted the Attorney-General's assurance that the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009—another bill, not the one we are amending tonight—will be dealt with in the parliament in the coming three weeks. But there is no assurance whatsoever that, once this bill has the amendment that I have brought forward here tonight attached to it, it will be passed into law this year. That is the difference. What we are asking here, because—

**Senator Brandis**—Well, ask the government.

**Senator BOB BROWN**—The coalition and the Greens have the ability to ensure that the registrar's position in Hobart is saved.

**Senator Brandis**—How could we do that? This bill will not be amended against the government's wishes in the House of Representatives, Senator Brown.

**Senator BOB BROWN**—Senator Brandis, you say that this bill will not be amended against the wishes in the House of Representatives—

**Senator Brandis**—Unless the government cooperates.

**Senator BOB BROWN**—Unless the government cooperates.

**Senator Brandis**—So what you said is wrong.

**Senator BOB BROWN**—You should leave this to somebody who has got much more experience in strategy than you have.

*Opposition senators interjecting—*

**Senator BOB BROWN**—The opposition senators laugh, but this is a serious matter. If the government and the Attorney-General say they will brook no amendment to this piece of legislation, they will hold it off, resulting in the grave consequences of that process that you yourselves have outlined. So how is it that you can meekly go along and accept an assurance that another piece of legislation, the access to justice bill, will be passed? It is equally important; it delivers justice to Australians. The second reading speech quoted Dickens, that people who have money have the power, and that bill is to redress that imbalance. This bill is very important for the delivery of justice and it deals with the Federal Court. What are the opposition going to say if there is an amendment there to save the registrar being lost from Hobart and the government says, 'This is hugely important legislation but we will hold it up if you persist with that amendment'? It is the same thing as they are saying to you tonight, and I—

**Senator Brandis**—But we have received an assurance that it will be dealt with by the government.

**Senator BOB BROWN**—You have received an assurance that the bill will pass with the amendment—

*Senator Brandis interjecting—*

**Senator BOB BROWN**—The only way they can do that, Senator, is if the coalition

backs off on the amendment. Have you received an assurance that it will pass the parliament with the amendment?

**Senator Brandis**—It will be dealt with promptly in the Senate.

**Senator BOB BROWN**—It will be dealt with?

**Senator Brandis**—Promptly in the Senate.

**Senator BOB BROWN**—So you have got no assurance at all, because that does not deal with it going back to the House and then being held up.

**Senator Brandis**—It is the same position as this bill.

**Senator BOB BROWN**—Yes, exactly, Senator Brandis. He says it is the same position as this one.

**The TEMPORARY CHAIRMAN (Senator Trood)**—Order! Just a moment, Senator Brown. Perhaps you gentlemen would conduct yourselves in the manner in which the standing orders require in relation to this matter. Thank you, Senator Brown.

**Senator BOB BROWN**—Chair, I think you are indicating that Senator Brandis should not be interrupting my delivery here, and I agree with you.

**Senator Brandis**—Mr Temporary Chairman, on a point of order: I know that Senator Bob Brown wants to talk this out so that he might bluff some people in Tasmania with his disingenuous rhetoric. I was responding to questions being put to me by Senator Brown. I thought that in the flexibility of the committee stage debate it would facilitate the process for me to respond immediately to questions being put to me by Senator Brown. But I suppose it is emblematic of his disingenuousness on this issue that he would then call me disorderly for responding to the questions he put to me.

**The TEMPORARY CHAIRMAN**—Senator Brandis, I am sure the Senate appreciates your willingness to assist, but there is no point of order. Senator Bob Brown.

**Senator BOB BROWN**—You are right again, Chair. The position is that Senator Brandis should answer questions, if he sees them as questions being put to him, in his own turn. That is what the standing orders require. And I do not want a lecture from Senator Brandis, putting down the people of Tasmania; I will not stand for it. This is an important matter. This is about the rights of Tasmanians to have a registrar. My information is that that position ended today, so it is absolutely incumbent upon the opposition to support this amendment now. It is just unacceptable that that is not happening.

I again ask the parliamentary secretary: will she give an assurance that the government will deal with the other bill, which has a similar amendment, and see that bill pass the parliament before the end of this year, if that alternative option is taken up?

**Senator STEPHENS** (New South Wales—Parliamentary Secretary for Social Inclusion and the Voluntary Sector and Parliamentary Secretary Assisting the Prime Minister for Social Inclusion) (6.49 pm)—There are several questions that Senator Bob Brown has just asked me. I can say no more about the other piece of legislation except that this afternoon there were assurances given to the opposition that that piece of legislation, which is due to be debated tomorrow, will be dealt with expeditiously and promptly within the Senate.

Progress reported.

#### DOCUMENTS

**The ACTING DEPUTY PRESIDENT (Senator Trood)**—Order! It being 6.50 pm, the Senate will proceed to the consideration of government documents.

### **New South Wales Regional Forest Agreements**

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (6.51 pm)—I move:

That the Senate take note of the documents.

Three out of these four Department of Agriculture, Fisheries and Forestry documents reporting on progress on the implementation of regional forest agreements in New South Wales—one reporting on RFA implementation in the north-east region, one on the Eden region and one on the southern region—are for the year 2004-05. That is, these reports to the parliament on the regional forest agreements are already four years out of date.

The Regional Forest Agreements Act requires the reports to be tabled in parliament within 15 days of them being provided to the minister. I ask the government to tell the Senate how reports for the year 2004-05—that is four years ago, and there are no reports for the intervening years—could have been provided to the minister only within the last 15 sitting days. I ask the government if it could furnish the Senate with an answer, maybe at the end of question time tomorrow. I put the question to the Minister representing the Minister for Agriculture, Fisheries and Forestry: were these reports in fact furnished to the minister in the last 15 sitting days?

One matter which has not been dealt with here is that a few weeks ago about half the known population of the rare and endangered swift parrot were spotted in eucalypt forests between Tathra and Batemans Bay. That included a hundred birds in the state forest near Bermagui. I have a particular interest in these birds. In fact, I am wearing a representation of a swift parrot on my lapel at the moment. They have arrived in Tasmania near the place where I live. The swift parrot is the fastest parrot on earth. Although the ferry

takes all night to cross Bass Strait, the swift parrot crosses it in three hours. There is speculation that their numbers are down to less than 1,000 breeding pairs. The first depiction of the swift parrot after the colonisation of this country by Europeans was in Sydney in 1797. Thousands of these birds came in large flocks to the mainland from Tasmania, and they were spotted in all regions between Brisbane, Toowoomba and Adelaide.

They come to the mainland in winter to feed on the flowering eucalypts and they go to Tasmania to nest in summer and feed on the flowering eucalypts there. The problem, as I have told the parliament before, is that the epicentre of their feeding and nesting range, the Wielangta State Forest in Tasmania, is being logged, along with other nesting sites, such as Bruny Island on the south coast of Tasmania, right up the east coast and elsewhere in Tasmania. In other words, the logging industry, under the regional forest agreements on both sides of Bass Strait, is engaged in destroying the habitat of these birds. If there are no nests, there are no birds. If there are no feeding sites, there are no birds.

Yet logging began last week on this side of Bass Strait in the Bermagui State Forest, in coupes adjacent to where the swift parrots were seen. These birds, by the way, move many kilometres within the space of an hour. If they have been seen in coupes adjacent to those being logged in Bermagui by the New South Wales authorities—under the authority of the Rudd government—then you can guarantee that those logged coupes are part of their habitat and are part of their support system on this planet. The logging plan at Bermagui has no specific provisions to protect forest or trees used by the parrots. It only has generalised provisions, which, in effect, do not save the habitat. The logging rules for swift parrots date back to 1995. We have

been expecting a national management plan for the recovery of the parrot, but there is none in place. Their habitat on both sides of Bass Strait is being eroded. Under the Rudd government's regional forest agreements with several state governments this bird is headed towards extinction. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

#### ADJOURNMENT

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

That the Senate do now adjourn.

#### Aged Care

**Senator POLLEY** (Tasmania) (6.57 pm)—Last week, Senator Barnett attempted to give us a rousing speech about the apparently magnificent job that the former Howard government did in relation to aged care. By the way he talked, anyone would have believed that the former Liberal government had been the champions of the aged-care sector and had overseen a period of massive and effective reform. He would also have had us believe that the sector has been undermined entirely by the Rudd government in less than two years and that the sector was baying for Labor blood. I am struck by Senator Barnett's gall, his self-delusion or his lack of memory retention.

If memory retention is the issue, I can certainly cover for Senator Barnett what the former Liberal government actually did for aged care, but it may not fit with the distorted, nostalgic memories he appears to hold. In 1997, shortly after forming government, the now opposition made so-called 'radical reforms' to the aged-care sector. The first of at least six ministers for ageing, Minister Moylan, boasted that the Aged Care Bill 1997 would 'guarantee positive outcomes for

older Australians.' So what kind of 'positive outcomes' did they get?

In 2000, after already having burnt through two ministers for ageing, the shocking and shameful 'kerosene baths' scandal rocked the aged-care sector. The discovery that an aged-care facility had bathed 57 residents in a bath containing diluted kerosene to treat an outbreak of scabies highlighted the complete failure of the former government's inspection system. One resident sadly died. Staff at the facility had apparently complained repeatedly to government authorities about the incident but with no response. The Victorian Health Services Commissioner went on to say that the area responsible for the complaints process, which should have acted on this information, had been poorly resourced.

When questioned about the scandal and the implications it had for the accreditation and inspections system, the minister at the time, Bronwyn Bishop, said:

... there is no crisis in aged care ...

No crisis! The inspections system broke down to the point where staff felt free to bathe elderly residents in kerosene and there was no crisis! The minister then went on to refer the investigation to the wrong authorities, delaying what should have been a swift and clear response by the government to such a disgraceful episode. She instead ran around claiming that it was not really her responsibility. How laughable that as the Minister for Ageing she felt no responsibility to refer the death to the appropriate authorities.

The Deputy Prime Minister at the time, John Anderson, conceded that the government had been 'a little tardy' in ensuring its aged-care reforms worked properly. This was the problem. They had claimed to be making radical reforms but had never bothered to keep a watching brief on those reforms. A

complete lack of commitment by the former Liberal government to proper inspections led to an industry that was unchecked. The result was a breakdown in the standard of care for our elderly in some homes. This is not surprising, given that a damning report released by the Commonwealth Ombudsman later that same year said that the former Liberal government's scheme for dealing with nursing home complaints was unclear and confusing. Therefore, it is no wonder that serious complaints had fallen through the cracks. The scandal led to the Hogan review being instigated. That review was taken to the 2001 election as an election promise but unfortunately sat in somebody's bottom drawer until 2004, after costing taxpayers \$7.2 million. The minister was eventually forced out of her portfolio in 2001, due to the then Prime Minister's lack of faith in her. Unfortunately, her replacement did not fare much better.

In the fallout of the kerosene bath scandal, the former Liberal government made a commitment to do an annual spot check of each and every one of the 3,000 aged-care facilities. They did not come close to reaching the target. They did not even meet 20 per cent of their target. Over a five-year period they still could not meet that target. At that time, the country was in uproar at the treatment of our elderly, and the former government could not even find the motivation to achieve 20 per cent of their target. Many homes went on to close or went into receivership and there were continual stories of facilities failing to meet key quality accreditation standards and of abuse of residents. The National Audit Office said that year that the accreditation system, which cost taxpayers \$11.5 million each year and for which aged-care providers were charged a fee, had no mechanism in place for assessing whether or not the care provided to our older Australians was actually improving.

The former government then demonstrated their lack of commitment to their own previously stated intentions by voting down Labor's amendment. That clearly demonstrated how cavalier their attitude was to addressing the serious and fundamental issues that were facing the aged-care sector. They said they would achieve an annual spot check in each facility. They failed that test. They were all talk and no action, no commitment and no heart. The former Liberal government had six ministers for ageing in eight years. This demonstrates the lack of commitment that the former Liberal government had to maintaining and promoting a quality standard of aged care and the 'poison chalice' mentality of the government's own members toward the portfolio.

I would like to ask why Senator Barnett has chosen now to adopt a deep concern for the state of the aged-care sector and to speak so passionately on the issue. In his speech last week, Senator Barnett sarcastically and childishly said several times:

Hello, Tasmanian Labor members of parliament. Please listen.

... ..

Please stand up for the viability of aged-care services in Tasmania.

He accuses us of not listening and not acting. Yet what is his record on the issue? Why the sudden crusade? And how can he be proud of the past efforts of his government and his own past efforts in listening and acting? Senator Barnett has held office since 2002. Between being appointed to the Senate as part of the government and the time that they lost office he would have had hundreds of opportunities to speak on this issue and to express his obvious concern. There should be volumes of speeches by the senator in *Hansard* calling on the then Liberal government to achieve better outcomes for the aged-care sector. I can tell you there are not volumes.

Senator Barnett, in fact, in that time spoke only three times directly on aged care. Three times! He was happy to sit in almost complete silence as the industry suffered crisis, scandal, financial devastation and mounting demand for services. All his government ever did was tinker around the edges with technical amendments and praise themselves for all their efforts.

I cannot and will not sit by and allow Senator Barnett to try and delude those in the Senate and the public with his statements that are at best misguided. In his speech last week, Senator Barnett referred to a petition he was presented with by a Presbyterian aged-care facility in Tasmania. He implied that this showed a large division between the current government and the sector and he played up his role as champion of the industry. The chairman of the board of directors for that very same home, the Hon. Dr Frank Madill, a former state Liberal member, spoke at the recent Senate committee inquiry into residential and community aged care in Australia. I chaired that committee. He gave a very different picture from what Senator Barnett would have us believe. When I asked if we needed a medium- and long-term strategy for aged care, Dr Madill said:

This is not the fault of the current administration. This has not happened because there has been a change of government in Canberra at all. This is something that has built up ...

When will Senator Barnett and those opposite stop trying to glorify their past efforts and start to acknowledge the current situation? No-one is saying that the aged-care sector is all roses at present. There are a lot of areas that require significant effort. If you read our report you would know that we had in excess of 30 recommendations. Coming into this chamber and rewriting history does nothing for the sector.

I would also like to put on the record that, unlike Senator Barnett, who sat in government very silently, I am out there talking to the industry. I am talking to older Australians and their families. I am listening. The government have already demonstrated our commitment to older Australians in many ways. We will continue to bring about the best outcomes for the industry and, more importantly, for the Australian people. I would like to put on record too my acknowledgement of the very positive and tireless work that those in the sector do for older Australians. I cannot allow it not to go on record. In fact, Dr Frank Madill, very publicly, only two weeks ago, congratulated me as chair of that committee on having the foresight to speak up for the industry. (*Time expired*)

#### State Alert

**Senator BACK** (Western Australia) (7.07 pm)—I rise this evening to address yet again the question of the protection of the Australian community in the face of both natural and human disasters because it is an issue of enormous interest to us, especially as we move towards the bushfire season in southern Australia. State Alert, a telephone based early warning system, is actually up and running in Western Australia. I wish to speak about this in some detail.

One of the key recommendations of the interim report of the Victorian royal commission into the disastrous bushfires on 7 February this year was the need for an effective, efficient, early warning system that can get to as many people as possible. It is no wonder that the commissioner made that recommendation, because tragically some 176 people died as a result of that fire and, worst of all for those associated with the fire industry, the vast majority of those people died in their homes or around their homes. That is evidence of the fact that they either were not



warned to leave early or did not realise the seriousness and did not make that decision, obviously to the regret of all concerned.

Some weeks ago in Western Australia State Alert commenced. It was demonstrated in the outer Perth suburb of Bedfordale. It is the result of eight or nine years of work. In fact, it was ready some two years ago, but we were only able to release it in August this year. I will run through the exercise.

The incident controller indicated to the person in control that a fire of some severity was threatening Bedfordale. In less than five minutes some 800 households received a telephone message, those that had faxes received a faxed message and mobile phones that were registered in the system—and I will refer to that in a moment—received a call or an SMS. All of this happened within five minutes of the incident controller informing the relevant authorities that he needed to send a warning. Surveys were conducted in that area immediately following that launch. It is very pleasing that, within five days, more than 40 per cent of households in that area responded and, equally importantly, 95 per cent of those who responded said that the message was clear, they understood it and, had it been a real situation, they could have acted early.

Why do I raise this in this chamber? Simply because the Western Australian then Labor government and the now Liberal and National government have offered this technology to all of their colleagues in the emergency services in Australia for free. It has cost \$700,000 to \$800,000 to develop. Under the auspices of the Australasian Fire Authorities Council—an absolutely wonderful group, which I had the privilege of being a member of when I ran the Bushfires Board in WA—the Western Australian government has offered that system. Regrettably, and for

reasons I do not understand, the other states and territories have not taken it up.

In its stead COAG made the decision earlier this year in Hobart that they would invest up to \$15 million to develop exactly what is now up and running. That has gone out to tender. The tender has closed. I understand only two parties have tendered. From my own knowledge and experience of the IT industry, I can tell you that it will be at least two to three years before a system is up and running and \$15 million will be only the starting figure.

What is beyond me is that, in accordance with the recommendation of the royal commission, we already have a system there able to be adopted. Several of the emergency services from eastern states and territories have visited Perth. Obviously, for some states whose IT systems are not exactly compatible with those of the Western Australian government, they would have some transfer and establishment costs. But I say again that the Western Australian government—the Fire and Emergency Services Authority of Western Australia—have offered State Alert without fee and with the standard operating procedures to all of their colleagues in the eastern states. Several are very keen to take it up, as you can imagine. They are facing a fire season imminently—in fact, it is already underway. In New South Wales only this last weekend there was a situation where fire events took place. Even if it eventuated that those using this system in this fire season and the coming fire seasons were to say, ‘It is not exactly what we wanted,’ or, ‘We need modifications or changes,’ one would have thought at least it would be embraced for this fire season. It is a web based system. I watched it being demonstrated last week with a group of colleagues. The chief of operations for the Fire and Emergency Services Authority simply used an external modem. It can be driven from anywhere a person has

internet access via a modem. We all saw this circumstance. We had to feed mobile numbers in and we watched within a matter of minutes a test alert going out.

What is integral to the process is the Integrated Public Number Database, which is a highly confidential database of all of the phone numbers in Australia, including private lines and all of the mobiles that are registered. With the good grace of the Department of Broadband, Communications and the Digital Economy, commencing in October this will be made available on a trial basis to the emergency service in WA so that automatically all of the information for an area can be picked up over a secure line. We have been led to believe that, should that be successful through October, by mid-November this year the integrated public database of telephone numbers may be made available to the fire and emergency services. That is absolutely essential because it will be an automated system incorporating any numbers that change, are upgraded or whatever in a specific area. Even if a person decided they did want their mobile number registered, they could say to their local fire or emergency organisation, 'We want that mobile phone number added into the database so that if anything happens in the area in which we have an interest we will receive a message.'

It is important to understand this is not something just for bushfires. In the event of a toxic plume, for example, occurring in a residential area which might result from a truck rolling over, you can imagine the absolute value of an incident controller being able within minutes to alert everybody in the downwind area—two to three thousand homes—of the fact that there is a toxic plume, that windows should be closed and air conditioners turned off and that people should remain in position. Equally, if a child were taken from a shopping centre, Mr

President, you could understand the value of being able very quickly in a web based system to identify all of the residences and all of the businesses in a discrete area and of sending out a message saying what had happened with the child's description and saying they should alert the emergency or police authorities if they see the child. It would also be valuable in the event of a tsunami, a cyclone or particularly the flood surge following a cyclone.

This is a system that is ready and available and can be picked up by the states and territories at this moment, subject to the department being able to release the Integrated Public Number Database over a secure line. I urge other states to pick State Alert up because we have seen in the last few years a community of people less able to make their own decisions. We have seen in the bushfire-prone areas of Victoria, in the hinterland of Canberra and outside all major cities people for whatever reason either being delayed or not understanding and not making decisions to protect themselves and their families. My plea is that this is just another tool. It does not replace the ABC radio alert. It does not replace the fire brigade and whatever messages they might put out, and it does not replace the time-honoured system of neighbours looking after neighbours. What it does is add one more element. I have been asked, 'What happens if a mobile phone tower burns down and you cannot then send the message?' The answer is simple: that message goes out a long time in advance of a fire getting anywhere near a mobile tower being burnt down. With new technologies being able to predict the direction of a fire or a toxic plume, that is obviated. I urge all states and territories to take it on board and to adopt it.

**Senate adjourned at 7.17 pm**

**DOCUMENTS**

**Tabling**

The following documents were tabled by the Clerk:

Commonwealth Authorities and Companies Act—Notices under section 45—

NBN Co Limited.

NBN Tasmania Limited.

The following government documents were tabled:

Dairy Produce Act 1986—Deed between the Commonwealth of Australia and Dairy Australia Limited, dated 18 April 2007—  
Deed of Variation, dated 8 September 2009.

Migration Act 1958—Section 486O—  
Assessment of detention arrangements—  
Personal identifiers 553/09 to 567/09—

Commonwealth Ombudsman's reports.

Government response to Ombudsman's reports.

Regional Forest Agreements between the Commonwealth of Australia and New South Wales—Reports on implementation—

Eden Region—2004-05.

North East Region—2004-05.

Southern Region—

2004-05.

2005-06.

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**QUESTIONS ON NOTICE**

The following answers to questions were circulated:

**Boston Consulating Group and Allen Consulting Group**  
**(Question Nos 1728 to 1730, 1760 and 1763)**

**Senator Ronaldson** asked the Minister representing the Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, the Minister for Early Childhood Education, Childcare and Youth and the Minister for Employment Participation, upon notice, on 10 June 2009:

Can a list be provided of contracts awarded to: (a) the Boston Consulting Group; and (b) the Allen Consulting Group, by the department and/or any of its agencies, of any value, between 1 January 2008 and 31 May 2009, including the value and primary deliverable of the contract.

**Senator Arbib**—The Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, the Minister for Early Childhood Education, Childcare and Youth and I have provided the following answer to the honourable senator's question:

The AusTender website at [www.tenders.gov.au](http://www.tenders.gov.au) details all contracts, with a value of \$10,000 or more, undertaken by the Education, Employment and Workplace Relations portfolio agencies since November 2007.

In addition, the Department of Education, Employment and Workplace Relations awarded contracts for "Facilitator for COAG Sub-group for Early Childhood" and "Facilitation of Quality Working Party Workshop" to The Allen Consulting Group for \$6,400 and \$6,200 respectively.

**Education, Employment and Workplace Relations, Social Inclusion, Early Childhood and Youth and Employment Participation: Consultants**  
**(Question Nos 1874 to 1876, 1906 and 1909)**

**Senator Barnett** asked the Minister representing the Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, the Minister for Early Childhood Education Childcare and Youth and the Minister for Employment Participation, upon notice, on 2 July 2009:

- (1) (a) Since November 2007, what is the total number of: (i) completed, and (ii) ongoing, consultancies in the portfolio/agency; and (b) for each consultancy: (i) who is the consultant, (ii) what is the subject matter, (iii) what are the terms of reference, (iv) what is its duration, (v) what will it cost, and (vi) what is the method of procurement (i.e. open tender, direct source, etc.).
- (2) Can copies be provided of all the completed consultancies.
- (3) (a) How many consultancies are planned or budgeted for: (i) 2009, and (ii) 2010; (b) have these been published in the Annual Procurement Plan on the AusTender website; if not, why not; and (c) in each case, what is the, (i) subject matter, (ii) duration, (iii) cost, (iv) method of procurement, and (v) name of the consultant if known.

**Senator Arbib**—The Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion, the Minister for Early Childhood Education, Childcare and Youth and I have provided the following answer to the honourable senator's question:

- (1) The Education, Employment and Workplace Relations Department and portfolio agencies report procurement contracts valued at \$10 000 or more on AusTender including consultancy contracts and the reason for the consultancy. The information sought by the honourable member in relation to consultancies valued at \$10 000 or more will therefore be available on the AusTender website ([www.tenders.gov.au](http://www.tenders.gov.au)).

These agencies also report details of consultancies valued at \$10 000 or more in their respective Annual Reports.

While AusTender and the Annual Reports contain details of contracts valued at \$10 000 or more, I consider it an unreasonable diversion of resources for the Education, Employment and Workplace Relations Department and portfolio agencies to provide details of consultancies valued at less than \$10 000.

- (2) Details of consultancies valued at \$10 000 or more can be obtained from the AusTender website.
- (3) Education, Employment and Workplace Relations Department and portfolio agencies have published details of planned procurements requiring an open tender for the financial year 2009/10 in their Annual Procurement Plans on the AusTender website.

### **Commonwealth Public Interest and Test Cases Scheme**

#### **(Question No. 2060)**

**Senator Bob Brown** asked the Minister representing the Attorney-General, upon notice, on 11 August 2009:

With reference to the answer to question on notice no. 1765, concerning the Commonwealth Public Interest and Test Cases Scheme:

- (1) Can a list be provided of the broad types of cases that come under each category (for example, for family law were the cases regarding custody of children, divorce proceedings, family violence, etc).
- (2) How much money was spent on each unidentified case.
- (3) Who broadly had successful applications (for example, individuals, unions, companies, community legal centres, etc).

**Senator Wong**—The Attorney-General has provided the following answer to the honourable senator's question:

- (1) A list of the broad types of case that come under each category of matters approved under the Scheme is provided below. Descriptions of each matter have been kept fairly general to ensure specific matters (and therefore the identity of specific applicants) are not identifiable. This is because there has been a longstanding practice, endorsed by successive Attorneys-General, to treat applications for assistance as confidential. This practice has extended to neither confirming nor denying that particular applications have been received or granted. This practice is consistent with obligations imposed by the Privacy Act 1988. It also protects information provided by applicants which would otherwise be subject to solicitor–client confidentiality.

The broad types of cases that come under each category are as follows:

- The family law matters related to superannuation, child support, international child abduction, child custody, property settlement, jurisdictional issues, child welfare, costs, evidence issues and marriage.
- The discrimination/human rights matters related to race discrimination, disability discrimination, sex discrimination, and age discrimination.

- The administrative law matters involved Administrative Decisions (Judicial Review) Act 1977 proceedings in relation to decisions made under various Commonwealth enactments, and one compensation matter.
  - The workplace/industrial relations matters related to industrial awards, union powers and conduct, jurisdictional issues and termination of employment.
  - The constitutional law matters included proceedings in relation to sections 51(xxxi), 61, 68, and 77 of the Constitution and one matter about the implied freedom of political communication.
  - The employment/OH&S/workers compensation matters included proceedings under the Safety, Rehabilitation and Compensation Act 1988 and the Commonwealth Employees Compensation Act 1930.
  - The land rights matters involved the interpretation of land rights legislation.
  - The migration matters related to unsuccessful visa applications.
  - The Commonwealth criminal law matters involved provisions of the Criminal Code Act 1995.
  - The consumer/fair trading/Trade Practices Act 1974 (TPA) matters involved interpretation of the TPA and the Insurance Contracts Act 1984.
  - The social security matters were about entitlement to pensions and retirement/death benefits.
  - The extradition matter involved interpretation of the Extradition Act 1988.
  - The intellectual property matter was a dispute about a copyright exception.
  - The proceeds of crime matter related to interpretation of the Proceeds of Crime Act 2002.
- (2) A net total of \$47,711 was spent on the four unidentified cases. Further details about these ‘unknown’ matters have now been located. The four matters comprise one family law matter (total spent was \$12,286), one constitutional matter (total spent was \$16,000), one land rights matter (total spent was \$19,425) and one administrative law matter (the total spent was \$141,081, however, that full amount was subsequently repaid to the Commonwealth by the grantee following a costs award, so the net total recorded as spent on the Department’s Data and Workflow of Grants System database [DAWGS] is \$0.00).
- (3) The successful applicants for grants of assistance were predominantly individuals (61 of the 75 approved applications). Of the remaining 14 successful applicants, two were counselling services, two were proprietary limited companies, three were community health services, three were industry peak bodies and four were Aboriginal community groups or land trusts.

#### **Defence: Staffing**

#### **(Question Nos 2073 and 2074)**

**Senator Johnston** asked the Minister for Defence, upon notice, on 13 August 2009:

For the period 1 January to 30 June 2009:

- (1) Was there a reduction in uniformed staffing numbers as a result of the efficiency dividend and/or other savings measures in the army, navy or air force; if so, where and at what level.
- (2) What total net savings have been made in the Strategic Reform Program (SRP) ‘Provisional Savings and Costs’.
- (3) What savings have been made in the SRP ‘Provisional Savings and Costs – Gross SRP Stream Savings’ for: (a) information and communications technology (ICT); (b) inventory; (c) logistics; (d) non-equipment procurement; (e) reserves; (f) shared services; and (g) workforce.
- (4) What savings have been made in the SRP ‘Provisional Savings and Costs – SRP Stream Costs’ for: (a) ICT; (b) inventory; (c) smart maintenance; (d) logistic; (e) non-equipment procurement; (f) pre-

paredness and personnel and operating cost (PPOC); (g) reserves; (h) shared services; (i) workforce; and (j) Mortimer implementation.

- (5) What savings have been made in the SRP 'Provisional Savings and Costs – SRP Stream Net Savings' for: (a) ICT; (b) inventory; (c) smart maintenance; (d) logistic; (e) non-equipment procurement; (f) PPOC; (g) reserves; (h) shared services; and (i) workforce.
- (6) What savings have been made in the SRP 'Other Savings' for the following areas: (a) zero based budgeting review; (b) minor capital program; (c) facilities program; (d) administrative; and (e) productivity.

**Senator Faulkner**—The answer to the honourable senator's question is as follows:

- (1) There were no reductions to uniformed staffing numbers as a result of the efficiency dividend and/or other savings measures in the Army, Navy or Air Force for the period specified.
- (2) (3), (4), (5) and (6) Savings relating to the SRP were provisionally allocated in the 2009-10 Budget context. In 2008-09, Defence embarked upon a program to implement internal efficiencies and economies to identify savings of up to \$10 billion across 10 years, for reinvestment in higher priority activities. In the Portfolio Budget Statements 2008-09, Defence identified savings and efficiencies in a range of non-operational areas totalling \$477.6m (as detailed on page 22 and 23). These savings were achieved. The final savings achievement for 2008-09 will be published in the Defence Annual Report 2008-09, due to be tabled by the end of October 2009.

The savings to be achieved over the decade to 2019-20 have been made publicly available through 'The Strategic Reform Program Delivering Force 2030' booklet.

#### **Defence: Staffing**

#### **(Question Nos 2075 and 2076)**

**Senator Johnston** asked the Minister for Defence, upon notice, on 13 August 2009:

For the period 1 January to 30 June 2009:

- (1) With reference to the White Paper and Strategic Reform Program (SRP) 'Indicative Workforce Implications', how many full-time equivalent (FTE) personnel were employed in the military workforce.
- (2) With reference to the White Paper and SRP 'Indicative Workforce Implications – Military Workforce': (a) how many FTE personnel were employed in implementing the White Paper initiatives; (b) what reduction has there been in FTE personnel employed in: (i) implementing efficiency improvements, (ii) implementing civilianisation, and (iii) implementing support productivity improvements; and (c) what increase or reduction has there been in FTE personnel employed from the 2008 to 2009 base.
- (3) With reference to the White Paper and SRP 'Indicative Workforce Implications – Civilian Workforce': (a) how many FTE personnel were employed as Australian Public Service (APS) staff or contractors; (b) how many FTE APS and contractor personnel were employed on White Paper/SRP initiatives; and (c) what reduction has there been in the number of FTE APS and contractor personnel implementing: (i) efficiency improvements, (ii) civilianisation, (iii) support productivity improvements, (iv) contractor conversion (reduction to contractors), and (v) support productivity improvements.
- (4) With reference to the White Paper and SRP 'Indicative Workforce Implications – Civilian Workforce', what increase or reduction has there been in FTE APS and contractor personnel from the 2008 to 2009 base.

**Senator Faulkner**—The answer to the honourable senator's question is as follows:

- (1) On average, 55,347.

- (2) Funding for the implementation of the White Paper initiatives and SRP implementation commenced on 1 July 2009. Therefore as shown in the table 'Indicative Workforce Implications – Military Workforce' there were no military workforce implications relating to White Paper implementation or the SRP during the period 1 January to 30 June 2009.
- (3) (a) On average, 20,664. (b) Funding for the implementation of the White Paper initiatives and SRP implementation commenced on 1 July 2009. Therefore as shown in the table 'Indicative Workforce Implications – Civilian Workforce' there were no civilian workforce implications relating to White Paper implementation or the SRP during the period 1 January to 30 June 2009. (c) Funding for the implementation of the White Paper initiatives and SRP implementation commenced on 1 July 2009. Therefore as shown in the table 'Indicative Workforce Implications – Civilian Workforce' there were no implications regarding the reduction of FTE APS and contractor personnel numbers during the period 1 January to 30 June 2009.
- (4) Funding for the implementation of the White Paper initiatives and SRP implementation commenced on 1 July 2009. Therefore as shown in the table 'Indicative Workforce Implications – Civilian Workforce' there were no increases or reductions in FTE APS and contractor personnel numbers during the period 1 January to 30 June 2009.

Indicative workforce implications relating to the White Paper and SRP for FY 2009-10 have been made publicly available in The Strategic Reform Program 2009: Delivering Force 2030.

**Defence: Media Monitoring  
(Question Nos 2083 and 2084)**

**Senator Johnston** asked the Minister for Defence, upon notice, on 13 August 2009:

For the period 1 January to 30 June 2009:

- (1) For the period 1 January to 30 June 2009, for each agency within the responsibility of the Minister/Parliamentary Secretary, how much was spent on media monitoring;
- (2) As at 30 June 2009: (a) how many staff were employed in public relations and/or the media in the department or each agency within the responsibility of the Minister/Parliamentary Secretary; (b) what were the position levels of these staff; and (c) how many of these staff were: (i) permanent, (ii) temporary, and (iii) contractors.

**Senator Faulkner**—The answer to the honourable senator's question is as follows:

- (1) \$262, 517.43 (GST exclusive).  
(a), (b) and (c) The Defence Public Affairs Branch employs 71 civilians, four contractors and 53 military employees.

Responsibility	Staffing
Executive	1 x permanent BRIG, 1 x permanent COL 1 x permanent EL2, 1 x permanent APS4
Defence Service Newspapers	1 x permanent WO2, 1 x permanent SGT, 3 x permanent CPL, 1 x permanent LS, 1 x permanent CPL, 4 x permanent EL1, 1 x temporary EL1, 3 x permanent APS6, 2 x temporary APS6, 1 x permanent APS4-5, 1 x permanent/part-time APS4
Communication Advisors Media Engagement	8 x permanent EL1, 1 x permanent APS6, 1 x permanent LTCOL 1 x permanent EL2, 1 x permanent EL1, 1 x permanent APS6, 6 x permanent APS4/5
Defence Internet Video and Imagery Library	1 x permanent EL1, 2 x contractors 1 x permanent EL1, 1 x permanent APS6, 2 x permanent APS4, 2 x contractors
Internal Communications	1 x permanent EL2, 2 x permanent EL1, 5 x permanent APS6



Responsibility	Staffing
Military Public Affairs Preparedness, Plans and Training	1 x permanent LTCOL, 1 x permanent MAJ, 1 x permanent CAPT, 1 x permanent APS6
Research, Policy and Entertainment Media Liaison	1 x permanent EL2, 1 x permanent APS6
Regional Public Affairs	7 x permanent EL1, 1 x temporary EL1, 1 x permanent APS6, 3 x permanent APS2
Military Headquarters Support	1 x permanent LTCOL, 6 x permanent MAJ, 1 x permanent SQNLDR, 3 x permanent CAPT, 1 x permanent LEUT,

Responsibility	Staffing
Joint Public Affairs Unit covering photographers and reporters	1 x permanent MAJ, 5 x permanent CAPT, 2 x permanent LEUT, 2 x permanent FLTLT, 3 x permanent WO2, 5 x permanent SGT, 1 x permanent PO, 6 x permanent CPL, 1 x permanent LS, 1 x permanent AB, 1 x permanent AC, 1 x permanent APS4
Administration Support	1 x permanent APS6, 1 x permanent APS5, 2 x permanent APS4
Secondment/ Leave	1 x permanent EL2, 4 x permanent EL1, 1 x permanent APS6

Key: BRIG: Brigadier, COL: Colonel, EL: Executive Level, APS: Australian Public Service, WO2: Warrant Officer Class 2, CPL: Corporal, LS: Leading Seaman, LTCOL: Lieutenant Colonel, MAJ: Major, WGCDR: Wing Commander, LEUT: Lieutenant (Navy), CAPT: Captain, FLTLT: Flight Lieutenant, LT: Lieutenant (Army), WO: Warrant Officer (Navy), SGT: Sergeant, AB: Able Seaman, AC: Aircraftman, PTE: Private, PO: Petty Officer

Outside of the Branch there are a further 38 Defence employees who provide public affairs support as a part of their duties.

Service/Group	Staffing
Vice Chief of the Defence Force	3 x permanent EL1, 2 x permanent APS6
Army	1 x temporary EL1, 1 x permanent APS6
Navy	2 x permanent CMDR, 1 x permanent LCDR, 4 x permanent LEUT, 2 x permanent EL1, 1 x permanent APS6
Air Force	1 x permanent WGCDR, 1 x permanent SQNLDR, 2 x permanent EL1, 1 x permanent APS6, 1 x temporary FLGOFF, 1 x temporary FLTLT,
People Strategies and Policy Group	1 x permanent EL1, 1 x permanent APS6
Chief Information Office	1 x permanent EL2
Intelligence and Security	1 x permanent EL1
Defence Science and Technology Organisation	1 x permanent EL2, 4 x permanent EL1, 3 x permanent APS6
Defence Materiel Organisation	1 x permanent EL1, 1 x permanent APS6

Key: CMDR: Commander, LCDR: Lieutenant Commander, LEUT: Lieutenant (Navy), WGCDR: Wing Commander, SQNLDR: Squadron Leader, FLTLT: Flight Lieutenant, FLGOFF: Flying Officer.

Defence Housing Australia (DHA) has no specific staff members responsible for the stated functions. DHA has a Marketing Communication Team, comprised of five staff members. The team is responsible

for marketing communication campaigns to provide product and service information. There is relatively little day to day media interest in DHA's activities, so an incidental proportion of the team's time is involved in responding to media requests.

**Minister for Defence and Parliamentary Secretary: Travel**  
**(Question Nos 2091 and 2092)**

**Senator Johnston** asked the Minister for Defence, upon notice, on 13 August 2009:

- (1) (a) Did the Minister/Parliamentary Secretary travel overseas on official business; if so: (i) to what destination, (ii) for what duration, and (iii) for what purpose; and (b) what was the total cost of: (i) travel, (ii) accommodation, and (iii) any other expenses.
- (2) (a) Which departmental officers accompanied the Minister/Parliamentary Secretary on each trip; and (b) for these officers, what was the total cost of: (i) travel, (ii) accommodation, and (iii) any other expenses.
- (3) (a) Apart from departmental officers, who else accompanied the Minister/Parliamentary Secretary on each trip; and (b) for each of these people, what was the total cost of: (i) travel, (ii) accommodation, and (iii) any other expenses.

**Senator Faulkner**—The answer to the honourable senator's question is as follows:

- (1) (a) Yes.(b) (i) to (ii) In relation to those parts of the question that request information about the cost of overseas travel by Ministers and advisers, I refer the Senator to the report Parliamentarians' travel costs paid for by the Department of Finance and Deregulation. The report is tabled biannually and provides details of the dates and purpose of the travel and the countries visited. Additional information is also available on ministerial web sites, media releases and media reports.  
(b) (iii) Some Ministerial expenses are a direct portfolio cost to Defence and those costs are reflected under item 1(b)(iii).
- (2) to (3) Please refer to the attached table.
- (3) (i) to (iii) Ministerial advisers' overseas travel, accommodation and expenses are also paid for by the Department of Finance and Deregulation and are reflected in the report tabled biannually for Parliamentarians' travel costs.

Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence	Ethiopia and Poland from 15 to 22 February 2009. In Ethiopia the Minister met with the Ethiopian Defence Minister, African Union (AU) senior officials and key permanent representatives to the AU from 16 to 17 February 2009. In Poland the Minister attended a meeting of NATO Defence Ministers with Non-NATO ISAF Contributing Nations on 19 February.	(i) N/A  (ii) N/A  (iii) \$22,242.61 (Includes support costs provided by the Australian High Commission Nairobi for the visit to Ethiopia \$18,532.58).	Ethiopia: 1. Mr Andrew Chandler, Assistant Secretary, International Policy Division. 2. FLTLT Patricia Bell, Aide de Camp. Poland: 1. ACM Angus Houston, Chief of Defence Force. 2. LTCOL Kahlil Feegan, Staff Officer. 3. FLTLT Patricia Bell, Aide de Camp.	(i) \$95,595.61  (ii) \$5,018.70  (iii) \$3,486.53	Two ministerial advisers accompanied the Minister, Mr Taubenschlag and Mr Sara. One AFP Officer (travel costs not known).	(i) N/A  (ii) N/A  (iii) N/A
Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence	East Timor from 5 to 6 March 2009 to attend the opening of the Specialist Training Air Wing in Metinaro and spend time with	(i) N/A  (ii) N/A	1. ACM Angus Houston, Chief of Defence Force. 2. BRIG Andrew Nikolic, First Assistant	(i) \$2,702.80 (Canberra to Darwin)  (ii) \$732.00 (Darwin)	The Minister was accompanied by two ministerial advisers,	(i) \$ N/A  (ii) \$ N/A

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Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
	troops at the International Stabilisation Forces Headquarters. Travel from Darwin/East Timor/Canberra was via VIP aircraft.	(iii) N/A	Secretary Regional Engagement, International Policy Division. 3. FLTLT Patricia Bell, Aide de Camp. 4. CAPT Barnet CDF Aide de Camp 5. SGT Reedman, Signaller	(iii) \$626.48 (incidentals & expenses)	Ms Enyi and Mr Smith. The Hon Alan Griffin MP, Minister for Veterans' Affairs also accompanied the Minister.	(iii) \$ N/A
Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence	United States from 7 to 14 April 2009 to attend the annual Australia United States Ministerial Meeting in Washington and meet with US	(i) N/A (ii) N/A	1. ACM Angus Houston, Chief of Defence Force. 2. Mr Nick Warner, Secretary.	(i) \$78,769.00 (ii) \$12,060.01	Two ministerial advisers accompanied the Minister, Ms Langton	(i) \$ N/A (ii) \$ N/A

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Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
	officials. The Minister also visited New York to meet with Defence Contractors.	(iii) \$20.26	3. Ms Julie Roberts, Executive Assistant. 4. Mr Peter West, Assistant Secretary, International Policy Division. 5. Mr David Stephens, Assistant Director US Section, International Policy Division. 6. FLTLT Patricia Bell, Aide de Camp.	(iii) \$6433.27 (incidentals & expenses)	and Mr Taubenschlag.	(iii) \$ N/A
Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence	Afghanistan from 22 to 26 April 2009 to attend ANZAC Day and meet with Afghanistan government officials, senior military leadership and	(i) N/A (ii) N/A	1. Mr Simeon Gilding, First Assistant Secretary, International Policy Division. 2. FLTLT Patricia Bell,	(i) \$23,489.94 (ii) \$0	Two ministerial advisers accompanied the Minister, Mr Sara and	(i) \$12,123.70 (Mr Payne) (ii) \$187.78 (Mr Payne)

QUESTIONS ON NOTICE

	Australian troops.	(iii) N/A	Aide de Camp.	(iii) \$453.63	Mr Smith. Mr Keith Payne VC accompanied as an invited guest by the Minister Four media personnel ac- companied at their own ex- pense.	(iii) \$0
Minister / Parliamen- tary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence	Singapore and Malaysia from 29 May to 2 June 2009. Singapore: To attend the Shangri-la Dialogue held annually and hold bilateral	(i) N/A  (ii) N/A	1. ACM Angus Hous- ton, Chief of Defence Force. 2. GPCAPT Craig Heap, CoS.	(i) \$53,736.91  (ii) \$17,679.90	Two ministe- rial advisers accompanied the Minister, Ms Varian and	(i) \$ N/A  (ii) \$ N/A

Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
	calls with attending Ministers. Malaysia: To attend the 7th Five Powers Defence Arrangements Ministers Meeting in Kuala Lumpur held triennially and visit RAAF Butterworth.	(iii) \$2182.76	3. FLTLT Naomi Gill, CDF Aide de Camp. 4. CPL Kelly Davis, Signaller. 5. Mr Simeon Gilding, First Assistant Secretary, International Policy Division. 6. FLTLT Patricia Bell, Aide de Camp. 7. Mr Joshua Hutton, IP Division 8. Ms Elizabeth Warnes	(iii) \$5,292.93	Ms Enyi.	(iii) \$ N/A
Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence	Netherlands, Belgium and Afghanistan from 9 to 15 June 2009. Netherlands: To attend the Regional Commander	(i) N/A  (ii) N/A	1. ACM Angus Houston, Chief of Defence Force. 2. Mr Nick Warner, Secretary. 3. Ms Julie Roberts, Ex-	(i) \$70,816.12  (ii) \$3,496.48	Two ministerial advisers accompanied the Minister, Ms Harrison	(i) \$ N/A  (ii) \$ N/A

	(South) Meeting in Maas-tricht and bilateral meetings with Ministers in attendance. Belgium: To attend the Non-NATO ISAF Contributing Nations Meeting in Brussels, meetings with Ministers and officials. Afghanistan: To engage with Afghanistan government officials, senior military leadership and Australian troops.	(iii) 862.14	ecutive Assistant (note: Ms Roberts did not travel to Afghanistan and remained in Dubai) 4. FLTLT Patricia Bell, Aide de Camp	(iii) \$3,093.58	and Mr Campbell.	(iii) \$ N/A
Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence Science and Personnel	The Middle East from 5 to 10 January to meet troops and senior officials. Countries visited were Iraq, United Arab Emirates, Bahrain,	(i) N/A  (ii) N/A	1. ACM Angus Houston, Chief of Defence Force. 2. MAJGEN Paul Alexander, Commander Joint Health Command.	(i) \$94,663.92  (ii) \$9,835.29	One ministerial adviser accompanied the Minister, Ms Sieper.	(i) \$ N/A  (ii) \$ N/A



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Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
	Qatar and Afghanistan.	(iii) N/A	3. GPCAPT Craig Heap, Chief of Staff. 4. CAPT Elisabeth Barnett, CDF Aide de Camp. 5. CPL Daniel Reedman, Signaller. 6. Dr Sheridan Kearnan, Director Afghanistan, International Policy Division. 7. FLTLT Duncan Cotter, MINDSP Aide de Camp.	(iii) \$8,393.97	One journalist accompanied at his own expense.	(iii) \$ N/A
Minister / Parliamentary Secretary	(1) (a) (i) (ii) (iii)	(b) (i)(ii)(iii)	2(a)	(b)	(3)(a)	(b)
Minister for Defence Science and Personnel	East Timor from 24-26 April for ANZAC Day. Minister Snowdon met with government officials and troops; attended ANZAC Day Services and the dedication and service of the DARE Memorial.	(i) N/A (ii) N/A (iii) N/A	1. LEUT Michelle Ryan, MINDSP Aide de Camp	(i) \$2,150.18 (ii) \$143.64 (iii) \$651.19	The Minister was accompanied by one ministerial adviser, Ms Sieper.	(i) \$ N/A (ii) \$ N/A (iii) \$ N/A

QUESTIONS ON NOTICE

**Australia Tibet Council****(Question No. 2105)**

**Senator Bob Brown** asked the Minister representing the Minister for Education, upon notice, on 14 August 2009:

- (1) Is the Minister aware of reports that seven members and supporters of the Australia Tibet Council were barred from entry to a public lecture held by the Royal Melbourne Institute of Technology (RMIT) on 25 June 2009 by Chinese consulate officials and private security guards.
- (2) Is it correct that Chinese security agents and/or consulate officials were: (a) at the lecture; and (b) instructing security guards to bar certain people from entering.
- (3) Does the Government consider that it is acceptable for the Commonwealth-funded educational institution to discriminate against people based on their nationality and/or political allegiances.
- (4) Is the Government satisfied with the investigation into the matter by RMIT.

**Senator Carr**—The Minister for Education has provided the following answer to the honourable senator's question:

- (1) Yes.
- (2) (a) Yes. (b) The Minister is not aware of the communications between the Chinese Consul-General and his security guards.
- (3) The security guards were not employed by RMIT.
- (4) Yes