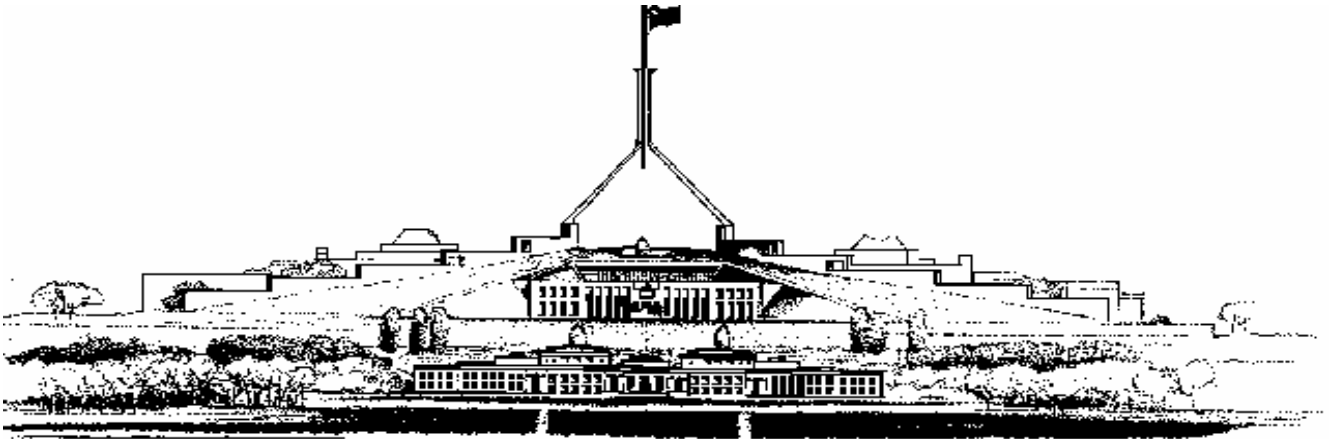




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



Senate

Official Hansard

No. 4, 2010

Friday, 26 November 2010

FORTY-THIRD PARLIAMENT
FIRST SESSION—FIRST PERIOD

BY AUTHORITY OF THE SENATE

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SITTING DAYS—2010

Month	Date
February	2, 3, 4, 22, 23, 24, 25
March	9, 10, 11, 15, 16, 17, 18
May	11, 12, 13
June	15, 16, 17, 21, 22, 23, 24
September	28, 29, 30
October	25, 26, 27, 28
November	15, 16, 17, 18, 22, 23, 24, 25, 26

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

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

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

Deputy Leader of the Opposition in the Senate—Senator Hon. George Henry Brandis SC

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

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

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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. Eric Abetz

Deputy Leader of the Liberal Party of Australia—Senator Hon. George Henry Brandis SC

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 Anne McEwen

Deputy Government Whips—Senators Carol Louise Brown and Helen Beatrice Polley

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 ⁽³⁾	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 ⁽²⁾	WA	30.6.2011	LP
Crossin, Patricia Margaret ⁽⁴⁾	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 ⁽¹⁾	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 ⁽⁴⁾	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 ⁽⁴⁾	ACT		ALP
Macdonald, Hon. Ian Douglas	QLD	30.6.2014	LP

Senator	State or Territory	Term expires	Party
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 ⁽⁴⁾	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—R Laing

Clerk of the House of Representatives—B Wright

Secretary, Department of Parliamentary Services—A Thompson

GILLARD MINISTRY

Prime Minister	Hon. Julia Gillard MP
Deputy Prime Minister and Treasurer	Hon. Wayne Swan MP
Minister for Regional Australia, Regional Development and Local Government	Hon. Simon Crean MP
Minister for Tertiary Education, Skills, Jobs and Workplace Relations and Leader of the Government in the Senate	Senator Hon. Chris Evans
Minister for School Education, Early Childhood and Youth	Hon. Peter Garrett AM MP
Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate	Senator Hon. Stephen Conroy
Minister for Foreign Affairs	Hon. Kevin Rudd MP
Minister for Trade	Hon. Dr Craig Emerson MP
Minister for Defence and Deputy Leader of the House	Hon. Stephen Smith MP
Minister for Immigration and Citizenship	Hon. Chris Bowen MP
Minister for Infrastructure and Transport and Leader of the House	Hon. Anthony Albanese 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 Sustainability, Environment, Water, Population and Communities	Hon. Tony Burke MP
Minister for Finance and Deregulation	Senator Hon. Penny Wong
Minister for Innovation, Industry, Science and Research	Senator Hon. Kim Carr
Attorney-General and Vice President of the Executive Council	Hon. Robert McClelland MP
Minister for Agriculture, Fisheries and Forestry and Manager of Government Business in the Senate	Senator Hon. Joe Ludwig
Minister for Resources and Energy and Minister for Tourism	Hon. Martin Ferguson AM, MP
Minister for Climate Change and Energy Efficiency	Hon. Greg Combet AM, MP

[The above ministers constitute the cabinet]

GILLARD MINISTRY—*continued*

Minister for the Arts	Hon. Simon Crean MP
Minister for Social Inclusion	Hon. Tanya Plibersek MP
Minister for Privacy and Freedom of Information	Hon. Brendan O'Connor MP
Minister for Sport	Senator Hon. Mark Arbib
Special Minister of State for the Public Service and Integrity	Hon. Gary Gray AO, MP
Assistant Treasurer and Minister for Financial Services and Superannuation	Hon. Bill Shorten MP
Minister for Employment Participation and Childcare	Hon. Kate Ellis MP
Minister for Indigenous Employment and Economic Development	Senator Hon. Mark Arbib
Minister for Veterans' Affairs and Minister for Defence Science and Personnel	Hon. Warren Snowdon MP
Minister for Defence Materiel	Hon. Jason Clare MP
Minister for Indigenous Health	Hon. Warren Snowdon MP
Minister for Mental Health and Ageing	Hon. Mark Butler MP
Minister for the Status of Women	Hon. Kate Ellis MP
Minister for Social Housing and Homelessness	Senator Hon. Mark Arbib
Special Minister of State	Hon. Gary Gray AO, MP
Minister for Small Business	Senator Hon. Nick Sherry
Minister for Home Affairs and Minister for Justice	Hon. Brendan O'Connor MP
Minister for Human Services	Hon. Tanya Plibersek MP
Cabinet Secretary	Hon. Mark Dreyfus QC, MP
Parliamentary Secretary to the Prime Minister	Senator Hon. Kate Lundy
Parliamentary Secretary to the Treasurer	Hon. David Bradbury MP
Parliamentary Secretary for School Education and Workplace Relations	Senator Hon. Jacinta Collins
Minister Assisting the Prime Minister on Digital Productivity	Senator Hon. Stephen Conroy
Parliamentary Secretary for Trade	Hon. Justine Elliot MP
Parliamentary Secretary for Pacific Island Affairs	Hon. Richard Marles MP
Parliamentary Secretary for Defence	Senator Hon. David Feeney
Parliamentary Secretary for Immigration and Citizenship	Senator Hon. Kate Lundy
Parliamentary Secretary for Infrastructure and Transport and Parliamentary Secretary for Health and Ageing	Hon. Catherine King MP
Parliamentary Secretary for Disabilities and Carers	Senator Hon. Jan McLucas
Parliamentary Secretary for Community Services	Hon. Julie Collins MP
Parliamentary Secretary for Sustainability and Urban Water	Senator Hon. Don Farrell
Minister Assisting on Deregulation	Senator Hon. Nick Sherry
Parliamentary Secretary for Agriculture, Fisheries and Forestry	Hon. Dr Mike Kelly AM, MP
Minister Assisting the Minister for Tourism	Senator Hon. Nick Sherry
Parliamentary Secretary for Climate Change and Energy Efficiency	Hon. Mark Dreyfus QC, MP

SHADOW MINISTRY

Leader of the Opposition	Hon. Tony Abbott MP
Deputy Leader of the Opposition and Shadow Minister for Foreign Affairs and Shadow Minister for Trade	Hon. Julie Bishop MP
Leader of the Nationals and Shadow Minister for Infrastructure and Transport	Hon. Warren Truss MP
Leader of the Opposition in the Senate and Shadow Minister for Employment and Workplace Relations	Senator Hon. Eric Abetz
Deputy Leader of the Opposition in the Senate and Shadow Attorney-General and Shadow Minister for the Arts	Senator Hon. George Brandis SC
Shadow Treasurer	Hon. Joe Hockey MP
Shadow Minister for Education, Apprenticeships and Training and Manager of Opposition Business in the House	Hon. Christopher Pyne MP
Shadow Minister for Indigenous Affairs and Deputy Leader of the Nationals	Senator Hon. Nigel Scullion
Shadow Minister for Regional Development, Local Government and Water and Leader of the Nationals in the Senate	Senator Barnaby Joyce
Shadow Minister for Finance, Deregulation and Debt Reduction and Chairman, Coalition Policy Development Committee	Hon. Andrew Robb AO, MP
Shadow Minister for Energy and Resources	Hon. Ian Macfarlane MP
Shadow Minister for Defence	Senator Hon. David Johnston
Shadow Minister for Communications and Broadband	Hon. Malcolm Turnbull MP
Shadow Minister for Health and Ageing	Hon. Peter Dutton MP
Shadow Minister for Families, Housing and Human Services	Hon. Kevin Andrews MP
Shadow Minister for Climate Action, Environment and Heritage	Hon. Greg Hunt MP
Shadow Minister for Productivity and Population and Shadow Minister for Immigration and Citizenship	Mr Scott Morrison MP
Shadow Minister for Innovation, Industry and Science	Mrs Sophie Mirabella MP
Shadow Minister for Agriculture and Food Security	Hon. John Cobb MP
Shadow Minister for Small Business, Competition Policy and Consumer Affairs	Hon. Bruce Billson MP

[The above constitute the shadow cabinet]

SHADOW MINISTRY—*continued*

Shadow Minister for Employment Participation	Hon. Sussan Ley MP
Shadow Minister for Justice, Customs and Border Protection	Mr Michael Keenan MP
Shadow Assistant Treasurer and Shadow Minister for Financial Services and Superannuation	Senator Mathias Cormann
Shadow Minister for Childcare and Early Childhood Learning	Hon. Sussan Ley MP
Shadow Minister for Universities and Research	Senator Hon. Brett Mason
Shadow Minister for Youth and Sport and Deputy Manager of Opposition Business in the House	Mr Luke Hartsuyker MP
Shadow Minister for Indigenous Development and Employment	Senator Marise Payne
Shadow Minister for Regional Development	Hon. Bob Baldwin MP
Shadow Special Minister of State	Hon. Bronwyn Bishop MP
Shadow Minister for COAG	Senator Marise Payne
Shadow Minister for Tourism	Hon. Bob Baldwin MP
Shadow Minister for Defence Science, Technology and Personnel	Mr Stuart Robert MP
Shadow Minister for Veterans' Affairs	Senator Hon. Michael Ronaldson
Shadow Minister for Regional Communications	Mr Luke Hartsuyker MP
Shadow Minister for Ageing and Shadow Minister for Mental Health	Senator Concetta Fierravanti-Wells
Shadow Minister for Seniors	Hon. Bronwyn Bishop MP
Shadow Minister for Disabilities, Carers and the Voluntary Sector and Manager of Opposition Business in the Senate	Senator Mitch Fifield
Shadow Minister for Housing	Senator Marise Payne
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Shadow Parliamentary Secretary Assisting the Leader of the Opposition	Senator Cory Bernardi
Shadow Parliamentary Secretary for International Development Assistance	Hon. Teresa Gambaro MP
Shadow Parliamentary Secretary for Roads and Regional Transport	Mr Darren Chester MP
Shadow Parliamentary Secretary to the Shadow Attorney-General	Senator Gary Humphries
Shadow Parliamentary Secretary for Tax Reform and Deputy Chairman, Coalition Policy Development Committee	Hon. Tony Smith MP
Shadow Parliamentary Secretary for Regional Education	Senator Fiona Nash
Shadow Parliamentary Secretary for Northern and Remote Australia	Senator Hon. Ian Macdonald
Shadow Parliamentary Secretary for Local Government	Mr Don Randall MP
Shadow Parliamentary Secretary for the Murray-Darling Basin	Senator Simon Birmingham
Shadow Parliamentary Secretary for Defence Materiel	Senator Gary Humphries
Shadow Parliamentary Secretary for the Defence Force and Defence Support	Senator Hon. Ian Macdonald
Shadow Parliamentary Secretary for Primary Healthcare	Dr Andrew Southcott MP

SHADOW MINISTRY—*continued*

Shadow Parliamentary Secretary for Regional Health Services and Indigenous Health	Mr Andrew Laming MP
Shadow Parliamentary Secretary for Supporting Families	Senator Cory Bernardi
Shadow Parliamentary Secretary for the Status of Women	Senator Michaelia Cash
Shadow Parliamentary Secretary for Environment	Senator Simon Birmingham
Shadow Parliamentary Secretary for Citizenship and Settlement	Hon. Teresa Gambaro MP
Shadow Parliamentary Secretary for Immigration	Senator Michaelia Cash
Shadow Parliamentary Secretary for Innovation, Industry, and Science	Senator Hon. Richard Colbeck
Shadow Parliamentary Secretary for Fisheries and Forestry	Senator Hon. Richard Colbeck
Shadow Parliamentary Secretary for Small Business and Fair Competition	Senator Scott Ryan

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Friday, 26 November 2010

The PRESIDENT (Senator the Hon. John Hogg) took the chair at 9 am and read prayers and made an acknowledgement of country.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.01 am)—I seek leave to move a motion to vary the routine of business for today.

Leave granted.

Senator LUDWIG—I move:

That the order of the Senate agreed to on 25 November 2010 relating to the hours of meeting and routine of business for today, be amended as follows:

Omit paragraphs (2) and (3), substitute:

- (2) That the Senate meet on Friday, 26 November 2010, and that:
 - (a) the hours of meeting shall be 9 am to 3.30 pm; and
 - (b) the routine of business shall be:
 - (i) the introduction of a private senator's bill—Assisting Victims of Overseas Terrorism Bill 2010,
 - (ii) a personal explanation by Senator Boswell,
 - (iii) a motion relating to leave of absence for senators, and
 - (iv) a motion relating to the consideration of private senators' bills.
- (3) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 be called on immediately and have precedence over all other business until determined.

Senator IAN MACDONALD (Queensland) (9.02 am)—I just ask the minister whether the government is still persisting with the 3 pm closure in view of the fact that

the legislation listed for when the telecommunications legislation amendment is completed is quite lengthy. I anticipate there will be quite some debate on it. I indicated yesterday that I understood the coalition will be moving amendments in the Territories Law Reform Bill which I am not sure that the government will accept. They voted against them in the other House. I again refer the minister to my amendment yesterday to have the sitting of the Senate continue until such time as that legislation was dealt with.

If the government seriously want to get those bills through, and I assume they do, the fact that they are on the Notice Paper for the last day of sitting and the fact that there will be debate and amendments moved and, I assume, voted on means one of two things: we are not going to finish them or, alternatively, the government with their lackeys in the Greens will again gag debate on those pieces of legislation so that Senator Brown and a couple of other Victorian Labor members can get down to Victoria to baste in the media spotlight for the Victorian election.

Senator Hanson-Young interjecting—

Senator IAN MACDONALD—And Senator Hanson-Young wants to go too, I understand. Is that right? Are we going to see you all here at three o'clock, Senator Hanson-Young and Senator Brown?

Senator Hanson-Young interjecting—

Senator Fierravanti-Wells—Senator Hanson-Young, are you going to be here at 3 o'clock?

Senator IAN MACDONALD—I will be eagerly watching to see if they are here. It will be interesting to see. We heard such pious comments from Senator Brown yesterday about the need to sit, so it will be very interesting to see whether Senator Brown is still here at 3 pm when the rest of us are. I heard a rumour that Senator Hanson-Young might be pursuing her leadership ambitions

by getting down there too and getting her share of the spotlight on the television. But perhaps I wrong them both, and if I get a chance to say it at three o'clock and they are both here I will apologise to both of them because you can never believe rumours in this place.

But I do seriously ask the minister in closing the debate on this motion, should no-one else want to speak: what is the plan for today? Do you want these bills through? If so, can I suggest that you adopt the amendment I used yesterday, and that is that the Senate rise as soon as all of those bills have been dealt with, whenever that is. That will be a real test for Senator Brown and Senator Conroy, another Victorian. Perhaps we will be debating them at 11 o'clock tomorrow morning. That would be interesting if Senator Brown and Senator Hanson-Young could not be there. That is an alternative I urge upon the Manager of Government Business, that we do retain the Senate until such time as the particular piece of legislation is dealt with.

Here we go, the Labor-Greens alliance having a bit of a chat again. For those who cannot see it and who might be listening on this last day of parliament, we have Senator Brown and Senator Evans, the Labor-Green alliance, the Labor-Green coalition, in furious conversation over there, working out how Senator Brown can get down to Melbourne in time to play the media—

Senator Siewert—We have Senator Kroger and Senator Ludlum in intense conversation on the other side of the chamber.

The PRESIDENT—Senator Siewert, it would help if we just hear Senator Macdonald out.

Senator IAN MACDONALD—I take Senator Siewert's intervention. I had not realised that Senator Ludlam and Senator Kroger were leaders of their respective parties. There is a slight difference with a cou-

ple of senators having a bit of a chat at the back of the chamber. I am surprised they are not listening intently to what I am saying but there is nothing to stop them having a bit of a chat. It is quite different when you have the Leader of the Government in the Senate, Senator Evans, and the Leader of the Greens—well, the leader at the moment; I know Senator Hanson-Young is making a lot of strides—

The PRESIDENT—I remind all senators that it is Christmas coming and we should have a bit of Christmas cheer.

Senator IAN MACDONALD—It is timely you mention that. Senator Brown said that to me yesterday: 'Where is your Christmas cheer? I am full of Christmas cheer.' I said, 'I thought Christmas was a Christian greeting.' Anyhow, I will let that pass.

Senator Fierravanti-Wells—Christmas for some.

Senator IAN MACDONALD—Okay. I do not quite understand the theological arguments here.

Senator Conroy—You are a grinch.

Senator IAN MACDONALD—I talk English. I urge Senator Bishop—Senator Ludwig; how could I forget Ludwig coming from Queensland—I urge on Senator Ludwig my amendment that extends the sitting of the Senate today until such time as that deal is done. Alternatively, I would just like Senator Ludwig's confirmation that it will be gagged through so that that legislation can be dealt with.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (9.07 am)—As is normally the case, normal pairing arrangements will apply from this side and I suspect from the opposition and the Greens. In terms of the remaining program for today, I am confident that we will discuss the program to ensure all busi-

ness is completed with the opposition and the Greens and Senators Xenophon and Fielding to ensure that we complete the program at a reasonable hour, by 3.30.

Senator Parry—I do not know what Senator Ludwig—

The PRESIDENT—Senator Ludwig has closed the debate. You will need leave. Is leave granted? Leave is granted.

Senator PARRY (Tasmania) (9.08 am)—Normally pairing arrangements are never mentioned in the chamber as such and I would like Senator Ludwig to explain what he means that normal pairing arrangements will be continued today. My understanding and my negotiations and discussions with the Government Whip are that we are back to our standard five pairs plus leader. I want this clarified—Senator Ludwig has raised this. It was the normal five plus one plus an additional pair for a senator who got sick yesterday, which is the way we transact business in relation to pairs. And we will not be pairing the Greens per se; the pairs for the Greens will be coming from the Labor Party allocation. I want that to be very clearly understood by the chamber.

Senator CHRIS EVANS (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations) (9.10 am)—by leave—Can I just say that Senator Ludwig was replying to the contribution from Senator Macdonald to try to ease the tension in the chamber and get us back on track. He was just indicating there were normal pairing arrangements; that senators were able to leave. He was making no comment on the specific arrangements. We appreciate the cooperation we have had from the coalition on pairing, which we always cooperate well on. He was just making that point and suggesting that we ought to get on with business; that, in terms of the management of the program during the day, normal

discussions will occur and we will work our way through the remaining business and that we all perhaps just get on with the job rather than try to incite trouble.

Question agreed to.

ASSISTING VICTIMS OF OVERSEAS TERRORISM BILL 2010

First Reading

Senator BRANDIS (Queensland) (9.11 am)—I move:

That the following bill be introduced: A Bill for an Act to establish a process for assisting victims of overseas terrorist acts, and for related purposes.

Question agreed to.

Senator BRANDIS (Queensland) (9.11 am)—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 BRANDIS (Queensland) (9.11 am)—I move:

That this bill be now read a second time.

I table an explanatory memorandum relating to the bill and seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The speech read as follows—

This is a very important bill, because it is about trying to assist Australians who are casualties of overseas terrorism.

We have seen on several major occasions now how the Islamist terrorism of the past decade has touched ordinary Australian citizens.

In the World Trade Centre on September 11 there were Australian victims; tragically, in Bali in 2002 and again in 2005 there were Australian victims; and in London, and twice in Jakarta, there were Australian victims.

All up, over the past decade more than 300 Australians have been killed or seriously injured as a result of terrorism.

In some cases, Australians became casualties because they were Australians.

If we take the second Bali bombing: the bombers went to that beachside restaurant in Bali precisely because they knew there would be Australians there.

In other instances, of course, it was because they were citizens of the West generally or in Western cities,

Through the bill we are debating I am proposing a national scheme, analogous to the state victims of crime schemes, to facilitate financial assistance for persons who suffer injury as a consequence of terrorist acts overseas or for the next of kin of those who are killed by terrorist acts overseas.

I am not proposing a massively costly scheme.

Using the average of 30 victims per year we have seen over the past decade, it would cost the Commonwealth government about \$2.25 million per annum.

If there is any responsibility of the federal government, it is surely to protect and look after Australians who get into trouble abroad.

That should include those Australians who are victims of terrorism.

Senator BRANDIS—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

PERSONAL EXPLANATIONS

Senator BOSWELL (Queensland) (9.12 am)—I seek leave to make a personal explanation as I claim to have been misrepresented.

Leave granted.

Senator BOSWELL—There were articles in the *Courier Mail* and the *Daily Telegraph* yesterday in which it was reported that I denied ‘receiving any funds from Metcash when challenged over the election donations’. This is one part of a misrepresentation or probably a misunderstanding. I was not, to

my knowledge, challenged over election donations. The tenor of the question relayed to me by my media officer was whether I had accepted payments for my personal benefit. I have never taken a corrupt payment in my life, and I said that. When, 24 hours later, further questions went to the issue of campaign donations I repeated that I had not received any donation from Metcash.

I repeat: I have not received any donation from Metcash. The campaign donation referred to went directly from Metcash to the then Queensland branch of the National Party of Australia. I am informed by the party that it banked the donation in its central campaign account in July 2007.

Another misrepresentation was suggested in the article, quoting an unnamed political observer that I ‘should have been more upfront in disclosing a conflict of interest’ in referring the matter concerning Metcash and the ACCC to the Senate. There is no conflict of interest. This matter is governed by a standing order of the Senate, specifically standing order 27(5), which states:

A senator shall not sit on a committee if the senator has a conflict of interest in relation to the inquiry of the committee.

This matter has been considered by the Senate before and the President indicated that the standing order applies to situations where a senator has a private interest in the subject of the committee’s inquiry which conflicts with the duty of the senator to participate conscientiously in the conduct of the inquiry.

In my case it is clear that I do not have a private interest. My interest as a senator pursuing my duties in this case is a career-long commitment to increase retail competition. Any donations facilitated by me for my party are by way of electoral donations and not personal ones. I note that the Liberal and Labor parties have also received donations from retail concerns, and that should simi-

larly not raise questions as to a conflict of interest for their senators. In pursuing my duties as a senator and in the interests of my constituents it would be remiss of me if I failed to refer this matter to a committee or to participate in the work of that committee.

LEAVE OF ABSENCE

Senator McEWEN (South Australia) (9.15 am)—by leave—I move:

That leave of absence be granted to the following senators for today:

- (a) Senators Arbib and Farrell, on account of parliamentary business; and
- (b) Senator Hurley, for personal reasons.

Question agreed to.

PRIVATE SENATORS' BILLS

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (9.15 am)—I move:

That the following general business orders of the day be considered under the temporary order relating to the consideration of private senators' bills on Thursday, 10 February 2011:

No. 43 Social Security Amendment (Income Support for Regional Students) Bill 2010.

No. 46 Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010.

Assisting Victims of Overseas Terrorism Bill 2010.

No. 50 National Broadband Network Financial Transparency Bill 2010 (No. 2).

No. 17 Evidence Amendment (Journalists' Privilege) Bill 2010 (No. 2).

Question agreed to.

**TELECOMMUNICATIONS
LEGISLATION AMENDMENT
(COMPETITION AND CONSUMER
SAFEGUARDS) BILL 2010**

In Committee

The TEMPORARY CHAIRMAN
(Senator Crossin)—The committee is considering the Telecommunications Legislation

Amendment (Competition and Consumer Safeguards) Bill 2010 and the amendment R(18) on sheet 7019 moved by Senator Ludlam. The question is that the amendment be agreed to.

Senator BIRMINGHAM (South Australia) (9.17 am)—I think other parties in the chamber last night stated their position on this amendment. The opposition opposes this amendment. We think that, in attempting to further define the definition of equivalence, as the Greens are seeking to do, they will end up potentially limiting the definition of equivalence. We think the definition as stated in the bill is an appropriate definition and we will not be supporting this amendment.

Question put.

The committee divided. [9.22 am]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	31
Noes.....	30
Majority.....	<u>1</u>

AYES

Bilyk, C.L.	Bishop, T.M.
Brown, B.J.	Brown, C.L.
Cameron, D.N.	Carr, K.J.
Conroy, S.M.	Crossin, P.M.
Faulkner, J.P.	Feeney, D.
Forshaw, M.G.	Furner, M.L.
Hanson-Young, S.C.	Hogg, J.J.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A. *	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Wong, P.	Wortley, D.
Xenophon, N.	

NOES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.

Colbeck, R.	Coonan, H.L.
Ferguson, A.B.	Fielding, S.
Fierravanti-Wells, C.	Fifield, M.P.
Fisher, M.J.	Heffernan, W.
Humphries, G.	Johnston, D.
Joyce, B.	Kroger, H.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Nash, F.
Parry, S. *	Ryan, S.M.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Williams, J.R.

PAIRS

Arbib, M.V.	Eggleston, A.
Farrell, D.E.	Back, C.J.
Hutchins, S.P.	Adams, J.
O'Brien, K.W.K.	Cormann, M.H.P.
Evans, C.V.	Payne, M.A.
Hurley, A.	Abetz, E.
Collins, J.	Minchin, N.H.

* denotes teller

Question agreed to.

Senator XENOPHON (South Australia)
(9.26 am)—I move amendment (16) on sheet 7005 revised:

(16) Schedule 1, item 31, page 59 (after line 7), at the end of clause 74, add:

- (ca) the principle that Telstra's wholesale/network business unit should have discrete branding and identity to that of its retail business units;
- (cb) the principle that Telstra's management and personnel should be strictly separated between:
 - (i) its wholesale/network business unit; and
 - (ii) its retail business units;
 - and that remuneration should be tied to business unit performance, not group performance;
- (cc) the principle that Telstra should maintain strict information barriers between:
 - (i) its wholesale/network business unit; and
 - (ii) its retail business units;

and that Telstra's retail business units and its wholesale customers should interact with Telstra's wholesale/network business units using the same information systems;

(ce) the principle that Telstra should maintain separate financial accounting between:

- (i) its wholesale/network business unit; and
- (ii) its retail business units;

(2) In determining the principle of equivalence covered by paragraph (1)(a), regard must be had to whether:

- (a) the terms and conditions relating to price or a method of ascertaining price; and
- (b) other terms and conditions;

on which Telstra supplies regulated services to its wholesale customers are no less favourable than the terms and conditions on which Telstra supplies those services to its retail business units.

(3) Subclause (2) does not limit the matters to which regard may be had.

(4) Disregard subclause (2) for the purposes of subsections 577A(2) and (3).

This amendment relates to the functional separation principles. It requires that there be separate branding and identity between Telstra's wholesale network business and its retail business unit. This amendment further specifies that there be strict separation between their information sharing, financial accounting and personnel. This is to ensure that there is a distinct and identifiable difference between the two entities. This amendment also provides that, in determining the principles of equivalence, which we discussed earlier today and last night, regard must be had to the terms and conditions and methods of ascertaining prices to ensure that what Telstra wholesale supplies to its wholesale customers is no less favourable than the

terms and conditions applied to the Telstra retail unit. I emphasise that this amendment relates to the issue of functional separation. I said previously that functional separation would be a poor second cousin to structural separation, but it enhances those principles in terms of equivalence, pricing, accountability and ensuring that the separation is as strict as possible if it is a functional separation. I know that the government is likely to support some but not all of this amendment. I will wait to hear the government's position in relation to this amendment—and, of course, the positions of my colleagues in the opposition and on the crossbench.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.28 am)—The government is broadly supportive of this amendment but we do not support paragraphs (ca) to (ce). If functional separation is required by Telstra then these are the types of matters that will be addressed in the minister's functional separation requirements determined under clause 75 in the bill. Such an instrument will be able to be drafted in a way which avoids technical problems which we believe Senator Xenophon's amendment brings about. I seek leave to move government amendments (1) and (2) to Senator Xenophon's amendment (16) on sheet 7005 revised.

Leave granted.

Senator CONROY—I move:

- (1) Omit paragraphs (ca) to (ce).
- (2) Omit clause (4), substitute the following:
- (4) To avoid doubt, this clause does not affect the meaning of anything in Part 33.

Senator BIRMINGHAM (South Australia) (9.30 am)—The opposition will not be supporting Senator Xenophon's amendments. We do not believe they add to the bill's workability or to how it will function.

There is also the fact that the government is seeking to excise a large swathe from the amendment and simply again leave behind parts, similar to those we have discussed previously, that may add to the process undertaken but do not add to the strength of conditions upon the minister or the government. Therefore we do not see that it is worthwhile supporting this amendment; it will not give a meaningful enhancement to the bill. And, as mentioned, the government itself is choosing to excise a large part of what Senator Xenophon is proposing.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that the government amendments (1) and (2) to Senator Xenophon's amendment (16) on revised sheet 7005 be agreed to.

Question agreed to.

The TEMPORARY CHAIRMAN—The question is that Senator Xenophon's amendment (16) on revised sheet 7005, as amended, be agreed to.

Question agreed to.

Senator XENOPHON (South Australia) (9.31 am)—I move amendment (18) on revised sheet 7005 standing in my name:

(18) Schedule 1, item 31, page 59 (after line 21), after subclause 75(4), insert:

(4A) Before making or varying a functional separation requirements determination, the Minister must:

- (a) cause to be published on the Department's website a notice:
 - (i) setting out the determination or variation; and
 - (ii) inviting persons to make submissions to the Minister about the determination or variation within 14 days after the notice is published; and
- (b) give the ACCC a copy of the notice; and

- (c) consider any submissions received within the 14-day period mentioned in paragraph (a); and
 - (d) ask the ACCC to give advice to the Minister, within 28 days after the publication of the notice, about the determination or variation; and
 - (e) have regard to any advice given by the ACCC.
- (4B) Subclause (4A) does not, by implication, prevent the Minister from asking the ACCC to give the Minister additional advice about a matter arising under this clause.

I have withdrawn amendment (17), but I am persisting with amendment (18). This amendment requires that, before the minister makes the functional separation requirements determination, the minister must publish the draft determination on the department's website and call for submissions to be made within 14 days. Again, it is similar to other amendments—it is about greater transparency; it is about the process of allowing for input to the determination.

Senator LUDLAM (Western Australia) (9.32 am)—The Australian Greens will be supporting Senator Xenophon's amendment (18). It is quite consistent with a number of the amendments that we have moved and carried, providing these windows for transparency part of the way through the process that I think will provide other participants in the market, and indeed the general public, with an important idea of how the process is rolling out. So we will be supporting Senator Xenophon's amendment (18).

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.33 am)—The government is supporting Senator Xenophon's amendment (18). This amendment requires the minister, before making or varying a functional separation requirements

determination, to publish the determination or variation and to undertake a public consultation process about the determination or variation for a period of 14 days. The minister is also required to ask the ACCC to give advice within 28 days after the publication of the determination or variation. This amendment addresses concerns raised by the Competitive Carriers' Coalition and Macquarie Telecom in their submissions to the inquiry into the bill by the Senate Standing Committee on Environment and Communications.

Senator BIRMINGHAM (South Australia) (9.33 am)—The opposition will not oppose Senator Xenophon's amendment. We accept the arguments that Senator Xenophon has put and look forward to seeing the information that his amendment will ensure is tabled and to some level of consultation or discussion arising from it.

Senator XENOPHON (South Australia) (9.34 am)—I thank members for their indications of support. I just want to make it clear that, following this process of consultation, the minister must consider any submissions received and request the ACCC to give advice. These amendments also allow for the minister to ask the ACCC for additional guidance as needed and they are designed to ensure full transparency in the process. I think the process will be a useful one and, like Senator Birmingham, I look forward to this adding a layer of scrutiny to the process.

Question agreed to.

Senator XENOPHON (South Australia) (9.34 am)—I move amendment (19) on sheet 7005 standing in my name:

(19) Schedule 1, item 31, page 70 (after line 17), at the end of Part 9, add:

82A Enforcement of undertakings

- (1) If:
 - (a) a final functional separation undertaking is in force; and

- (b) the ACCC considers that Telstra has breached the undertaking;
the ACCC must apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that Telstra has breached the undertaking, the court may make any or all of the following orders:
- (a) an order directing Telstra to comply with the undertaking;
 - (b) an order directing the disposal of network units, shares or other assets;
 - (c) an order restraining the exercise of any rights attached to shares;
 - (d) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by Telstra;
 - (e) an order that any exercise of rights attached to shares be disregarded;
 - (f) an order directing Telstra to pay to the Commonwealth an amount up to the amount of any financial benefit that Telstra has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (g) any order that the Court considers appropriate directing Telstra to compensate any other person who has suffered loss or damage as a result of the breach;
 - (h) any other order that the Court considers appropriate.
- (3) In addition to the Federal Court's powers under subsection (2), the court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
 - (b) has power to make an order containing such ancillary or consequential provisions as the court thinks just.
- (4) The Federal Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (5) The Federal Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

This relates to the enforcement of functional separation undertakings. This amendment inserts an enforcement of undertakings provision into the functional separation undertakings. If the ACCC determines not to take any breaches of the undertaking to court, it must publish its reasons. That is the basis of it. I think it is important that, if there will not be an enforcement for an apparent breach, we need to know why.

Senator LUDLAM (Western Australia) (9.35 am)—I will just indicate briefly that the Australian Greens, after careful consideration, will not be supporting Senator Xenophon's amendment (19). It appears as drafted to introduce an obligation upon the ACCC to take action in the Federal Court if Telstra breaches functional separation undertakings or principles. It goes a step further than the way the system would function with regard to structural separation, where the ACCC may take action. My reading—unless Senator Xenophon wants to correct me—is that this amendment would actually compel the ACCC to go after Telstra in court, even in the event of a fairly minor or accidental breach of the undertaking. We would prefer that that power remain discretionary. We hope—as I think everybody said in here last night and has said over the last couple of days—that we do not wind up going down the functional separation path, but we think it is probably a bit tough and perhaps a bit heavy-handed to compel the ACCC to give

Telstra a belting even in the event of a fairly minor or accidental breach.

Senator XENOPHON (South Australia) (9.36 am)—I need to apologise and to clarify this amendment, with this swathe of amendments. In terms of functional separation, in the event that an undertaking has not been enforced then the requirement is to go to the Federal Court rather than a publication of reasons. The issue of publication of reasons was another matter. Here it is quite clear from the wording that the court needs to consider it. I note that the government is not likely to support this, but I think it is important to flag this amendment and to raise it. Could the government explain on what basis it considers that it will be satisfied if there is not enforcement—what mechanisms are there to ensure that if there is an apparent breach some action is taken?

Senator BIRMINGHAM (South Australia) (9.37 am)—I indicate that the opposition strongly opposes this amendment. Senator Ludlam, who is often a wise and astute commentator in this place, even though we may disagree from time to time, indicated that this is a very heavy-handed amendment. The reality is that the amendment reads very clearly that under certain conditions the ACCC must apply to the Federal Court for an order under proposed subsection (2). We think that this is extremely heavy-handed, that it ties the ACCC's hands and that it does not provide for the type of responsiveness that we would expect from an agency such as the ACCC. There are of course other means by which the ACCC can seek enforcement, and we do not think that the chamber needs to be this prescriptive in this legislation on this occasion.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.38

am)—I indicate that the government opposes this amendment. The objective of this amendment is already addressed in the bill, in the government's view. Under the bill, an 'in force' functional separation undertaking is a condition of carrier licence—I refer you to clause 82 on page 70—with a range of remedies for a breach available, including for minor breaches, where court proceedings may be excessive. This amendment undermines those enforcement options by requiring the ACCC to seek an order in the Federal Court. Transparency is also provided by the reporting requirement in clause 51 on page 79 of the bill.

Question negatived.

Senator XENOPHON (South Australia) (9.39 am)—As we have dealt with amendment (20), I move amendment (21) on sheet 7005 standing in my name:

(21) Schedule 1, page 84 (after line 3), after Part 1, insert:

Part 1A—Allocation of spectrum licences
Radiocommunications Act 1992

67A After subsection 60(1)

Insert:

- (1A) Procedures determined under subsection (1) must provide for limits on the allocation of spectrum licences under this Subdivision, so that:
- (a) in relation to metropolitan areas, other than in the market area covering the Australian Capital Territory—no more than 25 per cent of the available spectrum may be used by any one person; and
 - (b) in relation to the market area covering the Australian Capital Territory—no more than 33 per cent of the available spectrum may be used by any one person; and
 - (c) in relation to regional areas—no more than 50 per cent of the available spectrum may be used by any one person.

This relates to the whole issue of spectrum licences for the 4G network, which is the next big thing because it is much faster than 3G. This amendment provides limits in the allocation of spectrum whereby in metropolitan areas, not including the ACT, not more than 25 per cent of the available spectrum can be used by any one person or any one entity, and in the ACT not more than 33 per cent can be used by any one entity. In regional areas no more than 50 per cent may be used by any one entity. This is in line with the competition limits set in 2001 for the allocation of the 3G spectrum. I understand the government will not be supporting this but I look forward to an undertaking from the government that we are not going to end up with some near monopoly or monopolistic behaviour in the context of the 4G spectrum.

Senator LUDLAM (Western Australia) (9.40 am)—The Australian Greens will not be supporting this amendment although we are supportive of the position of ensuring that competition principles apply right through the sector, including to the allocation of 4G spectrum. My understanding, unfortunately, is that it is more for reasons of technology than competition policy that it is very difficult to carve up spectrum in this way, given the number of players who are likely to be active in each of the different markets. I also call on the minister, if he is able, to provide us with a fairly detailed explanation of how the government proposes to avoid the kinds of anticompetitive outcomes that I think this amendment is designed to address. We have similar concerns. I am not certain that technologically it is possible to cut up spectrum in the way that Senator Xenophon is proposing.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.41

am)—The government does oppose this amendment. We are very conscious of the concerns that Senator Xenophon has raised. Competition limits regarding the allocation of spectrum need to be considered on a case-by-case basis taking into account the purposes for which the spectrum can be used, the quantity of spectrum to be made available, how it is best packaged and the level of competition in the market.

Furthermore, under the current Radiocommunications Act there are procedures for placing competition limits on spectrum that require consultation with the ACCC. It is not clear whether the caps imposed on available spectrum under this provision apply to all available spectrum in a particular area or to a spectrum available under a particular spectrum allocation process being run by the Australian Communications and Media Authority. That said, I recognise Senator Xenophon's legitimate interest in this area and I have therefore given a commitment that prior to giving any written direction to the ACMA under section 60(10) of the Radiocommunications Act relating to general competition limits to apply to the allocation of the specified bands of spectrum identified in this bill, I will be consulting with him.

Senator XENOPHON (South Australia) (9.42 am)—I would like to follow that up. Can you indicate that competition principles will be applied to it—that we are not going to have one operator? I am not concerned so much about consultation with me; I am concerned about consultation at large to ensure that there will not be one operator that will dominate the market. Are we likely to have something similar to 3G or approximating that, so that we will not have market domination by any one player and that there will not be any special deal for any one operator?

Senator CONROY (Victoria—Minister for Broadband, Communications and the

Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.43 am)—From my discussions with ACMA they are working very much on a competitive model. There are no special deals being envisaged at all. As I mentioned, competition limits regarding the allocation of spectrum need to be considered on a case-by-case basis. Those laws will be applying. I appreciate that you are very concerned about this. I would be equally concerned if we had a perverse outcome like that. While we are certainly seeking to maximise the outcome for taxpayers, the ultimate outcome for taxpayers would be significantly reduced if there was some of the domination that you are concerned about, Senator Xenophon. I will certainly be consulting on that issue and I will certainly have that uppermost in my mind. I believe those competition rules will be part of this consideration.

Senator XENOPHON (South Australia) (9.44 am)—I am grateful to the minister for his answer. So does that mean that it is a transparent process? Presumably, the spectrum will be auctioned—is that what the minister is considering—so therefore there is that transparency by virtue of an auction process?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.44 am)—Senator Xenophon, we have been consulting with ACMA over the last six months about the process of the auction. A range of auction methods have been used around the world. Some have been widely criticised; some have been less effective. ACMA may have been doing extensive research on this. If you are genuinely interested, I would be happy to talk to ACMA. They have not finalised their position, but they could certainly give you a flavour of the complexities involved and the types of processes. I know

that, deep down, you are a bit of a geek, Senator Xenophon, so I would be happy to see whether I could facilitate some information for you on that process. That auction process is absolutely designed to maximise the outcome for taxpayers of a very valuable resource.

Senator XENOPHON (South Australia) (9.45 am)—I will take the minister up on that offer. I am more of a masochist than a geek. I will get bombarded from the authority with information and, again, as long as I do not have to sign any confidentiality agreement—

Senator Conroy—Only for 12 years!

Senator XENOPHON—I am sure the minister is joking.

Senator LUDLAM (Western Australia) (9.46 am)—The minister, as one of the Senate's geeks, would probably appreciate something similar. But can the minister tell us whether, during the process that ACMA is going through around organising how these auctions are to take place, there will be any written indication of how competition principles will be applied? Will there be anything put into the public domain that will guide the discretion of ACMA so that we do not see one single player taking up all the available spectrum in a particular market?

Senator Conroy—Apologies, Senator Ludlam. Could you repeat your question.

Senator Birmingham—The minister was doing something on his iPhone.

Senator LUDLAM—Essentially, just to follow up on Senator Xenophon's question: will your office be putting anything into the public domain during that process of working out how the auctions are going to function to guide the discretion of ACMA so that we do not, for example, wind up with one player controlling all the spectrum in an available market? Consultation is one thing,

but will there be written guidelines or anything put into the public domain?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.47 am)—Firstly, it would not be possible, in my view, for there to be an outcome where one company could end up with all the spectrum. I make that very clear. That would be a very adverse outcome for the Australian public. In terms of where ACMA are up to in the process, there is a complex trade-off that they are considering, between the auction method—and there are three or four; if you are interested, I am happy to facilitate a briefing with ACMA—and what size of blocks, if I can use that phrase, industry want. We are talking about, say, 120, so 340 sounds fairly straightforward. But what the industry sector has said to us over the last 12 months is that, despite that being the thinking behind the process, say, 12 months or two years ago, different technologies are now being used. Industry's preference would be for the blocks to be sold off in smaller bits. So there is a trade-off between what technology industry want to use—upload and download is the wrong way to describe it, and I am not an engineer—and the auction process. It is very complex and fascinating, and I will happily organise that briefing if ACMA are in a position to do so.

Secondly, in terms of the public process, if I can I will get back to you before the end of the debate to let you know. If I cannot, I will talk to you later about what the public process part of the overall process is. But the discussion about this matter with ACMA has been fascinating, and I am sure you will enjoy it.

Senator BIRMINGHAM (South Australia) (9.49 am)—I am not sure whether I will put myself closer to Senator Xenophon or

Senator Ludlam in the debate around geekiness or otherwise. I do not think I can compete with Senator Ludlam. Senator Xenophon, I am sorry but you are all alone on this amendment. While consistency is not always a standard adhered to in this place, the opposition has been very critical from day one about the government's approach of using spectrum triggers in this legislation and mixing up issues around spectrum allocation with the division and structural separation of a fixed line service. Is the minister showing off his *Financial Review* article? We all have it; fear not. We think that it was wrong—

Senator Conroy—The article?

Senator BIRMINGHAM—The article is a total fabrication. The only accurate thing about the article is the tangled mess you appear to be in, in the pictures. We think that the issues around spectrum allocation are not issues that should be dealt with in this bill. We think it was wrong for the government to try to use them as a gun at the head of Telstra. We obviously have had that debate already. We attempted to remove that and sadly were unsuccessful. I know that Senator Xenophon comes to these amendments with good intentions, and I think the discussion that we have just had in the chamber will at least add to some of the process. We hope the government adopts a transparent, engaged and consultative process with industry, consumer representatives and others to ensure that this spectrum allocation is done in a way that maximises competition. We note we have had strong representations from the mobile telecommunications industry. Now the minister even has the clerks reading his puff piece. He is very proud. Have you got it framed already, Stephen?

Senator Conroy—Clerks are independent.

Senator BIRMINGHAM—The clerks would give an objective analysis, absolutely.

I am pleased the minister is proud of it; it is a lovely piece. We have had strong representations from the AMDA and other sectors who believe this is the wrong way to go; that, whilst Senator Xenophon's intentions are well meaning, trying to specify in this legislation in this way would be the wrong outcome and would potentially stifle the type of competitive outcomes you would hope to see from the allocation of this spectrum. So we hope that the minister's good words thus far in response to Senator Xenophon and Senator Ludlam will transfer into good deeds and that we will see a decent process for the allocation of this spectrum and something that provides a good competitive outcome.

The TEMPORARY CHAIRMAN (Senator Crossin)—The question is that amendment (21) on sheet 7005 moved by Senator Xenophon be agreed to.

Question negatived.

Senator PARRY (Tasmania—Manager of Opposition Business in the Senate) (9.53 am)—Madam Temporary Chairman, I seek leave to recommit the vote on Senator Ludlam's amendment R18 on sheet 7019.

Leave granted.

Senator PARRY—Senator Ronaldson was the absent senator who did not make up the numbers which would have tied the vote, which would then have negatived the vote. Senator Ronaldson, along with a number of other senators, very wisely seeks leave in advance for the last Friday of the last week of sittings. Leave was recalled from all senators when the Senate extended its sittings, and there has been a communication error with Senator Ronaldson's office and the understanding of the leave withdrawal was not completely comprehended. On that basis Senator Ronaldson is absent from the parliament, so I seek leave to recommit the vote. The upside for the government is that they now have an additional pair.

Question put.

The committee divided. [9.59 am]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes..... 30

Noes..... 30

Majority..... 0

AYES

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.	Faulkner, J.P.
Feeney, D.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A.*	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Wortley, D.	Xenophon, N.

NOES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Ferguson, A.B.	Fielding, S.
Fierravanti-Wells, C.	Fifield, M.P.
Fisher, M.J.	Heffernan, W.
Humphries, G.	Johnston, D.
Joyce, B.	Kroger, H.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Nash, F.
Parry, S.*	Ryan, S.M.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Williams, J.R.

PAIRS

Arbib, M.V.	Eggleston, A.
Farrell, D.E.	Back, C.J.
Hutchins, S.P.	Adams, J.
O'Brien, K.W.K.	Cormann, M.H.P.
Evans, C.V.	Abetz, E.
Hurley, A.	Payne, M.A.

Hogg, J.J.
Wong, P.

Minchin, N.H.
Ronaldson, M.

* denotes teller

Question negatived.

Senator BIRMINGHAM (South Australia) (10.01 am)—by leave—I move opposition amendments (58), (59), (61) and (62) on sheet 7004 together:

(58) Schedule 1, item 152, page 108 (lines 10 and 11), omit the item, substitute:

152 Subsection 152AV(1)

Omit “152AT or”.

152A Subsection 152AW(1)

Omit “152AT or”.

152B Paragraph 152AW(1)(b)

Omit “paragraph 152AT(3)(a) or”.

152C Paragraph 152AW(1)(c)

Repeal the paragraph.

152D Paragraph 152AW(1)(e)

Omit “152AT or”.

152E Paragraph 152AW(1)(f)

Omit “152AT or”.

152F Paragraph 152AW(1)(g)

Omit “152AT or”.

152G Paragraph 152AW(1)(h)

Omit “152AT or”.

152H Paragraph 152AW(5)(a)

Omit “152AT or”.

152J Paragraph 152AW(5)(c)

Omit “paragraph 152AT(3)(a) or”.

152K Paragraph 152AW(5)(d)

Omit “paragraph 152AT(3)(a) or”.

152L Paragraph 152AW(5)(e)

Repeal the paragraph.

152M Paragraph 152AW(5)(g)

Omit “152AT or”.

152N Paragraph 152AW(5)(h)

Omit “152AT or”.

152P Paragraph 152AW(5)(i)

Omit “152AT or”.

152Q Paragraph 152AW(5)(j)

Omit “152AT or”.

152R Paragraph 152AW(5)(k)

Omit “152AT or”.

152S Section 152AX

Omit “152AT or”.

(59) Schedule 1, item 160, page 131 (after line 2), at the end of Division 4, add:

Subdivision G—Review of access determinations by Tribunal

152BCX Application for review

- (1) A person whose interests are affected by an access determination may apply in writing to the Tribunal for review of the determination.
- (2) The application must be made within 21 days after the Commission makes the determination.
- (3) The Tribunal must review the determination in accordance with section 152BCY.

152BCY Review of access determinations

Orders

- (1) On a review of an access determination, the Tribunal may order that the determination be affirmed, varied or revoked.
- (2) If the Tribunal makes an order that the determination be varied or revoked, the Commission is taken to have varied or revoked the determination accordingly (other than for section 152BCX or this section).
- (3) For the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

Conduct of review

- (4) For the purposes of the review, the presiding member of the Tribunal may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

- (5) For the purposes of the review, the Tribunal may have regard only to:
- (a) any information given, documents produced or evidence given to the Commission in connection with the making of the access determination; and
 - (b) any other information that was referred to in the Commission's report mentioned in subsection 152BCH(1) or in any reasons for making the access determination that the Commission published.

Time period for review

- (6) The Tribunal must use its best endeavours to make an order under subsection (1) on or before the action date for the review.
- (7) If the Tribunal is unable to make an order by the current action date, the Tribunal must, by notice in writing, set a later date as the action date.
- (8) The Tribunal must:
- (a) give a copy of the notice to each party to the review; and
 - (b) publish the notice on its website and in a newspaper circulating generally throughout Australia.
- (9) In this section:
- action date**, in relation to a review, means:
- (a) the day 90 days after the Tribunal receives the application for review; or
 - (b) a later date set under this section.
- (61) Schedule 1, item 160, page 140 (after line 4), at the end of Division 4A, add:

Subdivision E—Review of binding rules of conduct by Tribunal

152BDO Application for review

- (1) A person whose interests are affected by binding rules of conduct may apply in writing to the Tribunal for review of the rules.

- (2) The application must be made within 21 days after the Commission makes the rules.
- (3) The Tribunal must review the decision in accordance with section 152BDP.

152BDP Review of binding rules of conduct

Orders

- (1) On a review of binding rules of conduct, the Tribunal may order that the rules be affirmed, varied or revoked.
- (2) If the Tribunal makes an order that the rules be varied or revoked, the Commission is taken to have varied or revoked the rules accordingly (other than for section 152BDO or this section).
- (3) For the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the Commission.

Conduct of review

- (4) For the purposes of the review, the presiding member of the Tribunal may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.
- (5) For the purposes of the review, the Tribunal may have regard only to any information given, documents produced or evidence given to the Commission in connection with the making of the rules.

Time period for review

- (6) The Tribunal must use its best endeavours to make an order under subsection (1) on or before the action date for the review.
- (7) If the Tribunal is unable to make an order by the current action date, the Tribunal must, by notice in writing, set a later date as the action date.
- (8) The Tribunal must:
 - (a) give a copy of the notice to each party to the review; and

- (b) publish the notice on its website and in a newspaper circulating generally throughout Australia.
- (9) In this section:
action date, in relation to a review is:
- (a) the day 90 days after the Tribunal receives the application for review; or
- (b) a later date set under this section.
- (62) Schedule 1, item 177, page 152 (lines 25 and 26), omit the item, substitute:
- 177 Subsection 152CE(1)**
 Omit “152BU(2), 152BY(3),”.
- 177A Subsection 152CF(1)**
 Omit “152BU(2), 152BY(3),”.
- 177B Paragraph 152CF(1)(b)**
 Omit “152BU(2) or”.
- 177C Paragraph 152CF(1)(c)**
 Omit “152BU(2) or”.
- 177D Paragraph 152CF(1)(d)**
 Omit “152BY(3) or”.
- 177E Paragraph 152CF(1)(e)**
 Omit “152BY(3) or”.
- 177F Paragraph 152CF(5)(a)**
 Omit “152BU(2), 152BY(3),”.
- 177G Section 152CG**
 Omit “152BU(2), 152BY(3),”.

These amendments relate to merits review provisions within the legislation. The opposition think it is important that these decisions of the ACCC are subject to some level of merits review process, and we think that our amendments will enhance the legislation by implementing such a process.

There has been a great deal of criticism of Telstra over the years and the way they have in many ways gamed the system, using lawyers to challenge access decisions made by the ACCC. That mechanism was previously known as ‘negotiate and arbitrate’ in the terms that were used and it has now been replaced with a more prescriptive approach,

locally known as ‘set and forget’. We support those changes.

However, while supporting those changes to a more prescriptive approach that eliminates that potential for gaming of the system, we think that it is important to not completely lose sight of issues of justice and fairness in the way that these matters are dealt with. It is one thing to say that a corporation is using lawyers to game decisions. It is fine to use that description. But to remedy that by totally taking away the rights—in other words, taking away the natural fairness provisions and natural justice provisions entirely—you will end up with a situation which is quite extraordinary, where the ACCC become totally beyond review. We do not think it is appropriate for the ACCC to be able to operate totally beyond review. We have of course—and I have in this debate—placed great faith in and set great store by the capacity of the ACCC in their decision-making processes. Indeed, we wish that the minister would allow the ACCC to do the job that they do in so many other instances without the need for him to limit the scope of their considerations in other aspects of this legislation.

However, in this regard we think that issues of procedural fairness should ensure that there is some review process and review mechanism. This is fundamentally an issue about getting the balance right in this legislation. We think the government has gone too far in one direction in totally eliminating these review processes and we think that allowing a merits review of access determinations by the tribunal is a fair and reasonable step to take. It is important that there be a merits review of these access determinations because they will be conducted in a prescriptive way as opposed to the much criticised approach taken in the legislation prior to this time.

I urge those senators on the crossbenches to understand that this is a relatively simple step. It is a commonplace step. I know that in other areas they have strong regard for the importance of merits review processes and I would hope that, if the government is unwilling to accept these amendments, those on the crossbench will accept that these processes of merits review should occur in determinations by the ACCC in this regard, just as they argue that merits review processes should exist in a range of other ways.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.05 am)—The coalition is proposing to restore merits review for anticipatory individual exemptions and special access undertakings. When this bill was first introduced to parliament, the removal of merits review from anticipatory individual exemptions and special access undertakings was widely supported in the industry. The removal of merits review was supported by industry because experience has demonstrated that any accountability benefits provided by merits reviews are strongly outweighed by the delays, the regulatory uncertainty and the outright gaming that have occurred.

The coalition is also proposing to make new provisions for merits review, access determinations and binding rules of conduct. Before making an access determination, the ACCC will have to hold a public inquiry. In the course of this public inquiry the ACCC is likely to receive dozens of submissions from access providers, access seekers, other industry participants and telecommunications users. Submissions will canvass complex pricing and technical issues. The Administrative Review Council, which is the body established to provide advice to the Attorney-General about administrative law, has published guidelines about what kinds of admin-

istrative decisions are suitable for merits review, and—this is important for the Senate in considering this opposition amendment—paragraph 4.53 of the guidelines states that decisions which involve extensive public inquiries or consultations are not suitable for merits review. Access determinations fall into this category.

In 2002, the government of the day—I think that those opposite may have been involved in that!—abolished merits review for ACCC arbitration determinations because merits review was hindering the development of competition.

Senator Joyce interjecting—

Senator CONROY—That is the most fundamental point, Senator Joyce, and I know you have concerns in this area. But let me be clear: your previous government very specifically went down this path for good reason.

Senator Joyce—That was for the sale of Telstra.

Senator CONROY—Well, Senator Joyce, perhaps you should not have voted for it. But then, if you had not, we would not be here today. The opposition now wants to reintroduce merits review—again, a move which would cause uncertainty and unnecessary delays for the industry.

In relation to binding rules of conduct, the bill provides that they will have a maximum duration of 12 months. Furthermore, the ACCC will have to commence a public inquiry to vary the access determination or to make a new access determination within 30 days of making binding rules of conduct. In other words, before any merits review or binding rules of conduct could be considered, let alone take effect, the ACCC would have to have already started the public inquiry process to make changes to the relevant access determination.

The effect of the coalition's amendment will be to waste the resources of the Australian Competition Tribunal, the ACCC and the telco industry on a meaningless exercise in red tape.

Senator BIRMINGHAM (South Australia) (10.09 am)—Senator Conroy sought to base a large part of his argument on the time frames for the merits review and the impact that they would have. We highlight to those on the crossbenches that we do have very specific time lines set out in these amendments and that, yes, merits review processes were previously abolished. However, we are looking at a different approach now and a different system being put in place. It is a system that is, as I said, far more prescriptive in terms of the outcomes. We think that, in terms of a balanced approach, if you have a prescriptive decision-making process at one end, it is quite reasonable to have a merits review process at the other end.

The time lines proposed in these amendments, No 59 and particularly the proposed sections 152BCX and 152BCY, do set out some very tight time lines that will not only limit but effectively prevent the type of gaming that we have seen previously while providing some reasonable level of fairness. So we think that those time lines are a good balance. It is always up for debate but, in terms of what the minister has said, arguing emphatically against a merits review approach is unreasonable. We think that having something in here is better than nothing in this regard. We believe we have got the balance right by putting in place a merits review provision but ensuring that it is one that has some clear, set time periods that ensure that there is not the type of gaming and the type of delaying tactics that we have seen previously. I would ask the crossbenchers to look closely at those time lines to see that we actually do have a process in place that we believe gets that balance right.

Senator LUDLAM (Western Australia) (10.11 am)—I indicate that the Australian Greens will not be supporting this batch of opposition amendments. I might speak to the next batch as well because I know they are related and the intent is certainly related. Merits review is appealing in the abstract but in the context of these agreements we believe it is actually undesirable. Merits review of ACCC access decisions was removed by the coalition as long ago as 2002 because it was simply a mechanism for Telstra to tie up access seekers in endless and very expensive proceedings, and created disincentive for other access seekers to challenge Telstra's decisions on questions of access to its network.

As I indicated, I will speak as well on the next batch of opposition amendments, which are related to procedural fairness. In the context of the binding rules of conduct issued by the ACCC, these are actually out of place, as binding rules of conduct are urgent interim measures intended to manage a situation until it can be properly addressed via an access determination. This will be produced or varied through a process of public consultation with all stakeholders and I think it would be a waste of public resources, quite frankly, to review an interim decision to see whether it is a proper response to a situation while the ACCC is essentially busy conducting a process to determine the proper response to that same situation. Senator Birmingham has moved the first batch but I indicate in advance that the Australian Greens will not be supporting either of these batches of amendments for those reasons.

Senator XENOPHON (South Australia) (10.13 am)—I indicate that for similar reasons to Senator Ludlam's I will not be supporting these amendments. There is a question to Senator Birmingham in relation to this. I understand the intent of what he is trying to do and I will not say it is well-

meaning or well-intentioned because that is what Senator Birmingham accuses me of and I take that as—is it a backhanded insult? It is not a backhanded compliment—damning with faint praise I think is better. The concern I have is that, given the policy objective here of structural separation of Telstra, if we insert what Senator Birmingham is seeking to do on behalf of the coalition you would actually put a spanner in the works, because that is what I see as the public policy imperative: to structurally separate Telstra so that we do not have this vertically integrated monopoly of telecommunications services in this country. That was a mistake and I think there are some coalition senators, as I have said, who in their heart of hearts would acknowledge that the way this was done, particularly in the last sale, by having the wholesale and retail arms meshed together, has been bad for competition. It has been bad for services. I do not think it has been good for the bush.

Senator Joyce interjecting—

Senator XENOPHON—Senator Joyce—

Senator Conroy—He used to believe in looking after the bush.

Senator XENOPHON—Senator Conroy, I have to defend Senator Joyce. Senator Joyce still believes in looking after the bush, so I think we will agree to disagree there, Senator Conroy.

Senator Conroy—He's too generous a soul!

Senator XENOPHON—I am too generous a soul! Maybe I have to make up for some of the other souls in this place, Senator Conroy. I think Senator Joyce's interjection was helpful. He said that openly in terms of the whole issue of having the wholesale and retail arms together. Senator Joyce understands that better than most, I think, and he is to be commended for that. I know about his concerns for telecommunications in the bush.

I cannot support this amendment. I am concerned that it would stymie the process. It could make it unworkable. We need to consider that Telstra shareholders need to approve this by June. That is a key date in relation to this, although I would have thought that what the government is offering is a significant sweetener. I understand the policy dilemmas that Senator Conroy had in relation to this. He has to unscramble the egg. When it comes to unscrambling this legislative egg, if he pulls this off it will be a *Master Chef* feat. That is what the dilemma is and, therefore, for those reasons I cannot support this amendment. If Senator Birmingham has any further thoughts in relation to that I would be grateful to hear from him.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (10.16 am)—The National Party has always had concerns about structural separation. The issue here of course is that this legislation ties up with another very substantive issue, NBN, which is—we do not know. It is \$35.7 billion if you cost it one way and probably in excess of \$50 billion if you choose to cost it in other ways, but somewhere in between, most likely. Because of its close association with that major reason for Australia to go further into debt, we need to be very diligent about exactly what we are doing here. We can have our concerns, as we do, in the National Party about needing structural separation. Actually, I believe those concerns are held all around the chamber. But just because you believe in something does not mean you believe in any possible way to get to it, because any possible way, as in the way the Labor Party are doing it, has all sorts of hairs all over it. The biggest concern is the debt that you end up landing us in and the fact that you are unable to prove to us that you can actually pay that debt back or that there is an actual benefit from that debt. That is the crux of it.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.17 am)—With all these things there are always two sides to the debate. I fully understand the claims and the way it was with the merits review as it currently stands—the gaming issue and the endless delays that that caused. And so the immediate response could go to the reverse and just take it out—get rid of it completely.

The coalition has put forward a reasonable argument. Maybe we should try putting some time frames around it. It will mean the ACCC is probably going to be fairly hectic in this regard. But there is something in me that says I am reluctant to just throw out the merits review completely at this stage, so I will be supporting the opposition on the merits review issue. It is basically a very final issue in a determination, and there is something in me that says there should be at least some way of having a merits review with some time constraints on it. A lot of the amendments that the opposition have put forward could be classified as maybe a little mischievous. I think this one is a genuine attempt to look at the issue and not go from the one extreme of open slather to the other of having no merits review at all. That is my case. I will be supporting the opposition.

Question put:

That the amendments (**Senator Birmingham's**) be agreed to.

The committee divided. [10.24 am]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	30
Noes.....	<u>30</u>
Majority.....	<u>0</u>

AYES

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.	Faulkner, J.P.
Feeney, D.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A.*	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Wortley, D.	Xenophon, N.

NOES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Ferguson, A.B.	Fielding, S.
Fierravanti-Wells, C.	Fifield, M.P.
Fisher, M.J.	Heffernan, W.
Humphries, G.	Johnston, D.
Joyce, B.	Kroger, H.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Nash, F.
Parry, S.*	Ryan, S.M.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Williams, J.R.

PAIRS

Arbib, M.V.	Eggleston, A.
Farrell, D.E.	Back, C.J.
Hutchins, S.P.	Adams, J.
O'Brien, K.W.K.	Cormann, M.H.P.
Evans, C.V.	Abetz, E.
Hurley, A.	Payne, M.A.
Hogg, J.J.	Minchin, N.H.
Wong, P.	Ronaldson, M.

* denotes teller

Question negatived.

Senator BIRMINGHAM (South Australia) (10.27 am)—The opposition opposes schedule 1, items 160 and 212 in the following terms:

- (60) Schedule 1, item 160, page 131 (lines 30 to 32), subsection 152BD(6) **TO BE OPPOSED.**
- (63) Schedule 1, item 212, page 167 (lines 7 to 14), item **TO BE OPPOSED.**

These are not dissimilar to the previous ones but in many ways are of less consequence in their application. They were related in some ways, but we have put them separately, noting that there are potentially different views in this regard. I draw the chamber's attention to these amendments. They seek to strike out two provisions in the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010. The first provision is found in section 152BD(6), which relates to the binding rules of conduct that the commission may make. It states:

The Commission is not required to observe any requirements of procedural fairness in relation to the making of binding rules of conduct.

The second relates to part 3 of the bill on anticompetitive conduct. Item 212 substitutes within the Competition and Consumer Act a new subsection 151AKA(9). It states:

The Commission is not required to observe any requirements of procedural fairness in relation to the issue of a Part A competition notice.

These are quite extraordinary provisions insofar as they state very clearly that there is a requirement on the commission not to observe processes of procedural fairness. I note that this is not a matter that will allow the type of gaming that we were talking about previously. This is not a matter that will see the ACCC subject to multiple appeal processes. This is simply a matter ensuring that the commission undertakes steps of procedural fairness. What might those steps be? They might be ensuring that there are appropriate consultation and comment periods on drafts, ensuring that there is a procedural fairness mechanism there to allow affected parties to make comment on the determinations, on the binding rules of conduct, that the commission may be making.

This is a relatively straightforward amendment. I look forward to hearing the minister's arguments, which I am sure there

will be, as to why the government thinks that stripping the ACCC of the requirement to act in a fair way is necessary in this legislation and why the government thinks it needs to take out all those types of provisions. As we discussed with the previous amendment related to merits review, there is a significant change in the way determinations are made from the historical basis to what will occur under this legislation. The chamber has just decided not to have a merits review process, so the chamber has already decided that the ACCC's determinations will be final. What we think is at least reasonable in this regard is that the ACCC be required to act in a procedurally fair manner. That is the simple aspect of these amendments, and I urge the chamber to support them.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.31 am)—Amendment (60) would require the ACCC to comply with the requirements of procedural fairness when making binding rules of conduct. Requiring the ACCC to comply with procedural fairness as part of the process of making binding rules of conduct would severely compromise its effectiveness. Binding rules of conduct are intended to enable the ACCC to quickly address problems which are affecting the supply of a declared service. The ACCC will only be able to make binding rules of conduct if it considers that there is an urgent need to do so. If the issue is not urgent, the ACCC will have to deal with it by varying the relevant access determination.

Since binding rules of conduct can only be made in cases of urgency, it does not make sense to require the ACCC to comply with procedural fairness, as that will have the effect of delaying the making of the rules. Binding rules of conduct will have a maximum duration of 12 months. Within 30 days

after making binding rules of conduct, the ACCC will have to commence a public inquiry to vary the access determination or make a new access determination. Parties will be accorded procedural fairness in the public inquiry.

This set of amendments is probably the most disappointing. Those opposite have taken a largely constructive view in the debate around the bill, but they know that the current system has failed and that the whole industry is behind these changes because what we have seen are ridiculous situations where it has taken years for outcomes to be achieved, which has completely defeated the purpose of the current regime. This allows swift action by the ACCC. Suggesting the reintroduction of these amendments really is opposition for opposition's sake. I think this is more politics than it is actual, fair dinkum policy rationale. It probably is the most disappointing part. The whole industry knows that the current system is broken, almost irretrievably, and this is the best mechanism to repair a broken system.

As for restoring current procedural fairness in relation to decisions to issue a part A competition notice under part 11B, the bill streamlines the process for issuing a part A competition notice. It does this by removing the requirement for the ACCC to issue a consultation notice before issuing a part A competition notice and by removing the requirement for the ACCC to accord procedural fairness when issuing a part A competition notice. These reforms are necessary to enable the ACCC to act as quickly as possible against alleged anticompetitive conduct, to limit the damage to competition. Powerful and well-resourced industry players who are engaging in anticompetitive conduct should not be able to string out the enforcement process so they can continue engaging in the conduct for long enough to consolidate their anticompetitive gains in the market.

That is what this is really about. The system currently has been gamed in a way that destroys its effectiveness. This block of amendments is designed to reintroduce a system that has manifestly failed, and that is acknowledged. I am sure even those opposite would acknowledge the current system has failed. You are hiding behind this pretence of an argument that 'we're suddenly behaving in a way that's anticompetitive' when you know that is not right. This is politics purely for politics' sake.

Senator BIRMINGHAM (South Australia) (10.35 am)—I need to respond to some of the comments of Senator Conroy. This is certainly not politics for politics' sake, as he said at the end of his remarks. We acknowledged, and I acknowledged in my comments on the previous amendment and these amendments, that we do not think the previous system worked effectively. We do have concerns about the way the system was gamed. We do think there are problems that need to be fixed. We acknowledge and support the more prescriptive approach that is being put in place that will ensure that the setting of determinations is done by far quicker and more effective means. We acknowledge that we believe there should be some form of merits review; that matter has been decided.

In relation to these binding rules of conduct and Senator Conroy's arguments that these need to be applied without procedural fairness because of their urgency, we do not believe there is an undue delay in providing a reasonable level of normal procedural fairness. By having procedural fairness you are not imposing forms of appeal; you are not opposing anything that will actually allow the parties to delay the process in any meaningful way. You are simply ensuring that there is some notice given, that there is potentially some opportunity for comment.

That is basically as far as decent procedural fairness provisions are likely to go.

In terms of the urgency, if you were talking in terms of a court system and you sought an *ex parte* injunction along the way, you would not have such an injunction usually stand for a 12-month period. It could, Senator Xenophon, but it would not be usual for such things to stand for that period of time without the other party having the opportunity to make their case to get the matter effectively resolved. In this instance we acknowledge there is a need for the government to have provisions for urgent action. That is fine. These amendments will not prevent that urgent action. They will simply require the ACCC to act in a procedurally fair way to the parties involved. It is a simple case; it should not be the matter of such argument in this place.

I am surprised that Senator Conroy thinks that of all our constructive amendments, and the constructive approach the opposition may have taken notwithstanding our differences on this matter, this is one that is said to be not constructive. We think this is a straight-forward amendment. We do not think it comes with enormous ramifications for the operation of the system. We think, however, that it simply strengthens the system and ensures that the ACCC's actions and decisions engage the parties that they affect in a fair and responsible manner.

Senator XENOPHON (South Australia) (10.38 am)—I indicate that I cannot support these amendments. If the public policy imperative is to structurally separate Telstra, with all the consequences that has and potential benefits it has for consumers and businesses, then this process potentially could get it off the rails. If you look at amendment (61), 'Application for review', it says:

A person whose interests are affected by binding rules of conduct may apply in writing to the Tribunal for review of the rules.

That triggers off a whole process. The review must be in accordance with the way that the tribunal operates, in accordance with section—

Senator Birmingham—Mr Temporary Chairman, on a point of order: amendment (61) was defeated in the last division.

The TEMPORARY CHAIRMAN (Senator Barnett)—Just to clarify, Senator Xenophon, we are debating amendments (60) and (63) on sheet 7004.

Senator XENOPHON—I apologise, but in terms of a review of access determinations the principles are the same: the tribunal may order that the determination be 'affirmed, varied or revoked'; the tribunal 'makes an order' for the determination to be 'varied or revoked'; the tribunal 'may perform all the functions and exercise all the powers of the commission'. If there is injunctive relief sought, Senator Birmingham is right: you would not expect it to go for 12 months. But potentially it could and it could go for several months. That has huge implications in relation to this.

So long as there is transparency in the process in the way determinations are made and the consultation that has been embedded in this legislation now, I would have thought that would provide adequate scope and adequate protections. The risk with this is that—and I do not say it in a pejorative sense at all; I do not question Senator Birmingham's intentions other than being good ones from the perspective of the coalition—if you go down this path you will throw a spanner in the works when it comes to the structural separation of Telstra, and that is my primary concern.

Senator FIELDING (Victoria—Leader of the Family First Party) (10.40 am)—This

is another one of those tricky issues. The issue about whether a decision is procedurally fair is not really the primary focus. The issue is whether it is the right decision. I tend to think that we need to get the balance right. I will not be supporting these proposals. You can make the right decision, even though procedurally it may not be the right view, but I think the urgency of passing this legislation is important. I believe merits review should be still there. Procedural fairness is a very interesting issue. Many times, for the sake of getting things done in the interests of the broader community, merits reviews need to be done and that decision could be well held by the ACCC itself.

The TEMPORARY CHAIRMAN (Senator Barnett)—The question is that section 152BD96) of division 4A in item 160, and item 212, stand as printed.

Question agreed to.

Senator XENOPHON (South Australia) (10.42 am)—I move amendment (22) on sheet 7005 revised:

(22) Schedule 1, item 160, page 143 (after line 25), after section 152BEA, insert:

152BEAA Register of Access Agreements

- (1) The Commission is to maintain a register, to be known as the Register of Access Agreements, in which the Commission must include all access agreements given to the Commission under section 152BEA.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Commission's website.
- (4) The Register is not a legislative instrument.
- (5) If the Commission is satisfied that:
 - (a) publication of a particular provision of an access agreement could reasonably be expected to prejudice

substantially the commercial interests of a person; and

- (b) the prejudice outweighs the public interest in the publication of the provision;

the Commission may remove the provision from the version of the agreement that is included in the Register.

- (6) If the Commission does so, the Commission must include in the Register an annotation to that effect.

This amendment relates to a register of access agreements. This requires the ACCC to have available on its website the access agreements between access seekers, carriers and carriage service providers given to the commission. It also includes a provision whereby the ACCC will have regard to commercial interests and will remove that portion annotated to that effect. I understand issues of commercial-in-confidence, but I think it is important that access agreements be up there on the website, that they be transparent and that people are able to compare apples with apples, in a sense, in access agreements. If there is preferential treatment in access agreements, it is there for all to see. An independent analysis can take the place of that. That is what this amendment is about. I may be alone on this amendment, as I have been with others, but I still think the principle is an important one and it ought to be pursued.

Senator LUDLAM (Western Australia) (10.43 am)—I will speak briefly. I thought we might hear from the Minister for Broadband, Communications and the Digital Economy or Senator Birmingham, but I indicate briefly that the Australian Greens will not be supporting this amendment—although it is line ball. Senator Xenophon has outlined that it requires the publication of a register of access agreements once commercially sensitive information has been redacted. We un-

derstand—but perhaps the minister can tell us from his own mouth—that the government will be opposing it in that it would reduce room for flexible negotiations by Telstra with access seekers. We just were not sure why, in a world of access determinations, we would need to have all access agreements published in this way. The ACCC will be laying down the rules of the game. It is not necessary, we do not believe, to create this register. If Senator Xenophon or Senator Birmingham have some compelling arguments for it, then we would consider it. We will not be supporting this amendment.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.44 am)—Can I apologise for being a little slow, Senator Ludlam. The government, as you have foreshadowed, is opposing this amendment. There are legitimate commercial reasons for the parties to keep confidential the fact that they have entered into access agreements, and this amendment may discourage the industry from using access agreements. For example, a provider may be willing to negotiate inferior commercial terms on one aspect of access in exchange for better terms on another aspect. Disclosure of this information would be likely to reveal critical information about the provider's future retail strategy.

All access agreements must be lodged in full with the ACCC, which will be able to take action under part 11B if any access arrangements reveal the presence of anti-competitive behaviour. It is highly likely that parties to the majority of access agreements will claim confidentiality. This would create a high administrative burden for the ACCC, which would ultimately impact on the industry through the cost recovery process. A publication requirement will inhibit development

of new services to meet the needs of niche markets.

Senator BIRMINGHAM (South Australia) (10.45 am)—The opposition equally will not be supporting this amendment. We concur in some ways with the comments of others in the chamber. We believe that there is potential for this amendment to go one of two ways. One way could be for so much commercially sensitive information within those agreements published as to render them fairly well ineffective in terms of being published. The other way is that you will end up with a lowest common denominator approach, or potentially a highest common denominator approach, where we do not get the competitive, innovative, thoughtful solutions and approaches to these access agreements that do spark competition, that do drive different carriers to take different approaches that can lead to better outcomes for customers. In this case we need to have some faith in the work that the commission does and have confidence that they will, under all of the new powers that either the minister has or that they have, in different respects ensure that they get good competitive outcomes. We think that this could be an amendment that either backfires or potentially ends up as a meaningless amendment. Either way, we think it is better not being in the bill as it proceeds.

Question negatived.

Senator LUDLAM (Western Australia) (10.47 am)—I move Australian Greens amendment (R19) on sheet 7020:

(R19) Schedule 1, item 160, page 144 (after line 12), at the end of Division 4B, add:

152BEE Primacy of access agreements

- (1) This section applies if an access agreement is inconsistent with any:
 - (a) access determination; or
 - (b) binding rule of conduct; or
 - (c) special access undertaking;

which comes into force on a date after the access agreement was made.

- (2) Either party to the access agreement may notify the other party that it wishes to cancel the access agreement.
- (3) The access agreement ceases to apply at the time a notification under subsection (2) is given.

Our amendment (R19) creates a form of no-disadvantage test to apply in the long transition period between the passage of the bill and the full migration of all of Telstra's traffic across to NBN Co. Senators would be aware that this amendment is quite different to the original one. As a result of discussions over the past couple of days, we have revised it. We have circulated a revision on sheet 7020, which effectively balances things a little bit. We recognise that in the short term access seekers may need to secure access agreements in the absence of a special access undertaking, a binding rule of conduct or on an access determination which could place them at a disadvantage. And if such instruments come into force at a later time, we believe that access seekers should be able to effectively roll back to the safety net of such a determination.

It does no more really than acknowledge that there is a significant asymmetry in market power between Telstra and access seekers and that providing this kind of safety net is an appropriate safeguard to provide. We were persuaded that the early form of the Australian Greens amendment effectively would have allowed the access seekers to cherry pick the best bits out of the contracts that they had signed, and therefore we have balanced this up a little bit. Now it reads so that either party to the access agreement can notify the other that it wishes to cancel the agreement. Having this clause in there will probably guide the discretion of parties to these agreements when they are being signed in the first place. That right would not just

apply to the access seeker; it could just as easily apply to Telstra. We feel that some of the critique of the first version of the amendment was probably justified and I hope that the government will at least support this one, where we have effectively made the playing field level for all parties to these agreements.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.49 am)—I indicate that this has probably been the toughest of the amendments for us to consider. It has many things in it that are very, very attractive to the government. I understand the sentiment and I understand why the Greens are moving this, and I have spoken to many of the people who have encouraged them to, but, on balance, after much consideration—and I know this will disappoint some people in the industry—we will be opposing this amendment.

As has been said, the amendment proposes that either party to an access agreement may cancel that access agreement where it is inconsistent with the terms of an access determination, binding rules of conduct or a special access undertaking which comes into force after the access agreement is made. The amendment is based on concerns raised by the Competitive Carriers Coalition that Telstra could compel access seekers into accepting an unfavourable access agreement in order to guarantee supply of a declared service. However, the revised part at 11C will not operate in this way. Access seekers will not be forced to agree to unfair access agreements. Instead, they will be able to require Telstra to provide them with access to its network on the terms and conditions set out in the relevant access determination. This is clearly set out in the revised terms of proposed section 152AY. In other words, once a final access determina-

tion is made, access seekers will only sign agreements with Telstra where it is in their commercial interests to do so. This amendment would have the effect of removing any incentive for Telstra or any other access provider to make commercial agreements with access seekers, as they would know that access seekers could simply walk away from the access agreement when it suited them.

The amendment does not recognise that parties may incur costs and obtain benefits at different stages of an agreement. For example, an access agreement may require the access provider to make investments to upgrade its network capacity or infrastructure. In return, the access seeker would commit to obtaining supply of a service on particular terms, such as a price that reflected the investment or for a fixed term or a guaranteed minimum capacity. It is precisely these types of mutually beneficial arrangements that the access agreement provisions seek to allow and that this amendment would stifle.

The amendment also carries an unacceptable risk in the case of agreements in force before the bill commenced that it would involve an acquisition of property other than on just terms, for which compensation would be payable by the government. However, to address a transitional issue the bill already provides that access seekers can lodge a dispute in relation to access agreements until such time as the first final access determination is made for that service. But I do acknowledge the very legitimate concerns in industry, and I will be keeping a very close eye on how this plays out in reality. I am sure that other senators will also be watching that.

Senator BIRMINGHAM (South Australia) (10.52 am)—I will be very brief. The opposition will be opposing amendment (R19) of the Australian Greens providing primacy of access agreements. We think that this is unnecessary. We think that it comes

with a number of risks, a number of which have just been outlined by the minister. We think there are effective transitional provisions already within the bill that allow for the ACCC to be able to make decisions which prevail over access agreements if need be. As a result, we do not think this is a wise path for the bill to be taking.

Senator XENOPHON (South Australia) (10.53 am)—I indicate that I will be supporting Australian Greens amendment (R19) moved by Senator Ludlam. In terms of the primacy of access agreements, I think what this amendment is intending to do is desirable in the scheme of things. I think it enhances what is being proposed by the bill. It is interesting that Senator Conroy said that it was a tough call in relation to this amendment. I appreciate his frankness in relation to that.

It seems inevitable that this amendment will be defeated but can the government indicate how it will deal, on an ongoing basis, with some of the concerns raised about this. Will there be some formal monitoring? Will there be a process of review in relation to this whole issue of primacy of access agreements? I appreciate the minister's candour in indicating that it was a tough call and that it is complex, but given the substantial merits of this amendment moved by Senator Ludlam I wonder how those concerns can be facilitated in some constructive way and with some due process.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (10.55 am)—As I said, this has really been the toughest call in this debate. I am very conscious of the argument of Senator Ludlam, and more importantly the arguments that have convinced Senator Ludlam to move down this path. As I said in my earlier con-

tribution, we will be watching this closely. We will be having conversations with the ACCC and we will be continuing to maintain a close dialogue with those in the industry. While some of these issues are commercially sensitive and cannot be revealed publicly I have always been able to have frank private conversations with the players in the industry on these types of issues.

I probably will not have a formalised process because it is hard to have discussions in a formal public way about issues that are commercial. I will welcome the ongoing scrutiny by the ACCC and I will be liaising with the ACCC. I am sure, Senator Xenophon, you will also be maintaining a weather eye on this so that you can keep me well informed. I have, as I said, many people in the industry keeping me continually updated on these sorts of matters and I will be monitoring this closely.

Question put:

That the amendment (**Senator Ludlam's**) be agreed to.

The committee divided. [11.00 am]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	6
Noes.....	<u>31</u>
Majority.....	<u>25</u>

AYES

Brown, B.J.	Hanson-Young, S.C.
Ludlam, S.	Milne, C.
Siewert, R. *	Xenophon, N.

NOES

Bilyk, C.L.	Birmingham, S.
Brown, C.L.	Bushby, D.C.
Cameron, D.N.	Colbeck, R.
Conroy, S.M.	Crossin, P.M.
Feeney, D.	Ferguson, A.B.
Fielding, S.	Fierravanti-Wells, C.
Fifield, M.P.	Forshaw, M.G.
Furner, M.L.	Joyce, B.
Lundy, K.A.	Marshall, G.

McEwen, A. *	McLucas, J.E.
Moore, C.	Nash, F.
Parry, S.	Polley, H.
Pratt, L.C.	Scullion, N.G.
Stephens, U.	Sterle, G.
Troeth, J.M.	Williams, J.R.
Wortley, D.	

* denotes teller

Question negatived.

Senator LUDLAM (Western Australia) (11.03 am)—I move:

(20) Schedule 1, page 155 (after line 15), after item 195, insert:

195A After section 152EO

Insert:

152EOA Review of operation of this Part

- (1) Before 30 June 2014, the Minister must cause to be conducted a review of the operation of:
 - (a) this Part; and
 - (b) the remaining provisions of this Act so far as they relate to this Part.
- (2) A review under subsection (1) must make provision for public consultation.
- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

We are proposing a review of amendments to the Trade Practices Act after a period of three years. We propose that before 30 June 2014 the minister reviews the operation of this part of the act that we are amending and the remaining provisions of the act.

I think it dovetails quite nicely with some of the provisions that Senator Xenophon had inserted about rolling reviews, but this one would be conducted by the minister and so we would get a view of whether the restructure of the market is actually working, whether people are getting burnt and whether

competition principles are being preserved and so on.

A couple of years after it has been signed it will effectively examine whether the access regime is functioning appropriately, principally because the bill grants such wide discretion to the ACCC—I think that is an argument that everybody has made in here over the last couple of days—to the degree that even rights to procedural fairness and merits review by the Competition Tribunal have been removed.

We acknowledge the reasoning behind those amendments but remain concerned that in solving one problem—that is, removing the ability of the incumbent to mire access determinations in endless procedural delays—we will in fact have removed two avenues of redress which the industry may well later regret. A formal review will allow the government to assess whether the new access regime is functioning as intended, and we propose that it be undertaken before 30 June 2014 and then be provided directly to parliament within 15 days of its receipt by the minister.

Senator BIRMINGHAM (South Australia) (11.05 am)—My understanding is that this amendment is not being opposed by the government, but I will let Senator Conroy indicate that. In regard to Senator Ludlam's contribution, whilst nobody wishes to see a rolling series of reviews, the opposition does accept that a good, thorough review of the operation of this component of the act is reasonable, and 3½ years in which to ensure such review is undertaken is appropriate and acceptable, and we will support this amendment.

Senator XENOPHON (South Australia) (11.05 am)—I support the amendment.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the

Prime Minister on Digital Productivity) (11.05 am)—The government supports the amendment.

Question agreed to.

Senator LUDLAM (Western Australia) (11.06 am)—I move Australian Greens amendment (21) on sheet 7006:

(21) Schedule 1, page 168 (after line 15), after item 216, insert:

216A Subparagraph 6(1)(b)(i)

Omit “has a hearing impairment”, substitute “is deaf or has a hearing and/or speech impairment”.

216B Subparagraph 6(1)(b)(ii)

Omit “teletypewriter”, substitute “device that enables text-based communication”.

This amendment is also relatively simple; it comes in two parts and broadens the definition of a standard telephone service beyond teletypewriters, senators will be pleased to know. We have also broadened the definition of hearing impairment, for fairly obvious reasons. At present it is by no means clear that the equivalent to voice telephony includes services that came into being subsequent to the publication of the original act, such as VOIP, video over IP and text over IP. The current reference to text telephony is a legacy of outdated analog technology. We thought this was an appropriate time to bring this definition up to date. I commend the amendment to the chamber.

Senator BIRMINGHAM (South Australia) (11.06 am)—The opposition supports these amendments. We do think that they are reasonable; we do think that they update definitions appropriately and certainly I think probably all members in the chamber stand as one in wanting to ensure that those with hearing impairment, speech impairment or otherwise are appropriately catered for in the telecommunications sector.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.07 am)—I have a long explanation of why we are supporting this amendment but I am sure the chamber would rather just hear that we are supporting it.

Question agreed to.

Senator LUDLAM (Western Australia) (11.07 am)—by leave—I move amendments (22) and (23) on sheet 7006:

(22) Schedule 1, page 181 (after line 20), after Part 4, insert:

Part 4A—Consumer protection

Telecommunications (Consumer Protection and Service Standards) Act 1999

226A Paragraph 115(1)(f)

Omit “.”, substitute “; and”.

226B At the end of subsection 115(1)

Add:

- (g) the advertising of products and informing customers about the prices, terms and conditions of products on offer; and
- (h) the fairness of consumer contract terms including having regard to the intelligibility and accessibility of contract terms; and
- (i) the provision of billing information and billing services to customers; and
- (j) the credit assessment of customers, the provision of security and credit control tools, and a requirement to have a financial hardship policy to assist customers experiencing financial difficulties; and
- (k) the complaint handling procedures for information provision to customers and recording of their complaints.

(23) Schedule 1, page 182 (after line 1), after the heading to Part 5, insert:

Telecommunications Act 1997

227A At the end of paragraph 105(3)(d)

Add:

- and (iii) performance standards made, and performance benchmarks set, under Part 6;

The first amendment adds five additional clauses to part 4A section 115 of the Telecommunications (Consumer Protection and Service Standards) Act 1999, relating particularly to performance standards. I suspect the government still does not like them but I am going to put the case nonetheless.

Currently ACMA may make performance standards to be complied with by carriage service providers in relation to six different matters, ranging from the time it takes to hook people up to a service to response time to customer complaints and so on. We are seeking to widen the range of matters for which ACMA may develop performance benchmarks which it can then enforce. This will go some way towards winding back the high rates of complaints and customer dissatisfaction which have plagued the industry and which the minister himself has acknowledged on many occasions.

The range of matters that we seek to include cover issues such as standards in advertising, fairness, intelligibility of contracts, provision of billing information and complaint handling procedures. I am aware that the government has concerns that some of these issues are diffuse and it will be difficult to provide accurate metrics against which to judge carriage providers. We believe that ACMA does have the ability and the wit to develop such benchmarks even if they have commonsense and plain English standards to give service providers a better defined idea of what the government expects, or it could simply be metrics along the lines of the number of complaints received during a de-

fined period of time. I hope that we can give ACMA the benefit of the doubt and let them define these benchmarks rather than assuming that it cannot be done.

Amendment (23) simply adds the provisions that we seek to insert here into ACMA's reporting obligations. I strongly commend these amendments to the chamber.

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.09 am)—The government would like to indicate that we are opposing these amendments, and because we are opposing them I think Senator Ludlam deserves an explanation, so I will go through the reasoning behind that position. On the Greens amendment to provide for customer service guarantee performance standards to apply to the matters currently dealt with by the industry self-regulatory Telecommunications Consumer Protections Code made under part 6 of the Telecommunications Act, the government agrees with the Greens that more needs to be done to encourage telephone companies to comply with the existing industry self-regulatory Telecommunications Consumer Protections Code. However, the CSG is not a suitable mechanism to apply to the matters in the Telecommunications Consumer Protection Code. There would be significant difficulties in attempting to apply performance standards or quantitative performance benchmarks to matters such as advertising of products, the fairness of contracts, the intelligibility and accessibility of contract terms, the provision of billing information, credit assessment of customers, financial hardship policies and complaints-handling procedures as proposed by the Greens.

Part 9 of the government's bill will amend the Telecommunications Act to allow the minister to direct the Australian Telecommu-

nications and Media Authority to determine an industry standard where industry codes do not adequately deal with consumer issues. The power is a more appropriate and broader mechanism than the amendments of the CSG as proposed by the Greens. If the matters in the Telecommunications Consumer Protections Code are made an industry standard under part 6 of the Telecommunications Act, providers will be required to comply or face civil penalties. Noncompliance could also be subject to the new ACMA infringement notice scheme. I understand that informal discussions with the Australian Consumers Communications Action Network indicate that ACCAN considers the government's proposal would satisfactorily meet the concerns of consumers in this matter.

It is expected that the power proposed under part 9 of the bill will be used in instances where the minister considers that an existing industry code fails to adequately address the interests of consumers or where there is an immediate concern that the development of an industry code would result in an unreasonable delay in providing protections for consumers. Some examples of where a standard may be appropriate include that on 1 July 2009 a new industry code came into force relating to mobile premium services. This power may have been utilised to address the issues around mobile phone premium services if industry had not put in place a robust code. Work is currently being undertaken by two separate bodies on consumer protection and customer service issues within the telco industry. The Communications Alliance, an industry peak body, is currently undertaking a review of the Telecommunications Consumer Protection Code and ACMA is currently undertaking an inquiry into customer service and complaints handling. If the current Communications Alliance code review fails to adequately address the interests of consumers and the govern-

ment were to judge the revised code as deficient in the protections it afforded to consumers in the area of complaint handling, or the ACMA review were to result in recommendations about minimum standards for customer service, the government may direct the ACMA to develop a standard dealing with such issues.

Therefore, while the government absolutely agrees with the sentiments of the amendments proposed by the Greens, the government considers the powers contained in part 9 of the bill are a more appropriate way to deal with concerns about compliance with the existing Telecommunications Consumer Protection Code.

Senator BIRMINGHAM (South Australia) (11.13 am)—I shall be brief. For many of the reasons outlined by Senator Conroy, the opposition does not support the Greens amendments in this regard.

Senator LUDLAM (Western Australia) (11.13 am)—It is a great shame that our brief honeymoon with the coalition on these amendments appears to have come to an end all too soon. We are offering to give the ACMA and thereby the minister some teeth in some pretty important areas of consumer protection. These are issues that the minister himself has been extremely outspoken on in preceding years and so I find it curious in the extreme that the minister is not seeking to effectively grant one of his own agencies the powers to deal with these matters directly. I wonder whether the minister would like to spell out for us where exactly consumers will go for the matters that we have raised in parts G through to K that we have sought to insert, how exactly those matters will be addressed and why exactly it is that the government believes that it is not possible to provide metrics, for example, on financial hardship policies, now in the water space, electricity space and so on. A lot of work has

been done in recent years about financial hardship policy for essential services, to pick that example out as one. Why should we not apply such policies to the telecommunications space and give ACMA the benefit of the doubt that if so directed they could indeed create standards that would be able to be benchmarked against to give industry participants a very clear idea of what exactly they need to come up with? If we can do it in other utilities, why not in telecommunications?

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.14 am)—As you know, all of the issues you raise, Senator Ludlam, I am very sympathetic to. We are going through a new process that I believe deserves a chance before we need to move to where you have arrived at. I would invite your participation in all of those reviews that you have been talking about. I know that whether or not I invited you I would be going to get it! So I think that we should see how these new processes work before we jump to where you are. I look forward to my ongoing work with the ACCAN group—and I know you work closely with them as well—to see if we can improve these processes that we are going through which will allow us to incorporate many of the issues that you have raised. I think it is a little unfair to suggest that we are not addressing those through this process. I look forward to your ongoing participation and cooperation in those processes.

Question negatived.

Senator BIRMINGHAM (South Australia) (11.16 am)—by leave—I move opposition amendments (1) and (2) on sheet 7012 concurrently:

(1) Clause 2, page 3 (after table item 12), insert:

13. Schedule 1, Part 10 The day after this Act receives the Royal Assent.

(2) Schedule 1, page 204 (after line 3), at the end of the Schedule, add:

Part 10—Productivity Commission to prepare cost-benefit analysis on NBN

Productivity Commission Act 1998

1 After Division 1 of Part 3

Insert:

Division 1A—Reference to Commission on NBN proposal

12A Commission to prepare and publish a cost-benefit analysis

(1) The Commission must prepare a cost-benefit analysis of the NBN proposal and publish it by 31 May 2011.

(2) The cost-benefit analysis must include the following matters:

- (a) an analysis of the availability of broadband services across Australia, identifying those suburbs and regions where current service is of a lesser standard or higher price than the best services available in the capital cities;
- (b) a consideration of the different options by which broadband services of particular speeds could be made available to all Australians (particularly those in regional and remote areas and those in underserved metropolitan areas) with an estimate of the likely timeframe and cost of each option;
- (c) a consideration of the economy-wide benefits likely to flow from enhanced broadband services around Australia, the applications likely to be used on such services, and in particular a consideration of the different scale of such benefits depending on the broadband speed available;
- (d) a full and transparent costing of the proposed NBN project, including any financial and economic projec-

tions, models, assumptions and sensitivity calculations underpinning the estimates;

- (e) an examination of the likely pricing structure of NBN services;
- (f) an examination of reasonable commercial rates of return and cash flows for NBN Co, taking into account NBN Co's costs of equity and debt and the risk profile of both NBN Co and the market in which it operates;
- (g) a consideration of what the likely realisable value of NBN Co would be if it were to be privatised after five years, as currently contemplated in the legislation;
- (h) an examination of the design, construction and operating arrangements of the proposed NBN project, so that direct and indirect outcomes from its construction and operation can be identified and evaluated;
- (i) an examination of the likely environmental and health impacts of the construction of the NBN;
- (j) an analysis of the effects of the proposed NBN on competition in the Australian fixed-line broadband market, including its effects on the scope for competition among different technologies for fixed-line and wireless broadband provision;
- (k) an analysis of the impact of any impact of any exemption from the Trade Practices Act 1974 / *Competition and Consumer Act 2010* in connection to the NBN;
- (l) benchmarking of the NBN against comparable broadband services available in overseas markets;
- (m) consideration of potential technological advances and the likely impact on the NBN, including whether future technologies may be superior;
- (n) consideration of the likely take-up rate for NBN services, having par-

- particular regard to international experience;
- (o) consideration of the national building social and community-specific benefits flowing from the NBN, having particular regard to rural and regional communities.
- (3) The Act applies in relation to the requirement in subsection (1) as if:
- (a) the requirement were a matter referred to the Productivity Commission for an inquiry by the Minister; and
 - (b) the Minister had required the Commission to hold hearings for the purposes of the inquiry under paragraph 11(1)(a) of that Act.
- (4) Sections 11 and 12 do not apply in relation to the inquiry, other than as provided for by subsection (3).

It is with pleasure that I have moved those amendments. These are the last amendments in the debate on this piece of legislation. Most of the time in the committee stage has been spent on debating amendments related to the structural separation and/or the functional separation of Telstra. Those are reasonable things. It is appropriate that we have looked at those as one of the key objectives of this piece of legislation. Whilst we may disagree with some of the means by which the government is seeking to achieve this key objective, the opposition does support the ultimate aim of that separation and the competitive benefits that it will provide to the telecommunications sector into the future. However, integrated into this bill is fundamentally a structure to support the development of the government's National Broadband Network. Whether this is a \$35.7 billion network, a \$43 billion network or a \$50 billion network—and we can have those debates—it is a very large amount of money. It is a phenomenally huge amount of money that the government is committing to its NBN and it is committing it with no knowl-

edge whatsoever as to whether it is the best way to deliver fast and affordable broadband services to all Australians at the lowest cost to taxpayers in a manner that promotes competition in the Australian telecommunications sector.

The main amendment seeks to at least test the government's assumptions. That is the fundamental basis of this amendment and it is, of course, something that the opposition has been calling for from day one of the conception of this NBN by the government. When Senator Conroy found that his NBN mark 1, his fibre-to-the-node \$4.7 billion proposal, did not stack up and crafted on the back of an aircraft napkin, in the RAAF VIP with then Prime Minister Rudd, the proposal for his \$43 billion fibre-to-the-home National Broadband Network, we heard about this idea and we said that what the government needs to do is undertake a full, decent, robust cost-benefit analysis of this gargantuan proposal to ensure that it is the best way to get fast, affordable broadband for all Australians. It has been a long time in the debate since Senator Conroy first announced that \$43 billion proposal. However, we still have not seen anything that vaguely resembles a cost-benefit analysis of the government's proposal. This amendment seeks to achieve that.

This amendment will require the Productivity Commission to undertake a thorough cost-benefit analysis of the NBN proposal, examining that proposal thoroughly and considering whether there may be alternatives that could deliver, for Australia and for all Australians, fast affordable broadband at a lower cost. That should be the aim of everyone in this place—to achieve fast affordable broadband at the lowest possible cost.

I do not know what the government are afraid of in having this cost-benefit analysis, aside from the fear that it just may prove

them wrong, that it just may prove the ‘NBN bro’—who is much lauded today, although he seems to be all tangled up in wires in his fabulous *Financial Review Magazine* feature—wrong. It just may prove the NBN bro wrong if we have this decent Productivity Commission analysis. The government do seem to be afraid that it may prove them wrong, because that can be their only real fear in this.

Let us be under absolutely no misapprehension, and let the crossbenches in particular be under no misapprehension: passing this amendment will have absolutely no impact on the passage of this legislation. To Senator Xenophon, to Senator Fielding and to the Greens: I emphasise that this government, having gone this far—if you require a Productivity Commission assessment to be undertaken—is not about to delay its own legislation any further. It will have to accept this legislation, it will have to accept this PC inquiry and it will do so having accepted all of the other undertakings that you have variously obtained from the government. But you will actually then see a thorough, robust cost-benefit analysis undertaken.

Let us also be under no misapprehension here: it will not delay the structural separation of Telstra; it will not delay the construction of the NBN. It will simply ensure that, by 31 May next year, we have a thorough cost-benefit analysis, one that has been comprehensively undertaken, and that we have, for all Australians to see, some analysis of whether this enormous multibillion project is value for money.

Senator Furner—But what will you do with the report? What will Senator Joyce do with the report?

Senator BIRMINGHAM—You want to know what we will do with the report? That is the question here. What will people do with the report? They will be a damned sight

better informed than they are. They will be a hell of a lot better informed than they are now, because there will be an independent, expert, robust analysis of whether you guys are heading down the right track or whether you are just taking billions of dollars of Australian taxpayers’ money and throwing it up against the wall, when there could be far more affordable, effective means to deliver this outcome that you have not examined—options you have not looked at. Why have you not looked at these options? What are you afraid of?

In the end, a PC inquiry will produce a report, and do you know what? If that report is utterly damning of your National Broadband Network, do you know what you can do? You can ignore it. That is right; you can ignore it, because there is nothing binding about a PC report. Your government, and governments before it, have ignored PC reports before. It has been done many times before. So you could ignore its findings. But what we would do, what I would hope Senator Xenophon would do, what I would hope Senator Fielding would do, what I would hope the Australian Greens would do and what I would hope the entire Australian public with an interest in this topic would do is analyse the report and make a fair assessment of whether we are on the right track or whether this government, a government that has delivered failure after failure in so many policy areas to date, is simply now embarking on the greatest policy failure of all—the most expensive policy failure in its three years to date. That is the real risk. That is the risk that Australians have to bear.

We know, from the shabby 36-page business plan summary you released, that the taxpayer is up for \$27.1 billion, \$27.1 billion that it has to tip in for the building of this National Broadband Network—more than you originally said. So the taxpayer is up, already, for at least a billion dollars more

than the figure stated in the implementation study and more than the figure stated by Senator Conroy when he first announced this proposal. At that stage, I remember that proposal as being a fifty-fifty split, where you had 50 per cent government equity and the other 50 per cent was going to come from private investors.

Whatever happened to the private investors, Senator Conroy, in your National Broadband Network? Because now we learn that anything required above that \$27.1 billion is going to come from debt raising. So, from day one, the 100 per cent government owned NBN entity will no longer have private investors; it will go out into the marketplace and raise all of its debt. So every single dollar of the billions of dollars that will be spent building this network will come from debt, either from the government's massive debt or NBN Co.'s debt, all of which comes back to the Australian taxpayer. That is why the opposition believes that we need a fair dinkum, robust analysis of the costs and benefits of this proposal and a fair dinkum, robust analysis of whether there is a better way to get the NBN built. We think the government is being utterly reckless in continuing to pursue this policy without any knowledge as to whether it is in fact the best policy to be pursued at all.

I note that Senator Xenophon uttered words previously in support of a Productivity Commission inquiry. He said that he believes there is real merit in the Productivity Commission being involved in the process. In considering this amendment I appeal to you, Senator Xenophon, and to all of the cross-benchers: you know this is the right thing to do; you know that there is no harm in the PC undertaking an inquiry. No harm whatsoever can come of this amendment. All it will do is better inform the debate by 31 May next year. It will not block or delay this bill, it will not block or delay the NBN and it will

not even force the government to change track. All it will do is ensure that, if they are on the wrong track, pressure will come to bear on them to change their track. That is all it will do. It will better inform your decision making, it will better inform our decision making and, hopefully, it will better inform the government's decision making.

I beg you to please consider this amendment as something that will not do any harm but provide a real good—a real good in terms of a thorough analysis of how we will get fast and affordable broadband services for the future. What you need to consider is whether the deals you have made with the government are actually worth compromising your positions on this PC inquiry. To Senator Xenophon in particular, I note the agreement you have struck with the government for the setting up of a joint standing committee. Regrettably, that joint standing committee does not take effect until 1 July next year. The PC's involvement there is, regrettably, only to provide some advice and to inform that joint standing committee. That will not provide the type of analysis of whether or not this is the best way forward. It will not provide what we require for Australia to get the best outcome.

I am sure that, deep down, you know that, Senator Xenophon. You have managed to negotiate, from your perspective, reasonable outcomes with the government on all the other matters of concern. That is perfectly fair and reasonable, but on this matter you have not negotiated a reasonable outcome. The proposed joint standing committee will still end up being largely dominated by the government. It will not even start its work until 1 July next year. I note that my colleague Senator Fisher—with the cooperation of others, I trust—will be moving an amendment to the motion to adopt the committee's report to ensure that at least the Senate Environment and Communications Ref-

erences Committee can get on with some work. But none of those things are substitutes for the Productivity Commission inquiry and for real robust work. On many other occasions, Senator Xenophon, you have paid great heed to the workings of the Productivity Commission and you have recognised the ability of Gary Banks and his team to provide fair, impartial and rational advice to governments, to the parliament and to the Australian community. That is all we are asking for them to do on this occasion.

To the Greens, to Senator Fielding, I make the same pitch: you really should consider whether, in voting against this amendment, you are simply voting against something that could further enhance what Australia gets at the end of the day. Voting for this amendment would not put you on side with the opposition in opposing the NBN; it would simply put you on side with the opposition in saying that we want to get the best outcome for Australia. And, if the best outcome is the government's NBN, if that is what the Productivity Commission says, we will wear it. We will wear what the Productivity Commission says and, of course, we will wear the words that we have spoken arguing against the NBN to date.

But, if the Productivity Commission comes back with an alternative, you will wear it. You will wear it if the Productivity Commission comes back saying that there is a lower cost way. Senator Conroy believes there is absolutely no possible lower cost way that this can be done. Senator Conroy, you are the one who flipped from thinking, just a year or so ago, that 12 megabits per second was effective to thinking, now, that we need 100 megabits per second. You did that without any decent cost-benefit analysis, and, in the process, you have put billions of extra taxpayer dollars on the line.

So my plea to the chamber is: accept this amendment as a sensible way to provide a real analysis of where this government is going. This government is spending billions of dollars of taxpayer money. It is empowering a 100 per cent government owned entity to borrow billions of dollars of taxpayer money to roll a network up and down every street of Australia, including those that already have very fast broadband services. If we want to get value for money for Australians and we want fast, universal access to broadband, we should have the right policy approach, and we should test it. This amendment will allow the Australian community to test the government's policy. (*Time expired*)

Senator CONROY (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (11.31 am)—Due to the processes that the Senate has committed to, this may be my last chance to make a contribution in this debate before we put the bills, at 12 o'clock. I indicate that, while it would be possible to believe that the opposition were motivated by sound public policy, their track record indicates otherwise. Their \$10 billion water package was apparently done on the back of an envelope. It had no cost-benefit analysis. It is a little hard to take seriously people who were involved in that process suddenly being the champions of a cost-benefit analysis by the Productivity Commission. I do not remember Senator Birmingham jumping up and down and demanding a cost-benefit analysis on that white elephant the Adelaide to Darwin railway. So it is a little hard to take the opposition seriously on those things. It is a little hard to take your cries on this issue seriously. The amendment is poorly drafted in many ways. I do not know how you define the 'NBN proposal'. What is the 'NBN project'? Is it different from the NBN

proposal? This is a cheap political stunt at the end of a long discussion, and I do not believe the chamber will fall for it.

More importantly, as I said, this will probably be my last chance to talk in this debate, so I want to say a few things in summing up. This legislation will deliver historic reforms to the telecommunications sector. It will deliver cheaper prices and more choice and it will drive innovative services for Australians. Australia has, to its shame, the fifth most expensive broadband charges in the OECD. This bill will help to bring prices down by allowing greater competition in the sector.

The competition and consumer safeguards bill is a fundamental and historic microeconomic reform and is in Australia's long-term national interest. This legislation paves the way for a more efficient rollout of the National Broadband Network. It delivers key reforms that allow for the structural separation of Telstra, which means the agreement between Telstra and the NBN Co. can be finalised. This bill does create a framework to deliver this important reform, but the bill also does much more than that. During the NBN rollout, the existing telecommunications regulatory regime will remain important for delivering better and more affordable services in the interests of Australian consumers and businesses. The reforms are designed to reshape regulation in the telecommunications sector in the interests of consumers. Also, small businesses and the economy will benefit enormously from the reforms we are voting on today. Specifically, the proposed reforms establish a framework for Telstra to progress its decision to structurally separate, including providing it with greater clarity around the undertaking process which will allow Telstra to seek approval from its shareholders on a firm proposal to migrate its fixed line customers to the National Broadband Network. They will

streamline the competition regime to provide more certain and quicker outcomes for telecommunications companies, and they will strengthen the consumer safeguards to ensure service standards are maintained at a high level. Importantly, they are supported by the overwhelming majority of the industry. The delivery of the government's reforms, in parallel with the rollout of the NBN across Australia, will finally deliver the affordable broadband services Australians need now and, importantly, into the future.

I want to thank a number of people who have participated in this debate—particularly Senator Ludlam and the Greens, Senator Fielding and Senator Xenophon—for their support in delivering this crucial bill, this crucial economic reform. It is disappointing. One of the proudest mantras of the opposition during the period of the Hawke-Keating government, and then when they became the Howard government, was that they were able to say, 'You could never have made those economic reforms without us,' because you supported them. The opposition put Australia's national interest ahead of short-term political gains. But those opposite today are turning their backs on economic reforms that they know this country needs and will benefit from. Short-term politics has been put ahead of national economic reform, and it is a disappointing day. You had a proud record through the period of the Hawke-Keating government of supporting economic reforms that were in the national interest, and you know this bill is in the national interest. You know this bill is about improved outcomes for every single Australian and you have torched the record and the mantle of economic reformers by how you are going to vote on this bill—and you should be ashamed of yourselves. You cannot claim the mantle of economic reformers anymore, because of your opposition to this bill.

I particularly want to thank the Greens, Senator Fielding and Senator Xenophon for accepting and agreeing that this country needed to shake up telecommunications in this area. It is a bill that is in the interests of Australian consumers, and every day of delay in the 12 months we have had to put up with has been another day of higher prices, less choice and less innovation for consumers. The task of undertaking such difficult but necessary reform in an industry that is fundamental to Australia's long-term national interests is one which this government embraces wholeheartedly and encourages the parliament to embrace.

But there have been many more people that have been involved behind the scenes that deserve recognition. I want to thank my department: Peter Harris, the head; Pip Spence; Daryl Quinlivan; and all of those who have been working on this and those who are here with me in the chamber today. They have spent many, many hours, night and day, to deliver this. I want to thank the ACCC, who have contributed enormously: Graeme Samuel, Ed Willett, Michael Cosgrave and their team. I want to thank the staff of Senator Ludlam, Senator Xenophon and Senator Fielding, who I know have worked many, many hours to make this bill a reality. I want to thank the organisations who have supported this cause for many, many years: ATUG, ACCAN and the Communications Alliance. I want to thank the staff at NBN and the NBN board, Harrison Young's and Mike Quigley's team, who have been fantastic in providing information and support and now have an enormous challenge.

Senator Ian Macdonald—And Mike Kaiser.

Senator CONROY—Yes, and Mike Kaiser. They have an enormous challenge before them now: to finalise the negotiations with Telstra and go forward.

I thank my colleagues Kevin Rudd and Julia Gillard, two prime ministers who backed me all the way in this venture. I thank Lindsay Tanner, who always believed, and Senator Penny Wong, who has taken on that mantle, and all of their staff who have worked on this bill over the years. I thank my close friend Wayne Swan, who has supported me at all times; the head of Treasury, Ken Henry, a believer who has always championed economic reform in this country; the head of Finance, David Tune; and the head of Prime Minister and Cabinet, Terry Moran. All have worked on this for endless hours. Finally and importantly, I thank my current and former staff, who have been absolute troopers in persevering in the face of enormous pressure—publicly and privately—to help deliver this reform today.

Senator XENOPHON (South Australia) (11.41 am)—I know the clock is running. I know that Senator Ludlam wants to make a contribution on this, so I will have to be briefer than I would like to be to give respect to Senator Birmingham's motion on this issue. I cannot support this amendment. I do believe the Productivity Commission has a role to play in this. The agreement reached with the Prime Minister allows for the Productivity Commission to give continual advice over an eight-year period to this committee about its implementation. Senator Birmingham, I think we will have to revisit this. This is a very tough amendment for me. I believe that, on balance, that is the best way to go forward. I think the government will confirm, if not in the next three minutes, issues of members being able to participate.

It is important to acknowledge that the Productivity Commission will have a valuable role in this whole process and one of monitoring. If the Productivity Commission merely provides a report, the risk is that it can be ignored, as Labor and Liberal governments have both ignored reports of the

Productivity Commission. This is about implementation. This is about ensuring some ongoing accountability. The government knows and the opposition knows that, when the NBN bills come up in February and March, I have absolutely reserved my position on them. That is where I am at. We do need to split Telstra. We do need to have a structural separation, but the question of the NBN and that legislation is still up for grabs.

Senator LUDLAM (Western Australia) (11.42 am)—In the remaining couple of minutes, I indicate that we will not be opposing this coalition amendment. In fact, the longer Senator Birmingham spoke about the need for the Productivity Commission to do a cost-benefit analysis the less I liked the proposal. We have no issue at all with the expertise of the Productivity Commission or what it would bring to the debate. It is the instrument itself of a cost-benefit analysis in the instance of a project such as the National Broadband Network that I think could be quite mischievously misused. There is nothing really wrong with the terms of reference that were proposed; it is what the opposition proposes to do with it. Professor Henry Ergas has done a cost-benefit analysis. The numbers are in. The benefits are \$17 billion. That is the magic number they have come up with. So I am not surely exactly what it is that you would be pursuing.

I thank in particular Adam Stone, who has ridden shotgun with me on this bill over a very long time. This is an exceptionally important reform. The Australian Greens would be supporting these reforms to the telecommunications industry. The former government did not have the guts to stand up to the structural asymmetries that they had built in as a result of the privatisation of Telstra. I congratulate this Minister for Broadband, Communications and the Digital Economy, Senator Conroy, for at least stepping up and attempting to do what has been long overdue

and has been in the workings probably for nearly two decades now. We also reserve our position on the substantive NBN bills that will be brought into this chamber post the review by the Senate committee and we very much look forward to having that debate.

At least this government is attempting to do something. There was not a word from the coalition all the way through this proposal as to exactly what its broadband policy is. The spectacle of the coalition, and the National Party in particular, opposing a broadband rollout into regional areas I still find utterly incomprehensible. So we look forward to this debate proceeding. Again, I would like to thank my staff and the folk who have looked after us through the long hours of this debate and I very much look forward to the passage of this bill.

Senator FIELDING (Victoria—Leader of the Family First Party) (11.44 am)—Today is an historic day, and history will show the Liberal and National parties were on the wrong side of this debate.

The CHAIRMAN—Order! The time allotted for consideration of the committee stage of this bill has expired.

Senator BRANDIS (Queensland) (11.45 am)—I seek leave to move a motion that would enable the consideration of the committee stage of the debate to be extended until 4 pm today.

Leave not granted.

Senator BRANDIS (Queensland) (11.45 am)—I move:

That so much of standing order 142 be suspended as would prevent further consideration of the bill, or the stage of the bill, without limitation of time or for a specified period.

This is, as the opposition has maintained throughout this debate, the most important decision in relation to infrastructure, in relation to the expenditure of public money, that this parliament has ever considered. Let me

say that again: the commitment of \$42 billion of taxpayers' money, at a minimum, at the lowest estimate of that expenditure, by this parliament is not something that should be rushed. And yet here, on the last sitting day of the year, the government is trying to guillotine consideration of the matter through the parliament.

Let me remind honourable senators what has happened in the course of this debate. Yesterday morning the opposition spent two hours trying to extend the time available for this debate, beyond the end of today and for all day Saturday. Had we succeeded in doing so—

Senator Sterle interjecting—

The CHAIRMAN—Order! Senator Sterle, you are not in your seat! You will remain silent.

Senator BRANDIS—Thank you, Mr Chairman. Had we succeeded in doing so, had we not been frustrated by a government that hides from public scrutiny and parliamentary review, then the time for this debate would have been extended by another 10 hours and the consideration of the committee stage of the debate would have been able to proceed, and proper and due consideration by this chamber of this legislation would have been allowed to happen.

But instead, what did we see? We saw a stunt in the course of which the government first of all tried to get rid of question time. Then, shamed out of that, they put forward a revised motion which reinstated question time but nevertheless constrained the consideration by the parliament, by the Senate, of this legislation. The Senate has now embarked on the consideration of the last of the amendments, which from the point of view of the opposition is the most important of the amendments—that is, the reference of this project to the Productivity Commission. So far we have heard from one opposition sena-

tor on this motion: the shadow spokesman, Senator Birmingham. How can anyone maintain that there has been proper scrutiny by this chamber of this legislation if the principal opposition amendment has not even had the opportunity to be discussed? And yet, as a result of the government moving this guillotine, unless the motion which I have sought leave to move were to be passed, there will be no significant discussion in this chamber of our proposal to refer to the Productivity Commission the expenditure of \$43 billion of public money.

Now I know to those opposite the expenditure of public money does not matter at all. They are, after all, the party which in government drove Australia into the greatest level of peacetime debt we have ever suffered in our history. They are a government which fecklessly and flippantly proposes to commit at least \$43 billion of public money to an untested, untried scheme; has serially sought to conceal from the parliament the business case that underlies the NBN Co.; has sought to conceal from the parliament the review of the business case insisted on by the minister for finance, Senator Wong; has sought to conceal from the parliament scrutiny of the rollout of the NBN Co. by withdrawing it from the supervision and jurisdiction of the parliamentary Public Works Committee; and has sought to close down debate in this very parliament so that the attempt by the opposition to have a cost-benefit analysis made by the Productivity Commission cannot happen.

Why on earth would anyone think that the expenditure of an unexampled amount of money by an Australian government should not have the benefit of a cost-benefit analysis? How could anybody seriously maintain that, before the parliament is asked to approve this expenditure, as we would be doing by voting on this bill now, the taxpayer is not entitled to be satisfied from a technical point

of view and from that point of view of parliamentary scrutiny that there had been a full discussion? But, if the motion, which I sought leave to move, is frustrated, as I expect it will be by this government, the Australian people will know that they were committed to a generation of debt by this Labor government and the parliament was denied the opportunity of properly discussing the matter.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (11.50 am)—What we have heard today is another process device by the opposition to frustrate debate that has occurred on this bill. The opposition denied the ability for the committee stage to sit on Wednesday night for a number of hours. They did not want to sit on Wednesday night. Why? Maybe you could ask the opposition why. Maybe they had other engagements.

Senator Marshall interjecting—

The CHAIRMAN—Order! Senator Marshall, your colleague is trying to make a point. There is no point in shouting across the chamber. I remind senators on my left as well that there should be no shouting across the chamber.

Senator LUDWIG—There was ample opportunity, as I indicated, on Wednesday night to deal with the substantive matters in committee. The opposition refused point-blank to engage in it. In addition to that, not only did they refuse point-blank to deal with it; they then used every procedural device they could think of—and, quite frankly, that was not all of them but every one that they could think of—to ensure that they could not get to the substantive element of the debate, that is, the committee stage. They think that they have not had an opportunity. They had an opportunity on Wednesday. They did not want it. They wanted to spend all their time on procedures. On Thursday, when they had

another opportunity to start again and deal with the committee stage of the bill, they did not want to do that. They wanted to spend all their time on process, on procedural devices to ensure that they did not have the ability to engage in the debate. They did not want to engage in the debate. They wanted to ensure that they did not get an opportunity to get into the committee stage. Why? Because they wanted to deal with procedural matters, the process. This is an opposition that is stuck in process.

In addition to that, they then had an opportunity to continue in committee, which they did not want to adopt. What we now have, as I have indicated, is another procedural device—just another one. If they had ensured that they used their time effectively during the committee stage of the debate, they would have had more than three hours; they would have had up to five hours of additional debate in committee. But, no—they spent 2½ to three hours on not wanting to debate the bill in committee. It is up to the opposition to come up with a reason for why they did not want to debate in committee. Now they cry crocodile tears that they did not get to speak. They had not only Wednesday night; they had two hours of procedural matters, when they could have said, ‘No, thank you. We understand the debate,’ as has been done in this parliament before, when you can collapse a procedural debate to ensure that there is sufficient time to deal with these things. But, no, they wanted to continue to do that.

We say we need to get on with this bill. The device, the management, was put in place yesterday. It was agreed to by a majority of the Senate. What we now have is an opposition that does not want to abide by the majority will of the Senate. They want to continue to wreck not only the Senate’s procedures but also this bill. This government is pursuing this bill. It is a bill that is vital for

this government to pass this week, and we intend to do so. I move:

That the question be now put.

Senator Birmingham—On a point of order, Mr Chairman: the minister cannot put the question.

The CHAIRMAN—A minister is allowed to speak to the motion and then to move that the motion be put. The question is that the motion moved by Senator Ludwig be agreed to.

The committee divided. [12.00 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	31
Noes.....	<u>29</u>
Majority.....	<u>2</u>

AYES

Bilyk, C.L.	Bishop, T.M.
Brown, B.J.	Brown, C.L.
Cameron, D.N.	Carr, K.J.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Faulkner, J.P.
Feeney, D.	Fielding, S.
Forshaw, M.G.	Furner, M.L.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A.*	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Wong, P.	Wortley, D.
Xenophon, N.	

NOES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Eggleston, A.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.
Kroger, H.	Macdonald, I.
Mason, B.J.	McGauran, J.J.J.

Nash, F.	Parry, S.*
Ryan, S.M.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Williams, J.R.	

PAIRS

Ferguson, A.B.	Arbib, M.V.
Back, C.J.	Farrell, D.E.
Adams, J.	Hutchins, S.P.
Cormann, M.H.P.	O'Brien, K.W.K.
Abetz, E.	Hurley, A.
Payne, M.A.	Hanson-Young, S.C.
Minchin, N.H.	Hogg, J.J.
Ronaldson, M.	Collins, J.

* denotes teller

Question agreed to.

CHAIRMAN—The question now is that the motion moved by Senator Brandis be agreed to.

The committee divided. [12.03 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	29
Noes.....	<u>31</u>
Majority.....	<u>2</u>

AYES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Eggleston, A.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.
Kroger, H.	Macdonald, I.
Mason, B.J.	McGauran, J.J.J.
Nash, F.	Parry, S.*
Ryan, S.M.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Williams, J.R.	

NOES

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

Feeney, D.
 Forshaw, M.G.
 Ludlam, S.
 Lundy, K.A.
 McEwen, A.*
 Milne, C.
 Polley, H.
 Sherry, N.J.
 Stephens, U.
 Wong, P.
 Xenophon, N.

PAIRS

Ferguson, A.B. Arbib, M.V.
 Back, C.J. Farrell, D.E.
 Adams, J. Hutchins, S.P.
 Cormann, M.H.P. O'Brien, K.W.K.
 Abetz, E. Hurley, A.
 Payne, M.A. Hanson-Young, S.C.
 Minchin, N.H. Hogg, J.J.
 Ronaldson, M. Collins, J.

* denotes teller

Question negatived.

The CHAIRMAN—The time allotted for consideration of the committee stage of this bill has expired. The question now is that the amendments on sheet 7012 circulated by the opposition be agreed to.

Question put.

The committee divided. [12.10 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	29
Noes.....	<u>31</u>
Majority.....	<u>2</u>

AYES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Eggleston, A.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.
Kroger, H.	Macdonald, I.
Mason, B.J.	McGauran, J.J.J.

Nash, F.
 Ryan, S.M.
 Troeth, J.M.
 Williams, J.R.

NOES

Bilyk, C.L.
 Brown, B.J.
 Cameron, D.N.
 Conroy, S.M.
 Evans, C.V.
 Feeney, D.
 Forshaw, M.G.
 Ludlam, S.
 Lundy, K.A.
 McEwen, A.*
 Milne, C.
 Polley, H.
 Sherry, N.J.
 Stephens, U.
 Wong, P.
 Xenophon, N.

Bishop, T.M.
 Brown, C.L.
 Carr, K.J.
 Crossin, P.M.
 Faulkner, J.P.
 Fielding, S.
 Furner, M.L.
 Ludwig, J.W.
 Marshall, G.
 McLucas, J.E.
 Moore, C.
 Pratt, L.C.
 Siewert, R.
 Sterle, G.
 Wortley, D.

PAIRS

Ferguson, A.B. Arbib, M.V.
 Back, C.J. Farrell, D.E.
 Adams, J. Hutchins, S.P.
 Cormann, M.H.P. O'Brien, K.W.K.
 Abetz, E. Hurley, A.
 Payne, M.A. Hanson-Young, S.C.
 Minchin, N.H. Hogg, J.J.
 Ronaldson, M. Collins, J.

* denotes teller

Question negatived.

The CHAIRMAN—It being past 12 noon on Friday, 26 November 2010, the time for the consideration of the remaining stages of the bill has expired.

Bill reported with amendments.

Third Reading

The DEPUTY PRESIDENT—The question now is that the remaining stages of this bill be agreed to and that the bill be now passed.

Senator FISHER (South Australia) (12.13 pm)—I seek leave to move an amendment to the motion.

Leave not granted.

Senator FISHER—I move:

That so much of the standing orders be suspended as would prevent Senator Fisher moving an amendment proposing a reference to the Environment and Communications References Committee.

The DEPUTY PRESIDENT—Order! The time for debate has expired so you cannot debate the motion to suspend standing orders, Senator Fisher. I can put the question but you cannot debate it. I understand that you are moving that so much of standing orders be suspended?

Senator FISHER—Yes, to enable me to put this motion that the NBN be referred to a Senate committee in terms of the motion as circulated.

Question put.

The Senate divided. [12.19 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes.....	29
Noes.....	<u>31</u>
Majority.....	<u>2</u>

AYES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Eggleston, A.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.
Kroger, H.	Macdonald, I.
Mason, B.J.	McGauran, J.J.J.
Nash, F.	Parry, S.*
Ryan, S.M.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.
Williams, J.R.	

NOES

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

Evans, C.V.	Faulkner, J.P.
Feeney, D.	Fielding, S.
Forshaw, M.G.	Furner, M.L.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A.*	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Stephens, U.	Sterle, G.
Wong, P.	Wortley, D.
Xenophon, N.	

PAIRS

Ferguson, A.B.	Arbib, M.V.
Back, C.J.	Farrell, D.E.
Adams, J.	Hutchins, S.P.
Cormann, M.H.P.	O'Brien, K.W.K.
Abetz, E.	Hurley, A.
Payne, M.A.	Hanson-Young, S.C.
Minchin, N.H.	Hogg, J.J.
Ronaldson, M.	Collins, J.

* denotes teller

Question negatived.

The DEPUTY PRESIDENT—I will now put the question that the remaining stages of the bill be agreed to and that the bill be now passed.

Senator FISHER (South Australia) (12.22 pm)—I seek leave to make a short statement.

The DEPUTY PRESIDENT—Leave is granted for two minutes.

Senator FISHER—I thank the chamber. Leave is sought ultimately to put the motion to refer, to the Senate Standing Committee on Environment and Communications, the National Broadband Network for inquiry, commencing as soon as that committee so wishes and reporting during August next year—designed to dovetail with the joint parliamentary committee that the Prime Minister seems to have promised Senator Xenophon.

The trouble for Senator Xenophon and his deal is that all that he has is a letter from the Prime Minister about the joint parliamentary

committee. And all that that letter does is to make it very clear that the joint parliamentary committee is not established yet—there is nothing from the House establishing it. It will have a majority of government members, leaving the opposition and Independent members to split the spoils. Government members will decide the terms of reference. It will not start work until July next year. It will be able to hear from members of parliament, so it will become a parade ground for government members peddling the government's NBN propaganda.

In an effort to cover the rear, I understand that Minister Wong has been deep in discussions with the Independents and is attempting to reassure them that something will be done to this committee—

The DEPUTY PRESIDENT—You have two minutes.

Senator FISHER—which does not exist yet because there is nothing formally from the House establishing it—

The DEPUTY PRESIDENT—I said two minutes.

Senator FISHER—to equal up the numbers of this committee and ensure that it is able to inquire into the National Broadband Network in an appropriate way, and to make it so that members of parliament are not invited to give evidence, which, of course, is the height of hypocrisy, given that this government refused to allow that to happen to the Senate committee inquiring into the botched and bungled Home Insulation Program. So I wish to put my motion, to establish that inquiry, to operate, as it were—

Government senators—Time! Time!

The DEPUTY PRESIDENT—Order! I do not need advice from my right.

Senator FISHER—as a tag team, and—
(*Time expired*)

The DEPUTY PRESIDENT—I am now going to put the motion that the remaining stages of the bill be agreed to and that the bill be now passed.

Senator BRANDIS (Queensland) (12.24 pm)—Mr Deputy President, I seek leave, pursuant to contingent notice of motion No. 3 standing in the name of Senator Abetz, to move:

That so much of the standing orders be suspended as would prevent the further consideration of the bill until 4 pm.

The DEPUTY PRESIDENT—You cannot debate the issue. If you are seeking to suspend standing orders, I can put the motion, but it must be put immediately.

Leave not granted.

Senator BRANDIS—I move:

That so much of the standing orders be suspended as would prevent Senator Brandis moving a motion to extend the time allotted for the consideration of the remaining stages of the bill.

The DEPUTY PRESIDENT—I must put that question. The question is that the motion moved by Senator Brandis be agreed to.

Senator Chris Evans—On a point of order, Mr Deputy President, I seek your ruling on this: the impact of Senator Brandis's motion is to again test the Senate on a proposition he has already put to the Senate that has been defeated.

Senator BRANDIS—On the point of order: it is a different proposition. The earlier motion was an extension of the committee stage. This seeks an extension of the further consideration of the bill, the committee stage having now concluded.

The DEPUTY PRESIDENT—I shall seek some advice. I put the question again: the question is that Senator Brandis's motion to suspend standing orders be agreed to.

Senator Chris Evans—I presume you have ruled now, Mr Deputy President.

The DEPUTY PRESIDENT—I am ruling that it is a different stage of the bill. I took advice because I was not sure myself.

Senator Chris Evans—You need to tell us what the decision is.

The DEPUTY PRESIDENT—The decision is that it is a different matter and it is at a different stage of the bill.

Senator Conroy—How many salamis do they get to slice?

The DEPUTY PRESIDENT—Senator Conroy, you are not helping matters at all. I needed to take advice, and I took advice. I am now putting the question that Senator Brandis has moved: that standing orders be suspended.

Question put.

The Senate divided. [12.31 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes.....	28
Noes.....	<u>30</u>
Majority.....	<u>2</u>

AYES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Ferguson, A.B.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.
Kroger, H.	Macdonald, I.
McGauran, J.J.J.	Nash, F.
Parry, S. *	Ryan, S.M.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Williams, J.R.

NOES

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

Feeney, D.	Fielding, S.
Forshaw, M.G.	Furner, M.L.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A. *	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Sterle, G.	Wong, P.
Wortley, D.	Xenophon, N.

PAIRS

Eggleston, A.	Arbib, M.V.
Back, C.J.	Farrell, D.E.
Adams, J.	Hutchins, S.P.
Cormann, M.H.P.	O'Brien, K.W.K.
Abetz, E.	Hurley, A.
Payne, M.A.	Hanson-Young, S.C.
Minchin, N.H.	Hogg, J.J.
Ronaldson, M.	Collins, J.

* denotes teller

Question negatived.

The DEPUTY PRESIDENT—The question now is that the remaining stages of this bill be agreed to and that the bill be now passed.

Senator Ian Macdonald—Mr Deputy President, I raise a point of order and almost a matter of privilege. I understand that the vote on that last motion was determined on the basis of an undertaking given by a government minister to two senators and it was as a result of that undertaking that they voted in a certain way. I raise this almost as a matter of privilege.

The DEPUTY PRESIDENT—I am afraid that you can speak to a point of order—

Senator Conroy interjecting—

The DEPUTY PRESIDENT—Order! Senator Conroy, I am directing my remarks to Senator Macdonald, and I ask you to remain silent. Senator Macdonald, you cannot speak about a matter of privilege. You can raise a point of order if you like.

Senator Ian Macdonald—I am raising this as a point of order. The point of order is this: if Senator Wong is making an undertaking to two senators she should get up in this chamber and make the same undertaking to everybody.

The DEPUTY PRESIDENT—You are debating the issue, Senator Macdonald, and there is no point of order. The question is that the remaining stages of this bill be agreed to and that the bill be now passed.

Question put.

The Senate divided. [12.39 pm]

(The Deputy President—Senator the Hon. AB Ferguson)

Ayes.....	30
Noes.....	<u>28</u>
Majority.....	<u>2</u>

AYES

Bilyk, C.L.	Bishop, T.M.
Brown, B.J.	Brown, C.L.
Cameron, D.N.	Carr, K.J.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Faulkner, J.P.
Feeney, D.	Fielding, S.
Forshaw, M.G.	Furner, M.L.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.
McEwen, A.*	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Sherry, N.J.	Siewert, R.
Sterle, G.	Wong, P.
Wortley, D.	Xenophon, N.

NOES

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Ferguson, A.B.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.
Kroger, H.	Macdonald, I.
McGauran, J.J.J.	Nash, F.

Parry, S. *
Scullion, N.G.
Trood, R.B.

Ryan, S.M.
Troeth, J.M.
Williams, J.R.

PAIRS

Eggleston, A.	Arbib, M.V.
Back, C.J.	Farrell, D.E.
Adams, J.	Hutchins, S.P.
Cormann, M.H.P.	O'Brien, K.W.K.
Abetz, E.	Hurley, A.
Payne, M.A.	Hanson-Young, S.C.
Minchin, N.H.	Hogg, J.J.
Ronaldson, M.	Collins, J.

* denotes teller

Question agreed to.

Bill read a third time.

The DEPUTY PRESIDENT—Order! I would remind those in the gallery that they should remain silent while they are in the gallery. Order! Senator Brown, you are not in your seat and you will not get the call.

Senator Bob Brown— Mr Deputy President, I rise on a point of order. I think that a little bit of Christmas cheer towards the public at this time of year would go a long way.

The DEPUTY PRESIDENT—Senator Brown, there is no point of order.

COMMITTEES

Selection of Bills Committee

Report

Senator McEWEN (South Australia) (12.43 pm)—by leave—I present the 15th report of 2010 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator McEWEN—I seek leave to have the report incorporated in *Hansard*.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 15 OF 2010

1. The committee met in private session on Thursday, 25 November 2010 at 6.37 pm.

2. The committee resolved to recommend—
That—

(a) the Food Standards Amendment (Truth in Labelling—Genetically Modified Material) Bill 2010 be referred immediately to the Community Affairs Legislation Committee for inquiry and report by 16 June 2011 (see appendix 1 for a statement of reasons for referral); and

(b) the Patent Amendment (Human Genes and Biological Materials) Bill 2010 be referred immediately to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 16 June 2011 (see appendix 2 for a statement of reasons for referral).

3. The committee resolved to recommend—That the following bills not be referred to committees:

Assisting Victims of Overseas Terrorism Bill 2010

Banking Amendment (Controls on Variable Interest Rate Changes) Bill 2010

Broadcasting Legislation Amendment (Anti-Siphoning) Bill 2010

Defence Force Retirement and Death Benefits Amendment (Fair Indexation) Bill 2010

Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010

Health Insurance Amendment (Compliance) Bill 2010

Plastic Bag Levy (Assessment and Collection) Bill 2010

Screen Australia (Transfer of Assets) Bill 2010

Tobacco Advertising Prohibition Amendment Bill 2010.

The committee recommends accordingly.

4. The committee deferred consideration of the following bills to its next meeting:

Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Bill 2010

Foreign Acquisitions Amendment (Agricultural Land) Bill 2010

Human Services Legislation Amendment Bill 2010

Migration Amendment (Detention of Minors) Bill 2010

Migration Amendment (Detention Reform and Procedural Fairness) Bill 2010

National Broadband Network Companies Bill 2010

National Broadband Network Financial Transparency Bill 2010 (No. 2)

Responsible Takeaway Alcohol Hours Bill 2010

Statute Law Revision Bill (No. 2) 2010

Tax Laws Amendment (2010 Measures No. 5) Bill 2010

Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2010.

(Anne McEwen)

Chair

26 November 2010

APPENDIX 1

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee

Name of Bill:

Food Standards Amendment (Truth in Labelling - Genetically Modified Material) Bill 2010

Reasons for referral/principal issues for consideration:

Possible submissions or evidence from:

Greenpeace Gene Ethics CHOICE

MADGE - Mothers Are Demystifying GE

Food manufacturers

Australian Food and Grocery Council

Food Standards Australia New Zealand

Committee to which bill is to be referred: Senate
Community Affairs Committee

Possible hearing date(s): February/March 2011

Possible reporting date: March/ April 2011

(signed)

Rachael Siewert

Whip / Selection of Bills Committee member

APPENDIX 2

SELECTION OF BILLS COMMITTEE

Proposal to refer a bill to a committee

Name of bill:

Patent Amendment (Human Genes and Biological Materials) Bill 2010

Reasons for referral/principal issues for consideration:

Possible submissions or evidence from:

Cancer Council Australia Dr Luigi Palombi (ANU)

Breast Cancer Action Group National Breast Cancer Foundation

Breast Cancer Network of Australia Australian Gene Ethics Network

Dr Leslie Cannold ACCC

Peter MacCallum Cancer Institute Walter and Eliza Hall Institute

Cancer Voices Maurice Blackburn

Professor Ian Frazer Australian Law Reform Commission

Genetic Technologies Ltd Intellectual property lawyers

Civil liberties groups

Committee to which bill is to be referred:

Senate Legal and Constitutional Affairs Legislation Committee

Possible hearing date(s): April/May 2011

Possible reporting date: June 2011

(signed)

Rachael Siewert

Whip/Selection of Bills Committee member

Question agreed to.

**NATIONAL VOCATIONAL
EDUCATION AND TRAINING
REGULATOR BILL 2010**

**NATIONAL VOCATIONAL
EDUCATION AND TRAINING
REGULATOR (TRANSITIONAL
PROVISIONS) BILL 2010**

First Reading

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (12.44 pm)—I move:

That the following bills be introduced: A Bill for an Act to establish the National Vocational Education and Training Regulator, and for related purposes, and A Bill for an Act to deal with transitional matters arising from the enactment of the *National Vocational Education and Training Regulator Act 2010*, and for related purposes.

Question agreed to.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (12.44 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 LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (12.45 pm)—I table the explanatory memorandum relating to the bills and 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—

**National Vocational Education and Training
Regulator Bill 2010**

The Government is committed to improving the quality and consistency of training across the Vocational Education and Training (VET) sector. A key step to achieving this is becoming more nationally consistent and rigorous in the way we register, accredit and monitor courses and providers and the way we enforce performance standards in the VET sector.

The National Vocational Education and Training Regulator Bill 2010 establishes a National Regulator for the Vocational Education and Training (VET) sector. The National VET Regulator was part of the Skills for Sustainable Growth Package announced in the 2010 Budget

Along with establishing the Regulator that package included the Quality Skills Incentive program, which provides \$130 million in payments for the 100 largest VET providers where they meet relevant performance benchmarks. Importantly the National VET Regulator will play a key role in developing those benchmarks.

The establishment of a National VET Regulator is one of the most significant reforms to the sector in years. It has been achieved through strong co-operation between the Commonwealth, states and territories. It will improve the quality of Australia's training system and increase confidence in the skills of its graduates.

Regulatory arrangements for the VET sector are currently dispersed between eight States and Territory based jurisdictions. Some jurisdictions also delegate regulatory activities to other bodies such as the National Audit and Registration Authority.

There have been several attempts in the past to harmonise the state based regulation systems. National standards against which training providers are regulated were introduced in the 1990s and model clauses for state legislation were introduced in 2002.

Despite these important reforms, regulation in the VET sector is still fragmented between jurisdictions. The auditing and monitoring of provider performance still varies from state to state.

To address this, COAG agreed at its meeting in December 2009 on a new approach to national regulation. This approach includes the establishment of a National VET Regulator responsible for registering training organisations and accrediting VET qualifications and courses, and a separate Standards Council to provide advice to the Ministerial Council for Tertiary Education and Employment (MCTEE) on national standards for regulation.

The introduction of this new approach to national regulation will build on the current quality and consistency in the VET sector and support the labour market and national productivity agendas by:

- strengthening confidence in the quality and consistency of assessment and training outcomes of VET qualifications which in turn

supports confidence in the abilities of VET graduates;

- maximising consistency in application of national standards and regulatory activity in all jurisdictions
- maximising consistency in the application of sanctions and the treatment of low quality providers
- providing clear lines of accountability and responsibility for quality of VET, and
- ensuring a coordinated response to emerging quality issues in the sector.

Specifics of the Bill

I turn now to a few specific aspects of the Bill.

The National VET Regulator will operate under a referral of powers from most states and will use its constitutional powers to operate in the territories. Victoria and Western Australia, as the two non-referring states, have agreed to enact mirror legislation to ensure a consistent approach to VET regulation. The COAG decision agreed the National VET Regulator would regulate all international and multi-jurisdictional providers and the Commonwealth will use its constitutional powers to achieve this. Registered Training Organisations (RTOs) that operate solely in non-referring states (and are not registered to deliver education to international students) will continue to have their activities regulated by those states.

The National VET Regulator will be run by a Chief Commissioner who will be assisted by two other commissioners. The National VET Regulator will be established as an agency under the Financial Management and Accountability Act.

The National VET Regulator will undertake a range of activities involved in the regulation of Registered Training Organisations (RTOs) and Accreditation of VET Qualifications. These include registration, quality assurance, performance reporting, risk assessment, audit and renewal of registration / accreditation.

A key mechanism for regulation in VET is the national standards against which RTOs are regulated, currently called the Australian Quality Training Framework. The content of the standards will not be significantly changed, but this Bill

strengthens their legal status by making them a legislative instrument.

The standards will continue to be endorsed by the Ministerial Council and will be developed in the future by the new Standards Council which will be established in 2011.

Effective quality assurance of education and training depends upon an effective model for regulation. The introduction of national regulation for the VET system provides an opportunity to establish a regulatory model that can support and assure the quality of Australian VET providers. The National VET Regulator will develop a regulatory model based upon a responsive approach that is both strong and balanced.

The responsive approach to regulation will allow the regulator to focus its activities on those providers most likely to have problems, with minimal intrusions for proven, quality RTOs. Clear and accountable decisions and an escalating approach to sanctions will create a strong incentive for RTOs to comply with the standards.

A key concern with the current system has been the limitations on the tools available to existing state regulators. This Bill establishes a robust set of powers to allow the National VET Regulator to fulfil its functions and effectively regulate the VET sector. This National VET Regulator will have a range of powers with which to effectively regulate training providers, including administrative sanctions, civil penalties and criminal offences. These powers are stronger than those available to existing state regulators and the introduction of civil penalties in particular will expand the range of options the National VET Regulator has when dealing with poor performing providers. Decisions made by the National VET Regulator will be subject to appropriate natural justice and judicial review procedures. The National VET Regulator will have appropriate search and monitoring powers similar to those provided in the Education Services for Overseas Students (ESOS) Act 2000.

This Bill reflects the Government's continued commitment to improving the quality of education and training and improving the consistency of regulation across the country.

National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010

The National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010 allows for the transfer of existing registrations, applications and other matters from state regulators to the National VET Regulator with minimal disruption to existing RTOs. Provisions to allow the smooth transition of staff and outstanding legal matters from state regulators are also contained in the Bill.

In conjunction with the National Vocational Education and Training Regulator Bill 2010, this Bill reflects the Government's continued commitment to improving the quality of education and training and improving the consistency of regulation across the country.

Debate adjourned.

BUSINESS

Consideration of Legislation

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (12.46 am)—I 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:

Corporations Amendment (Sons of Gwalia) Bill 2010

Financial Framework Legislation Amendment Bill 2010.

Question agreed to.

PARLIAMENTARY ZONE

Approval of Works

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (12.46 pm)—I move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone relating to an external expansion to the Abacus childcare centre at the Treasury building.

Senator IAN MACDONALD (Queensland) (12.46 pm)—This motion particularly relates to the external expansion of the Abacus childcare centre at the Treasury building. Generally speaking, the coalition supports that. The motion does, however, bring into question the management of the Parliamentary Zone, and I have for a long time had a concern about how this building seems to be undermaintained. I know it has been remarked upon elsewhere, and I know some remedial action has been taken, but it does concern me that this magnificent building still has some of its water features covered up with a bit of green cloth. I would urge the President and the Speaker to have a look at that green cloth. In my view, the cloth should be removed or the water features either be filled in or, preferably, returned.

In relation to matters that happen in this building, we have had the spectacle in the past couple of days of the Greens voting with the Labor Party to gag debate. I would not be surprised if they got up again and tried to gag me on this particular motion. Even as late as this morning, the Greens, who have all their political career indicated that they are in favour of open and free debate and parliamentary accountability, have been gagging debate. They have gagged it again this morning. More than a dozen times in the past couple of days, the Greens political party, led by Senator Dr Robert Brown, have gagged debate in this particular chamber. And that comes after literally decades of the Greens getting up in this chamber and saying how they would never gag debate and, no matter how much they disagreed with a person's view, they would always allow that person to have a view. That seems to have gone by the board. That concerns me in relation to this particular motion that we are debating at the moment. It is something that I think needs to be made public at every opportunity.

This motion in relation to the Abacus Child Care and Education Centre at the Treasury building is one that the Senate can comfortably agree with. It is for a good cause, and it would seem to me that the motion should be supported.

Question agreed to.

AIRPORTS AMENDMENT BILL 2010

Second Reading

Debate resumed from 26 October, on motion by **Senator Feeney**:

That this bill be now read a second time.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (12.50 pm)—The Airports Amendment Bill 2010 makes a number of amendments to the Airports Act 1996, which establishes a framework for the regulation of Commonwealth leased airports. The act sets out the requirements for airport master plans, which set out development plans over a 20-year period and which are updated every five years or earlier. Master plans are intended to establish the overall direction of the development of an airport site. The planning process reduces the potential for conflicts with surrounding communities, allows for the public to be informed of the developments at the airport and enables them to be consulted on these developments. A key question might be asked lately about the approval of the development of the subdivision under the Canberra Airport, which one might presume will have far greater traffic in future. The Airports Act also requires major development plans to be prepared for specific development proposals. Both master plans and major development proposals require a period of public consultation, after which the plan is submitted for ministerial approval.

The bill will increase requirements for airport master plans and major development plans to align more closely with the state and

local planning laws. It will require that master plans include a ground transport plan illustrating how airport developments will impact the surrounding transport network and include analysis on how the master plan aligns with state and local planning laws. Master plans will be required to integrate the airport environment strategy rather than having it separate to the master plan. In addition, some types of developments that are deemed incompatible with the operation of airport sites as an airport will be prohibited. The bill will also restructure the triggers for the preparation of major development plans to include developments with significant community impact, thus enabling public consultation for all airport developments that impact surrounding areas.

The bill will seek to streamline certain development applications. If a development has little community impact there is currently no provision for airports to seek an exemption from the major development plan process. The bill will introduce such an exemption. The bill will also allow airports to seek a reduction in the public consultation period from 60 days to 15 days in the event that a major development plan is aligned with the latest master plan and therefore has already been subjected to public scrutiny.

The opposition acknowledges that getting the balance between aviation infrastructure development and broader community planning and consultation is never easy. That is why the coalition introduced the Airports Act in 1996. So, in one respect, the Airports Amendment Bill 2010 continues the reformist work of the former coalition government. Unfortunately, as is so typical of this government, it has once again proved unable or unwilling to provide even the basic courtesy level of consultation with key stakeholders when it comes to drafting this bill. Fortunately, on 30 September 2010, the bill was referred to the Senate Rural Affairs and

Transport Legislation Committee for inquiry and report by 16 November 2010. While I acknowledge that the government did not oppose this referral, its contempt for consultation and review was made clear by the government's refusal to accept a perfectly reasonable coalition amendment.

Today, one might call into clear focus the same government's refusal to be part of a process of getting proper oversight of their NBN Telstra legislation by the Productivity Commission. One also might draw into clear context the fact that the Labor government, ably assisted by the Greens and the Independents, have decided to go down the path of their process even though such a person as Mr Glenn Stevens, the head of the Reserve Bank, has clearly stated today that the NBN should not go forward without it going to the Productivity Commission first. Once more, it is a case of every person telling them something but them ignoring it and unfortunately other people believing them on the way through.

Going back to this airport bill, this rejection is all the more remarkable since the government, when preparing this bill, refused to provide an exposure draft. This is extraordinary. Airports are a vital part of Australia's infrastructure and their interaction with the broader community is enormous. Unfortunately, because the government is in such a rush and is not interested in consultation, this bill has problems. These problems have aroused concerns from a number of aviation industry stakeholders. Fortunately, the Senate inquiry identified these problems and, in a unanimous conclusion, recommended:

... that the Department of Infrastructure and Transport develop guidelines in consultation with key stakeholders to clarify the level of detail and analysis to be included in airport master plans in order to satisfy the requirements set out in para-

graph 71(2)(h) and 71(3)(h) of the Airports Amendment Bill 2010.

We call upon the government to develop these guidelines swiftly in order to clarify the doubts about these elements of the Airports Amendment Bill 2010. We also call upon the government to table these guidelines on the Federal Register of Legislative Instruments as per the recommendation made by the coalition senators in the Senate inquiry into the bill. We further note that, as a result of sloppy drafting and lack of consultation, the government has had to make further amendments to this bill. The coalition welcomes the government's belated changes to this bill and the coalition will not oppose passage of the Airports Amendment Bill 2010 and the associated amendments.

In closing, this is yet another statement, as has been so clearly betrayed today, of a government that is unwilling to properly engage, a government that is hopeless with the details, a government that is clueless about the facts and a government that ignores all the key stakeholders, even the independent stakeholders outside the partisan arrangements of this chamber such as the head of the Reserve Bank, Mr Glenn Stevens, with his comments about whether the NBN should go to the Productivity Commission. This is a government that tries to laud itself on what it gets through rather than what it actually delivers an outcome for. We see Mr Albanese stand up in the other place and come up with that list—more a list to explain other things that should be cleaned up rather than things that have actually been achieved. Everything this government touches turns to clay.

The only way we can save the Australian people from some of the ridiculous decisions that come out of this place is with proper oversight by this parliament. Yet this government, ably assisted by the Greens and, to be honest, by the Independents, has gagged that process. We see that in minor ways, such

as with the Airports Amendment Bill, but today we saw it in the most major of ways when we tried to get the Australian people the right to a proper analysis of their major infrastructure project. This government, and those who are associated with this government, especially the Greens, must accept responsibility for the decisions that they take. When those decisions come unstuck, when the money is gone and when people stand around and say, 'Where are these social benefits that we had in the past and that we used to pay for out of taxpayers' dollars, and where is our capacity to properly fund the Pharmaceutical Benefits Scheme, to properly fund defence and to properly fund education?'—when they ask where on earth that money has gone—we will be able to point to days like today when this government in association with the Greens, this Labor-Green government, refused proper oversight and to that lack of proper oversight as the reason we ended up finding ourselves in such an invidious position.

Senator XENOPHON (South Australia) (12.59 pm)—I will be brief. Airports Amendment Bill 2010 relates to airport land and I have raised a concern with the minister's office and with the department on the issue of gambling premises on airport land. I have asked whether state regulations apply, as a matter of course, both to the approval process for putting a poker machine venue on airport land and to the rules and regulations applying to problem gambling. I have had a useful discussion with both the department and the minister's office on this and I understand the minister may be making an undertaking or confirming that there will be further review of this issue.

It is an issue that I think has been raised at a ministerial council level, but it would have been remiss of me not to have raised this issue to ensure that if a gambling venue is on airport land there ought to be, at the very

least, the same rules that apply to venues on non-Commonwealth land in terms of both the approval process for such a venue and the regulation of those premises. My first preference is that there not be any more poker machine venues established on airport land or any further proliferation of gambling venues. That is where I am at on this bill and I would be grateful if I could hear from the minister on this issue following my discussions with Minister Albanese's office and the department.

Senator FISHER (South Australia) (1.01 pm)—I rise to speak on the Airports Amendment Bill 2010, which establishes a comprehensive framework for the regulation of Commonwealth owned airports leased to the private sector over the next 50 years. I note in particular the provisions of the bill designed to improve the planning and regulatory framework, drawing on the lessons of the past 14 years, and amendments on matters relating to the first five years of the master plan requiring additional information—for example, a ground transport plan. I also note amendments that clarify provisions in the existing legislation and framework which may be somewhat ambiguous.

Those sorts of provisions are not dissimilar to the sorts of provisions that could be developed by the government in the rollout of the National Broadband Network. The airports—the subject of this bill—would be very pleased to hear that there may be some scrutiny of the National Broadband Network, given that presumably they are enjoying or wish to enjoy some sort of broadband access. They may be wondering at what point some of their passengers are going to arrive today, given that it is largely the debate about the National Broadband Network legislation that has affected the departure times proposed by some of the passengers coming to those airports.

Given the links between this legislation and the National Broadband Network—in particular, the provisions of this bill that seek to clarify ambiguity—there remains ambiguity about issues dealt with, in part, by this chamber in respect of the National Broadband Network. Over the last couple of days we have heard about Senator Xenophon's agreement with the government which, in part, was to do with securing the vote of the Independents for the passage of the legislation. We have also learnt that the strength of that agreement rests in a letter from the Prime Minister, dated 23 November. Senator Xenophon has already told the chamber that the date might be out a day, but we know the letter we are talking about.

It is also very clear that despite what seems to be the Prime Minister's promise to Senator Xenophon that the NBN will be subject to scrutiny and be transparent by virtue of the creation of a joint parliamentary committee to inquire into the National Broadband Network, it is very clear that the strength of that committee is nothing more than the subject of a paragraph in a letter from the Prime Minister to Senator Xenophon. So what we know about that committee rests purely and simply in the letter from the Prime Minister. There is nothing from the House: no motions and no resolutions for this place to consider. There is nothing thus far that has kept the Prime Minister's word to set up that committee.

But what we do know about the committee, if we go on the say-so of the Prime Minister's letter, are four things. Firstly, it will comprise mainly government members. Secondly, the committee will determine the terms of reference of the matters into which the committee will inquire. Thirdly, the committee will not start its work until 1 July next year, which is some eight months hence, by which time the rollout in Tasmania will have done much work and there will have

been the rollout in mainland Australia. Finally, we also know that the Prime Minister is proposing that the committee be able to call witnesses, including members of parliament, about the performance of the NBN 'or other matters of local interest'. So, taking this committee purely on face value from the Prime Minister's letter, because that is all we have, it is very clear it is going to be a government dominated committee looking into matters that the government is happy to have looked into in the National Broadband Network. In short, it will become a politician's playpen and a parade ground for government members peddling the government's NBN propaganda.

So what should we do about this? I would have had it that this chamber be able to consider a motion to establish a Senate committee inquiry into the National Broadband Network to dovetail with the joint parliamentary committee, were it to be established as the Prime Minister forecasts. I would also have had the Senate consider the motion that includes the terms of reference, which I would have been hopeful that the Greens, Senator Xenophon and Senator Fielding would have seen fit to support. Indeed, I would have been hopeful particularly of the Greens, given that the terms of reference in that motion had been on the *Notice Paper* for some days in the joint names of me and Senator Ludlam. He was at that stage happy for those matters to be the subject of the terms of reference. I also would have been hopeful of the support of the Independents for the motion at large, because I do believe that they want the National Broadband Network scrutinised from now until its completion.

However, given in particular the shortcomings in the sop, effectively, of the joint parliamentary committee offered to Senator Xenophon by the Prime Minister, I am left to wonder about indications that may have been

given by Minister Wong in the background during the course of discussions in the ether of this wonderful chamber as it considered the national broadband legislation just gone. I am left to wonder whether certain indications may have been given by Minister Wong to the Greens, to Senator Xenophon and to Senator Fielding, given the publicity recently about, in my view, the spectacular shortcomings of the proposed joint committee—it will be stacked, it will tell the story the government wants to be told, it will not start work until July next year and it will just be a government propaganda machine. Given those shortcomings, I wonder whether Minister Wong may have made some overtures to the Independents in this place to attempt to back-fill the gaps in the proposed joint parliamentary committee which have been identified in the very important debate that this Senate has had some time to have about the National Broadband Network and related legislation.

I do wonder whether Minister Wong has given some indications, for example, about the composition of the joint parliamentary committee and about it being more evenly balanced between, say, government and opposition members. I do wonder whether Minister Wong may have given some indications to the crossbenchers in this place about that committee being set up to start its inquiry as of February next year and I do wonder whether Minister Wong may have given some indications to the crossbenchers about the ability or otherwise for members of parliament to parade their wares in front of that committee, when, really, who wants another speaking opportunity for politicians? I reckon the Australian people would reckon we get plenty in any event. I speculate that there might have been overtures in that regard.

Given that we are led to believe that the support of the Independents, and in particular Senator Xenophon, rested in very large part

on the offerings of the government made to the crossbenchers in the last few days, it is incumbent on the Australian people and I think this place to attempt to extract from the government on the record what, if any, overtures may have been made to backfill the glaring gaps that exist in the Prime Minister's indications to Senator Xenophon about the establishment of a joint parliamentary committee. Before we go to these airports, which are subject to this bill, and before catching planes tonight, I would respectfully suggest it is incumbent upon Minister Wong to put on the record any indications to the crossbenchers she has made. All Senator Xenophon had to hang on to—I bet his was not yellow—in the last 48 hours was a letter from the Prime Minister, from which there now may well be some departure—

Senator Ludwig—Mr Acting Deputy President, I rise on a point of order. I rarely do this and generally only during question time, but I think that in this instance I should point out, on a matter of relevance, that Senator Fisher has been talking at some length about matters other than those even close to the Airports Amendment Bill 2010. I did not hear the word 'airports' or something akin airports being mentioned in the last 10 minutes. I stand to be corrected. From a different perspective: people will want to contribute to a range of bills that are listed as noncontroversial. I seek the cooperation of the chamber to ensure that everybody gets an opportunity to be heard.

Senator Ian Macdonald—Mr Acting Deputy President, on the point of order: Senator Fisher clearly mentioned airports a number of times. It was about government accountability in the airports bill. Senator Fisher was merely talking about the accountability of the government in this bill and on the other matter she was raising. In relation to Senator Ludwig's last comment, which had nothing to do with his point of order but

which you allowed, I simply say that Senator Ludwig had an opportunity to extend the time for debate on these bills, which he twice refused—

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—Senator Macdonald, you are now engaging in debate and you are committing the same offence you accuse Senator Ludwig of committing. Come back to your point of order, Senator Macdonald.

Senator Ian Macdonald—Exactly, but you allowed him. I am sure that, in fairness, you would allow me the same indulgence—

The ACTING DEPUTY PRESIDENT—Address the point of order, Senator Macdonald.

Senator Ian Macdonald—I have addressed the point of order, Mr Acting Deputy President.

Senator Joyce—On the point of order: I imagine the regular retort to this would be: you have 10 minutes left to become relevant.

The ACTING DEPUTY PRESIDENT—The minister has raised a point of order. As we are all aware, I am unable to direct how you should make your contribution. I do direct your attention to the fact that it is the Airports Amendment Bill.

Senator FISHER—Given that this bill does two very important things—improving the planning and regulatory framework for airports, drawing on the lessons of the last 14 years, and seeking to clarify ambiguous provisions—it is incumbent on the government, in the context of the National Broadband Network, and particularly incumbent on Minister Wong, to clarify the ambiguity that may exist in any discrepancy between the Prime Minister's letter to Senator Xenophon recording her sop to the Independents for their vote and anything that Minister Wong may have given by way of indications or

overtures to the Independents. These indications would have been given to the Independents prior to what might otherwise have been their consideration of a motion that I would have sought to put to make the National Broadband Network subject to the scrutiny of a Senate committee and subject to the sort of scrutiny that this bill proposes for the regulatory framework of Commonwealth owned airports leased to the private sector. I look forward to at some stage in the near future trafficking through a few airports and hopefully ensuring, by way of scrutiny, that the broadband network is up to date.

Senator Fifield—Travelling, not trafficking!

Senator FISHER—Trafficking myself. Oh, that gets worse, doesn't it! Merry Christmas, everybody. Here we go, NBN bro.

Senator IAN MACDONALD (Queensland) (1.15 pm)—I have a longstanding interest in transport matters and have represented the minister and shadow ministers in this chamber on a number of occasions. I also travel through a lot of airports. I do want to say some words on the bill but, before I do that, I want to comment on some of the things that Senator Fisher was saying in relation to government accountability. I am very concerned about the way the government handled the NBN bill and, therefore, I am concerned about how they will handle the Airports Amendment Bill 2010. Senator Fisher rightly raised the issue that, in spite of previous arrangements made with the crossbenchers and the Greens, those senators did not vote to support Senator Fisher's motion on a committee to be set up to start looking at the NBN process now.

The reason why the crossbench senators did not support it was that they had an undertaking from Prime Minister Gillard. You need go no further than Mr Kevin Rudd to work out the veracity and usefulness of

promises given by Ms Gillard—and I say no more on that particular point. A deal was clearly made. I did not overhear it. I have not heard it directly but Senator Wong approached Senator Ludlam, Senator Xenophon and Senator Fielding. They huddled and then she went away and wrote something on her iPad. This, to all intents and purposes, apparently enabled those senators to vote against Senator Fisher's motion to set up a new committee to give scrutiny to the NBN process.

My question to the government and to Senator Wong, which I tried to raise at the time, is that, if this undertaking is given to three senators, why can't they make it open and accountable to all senators? That Senator Wong would not get up in the chamber and repeat that same offer leads me to think that she does not intend to keep the arrangements that she has made with those three senators, which influenced their vote. During the debate, I heard Senator Xenophon ask the minister at the table, 'Is it true that the government's joint committee on the NBN will have complementary members who will have the same rights as participating members on Senate committees?' I did not hear the minister at the table give a response to that, yet Senator Xenophon is clearly working on the undertaking given by the Prime Minister that the minister in this chamber will not put on the record. Senator Wong, when invited to do that this afternoon, refused in the same manner to get up and say what the deal was. That, to me, is a matter which requires further scrutiny. I think it is a matter for privileges, and I will be exploring that matter. That is all, as I say, relative to government administration and whether their undertakings can be accepted.

I did briefly want to comment on the Airports Amendment Bill 2010 and planning. There has been a lot of concern raised at times with all of us about activities that occur at

airports. Senator Xenophon has quite rightly raised the issue of gambling—not that I agree or disagree with him on that. But we have seen things happening at airports which sometimes people do query. I have been very concerned by the length of time it has taken to complete activities at both Cairns airport, up in Far North Queensland, and Canberra airport—two airports which I use regularly—and I wonder what there is in the planning arrangements in this bill to consider the interests of the travelling public at those airports. For a long period of time there have been difficulties for members of the public at those airports.

I relate the incident where I was knocked out by a boom gate at Cairns airport some time ago because of the very strange arrangements there. Fortuitously, that airport is almost at the end of what seems to have been a 100-year construction period although I think it has only been two or three years. But it does seem to me that someone, in planning airports, needs to take into account a little better how the regular activities of an airport, which are planes landing and taking off and passengers getting in and getting out, should occur during these very significant construction stages. With that and with the reservations that Senator Joyce mentioned, I support the Airports Amendment Bill.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.20 pm)—This government is committed to supporting sustainable growth in aviation underpinned by meaningful engagement and consultation with the community and industry stakeholders. The Airports Amendment Bill 2010 is a priority for the government. It brings into effect a program of reforms to planning at and around our airports, reforms that we first outlined in the aviation white paper, *Flight path to the future*, which was released in December last year. This bill is about getting the balance

right between ongoing investment in aviation infrastructure, community consultation and the integration of airport planning with local, state and territory planning regimes. I note that Senator Xenophon has raised concerns about the use of airport land in relation to gambling. The government has undertaken to ensure that ongoing reforms to strengthen or reform gambling laws will include consideration of airport land as well. We will come back to that in due course. I table a correction to the explanatory memorandum relating to the Airports Amendment Bill 2010. I thank senators for their contributions in relation to the bill. With that I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.22 pm)—by leave—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 23 November 2010. I move government amendments (1) to (33):

- (1) Schedule 1, item 2, page 4 (line 30), omit “(in relation to civil uses of the airport and in accordance with regulations, if any, made for the purpose of this paragraph)”, substitute “in relation to civil uses of the airport and”.
- (2) Schedule 1, item 15, page 8 (line 27), omit “*incompatible*”, substitute “*sensitive*”.
- (3) Schedule 1, item 27, page 10 (line 19), omit “*incompatible*”, substitute “*sensitive*”.
- (4) Schedule 1, item 27, page 10 (line 22), omit “incompatible”, substitute “sensitive”.
- (5) Schedule 1, item 27, page 10 (line 23), omit “An *incompatible*”, substitute “A *sensitive*”.

- (6) Schedule 1, item 27, page 10 (lines 23 to 25), omit “the development of, or the redevelopment of, any of the following facilities in a way that increases the capacity of the facility”, substitute “the development of, or a redevelopment that increases the capacity of, any of the following”.
- (7) Schedule 1, item 27, page 10 (lines 26 and 27), omit “(except accommodation for students studying at an aviation educational facility at the airport)”.
- (8) Schedule 1, item 27, page 10 (line 31), omit “(except an aviation educational facility)”.
- (9) Schedule 1, item 27, page 10 (lines 32 to 34), omit “(except a facility with the primary purpose of providing emergency medical treatment to persons at the airport and which does not have in-patient facilities)”.
- (10) Schedule 1, item 27, page 10 (after line 34), after subsection 71A(2), insert:
- (2A) A *sensitive development* does not include the following:
- (a) an aviation educational facility;
 - (b) accommodation for students studying at an aviation educational facility at the airport;
 - (c) a facility with the primary purpose of providing emergency medical treatment and which does not have in-patient facilities;
 - (d) a facility with the primary purpose of providing in-house training to staff of an organisation conducting operations at the airport.
- (11) Schedule 1, item 34, page 12 (lines 30 and 31), omit “an incompatible”, substitute “a sensitive”.
- (12) Schedule 1, item 34, page 12 (line 33), omit “incompatible”, substitute “sensitive”.
- (13) Schedule 1, item 39, page 14 (line 21), omit “Incompatible”, substitute “Sensitive”.
- (14) Schedule 1, item 40, page 14 (lines 25 and 26), omit “, including altering a runway in any way that changes”, substitute “(other than in the course of maintenance works) in any way that significantly changes”.
- (15) Schedule 1, item 45, page 15 (line 26), omit subparagraph 89(5)(b)(i).
- (16) Schedule 1, item 46, page 16 (line 3), omit “**Incompatible**”, substitute “**Sensitive**”.
- (17) Schedule 1, item 46, page 16 (line 4), omit “**Incompatible**”, substitute “**Sensitive**”.
- (18) Schedule 1, item 46, page 16 (line 7), omit “an incompatible”, substitute “a sensitive”.
- (19) Schedule 1, item 46, page 16 (line 9), omit “an incompatible”, substitute “a sensitive”.
- (20) Schedule 1, item 46, page 16 (line 12), omit “incompatible”, substitute “sensitive”.
- (21) Schedule 1, item 46, page 16 (lines 23 to 25), omit “matters in paragraphs (1)(c) and (d)”, substitute “approval of the Minister mentioned in subsection (1)”.
- (22) Schedule 1, item 46, page 16 (line 29), omit “an incompatible”, substitute “a sensitive”.
- (23) Schedule 1, item 46, page 17 (line 1), omit “incompatible”, substitute “sensitive”.
- (24) Schedule 1, item 46, page 17 (line 5), omit “incompatible”, substitute “sensitive”.
- (25) Schedule 1, item 46, page 17 (line 11), omit “incompatible”, substitute “sensitive”.
- (26) Schedule 1, item 48, page 17 (line 29), omit “an incompatible”, substitute “a sensitive”.
- (27) Schedule 1, item 48, page 17 (line 31), omit “incompatible”, substitute “sensitive”.
- (28) Schedule 1, item 54, page 19 (line 8), omit “an incompatible”, substitute “a sensitive”.
- (29) Schedule 1, item 54, page 19 (line 11), omit “incompatible”, substitute “sensitive”.
- (30) Schedule 1, item 54, page 19 (line 13), omit “incompatible”, substitute “sensitive”.
- (31) Schedule 1, item 54, page 19 (line 16), omit “incompatible”, substitute “sensitive”.
- (32) Schedule 1, item 75, page 23 (line 2), omit “**incompatible**”, substitute “**sensitive**”.
- (33) Schedule 1, item 75, page 23 (line 4), omit “incompatible”, substitute “sensitive”.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.23 pm)—I think it is appropriate at this time to get a few questions on the record. Minister, would

it be the case that, through the bill that we are currently dealing with, there would be the possibility to move on this? I note the concern of Senator Xenophon that there should be the capacity to deal with issues such as gambling, especially the use of poker machines, at federal airports.

The TEMPORARY CHAIRMAN (Senator Mark Bishop)—Would you repeat the question, please, Senator Joyce?

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.23 pm)—Do I have a choice! I think it is important to get this on the record. Is there the capacity with bills such as these, especially this bill now that it is open for debate, for us to deal with Senator Xenophon's concern about poker machines? So do we have the capacity to deal with it in bills such as this in a decisive way so as to not allow them?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.24 pm)—There is nothing, as the opposition would know, that is in the act directly relating to that. But there is the potential that it can be dealt with by regulation, so it can be dealt with within the framework of the legislation.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.24 pm)—Is it in the capacity of the oversight of the minister to have specific preclusions on the operation of certain businesses within federal airports?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.25 pm)—The short answer is yes.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.25 pm)—What is your envisaged program in the future with regard to dealing with the concerns brought here, well and ably, by Senator Xenophon?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.25 pm)—As you will recall, I indicated that we would come back to Senator Xenophon in relation to that matter, so we might have to wait for the process to run its course.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.25 pm)—Obviously we would have to open up the act in some way, shape or form. Do you envisage such a process as something likely to be before the parliament in the near future, so we can deal with such an issue? Otherwise this issue today would be the area to deal with it, wouldn't it?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.25 pm)—It is a rather circular argument that is now being put. It is hypothetical in two respects: (1) it seeks to ask questions about something which has not yet occurred and (2) it seeks to elicit information about something that has still not occurred. I talked about this clearly in the beginning. It is probably worth going back to it so there is no confusion about this. Senator Xenophon had raised concerns about the use of airport land for gambling. The opposition similarly have that concern, judging by the questions that are being asked by the opposition. The government has undertaken to ensure that ongoing reforms are strengthened and reformed gaming laws include consideration of airport land. We will come back to that. That is, again, a future process.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.27 pm)—Have you had any representations from people who may be involved in commercial interests involved in gambling to have an involvement at federal airports, possibly airports in the northern part of our nation?

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.27 pm)—Not that I am aware of, but if that advice changes I can advise the Senate accordingly.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (1.27 pm)—If an amendment that precluded gambling at airports were moved and passed today, that would solve that problem, wouldn't it? It would solve the issue of not allowing gambling at airports.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.27 pm)—Gambling, of course, is already prohibited under regulations, except for grandfathering arrangements that are in place.

Senator XENOPHON (South Australia) (1.28 pm)—I am genuinely grateful for Senator Joyce's line of questioning in relation to this—because it is important to raise this issue—and for the minister's responses. The concern I have—and I have raised it with the state Minister for Gambling in South Australia, the Hon. Tom Koutsantonis—is the extent to which state laws apply on federal land. There are some grandfathered clauses, and the minister is quite right in terms of regulations prohibiting any more gambling venues, but I am concerned about the extent to which state regulations would apply to protect problem gamblers. My complaint has always been that I think state regulations nationally should go much further. That is why I think it is important that there is a federal approach in relation to this. But the fact that the government is actively looking at this to ensure that there is no ambiguity about the applicability of current state laws in relation to the protection of problem gamblers on federal land is welcome. I think at the moment that the approach is to the extent possible, but I think

that ambiguity should be removed in the context of airport land. I am genuinely grateful to Senator Joyce for raising this issue. As I understand it, within about two months—by February at least—the minister's office will be able to report back on this. I am quite happy with that undertaking. In a more relevant sense in terms of process, as I understand it the ministerial council, at a COAG level, is looking at this issue as well. So it is just a case of getting an update and ensuring that this is still very much on the agenda.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.29 pm)—Just to reiterate what I had said earlier, Senator Xenophon has gone to the issues that we have given an undertaking to explore further.

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (1.31 pm)—I move:

That the bill be read a third time.

Question agreed to.

Bill read a third time.

TAX LAWS AMENDMENT (CONFIDENTIALITY OF TAXPAYER INFORMATION) BILL 2010

Second Reading

Debate resumed from 23 November, on motion by **Senator Feeney**:

That this bill be now read a second time.

Senator FIFIELD (Victoria)—Manager of Opposition Business in the Senate (1.31 pm)—The Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010 seeks to improve and consolidate the secrecy and disclosure provisions applying to taxa-

tion information. These provisions are currently spread across many tax laws and are often unclear and inconsistent. The coalition started the process to address this issue in government in 2006. The bill also proposes a new framework to protect the confidentiality of taxpayer information. It places a general prohibition on the disclosure of taxpayer information.

The coalition supports the intent of this bill. We support effective attempts to provide taxpayers, the ATO and stakeholders with clarity and certainty about the tax laws. The bill permits disclosure of taxpayer information among government agencies where the public benefit associated with the disclosure outweighs the need for taxpayer privacy. Such a determination is to be made with regard to the purpose for which the information is to be used, the potential impact on the individual from the disclosure and subsequent use of the information and whether the new disclosure would represent a significant departure from existing disclosure provisions. The coalition agrees that effective enforcement of the law might warrant transfer of such information on occasion. When it does, however, information transfers must be subject to appropriate safeguards.

The coalition had been concerned that the government would ignore the findings of the Senate Standing Committee on Economics inquiry into this bill on how safeguards in the bill could be appropriately strengthened. The Senate economics committee, which included Labor senators, made a unanimous recommendation that an appropriately authorised and senior tax officer be the decision maker when a determination needs to be made about the public benefit of disclosing taxpayer information. The coalition is moving amendments to this bill to include this recommendation.

We are also putting forward two further recommendations which are in keeping with the spirit of the committee's report: that the Commissioner of Taxation will have to establish and publish on the ATO website procedures that taxation officers are to follow when disclosing protected information to ministers, other government agencies and law enforcement agencies; and that the tax office will have to publish the number of times a request was made to disclose taxpayer information and the number of times such disclosures were actually made to ministers or law enforcement agencies. These amendments, which have been circulated, provide appropriate protections for taxpayers without placing an undue burden on the Australian Taxation Office.

Senator BUSHBY (Tasmania) (1.34 pm)—I rise to also speak on the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010. This bill brings together a disjointed regime of tax information disclosure legislation by collating the relevant provisions. Tax legislation is an enormous and confusing area and any reduction in the complexity is to be applauded. We badly need some wins in this domain. Currently, our tax law has exploded, as with the Income Tax Assessment Act 1936 with its 5,156 pages and the Income Tax Assessment Act 1997 with its 10,806 pages, giving a total now standing at 15,962 pages. In addition, we have the regulations for both acts, the Taxation Administration Act, the International Tax Agreements Act and the superannuation legislation, which would add a few thousand more pages to the 15,962.

Perhaps this government has a master plan to simplify our tax legislation. The coalition was working towards this via its ANTS document, via its simplified business entity tax systems and also via its superannuation reforms. But, after the last three years under Labor, I see no evidence that this govern-

ment has a simplification and tax legislation truncation plan. Treasurer Swan and Minister Shorten will need to refocus on this admirable goal, and drawing on the coalition's success during the Howard-Costello years would be a productive first step.

This bill has been a subject of debate and scrutiny in both the 42nd and the 43rd parliaments. It was considered by the Senate Economics Legislation Committee and the Senate Standing Committee of Privileges. The coalition appreciates opportunities over the last month or so, which Minister Shorten has given us, to express our concerns re the bill and how it can be improved. What we have in this bill is a win for accountability and transparency, and it amply demonstrates the role that this chamber can play in legislating for review and scrutiny.

The bill has extended the ATO's ability to share information by allowing it to be distributed to other agencies where it can be used to prosecute as well as investigate. The sharing of information amongst agencies can be a useful and time-saving measure—for example, when considering Centrelink child support payments, the income of a parent and Medicare liability. It is especially useful when it is a taxpayer who wants the information or indeed wants it to be relayed to another agency. But we must ensure that it is done correctly and transparently and that the fundamental right of privacy is respected. To quote the United Nations Universal Declaration of Human Rights, article 12 provides:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

If the ATO were to be given untrammelled power to transfer information to all and sundry in the absence of a taxpayer knowing what is being done behind his or her back, that would do little to instil in taxpayers con-

fidence in the ATO. They would see the ATO in an Orwellian light and be fearful of any dealings with the ATO. Hopefully, when the ATO is formulating its procedures it will make sure that it incorporates some health warnings in its various forms and transactions which say that it may transfer certain items of information to other agencies without the knowledge or consent of the taxpayer in question. Also, it might consider how it handles requests for information or transfers of such information which are made by the taxpayer concerned.

The words of one of our great governors-general and jurists, Sir Zelman Cowen, are helpful in this regard. In the 1969 Boyer lectures he observes:

A man without privacy is a man without dignity; the fear that Big Brother is watching and listening threatens the freedom of the individual no less than the prison bars

I also commend this quotation to our federal Privacy Commissioner's attention and advise him that the Senate will no doubt expect his agency to review the ATO procedures and practices arising out of this bill and report on this matter as soon as possible during the life of the 43rd Parliament. Also, the Commonwealth Ombudsman should take an interest in this legislation and its practicalities and report as well.

As I said in my opening remarks, the Senate economics committee as well as the privileges committee both examined the bill in its earlier form. The Privileges Committee's recommendations were implemented when the bill was reintroduced, so all that remain are those of the economics committee. The committee, after considering nine submissions, recommended that the bill be amended to state that an appropriately authorised tax officer should make the decision on whether information can be released because the public benefit outweighs the pri-

vacy of the taxpayer. I urge you to consider this and other amendments, as they bolster the integrity of the bill.

The other substantive problem is accountability and transparency of the use of powers by our regulators. Over the last two estimates periods, I have asked questions of a range of regulators, including the ATO, regarding their use of powers and their publishing of explanations of their processes. I have put a number of questions on notice to the ATO regarding coercive powers at the most recent estimates, to which I still await answers. These questions are—and I am going to read them out for the benefit of the Senate:

- What are the ATO's coercive powers? How often has each power been used in the past five years?
- How many departure prohibition notice orders does the ATO currently have in force? Is it the case that if a court declares a departure prohibition order invalid the ATO can immediately issue a further DPO effectively over-riding the Court? Has this ever occurred? What are the procedures?
- Third, when exercising these powers what is the ATO position re suggesting that those under coercion seek the advice of an appropriate adviser so that their rights are respected?
- Does the ATO ever try to discourage a taxpayer in its dealings with the ATO from using lawyers?
- If you had heard of such an instance would that concern you and what would you do?
- In the UK the HM Revenue and Customs HMRC has a policy on its web site as follows:

This Code of Practice explains how the Fraud and Avoidance section of the Specialist Investigations directorate of HM Revenue & Customs (HMRC)

carry out investigations. It applies to all investigations where the Civil Investigation of Fraud procedures (Code of Practice 9) are not used. Other sections of Specialist Investigations may also act under this Code from time to time. The Code promises that we will treat you fairly and courteously in accordance with the law and includes 'Our service commitment to you'.

In respect of professional representation, it states:

We recommend that you approach a professional adviser to represent you during our investigation although, again, this is a matter for you.

So my final question was:

- Does the ATO have an equivalent statement on its web site or does it send written advice with these messages to taxpayers under scrutiny?

I expect a timely response from the ATO on these activities and look forward to a responsible regime being developed, because sunlight is the best disinfectant and, in the case of the use of intrusive coercive powers, it is a key requisite.

This bill, if amended, will require the ATO to publish how and how often they make decisions to disclose taxpayer information. My colleague Senator Cormann has informed me that the government has entered into good faith negotiations to allow sunlight to shine on the powers conferred by this bill once it becomes law, and Senator Fifield has today confirmed that. Consequently, in future ATO annual reports there will be disclosures on how often these transfers are being made, and the ATO will also be required to post on its website the procedures that it has formulated to guarantee integrity in decision making and compliance with the provisions of this new and consolidated regime. In addition, the bill will require the ATO to have procedures for authorising the transfer of information to law enforcement agencies which provide for some degree of independ-

ent sign-off by an SES officer outside the business line recommending the transfer.

The publication of the procedures and the frequency of use of the powers will give the Senate a starting point to question the use of these new powers when the ATO attends estimates and hearings of the Joint Standing Committee of Public Accounts and Audit. I commend the bill with those amendments.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (1.42 pm)—The Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010 is a good example of the government’s commitment to reduce the volume and complexity of taxation law. The government has also decided to agree to opposition amendments to the bill that will provide for new approval procedures for particular disclosures by taxation officers under the bill, as well as new annual reporting requirements for disclosures made to ministers and law enforcement agencies.

The government notes that these amendments impose an additional administrative burden on the Australian Taxation Office. However, the government is prepared to accept the amendments, as it does not wish that this important piece of legislation be deferred, especially since the bill contains a small number of new disclosures that will enhance law enforcement activities. The government wishes to take this opportunity to thank senators who have contributed to this debate and commends the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator FIFIELD (Victoria)—Manager of Opposition Business in the Senate (1.43

pm)—by leave—On behalf of Senator Cormann, I move government amendments (1) to (9) on sheet 6177:

- (1) Schedule 1, item 1, page 9 (line 2), before “Section”, insert “(1)”.
- (2) Schedule 1, item 1, page 9 (lines 4 and 5), omit paragraph 355-55(b), substitute:
 - (b) an item in the table in this subsection covers the making of the record or the disclosure; and
 - (c) if the entity is not the Commissioner, a Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:
 - (i) the Commissioner;
 - (ii) a Second Commissioner;
 - (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.
- (3) Schedule 1, item 1, page 10 (line 2), omit “section”, substitute “subsection”.
- (4) Schedule 1, item 1, page 10 (after line 5), at the end of section 355-55, add:
 - (2) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.
- (5) Schedule 1, item 1, page 20 (lines 12 and 13), omit paragraph 355-70(1)(b), substitute:
 - (b) an item in the table in this subsection covers the making of the record or the disclosure; and
 - (c) if the entity is not the Commissioner, a Second Commissioner or an SES employee or acting SES employee of the Australian Taxation Office—one of the following has agreed that the record or disclosure is covered by the item:
 - (i) the Commissioner;

- (ii) a Second Commissioner;
- (iii) an SES employee or acting SES employee of the Australian Taxation Office who is not a direct supervisor of the taxation officer.
- (6) Schedule 1, item 1, page 22 (before line 1), before subsection 355-70(2), insert:
- (2A) The *taxation officer is entitled to rely on the exception in subsection (1) even if the agreement referred to in paragraph (1)(c) has not been obtained in relation to the record or disclosure.
- (7) Schedule 1, item 1, page 34 (after line 3), at the end of section 355-320, add:
- The Commissioner must issue instructions relating to the disclosure of protected tax information
- (8) Schedule 1, item 1, page 36 (after line 6), at the end of Subdivision 355-E, add:
- 355-335 Procedures for disclosing protected information**
- (1) The Commissioner must issue instructions in relation to the procedures to be followed by *taxation officers in disclosing *protected information under the exceptions in sections 355-55 (about disclosures to Ministers), 355-65 (about disclosures for other government purposes) and 355-70 (about disclosures for law enforcement and related purposes).
- (2) The instructions must:
- (a) be issued within 6 months after the commencement of this section; and
- (b) be in writing; and
- (c) provide for the matters mentioned in subsection (3); and
- (d) be published on the Australian Taxation Office website.
- (3) The matters are:
- (a) the processes to be followed before *protected information can be disclosed by a *taxation officer under the exceptions in sections 355-55, 355-65 and 355-70; and
- (b) the processes involved in obtaining and giving the agreement mentioned in paragraphs 355-55(1)(c) and 355-70(1)(c); and
- (c) other matters the Commissioner considers appropriate.
- (4) Without limiting subsection 33(3) of the *Acts Interpretation Act 1901*, the Commissioner may vary or revoke the instructions.
- (5) A failure to comply with the time limit in paragraph (2)(a) does not:
- (a) prevent the Commissioner from issuing the instructions after this time; or
- (b) affect the validity of the instructions when issued.
- (6) A failure to comply with the instructions does not, of itself, mean that a *taxation officer is not entitled to rely on the exceptions in sections 355-55, 355-65 and 355-70.
- (7) The instructions are not a legislative instrument.
- (9) Schedule 2, item 108, page 58 (line 5) to page 59 (line 21), omit the item, substitute:
- 108 Paragraphs 3B(1AA)(b) to (f)**
- Repeal the paragraphs, substitute:
- (b) set out:
- (i) the number of occasions (if any) during the year on which a request was made to disclose information under subsection 355-55(1) in Schedule 1 (about disclosures to Ministers); and
- (ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and
- (iii) the Ministers to whom the information was disclosed; and
- (c) set out:
- (i) the number of occasions (if any) during the year on which a request was made to disclose in-

formation under subsection 355-70(1) in Schedule 1 (about disclosures for law enforcement and related purposes); and

- (ii) the number of occasions (if any) during the year on which information was disclosed under that subsection; and
 - (iii) the types of entities and the names of the courts and tribunals to which the information was disclosed; and
 - (iv) if the information was disclosed under table item 1 or 6 in subsection 355-70(1)—the general categories of offences in relation to which the information was disclosed; and
- (d) set out the number (if any) of *taxation officers found guilty of the offence in section 355-25 in Schedule 1 (about disclosure of protected information).

Question agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (1.45 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

RADIOCOMMUNICATIONS AMENDMENT BILL 2010

Second Reading

Debate resumed from 15 November, on motion by **Senator McLucas**:

That this bill be now read a second time.

Senator BIRMINGHAM (South Australia) (1.45 pm)—The Radiocommunications Amendment Bill 2010 amends the Radiocommunications Act 1992 to give the independent radiocommunications regulator, the Australian Communications and Media Authority, ACMA, greater flexibility in the time frame in which it can commence processes for reissuing spectrum licences; to allow ACMA to issue class licences in the same radiofrequency spectrum as expired or reissued spectrum allocations as well as spectrum in which a spectrum licence is not currently in force, conditional on there being adequate interference safeguards and it being in the public interest; and to vary the treatment of certain ministerial determinations and directions made under the act.

This bill was introduced into the House in June this year. It deals in particular with issues that relate to the expiry of certain spectrum licences. In the late 1990s Australia was very much a world leader when the government commenced auctioning a number of spectrum licences to support a market based approach to licensing of the radiofrequency spectrum. Those licences had a 15-year tenure, flexible conditions and were fully transferable. We were, as I said, world leaders and were amongst the first countries in the world to issue licences on this basis. Many of these licences are now being used by telecommunications carriers to provide mobile phone and wireless access services to millions of Australians. I think few in this place or elsewhere would disagree that the process has provided Australia with a strong, robust and competitive mobile telecommunications service and sector.

The first of the key 15-year licences are due to expire in 2013, with the remainder to expire by 2017, so the need to act in terms of the process for rolling over these licences is evident to all. The current act requires ACMA to publish a notice advising which

spectrum licences are due to expire within the next two years and inviting expressions of interest in the spectrum. ACMA are also restricted from issuing draft spectrum licences as part of their marketing plan until two years prior to the licences' expiration.

According to the government's second reading speech, incumbent licensees have consistently called for greater certainty about licence reissue. Without such certainty it is claimed that there will be a reluctance to maintain investment in infrastructure and service provision, with potential adverse impacts on coverage and service quality. The explanatory memorandum says that this bill will provide greater flexibility, help reduce incumbent licensee uncertainty close to the licence expiry and encourage continued investments by incumbents in existing network services currently provided under these licences.

With regard to the changes relating to the coexistence of class licences and spectrum licences, the EM states that new and developing technologies have the potential to greatly increase the technical and productive efficiency of spectrum use. These new technologies may be authorised under the ACMA class licence. Importantly, however, the EM goes on to highlight certain conditions that such authorisations may be subject to and that ACMA may impose. It states that they must be satisfied that unacceptable levels of interference will not occur to the operation of radiocommunications devices operated or likely to be operated under spectrum licences and that it is in the public interest to issue class licences, in spectrum designated or re-allocated for spectrum licences, to authorise devices with the new sharing technology.

There are also changes to ministerial determinations and directions, as I mentioned, which amend the status of the determinations made by the minister under subsection 82(4)

to make them legislative instruments that are not subject to disallowance. The bill also amends the act concerning written directions by the minister to ACMA about determinations made by ACMA concerning spectrum access charges. Once again it specifies that such directions are not disallowable legislative instruments. According to the EM, the rationale for this amendment is that instruments of this kind are not legislative in nature and fall within an exemption provided for under the Legislative Instruments Act 2003. The intention of this amendment is to protect commercially sensitive pricing information relating to the reissue of 15-year spectrum licences by giving a written ministerial direction to the ACMA that it is not a legislative instrument and thus not subject to disallowance. It will protect this information during licence reissue processes until completed.

The government announced back in May its approach to the reissue of 15-year radio frequency spectrum licences. They highlighted that they would be going through a consultation phase and it has, along with the committee inquiry into this legislation, elicited some comments about the bill before us. The Australian Mobile Telecommunications Association in a discussion paper have expressed some concern about aspects of the coexistence of class and spectrum licences. They highlighted that AMTA does not support any amendment, terms and conditions of reissued spectrum licences that would permit other users encroaching on the licensed spectrum assets held by their members. They highlight that their members invest very significant capital for the exclusive but highly competitive use of licensed spectrum and permitting other users to access that spectrum has the potential to dilute the value of these assets particularly where users could be granted access at no cost. They said that if future coexistent use grows in such a way

that was never originally envisaged or modelled, no-one could guarantee that it would not adversely impact on the primary spectrum license holders. There is no simple mechanism to measure, manage or rectify adverse outcomes of coexistent use and, if adverse impact occurred, the business impact on the primary licence holder could be significant and long-lasting.

The coalition has of course heard those concerns, and I know that those concerns have been addressed in some ways by the government as well as by the committee. We believe that there is reasonable confidence—and I look forward of course to any reassurances from the government and the minister—that the process in place and the requirements that are there for ACMA to ensure that there is not interference in any determinations that are made are appropriate and we would hope that that provides the necessary reassurance to existing licence holders, as well as, of course, the requirements for a public interest test in this regard.

Another issue of concern is the changing of the spectrum access determinations to make them no longer disallowable instruments. This does give the minister more power on this issue but, equally, a number of industry representatives have indicated that this change will streamline and modernise the licence reissue processes. I do note that the committee inquiry into this bill has of course especially highlighted these issues and that the Scrutiny of Bills Committee, as is not unusual with regard to such changes, has highlighted its concerns about the removal of these provisions as disallowable instruments and has left that, however, as matters for the Senate to consider. Once again, in the committee stage or in other comments I do look forward to reassurance that the government may provide in this regard as to how they see those changes to disallowance provisions working.

Notwithstanding those concerns, the opposition's position is that we recognise there is a need to provide some certainty to industry given the successful application of this spectrum for Australia's benefit over a period of close to 15 years now. It is appropriate we ensure that those companies that have this spectrum are able to plan for the future with some certainty. We will not be opposing this bill and indicate our broad support for its direction.

The ACTING DEPUTY PRESIDENT (Senator Mark Bishop)—Senator Birmingham, you mentioned a potential committee stage. Is it your intention to request to go into committee?

Senator BIRMINGHAM—Not necessarily, Mr Acting Deputy President.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (1.54 pm)—I rise to speak on the Radiocommunications Amendment Bill 2010. I do have some information that I think provides the assurances that the opposition is seeking in relation to this bill and am pleased to be able to report to the Senate that the application of the safeguards in the bill would be a matter for the Australian Communications and Media Authority before it allows the coexistence of class and spectrum licence in a spectrum band. The safeguards in the bill are that the ACMA must be satisfied, firstly, that the coexistence of class and spectrum licences in a spectrum band would not result in unacceptable interference to the operation of devices authorised under the spectrum licence and, secondly, that it will be in the public interest for the ACMA to allow coexistence of class and spectrum licences in a spectrum band.

In addition, the ACMA must consult all licensees of spectrum licences who may be affected by a coexistence proposal, and the

ACMA has advised that it will consider co-existence proposals on an individual spectrum band basis. The ACMA will develop a limit for unacceptable levels of interference for the coexistence of class and spectrum licences in each spectrum band. Consistent with the bill, the ACMA will also undertake consultation with all potentially affected parties to ensure their views are fully considered in setting interference limits. The limit for unacceptable interference will, firstly, provide protection to incumbent primary services while allowing new technologies to take advantage of underutilised spectrum and provide new services to users, and, secondly, be developed after careful and thorough consideration of engineering models, equipment specifications and standards for likely devices that may operate or coexist in the band.

With regard to the public interest, the ACMA has advised that it will undertake a process to consider whether it would be in the public interest to issue a class licence in the spectrum licence space. The ACMA will, in this process, balance the cost of potential interference with the benefits of greater spectrum utilisation to ensure the most efficient outcome which maximises total welfare to the Australian community.

I trust those comments provide the assurance that the opposition is seeking, and I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

FAMILY LAW AMENDMENT (VALIDATION OF CERTAIN PARENTING ORDERS AND OTHER MEASURES) BILL 2010

Second Reading

Debate resumed from 24 November, on motion by **Senator Feeney**:

That this bill be now read a second time.

Senator BRANDIS (Queensland) (1.58 pm)—The 2006 family law reforms, introduced by the previous government under the guidance of the then Attorney-General, Mr Ruddock, introduced the presumption of shared parental responsibility. The operation of that presumption has been recently the subject of misinformed criticism from some sectors. The majority of those criticisms were answered by the Australian Institute of Family Studies' longitudinal survey and the Family Law Council's report to the Attorney-General. These reports found that the 2006 reforms worked well and had been well received in the community. In particular, the number of court filings in children's matters had been reduced by 22 per cent, which has resulted in speedier and more dedicated access for the less tractable and more worrying cases. A reduction of such magnitude in the number of filings is the surest indication that the scheme is working in an improved manner.

The family dispute resolution process was very highly rated by its users. A substantial majority of parents with shared care reported that the arrangements worked well for them, and for their children. The coalition is very proud of the shared parenting regime and—although we allow for the possibility that, like any comprehensive law reform, it is capable of being improved at the margins—we will fight strongly to defend it if, as has been foreshadowed by the government, it comes under attack in future legislation.

The Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010 is not such an attack. It is an uncontroversial bill which arises from an issue which has arisen within the family law system—that is, the issue of reports of cases in which mothers were allegedly being confined in remote communities by orders requiring equal parenting time with fathers. The coalition’s view was that the making of such orders arose from a misinterpretation of the reforms.

In March, the High Court handed down its decision in a case called *MRR v GR*, holding that court orders for shared time must be in the best interests of the child and reasonably practicable. The court held that restricting a mother to a certain location which denied her employment opportunities and caused her distress was neither in the best interests of the child nor reasonably practicable. We agree. The view of the Attorney-General’s Department is that the decision casts doubt on the validity of certain parenting orders made pursuant to the reforms—though not, obviously, the parenting order which was the subject of that case, which was disposed of in the appeal. The orders that may be affected are those where the parents have shared equal parental responsibility. The court has not considered certain criteria relating to equal time or, if the case requires, substantial and significant time in accordance with section 65DAA of the Family Law Act.

The bill creates new statutory rights and responsibilities and ensures that these are exercisable and enforceable as if they had been made under the act, while preserving appeal rights against orders affected by the High Court’s decision. Those people with contested parenting orders will be able to commence fresh family law proceedings where the court did not consider the reasonable practicality of the order, without having to demonstrate a material change in the cir-

cumstances. The bill also amends the act to permit a court to consider the statutory criteria in section 65DAA(1) and (2)—that is, the best interests of the child and the reasonable practicality of the arrangement—in relation to applications for consent parenting orders, where the parents are to have equal shared parental responsibility. This will allow the courts to give appropriate weight to agreements between parents. The bill does not interfere with the 2006 reforms but seeks only to remove doubts as to the validity of orders made between the commencement of the reforms and the High Court’s decision last March.

The few decisions that confined women to remote communities were a misinterpretation of the provisions, creating misleading perceptions in the community, and resulted in genuine distress and hardship for a small number of parents. The High Court’s decision—and this bill—should put the misinterpretations of the reforms to rest and reinforce the paramountcy of the best interests of the child as the basic principle underlying these provisions of the act, a basic principle in no way impinged upon by the principle of shared parenting. I commend the bill to the Senate.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.03 pm)—I thank senators for their contributions and commend the Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010 to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

**CORPORATIONS AMENDMENT
(SONS OF GWALIA) BILL 2010**

First Reading

Bill received from the House of Representatives.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.04 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 JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.05 pm)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Today I re-introduce a bill which will amend the Corporations Act to reform the treatment of shareholder claims against companies that become insolvent.

This Bill gives effect to the Government's decision to reverse the outcome of the High Court's decision in the *Sons of Gwalia v Margaretic* case. The Bill also introduces reforms relating to notices to creditors and shareholder voting, and clarifies the position of shareholders bringing claims for damages against companies.

To the ultimate benefit of both shareholders and creditors, this Bill will remove an area of uncertainty that currently results in higher finance costs for business. It will also reduce the costs and complexity associated with running insolvency administrations.

The Bill contains three primary measures.

Firstly, the Bill amends section 563A of the Corporations Act to provide that all claims in relation to the buying, selling, holding or otherwise dealing with shares are to be ranked equally – and after all other creditors' claims.

In January 2010, the Government announced its decision to introduce legislation to reverse the effect of the High Court's decision in *Sons of Gwalia v Margaretic*. In *Sons of Gwalia*, the High Court determined that section 563A, as it is currently worded, did not subordinate certain compensation claims by shareholders below the claims of other creditors.

Prior to *Sons of Gwalia*, the common understanding was that all shareholder claims against a company in external administration that related to a shareholding, were made in the 'capacity as a member of the company' and were postponed by operation of section 563A of the Corporations Act.

Investors make a conscious decision to invest money in a company in the hope of sharing in the company's profits. In doing so, they are entitled to expect proper disclosure from the company. But they must accept that they are taking a risk in making that investment.

In contrast, creditors are not hoping to increase their wealth by gambling on the future profitability of a company. They are often small businesses or trade creditors who are simply owed money for work they have already done, or for materials they have supplied.

Investors who have been misled into making that investment should rightly be able to claim redress. However, they should not be able to do so to the detriment of creditors when a company is insolvent.

The provision, as currently interpreted, has the effect of undermining the traditional distinction between debt and equity.

The decision in *Sons of Gwalia* has had the effect of shifting the losses suffered by shareholders (due to a company's misleading conduct or non-disclosure) to the company's unsecured creditors.

By reducing the likely return to unsecured lenders in an insolvency, the *Sons of Gwalia* decision has had the effect of increasing the cost of unsecured

debt and of reducing the availability of credit, particularly for less well-established companies.

Secondly, the Bill streamlines the treatment of shareholder claimants in an external administration. Persons bringing claims regarding shareholdings will not vote as creditors in a voluntary administration or a winding up unless they receive permission from the Court. They will also not receive reports to creditors unless they first make a request for such to the external administrator.

Thirdly, the Bill eliminates certain residual common law restrictions on the capacity of a shareholder to recover damages against a company.

The 1880 House of Lords decision in *Houldsworth v City of Glasgow Bank* determined that a person who has subscribed for shares in a company may not, while they retain those shares, recover damages against the company on the ground that they were induced by the company to subscribe for those shares by fraud or misrepresentation.

Although case law in Australia has subsequently limited the reach of this decision, there are still situations where a shareholder may unfairly be prevented from suing for damages. The application of the old rule is limited, uncertain and difficult for stakeholders to comprehend. I note that in the United Kingdom, the rule was excluded in all cases by the Companies Act 2006 (UK).

The Global Financial Crisis highlighted the importance of addressing any impediments to companies accessing reasonably priced credit.

These reforms restore the order of priority for distributions of assets in corporate insolvencies to the position that was understood to exist prior to the *Sons of Gwalia* judgment.

In doing so, they improve access by companies to credit, ensuring continued employment, entrepreneurialism and economic growth.

Senator FIFIELD (Victoria) (2.05 pm)—The Corporations Amendment (Sons of Gwalia) Bill 2010 will amend the Corporations Act 2001 to reverse the effect of the High Court's decision in *Sons of Gwalia Ltd v Margaretic* and to make other amendments to streamline external administrations of

companies. The *Sons of Gwalia* case was heard by the High Court in February 2007. The court held that a compensation claim by a shareholder against a company was not subordinated below the claims of other unsecured creditors by virtue of section 563A of the Corporations Act. The coalition realised the importance of the decision and referred it to the Corporations and Markets Advisory Committee in 2007 for consideration. In late 2008 CAMAC advised that to overturn the decision would stymie the trend of shareholder empowerment. Nevertheless, the coalition understands that incorporated businesses have found it difficult to obtain credit since the financial crisis. The decision in *Sons of Gwalia* had the potential to raise the risk and cost of lending, which in turn could increase borrowing costs, especially for companies in financial distress. Moreover, the *Sons of Gwalia* decision could delay the external administration of companies because it would become necessary to work out which shareholders are ranked alongside unsecured creditors. The confusion about rights of creditors and shareholders could provoke costly legal action against the company which is ultimately borne by creditors and other shareholders.

The bill contains three measures. The first says that all claims in relation to shares are to be ranked equally and after creditors' claims. The second removes the rights of persons bringing claims regarding shares to vote as creditors in a voluntary administration or a winding-up unless they receive permission from the court. The third provides that any restriction on the capacity of a shareholder to recover damages against a company based on how they acquired the shares is removed.

In practice, these measures are designed to ensure that shareholder compensation claims are paid from the pool of funds available to shareholders rather than out of the pool available to unsecured creditors. Sharehold-

ers assume a higher level of risk—and potential reward, for that matter—than unsecured creditors. Unlike unsecured creditors, they are part owners of a company. As such, shareholders themselves could undertake due diligence to avoid corporate misfortune. Ranking all shareholders after unsecured creditors restores the appropriate risk balance between creditors and shareholders.

The coalition supports this bill. We reserved our final opinion until the Senate Legal and Constitutional Affairs Legislation Committee had considered the bill in detail. The committee has now published its final report, and we are pleased that the government is amending the bill to incorporate the recommendations of the committee. The committee's recommendations were put to the committee by the Law Council of Australia, and they improve the drafting of the bill. The amendments include measures to ensure the consistent use of terminology in the Corporations Act to avoid ambiguity, to clarify the types of claims which rank above subordinated claims and to ensure that the bill does not disturb the effective operations of creditors' schemes of arrangement. Finally, we understand that the government has undertaken to refer the impact of this bill to the Senate economics committee in a year's time and that the committee will examine whether the bill is having its intended effect.

Senator XENOPHON (South Australia) (2.09 pm)—I will make a very short contribution, if I may. I indicate that I do not support the Corporations Amendment (Sons of Gwalia) Bill 2010. I understand that the numbers are not here and that this is essentially non-controversial legislation, but I do have concerns about this. The Sons of Gwalia decision effectively protected investors who became shareholders, to put them on an equal footing with creditors. It is in the context of those who become shareholders who have subscribed pursuant to an offering.

I see them, as did the High Court, as being involved in the company pursuant to that offering, pursuant to that subscription, effectively as investors in the company. If misrepresentations were made, I think they should be on equal terms with creditors. I know that the coalition and the government have taken the view that since the global financial crisis this could affect equity raising and could affect corporations—this has been raised as a concern—but I have real concerns about that. I think that the High Court got it right, and I think the parliament is getting it wrong by going down this path.

I understand from my officers' discussions with the government that there will be an opportunity for the Senate Standing Committee on Economics to review this further—I am not sure if the parliamentary secretary can confirm that—but I just want to raise my concerns and my opposition to this bill. I think we are making a mistake. I think that the High Court took the right approach in protecting those who have invested in companies, and I worry that, under the cover of the global financial crisis, there are some entities who are getting away with an approach that I do not think is necessarily in the best interests of those who have put money in companies. Let us wait and see how this pans out, but I hope that a review of this may cause some reconsideration of this measure down the track.

Senator JOHNSTON (Western Australia) (2.11 pm)—I wish to associate myself with the remarks of Senator Xenophon, and I want to compliment him on his jurisprudential understanding. The Corporations Amendment (Sons of Gwalia) Bill 2010 takes away rights of Australians. Very rarely does legislation come through both chambers of this parliament and remove rights of people, tortious rights, that we have fought long and hard for very many years to protect and revere in our system. Unfortunately, I really

believe that not very many senators and not very many members of the House of Representatives understand just how this works, but I do say that I want to compliment Senator Xenophon and I agree with him.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.12 pm)—in reply—I thank senators who have contributed to this debate. I particularly thank those who are members of the Senate Legal and Constitutional Affairs Legislation Committee for their report and the stakeholders who provided submissions to the committee’s inquiry, particularly the Law Council of Australia. I commend the Corporations Amendment (Sons of Gwalia) Bill 2010 to the Senate. In doing so, further to Senator Xenophon’s remarks, I table a letter from the Parliamentary Secretary to the Treasurer to Senator Xenophon, dealing with the issues he raised.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator XENOPHON (South Australia) (2.13 pm)—If these matters have to be taken on notice, I would be satisfied with that. I do not want to unduly—that look on Senator Collins’s face says it all! That is not a criticism.

Senator Jacinta Collins—I’m smiling.

Senator XENOPHON—She’s smiling. For those who are listening, Senator Collins is smiling, which is always a good thing. My concern—and I think Senator Johnston summed it up in his second reading contribution—is that, from a jurisprudential point of view, people are losing rights. In this bill, people are losing rights. It is overturning a well-considered High Court decision. If a person has effectively been defrauded by

virtue of their investment, their subscription, in a company, they are missing out because this piece of legislation just holus-bolus overturns the High Court’s decision in *Sons of Gwalia*, and it does so in a way that completely disregards the common-law rights, the contractual rights and the tortious rights of individuals who have been ripped off, who have, by misrepresentation, been defrauded in investing in a company.

Senator John Williams is in the chamber, and I know that he is one who has been particularly diligent and who has campaigned very strongly in relation to issues of corporate governance, the role of ASIC and people being ripped off. It has always been a pleasure to work with Senator Williams in relation to those issues and issues of banking as well—along with Senator Bushby, we have co-sponsored that Senate inquiry.

The question I have is: what was the process, and what representations were made by which the government went from having a High Court decision to saying, ‘No, we are going to overturn that; we’re actually going to take people’s rights away’? That is a real concern. I am mindful of time constraints. If necessary this can be provided on notice, but I just want these concerns to be placed on the record further to Senator Johnston’s contribution.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.16 pm)—I note the concerns raised by Senator Xenophon, and I think it is important that he indicated that he has raised these concerns. There has been some discussion between his office and the offices of the parliamentary secretary. The letter I tabled earlier refers to those and, as he indicated, I will take on notice the historical elements that he is seeking in relation to the justification for the reversal of that decision.

Senator XENOPHON (South Australia) (2.16 pm)—As I understand it, with the toing and froing at my office—and, as usual, I think it is important to put this on the record—the government will support a reference to the Senate economics committee within 12 months as to the operation of this. I think that we have not heard the end of this yet. I am concerned that there will be another Sons of Gwalia situation coming up there, where people have been misrepresented to and where they have subscribed to a company under fraudulent circumstances and they will lose their rights, and they will not have the same rights, for instance, as a creditor in a winding-up. From a jurisprudential point of view and from the point of view of basic fairness and equity, this parliament is doing the wrong thing. I have been very comforted by Senator Johnston's support in relation to this as a leading coalition senator. But I just hope that we can do a U-turn on this sooner rather than later.

Can Senator Collins, on behalf of the government, just confirm that undertaking that within the next 12 months the government will agree to the Senate economics committee revisiting this. I hope that there will not be another Sons of Gwalia situation where people who have invested in a company under circumstances where they have been misrepresented to and ripped off and left without the rights that the High Court has conferred on them.

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.18 pm)—I can give Senator Xenophon the assurance he seeks there. It is indeed in the letter that I tabled earlier, although I appreciate that he may not have had the opportunity to look at the detail, given the timing. I refer him to the second page and the third last paragraph:

Accordingly, the government supports in principle the submission of the bill within 12 months of its enactment to the Senate Economics Legislation Committee for review of its efficacy and whether it has achieved its intended policy objectives. I understand that the appropriate process in this matter is for the Senate to resolve to refer such and the government would support such a referral.'

Senator XENOPHON (South Australia) (2.19 pm)—I should have made reference to the letter that was tabled earlier, but it was good to have it further emphasised and I am grateful for the government's assurances in relation to this. I hope that I am wrong about my concerns, but I will back the High Court on this one in terms of the policy behind this bill.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

Senator JACINTA COLLINS (Victoria—Parliamentary Secretary for School Education and Workplace Relations (2.20 pm)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

HEALTH INSURANCE AMENDMENT (PATHOLOGY REQUESTS) BILL 2010

Second Reading

Debate resumed from 24 November, on motion by **Senator Feeney**:

That this bill be now read a second time.

Senator FIERRAVANTI-WELLS (New South Wales) (2.21 pm)—I rise to speak on the Health Insurance Amendment (Pathology Requests) Bill 2010, which was previously considered by the House in the last parliament. It removes the legislative requirement for requests to be made to a particular approved pathology provider for Medicare

benefits to be payable. But, as with a number of health bills, there were considerable concerns and this is another example of the ramshackle way in which the Minister for Health and Ageing deals with business in the House. I will come to another example later, but this is one example. Both non-controversial bills with which I am involved today deal with similar situations where the government has really failed in its consultation and not thought through the consequences of its actions. The concerns about this bill were first canvassed in the original debate and in evidence to the Senate inquiry. It was very good that the Senate did have an inquiry into this matter because it brought out quite a number of problems.

There is a variation in the range of services offered by pathology practices—in their methods, in the equipment used and in the methods of communication between pathology practices and referring doctors. Whilst cost is a very important consideration for patients, it may not always be the appropriate basis for deciding on a service provider. Indeed, that fact was even acknowledged by the minister in her second reading speech.

In this instance, the government basically failed to explain how new referral pathways will operate in cases where the pathology practice is unknown to the referring doctor. Of course, there were concerns about lost or delayed results and stakeholders flagged a whole series of concerns regarding lines of communication to the government and about the fact that these issues should have been resolved prior to implementation. Indeed, that was the subject of debate in the lower house. There is growing concern in the community about the decreasing levels of bulk-billing for pathology. Of course, that particularly affects older Australians, self-funded retirees and pensioners on fixed incomes. Another example of a failure by the

government is in a disallowance motion where the government simply put things in the last budget because, having wasted so much money on things like putting in pink batts and building Julia Gillard memorial halls and all sorts of other things, they then had to go out and find money elsewhere. Typical of the government, given the attitude that the Prime Minister has towards older Australians, we saw measures and some cuts in the budget which directly affected older Australians, such as access to pathology. These things go into the budget without any consultation whatsoever. Then of course you have a problem and stakeholders come out and say: ‘Minister, have you thought about this and have you thought about that?’ No, of course she did not think about it, because all she was interested in was saving money. And this bill is another example of that.

So we had to go through this bill, and of course we have had a situation with a matter that is on the *Notice Paper*. Because the government has not organised its business properly, the disallowance motion which is before the Senate in relation to Health Insurance (Eligible Collection Centres) Approval Principles 2010 will not be dealt with. It will be dealt with when we come back in the new year. Notwithstanding that the government is having reviews into pathology matters and pathology funding which are going to be reflected in its next budget, instead of waiting for the outcome of those reviews here we are pushing through changes.

In this instance there were concerns with the original bill and there was scrutiny by the Senate through the committee process. The concerns here are about the onus that is being placed on patients to choose the pathology practitioner; problems which may arise between unknown referring doctors and pathology providers and which may result in delays; problems which may arise as a result of inconsistent reference ranges and meas-

urement series used by different pathology providers; and possible effects upon arrangements between general medical practitioners and pathology providers relating to emergency and out-of-hours contact. The coalition senators in the minority report noted that of course we do support patient choice and that patient choice is very important, but this should not be at the expense of patient safety, the legal responsibilities of practitioners providing care and the practicalities of providing high-quality medical care. They recommended that the legislation be amended to allow referring doctors to specify a pathology provider in circumstances where there is a justifiable clinical need.

The coalition moved amendments in the lower house. It seems to happen with regular frequency in the Health and Ageing portfolio that the minister decides she is going to do something for some cost-saving measure, she does not think and then we have problems. When we start thinking about the patients we see where the problems are, and the government then has to backflip and change its position. This was another situation where that happened, and I am pleased that the government accepted the coalition's amendments in the House to allow treating practitioners to specify a pathology provider where there is a clinical need to do so.

But, whilst we do not oppose the bill, we hold some concerns about the practical effects of its implementation and the lack of consultation that occurred prior to the initial introduction into the parliament. The coalition supports patient choice in accessing health care, but, as with any change of policy in this portfolio, proper consideration should be given to patient safety and quality of care. That is another 2009-10 budget measure not subject to consultation.

I have mentioned other instances. The classic one was the Better Access to Mental Health Care Initiative, which has certainly not been an area where this government has covered itself in glory. Indeed, it has covered itself in gross ingloriousness. Under the better access initiative, social workers' and occupational therapists' access under Medicare was often dropped. Often, particularly in rural and regional areas, social workers and occupational therapists are the only people that people have access to. But did the government think about patients in regional and rural areas? Of course they did not. Of course Minister Roxon did not think about that. She simply thought: 'Okay, I'll be able to save a bit more money here.' It was not until we had an outcry by social workers and occupational therapists in the sector and we went through the spectacle at estimates where the minister and the department were put under scrutiny that Minister Roxon suddenly thought: 'Oh, well, perhaps I might have another look at this', and of course we saw another backflip.

The point that I am making is that this government looks at where it is going to save money but does not think about it. This is another such decision. Having said that, we have raised these concerns and we will continue to do so but on that basis we will not be opposing the bill, on the basis that the coalition's amendments have been included.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.30 pm)—This bill, as I think senators know, will allow patients to take a pathology test to a pathology provider of their choice. It will encourage pathology providers to compete on price and convenience for patients. As has been noted by senators opposite, the government has supported some constructive amendments in the House. I would like to thank all

senators who have made a contribution to this debate. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

FINANCIAL FRAMEWORK LEGISLATION AMENDMENT BILL 2010

First Reading

Bill received from the House of Representatives.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.31 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 LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.32 pm)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Financial Framework Legislation Amendment Bill 2010 is an omnibus Bill that would, if passed, affect 31 Acts, involving the amendment of 25 Acts and the repeal of 6.

This is the seventh *Financial Framework Legislation Amendment Bill* (FFLA Bill) since 2004 and is in substantially the same form as the FFLA Bill

I introduced on 23 June 2010. These Amendment Bills build on improvements to the Commonwealth's financial governance framework and have traditionally had broad Parliamentary support.

This Bill contains three major themes, being the repeal of redundant special appropriations, the improvement of the laws underpinning the Commonwealth's financial governance framework, and updating the financial governance of specific bodies.

On the first theme, the Bill would, if enacted, repeal 20 redundant special appropriations, including 6 Acts in their entirety. This continues the Government's commitment to regularly review special appropriations, as given in the Government's response of December 2008 to the report by former Senator Andrew Murray, *Operation Sunlight – Overhauling Budgetary Transparency*.

Second, the Bill would improve the governance framework established by the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*, known colloquially as the "FMA Act" and the "CAC Act".

The Bill would allow Ministers to delegate certain functions under the CAC Act to Departmental Secretaries, relating to the oversight of Commonwealth authorities and Commonwealth companies. Introducing such specific delegation powers would strengthen existing arrangements, that currently rely on authorisations by Ministers, for obtaining budget estimates and monthly financial statements.

The Bill would also address the situation of FMA Act agencies, and Commonwealth authorities operating under the CAC Act, that are interjurisdictional in nature, by amending those Acts to empower relevant State and Territory Ministers to request information about their operations. This power would be commensurate with the power currently held by Commonwealth Ministers in this regard, with the details to be set out in regulations. This would enable full consultation to occur between the Commonwealth and relevant States and Territories, before such requirements are put in place, and would also allow the requirements to be calibrated on a case-by-case basis.

The Bill would also strengthen the reporting to Parliament of the Commonwealth's involvement in companies. Currently the CAC Act obliges responsible Ministers to inform Parliament when the Commonwealth acquires or disposes of an interest in a company. The Bill would relocate this requirement more appropriately to Part 5 of the FMA Act, which currently deals with investments by the Commonwealth.

Third, the Bill would clarify the governance arrangements of several specific bodies. These have been developed after consultation with relevant Ministers, departments and agencies.

In particular, the Bill would consolidate the Australian Institute of Criminology with the Criminology Research Council into a single agency, while at the same time transferring them from the CAC Act to the FMA Act. The Bill would also transfer the governance of the Australian Law Reform Commission from the CAC Act to the FMA Act.

Further, this Bill would bring the governance of the National Transport Commission under the CAC Act, because the Commission currently operates outside existing frameworks, other than for its annual reporting.

This is consistent with the Finance Department's *Governance Arrangements for Australian Government Bodies*, the Government's policy on governance arrangements.

Finally, the Bill would repeal legislation that had established the Office of Evaluation and Audit for Indigenous Programs, in recognition of this function having now been successfully absorbed into the Australian National Audit Office.

I commend the Bill to the Senate.

Senator FIFIELD (Victoria)—Manager of Opposition Business in the Senate (2.32 pm)—I rise to speak on the Financial Framework Legislation Amendment Bill 2010. This is the seventh financial framework legislation amendment bill since 2004. These bills have continued the coalition's work to promote transparent and accountable government finances for Australian government departments, agencies, Commonwealth authorities and companies, which are pre-

dominantly contained in the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997. This bill in particular seeks to update the framework, improve operational efficiency and assist with the operation of interjurisdictional entities.

Firstly, the bill repeals 20 redundant special appropriations including six acts in their entirety. Secondly, the bill seeks to improve the governance framework established by the FMA Act and the CAC Act—that is an acronym that has always troubled me—both of which govern the management and accountability of Commonwealth agencies, authorities and the executive arm of government. The bill will allow ministers to delegate certain functions under the CAC Act to departmental secretaries, relating to the oversight of Commonwealth authorities and Commonwealth companies. It also seeks to allow relevant state and territory ministers to request information about the FMA Act, agencies and Commonwealth authorities operating under the CAC Act.

Thirdly, the bill consolidates the Australian Institute of Criminology with the Criminology Research Council into a single agency while also transferring them from the CAC Act to the FMA Act. It also seeks to transfer the governance of the Australian Law Reform Commission from the CAC Act to the FMA Act and, further, the National Transport Commission will be brought under the CAC, as it currently sits outside existing frameworks other than for its annual reporting.

The coalition broadly supports these amendments, however I draw the house's attention to page 5.2 of the Department of Finance and Deregulation red book—the incoming government brief publicly released on 1 October—which stated:

Through this Bill—

the Financial Framework Legislation Amendment Bill 2010—

there is also an opportunity for the Government to reconfirm its support for a strong financial framework dealing with Commonwealth resources by expanding the definition of 'proper use' to include 'economical'. While proper use already includes 'efficient, effective and ethical', inclusion of the word 'economical' will increase the focus on the level of resources the Commonwealth applies to achieve outcomes.

This was the department's subtle way of acknowledging this government's reckless waste and mismanagement across a range of portfolios. Although I am tempted, in light of the hour of the day I will not go exhaustively through every example, which I know will be a source of great relief to those on the other side. This side of the chamber does support the very careful stewardship of taxpayers' money. It is not what we have seen over the three years of this government. Rather than elucidating that further, I will just indicate that the opposition will not be opposing the bill.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.36 pm)—The Financial Framework Legislation Amendment Bill 2010 is an omnibus bill that will affect 31 acts, involving the amendment of 25 acts and the repeal of six. The bill contains three major themes: to repeal redundant legislation, to improve the financial governance frameworks and to clarify the governance arrangements of several specific bodies. The government notes in this place that the opposition moved an amendment in the House and we agreed to this amendment. I would like to thank honourable senators for their contribution to the debate and commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

THERAPEUTIC GOODS AMENDMENT (2010 MEASURES No. 1) BILL 2010

Second Reading

Debate resumed from 15 November, on motion by **Senator McLucas**:

That this bill be now read a second time.

Senator FIERRAVANTI-WELLS (New South Wales) (2.37 pm)—The coalition will not be opposing the Therapeutic Goods Amendment (2010 Measures No. 1) Bill 2010, which introduces amendments to the Therapeutic Goods Act as part of the government's regulatory reform plan designed to improve regulation of therapeutic goods in Australia. These amendments allow the secretary of a department to approve the importation and supply of certain medical devices that are not on the Australian register of therapeutic goods to act as substitutes for devices that are on the register when these are in short supply or not available. The other amendments are largely administrative and are a sensible alignment with medicines.

I want to use the limited time available to say that this is another bill which just highlights the total incompetence of the health minister. It needs to be put on the record that in the debate on the bill in the House of Representatives on 27 October Minister Roxon produced nine pages of changes containing 15 amendments to the bill. The debate had to be suspended because the minister had failed to circulate the amendments. The reason I raise this is because the minister goes out there constantly whingeing and complaining all the time that her health legislation is being delayed and opposed and is logjammed in the Senate, conveniently ignoring the reality that she and her government decide what legislation will or will not be debated. But in

this case it highlights the shambolic way she deals with legislation. If she cannot manage the parliamentary process, how can she be trusted to deliver Labor's so-called grand plan for hospitals? I put this on the record because I do not want a situation like the last end of term where the minister complained that the Senate was holding up her legislation. If this is the shambolic and incompetent manner that she deals with legislation, God help us all. Unfortunately, there is no cure for incompetence.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.39 pm)—The Therapeutic Goods Amendment (2010 Measures No. 1) Bill 2010 amends the Therapeutic Goods Act 1989 to clarify the regulation of therapeutic goods in Australia and improve arrangements. I thank all senators who have made a contribution to this debate and commend this bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.41 pm)—by leave—I move:

That the order of the Senate agreed to on 25 November 2010, as amended, relating to the days and hours of meeting and routine of business for today, be amended as follows:

That government business be interrupted immediately to consider business of the Senate notice of motion standing in the name of Senator Kroger for the disallowance of the Extradition

(United Arab Emirates) Regulations 2010, for not more than 15 minutes, at which time the question on the motion shall be put immediately.

Question agreed to.

EXTRADITION (UNITED ARAB EMIRATES) REGULATIONS 2010

Motion for Disallowance

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (2.42 pm)—I seek leave to table and incorporate into *Hansard* a statement on behalf of the government.

Leave granted.

The statement read as follows—

INTERPRETATION OF TREATY ON EXTRADITION BETWEEN AUSTRALIA AND THE STATE OF THE UNITED ARAB EMIRATES

Effective extradition relationships are a cornerstone of international cooperation to fight transnational crime. The Australian government is determined to deny safe haven to those who commit crimes and to ensure that criminals are not able to evade justice by crossing borders.

At the same time, the Australian Government recognises that the criminal justice process must be built upon strong human rights protections. When the Government seeks to strengthen or establish new extradition relationships, it ensures these relationships are underpinned by appropriate safeguards and protections.

The UAE is an important partner in the Middle East in efforts to combat transnational crime. The Treaty on Extradition between Australia and the State of the United Arab Emirates represents a significant step in strengthening our international legal cooperation relationship. It will create an extradition regime which accommodates the extradition procedures of both countries whilst providing appropriate safeguards for individuals.

The Treaty contains the safeguards and protections necessary to fulfil Australia's international and domestic obligations to appropriately protect individuals accused of crimes and whose extradi-

tion is sought by the UAE. These Treaty provisions complement specific provisions in the Extradition Act 1988.

As part of the protective mechanisms in the Treaty, Article 4(2)(e) contains a ground for refusal where 'the Requested State, while taking into account the nature of the offence and the interests of the Requesting State, considers that the extradition of the person is unjust, oppressive, or incompatible with humanitarian considerations in view of age, health, or other personal circumstances of that person'. Australia interprets Article 4(2)(e) to require consideration of factors inter alia:

- The trial process, including the likelihood the person will have access to a fair trial, taking into consideration whether the person would receive the minimum guarantees in criminal proceedings as contained in Article 14 of the International Covenant on Civil and Political Rights
- Prison conditions upon surrender, and
- The health of the person sought, including any specific medical condition that requires ongoing treatment.
- Provided that
 - Extradition shall not be granted in circumstances where there are substantial grounds for believing that a person whose extradition is requested would be in danger of being subjected to torture or cruel, inhuman or degrading treatment or punishment.
- Or
 - Where such extradition would breach the person's rights in accordance with Australia's international non-refoulement obligations.
- And
- Any interpretation of the Extradition Treaty with the UAE shall take into account all of these matters.

Senator KROGER (Victoria) (2.42 pm)—I am disappointed that there are currently so few senators from the government in the chamber because I consider it to be an

absolute indictment on this government that we are considering something as significant as this disallowance motion at the 11th hour on the last day of sitting. It is yet another disgraceful example of the government taking their hands off the wheel and not managing the business that is before this Senate that we are now dealing with this matter.

I draw the chamber's attention to the fact that it was the government that changed the order of the business yesterday and today. It is the government that wished to gag this Senate chamber and ram through the telecommunications legislation. Such was their intent to do so that they forgot—and, I repeat, they forgot—that there was a disallowance motion on the table that needed to be addressed today.

The ACTING DEPUTY PRESIDENT (Senator Troeth)—Senator Kroger, I need to interrupt you for a moment. The Senate needs to be informed as to whether you are withdrawing the motion or moving it.

Senator KROGER—I am withdrawing the motion.

The ACTING DEPUTY PRESIDENT—Senator Kroger, you need leave to make a statement.

Senator KROGER—I seek leave to make a statement.

Leave granted.

Senator KROGER—It was the government that, having changed the order of business, forgot that this disallowance motion needed to be dealt with. I would like to point out that it was the government that asked me to postpone this motion to the first day of sitting next year so that they had more time to deal with the many issues and concerns that have been raised. So it was the government who were seeking another two months to deal with the issues that they needed time to consider. What we have witnessed in the

last 24 hours—which I have to say has been an extraordinary time—is the most frantic and frenzied level of activity to address the concerns and issues that have been raised over some considerable time so that this could be dealt with.

This disallowance motion was moved two months ago. The issues and concerns raised at that time which led to my moving this motion were there long before that. As early as April this year the Foreign Minister, the Attorney-General and the Prime Minister had received reams of correspondence and communication, letters and applications from various Australians expressing their concerns about the regulations. I regret to say that all those communications and applications went unheeded. It was because of that that I sought to move the disallowance motion so that it could be addressed in a formal way. We have now reached a situation where the government have finally turned their attention to this, albeit somewhat latently, and have addressed many of the concerns that have been raised.

In tabling the disallowance motion, my primary concern has always been the implications it would have for Australian citizens. In considering an extradition treaty with any country, it is incumbent upon us to ensure that the criminal justice process is based upon strong human rights protections. When considering a treaty with a country that governs under a very different judicial system to the domestic law in Australia, it is even more important to ensure that appropriate safeguards and protections are put in place.

The bilateral relationship that Australia and the UAE share is a very important one and, along with the primary interests and concerns about the human rights of Australian citizens, the relationship has been central to the coalition's consideration of this issue. Fundamentally, the UAE and Australia

strongly support a quest for the stability and security of the Middle East region. It is the No. 1 primary concern. In addition to that, our bilateral relationship is underpinned by a strong trade and economic relationship, which is a very effective and important one. Some 50,000 Australians travel to and visit the UAE each year, and that has been a continuing benefit to both our countries.

I am satisfied that the document that has just been tabled by the government and incorporated into *Hansard* has addressed some of the issues that have been raised by me and others over the last few months. This document provides a stronger framework for an Attorney-General in considering an extradition treaty and, I hope, for all Attorney-Generals in the future. It provides further consideration of circumstances where there are substantial grounds to believe that a person whose extradition is requested would be in danger of being subjected to torture or cruel, inhumane or degrading treatment or punishment and where such extradition would breach the person's rights in accordance with Australia's international non-refoulement obligations. I am satisfied that the document does provide an appropriate and strengthened framework for the consideration of the extradition treaty.

The ACTING DEPUTY PRESIDENT (Senator Troeth)—In a moment, Senator Kroger, I will ask you to seek leave to withdraw the disallowance notice, but before leave is granted, does any other senator wish to take over the disallowance motion from Senator Kroger?

Senator LUDLAM (Western Australia) (2.50 pm)—Pursuant to standing order 78(3), I do object to the withdrawal of business of the Senate notice of motion No. 1 proposing this disallowance, and I ask that the notice stand in my name. I move:

That the Extradition (United Arab Emirates) Regulations 2010, as contained in Select Legislative Instrument 2010 No. 36 and made under the *Extradition Act 1988*, be disallowed.

In a nutshell, this debate offers an opportunity for us to put our concerns on the record, and I would like to add my remarks to those of Senator Kroger. Our issues are partly the principles of the issues that are tied up in this extradition treaty, but also the poor governance in the way that the executive determines our treaties rather than the parliament. I have sat on the Joint Standing Committee on Treaties for a couple of years, as has Senator Kroger, and the joint standing committee raised serious concerns in the instance of this extradition treaty once the agreement had been signed. Now the parliament is confronted with it once it has been signed. Our concerns are very similar to Senator Kroger's. I know that we had very similar correspondence as the minister was receiving. We are not satisfied at all with the statement that has just been tabled by Senator Lundy because it makes no material difference whatsoever to the way that the treaty will operate in practice. I am glad that Senator Kroger moved this disallowance motion; I am very disappointed that the opposition, at the 11th hour, will not be seeking to support it.

The Greens with the minister raised six key concerns with this treaty, most notably that Australia should not be signing extradition treaties with countries not party to important international covenants such as the Convention against Torture and the ICCPR. This treaty sets up a very dangerous and shameful precedent because all of the other 35 countries that we have extradition treaties with are parties to the Convention against Torture and the International Covenant on Civil and Political Rights, so we are crossing a line with this one this afternoon with the UAE.

Many stakeholders have written to us on the human rights and justice concerns, and these should not be sacrificed in the name of strengthening a trading relationship. We have sought stronger provisions and not ministerial discretion. I have not had the opportunity to go through in detail the statement that Senator Lundy has just tabled, but I understand it does progress the debate somewhat. We were not seeking greater ministerial discretion; we were seeking a stronger treaty.

Other countries such as the UK have safeguards in their treaties with the UAE to protect the rights of their citizens. Quite a high profile High Court case in the United Kingdom ruled that the UK could not rely on diplomatic assurances from the UAE government that one particular individual would not be subject to torture or inhumane or degrading treatment or punishment as per article 3 of the European Convention on Human Rights. We have no such convention here in Australia and no such benchmarks to protect human rights in Australia or overseas because we have not yet implemented our obligations under the ICCPR into a bill of rights, and that was one of the more important failures of the Rudd-Gillard government thus far.

So the clauses that the government has inserted, the language that has been tabled by Senator Lundy, is certainly welcomed, but it results in no material change whatsoever to the treaty that is before us. Amnesty International's 2008 report outlines the key risks from the UAE legal system, and this document makes for hair-raising reading: incommunicado detention without charge; torture; imprisonment for criticism of the government; cruel, inhuman and degrading punishment, including death by stoning; and abuse of migrant workers' rights. The UAE has not signed and is not a signatory to the Convention against Torture or the ICCPR; nor are they a signatory to the International Cove-

nant on Economic, Social and Cultural Rights or the Convention of the Protection of the Rights of all Migrant Workers and Members of their Families.

We are about to sign an extradition treaty with the UAE which, for some reason, seems to be entirely content with these lapses. Pursuing stronger strategic partnerships with our friends in the Middle East should not come at the expense of our stance on human and civil rights. I will be, as I am sure Senator Kroger will be, pursuing these issues very strongly within the Joint Standing Committee on Treaties, but, as I have taken this disallowance motion in my own name, I strongly commended it to the chamber.

Senator LUDWIG (Queensland—Minister for Agriculture, Fisheries and Forestry) (2.55 pm)—The Gillard government stands by its position that we do not want Australia to become a safe haven for criminals, that we take our international anticrime cooperation role seriously and that we are committed to maintaining our international obligations to protect human rights, nor would an Australian government extradite a person for conduct that was not a criminal offence in Australia. That is why we are opposing this disallowance. The UAE and Australia share a strong interest in a stable and secure Middle East and Gulf region and have a shared strategic view on regional security.

Senator IAN MACDONALD (Queensland) (2.55 pm)—Madam Acting Deputy President, this is an important matter and there is another important bill to be before the chamber. That being the case, I seek leave to move a motion to extend the hours of sitting today to allow completion of this matter and the next matter, on the bill. So I am seeking leave to move that motion.

The ACTING DEPUTY PRESIDENT (Senator Troeth)—We are about to conclude

this matter, Senator Macdonald. However, you have sought that.

Leave not granted.

The ACTING DEPUTY PRESIDENT—I confirm that leave was granted for Senator Kroger to withdraw the notice.

Question put:

That the motion (**Senator Ludlam's**) be agreed to.

The Senate divided. [3.00 pm]

(The Acting Deputy President—Senator JM Troeth)

Ayes.....	4
Noes.....	<u>33</u>
Majority.....	<u>29</u>

AYES

- | | |
|-------------|---------------|
| Brown, B.J. | Ludlam, S. |
| Milne, C. | Siewert, R. * |

NOES

- | | |
|----------------|------------------|
| Barnett, G. | Bernardi, C. |
| Bishop, T.M. | Brandis, G.H. |
| Cameron, D.N. | Colbeck, R. |
| Collins, J. | Coonan, H.L. |
| Crossin, P.M. | Faulkner, J.P. |
| Feeney, D. | Ferguson, A.B. |
| Fielding, S. | Fifield, M.P. |
| Forshaw, M.G. | Furner, M.L. |
| Humphries, G. | Ludwig, J.W. |
| Lundy, K.A. | Macdonald, I. |
| McEwen, A. | Moore, C. |
| Nash, F. | Parry, S. |
| Polley, H. | Pratt, L.C. |
| Scullion, N.G. | Sherry, N.J. |
| Stephens, U. | Sterle, G. |
| Troeth, J.M. | Williams, J.R. * |
| Wortley, D. | |

* denotes teller

Question negatived.

**TERRITORIES LAW REFORM
BILL 2010**

Second Reading

Debate resumed from 22 November, on motion by **Senator Feeney**:

That this bill be now read a second time.

Senator HUMPHRIES (Australian Capital Territory) (3.03 pm)—In view of the lateness of the hour, I rise in continuance simply to place on the record that the opposition supports the thrust of the Territories Law Reform Bill 2010 and notes that it represents a major change in the governance arrangements for Norfolk Island. The opposition wishes that it had an opportunity to consider some variation on the approach being adopted in this legislation but accepts that essentially the legislation does carry the territory forward into a more robust and accountable regime than previously applied. The opposition will closely monitor the implementation of these reforms to ensure that the administrative burden being placed on the government of Norfolk Island does not unnecessarily encumber the process of delivering good government to the people of Norfolk Island.

Senator FERGUSON (South Australia) (3.04 pm)—I only rise to speak briefly to the Territories Law Reform Bill 2010, and I do so with regard to the fact that for the past three years and a bit I have been on the Joint Standing Committee on the National Capital and External Territories and in that time have managed to build up a relationship with the Norfolk Islanders through the visits that we have made to that place and through the representations we have made to them; in fact, we have listened to their concerns as they have spoken to us. I have enormous regard for Norfolk Island and its people, and the committee members have done their best—certainly in my time—to do what they be-

lieve is best in the interests of Norfolk Island and the people that live there.

It is quite common knowledge that there is a divergence of views on Norfolk Island as to what is the best way forward for them during very tough economic times, and this bill is a result of a number of inquiries where proposals have been brought to governments in order to try and alleviate some of the problems that exist there but also to help them determine their own future and in some way overcome the enormous difficulties that have been exacerbated by the global financial crisis because they rely almost totally on tourism for survival.

I believe that this bill that has been brought forward by the government is really only the start of what is required to help Norfolk Island ensure its future. We have seen a change of heart from the people of Norfolk Island and the legislature on Norfolk Island, because it is only some six to nine months ago that we held a public inquiry there on this legislation where the island's government and many members of the population were totally opposed to what was proposed by the government. I am very delighted to see that in recent times that view has changed in relation to the proposal that has been put forward by the government, which is supported by the opposition—in fact, many of the proposals that are brought forward in this were proposals that were brought to the previous government by the committee in its previous incarnation. The change of heart by Chief Minister David Buffett and many of the members of that council and the population of the island, I think, is welcome, and I would encourage the very close cooperation between the government, the joint committee, the legislature on Norfolk Island and the people of Norfolk Island, who have, as I said, a wide range of views.

While this spirit and mood of cooperation are in place, we should tackle some of the other very difficult problems that currently face Norfolk Island to maintain its economy and to improve quality of life for the people on that island. It is only a small population. It is a population of historic significance. Many of the people there have historical connections back to the mutiny on the *Bounty* and Pitcairn Island. There is a difference of view amongst islanders, which you often find in small communities. We need to do the best that we can to help them solve their problems—not to force changes on them but to make sure that we work together with the Norfolk Islanders to improve their quality of life. My own personal view is that the sooner Norfolk Island is brought within the Australian taxation regime, so that they become part of our whole economic system and people can have the advantages and benefits of welfare and of our Medicare system, the better. I believe in my own mind that probably 80 or 90 per cent of the Norfolk Islanders would be much better off, not worse off as some of them say. But that is something for the future and something that we must discuss with the Norfolk Islanders until we come to an agreed arrangement where they feel confident that what the federal government is doing is ensuring a better future for them and not just imposing more control over their daily lives.

I would also commend the work of the former chair of the joint committee, Senator Kate Lundy, who for the past three years has worked very closely with the Norfolk Island people and, I think, has helped to get us to the position we are in today. I hope that in the future we can see those on Norfolk Island, the government and the committee working closely together for the betterment of those people.

Senator IAN MACDONALD (Queensland) (3.09 pm)—It is indeed an honour and

a privilege to me to speak in the debate on the Territories Law Reform Bill 2010 following two very distinguished persons speaking from the coalition's point of view in Senator Humphries and former President Senator Ferguson. I only wish time had permitted us to allow both of those senators to speak longer on a bill on which they both have some considerable expertise. I am very concerned that, because of the gagging of this and other debates by the coalition of the Greens and the Labor Party, the debate on this bill has been quite substantially restricted.

I also indicate that, contrary to advice that I gave earlier to this chamber, the coalition will not now be moving amendments to this bill, much as we would have liked to. The reason we are not doing that is that the coalition believe genuinely that is in the best interests of Norfolk Islanders and that it must be addressed immediately. It is a regret that we are rushing it through on the last extended day of the last week of the last month of this tumultuous year of parliament, but I am told and accept that it has to be adopted today.

Our amendments—and I only speak very broadly because time will not permit me to go further—affected two areas and there is another area that I want to touch on which I think should have been addressed by the government. Generally speaking, in relation to privacy and freedom of information matters, we think the imposition of Australian rules on such a small community with a public service very limited in number should not have been put through the red tape and procedures that apply in a country of 20 million people like Australia. Our amendments moved in the lower house were along those lines and, I think, should have been supported. I am quite confident that, after hearing the debate, the two Independents in this chamber would have supported those

amendments, which would have meant that the bill would have gone back to the government in the lower house to be dealt with on Monday.

If then, as the Labor Party indicated, the government did not accept the amendments, it would mean that this bill could not be dealt with today. Accordingly, an essential bill that is basically in the interests of Norfolk Islanders would not have been able to have been dealt with prior to the beginning of next year, and I am told that that is far too late. So rather than having that situation because of the intransigence of the Labor Party to those very sensible amendments, which they rejected in the lower house, it is preferable to deal with the bill today. For that reason the coalition will not be proceeding with the amendments which I foreshadowed earlier.

The two speakers before me have considerable experience in Norfolk Island and I do not even attempt to relate my experience to theirs, but I was for three years the Minister for Regional Services, Territories and Local Government and spent a deal of time on Norfolk Island in those days, and in fact was one of the ministers who started the process that has ended up where we are today. It has taken a long time, almost 10 years, to get from there to here. I say proudly that, back in those days, I commenced the action that brought a form of freehold title to the island, which I hope has been beneficial. But, as both Senator Ferguson and Senator Humphries have indicated, there are difficulties on the island that do need to be addressed, and this bill does go part of the way.

I say to anyone who might be listening to this: if you have not been to Norfolk Island, you should go there. It is a fabulous place. It is steeped in history. The scenery, ambience and culture there are worth experiencing and I certainly urge people to visit the island. These days it is, I understand, cost effective,

although over the history of Norfolk Island the situation has been that, because it does not have a tax system, certain wealthy people do benefit from living there. But they got their money for government services by taxing the tourists, and, in that way, I have to say that they have contributed to the difficulties in which they currently find themselves. But it is quite clear that the island cannot go on financially in the way that it has in the past. It will need increased Commonwealth assistance. This has always been very obvious to anyone who has an interest in the island.

The amendment bill before the chamber now, as set out in the second reading speech which my colleagues have briefly referred to, does assist in regularising the governance of Norfolk Island. With a very small population, it has had a parliament of seven, eight or nine people—I forget; it had a ministry of three, four or five people; and it had a chief minister who used to have a ministry that was put there by where they came as a result of the vote. It meant that there was no collegiality in the ministry. The situation was very different. Every person had four votes, and you could allocate four of your votes to one candidate, or two to one candidate, one to another and one to the other. There were quite a number of other governance and electoral provisions which would have been seen as quirky, if I may use that word, to people coming from a democracy like Australia. This bill goes part of the way towards addressing some of those things. It would have been better had the coalition's amendments in the lower house been accepted.

I just want to raise one aspect of the bill which I am not sure the government has properly and clearly thought through. Item 19 proposes the repeal of section 9 of the Norfolk Island Act and substitutes a provision which says:

- (1) The responsible Commonwealth Minister may appoint a person, or persons jointly or severally, to be the deputy or deputies of the Administrator in the Territory, and in that capacity to exercise during the pleasure of the responsible Commonwealth Minister such powers and functions of the Administrator as the responsible Commonwealth Minister assigns to the deputy or deputies.
- (2) The appointment of a deputy does not affect the exercise of a power or performance of a function by the Administrator.

This shows a fundamental misunderstanding of the Administrator's role. The Administrator of Norfolk Island is, all things being equal, the same as the Administrator of the Northern Territory: he carries out an essentially vice-regal role in the same way as the Governor. Although on Norfolk Island he has slightly broader discretionary powers, which will be enhanced by this bill, in 80 per cent or more of his role, he acts on the advice of his Norfolk Island ministers. It is wrong for the Deputy Administrator or deputies of the Administrator to be appointed by the Commonwealth minister. When Mr Ellicott QC introduced the original bill in 1979, it was provided that the Administrator and Deputy Administrator should hold commissions from the Governor-General, and I would submit that that should remain.

The proposed amendment is purely for the administrative convenience of the department, yet it makes the fundamental error of treating the Deputy Administrator as if they are a public servant. The person appointed may well be a public servant in their other duties, but in their role as Deputy Administrator they occupy a uniquely hybrid office and should still be appointed by the Governor-General. It is wrong for the minister to be appointing someone who is required to give assent to laws and who may have to make decisions at their own discretion to seek advice and reserve laws for the Governor-General's pleasure. It confuses the vice-

regal type role of the Administrator and his or her deputies.

I believe this clause is also wrong in that it proposes that the minister may choose which powers of the Administrator he assigns to the deputy or deputies. So, on one hand, the Administrator is appointed by the Governor-General and has powers set out in the act and, on the other hand, in the Norfolk Island laws, one or more deputies may be appointed to have some powers but not others, at the whim of a federal minister.

Even at this late hour, I have gone through that at some length. I do hope the government will have a look at that and perhaps amend the bill later, when the additional amendments that are required, as was suggested by Senator Ferguson, are set out.

I have been handed a note saying, 'Please leave Senator Lundy five minutes to close the debate,' and I certainly intend to do that. I simply say to Senator Lundy: it is a shame that the motions I have tried to move to extend the time of this debate have been gagged by the Labor Party and the Greens. I know my two colleagues wanted to say a lot more on this legislation, but they have very generously curtailed their remarks to allow Senator Lundy, who I know also has an interest in Norfolk Island, to say a few words. I intend to cease now to give Senator Lundy the same amount of time as I have had to comment on this, but again I lament the fact that the procedures of this chamber have been so abused by the Labor Party and the Greens in coalition as for them to have gagged, more than a dozen times in the last two days, free debate on this bill and a series of other bills, including the very important telecommunications bill which we have had a very curtailed debate on over the last couple of days. With those serious reservations, I support the bill and urge its adoption before parliament rises.

Senator LUNDY (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.21 pm)—On behalf of the government, I am very pleased to thank all of the senators who have made a contribution. I particularly want to acknowledge the other senator for Norfolk Island, my ACT Senate counterpart, Senator Gary Humphries. Both of us have our role representing the Australian citizens of Norfolk Island, and Senator Humphries, I know, has a deep and abiding interest in their welfare, as do my colleagues in the House. Gai Brodtmann MP is the House of Representatives member for Canberra.

In closing the debate on the Territories Law Reform Bill 2010 I would also like to acknowledge the work of the Joint Standing Committee on the National Capital and External Territories and Senator Ferguson, who has also been a longstanding member. The members of that committee have worked very hard with the people of Norfolk Island to come up with the right model of reform to allow Norfolk Island to progress its accountability, transparency and governance reforms. I would also like to take this opportunity to acknowledge ministers, including those of the previous governments—Minister Debus, Minister O'Connor and now Minister Crean are our respective Labor government territories ministers—for their diligent work in progressing these reforms. I do that, very conscious of time.

I will post some additional remarks on my website that will reflect, I think, the broader sentiment and the detail of the reforms that we are proposing in this legislation. I would certainly like to say that it is my great pleasure to commend the bill to the Senate.

Question agreed to.

Bill read a second time.

Third Reading

Bill passed through its remaining stages without amendment or debate.

BUSINESS

Rearrangement

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.24 pm)—I seek leave to move a motion to vary the routine of business for today.

Senator Ian Macdonald—No? What is it?

The PRESIDENT—Is leave granted?

Senator Ian Macdonald—Mr President, I have refused leave, but I will give leave if I get leave to make a short statement.

The PRESIDENT—Is leave granted?

Senator Pratt—For 30 seconds.

Senator Ian Macdonald—Thirty seconds would be fine.

The PRESIDENT—Leave is granted for 30 seconds.

Senator IAN MACDONALD (Queensland) (3.24 pm)—Thank you, Mr President. Twice now I have sought leave to amend the sittings today to allow the proper business of this chamber to be properly dispatched. Now, clearly, some people want to make Christmas messages or something like that. This is a sequence of gagging the debate on these bills. Had the Labor Party been serious and sensible, they would have allowed the debate to have been extended as I have tried to do twice, leave for which was refused by the minister now seeking leave.

The PRESIDENT—There being no objection, now leave is granted to the minister.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.25 pm)—I move:

That the order of the Senate agreed to on 25 November 2010, as amended, relating to the days

and hours of meeting and routine of business for today, be amended as follows:

That, on Friday, 26 November 2010, the Senate continue to sit till not later than 3.45 pm to enable certain motions to be moved and statements to be made, by leave, relating to the end of year sittings.

Question agreed to.

BUSINESS

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.25 pm)—I move:

That the Senate, at its rising, adjourn till Tuesday, 8 February 2011, at 12.30 pm, or such other time as may be fixed by the President or, in the event of the President being unavailable, by the Deputy President, and that the time of meeting so determined shall be notified to each senator.

Question agreed to.

LEAVE OF ABSENCE

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.25 pm)—by leave—I move:

That leave of absence be granted to every member of the Senate for the period from the end of the sitting today to the day on which the Senate next meets.

Question agreed to.

Senator LUDWIG (Queensland—Manager of Government Business in the Senate) (3.26 pm)—by leave—I move:

That leave of absence be granted to Senator Hutchins for today, for personal reasons.

Question agreed to.

BUSINESS

Divisions

Senator PARRY (Tasmania—Manager of Opposition Business in the Senate) (3.26 pm)—I seek leave to make a short statement and an inquiry of the government.

Leave granted.

Senator PARRY—A number of senators were aware that we were concluding at 3.30 pm, which means they will be leaving the building. Can we have a commitment that there will be no divisions from 3.30 pm onwards?

The PRESIDENT—Is there a commitment? We cannot rely on it.

Senator Ludwig interjecting—

The PRESIDENT—It depends on what I say, I think, Senator Parry!

VALEDICTORIES

The PRESIDENT (3.27 pm)—At the conclusion of an extraordinary and very busy year, I take this opportunity—

Senator Joyce interjecting—

The PRESIDENT—Order! Senator Joyce, I am on my feet. I take this opportunity at the end of the 2010 sittings to acknowledge and express my personal gratitude to the following: firstly, the Clerk of the Senate, Rosemary Laing—I would like to thank her for the dedication and professionalism she has shown in her first year as Clerk; the Acting Deputy Clerk, Cleaver Elliott, and the other clerks at the table. I thank all the senior officers of the Department of the Senate for their ongoing support and advice.

I thank all senators, and I would like to make special note of the Deputy President and Chair of Committees, Senator Alan Ferguson. I especially wish to acknowledge the close cooperation between the Deputy President and me throughout the year. I thank the temporary chairs of committees who, on a daily basis, run this chamber.

I wish to thank the Usher of the Black Rod, Brien Hallett, the Deputy Black Rod, and those others who have occupied that position this year—Nick Tate, Glenn Krause, Anthony Szell—as well as the staff of the Black Rod's Office. I thank the chamber

support staff and, in particular, the attendants and mail attendants; you do a marvellous job for all of us. The Table Office and the Procedure Office provide efficient and professional support to make for the smooth running of the Senate. I thank the staff of the committee office who consistently produce substantial and timely reports. I thank all other staff of the Department of the Senate.

I thank those in the Department of Parliamentary Services, led by Alan Thompson, including the Landscape Services staff in particular who, in looking after the courtyards and gardens, make this place such a showpiece for the nation. I also thank those in Art Services; Facilities Management; the guide service; and IT, broadcasting and Hansard staff; the Parliamentary Library and the research service under the direction of the Parliamentary Librarian, Roxanne Missingham; the International and Community Relations Office, formerly PRO, for their tremendous work with outgoing and incoming delegations and in managing parliament's international relations and assistance program; the Parliamentary Education Office who, this year, in this building, taught over 90,000 young Australians from 1,577 schools about our parliament; those who work in security and for the protective services at Parliament House; Health and Recreation Centre staff; and the Speaker, his staff and other officers of the Department of the House of Representatives.

Finally, I thank the staff of my own office, as well as my electorate office staff in Queensland and all those other people who work in Parliament House and electorate offices right around Australia.

In conclusion, I extend my best wishes to all staff and colleagues for the upcoming festive season. I look forward to seeing all of you back here in 2011. I thank the Senate.

Senator CHRIS EVANS (Western Australia—Leader of the Government in the Senate) (3.30 pm)—Firstly, I endorse your remarks and, on behalf of the government, wish all senators, their staff and all employees of the parliament a merry Christmas and a peaceful and restful break over the Christmas-New Year period.

I think we are all cognisant of the fact that it has been a pretty tough year for all those involved in federal politics. Win, lose or draw, it has been a hard, long year and I think everyone is looking forward to a break. I think signs of that tiredness were exhibited today as people maybe got a little on the testy side as the wear and tear of the year hit home. The reality, though, is that generally there is goodwill and positive relationships among senators and staff and people who serve the parliament. We all share a broad objective in the interests of Australia and the proper functioning of its democracy and, as I say, most of the time we enjoy good, positive relationships. It is also the case that we do care for and support each other, and I am sure all Labor senators are very glad to see Senator Ferguson back in ruddy good health after his scare this year, so we are all pleased to see him back. Also, we are very glad to see Senator Minchin's son come through what was obviously a horrific experience. So I do wish all senators and their staff a merry Christmas. Like the President, I also want to acknowledge all those who serve the Senate. They are too numerous to mention but they include the clerks, the attendants and everyone in the parliament. I was walking through the gardens today actually contemplating what a great job the gardeners do, what a beautiful job they do for what is a great national institution.

Senator Birmingham—Time to smell the roses!

Senator CHRIS EVANS—I was on my way to a division. The only fresh air you get is if you walk across the courtyard on the way to a division and the only exercise I get is carrying the ministerial files to question time, but I hope to fix that over the break. So to all those who work here, thank you for all your support. We know that once we leave the place runs much better—it is like a hospital without patients—and the clerks will be much happier running the show without us.

To my senators and their staff, thanks for the tremendous work effort this year and the support you have given to me and to the ministers and to the Prime Minister. Even though we make unreasonable demands of you, we really do appreciate how you people take on those demands. I would particularly like to acknowledge the whip, Anne McEwen, who has done a fantastic job after having been dropped in the deep end, and also Senator Ludwig, who continues as Manager of Government Business in the Senate. So to them and their staff, I say thank you for your support.

I conclude by saying we think everyone will be all the better for a rest and we look forward to the parliament resuming in early February. Of course, the work does not stop for members of parliament or their staff, but I think it will be at an easier pace. So I say thank you to everyone for their help during the year and I wish a merry Christmas and a restful break to all involved.

Senator BRANDIS (Queensland) (3.33 pm)—Thank you, Mr President. On behalf of the opposition, may I join with Senator Evans in wishing you and all senators the compliments of the season and best wishes for a restful summer break. It is a 10-week break this year, a little longer than usual. Perhaps after the tumultuous year that we have all experienced a long break is needed. I was just observing to Senator Fifield that the cir-

cumstances in which the Senate adjourns at the end of this year are very different from the circumstances, at least from my side's point of view, in which we adjourned last year. This has been a very good year from the point of view of the coalition and a very tumultuous year for everyone involved in politics.

It has been, from the point of view of the Senate, the first year in which we have not had Harry Evans here as the Clerk of the Senate and I want to begin by sending thanks, on behalf of the coalition, to Rosemary Laing, who has filled those big shoes in a very accomplished manner, and to the other clerks, Black Rod, committee staff, the Table Office, chamber attendants, Hansard and those who look after us including the Senate transport office, Ian and Peter, Comcar, the other parliamentary staff, the Parliamentary Library and the other staff too numerous to name. We all stand in your debt and we all wish you a restful and happy Christmas.

Can I make mention of some of my senior colleagues. This is a year which saw the retirement from the leadership of the coalition in the Senate of Senator Nick Minchin. Thank you very much, Senator Evans, for your expression of good wishes particularly for the happy recovery of his son, Oliver, from a terrible accident earlier in the year. Senator Minchin has been a marvellous leader for my side and a marvellous mentor to all coalition senators, and the appropriate statements at greater length will be made next year. We have welcomed a new leader, Senator Abetz, who has taken to the role, if I may say so, with great aplomb. I extend my thanks, my great gratitude and my best wishes for the festive season to him, to the Leader of the National Party, Senator Joyce, to Senator Parry, the Chief Whip, to the other whips and to Senator Fifield, the Manager of Opposition Business in the Senate. As for all of the coalition staff, both those in the elec-

torate offices and those who work with us here in Canberra, all of us know just how important they are to making this place work.

I mention my own staff: Travis, James, Peter, Tanya, Liam and Verity. I am very proud of them and I could not do what I do without them. I am sure we would all have that to say about our own staff in our own office.

In closing, after two days of very willing and vigorous parliamentary battle, it is a great thing to be able to end the year in the best spirit of Australian democracy on a note of good wishes, goodwill and happy Christmas.

Senator BOB BROWN (Tasmania—Leader of the Australian Greens) (3.37 pm)—On behalf of the Australian Greens I also extend season's greetings to all our fellow senators, all the officers and all the staff of this great building, who give service to this nation, and to all the people of Australia. I hope that it is a wonderful summer. I wish everybody a great deal of happiness.

I also think of those around the world who are not having the happiness that we have and who will face daunting circumstances in the coming times. It is a time to think about how we human beings interact with each other and how we can best gift each other in sharing the great plenitude of this fantastic nation, one of the four oldest continuous democracies on the face of the planet. As we move into this season thinking about goodwill to all people who on earth do dwell I wish all of you, both here and those listening, a marvellous summer, good tidings, a great time with friends, families and loved ones and a bountiful 2011.

Senator JOYCE (Queensland—Leader of the Nationals in the Senate) (3.38 pm)—First of all, Mr President, I would like to apologise for not recognising your ruling and sit-

ting down when you were standing up, but I could not see you because you were behind me!

The PRESIDENT—You should get eyes in the back of your head, Senator Joyce! It might help you!

Senator JOYCE—I will fix it up!

It has been an interesting year. As one of my friends who has nothing to do with politics said: 'How long have you been in politics for?' I said, 'About six years,' and he said, 'Mate, you have aged about 15.' And I think this year is responsible for five of them.

I would like to thank the attendants for putting up with us. You have done a great job and you are always polite. We might get a bit doughy but they never seem to fall asleep on us, which is great. I would like to thank the cleaners, especially the one who was still cleaning my room at around seven o'clock the other morning after you good people came round for a party and did not leave.

I would like to thank the people of the fourth estate, the good people in the media who convey this message out to the Australian people. It was interesting the other day when I was down at a function and a person snuck up on me who I realised was not from the media but from a very edgy group. I thought the person behind the camera was from his organisation, one that seems to blame Prince Philip and one-world government for basically everything. I said, 'Mate, are you from the fourth estate?' and he said, 'No, no, I am normal; I am from the ABC.'

I would like to thank Rosemary Laing for the great work she has done, especially since Harry left the building. I would like to thank the beaver Cleaver for all the work he does and all the other people who have done so much work. I thank Ian and Peter, who have diligently made sure we arrived here and have also made sure that we get away in

comcars. From my own side I would like to thank my friend, guide, confidant and philosopher Senator Nash, who is a tower of strength in the work that we do. And I am sure everybody else would like to thank their deputies for the power of work they do. I would like to thank Wacka, just for being here, for the grace of having an ex-shearer as a whip, and for the work he does. I would like to thank Senator Fifield for the work he does managing business. Good on you, Mitch. You have done a great job. I would also like to thank George, Eric, Chris, Bob—make the most of it, mate—Steve, Nick Xenophon and the retiring other Nick: Minchin. Most importantly I would like to thank our spouses and partners, the ever patient people who put up with this very peculiar life that we live down here. I would like to thank our children for the sacrifices they make. They have to put up with almost living in single-parent families, whether they like it or not, because they have people in their family involved in politics. I would like to thank Dougie Cameron for making the whole place entertaining! People do not understand it, but in here it is a lot like the football paddock. Once you get outside the door it is the changing room, and no-one plays football in the changing room. Although everybody might think that everyone is a partisan animal, people are actually quite good natured once they get out the door. I thank them all. I wish you all a safe and blessed Christmas. May you have a great Christmas with your family or whoever is special to you. If not, maybe you can come up to our place and we will look after you. Thank you and God bless.

Senator FIELDING (Victoria—Leader of the Family First Party) (3.42 pm)—On behalf of Family First I wish all Australians a very merry Christmas and a very safe and happy new year. We have a great democracy in Australia. Some days it looks better than

others, but it works well because the people in Parliament House—the staff in the chamber, the committees, security, the guards, the cleaners and the whole place—work extremely well. It is a credit to them also that we do have such a great democracy. They make sure that this place does work so well. A special thanks to Richard Pye and their team and also Cleaver Elliott, the chamber staff and Hansard, who always fix up a lot of my grammatical issues. I also want to wish all my colleagues a merry Christmas and a happy and safe new year.

NOTICES

Presentation

Senator Stephens to move 15 sitting days after today:

That the ASIC Market Integrity Rules (ASX Market) 2010, made under subsection 798G(1) of the *Corporations Act 2001*, be disallowed.

Senator Stephens to move 15 sitting days after today:

That the Australian Wine and Brandy Corporation (Annual General Meeting of the Industry) Amendment Regulations 2010 (No. 1), as contained in Select Legislative Instrument 2010 No. 218 and made under the *Australian Wine and Brandy Corporation Act 1980*, be disallowed.

Senator Stephens to move 15 sitting days after today:

That the Electoral and Referendum Amendment Regulations 2010 (No. 3), as contained in Select Legislative Instrument 2010 No. 227 and made under the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*, be disallowed.

Senator Stephens to move 15 sitting days after today:

That the Producer Offset Amendment Rules 2010 (No. 1), made under section 376-265 of the *Income Tax Assessment Act 1997*, be disallowed.

Senate adjourned at 3.44 pm

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Families, Housing, Community Services and Indigenous Affairs: Program Funding (Question No. 2754)

Senator Scullion asked the Minister representing the Minister for Families, Housing, Community Services and Indigenous Affairs, upon notice, on 15 March 2010:

With reference to the Council of Australian Governments' resolution to renegotiate the funding arrangements pertaining to the National Partnership Agreement on Remote Indigenous Housing, as at 1 March 2010:

- (a) what funding has been provided to each state and territory government through this agreement; and
- (b) how many houses have been constructed by each state and territory government through this agreement.

Senator Arbib—The Minister for Families, Housing, Community Services and Indigenous Affairs has provided the following answer to the Honourable Senator's question:

- (a) The National Partnership Agreement on Remote Indigenous Housing (NPARIH) provides a total national allocation of \$5.5 billion over the period of the agreement. The actual total allocations for each state and territory are subject to an ongoing competitive bids process subject to delivery of new house, rebuild and refurbishment targets.
- (b) In 2009-10, 316 new houses and 828 refurbishments were delivered across Australia (see table below). As at 22 October 2010, the most recent reports by jurisdictions stated that a further 36 new houses and 358 refurbishments have been delivered under the NPARIH this financial year and 165 new houses and 338 refurbishments are also underway.

2009-10 NPARIH New Housing Delivery				
Jurisdiction	New Housing PBS Targets	New Houses Completed	Refurbishment PBS Targets	Refurbishments Completed
NSW	50	58	50	2
QLD	65	46	150	152
SA	44	33	63	61
WA	75	78	150	150
TAS	2	0	12	12
NT	60	67	152	344
Other Delivery	24	34	10	107
Total	320	316	587	828