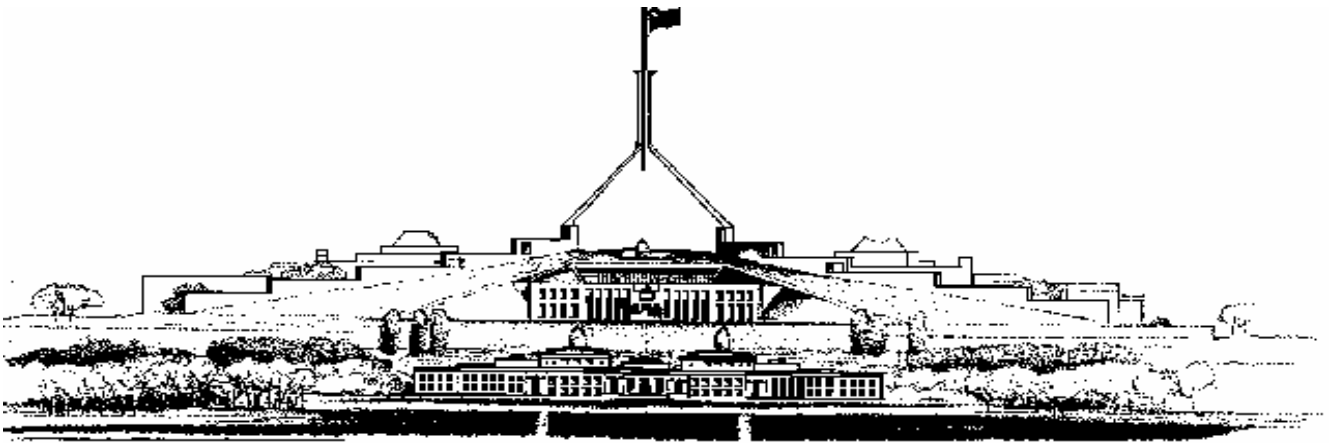




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**Senate**

**Official Hansard**

**No. 4, 2010**

**Thursday, 25 November 2010**

FORTY-THIRD PARLIAMENT  
FIRST SESSION—FIRST PERIOD

BY AUTHORITY OF THE SENATE



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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

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

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

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

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

*Leader of the Opposition in the Senate*—Senator Hon. 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

**Senate Party Leaders and Whips**

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

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

*Leader of the Liberal Party of Australia*—Senator Hon. 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 <sup>(3)</sup>	WA	30.6.2011	LP
Barnett, Guy	TAS	30.6.2011	LP
Bernardi, Cory	SA	30.6.2014	LP
Bilyk, Catryna Louise	TAS	30.6.2014	ALP
Birmingham, Simon John	SA	30.6.2014	LP
Bishop, Thomas Mark	WA	30.6.2014	ALP
Boswell, Hon. Ronald Leslie Doyle	QLD	30.6.2014	NATS
Boyce, Suzanne Kay	QLD	30.6.2014	LP
Brandis, Hon. George Henry SC	QLD	30.6.2011	LP
Brown, Carol Louise	TAS	30.6.2014	ALP
Brown, Robert James	TAS	30.6.2014	AG
Bushby, David Christopher	TAS	30.6.2014	LP
Cameron, Douglas Niven	NSW	30.6.2014	ALP
Carr, Hon. Kim John	VIC	30.6.2011	ALP
Cash, Michaelia Clare	WA	30.6.2014	LP
Colbeck, Hon. Richard Mansell	TAS	30.6.2014	LP
Collins, Jacinta Mary Ann	VIC	30.6.2014	ALP
Conroy, Hon. Stephen Michael	VIC	30.6.2011	ALP
Coonan, Hon. Helen Lloyd	NSW	30.6.2014	LP
Cormann, Mathias Hubert Paul <sup>(2)</sup>	WA	30.6.2011	LP
Crossin, Patricia Margaret <sup>(4)</sup>	NT		ALP
Eggleston, Alan	WA	30.6.2014	LP
Evans, Hon. Christopher Vaughan	WA	30.6.2011	ALP
Farrell, Donald Edward	SA	30.6.2014	ALP
Faulkner, Hon. John Philip	NSW	30.6.2011	ALP
Feeney, David Ian	VIC	30.6.2014	ALP
Ferguson, Hon. Alan Baird	SA	30.6.2011	LP
Fielding, Steve	VIC	30.6.2011	FF
Fierravanti-Wells, Concetta Anna	NSW	30.6.2011	LP
Fifield, Mitchell Peter	VIC	30.6.2014	LP
Fisher, Mary Jo <sup>(1)</sup>	SA	30.6.2011	LP
Forshaw, Michael George	NSW	30.6.2011	ALP
Furner, Mark Lionel	QLD	30.6.2014	ALP
Hanson-Young, Sarah Coral	SA	30.6.2014	AG
Heffernan, Hon. William Daniel	NSW	30.6.2011	LP
Hogg, Hon. John Joseph	QLD	30.6.2014	ALP
Humphries, Gary John Joseph <sup>(4)</sup>	ACT		LP
Hurley, Annette Kay	SA	30.6.2011	ALP
Hutchins, Stephen Patrick	NSW	30.6.2011	ALP
Johnston, Hon. David Albert Lloyd	WA	30.6.2014	LP
Joyce, Barnaby Thomas Gerard	QLD	30.6.2011	NATS
Kroger, Helen	VIC	30.6.2014	LP
Ludlam, Scott	WA	30.6.2014	AG
Ludwig, Hon. Joseph William	QLD	30.6.2011	ALP
Lundy, Kate Alexandra <sup>(4)</sup>	ACT		ALP
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 <sup>(4)</sup>	NT		CLP
Sherry, Hon. Nicholas John	TAS	30.6.2014	ALP
Siewert, Rachel Mary	WA	30.6.2011	AG
Stephens, Hon. Ursula Mary	NSW	30.6.2014	ALP
Sterle, Glenn	WA	30.6.2011	ALP
Troeth, Hon. Judith Mary	VIC	30.6.2011	LP
Trood, Russell Brunell	QLD	30.6.2011	LP
Williams, John Reginald	NSW	30.6.2014	NATS
Wong, Hon. Penelope Ying Yen	SA	30.6.2014	ALP
Wortley, Dana Johanna	SA	30.6.2011	ALP
Xenophon, Nicholas	SA	30.6.2014	IND

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

#### PARTY ABBREVIATIONS

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

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

Clerk of the Senate—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
Chairman, Scrutiny of Government Waste Committee	Mr Jamie Briggs MP
Shadow Cabinet Secretary	Hon. Philip Ruddock MP
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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*Thursday, 25 November 2010*

**The PRESIDENT (Senator the Hon. John Hogg)** took the chair at 9.30 am and read prayers and made an acknowledgement of country.

### **BUSINESS**

#### **Rearrangement**

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (9.31 am)—I seek leave to move a motion to vary the hours of meeting and routine of business for today.

Leave not granted.

#### **Suspension of Standing Orders**

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (9.31 am)—Pursuant to contingent notice standing in the name of the Leader of the Government in the Senate, Senator Evans, I move:

That so much of the standing orders be suspended as would prevent Senator Evans moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to vary the hours of meeting and routine of business for today and Friday, 26 November 2010.

The government has signalled its intention for the Telecommunications Legislation Amendment (National Broadband Network Measures—Access Arrangements) Bill 2010 to be completed this week. We finalised the program and circulated that in the chamber, and that indicated that it was essential to have this bill dealt with in this week. Having now had a number of hours for the second reading debate and the committee stage, it is time to ensure that we complete the bill before we rise this evening or—if people require additional hours—by the end of the week. It is necessary to ensure that we put

additional hours in the program to allow that to occur.

In addition, there are significant amendments that need to be progressed. We are currently in the committee stage in relation to that bill. In dealing with the committee stage, if any amendments are passed here it will be necessary for them to go over to the House for the House to deal with those amendments. If there are any messages returned, the Senate will then need to deal with those. In giving the proposed motion precedence, we seek the support of the Senate to ensure that we can finalise this bill.

If you look at the program over the last 12 months, the government has endeavoured to gain the cooperation of the opposition to ensure that we can get our legislative program dealt with in a reasonable way. The opposition have not been completely reasonable, if I can use that phrase, in ensuring that the government had sufficient time to deal with its legislative program. There are two indicia which highlight this. The first is that government business for the year to date runs at about 40 per cent of Senate time. It usually runs at about 50 per cent. Therefore, there has been about 10 per cent less government time in which to deal with legislation. The second is that the opposition have increased the number of urgency motions and matters of public importance from something in the order of between seven per cent and 15 per cent to 38 per cent. That has meant that the amount of available time for the Senate has significantly reduced.

We all know that at the end of the session it is not unusual to seek additional hours to ensure that we can deal with the legislative program. In this instance, there is but one bill that we are now pursuing with vigour to ensure that we finalise the legislative program of the government. The opposition have indicated, clearly, that they are not supportive

of this approach. Therefore, the only recourse that the government had to ensure that we can proceed was to move this motion. We need the support of the minor parties and the Independents. It would be much better to have had the opposition arrange—like we have done in the past—time for a full debate and for the debate to be continued in respect of this. The opposition have indicated time and again that they do not want to debate this bill. They are seeking to frustrate the ability of the government to finalise its legislative program and frustrate the ability of the government to finish this bill. The opposition have that right. The government also has the right to pursue its legislation as outlined.

**Senator ABETZ** (Tasmania—Leader of the Opposition in the Senate) (9.36 am)—Mr President, on a point of clarification: we are debating, as I understand it, motion No. 4 on today's *Notice Paper*. Is that correct?

**The PRESIDENT**—No, we are not. We are debating a suspension of standing orders.

**Senator ABETZ**—Thank you for that clarification. At the outset let me say this opposition has been one of the most cooperative oppositions in the history of this Senate. We have helped and assisted this government. The government claims that only 40 per cent of the Senate's time has been taken with government legislation, but that is because of one simple reason: they had no legislation to put before us. They introduced the Afghanistan motion, they introduced all sorts and manner of things, and were more than happy for private members to be given time to discuss and ventilate issues because they did not have, and still do not have, a genuine agenda to prosecute in this chamber—until now.

We had an unseemly performance last night on national TV from the Deputy Leader of the Opposition in the Senate, fresh from his debacle about the NBN not being

mentioned in the legislation that is before us, being wrong about that not once, not twice, but 62 times. He then went on national TV last night to tell us that there are some 'arcane practices' in the Senate which are delaying process of his legislation. You know what the arcane practices are: that there are still some senators gutsy enough crease the back of the legislation, to crease the spine of the explanatory memorandum and actually read them. If the minister had done that he would not have made that monumental error that Senator Joyce so ably exposed on national TV. Also, the assertion was made that this legislation has been on the *Notice Paper* since June 2009—in fact, 15 June 2009. That is just completely and utterly incorrect and it goes to show the misinformation that Labor continually peddles and that is unfortunately regurgitated by friendly elements in the media.

The simple fact is the government did not do a deal with Telstra in relation to these matters until 20 June this year and then they only presented the new legislation—significantly different from that which was tabled on 15 September 2009—when they tabled it on 20 October. We have only had five days when it has actually been on the *Notice Paper*. This is a piece of legislation which will be the first step in implementing a \$43-thousand-million infrastructure project—

**Senator Ian Macdonald**—Fifty!

**Senator ABETZ**—Senator Macdonald corrects me; each time we look at it, it goes up. That is why it is so vitally important that this legislation not be rushed. I simply remind the Greens and the minors in this place that they, in their rush to assist the government in relation to the so-called stimulus package, share the responsibility of the house fires in the pink batts debacle. They share the responsibility for the Building the Education



Revolution debacle. They share the responsibility for the green loans scandal. And they will share the responsibility for the huge burden, at over \$2,000 per man, woman and child, that is being placed on the shoulders of not only this generation but the next generation as well. That is why we say it is wise for us not to proceed in an inappropriate, indecent, hasty manner because they should have learnt the lesson of pink batts, BER, green loans—and the list goes on. But, no, they are willing to airbrush all that from their memory and say, ‘Sure, we have mucked up three or four times; let’s do it again, but with a lot bigger sum of money’—\$43-thousand-million or, indeed, \$50-thousand-million.

The summary of the business plan that we were given will be ventilated in an extensive manner by the coalition at least. To my friend Senator Xenophon, who put out a press release saying ‘Government agrees to publicly release full NBN summary’, I say that that is like saying, ‘I’ve got a full half glass of water.’ With great respect, this is accepting and adopting government spin, which is not good enough when you are dealing with a \$43-thousand-million or \$53-thousand-million project. As a result we will be opposing the motion.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (9.42 am)—That is extraordinary, isn’t it, Mr President? We have poor Senator Abetz moving to oppose a motion for a debate on sitting hours that he has not seen. But it is not too unusual for Senator Abetz to be opposing things he does not understand.

**Senator Ian Macdonald**—Move the gag. That’s what Greens do: gag debate.

**Senator BOB BROWN**—What is more, Mr President, you might note that we have bleating from his seat the even poorer Senator Macdonald, who is equally ignorant of

what the motion is that the Leader of the Government in the Senate wants to put.

**Senator Abetz**—You’re really getting into the Christmas spirit, Bob!

**Senator BOB BROWN**—Senator Abetz has mentioned Christmas. He said last night that there should be more sitting hours. I am in the mood that we should sit till Christmas if necessary. I am looking forward to the opposition being called on this. They might be changing a few pre-Christmas events.

**Senator Fifield**—We already have.

**Senator BOB BROWN**—That is excellent. We are in the spirit of giving ourselves more time here.

**Senator Ian Macdonald**—Gagging it!

**Senator BOB BROWN**—Poor Senator Macdonald is gagging, he says. That is up to him. There should be time for the debate on this. We should be enlightened by what the motion is. We will be supporting this motion so that, in the commonsense way of the Senate, it can be looked at and properly dealt with.

The opposition seem to have left the chamber—so much for attention to detail with regard to Friday morning! They are all missing except for the obligatory two senators—so much for attention to this important matter. I look forward to seeing what the government have to put before us. We support this motion, and we will support a full debate on it, if necessary, so that everybody can come to a proper arrangement for us to sit here today and, I presume tomorrow, in order to deal—(*Quorum formed*) So the opposition, having vacated the chamber, call for a quorum. As you know, Mr President, that is about as irresponsible an action as an opposition can take at this stage of the game. I presume more quorums will be called during the day because the opposition are absent from the chamber and unable to properly

take part in the debate. That is fine too. As I say, they should get ready to sit through until Christmas if we need to; I am quite happy to. I support the suspension that is inherent in this motion.

**Senator FIFIELD** (Victoria)—Manager of Opposition Business in the Senate (9.47 am)—I have to admit that I never bought the new paradigm. I always suspected that this parliament would resemble far, far too closely the previous parliaments. When there is talk of new paradigms, a new political culture and a new way of operating, you will forgive me if I am a little cynical. We saw the first episode of that last night when Senator Brown sought to gag debate in this place.

**Senator Carr**—You do a good trade in cynicism.

**The PRESIDENT**—Order! Senator Carr, it will assist if you do not interject.

**Senator FIFIELD**—Senator Conroy had to step in after Senator Brown bungled procedurally. Clearly Senator Conroy did not read the comments of Mr Swan, mentioned on the front page of the *Australian* newspaper yesterday, which were to steer clear of the Greens. The Labor Party and the Greens are in this place in an alliance. It is an alliance against accountability; it is an alliance against transparency, and that is what we saw last night. We are seeing another instalment of that today, with Senator Ludwig seeking to suspend standing orders to introduce a motion to vary the order of business today. There is a well-established pattern of business in this place, and it is the government's obligation to manage their program within that established program, which it has failed to do.

Alongside that, we on this side of the chamber are not prepared to be party to any rush of consideration of the telecommunications legislation, which has taken up part of this week. That legislation actually has not

received significant scrutiny. It is not for any lack of trying on this side of the chamber. It is because the parliament and the Australian people have been denied basic information which they need when assessing something of this magnitude—when assessing a \$42 billion or \$43 billion government program. We wanted the business case but that has been denied. We have been given an abridged version of it but that is not adequate; it is not sufficient. We have argued time and again that something of this magnitude should go to the Productivity Commission.

Even the \$16 billion Building the Education Revolution program at least gets the scrutiny of the hapless Mr Orgill. Even that program gets a modicum of objective assessment. But for something that will cost \$42 billion this government seeks to deny even the most basic elementary scrutiny. We are not minded to support—and we will not be supporting—the suspension of standing orders to consider a motion to vary the hours in this place—

**Senator Abetz**—It still hasn't been written.

**Senator FIFIELD**—It is still being written as we speak, as Senator Abetz points out. This legislation does deserve proper scrutiny. In my own portfolio of disabilities, just the concept—it is a good concept—of a national disability insurance scheme, which probably goes to a dollar figure of \$3 billion to \$5 billion, is being examined by the Productivity Commission, even before it has come into existence, just as a concept.

In my time here, I have never seen such a denial of scrutiny, such a denial of accountability. We had the farce last night of Senator Conroy on TV referring to the processes of this place, this chamber of which he is a member, as 'arcane'. But there is nothing arcane about good old-fashioned scrutiny.

There is nothing arcane about having sunlight, having the spotlight, put on government legislation. We heard a lot about Operation Sunlight, as colleagues would remember. It sounded like a North Korean concept, but we gave it the benefit of the doubt. This government was going to be better and do better than previous governments. They have failed, and we will not be supporting this motion. (*Time expired*)

**Senator XENOPHON** (South Australia) (9.53 am)—I think we know it is going to a momentous day in the Senate when Annabel Crabb graces us with her presence in the press gallery. We know something big is happening.

**Government senators**—Crawler!

**Senator XENOPHON**—I indicate that I will be supporting—

**Senator Cameron**—Crawler!

**The PRESIDENT**—Senator Xenophon, just address your remarks to the chair; ignore other distractions.

**Senator XENOPHON**—As always, Mr President. I indicate that I will be supporting the suspension of standing orders. This is an important—

**Senator Ian Macdonald**—Shame!

**Senator XENOPHON**—Senator Macdonald, whom I have a lot of time for, says ‘shame’. But the suspension allows for debate to continue through tonight and they allow for debate tomorrow for the committee stages. I think inadequate consideration—

**Senator Abetz**—No, we don’t know what the motion is.

**Senator Cormann**—We haven’t seen it.

**Senator Cash**—Have you seen it?

**Senator Abetz**—It’s giving a blank cheque.

**Senator XENOPHON**—Somehow—

*Opposition senators interjecting—*

**The PRESIDENT**—Senator Xenophon, just continue. Ignore the interjections and address your remarks to the chair. Those on my left, cease interjecting.

**Senator XENOPHON**—I think it is important that we have adequate time to debate this very important piece of legislation. We know that there are time constraints. We know that there is an issue here. The structural separation of Telstra, I believe, is in the interests of consumers. It is not sustainable to have such a vertically integrated telecommunications network, as we have in this country. The OECD acknowledges how constrained we are because of the vertical integration of Telstra.

**Senator Abetz**—What does the OECD say about the NBN?

**Senator XENOPHON**—Mr President, I am always courteous to Senator Abetz. I listen to him in silence. Perhaps he could give me the same courtesy.

I think that there are some compelling reasons why we need to deal with this legislation now. We saw what happened at the Telstra board meeting last Friday. If the deal between Telstra, the government and the NBN falls over then we will lose a golden opportunity to structurally separate Telstra and, with it, benefits to consumers in the longer term. There will be another opportunity to deal with the NBN legislation, but I think it is important that we have adequate scrutiny of this piece of legislation. What I said to the media this morning and what I said last night was that if we need to sit on Friday to deal with this then so be it. But I support the suspension of standing orders because—

**Senator Ian Macdonald**—And Saturday and Sunday?

**Senator XENOPHON**—Well, the thought of spending the weekend with Senator Macdonald is a very alluring one! But I

am not sure that that will be necessary. I support the suspension of standing orders.

**Senator Abetz**—Mr President, on a point of order: I wonder how the Senate can be debating a motion to suspend standing orders to consider a motion that has not been drafted and has not been circulated so we do not know what its contents are.

**The PRESIDENT**—That is not a point of order. There is no point of order there, Senator Abetz.

**Senator Ludwig**—On the point of order, Mr President: it is not unusual to read out the motion. When we come to that, I will read it out.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (9.57 am)—It becomes stranger by the moment, doesn't it?

**Senator Bob Brown**—It does with you!

**Senator JOYCE**—And we just heard Bob Brown interjecting. What we have—

**The PRESIDENT**—Senator Joyce, you will refer to people by their correct titles, thank you.

**Senator JOYCE**—Senator Bob Brown.

**Senator Bob Brown**—That's better.

**Senator JOYCE**—Senator Dr Bob Brown.

**Senator Bob Brown**—That's much better!

**Senator JOYCE**—It appears we are now suspending standing orders for a motion that we do not know. Apparently, it is supposed to come to us through divine inspiration! But everybody else seems to know it. It would be interesting, since they know it, for them to read out this motion into the *Hansard*. Otherwise, this is another form of that caucusing—caucusing so as to remove the right of this chamber to proper and open transparency in the delivery of the facts that are so pertinent to this piece of legislation. And

now the Greens are in unison with the government on this. The Greens now want to deliver gags. We already have a statement by Senator Bob Brown that he is prepared to sit here till Christmas. Well, so am I, Senator Brown; but the moment you move a gag you make yourself a complete and utter hypocrite, a complete and utter hypocrite—

**The PRESIDENT**—Senator Joyce, you need to withdraw that.

**Senator JOYCE**—I withdraw that he is a 'complete and utter' hypocrite—maybe just partially.

**The PRESIDENT**—No, we are not going play around. You need to withdraw.

**Senator JOYCE**—I withdraw. So if Senator Brown's word is good then he will not move for a gag today because he is prepared to sit here till Christmas, as are we. Now we will see and test his mettle. We will test his mettle and test his word. We will test his word today to see what he does. We will be able to determine from that whether Senator Dr Bob Brown is as true to his word on this issue as he will be on everything else. Or is it one thing for one group and one thing for somebody else? Is it narrowcasting, Senator Dr Bob Brown?

**Opposition senators**—Robert!

**Senator JOYCE**—Yes, Robert. Why is this such an issue? Because we apparently have this complete change in process of where we are on this piece of legislation as a result of this motion. Isn't this funding amazing? I quote:

NBN Co's funding requirement is driven by the Company's earning before interest, taxes, depreciation and amortisation (EBITDA)—

that is remarkable—

and Capex profiles, including working capital.

If you just went with the acronym, you could put it almost in a line—for \$27.1 billion of borrowings. That is what we are going to get.

We might be going to borrow more because on the next line we talk about the equity requirements:

This is based on advice from Goldman Sachs that NBN Co should be able to arrange debt funding.

That is it. That is where it stops. These are motherhood statements. This is year 9 economics. This is a cover-up. This is a total and utter cover-up and our job in this place is to ventilate this issue for the Australian people. It will be interesting today to see who actually has a genuine desire for the ventilation of this issue because the people who have to pay this money back have that right.

The Labor Party have all been up here talking to Dr Robert Brown, Senator for Tasmania, then going back, organising times and saying when they think we should be out of here by. It is all a set-up. The Australian people are being set up. The Australian people are having a snow job done on them. It is all right if you do not pretend to be as pure as the driven snow, but they do. They are all part of this process and they are going to do you over today, Australia. They are going to let you down. They are going to hide, they are going to prevaricate and they are going to guillotine. This crowd are not good for their word. They are not transparent. They are not the arbiters of light. There is no light in this. This is all tinea. That is we are getting in this show. There is no light in this place. This is what we get.

*Senator Cameron interjecting—*

**Senator JOYCE**—If you want to know what is inane, look at the rubbish you have got in this NBN Co. business case summary. We are about to spend this money so I can get on Facebook—what a relief!—and so I can download movies quicker. That is why my nation should go into this much debt. *(Time expired)*

**The PRESIDENT**—Order! I do advise the next speaker that there is a 30-minute

time limit on this debate, which means that there are probably two minutes left in the debate.

**Senator IAN MACDONALD** (Queensland) (10.02 am)—I want to use my couple of minutes to emphasise what I heard both Senator Dr Robert James Brown and Senator Xenophon say in this debate and that is that they both want a full and open debate on the NBN proposal. There are a hell of a lot of amendments to be dealt with and they need to be properly scrutinised, so I again emphasise to the parliament that both Senator Brown and Senator Xenophon have guaranteed a full, open and accountable debate, which means that neither of them will be moving the gag motion and neither of them, nor their parties and followers, will be supporting the gag debate at any time during the debate on the NBN. I want to emphasise that. Thank you, Senator Brown, and thank you, Senator Xenophon, for indicating there will be a full and open debate, which means you will not be moving and you will not be supporting a gag motion. The Greens, since time immemorial, have railed against the imposition of gags. I am sure they will not change their mind; otherwise, Senator Brown would be called a hypocrite.

**The PRESIDENT**—Order!

**Senator IAN MACDONALD**—I did not say he was a hypocrite; I said if he voted for it he would be a hypocrite, because he has spoken for so long about not supporting gags. Should it be the case that Senator Brown did change his mind and did prove what he just said now to be a complete lie, then it would show that Senator Brown would be displaying his absolute and unmitigated hypocrisy.

**The PRESIDENT**—Order! The time for the debate has expired.

Question put:

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

The Senate divided. [10.09 am]

(The President—Senator the Hon. JJ Hogg)

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

#### AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Crossin, P.M.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
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

Abetz, E.	Adams, J.
Back, C.J.	Barnett, G.
Bernardi, C.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Cormann, M.H.P.	Ferguson, A.B.
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. *	Payne, M.A.
Ronaldson, M.	Ryan, S.M.
Scullion, N.G.	Troeth, J.M.
Trood, R.B.	Williams, J.R.

#### PAIRS

Eggleston, A.	Wong, P.
Birmingham, S.	Conroy, S.M.
Mason, B.J.	Hutchins, S.P.

Williams, J.R.

O'Brien, K.W.K.

Joyce, B.

Crossin, P.M.

\* denotes teller

Question agreed to.

*Opposition senators interjecting—*

**Senator Brandis**—You spineless worm, Senator Sterle!

**The PRESIDENT**—That does not help the debate. I think that should be withdrawn.

**Senator Brandis**—I withdraw.

**Senator Abetz**—Mr President, I was wondering if you could explain to us, for absolute clarity, the motion that has now been circulated. Paragraph 3 says:

The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 be called on immediately and have precedence over all other business ...

Does that mean that question time today will not take place?

**The PRESIDENT**—Senator, there is no point of order in the sense that the motion has not been moved and it is not my job as the Presiding Officer to explain the motion. It is a matter for the debate of the chamber, and I will leave it to the debate of the chamber.

**Senator Ian Macdonald**—Mr President, I have a most serious point of order to raise, and I have some hesitation in doing it, because I do not like pointing the finger at my colleagues. Two of our colleagues have just said they would not curtail debate. This motion that they have indicated—

*Honourable senators interjecting—*

**The PRESIDENT**—Wait a minute, Senator Macdonald. There is an exchange across the chamber and I am trying to listen to you.

**Senator Ian Macdonald**—This motion, which they have both indicated they will support, clearly indicates they will curtail debate. I point out to you, Mr President, that both senators have deliberately misled this

chamber and should be dealt with by you accordingly.

**The PRESIDENT**—That is not a point of order.

### Rearrangement

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (10.13 am)—I move:

That a motion to vary the hours of meeting and routine of business for today and Friday, 26 November 2010 may be moved immediately and have precedence over all other business today till determined.

I also move:

That the question be now put.

**The PRESIDENT**—The question is that the question be now put.

**Senator Abetz**—So we cannot move an amendment?

*Opposition senators interjecting—*

**The PRESIDENT**—It is a procedural motion. The question is—

**Senator Abetz**—On a point of order, just so it is completely clear—

**The PRESIDENT**—Senator Brown, you may resume your seat because I am listening to Senator Abetz, but I cannot listen to Senator Abetz—

*Honourable senators interjecting—*

**The PRESIDENT**—Senator Abetz is entitled to be heard in silence—on both sides.

*Honourable senators interjecting—*

**The PRESIDENT**—This does not help the process that is going on in this chamber this morning. I call Senator Abetz.

**Senator Abetz**—I will not pursue the point of order.

**Senator BOB BROWN** (Tasmania—Leader of the Australian Greens) (10.15 am)—I ask that the clerk read the motion.

**The PRESIDENT**—The question is that the motion be given precedence and that the question be now put. That is the issue that is before the chair at this moment.

*Opposition senators interjecting—*

The Senate divided. [10.20 am]

(The President—Senator the Hon. JJ Hogg)

Ayes..... 34

Noes..... 32

Majority..... 2

### AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Crossin, P.M.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
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

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

## PAIRS

Eggleston, A.	Wong, P.
Birmingham, S.	Conroy, S.M.
Mason, B.J.	Hutchins, S.P.
Williams, J.R.	O'Brien, K.W.K.
Joyce, B.	Crossin, P.M.

\* denotes teller

Question agreed to.

**The PRESIDENT**—The question now is in respect of the giving of precedence.

The Senate divided. [10.24 am]

(The President—Senator the Hon. JJ Hogg)

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

## AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Crossin, P.M.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
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

Abetz, E.	Adams, J.
Back, C.J.	Barnett, G.
Bernardi, C.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Coonan, H.L.
Cormann, M.H.P.	Ferguson, A.B.
Fierravanti-Wells, C.	Fifield, M.P.
Fisher, M.J.	Heffernan, W.
Humphries, G.	Johnston, D.
Kroger, H.	Macdonald, I.

McGauran, J.J.J.	Minchin, N.H.
Nash, F.	Parry, S. *
Payne, M.A.	Ronaldson, M.
Ryan, S.M.	Scullion, N.G.
Troeth, J.M.	Trood, R.B.

## PAIRS

Eggleston, A.	Wong, P.
Birmingham, S.	Conroy, S.M.
Mason, B.J.	Hutchins, S.P.
Williams, J.R.	O'Brien, K.W.K.
Joyce, B.	Crossin, P.M.

\* denotes teller

Question agreed to.

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (10.26 am)—I intend to move:

That:

- (1) On Thursday, 25 November 2010, the hours of meeting shall be 9.30 am to 7 pm and 7.30 pm to 10 pm.
- (2) The Senate meet on Friday, 26 November 2010, and that the hours of meeting shall be 9 am to 3.30 pm.
- (3) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 be called on immediately and have precedence over all other business until determined, except at 2 pm on Thursday, 25 November 2010, questions without notice shall be asked for one hour.
- (4) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 shall be considered under a limitation of debate.
- (5) The time allocated for the remaining stages of the bill shall be as follows:
  - (a) committee of the whole—until 11.45 am, on Friday, 26 November 2010;
  - (b) all remaining stages—until noon, on Friday, 26 November 2010; and
  - (c) this order operate as an allocation of time under standing order 142.
- (6) At the conclusion of the consideration of the business listed in paragraph (3), the order of business be:



- (a) tabling of a report of the Selection of Bills Committee;
- (b) consideration of the following government business notices of motion:  
 No. 1 – Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) – Introduction of the National Vocational Education and Training Regulator Bill 2010—

**Senator Abetz**—Should government business notice of motion No. 1 read ‘regulator bill’ or ‘regulatory bill’?

**Senator LUDWIG**—You can read.

**Senator Abetz**—Mr President, on a point of order: the minister is purportedly reading to the Senate a motion which has been circulated, and there is now a discrepancy between that which he read and that which is printed. I would seek clarification as to what the wording ought to be.

**The PRESIDENT**—I have no idea of what the correct title is. I will get the minister to clarify that.

**Senator LUDWIG**—No. 2 reads:

Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans)—Introduction of the National Vocational—

**Senator Abetz**—Mr President, on a point of order: I sought clarification in relation to government business notice of motion No. 1.

*Government senators interjecting—*

**Senator Abetz**—No, you said No. 2, and I raised a point of order in relation to No. 1. So, if we could have clarification of No. 1, that would be helpful.

**The PRESIDENT**—I am sure that the minister will clarify that.

**Senator Cormann**—Mr President, I rise on a point of order. The motion that the minister is reading out is at variance with the motion that I have got in front of me. I am totally confused as to what the government is actually proposing to do this morning. Can

he please be asked to provide some clarification?

**The PRESIDENT**—It is correct within the standing orders for the motion to be read. If there is a difference between what has been circulated and what the minister is reading then I can only take it that what the minister is reading is the true and proper version. I think that is the correct way.

**Senator Ian Macdonald**—Mr President, I rise on a point of order. We just voted previously on two motions to immediately put a motion. The motion that was circulated to us as what would be put is not the one he was reading out, but the one that is on our desks. The previous two motions that have been voted upon related to the document that was on our tables when he moved that motion. So those two motions do not take account—

*Government senators interjecting—*

**Senator Ian Macdonald**—Mr President, let me finish. Let me develop my point of order. The two previous motions related to a document on our tables and so we voted accordingly. Perhaps if we had known it was different we might have voted a different way. And so, I think those previous two motions are invalid, and do not apply to the motion before the chair.

**Senator Bob Brown**—It is quite clear, and it has always been the fact, that a motion read is the motion that we are dealing with. A motion circulated may be at variance to that, but I would ask you, Mr President—

*Honourable senators interjecting—*

**The PRESIDENT**—Order! Senator Brown, this is not a time for debate. If you have finished your point of order—

**Senator Bob Brown**—Thank you. If the attendants might circulate a pencil each to the opposition so that they can get it right as the motion is read out—

**The PRESIDENT**—Senator Brown, that is not a point of order.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! When everyone is ready we will proceed.

**Senator Brandis**—Mr President, on Senator Macdonald's point of order: the motion for which the Senate just voted was a motion that the motion be put. Not that 'a motion be put' in relation to precedence but that 'the motion be put'. The only motion before the Senate at the time that motion was put and determined was not the motion which Minister Ludwig is now reading. The motion that Minister Ludwig is now reading is not the motion that the Senate gave leave to put. He is out of order and you should sit him down.

**The PRESIDENT**—Senator Brandis, that is a completely wrong construction on that. The motion was simply a motion seeking precedence; it did not stipulate the motion. It was a matter of precedence and that the motion be put that would allow precedence to take place. That is what the motion was and that was quite within order.

**Senator Brandis**—Mr President, I rise on a point of order. Can the clerk read the motion that was just put and deliberated upon by the Senate, because I think you will find it was a motion that the motion be put.

**Senator Carr**—We know exactly what your game plan is! Waste as much time as possible.

**Senator Abetz**—You are showing all the temperament of North Korea!

**Senator Carr**—How is uncle Otto going?

*Honourable senators interjecting—*

**The PRESIDENT**—Order! Just wait a minute.

**Senator Ian Macdonald**—Mr President, I rise on a point of order about the conduct of

Minister Carr, impugning improper motives. I ask that you ask him to apologise and withdraw.

**The PRESIDENT**—Senator Macdonald, there is so much shouting going across this chamber that I am not able to hear. There is no point of order on what you have raised.

### **Suspension of Standing Orders**

**Senator BRANDIS** (Queensland) (10.34 am)—I seek leave to move:

That the Senate take note of the ruling of the President.

Leave not granted.

**Senator BRANDIS** (Queensland) (10.34 am)—I move:

That so much of the standing orders be suspended as would prevent Senator Brandis from moving a motion to take note of the President's explanation of the proceedings to this point.

Mr President, without reflecting on your ruling—which I do not do—the fact is that the motion upon which the Senate lately deliberated was a motion that the motion be put.

The motion that was before the chamber at the time that motion was deliberated upon was not the motion that Minister Ludwig is now reading. And we know what this is all about because in the original motion, the only motion that was before the chamber at the time the question was put, was a guillotine motion which would have included, among other things, eliminating question time. Plainly, embarrassed by the revelation that that motion would have eliminated question time, the government sought late in the piece to change the motion to reinstate question time. But you know, Mr President, and every senator present in this chamber is well aware, that the government's original plan was to eliminate question time.

Everyone accepts that both sides of this chamber when in government have on occasions moved the guillotine, moved the gag.

That charge has been levelled against us in interjections from the government benches, and it is true. During the Howard government, we moved the guillotine on a number of occasions, but never—and I think you will find, if you look at the precedent books, not once in the history of the Australian Senate—has a guillotine motion eliminated question time. This is a new depth in parliamentary practice which has been imposed by this government with the willing connivance of the Greens—whose heroic talk about parliamentary scrutiny, the role of the Senate and transparency in government is revealed for the fraud that it is—and, I am sorry to say, with the connivance and support of Senator Xenophon and Senator Fielding as well. They perhaps, to give them the benefit of the doubt, may have been lulled into not appreciating that the motion before the chamber at the time was to eliminate question time. So let the record show that today, 25 November 2010, for the first time in the history of this Senate, an Australian government, in moving the guillotine, sought to eliminate question time. How can any Labor senator or any Greens senator ever again, without obvious hypocrisy, talk about openness in government, parliamentary scrutiny or transparency?

If it is possible that it could be worse than that, it is, because we know that this was a pre-ordained plan. Senator Conroy, the stupidest person in this place, gave it away yesterday.

**The PRESIDENT**—Senator Brandis, you cannot—

**Senator BRANDIS**—I withdraw.

**The PRESIDENT**—Thank you.

**Senator BRANDIS**—Senator Conroy gave it away yesterday when at the end of question time he merrily waved across to the opposition benches and said, ‘Happy Christmas. See you next year.’ So Senator

Conroy was in on the fix. He well knew that there would be no question time today, Thursday. That is why at the end of question time yesterday it caused some of us to be a little curious, I might say, as to why Senator Conroy would anticipate that he would not be here to answer questions the next day. The reason was that the government had already decided as early as question time yesterday that yesterday’s question time would be the last question time of the year.

Now, we can understand why this government would want to protect from scrutiny a struggling, weak and failing minister in Senator Stephen Conroy—

*Senator Johnston interjecting—*

**Senator BRANDIS**—A man overboard indeed, Senator Johnston. But to stoop to a new low in Australian parliamentary democracy, to actually vote to suspend the standing orders so that there could be no question time, reasonably expecting that the question time would be largely directed to the minister—the weak, struggling, failing, hopeless, flailing minister they were trying to protect—is unprecedented. Mr President, the ruling you have given, while I do not reflect upon it, was a ruling in relation to a motion that the question be put. The only question that this Senate has decided is that the motion—*(Time expired)*

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (10.40 am)—I move:

That the question be now put.

The Senate divided. [10.44 am]

(The President—Senator the Hon. JJ Hogg)

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

## AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Crossin, P.M.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
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

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

## PAIRS

Eggleston, A.	Wong, P.
Birmingham, S.	Conroy, S.M.
Mason, B.J.	Hutchins, S.P.
Williams, J.R.	O'Brien, K.W.K.
Joyce, B.	Crossin, P.M.

\* denotes teller

Question agreed to.

**Senator Brandis**—Mr President, I rise on a point of order. Are we moving my motion? Senator Ludwig moved a motion that the motion be put. I am moving my motion to suspend standing orders.

**The PRESIDENT**—That is exactly right. I now put the question. We will now vote on it.

**Senator Brandis**—On my motion to suspend standing orders?

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

The Senate divided. [10.52 am]

(The President—Senator the Hon. JJ Hogg)

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

## AYES

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

## NOES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Evans, C.V.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
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.  
Stephens, U.  
Wortley, D.

Siewert, R.  
Sterle, G.  
Xenophon, N.

#### PAIRS

Eggleston, A.  
Birmingham, S.  
Mason, B.J.  
Williams, J.R.  
Joyce, B.

Wong, P.  
Conroy, S.M.  
Hutchins, S.P.  
O'Brien, K.W.K.  
Crossin, P.M.

\* denotes teller

Question negatived.

#### Rearrangement

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry) (10.54 am)—The remaining terms of the motion have been circulated headed ‘Revised’. The correct terms of the motion are those which have been circulated headed ‘Revised’. I now move:

That:

- (1) On Thursday, 25 November 2010, the hours of meeting shall be 9.30 am to 7 pm and 7.30 pm to 10 pm.
- (2) The Senate meet on Friday, 26 November 2010, and that the hours of meeting shall be 9 am to 3.30 pm.
- (3) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 be called on immediately and have precedence over all other business until determined, except at 2 pm on Thursday, 25 November 2010, questions without notice shall be asked for one hour.
- (4) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 shall be considered under a limitation of debate.
- (5) The time allocated for the remaining stages of the bill shall be as follows:
  - (a) committee of the whole—until 11.45 am, on Friday, 26 November 2010;
  - (b) all remaining stages—until 12 noon, on Friday, 26 November 2010; and
  - (c) this order operate as an allocation of time under standing order 142.

- (6) At the conclusion of the consideration of the business listed in paragraph (3), the order of business be:

- (a) tabling of a report of the Selection of Bills Committee;

- (b) consideration of the following government business notices of motion:

No. 1 – Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) – Introduction of the National Vocational Education and Training Regulator Bill 2010

No. 2 – Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) – Introduction of the National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010

No. 3 – Minister for Innovation, Industry, Science and Research (Senator Carr) – Exemption of bills from the provisions of standing order 111 (5) to (8) concerning the consideration of legislation (Corporations Amendment (Sons of Gwalia) Bill 2010; and Financial Framework Legislation Amendment Bill 2010)

No. 5 – Parliamentary Secretary for Sustainability and Urban Water (Senator Farrell) – Approval of works within the Parliamentary Zone (external expansion to the Abacus childcare centre at the Treasury building); and

- (c) consideration of the following government business orders of the day:

No. 4–Airports Amendment Bill 2010

No. 5–Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010

No. 6–Radiocommunications Amendment Bill 2010

No. 7–Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010

Corporations Amendment (Sons of Gwalia) Bill 2010

No. 8—Health Insurance Amendment  
(Pathology Requests) Bill 2010

Financial Framework Legislation  
Amendment Bill 2010

No. 9—Therapeutic Goods Amendment  
(2010 Measures No. 1) Bill 2010

No. 10—Territories Law Reform Bill  
2010

(7) Notices of motion may be lodged in writing  
on Friday, 26 November 2010.

I move:

That the question be now put.

**Senator Cormann**—Mr President, I raise a point of order. It is still unclear what motion is actually before the Senate at present because there are two different motions floating around.

**Senator Ludwig**—I said ‘Revised’.

**The PRESIDENT**—I understand from side comments I hear that the motion is headed ‘Revised’. All I can do is give you the information; I cannot enter into the debate.

**Senator Cormann**—Thank you, Mr President. I seek leave to take note of the information that you have just provided to the Senate.

**The PRESIDENT**—No, I give information—

**Senator Cormann**—Mr President, I seek leave to take note of your ruling.

**The PRESIDENT**—It is not a ruling.

**Senator Cormann**—You have just said no.

**Senator Brandis**—Mr President, it is a ruling whether it is described as such or not because Senator Cormann raised a point of order. You have disposed of his point of order with the remarks you have just made. That is a ruling whether described as such or not.

**Senator Chris Evans**—On the point of order, Mr President, as the opposition well know, they queried the resolution being put. Senator Ludwig explained across the chamber and the President formally advised the chamber of that information so as to answer Senator Cormann’s query. There is no point of order on this point raised by Senator Brandis. The chamber is aware of the resolution that has been put and it ought to be put.

**Senator Brandis**—The chamber is not.

**Senator Chris Evans**—Senator Brandis, I cannot help you keep up if you are not prepared to keep up.

**The PRESIDENT**—There is no point of order.

**Senator Cormann**—Mr President, on a point of order, you provided me with information and I sought leave for the Senate to take note of the information you provided to the Senate.

**The PRESIDENT**—We are in the middle of another motion that is before the chair, and that is that the motion be put.

**Senator Fifield**—Mr President, I raise a point of order. There is no clarity at all. So far there have been two documents circulated and also Senator Ludwig before the previous procedural motion was halfway through reading his motion. So we now have two written motions before the chamber and a motion which was read halfway. So we now have three motions potentially before the chamber.

**Senator Bob Brown**—Mr President, I draw your attention to standing order 199. It reads:

1. The motion that the question be now put is not open to debate or amendment and shall be forthwith put by the President and determined.

**The PRESIDENT**—The motion before the chair is that the motion be put.

**Senator Cormann**—Mr President, I rise on a point of order. The consistent advice that I have received from the Clerk right from the day when I started is that at any one point of the procedure an individual senator can seek leave and the chamber can decide whether to give or deny leave. I ask you to put the question as to whether I have leave to take note of the information that you have provided to the Senate.

**The PRESIDENT**—I understood that that has already been resolved. Senator Brandis, I am not sure what your point of order is, but we will come back to it in a moment. The question is that the question be now put. That is the question before the chair.

**Senator Cormann**—Mr President, I move that so much of standing orders be suspended—

**The PRESIDENT**—No, I am not entertaining that. I have to abide by the standing orders. The question is that the question be now put. Those of that opinion—

**Senator Brandis**—What is the question?

**The PRESIDENT**—The question is that the question be now put. That is the question.

**Senator Brandis**—Mr President, Senator Cormann raised with you a point of order. You made some observations in relation to the point of order. Senator Cormann then sought leave to take note of your ruling. You said: ‘I haven’t made a ruling. I’ve merely provided information.’ I then took another point of order, my point of order being that, regardless of whether or not you characterised what you said as providing information, you had disposed of Senator Cormann’s point of order and therefore that was a ruling, whether described as such or not. I have not had a ruling on my point of order.

**The PRESIDENT**—Senator Brandis, I have ruled that there is a motion before the

chair. The motion before the chair is that the question be put. In accordance with standing orders, I will be dispensing with that question before the chair.

**Senator Cormann**—Mr President, I seek leave to move that the Senate take note—

**The PRESIDENT**—No, I do not have to entertain that. The question is that the motion—

**Senator Brandis**—Mr President, a senator may seek leave to do anything at any time. If leave is refused, he may then move to suspend standing orders if he so chooses. Mr President, I maintain that you have given a ruling on Senator Cormann’s point of order. But whether that be right or wrong, you have certainly given a ruling on my point of order. Senator Cormann is perfectly at liberty to seek leave to take note of your ruling on my point of order, which, as I understand it, is what he has done. The fact that he has done so is currently the question before the chair.

**The PRESIDENT**—Senator Brandis, there is no point of order. The question before the chair is that the motion be put.

**Senator Ronaldson**—Mr President, the scenario that has been put to you by Senator Brandis and Senator Cormann is exactly the scenario upon which the Senate went to two divisions some 10 minutes ago. The circumstances are exactly the same. There is no difference between the motion put by Senator Brandis and the motion put by Senator Cormann. If you are now refusing to take Senator Cormann’s motion, that is a completely inconsistent ruling.

**The PRESIDENT**—The question before the chair is quite clearly that the motion be put, which is a closure motion. A closure motion is not subject to further debate and has to be put. I will put that motion.

**Senator Brandis**—Senator Cormann moved a motion and that motion is now the question before the chair.

**The PRESIDENT**—No. That question has not been accepted as being before the chair because I already have a question before the chair, which is a closure motion that I need to put.

**Senator Cormann**—Mr President, I rise on a point of order. I moved a motion that so much of standing orders be suspended as would prevent me from taking note of your ruling. So we have to deal with my motion to suspend standing orders.

**The PRESIDENT**—Senator Cormann, that is not correct.

**Senator Bob Brown**—Through all the gag motions moved through the Howard years, I have never seen this process before. The rule that I read to you, rule 199, says that you—

**The PRESIDENT**—This is a point of order?

**Senator Bob Brown**—Yes, it is. The point of order is that you have to put this motion forthwith. All this is against the standing orders, Mr President. I ask you to abide by the standing orders and put the motion forthwith.

**The PRESIDENT**—Senator Brown, I will be putting the motion forthwith.

**Senator Brandis**—Mr President, I direct your attention to standing order 197(3). It reads:

A question of order or a matter of privilege so raised suspends the consideration and decision of every other question until determined.

Senator Cormann has raised a question of order. The moment that he raised that question of order, the consideration of every other question was suspended, including Senator Ludwig's motion.

**The PRESIDENT**—There is no point of order. The question is that the motion be put.

**Senator Brandis**—I move that the Senate take note of your ruling.

**The PRESIDENT**—Senator Brandis, I have an obligation to put the motion that the question be put. That is what I will be doing, Senator Brandis. I will be putting the closure motion. How people deal with the matter after it has been put to the vote is something for the Senate to determine.

**Senator Abetz**—Mr President, it does seem that there is a lot of merit in Senator Brandis's point of order in relation to standing order 197(3), which says:

A question of order ... so raised suspends the consideration and decision of every other question until determined.

There is no other way, with respect, Mr President, that that can be read other than: if there is a point of order raised, that does need to be dealt with. In those circumstances I would be obliged if you would reconsider your ruling.

**The PRESIDENT**—As I said before, there is no point of order. My obligation is to put the motion that sees the closure. There are other mechanisms that can be used in this debate if people wish to use them, but I have to put the motion. The motion is: that the question be now put.

Question put.

The Senate divided. [11.12 am]

(The President—Senator the Hon. JJ Hogg)

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

AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.



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

## NOES

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

## PAIRS

Hutchins, S.P.	Eggleston, A.
O'Brien, K.W.K.	Birmingham, S.
Carr, K.J.	Fierravanti-Wells, C.
Farrell, D.E.	Williams, J.R.
Sherry, N.J.	Joyce, B.

\* denotes teller

Question agreed to.

**The PRESIDENT**—The question now is that the motion moved by Senator Ludwig be agreed to.

**Senator Abetz**—Mr President, under standing order 195, could the Clerk please read out the motion?

**The PRESIDENT**—I can invoke the ruling of President Calvert on this matter, which is simply that the motion, as I understand,

has been circulated in the chamber and Senator Calvert has—

**Senator Cormann**—Which one?

**The PRESIDENT**—It is the revised motion. We will get the Clerk to read it.

**The Clerk**—The motion before the chamber is as follows. It is headed 'Revised: motion circulated in the chamber on 25 November 2010'.

**Senator Cormann**—I cannot hear.

**The Clerk**—The motion before the chamber is headed: 'Revised: motion circulated in the chamber on 25 November 2010'. The motion is:

That:

- (1) On Thursday, 25 November 2010, the hours of meeting shall be 9.30 am to 7 pm and 7.30 pm to 10 pm.
- (2) The Senate meet on Friday, 26 November 2010, and that the hours of meeting shall be 9 am to 3.30 pm.
- (3) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 be called on immediately and have precedence over all other business until determined, except at 2 pm on Thursday, 25 November 2010, questions without notice shall be asked for one hour.
- (4) The Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 shall be considered under a limitation of debate.
- (5) The time allocated for the remaining stages of the bill shall be as follows:
  - (a) committee of the whole—until 11.45 am, on Friday, 26 November 2010;
  - (b) all remaining stages—until 12 noon, on Friday, 26 November 2010; and
  - (c) this order operate as an allocation of time under standing order 142.
- (6) At the conclusion of the consideration of the business listed in paragraph (3), the order of business be:

- (a) tabling of a report of the Selection of Bills Committee;
- (b) consideration of the following government business notices of motion:

No. 1 – Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) – Introduction of the National Vocational Education and Training Regulator Bill 2010

No. 2 – Minister for Tertiary Education, Skills, Jobs and Workplace Relations (Senator Evans) – Introduction of the National Vocational Education and Training Regulator (Transitional Provisions) Bill 2010

No. 3 – Minister for Innovation, Industry, Science and Research (Senator Carr) – Exemption of bills from the provisions of standing order 111 (5) to (8) concerning the consideration of legislation (Corporations Amendment (Sons of Gwalia) Bill 2010; and Financial Framework Legislation Amendment Bill 2010)

No. 5 – Parliamentary Secretary for Sustainability and Urban Water (Senator Farrell) – Approval of works within the Parliamentary Zone (external expansion to the Abacus childcare centre at the Treasury building); and

- (c) consideration of the following government business orders of the day:

No. 4–Airports Amendment Bill 2010

No. 5–Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010

No. 6–Radiocommunications Amendment Bill 2010

No. 7–Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill 2010

Corporations Amendment (Sons of Gwalia) Bill 2010

No. 8–Health Insurance Amendment (Pathology Requests) Bill 2010

Financial Framework Legislation Amendment Bill 2010

No. 9–Therapeutic Goods Amendment (2010 Measures No. 1) Bill 2010

No. 10–Territories Law Reform Bill 2010

- (7) Notices of motion may be lodged in writing on Friday, 26 November 2010.

**Senator Abetz**—Mr President, seeking clarification, does that mean that this motion cannot be amended now that we have passed those procedural—

**The PRESIDENT**—I understand that the debate on the motion has closed and that the motion will now be put.

**Senator Abetz**—And, therefore, we will not be able to take note of answers later on today, if this motion gets carried?

**Senator Bob Brown**—Correct.

**Senator Abetz**—Senator Brown says, ‘Correct.’ I hope that is in *Hansard*. Thank you very much.

Question put:

That the motion (**Senator Ludwig’s**) be agreed to.

The Senate divided. [11.24 am]

(The President—Senator the Hon. JJ Hogg)

Ayes.....	37
Noes.....	35
Majority.....	2

#### AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
Ludlam, S.	Ludwig, J.W.

Lundy, K.A.  
McEwen, A. \*  
Milne, C.  
Polley, H.  
Sherry, N.J.  
Stephens, U.  
Wong, P.  
Xenophon, N.

Marshall, G.  
McLucas, J.E.  
Moore, C.  
Pratt, L.C.  
Siewert, R.  
Sterle, G.  
Wortley, D.

## NOES

Abetz, E.  
Back, C.J.  
Bernardi, C.  
Boyce, S.  
Bushby, D.C.  
Colbeck, R.  
Cormann, M.H.P.  
Fierravanti-Wells, C.  
Fisher, M.J.  
Humphries, G.  
Joyce, B.  
Macdonald, I.  
McGauran, J.J.J.  
Nash, F.  
Payne, M.A.  
Ryan, S.M.  
Troeth, J.M.  
Williams, J.R.

Adams, J. \*  
Barnett, G.  
Boswell, R.L.D.  
Brandis, G.H.  
Cash, M.C.  
Coonan, H.L.  
Ferguson, A.B.  
Fifield, M.P.  
Heffernan, W.  
Johnston, D.  
Kroger, H.  
Mason, B.J.  
Minchin, N.H.  
Parry, S.  
Ronaldson, M.  
Scullion, N.G.  
Trood, R.B.

## PAIRS

Hutchins, S.P.  
O'Brien, K.W.K.  
\* denotes teller

Eggleston, A.  
Birmingham, S.

Question agreed to.

**Suspension of Standing Orders**

**Senator BRANDIS** (Queensland) (11.27 am)—Mr President, I seek leave to move a motion to amend the revised order of business.

**The PRESIDENT**—Is leave granted?

**Government senators**—No!

Leave not granted.

**Senator BRANDIS** (Queensland) (11.27 am)—I move:

That so much of the standing orders be suspended as would prevent Senator Brandis moving a motion to vary the order for the hours of meet-

ing and routine of business for today and Friday, 26 November 2010

Mr President, the order of business that has just been decided upon by the Senate as a result of the division is now, in effect, the 'Red' for the next two days, and the opposition—or, indeed, any senator—may amend the 'Red'.

The amendments that the opposition proposes are these: in paragraph (3) there be added the words 'and a 30-minute debate for motions to take note of answers to questions', after (2) there be added (2A) 'The Senate shall meet on Saturday, 27 November 2010 and that the hours of meeting shall be 9 am to 3.30 pm', in (5)(a) the words and expressions '11.45 am' be deleted and the words and expressions '3.30 pm' be inserted in their place, in (5)(b) the words '12 noon, on Friday 26 November 2010' be omitted and in substitution for them there be inserted the words '12 noon, on Saturday 27 November 2010'.

The opposition embarks on this course with reluctance, but aware of the gravity of the situation. It is the consequence of the motion that the Senate has lately carried that, were the Senate to dispose of the business as is currently scheduled, then the Senate would not have the opportunity for appropriate scrutiny of this legislation. Before I come to that—

**Senator Chris Evans**—You've just wasted two hours!

**Senator BRANDIS**—We are entitled, Senator Evans, to move whatever procedural motions are appropriate to protect the right of this Senate to have proper scrutiny of the largest expenditure of public works in Australian history. It is the opposition that is proposing that the Senate meet on Saturday—

**Senator Chris Evans**—Too late, mate! Too late!

**Senator BRANDIS**—Watch your politics, Senator Evans, it ill becomes you.

**Senator Conroy**—One year! One year this bill has been on the *Notice Paper*. It has been sitting on the table for one year!

**The PRESIDENT**—Senator Conroy!

**Senator BRANDIS**—That's a lie, Senator Conroy. Let me take Senator Conroy's interjection, Mr President, because last night on the *Lateline* program Senator Conroy—either through ignorance or malice, I'm not sure—misled the Australian people. He claimed that this bill has been on the Senate *Notice Paper* for one year, and that claim is false.

*Senator Conroy interjecting—*

**Senator BRANDIS**—That claim is false. A bill of the same name as the bill currently before the Senate was on the Senate *Notice Paper* a year ago.

**Senator Conroy**—A year ago! One year! One year! We moved this over a year ago, you hypocrite!

**Senator BRANDIS**—But Senator Conroy, who makes a habit, as viewers of Sky News would be well aware, of not knowing what is in his own legislation, is ignorant—

**Senator Conroy**—One year, you hypocrite!

**The PRESIDENT**—Senator Conroy, that needs to be withdrawn.

**Senator Conroy**—I withdraw.

**Senator BRANDIS**—Senator Conroy—who, as viewers of Sky News would be aware, makes a habit of being ignorant of the content of his own legislation—is unaware, evidently, that the bill that was on the *Notice Paper* a year ago, which bears the same name as the bill currently before the chamber, is entirely different. It was a different bill with the same name—not the same bill. Even a person of Senator Conroy's limited

intelligence could understand that the fact that a bill bears the same name as an earlier bill does not make it the same bill. Senator Conroy is evidently entirely unaware of the fact that the claim he made on *Lateline* last night was false. It seems that it is *Lateline*, one, *Sky News Agenda*, one, when it comes to exposing the ignorance of the minister.

That having been said, the opposition is determined to ensure that there is proper scrutiny of this legislation. So we propose that the order of business be amended so that the Senate sits on Saturday and so that all of the time allowed for sitting tomorrow—not just the time until noon—be allowed for deliberation in the Senate on this bill. We know what the government's game is. The government's game is to conceal from parliamentary scrutiny this legislation, just as they have concealed from parliamentary scrutiny the business case. (*Time expired*)

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry) (11.32 am)—I move:

That the question be now put.

Question put.

The Senate divided. [11.36 am]

(The President—Senator the Hon. JJ Hogg)

Ayes.....	37
Noes.....	<u>35</u>
Majority.....	<u>2</u>

#### AYES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
Ludlam, S.	Ludwig, J.W.

Lundy, K.A.  
McEwen, A. \*  
Milne, C.  
Polley, H.  
Sherry, N.J.  
Stephens, U.  
Wong, P.  
Xenophon, N.

Marshall, G.  
McLucas, J.E.  
Moore, C.  
Pratt, L.C.  
Siewert, R.  
Sterle, G.  
Wortley, D.

## NOES

Abetz, E.  
Back, C.J.  
Bernardi, C.  
Boyce, S.  
Bushby, D.C.  
Colbeck, R.  
Cormann, M.H.P.  
Fierravanti-Wells, C.  
Fisher, M.J.  
Humphries, G.  
Joyce, B.  
Macdonald, I.  
McGauran, J.J.J.  
Nash, F.  
Payne, M.A.  
Ryan, S.M.  
Troeth, J.M.  
Williams, J.R.

Adams, J. \*  
Barnett, G.  
Boswell, R.L.D.  
Brandis, G.H.  
Cash, M.C.  
Coonan, H.L.  
Ferguson, A.B.  
Fifield, M.P.  
Heffernan, W.  
Johnston, D.  
Kroger, H.  
Mason, B.J.  
Minchin, N.H.  
Parry, S.  
Ronaldson, M.  
Scullion, N.G.  
Trood, R.B.

## PAIRS

Hutchins, S.P.  
O'Brien, K.W.K.

Eggleston, A.  
Birmingham, S.

\* denotes teller

Question agreed to.

**Senator IAN MACDONALD** (Queensland) (11.39 am)—Mr President, I seek to leave to move a motion in relation to the hours of sitting which will, in effect, delete from paragraph 2 the words:

... that the hours of meeting shall be 9 am to 3.30 pm.

and include the words 'shall continue until such time as the bills listed in paragraph 6(c) are dealt with and determined.'

Leave not granted.

Question put:

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

The Senate divided. [11.45 am]

(The President—Senator the Hon. JJ Hogg)

Ayes..... 35

Noes..... 37

Majority..... 2

## AYES

Abetz, E.  
Back, C.J.  
Bernardi, C.  
Boyce, S.  
Bushby, D.C.  
Colbeck, R.  
Cormann, M.H.P.  
Fierravanti-Wells, C.  
Fisher, M.J.  
Humphries, G.  
Kroger, H.  
McGauran, J.J.J.  
Nash, F.  
Payne, M.A.  
Ryan, S.M.  
Troeth, J.M.

Adams, J. \*  
Barnett, G.  
Boswell, R.L.D.  
Brandis, G.H.  
Cash, M.C.  
Coonan, H.L.  
Ferguson, A.B.  
Fifield, M.P.  
Heffernan, W.  
Johnston, D.  
Macdonald, I.  
Minchin, N.H.  
Parry, S.  
Ronaldson, M.  
Scullion, N.G.  
Trood, R.B.

## NOES

Arbib, M.V.  
Bishop, T.M.  
Brown, C.L.  
Carr, K.J.  
Evans, C.V.  
Faulkner, J.P.  
Fielding, S.  
Furner, M.L.  
Hogg, J.J.  
Ludlam, S.  
Lundy, K.A.  
McEwen, A. \*  
Milne, C.  
Polley, H.  
Sherry, N.J.  
Stephens, U.  
Wortley, D.

Bilyk, C.L.  
Brown, B.J.  
Cameron, D.N.  
Collins, J.  
Farrell, D.E.  
Feeney, D.  
Forshaw, M.G.  
Hanson-Young, S.C.  
Hurley, A.  
Ludwig, J.W.  
Marshall, G.  
McLucas, J.E.  
Moore, C.  
Pratt, L.C.  
Siewert, R.  
Sterle, G.  
Xenophon, N.

## PAIRS

Eggleston, A.  
Birmingham, S.  
Mason, B.J.

Wong, P.  
Conroy, S.M.  
Hutchins, S.P.

Williams, J.R.

Joyce, B.

\* denotes teller

O'Brien, K.W.K.

Crossin, P.M.

Question negatived.

**Senator IAN MACDONALD** (Queensland) (11.48 am)—Mr President, I seek leave to move a motion in relation to the hours of sitting which will remove from paragraph 2 the words, 'that the hours of meeting shall be 9 am to 3.30 pm' and, in lieu thereof, insert the words 'shall continue until such time as the bills listed in paragraph 6(c) are dealt with and determined'.

Leave not granted.

**Senator IAN MACDONALD**—Mr President, I move:

That so much of the standing orders be suspended as would prevent Senator Macdonald moving a motion to vary the order for the hours of meeting and routine of business for today and Friday, 26 November 2010.

**The PRESIDENT** (11.48 am)—I will have to rule that not in order. This is the second motion for the suspension of standing orders to amend the order agreed to by the Senate and such a motion is not in order. The rationale of this ruling is that, once the Senate has been asked to suspend standing orders in order to depart from the order of business on one occasion and has declined to do so, the request should not be capable of being repeatedly made because this would provide a means of permanently obstructing the business of the Senate. I am relying on a wide range of precedent that has been cited on this matter.

**Senator IAN MACDONALD** (Queensland) (11.49 am)—Mr President, I seek leave to move a motion that your ruling be noted.

Leave not granted.

**Senator IAN MACDONALD**—Mr President, I move:

That so much of the standing orders be suspended as would prevent Senator Macdonald moving a motion to take note of the President's ruling.

This government are so hopeless and poorly managed that they do not understand that these bills listed in paragraph 6(c)—

*Honourable senators interjecting—*

**Senator IAN MACDONALD**—I appreciate that the Greens would not know this because all they are interested in is any fraudulent activity that might win them a vote or two in the Victorian election. I would have hoped that the government—

*Honourable senators interjecting—*

**Senator IAN MACDONALD**—Ooh, is that a threat? I am being threatened by the Greens. Heaven forbid! Protect me please, Mr President, the Greens are threatening me! I am so traumatised I can barely get this out, but I was trying to say to Senator Ludwig that we could get to a position where these motions listed at paragraph 6(c), which we are told are very important, may not be voted on. I am particularly interested in the Territories Law Reform Bill, which is listed at the end. The opposition will be moving amendments in relation to that particular bill but, with the way these orders stand at the moment, we may well not get to them.

*Senator Carr interjecting—*

**Senator IAN MACDONALD**—Senator Carr keeps yelling out. He has absolutely no idea what I am talking about. Senator Carr, if you opened your ears you would understand that I am actually trying to facilitate—

*Government senators interjecting—*

**The PRESIDENT**—Can I suggest that debate across the chamber at this hour is not assisting anyone. Senator Macdonald, you are entitled to put your point and be heard in silence.

**Senator IAN MACDONALD**—Thank you, Mr President. Regrettably, some senior members on the other side are such boofheads—

*Government senators interjecting—*

**Senator IAN MACDONALD**—I can name some if you want me to. They are such boofheads that they do not understand that under the current standing orders, which this government has so mismanaged this morning, it could well eventuate that we will get to three o'clock tomorrow afternoon and not have dealt with this legislation which, they tell us, is important—and I know the Territories Law Reform Bill is important.

*Senator Carr interjecting—*

**Senator IAN MACDONALD**—What I say now has nothing to do with the Territories Law Reform Bill because we do not get onto that, Senator Brown—if you would only read the motions that you have just supported—until after your 23rd gag today. Fancy that: the Greens are listed in the pages of *Hansard* opposing gags—I certainly hope the voters of Victoria understand this, because the Greens portray themselves as the upholders of the parliament and the democratic institution—and here they are against everything they have said for as long as they have been in parliament. Ever since they have been here, they have railed against gagging debate, and here they are, 23 times this morning, with the support of Senator Xenophon and Senator Fielding, trying to gag proper debate. Because they are not listening to my speech now, they are going to gag debate on the Airports Amendment Bill 2010, the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2010 and the Radiocommunications Amendment Bill 2010—bills that we cannot start debating, according to Senator Brown's motion, until noon on Friday.

What the Greens, the Labor Party and the Independents are effectively doing is curtailing debate on the Airports Amendment Bill, the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill, the Radiocommunications Amendment Bill, the Family Law Amendment (Validation of Certain Parenting Orders and Other Measures) Bill, the Corporations Amendment (Sons of Gwalia) Bill, the Health Insurance Amendment (Pathology Requests) Bill, the Therapeutic Goods Amendment (2010 Measures No. 1) Bill and—the one that I am particularly interested in—the Territories Law Reform Bill, where the opposition will be moving a substantial number of amendments. Clearly, under the table of time that the government and the Greens have imposed upon us we are not going to be able to meet those—

*Honourable senators interjecting—*

**Senator IAN MACDONALD**—They are not noncontroversial according to this. Where does it say noncontroversial?

**Senator Siewert**—Read the red!

**Senator IAN MACDONALD**—This is the red here!

*Honourable senators interjecting—*

**Senator IAN MACDONALD**—The red has been replaced by this series of agreements that the Labor Party and the Greens have just imposed upon the Senate. Those things have to be dealt with. Senator Siewert, are you going to extend your gag to each of those bills? Are you going to gag us all on those bills again? That is another indication of the lack of proper scrutiny and debate on those six very important bills. We are obviously going to be gagged on those as well. *(Time expired)*

**Senator CHRIS EVANS** (Western Australia—Leader of the Government in the Senate) (11.55 am)—I speak to Senator

Macdonald's motion to make this key point. The opposition have indicated that they oppose the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 before the chamber. That is accepted and is a perfectly legitimate position for them to take. They have argued that there would not be enough time to debate the bill properly under these arrangements. We sought yesterday to provide an extra three hours of sitting to debate this bill last night. The opposition determined not to support that and, therefore, denied themselves three hours of debate.

**Senator Ian Macdonald**—Mr President, a point of order on relevance: the Leader of the Government in the Senate does not have a clue what the motion is. The motion did not refer to the broadcasting bill, if I can call it that for brevity. It refers to those other bills listed in paragraph 6(c). Clearly, the minister is not being relevant to the motion before the chair.

**The PRESIDENT**—There is no point of order.

**Senator CHRIS EVANS**—We are in a situation where last night the opposition knocked back the opportunity to have three hours debate on the bill. We have now spent 2½ hours this morning debating procedural motions, which the opposition has sought to use, to delay the Senate considering the bill. So we are now in a position where the Senate has wasted a potential 5½ hours to debate the telecommunications legislation by virtue of the opposition's tactics. Those tactics are open to them—that is a decision for them—but the Senate and the Australian public have to understand that these are tactics designed to prevent debate on the legislation. We have already lost 5½ hours of debate on the legislation. So, when they say they want to debate the legislation, they have already rejected the opportunity of debating it for another 5½

hours. The key point is this: given that the guillotine motion has been carried—

**Senator Ronaldson**—Mr President, on a point of order: I have just been watching the clock, Mr President, and the clock has been on four minutes 19 seconds for some time now.

**The PRESIDENT**—I have not noted that, but I do take your point.

**Senator CHRIS EVANS**—I think the point of order is correct, Mr President. I do not intend going for long, so I will stick to my five-minute period. The key point to make is this: the Senate is now in a position where every minute and every hour we debate procedural motions is less time available to debate the bill. The debate on the guillotine motion has been carried. The clock is now ticking. What everyone needs to understand is when more procedural motions are moved by the opposition more time is merely eaten up to debate the bill.

**Senator Joyce**—Mr President, on a point of order: the clock is ticking very quickly. It went to four minutes 19 seconds and the next thing it was down to three.

**The PRESIDENT**—There is no point of order. That was an adjustment to accommodate the error.

**Senator CHRIS EVANS**—Every minute now wasted on procedural motions is time taken away from the time the Senate has to consider the bill. So the opposition have to make a decision whether they are seriously interested in considering the bill or are interested in wrecking and preventing consideration of the bill. That is where they are now.

It is perfectly appropriate for them to oppose on procedural grounds the motions we have moved. We have had those debates—we have had them at length. But we are now in a situation where the more we debate procedural motions the less time there is for



scrutiny of the bill, and it is on the heads of the opposition whether they choose to use the time now to scrutinise the bill. We have the rest of the day and all day tomorrow under the motion carried by the Senate. It is a decision for the opposition now whether they use that time for consideration of the bill or they use it for procedural purposes.

**Senator Ian Macdonald**—Mr President, on a point of order: I say again that the Leader of the Government in the Senate cannot understand that the motion we are talking about is to take note of your ruling on my motion about giving us time to debate not the NBN bill but all those other bills. Clearly Senator Evans does not have a clue, and he is not relevant to the motion before the chair—

**The PRESIDENT**—There is no point of order. Senator Evans has the call.

**Senator CHRIS EVANS**—I am trying to deal with the legislative program in the time remaining for the Senate, and the key point is this: it is on the heads of the opposition how we use the available time. If Senator Macdonald and others are not reined in by the leadership of the Liberal Party, that is a decision for them; but the bottom line is that the Senate now has a timetable, and how we use that time is determined by the senators here. They can choose to use it on procedural matters or they can choose to use it debating the bill. I suggest we get on and debate the bill, and on that basis I move:

That the question be now put.

**Senator Ferguson**—Mr President, on a point of order: I think it was only yesterday that—and Senator Evans, had he been here, would have realised this—you ruled that someone who has spoken in the debate cannot move that the motion be put.

**The PRESIDENT**—That does not apply to a minister.

Question put:

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

The Senate divided. [12.05 pm]

(The President—Senator the Hon. JJ Hogg)

Ayes.....	36
Noes.....	<u>34</u>
Majority.....	<u>2</u>

#### AYES

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

#### NOES

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

## PAIRS

Hutchins, S.P.                      Eggleston, A.  
O'Brien, K.W.K.                  Birmingham, S.  
\* denotes teller

Question agreed to.

**The PRESIDENT**—The question now is that the motion moved by Senator Macdonald be agreed to.

Question put.

The Senate divided. [12.12 pm]

(The President—Senator the Hon. JJ Hogg)

Ayes.....	34
Noes.....	<u>36</u>
Majority.....	<u>2</u>

## AYES

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

## NOES

Arbib, M.V.	Bilyk, C.L.
Bishop, T.M.	Brown, B.J.
Brown, C.L.	Cameron, D.N.
Carr, K.J.	Collins, J.
Conroy, S.M.	Crossin, P.M.
Evans, C.V.	Farrell, D.E.
Faulkner, J.P.	Feeney, D.
Fielding, S.	Forshaw, M.G.
Furner, M.L.	Hanson-Young, S.C.
Hogg, J.J.	Hurley, A.
Ludlam, S.	Ludwig, J.W.
Lundy, K.A.	Marshall, G.

McEwen, A. *	McLucas, J.E.
Milne, C.	Moore, C.
Polley, H.	Pratt, L.C.
Siewert, R.	Stephens, U.
Sterle, G.	Wong, P.
Wortley, D.	Xenophon, N.

## PAIRS

Eggleston, A.	Hutchins, S.P.
Birmingham, S.	O'Brien, K.W.K.
* denotes teller	

Question negatived.

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

**In Committee**

Consideration resumed from 24 November.

**The CHAIRMAN**—The committee is considering Australian Greens amendments (1) and (2) on sheet 7006 moved by Senator Ludlam.

**Senator ABETZ** (Tasmania) (12.15 pm)—The amendment dealing with the objects of the legislation are very, very important for us to consider, because this is all about whether this is affordable and whether or not the business case has actually been made out. From a 400-page business case, the Labor Party say they have given us a 50-page summary.

Senator Conroy was not able to count the number of times 'NBN' is mentioned in the legislation. Remember that he appeared on national television saying that the legislation before us does not deal with the NBN, when the NBN is mentioned in the legislation not once or twice, not 50 times, but on 62 separate occasions. That is the ignorance with which the minister has clothed himself to enter this debate. That is the ignorance with which the Labor Party, the Greens and the crossbenchers are now saying that we should

rush this legislation through the chamber without proper consideration.

The summary is not 50 pages; there are in fact 36 pages. You might think, 'Well, what's a factor of 14 pages?' But if you go to page 6, you see that it does not even have a full sentence on it—it is blank. And so it goes on and on throughout this document. To say that it is a 50-page document is simply wrong. One might say that it has 36 pages. Yes, there are 36 separate pieces of paper but without type on them. That is the scandal with which the Labor Party come into this place, trying to hoodwink the Australian people.

This summary document is one of the most flimsy and most pathetic documents I have read. It was prepared by NBN Co. themselves—and guess what? NBN Co. say it is a robust document. It is their business plan. Would they say, 'We don't have a robust case; it's going to go broke; it's no good'? I have never heard of a business plan that does not seek to promote itself.

I recall as a young lawyer being in the magistrates courts, and the prosecutor would always say, 'We have a strong prima facie case against the accused.' I got sick and tired of that after a while and I said, 'Your Worship, have you ever heard a prosecutor admit, 'We've got a pretty weak case on this fellow'? Never once. It is the same with business plans. They never once will say, 'This is a weak business plan.' They will always say that it is robust. And you know what? In the very second paragraph of the summary, we are told that 'the business case includes robust sensitivity analysis throughout the plan'—robust.

This is what has convinced the hapless crossbench senators to now support this—because that is what the summary says. But they have forgotten that the government itself does not believe that this is robust, because it has engaged the services of Green-

hill Caliburn business assessors to assess—and the government uses these words—'the robustness of the plan'. The government itself does not accept on face value that this is robust and will hide from us the report from Greenhill Caliburn on whether the business case is robust until after we have voted on this legislation and until after the parliament has risen.

This is an absolute abrogation of duty and responsibility by the Australian Greens and crossbench senators. I would have thought that they would have learnt their lesson—waving through government programs that have seen the deaths of four of our fellow Australians and 200 roof fires with the debacle of the pink batts scheme. They were convinced that the government had it all in hand and that we did not need to scrutinise it in the way the coalition said it should be scrutinised, so they just waved it through. It is on their heads that there have been 200 roof fires—just as much as it is on the head of the hapless Minister Garrett.

We could move on to the Building the Education Revolution, where there has been blow-out of over \$1 billion. Indeed, the pink batts scheme, costing the taxpayer \$1 billion has now blown out, with remedial work being needed, by another \$1 billion. That is \$1,000 million to be funded by the Australian taxpayers because the crossbenchers and the Greens were not willing to do the hard yards, the hard yakka, in relation to assessing government programs. If they failed so comprehensively in relation to the pink batts program, the Building the Education Revolution program and the \$850 million blow-out on the Green Loans scheme—or should I say scandal—surely, after all those experiences in the three long years of Labor that we have had thus far, they should be saying: 'The amber light is flashing; we should take some caution in relation to this. We should be provided with the full information.' But no, they

have gone cap in hand with the government to allow a \$43,000 million program to be waved through this parliament without any proper and fair assessment.

And what should make the amber light go red for those opposite is when the hapless Minister for Broadband, Communications and the Digital Economy, Senator Conroy, who is in the chamber, appears on national TV and says that the legislation we are now dealing with does not involve the NBN; that it is not mentioned. The problem is that the minister had never creased the spine of the bill. He had never opened the bill. If he had he would have seen that it is mentioned 62 times. That is the sort of ignorance with which the Labor Party have entered into this debate and somehow—I still do not know how—have conned the crossbenchers.

I refer to the media release put out by my good friend Senator Xenophon. It is headed 'Government agrees to publicly release full NBN summary'. That is like saying that this is a full half glass of water. How can you have a full summary? You either have a summary or part of it or the full document. We in the coalition are demanding and requesting the full document because there is no doubt that this summary is flawed. You do not have to go far into the document. Indeed, on page 4, under 'Business Environment', part of this business plan is a simple, pathetic regurgitation of what the government's objects are in relation to the NBN.

**Senator Ludlam**—Mr Chairman, I rise on a point of order. I seek your guidance. This debate is about perfectly reasonable amendments to the objects clause of the Telecommunications Act. Does Senator Abetz need to be remotely relevant to the amendments or is he able to just discuss whatever matters come into his head? I just seek the guidance of the chair.

**The CHAIRMAN**—Senator Ludlam, I have been listening carefully to Senator Abetz and I can assure you that he is being relevant.

**Senator ABETZ**—Thank you, Mr Chairman. I can understand the Greens' huge embarrassment, having voted for the gag time and time again to truncate discussion on this because they do not want these matters aired. I was wrong about the page number, so the point of order by Senator Ludlam was helpful to me. I was, in fact, referring to page 7, where the summary of the business plan says 'Key objectives'. All the NBN Co. does is regurgitate:

The Government has stated its broad objectives for the NBN as follows ...

How is that in any way, shape or form giving us information about the NBN's business plan? All they are doing is regurgitating the propaganda of the government, and they cannot even do it properly. I draw the attention of those in NBN Co. who drafted this document to page 7. It says:

The Government has stated its broad objectives for the NBN as follows:

"The new superfast network will:

Then they go through dot point after dot point after dot point, but the inverted commas stop at the second last dot point. So one wonders: is it an objective of the government:

To design, build and operate the broadband network required as the foundation of the Government's NBN policy ...

If that is not part of the government's objectives, what is it doing indented in the paragraph in this way? This shows that this document has been put together in a sloppy and unprofessional manner, or in indecent haste. I suspect the latter. If you recall, Labor was saying it is completely and utterly inappropriate to release any of the business plan, that it was top-secret stuff and that it would

take them more than 14 days to analyse the 400 pages to determine what should be deleted. All it took was one Independent senator to say, 'I'm not sure that's good enough.' All of a sudden they can produce 36 pages of documentation which allegedly does tell us all about that business plan, which only two hours earlier had been ruled out as being completely unacceptable. This is from a government that got into government doing deals with the Australian Greens and the country Independents on one very important proviso: we would have 'Operation Sunlight'—there would be complete transparency, there would be openness and there would be no secrecy. And what do we have? The Independents and the Australian Greens, cap in hand, voting with the Australian Labor Party to ensure that there is no transparency, no accountability and no openness. Undoubtedly, a side deal has been done and we will see later on, in the course of this parliament—some time next year, no doubt—as to what that side deal is and how the Labor dog is going to be wagged, especially by its newly found Green tail.

The minister clearly has to tell us whether that is an error on page 7 of the document. He also needs to tell us the time line. We move to page 8, where it says:

Once NBN Co's Corporate Plan is approved by Government ...

So we are being asked to vote for this legislation to help assist NBN Co. get established and underway when the NBN's corporate plan has still not been approved by the government. How can any senator who takes his or her responsibility seriously vote for this legislation, let alone vote to gag discussion of this legislation, when those fundamental and foundational documents, which should be available to us, have not been provided and which, as a result, are denying us the opportunity to make a rational, sound and considered decision?

I have reminded the Greens and I have reminded the crossbenchers, and I do so again: you know what happened when you went along with the Labor agenda in relation to pink batts, Building the Education Revolution and the Green Loans scheme. It seems those lessons have been lost on you. Those lessons have meant absolutely nothing. You mucked up with a \$1 billion plan for pink batts, an eight-hundred-and-something-million-dollar plan for Green Loans, and the multi-multi-billion-dollar plan on Building the Education Revolution. That was only small fry. Let's see if we can really muck it up with something big and make it worthwhile, like a \$43,000 million plan.

Of course, there is no business plan before us. There is no corporate plan. There is no government response to the implementation study. There is no Greenhill Caliburn consideration of the business plan before us. None of those documents are before us. How could any person seeking to parade any scintilla of independence come into this chamber and give a blank cheque to the Australian Labor Party—given its past history of mismanagement—to deal with this issue in this manner? Any suggestion of independence, any suggestion of really considering this matter in detail, is completely and utterly thrown out the window—especially when you support the gag, especially when you seek to do everything to truncate debate on this fundamental infrastructure project for our nation.

**Senator FIELDING** (Victoria—Leader of the Family First Party) (12.30 pm)—These amendments do go to the heart of the bill, and I want to give my views on the heart of the bill. What sort of telecommunications infrastructure do we need for Australia in the 21st century? This question is really at the heart of this debate on the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010. This bill proposes two key issues in regard to our

future telecommunications in Australia. The first key issue is to do with setting up fairer competition with regard to wholesale access. The second, and more controversial, issue is to do with giving the green light to setting up the National Broadband Network through authorising the Telstra and NBN Co. deal.

With respect to the first issue of setting up fairer competition for access, I can say that I fully support these measures. Under the present arrangements Telstra, through no fault of its own, enjoys a monopoly position with its wholesale network. This has meant that other telcos have been put at a clear disadvantage compared with Telstra when competing in the industry. It has in effect made Telstra the price setter when it comes to determining the price for accessing its network, and it is clear that the current arbitrate-negotiate model has stifled competition. This outcome is bad for competition and ultimately bad for consumers.

From the very beginning I made it clear that I did not necessarily oppose the structural or vertical separation. What I did object to was the way the government unfairly put the gun to Telstra's head before Telstra had a chance to negotiate with NBN Co. I strongly objected to the government rushing ahead with the legislation before Telstra and the government had a chance to properly explore whether they could come to an agreement. I believe in a fair go, and what the government was trying to do was not a fair go. Clearly an agreement has been reached between Telstra and NBN Co. and now we can rightly consider this legislation. After close to a year of negotiations, Telstra and the government have finally nipped out an agreement and that has ensured that 1.4 million Telstra shareholders have also been given a fair go. Telstra will structurally separate but it will be duly compensated, and this is the fair thing to do. I make no apologies for holding up the legislation until Telstra and NBN Co. came

to some agreement. Given this, I think it is important that the reforms to wholesale access be allowed to go through.

Before turning to the second and more contentious issue of the bill—the issue of giving a green light to setting up the National Broadband Network—I want to provide some reference to where I am coming from. When I finished high school, I decided to study electronics engineering. The reason I studied electronics engineering as a young man was that I could see that technology was a critical key to helping ordinary Australians have a better life and that we could all achieve more with greater efficiency. I still hold that view today. I strongly believe that technology, including telecommunications infrastructure, is a vital building block for any advanced economy that wants to remain competitive in a global market. I have also spent time working for a telco and have a good understanding of the industry and networks.

With that background, I will now turn to the key question: what sort of telecommunications infrastructure do we need for Australia? After considering the various discussions with telco experts, Telstra, NBN Co., government, opposition, competition experts and other interested parties, I have formed the following views. (1) Telecommunications infrastructure is critical to Australia's future productivity and it is critical for Australia to remain competitive in the global marketplace. Superfast broadband is the future, and if we are to be at the forefront of the global community we need the speed and infrastructure to be there. (2) A fibre based wholesale network will always provide superior speeds no matter how much you speed up copper or wireless. There is no doubt that fibre is the best way to improve our network speeds, as the technology has unlimited potential. (3) All Australians deserve access to superfast broadband. This means that small

business will have the same access speeds as big business, which will give small business a fighting chance to compete in a growing, globalised market.

The final view that I formed is: if you continue to let the commercial business market drive access investment decisions, we will continue to see many people missing out on superfast broadband, and this will only get worse in an increasingly competitive market.

With regard to the issue of the business plan, I know that some will argue that we should wait until everyone has seen the business plan for the NBN before debating this bill. Also, there have been calls for the Productivity Commission to undertake a cost-benefit analysis. But the reality is that a business plan or a cost-benefit analysis will not change the fact that Australia needs to have telecommunications infrastructure that provides access to superfast broadband for all. What is more, any cost-benefit analysis undertaken will also be subject to counterclaims that it is riddled with uncertainties, and we will just end up going around in political circles.

In addition, how do you value the benefits of a superfast broadband network when many of the innovations that it will spur on do not yet exist? This is the reason it is difficult to quantify the full economic and social benefits of the NBN, because it is indeed transformative technology. To give just a small, simple example of this fact, let us look at the iPhone. When Apple invented the iPhone they thought it was a winner, but I doubt even they could have imagined the industries which would be created or the number of applications which would develop from it. Just look at how the iPhone has transformed the way we go about our personal and business lives. There are now entire new enterprises and technological solu-

tions which exist solely because of the iPhone.

For the same reason, it is hard to imagine what the future will hold if Australia develops a ubiquitous superfast broadband network. For example, think how education could change as a result of having superfast broadband for all. Imagine if the government decided to offer free university with every broadband connection. Family First believes that a free online university could offer free degrees to all Australians. A free online university would make that easier and more affordable for many more Australians. This would be a real education revolution for the Australian people. Being able to do university from home at your own convenience, without a huge HECS debt, would also create enormous opportunities for mothers staying at home to look after the kids. It would also benefit people who want a career change but do not want to be burdened with a huge, midlife debt. This is the kind of innovation that can come from superfast broadband across Australia. It is a simple idea that would be transformative and help us continue to be a clever nation.

Another example to think about is how medical service delivery can change as a result of having superfast broadband for all. No matter where you live, whether in regional or suburban areas, medical service delivery can be right there. There will be no necessity for you to travel for hours and hours just to get medical services. You will be able to do that over the network, without leaving home.

I believe the upsides for Australia in developing a ubiquitous superfast broadband network are tremendous. This is a very subjective statement, I know. All I can say is that, given my background as an electronic engineer, I do believe superfast broadband for all is transformative technology and is the

basic building block for Australia to remain competitive in the 21st century. Given these upsides and given that taxpayers' money of around \$27 billion will be fully repaid and the government will end up owning a public monopoly asset called the NBN Co., which will have net worth in the tens of billions, I can see no reason for me not to support the government's National Broadband Network. I believe that fibre to the home and to all premises is the best way forward for Australia, and this legislation will give effect to that initiative. Because of this, I will be supporting the government's bill and also supporting the amendments before the chair.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (12.40 pm)—It is very important that we try to ventilate this as much as possible and at every opportunity. This document, the business case summary, which goes to the essence of the motion, I will not even describe as flimsy. It has a paucity of detail. It is an absolute joke and should not be taken with any sense of dignity whatsoever. To respond to Senator Fielding, you just do not know what you are about to do. You do not borrow money from overseas to launch yourself into something which no-one can prove to you is actually going to work. You have got to be more provident with other people's money. Let us just go for a little bit of a paw through this document. Right at the start, it says:

The Business Case includes robust sensitivity analysis throughout the plan.

It also says:

The NBN Business Case is based on detailed engineering, financial and business analysis ...

Who do we refer to? Undertaken by whom? Give me even a footnote and a reference as to the competency levels of who is actually dealing with this. Give me something beyond just a statement. It talks about the ACCC review, and I will get on to that in a second. I

believe the ACCC will have major concerns about this.

The document has ludicrous things in it. It was said to be a discussion of 50 pages, when it is actually 36, and it has pages like this one, page 3. I will tell you what is on this page:

Arrangements for the Commonwealth Government Business Enterprise (June 1997).

Full stop. That is it. That is all that is on that page. This document goes through flimsy motherhood statements. I do not know who put this together. There is no competency in this whatsoever. And if we drill down into some of the technical scenarios, on page 15, on the 'Telstra Deal', it says:

As no binding agreement has yet been entered into with Telstra, the Business Model includes extensive analysis of NBN Co's No Deal scenario (which is a scenario set out in the Business Model) and a comparison between the two cases.

So we are examining the 'No Deal scenario'. That is one of the premises of analysis of the 'Deal' scenario: we examine what does not happen, to work out what happens when something does happen. The minister has put this out! It is like explaining to people everything they are not, to try and work out what they are. Then there is this on pages 15 to 16:

Whilst negotiations and drafting of the Definitive Agreements are progressing well, there are no legal obligations on either party to agree—

What does that mean? There are no legal obligations on either party to agree—

and sign binding documentation other than to negotiate 'in good faith'.

Well, there's a good reason to borrow \$27.1 billion if ever I heard one. This thing has got hairs all over it—and this has been presented to the Australian people. The reason you are gagging the debate is because you do not want us to discuss this. This is bedtime reading for monsters. It is just so pathetic.



What is on page 17? These words: 'consideration process once the finalised special access undertaking can be lodged'—another one of those incredibly detailed pages! I will tell you what should go on that page, Minister: how the ACCC are going to have huge problems because of the ministerial discretion to override the ACCC and how that will actually affect other people in the marketplace. That is what should have filled up the rest of that page, and about 50 others. You know full well that within your legislation there is discussion about the ministerial powers that can override the ACCC so as to affect the deal. Those, of course, will stay in situ in the NBN Co. forevermore. That is yet another part that the Australian people are not to know about.

The document says the NBN's projected internal rate of return 'could decline by 50-80 basis points because of slower take-up of broadband and slower introduction of retail services that require higher speeds'. I would not have minded a bit more information on that, on exactly what is happening there. That is pretty important.

Everybody would like to know a little bit about the pricing; that is something I think the Australian people have a right to know about. I just want to help the Australian people out here. The document says:

The pricing structure and pricing levels have been set to achieve a viable internal rate of return (IRR) based on NBN Co's estimates of take up of different speed tiers and connectivity capacity usage.

So the pricing is a variable. They do not have a clue about where the pricing is going on this—not a clue. All they can tell you is that it is going to be 'viable'. 'Viable' means making a commercial rate of return. I do not think their current internal rate of return, at six per cent, is viable when the long-term bond rate is at 5.45 per cent. They say that is viable—it is totally unviable. Why wouldn't

they just stick the money in the bank? What is going to happen to the price of phone calls? A little bit more discussion on that would have been helpful. But this has been enough to convince the Independents, Senator Xenophon, Senator Fielding and the Greens, and the Labor Party to vote for this. This is them delivering transparency to us!

Then they start telling us what the internal rate of return is not, not what it is—the typical Labor cop-out. On page 21 it says:

This is based on a number of assumptions, the most significant of which are growth in speeds and demand and hence revenue. The stated internal rate of return is also dependant on the completion of the Telstra deal, which has a material impact on construction costs ...

What exactly does that mean? It is just a nebulous statement, an amorphous blimp statement—nothingness in proxy for information. Once more again we go back to the rule-out clause:

The internal rate of return does not take account of any external benefits anticipated from the NBN to the economy, productivity or social outcomes.

Why do you need to say that? Why do you need to tell us what it does not do? What is the point of putting that in your so-called 'forensic' document—the document that has swayed Senator Xenophon and Senator Fielding, that has brought them across. Have they actually read this? Why would you put, in a document that you believed had some sort of prudential acumen, some sort of gravitas, a statement about what the rate of return does not do? Why not say, 'This document does not affect the wanderings of the marauding wildebeest on the African plains,' 'This document shall not affect the climate,' 'This document is not part of any international treaty between Swaziland and North Korea,' or, 'This document cannot be driven around the block and used as a motor-car'? Why do we have these statements about what the return is not? 'The internal

rate of return does not take account of any external benefits anticipated from the NBN to the economy, productivity or social outcomes—I imagine that means that this document does not help me talk to people on a Friday night at the pub. That is good—I am glad we got that off our chests!

Then there are lots of pictures. Pictures are always helpful, especially when they use up a lot of the page. It is great to have pictures in there! Then, on the capex, it says:

At the end of the contribution and deployment period, the total capital expenditure (capex) is estimated by NBN Co to be \$35.7 billion.

They are lauding that as a big win. It continues:

This is lower than originally forecasted as a consequence of the pending deal with Telstra—which we have no idea about—

This deal reduces the overall capex due to efficiencies as a result of the re-use of infrastructure and also the use of—

wait for it!—

longer term leases.

The capex is less because they are not actually buying the stuff—they are leasing it. So you get to spend this money but you will not own it at the end. This is the document that has brought Senator Xenophon and Senator Fielding across. This is it. We are not buying the pipes and the pits; we are leasing them. Telstra get them back at the end of the day unless they do not want them. Telstra had us over a barrel, and this is what you do. They saw Senator Conroy coming. They knew he was struggling. He is up to his eyeballs; even his colleagues are crawling all over him. People are a wake-up to it and all of a sudden there is panic. That is why we had the guillotine and the attempt to shut the whole show down.

Let's continue through the *NBN Co. business case summary*, this magnum opus. Under 6.7, on page 30, it says:

The equity requirement from Government based on our current plan is \$27.1bn.

What does that mean? Before, it was \$26.66 billion. I know half a billion dollars is only loose change for the Labor Party. They just snuck that one in there—‘They won’t pick that up, will they? We won’t have any discussion as to why it has changed by half a billion dollars.’ Senator Conroy would not bother bending over to pick that up if he dropped it at the pub on a Friday night—‘Why would you worry about it? It’s only half a billion dollars; what’s that between mates?’ It is a wonder the Independents or the Greens did not ask some questions about that. Maybe, if we had not had the gag, we could find out what happened to that half a billion dollars. Maybe someone could tell us a little bit about that.

I wonder what we could do with half a billion dollars? I wonder how many hip replacements we could have with half a billion dollars? I wonder how many people’s teeth we could fix with half a billion dollars? I wonder how many roads we could build in regional Australia with half a billion dollars? I wonder how much we could spend on getting new drugs onto the Pharmaceutical Benefits Scheme with half a billion dollars? But the government do not care about this. They do not care about those sorts of details. They are too arrogant and hopeless and incompetent. I do not know what the other people are doing letting them get away with this. They show no respect for money and somebody somewhere has to pay this money back.

Anyway, the fiasco continues. It says:

Based on these parameters, a capital weighted [weighted average cost of capital] has been de-

rived at 10 per cent-11 per cent over the 30-year period.

And what? Show me! Prove it! Give it to me in something beyond a statement. It goes on to the risk analysis. This is a clanger, the risk management; this is how we work out that we are not losing money, doing our shirt:

Whilst the execution of the risk management system aims to identify risks before they occur, for a number of reasons this is not always possible.

I will give you one of the reasons it is not always possible: because they have gagged it. That is why it is not possible. They have gagged it so that we cannot talk about it. The biggest risk to the risk analysis is the Labor Party, the Greens and the Independents. And they just dropped this in there:

Whilst the execution of the risk management system aims to identify risks before they occur, for a number of reasons this is not always possible.

What risk? Identifying what risk is not possible? Tell me more. I am curious. I am a curious person; I want to know what risks you decide not to take on board. I want to know what you have decided not to analyse, because by the look of this document it is the whole lot. I do not believe you have a clue what you are doing. Not a clue. You are totally clueless.

It is just so remarkable in its incompetence, but it is true to form. So help me, I am not even the shadow minister of this portfolio, but I do have the tendency to take the legislation and have a bit of a glance over it and after watching the minister for five seconds on national television I find out that I know more about it than he does. Why would you have a person of such utter incompetence in charge of something that we do not have the money for? We are borrowing this money.

Might I direct you also to the fact that when they say, 'We're borrowing \$27.1 billion,' it is with a caveat that they presume

they can raise the rest of the money. If they cannot, they are going to borrow more. They are going to be borrowing more, and they will pay that money back to the people from whom they borrowed it. They are borrowing it from the good people of the Middle East, from the good people of China, from people predominately overseas, and these people will want a return on their capital. And Australians will work hard into the night—at the checkout, at the office, laying bricks, shearing sheep—doing whatever to pay for this stuff up.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (12.55 pm)—I wanted to indicate the government's support for amendments (1) and (2). The government supports these amendments. These amendments propose that the objects set out in 3(1) of the Telecommunications Act 1997 be expanded to include availability of accessible and affordable carriage services that enhance the welfare of Australians. The inclusion of this objective will make clearer the importance the parliament places on the provision of accessible and affordable telecommunications which promote the welfare of Australians. It will enable specific economic welfare principles to be more easily and openly weighed against the other objects in the act, such as efficiency and international competitiveness. The amendment clarifies that affordability and accessibility of carriage services are important factors when considering long-term interests of end users.

**Senator RONALDSON** (Victoria) (12.56 pm)—I want to make a number of comments today. I want to put to bed some commentary from the minister both on *Lateline* last night and in the media again today in relation to the debate on this bill. There is some ex-

traordinary notion that this has been 12 months of—

**Senator Conroy**—A filibuster!

**Senator RONALDSON**—a filibuster from us—thank you for the interjection. But what complete and utter rubbish and what a filibuster that is! The minister has been quite duplicitous in making that claim because this bill was introduced on 15 September 2009, but the key issue is that it was introduced prior to the deal with Telstra, which happened in the middle of this year, from recollection. And on 20 October a very different bill was introduced into the House, a very different bill indeed, which took into account those quite dramatic changes that followed on from the deal with Telstra. A completely different bill post the Telstra deal. It was introduced into the Senate on 17 November, so effectively this chamber will have five to six days to debate probably the greatest spend in this country's history. And today we have had the quite remarkable scene of the protectors of democracy—the Greens, aided and abetted by the two Independents, of whom I thought a lot more—making sure that this parliament, this Senate, is not debating matters this morning.

Prime Minister Gillard must be terribly, terribly proud of that. This is the openness and transparency—is this the new Julia? The new Julia has done a grubby deal with the Greens, walking now hand in hand to make sure that you, Minister, and your party are being removed as the party of the workers to a party that now is fully rusted on to the Greens philosophical view of life. When you leave this place and that is the legacy you have left, then I do not think you will be doing it with any pride at all because I know what your personal philosophical views are and they are so far removed from the Australian Greens. But you and your colleagues on the right of the Australian Labor Party have

been prepared to sign up to a grubby deal with a grubby political party which does not represent in any way the views of average Australians. So no more, please, of this '12-month filibustering'; you know as well as I do that this is an entirely different bill.

I refer to press commentary today, particularly from Terry McCrann, who I think everyone would agree is a respected economic commentator. The by-line says 'NBN "case" nonsense':

It might have been one small step for independent senator Nick Xenophon. It proved to be one gigantic leap—backwards—for the rest of us.

The 36-page so-called "NBN Co Business Case Summary" was a complete joke. If it's at all an accurate indicator of what's in the "full" Business Case, NBN Co CEO Mike Quigley and his irresponsible minister Stephen Conroy should both be sacked.

I will not go on with the rest of the article. As the shadow minister, Mr Wentworth, from the other place made quite clear on the *AM* program this morning:

Well it's a very inadequate document. It doesn't have any financial statements, it doesn't have a profit and loss, it doesn't have a balance sheet, it doesn't have any cash flow statements, it really isn't an adequate basis on which to make a \$43 billion decision.

The government's recklessness is extraordinary. The Prime Minister has not read the full business plan. The Treasurer has not read the full business plan. It apparently has not gone to the cabinet.

I ask the minister while we are in committee: have you read the full business plan? The minister will not acknowledge whether he has or has not read the full business plan. From that I take it that the minister has not read the full business plan, because surely if he had he would have said so. So here we have a minister who is signing up to nearly \$50 billion of taxpayers' expenditure, who has not himself read the business case. It is

extraordinary. And this government stands utterly condemned for signing up the Australian taxpayer to nearly \$50 billion—and I suspect it will be closer to \$70 billion or \$80 billion by the time we finish. Indeed, if you look at commentary from the Alliance for Affordable Broadband, who I understand have written a letter to Mike Quigley today—and if you go through at some length the letter, which I will seek to table at the end of my contribution—the matters raised in this letter should fill every one of us with complete and utter horror. The horror expressed today by Terry McCrann is replicated by others.

I want to ask a number of questions of the minister. Is it correct that the Telstra cost is now at some \$13.8 billion? The minister is refusing to answer any questions from the opposition members while he is fiddling with his BlackBerry. That is fine. I will just ask them and others will judge the minister's inability or failure to answer questions. What is the actual cost of the Telstra payment? Originally the statements indicated, I think, that there were two amounts: \$9 billion plus \$2 billion, making \$11 billion. This report now says it is \$13.8 billion. There was also a report in one of the newspapers back in August which said the full payment from the NBN was \$16 billion on a pre-tax basis. So, Minister, what are the true figures before and after tax? Are you able to say whether Telstra, for example, will have a capital gains tax bill as a result of this payment? Indeed, the last paragraph on page 30 of this extraordinary document, as it was quite rightly called by Senator Joyce—this remarkable document which says nothing, which Terry McCrann says is a 'pure nonsense' and a complete and utter joke—talks about, as Senator Joyce may have raised briefly, how the NBN will start paying cash dividends in 2020 and, allegedly, will repay the government's entire investment by 2034. Minister,

is the NBN paying interest to the government? I think you could probably assist me by saying yes or no to whether they are. If they are then I will not have to proceed with the rest of my questions. If they are not then I will. So are they paying interest or not?

**The TEMPORARY CHAIRMAN (Senator Trood)**—I think the progress of the debate would be facilitated if you were to ask your questions and let the minister answer at the end of your contribution.

**Senator RONALDSON**—Thank you, Mr Temporary Chairman. I again ask for indication from the minister about whether interest was being paid. Then I can make a decision about whether I continue with the questions. But if the minister is not prepared to do that and I have to take another five minutes to answer the question, do not come back to me with any talk about filibustering. If they are not paying cash interest, is an amount being capitalised? Is that going to be included in the total funds contributed by the government or is it, effectively, an interest-free loan? I presume the minister will answer that question when I have finished my contribution or the others have finished their contributions. Minister, are you going to table the terms of the lease which Senator Joyce referred to? What are the terms of the lease? Where is that cost included? Are you going to release the details of those leases?

I mean, this is just absolutely full of holes. In answer to the question raised by Senator Fielding about whether we need a state-of-the-art network, I will quote pieces from an editorial in the *Australian* the other day:

The unseemly rush to a National Broadband Network says more about the government's political problems than about adding to national value.

... ..

Labor appears willing to do anything to get the \$43 billion network up ...

Australians deserve more open discussion on the NBN ...

... ..

The NBN is a Rolls-Royce answer to communication needs when a Holden might do just as well. Who is probably best able to make that sort of assessment? Maybe the Productivity Commission might be a body that can make that sort of judgment and give the government and the parliament some indication about the integrity of what we have been asked to vote on in the next 24 hours.

So why will this government not acknowledge that the Productivity Commission should be involved? Its case was weakened dramatically with the remarkable revelation some 36 hours ago that Greenhill Caliburn are doing a review of the robustness of the 30-year business plan and the company's corporate plan. If the government itself required Greenhill Caliburn to come in and cross-check the comments and the NBN business case, if they were required to do that, that is an acknowledgement on the part of the government that all is not well with this. The fact that it has called them in to run their finger over this means that the government acknowledges that all is not well. So why not let the Productivity Commission do it properly? Minister, why not let the Productivity Commission, who have all the resources, do an inquiry into this and see what they come back with? If we are proved wrong after the Productivity Commission has reported then we will be proved wrong. But at the moment you are not allowing this parliament to make a proper judgment about a \$50 billion noose that you are hanging around the necks of not just this generation—

*Senator Conroy interjecting—*

**Senator RONALDSON**—So you think it might be 70. The minister said it might be \$70 billion. I think that is probably closer to

it, and I am glad we have got an acknowledgement that that is a possibility.

Let us get this off to the Productivity Commission. The opposition is happy to be proved wrong if the Productivity Commission comes back and says, 'This business case stacks up.' I will be the first one to stand up in this place and say that my nervousness and the nervousness of the business community, the banking community and everyone else was wrong. I will be happy to admit it if we are wrong. But I tell you what, we are not going to let you get away with expenditure of this nature on the back of a 36-page summary of a business case, which, as Senator Joyce said, said absolutely nothing at all. If you think it is appropriate to spend that amount of money and sign not just this generation but generation after generation up to this sort of expenditure then it is a gross abrogation of your responsibilities as a minister and a gross abrogation of the responsibilities of the Prime Minister to this country.

Get it off to the Productivity Commission and let the Productivity Commission make a value judgment about it. Then come back into this chamber and tell us what they said about it. Why you are afraid, Minister, and why Prime Minister Gillard is afraid to put this to the ultimate test is because it is about politics and the pull-through that the Prime Minister got last night from your colleagues, Minister—some 20, apparently, who spoke on this—when they said to her, 'You do not have a program for this government and you have lost your way.' These were your own colleagues telling the Prime Minister, and there is no indication to date that anything is going to change.

This is a political fix. This not a broadband fix; this is a political fix. And the fact that you have dragged the two Independents into this political fix is one of the most disappointing aspects. I have great regard for

both of them but, quite frankly, I think they have been conned by you, your government and the Prime Minister into supporting this dramatic expenditure of taxpayers' funds. (*Time expired*)

**Senator FIERRAVANTI-WELLS** (New South Wales) (1.12 pm)—We are focusing on the objects of the legislation. In particular, Senator Ludlam was earlier talking about the objects of it, and I would like to focus on a very important object. One of the amendments proposed is the availability of accessible and affordable carriage services that enhance the welfare of Australians. I would like to pick up on that point because my biggest concern is the cost the average Australian is going to have to bear as a consequence of what is now turning out to be another debacle of this government. It really has become a very, very sorry mess.

We now have the government finally, under duress, releasing this 36-page summary, but in the end this is really just fuzzy words. Where are the financial statements? Where is the business plan? Where are the cash flow statements? Where is the profit and loss statement? All of this seems to be totally out of context. If anybody in this country—and I look at the people in gallery and ask them—wants to set up a business tomorrow and they want to go to the bank for money from the bank to set up that business, what is the first thing that the bank manager is going to ask? The bank manager is going to say, 'Well, that's all very well. That might be a great idea, but where is your business plan? Where is the money coming from? Where is the security? What is your profit and loss? What are your assumptions? Are your assumptions appropriate for what you want to do?'

If you do not have that business plan, you are not going to go anywhere. But here we have this government proposing to spend \$43 billion—actually, it is not \$43 billion; I

correct myself. There is the odd figure in the document I have here, and if I have a look at page 29 of this document we are told that by the time you add it all up we are talking about \$49.5 billion. So we are talking about almost \$50 billion that the taxpayers of Australia are going to have to underwrite for what is a monopoly in this country and there is no business plan to spend this money—my money, your money, the money of your children and your children's children—because by the time the \$49 billion is paid off it will be your children and your grandchildren who are going to have to foot the bill for this.

The government talks about affordable broadband so that everyone can get broadband, but the question how we are actually going to get there was never really asked. That was the question that should properly have been asked of the Productivity Commission, which is best equipped to give the answer—that is, how are we going to have universal and affordable broadband so that everyone can get broadband with high speeds at a price they can afford to pay? When Senator Ludlam talks about accessible and affordable broadband, that is the question that the Productivity Commission should have been asking. The Productivity Commission should have been given the opportunity to ask that question and make an analysis so that the taxpayers of Australia could have had the appropriate answers before this Senate is called upon to vote on this legislation.

But of course millions of households, at a cost of billions of dollars, are effectively going to have their existing fixed-line telecommunications ripped out and made redundant, and they will end up getting a service which, quite frankly, is no better than what they had. I would like to focus on this, because I would like to know—and I would like to know it from the minister—what assurances consumers have that this monopoly situation is not going to do what Telstra did

this week to one consumer, namely me; that is, switch off broadband at my home. Minister, are you listening to this? This week broadband at my home got switched off. I do not want to cast aspersions, Minister.

**Senator Conroy**—Guilty as charged.

**Senator FIERRAVANTI-WELLS**—It might well be that Minister Conroy has decided that he is responsible for switching off broadband. What happens? All this week I have been struggling to try to reconnect broadband to my home. What assurances do the consumers of Australia have in a monopoly situation that somebody is not going to come along one day and decide to just—

**Senator Conroy**—It is a monopoly fixed line.

**Senator FIERRAVANTI-WELLS**—We are supposed to have competition now, let alone if we have a monopoly situation. What assurances do I have, Minister, that that is not going to happen again? Out of the blue this happened, and it has taken me five or six days to try to resolve this issue. What assurances will we have, and where are these assurances in this document that consumers will have proper access to broadband, because quite frankly it is really not evident at the moment.

Labor started this whole debate on \$43 billion but now, from the few words that have been released to Senator Xenophon, it is \$49.5 billion. How do we know that that is the end figure? How do we know that it is not going to be \$60 billion or \$70 billion? If we had a proper business plan and the assumptions were tested, perhaps we might be in a far better position to ascertain that. We hear all these numbers that are flying past. I take you back to the point I made earlier in relation to any business that wants to launch a product or do something and goes to their bank manager. The business plan they present would put whatever they want to do in a

favourable light. Minister, if this is such a great thing why don't you release all the documents so that at least we can see whether those 400 pages—a lot better than what you have given us—actually try to put this in a much more positive light? I think it would be better if the public were able to access that.

Let us look at the situation. We have had years and years of microeconomic reform. We talk about getting governments out of business, we talk about ensuring competition and we talk about making sure that there has been competition out there in the telecommunications sector. What we are now establishing is a new government-owned monopoly. We are using the powers of this parliament to prevent other companies and the private sector from competing with this monopoly. It is obvious, Minister Conroy, that you have been dealing with Minister Carr for too long, because you have been infused with his rather extreme left-wing, noncompetition tendencies. You have been spending far too much time with him. We have worked hard over the years to ensure that we had competition in the telecommunications industry and suddenly this minister is going to reverse—

**Senator Conroy**—You went without broadband for five days and that's competition?

**Senator FIERRAVANTI-WELLS**—No, I am talking about the bigger picture. I am talking about assurances. You talk about all the benefits of e-health and this and that. If you are going to have circumstances where consumers cannot have assurances about even day-to-day matters, then you have got problems now let alone in a circumstance where you have got a monopoly situation. Things will be far worse. Consumers will not have the confidence. Why would a monopoly care? I expect you to personally go in and



investigate this matter. I expect that you will provide an answer because it is not just about—

**Senator Conroy**—I hear you have moved into the Kiama Downs area so you could get broadband.

**Senator FIERRAVANTI-WELLS**—I have not. In fact, you have sold the people in the Kiama Downs area a pup.

**Senator Conroy**—I hear you moved in there.

**Senator FIERRAVANTI-WELLS**—No, I do not live at Kiama Downs. You come in here and talk about broadband, you talk about Kiama Downs and about other areas, but what it ultimately will come down to, Minister, is whether the taxpayers of Australia will get the accessible and affordable broadband that they deserve. How do we know? Quite frankly, your plan has not been put under proper scrutiny. The Australian taxpayers are going to have to fund this. Ultimately, if NBN Co. has financial problems it is going to be the Commonwealth of Australia and the taxpayers of Australia that are going to have to foot the bill.

People out there are now starting to understand that this really is a pup because, ultimately, it is not just \$43 billion, not just \$49 billion but a whole lot more billions of dollars. You mismanaged the pink batts and the school halls. Everything you have done you have mismanaged. This will be your legacy. In fact, it will be the most mismanaged program ever by a government. It will have your name on the epitaph, and that is exactly what is going to happen.

You are taking competition out of the market and you are selling the Australian public down the gurgler. You are inflicting on the Australian public a tax burden that you cannot even put your finger on. Weeks ago it was \$43 billion and now it is \$49 billion. You cannot even get your facts right.

Why? Quite frankly, Minister, you do not know what you are doing. If you were so confident about how great this plan was, you would have put it out for much more public scrutiny. What are you afraid of?

You send off all sorts of things to the Productivity Commission. You have shunted off aged care to the Productivity Commission. You have not done anything about aged care, even though you said there are millions of Australians that are waiting. You shunted that off to the Productivity Commission because, even though you have had review upon review, you said you need a proper assessment of what is needed in aged care. What about this? This is almost \$50 billion worth of spending and you are not going to send this off to the Productivity Commission. You are prepared to do other things that deserve scrutiny. Surely, what is going to be one of the largest infrastructure investments in this country deserves much more scrutiny. I appeal to the taxpayers of Australia to understand precisely what it is you are being sold, and it is a real pup.

**Senator BOYCE** (Queensland) (1.27 pm)—I rise to follow on from the comments made by my colleagues, particularly Senator Ronaldson and Senator Fierravanti-Wells, on the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010. Senator Ronaldson made the point that this legislation has not been before this parliament for the length of time that the government, particularly the Minister for Broadband, Communications and the Digital Economy, Senator Conroy, would have you believe. It is a very new piece of legislation. The amendments also are new. I commend Senator Ludlam for his attempt at an amendment that assists somewhat in trying to put some fairness and some equity into the system. Unfortunately, it is still a black hole.

**Senator Ludlam**—Will you be supporting the amendment?

**Senator BOYCE**—I will not be supporting the amendment because I do not support the bill, Senator Ludlam. The availability of accessible and affordable carriage services that enhance the welfare of Australians would certainly be something that the coalition would support. As an object, we would support that. However, I do not believe that we have any more evidence than we had earlier this week to suggest that this piece of legislation will go anywhere at all towards providing that.

I was interested to hear Senator Xenophon say on television last night that he was persuaded by the intervention of the Prime Minister into this case. It is a shame Minister Conroy was not able to carry through his own legislation, which apparently he has such a passion for but which he does not want to share with anybody else. The intervention of Prime Minister Gillard by getting out her itsy-bitsy business plan and showing it to Senator Xenophon apparently was enough to sway Senator Xenophon towards the government's view. It has not swayed the coalition and it will not sway the coalition. Nor has it swayed vast numbers of the public.

We can see, and it has been commented on, that this summary is very light on—it was referred to as being 'number light'. Not only is it light on, it is clear that it was put out in such a hurry that it is full of language errors. In the third paragraph—you think they would have got around to checking the third paragraph, wouldn't you?—it talks about:

... providing more information without comprising the market sensitive aspects of the Business Case ...

I think they meant 'compromising', but we should know that 'compromise' and 'nego-

tiation' are not words that this government understand. What we have before us is not an analysis of the costs or an analysis of the benefits.

I note that Greens amendment (2) talks about 'services that enhance the welfare of Australians'. Yet, if we look through the itsy-bitsy business plan, we see it says nothing on that topic, nothing at all. There are all sorts of comments about assumed usage and assumed speeds, but it does not tell us a thing about what NBN Co. perceive to be the welfare of Australians. There is nothing in here at all about that. It goes on and on about rates of return, which will be a complete shemozzle for them and, in my view, unachievable. It talks about 'points of interconnect', which is not yet an achieved deal—and, if that deal is not achieved, this whole business plan is likely to simply collapse. But there is nothing at all about welfare in the summary. In fact, it makes the point, which I found somewhat bizarre:

Telstra will become NBN Co's largest suppliers of infrastructure and is likely to become NBN Co's largest customer—

its largest supplier and largest customer. The ACCC might have liked to look at that! The Productivity Commission, I am sure, would have had a view on that sort of material.

When we look at the comments and the number of assumptions they have made about growths in speed and demand and therefore revenue, we find nothing at all, except that they have used projections based on what is happening now and what they hope will happen. They hope that there will be 10.9 million premises in financial year 10 using the new service, and that would be, they hope, 9.6 million residential premises and 1.3 million business premises. They are basing the growth rates, in part, on an average growth of 177,000 new premises every year up to 2025.

Well, we have news for you: building approval rates, particularly in the residential area, have been falling disastrously under this government, and nothing is being done to fix them. So why wouldn't we expect that to be in the figures? We have no idea what they are talking about, but they go on and on. Their only concern about the future, about what might affect their projections, is that there could be a 'saturation of usage, slowing growth in online hours and increasing delivery of content on multicast applications'. That is all they can tell us there. They can tell us nothing about genuine welfare, about what this will do for regional Australia or any other aspect of Australian life.

The summary says that fibre to the home is the next generation of technology. Now, the only sure thing is that within the next 30 years there will be several more 'next generations' of technology. But have they assumed anything there? Other than under their risk management profile, they do not talk about how they would deal with that or anything else.

Another aspect of Greens amendment (2) is 'affordable' carriage services, which is possibly dealt with at greater length than almost anything else in the itsy-bitsy business plan—except, of course, that we do not get any figures. There are no figures. NBN Co. tell us:

The pricing structure and pricing levels have been set to achieve a viable internal rate of return (IRR) based on NBN Co's estimates of take up of different speed tiers and connectivity capacity usage.

Sorry, but different speed tiers and connectivity capacity usage are very, very strongly related to the price, which they sort of cover in this itsy-bitsy business plan. It goes on to say:

... NBN Co. anticipates being able to reduce real prices for all products and nominal prices for all products, except the basic service offering, while

maintaining an internal rate of return above the Government long-term bond rate.

The issue here is that the access to 12 megabits or more per second that NBN are apparently going to offer as their basic service will be the service that most Australians will want to take up. So once again we are back to the fact that, if you want the one with the bells and whistles, you will get a good price; but, if you want the average that this project would offer, you have no guarantee whatsoever about what will happen to prices. The prices will just continue to rise because there is no guarantee at all that real prices will be contained—not in this excuse for a business plan.

The NBN internal rate of return is, again, an interesting effort. They have used a number of assumptions to get to it. But, as they point out, other remaining government decisions could have an impact on that—but, gee, they'll just have to wait. They are looking at their stocks, the building of new premises and speeds, but nowhere do they look at what might happen over the next 30 years in terms of people's usage of products that are delivered via fibre to the home. Certainly, a saturation point will be reached, but there is no detail about why they are so confident that this will not be a major issue for them—yet it is something that has been raised over and over again by commentators.

In an article in the *Age* today there is a view that there is sleight of hand on the figures they use, that it is very clever to have moved Telstra's expenditure of \$13.8 billion to the operating expenses as though that is something that the government will not have to fund. How much are the government going to have to pay over the next few years to get NBN Co. operational? According to their latest figures, it will require \$35.7 billion in capex and another \$13.8 billion in operating expenses to do the deal that they had to do with Telstra and which is covered in this leg-

isolation, of which there has been almost no scrutiny up until now. I am sorry: if you add 35.7 and 13.8 you get to 49.5—that is, \$50 billion. If they can explain to me how these expenses will not have to be met by the Australian taxpayer over the next few years, I would love to hear it. But, of course, that is not covered in any way, shape or form in the itsy-bitsy business plan.

The other point made in a column in the *Age* today is that the government claim that they will have a long-term weighted cost of capital of between 10 and 11 per cent; yet there is nothing here to suggest how on earth they intend to achieve that or how they could possibly hope, in the climate that they have not explained and that we all know is moving all the time, to keep to a long-term cost of capital of 10 per cent to 11 per cent. In fact, Malcolm Maiden in the *Age* wrote:

However it is configured the project is going to struggle to meet its own long-term weighted cost of capital ...

We already have respected people making the point that there is a strong possibility that NBN will be a white elephant. But the government do not want anyone to talk about that. They do not want it discussed, they do not want it ventilated and they do not want to look at it properly. If they could get out such an itsy-bitsy little business plan in an attempt to win support for this legislation, why could they not have put out the real business plan, the 400-page business plan, with commercially sensitive information simply blacked out? They have had weeks and weeks to do that and have chosen not to. There is absolutely nothing in anything that the government have told us so far that gives me any confidence that what we are looking at are accessible and affordable carriage services that will enhance the genuine welfare of Australians.

**Senator FISHER** (South Australia) (1.41 pm)—I rise to speak to Greens amendment (1) to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 and, in particular, the clause that ‘the availability of accessible and affordable carriage services that enhance the welfare of Australians’ be added to the object of the legislation. Before any National Broadband Network can deliver accessible and affordable carriage services and broadband, the Australian people deserve some reassurance that those carriage services will be subject to some transparency and accountability in the process of the build and, in particular, in the passage of the legislation to enable the ultimate build. As the opposition has said repeatedly in this place and the other place, transparency and accountability are conspicuous in their absence. That is an understatement when considering the National Broadband Network.

The government has attempted, thus far successfully, to curry favour with the Independents in the lower house and my Independent colleagues in the Senate. With respect to my Independent colleagues in the Senate, in my view they have curried that favour with a couple of sops. I regret that I think these sops, given the fullness of time, my Independent colleagues in the Senate may live to regret. They may live to rue the day that they signed off on the bottom line they voted on, be that today or as long as it takes for the chamber to deal with this legislation. They may rue the day that they signed off on the bottom line on the basis of those sops offered by government. The lead-in to the sops was the rejection, as I understand it, by the other place of the member for Wentworth’s motion to establish a joint parliamentary committee to inquire into the National Broadband Network. The joint parliamentary committee proposed by member for Wentworth could have commenced work

tomorrow. He proposed that it be equally laden with government members and opposition members and that it have, in addition to those parliamentary members, independent representation, as is appropriate.

I will go in a moment to the second of the two sops offered to and accepted by the Independent senators—that is, the government’s proposition that there be established a joint parliamentary committee, and contrast that with what would and could have been the member for Wentworth’s proposal for a joint parliamentary committee to properly and impartially assess the ongoing rollout of the National Broadband Network. I will also take the liberty of contrasting it with what could have been—had the government not so thwarted business in the Senate today—Senate consideration of what was on the *Notice Paper*, namely a joint motion by Senator Ludlam and me to refer the ongoing rollout of the National Broadband Network to the Senate Standing Committee on Environment and Communications for ongoing inquiry. The sop of a government proposed joint parliamentary committee is a very sorry sop when contrasted with what could have been the member for Wentworth’s proposed joint parliamentary committee and what could have been Senate consideration of a proposal that the Senate environment and communications committee consider the National Broadband Network on an ongoing basis.

First of all I want to go to the supposed business case and the business case summary—the summary, the sop—which has been accepted by the Independents and about which my colleagues have spoken at some length. I have a couple of observations in respect of that summary. The first one arises from a letter sent today from the Alliance for Affordable Broadband, an open letter to Mike Quigley, CEO of NBN Co. I know some of my colleagues, in particular Senator Ronaldson, have referred to this letter al-

ready today. That alliance, which from our experience in ongoing Senate committee inquiries comprises some nine to 10 highly respected and totally senior operators in the broadband sector, says that they have had a look at the business case summary released yesterday. It says, ‘We have some immediate take-outs and several questions, Mr Quigley, which we hope you can answer.’

They say that the summary appears to raise more questions than it answers. They say that in their view the summary shows that the costs are actually higher than they are expected to be. The price of the basic package will not decrease over time and will likely increase. The project is only viable if it is a monopoly in the last mile and in back-haul, facing no competitive pressure as to price or innovation or efficiency. The letter goes on to say ‘We still do not have fundamental information and facts to support the government’s assertion about the business case. We do not have much confidence that the rest of the business case that has not been released will provide any of this information or facts.’ The best bit—the most tragic bit—is their assessment that no investor or lender would lend money to open a milk bar based on a document with this little detail.

Interestingly, there is enough that is entirely consistent with the observations made by the member for Wentworth yesterday on his blog about the 36-page summary—the summary sop—accepted by the Independents. The member for Wentworth said on his blog:

... beyond a few scraps of information and other warm words this is a thoroughly inadequate document. It is a sop thrown to the independent Senators in the hope that they will give the Government their vote. Real accountability, real transparency requires a thorough and complete business case, not 36 pages of reassurance devoid of financial detail.

We have this 36-page sop, this 36-page apology for a 400-page business case which the minister will not even fess up to reading because most likely he has not. He will also not fess up to reading the supposed ACTU agreed enterprise bargaining principles upon which he bases his reassurance that there will be no wages blow-out in the build of the NBN. He fails to give that reassurance that he has read it because again most likely he has not. Indeed until we see that document, we do not even know whether it exists other than on the minister's own say-so. So the minister offers a 36-page sop for a 400-page document which he will not even fess up to reading. Do you know that in this 36-page sop, which is supposed to describe the financial underpinnings of the business case, the 400-page document, you have to get to page 28 of those 36 pages before you see a frigging dollar sign for a \$43 billion infrastructure investment? The government has bought off the Independents with a 36-page sop. You have to get to page 28 of those 36—that is, seven-ninths of the document—before you see a jolly dollar sign. Cheap, cheap, cheap—not.

Leaving the business case summary sop, let us go to Senator Xenophon's agreement with the government and in particular Senator Xenophon's reference to the government's agreement to an:

... ongoing oversight of the NBN roll-out by a new Joint Parliamentary Committee, chaired by a Lower House Independent—

I am reading from Senator Nick Xenophon's press release. He goes on:

to report every six months during the rollout of the NBN ... Every member and senator will have the right to participate.

I have been provided with a copy of the Prime Minister's letter of 23 November to Senator Xenophon. It says:

I am writing after our discussions yesterday to confirm the package of measures that we have agreed with you to facilitate the package through parliament of the consumer safeguards bill.

I am going to refer to the paragraph in that letter where the Prime Minister discusses this joint parliamentary committee. She says:

First the government agrees that there is a valuable and ongoing role for parliamentary scrutiny to properly scrutinise the implementation of policies. With this in mind and in the interests of accountability and transparency—

Thank you very much—

the government will move to establish a joint committee on the National Broadband Network to provide progress reports every six months. The composition of this committee will mirror the Joint Committee of Public Accounts and Audit.

Of course, if you have a look at the Joint Committee of Public Accounts and Audit, you will see that that is a wholly government dominated committee. It has 16 members—10 from the House of Representatives and six senators. Nine of those members are government, six are opposition and one is Independent. The committee is also—which should concern members in this place—dominated by House of Representatives members. What a cheap sop—in particular to the Independents. So it is a committee that is very clearly government dominated and House of Representatives dominated.

Prime Minister Gillard then goes on to say in her letter:

The Joint Committee on the National Broadband Network will report on rollout progress, report against the final business plan, assess risk management processes and look at other matters the committee determines are relevant to its deliberations.

What do you reckon they might be from a government dominated committee? Do you reckon that a government dominated committee would agree to look at things that were the subject of Senator Ludlam's and my

joint motion to refer the NBN on an ongoing basis to a Senate inquiry? Do you reckon a government dominated committee will agree to look at the cost of establishing and operating the NBN and the impact of the project on government finances? Do you reckon a government dominated committee will look at the impact on competition in the telecommunications market? Do you reckon a government dominated committee will look at alternative or emerging telecommunications technologies and the degree to which the NBN will be future proof—a point referred to by the alliance in their letter to Mr Quigley? Do you reckon a government dominated committee will look at any practical issues likely to arise during construction of the NBN, including workforce—well, Senator Conroy will not—property access and property connection issues and aerial versus underground construction? Do you reckon a government dominated committee will look at experience gained at, and principles or lessons extracted from, current release sites including cost, pricing and performance? Do you reckon a government dominated committee will look at documents, information and advice provided to the government but not made public? I hardly think so.

Even better, the Prime Minister says to Senator Xenophon that this joint parliamentary committee will not start its work until July next year. What about the taxpayers' money to be expended up until then? This parliamentary committee will not start its job until 1 July next year. Until then its work is supposed to be done in this way—maybe:

The committee will draw on any relevant material from the Standing Committee on Infrastructure and Communications, due to report back by August 2011.

Again, have a look at the membership of that standing committee: four government, three opposition and one non-aligned member. It is government dominated and House of Repre-

sentatives dominated. It is a do-nothing committee, other than what is favourable to the government.

But the best bit about the Prime Minister's letter to Senator Xenophon, sealing the sop and sealing the deal, is:

The committee would be able to call witnesses including MPs and senators about the performance of the NBN or any other matters of local interest.

This joint parliamentary committee will become a politicians' plaything—and a government dominated politicians' plaything at that. How interesting it is to contrast that proposition with the repeated refusal by ministers of this government to accept repeated invitations to front the Senate Environment and Communications References Committee on the inquiry into the botched, bungled and tragic Home Insulation Program. The Prime Minister refused when Deputy Prime Minister; then Prime Minister Rudd refused; Senator Arbib refused; Minister Combet refused; and Environment Minister Garrett—as he then was—refused. Contrast that with the hypocrisy of this Prime Minister now offering a politicians' plaything. It is a disgrace.

**Senator JOHNSTON** (Western Australia) (1.56 pm)—I want to deal with some of these amendments that Senator Ludlam has put forward. I note that they are all very constricting on the powers of the minister and quite prescriptive in what they want the minister to do in dealing with this legislation. I say to Senator Ludlam—and indeed to you, Chair—that I share his concerns, and I take the time to compliment him on quite a considerable amount of work in just this one amendment. It is very clear to me that he has some grave concerns as to how this will play out, both from the perspective of accountability and from the perspective of providing a reliable and proper service to people.

The government, in answer to the very large number of amendments, lies like a dog in the manger with respect to providing transparency and openness on this particular project and this particular legislative framework. The question is: what is the problem? I have a number of questions for the minister which I hope that he will answer in this debate as to these amendments. Why is he so secretive? If this is such a robust plan, as he suggests Australians should believe it is, why has he been dragged kicking and screaming to this point in time to release any real information about the project?

The other point I should make is that the government are quite concerned that the opposition is not going with them. I want to say that, quite rightly, the opposition has an enormous number of grave reservations about the administrative and governance capacity of the individual ministers of the government. They impart absolutely no confidence whatsoever in any of the undertakings that they have carried out whilst in their present ministerial positions. The minerals resource rent tax has from its inception been an absolute laughing stock and fiasco. Climate change has been simply a running sore of a disaster. The most deficient department and the most defective minister in the government have of course been the former climate change minister and the department with no legislation, something straight out of *Yes Minister*. There is the current health debacle across Australia—seeking 30 per cent of, in particular, Western Australia's GST. Asylum seekers and their positioning around Australia, and the protection of Australian coastal borders, has been an absolute fiasco. There is the issue of water in the Murray-Darling and, of course, pink batts. On the pink batts issue, this parliament—and, indeed, probably Australia since Federation—has never seen such a tragic outcome as the four dead people and the hundreds of house fires that that purely

ministerial maladministration has delivered. Of course, lastly there is the issue of school halls. The question is: why would the opposition, in the face of all that, be so reluctant to go down the path of a \$50 billion expenditure by these ministers? Why would we be reluctant? The simple answer is: because—

Progress reported.

### QUESTIONS WITHOUT NOTICE

#### Labor Government

**Senator ABETZ** (2.00 pm)—My question is to Senator Evans, representing the Prime Minister. I refer to the minister's inability yesterday to confirm that any of Labor's nine major 2007 election promises had been fully honoured and that any of the three government priorities set by Ms Gillard prior to the last election had been advanced. I also refer to yesterday's Labor caucus at which Ms Gillard outlined a five-point plan: a stronger economy, a more sustainable environment, a fairer society, governing for all Australians, and keeping all Australians safe at home and strong in the world. Given that everyone in Australia supports these sentiments, isn't this nothing but a pathetic bunch of motherhood statements, as vacuous as the Prime Minister's citizen assembly idea? Is this absolute confirmation that the government is bereft of a real plan and has totally lost its way?

**Senator CHRIS EVANS**—I thank Senator Abetz for the question. I am sure anyone listening to this question time today will say, 'What on earth was that all about? What on earth are the Liberal Party about? Why are they not focused on the concerns of ordinary Australians? Why are they so enmeshed in their own party-political games that they have no conversation to have with the Australian people?' They have no interest in asking the government questions that hold the government to account on important matters of public importance. No. They want me to discuss what happened at our caucus meet-



ing. It seems the only interest the Liberal Party have is in what happened in a Labor Party caucus room. They are much more interesting than, I hear, yours are since you abandoned any interest in the second half of your job—since you admitted that you only had to do half your job, which is to criticise and wreck, and that you had no interest in policies. We have seen that again in the telecommunications debate today. All they can do is criticise and seek to wreck and offer nothing in the alternative. They had 11 years to come up with a communications policy and they failed.

The Labor caucus and Labor government are focused on the key issues of concern to the Australian public. The objective of strengthening our economy is at the core of the government's objective and policies.

**Senator Abetz**—Yes, everybody agrees.

**Senator CHRIS EVANS**—Senator Abetz, you may mock. You may not think it is important, but we actually think that delivering jobs at the height of the global financial crisis was a very important thing and a very great achievement of this government. We are focused on delivering jobs, on assisting those under cost-of-living pressures and making sure the economy is strong. That is absolutely the focus of this government and will remain so. Perhaps you ought to get in tune with the aspirations and needs of the Australian public.

**Senator ABETZ**—Mr President, I ask a supplementary question. Given that the government has not delivered on the three-point plan Ms Gillard announced on the day she became Prime Minister—to fix the mining tax, fix the boats and fix carbon emissions—why should anyone believe that she will now deliver on her five-point plan? And for the record, just when does the government plan to fix the mining tax, stop the boats and fix carbon emissions?

**Senator CHRIS EVANS**—I think Senator Abetz confuses his three-word slogans with the government's positions. Senator, you are the party of three- or four-word slogans; we are not. We are actually about serious public policy. We are actually about addressing the fundamental issues that confront government—fundamental issues that seek to grow our economy, improve job prospects—

*Honourable senators interjecting—*

**The PRESIDENT**—Senator Evans, resume your seat. I know people are a little bit excited today, but I remind senators that we need silence in the chamber.

**Senator CHRIS EVANS**—This government is actually focused not on cheap slogans but on serious policy. The bill before the parliament today is a classic example of that—sophisticated, important public policy. Whether it is abolishing Work Choices, creating work programs, improving our schools or improving our TAFEs and universities, this government is on an agenda of growing our economy; growing opportunities for young Australians, and doing hard, serious public policy work to deliver for the Australian public those opportunities.

**Senator ABETZ**—Mr President, I ask a further supplementary question. I refer again to Labor's caucus meeting yesterday at which the Prime Minister stipulated certain 'landing points' in response to Labor caucus members questioning both publicly and internally what the government stands for. Can the minister explain these landing points, and are landing points something you desperately need when you are all at sea?

**Senator CHRIS EVANS**—I did a long time in opposition and I went to a lot of tactics meetings. It does get tougher in the last week but, quite frankly, you have hit a new low. If all the Liberal Party can do is ask the Leader of the Government in the Senate,

‘What happened in a Labor caucus meeting?’ you clearly have lost any idea of what your role is. You have clearly lost the plot.

**Senator Abetz**—Mr President, I rise on a point of order. The answer is in no way, shape or form directly relevant. Secondly, you know and the leader knows well that he should not be directing these sorts of abusive comments across the chamber personally, and he should desist.

**Senator Ludwig**—Mr President, on a point of order: this is a good example of what I have raised a number of times on this point of order, where they lead with their chin in relation to a matter and then take offence when the minister responds across the issue that has been raised. Clearly, the wide-ranging questions that have been asked by the leader of the opposition have allowed the minister to range over those issues and remain directly relevant in the response. I humbly submit: there is no point of order.

**The PRESIDENT**—Senator Evans, I do draw your attention to the question. There are 36 seconds remaining.

**Senator CHRIS EVANS**—I could perhaps have made the point that asking me about Labor Party caucuses was not actually part of my ministerial responsibilities. But, in order to be helpful to the Senate, I am attempting to answer the question.

*Senator Abetz interjecting—*

**Senator CHRIS EVANS**—As you know, Senator, one does not generally discuss these matters. What I can tell you about the Labor caucus—

*Honourable senators interjecting—*

**Senator CHRIS EVANS**—is that they are focused on the needs of the Australian people.

*Honourable senators interjecting—*

**The PRESIDENT**—When we have silence, we will proceed.

**Senator CHRIS EVANS**—So, yes, the Labor caucus and the Labor government are absolutely focused on a stronger economy and opportunities for young Australians for jobs and education. We will continue to be focused on those things, and I suggest the opposition think about focusing on those big issues too.

#### **New Zealand: Mine Explosion**

**Senator STEPHENS** (2.08 pm)—My question today is to the Minister representing the Prime Minister, Senator Evans. Can the minister update the Senate on the recent tragic events at the Pike River coalmine in New Zealand?

**Senator CHRIS EVANS**—I thank the senator for her question. As senators would be aware, New Zealand authorities have confirmed that a secondary explosion took place at the mine site on the afternoon of Wednesday, 24 November. It is with great sadness that I confirm to the Senate that the families of the trapped miners have been told by the New Zealand authorities that there is no hope of survivors from the most recent explosion.

At this tragic time, our thoughts and prayers are with the families and loved ones of the 29 men, including two Australians, Joshua Ufer and William Joynson. Australia and New Zealand have always enjoyed a close and enduring relationship, and the Prime Minister has been in regular contact with the New Zealand Prime Minister, John Key. Senators should be aware that she has conveyed her and the country’s condolences to the government and people of New Zealand, and I am sure all senators support those sentiments.

Reflecting as well on the recent rescue of the trapped Chilean miners, it is always a sad irony that events such as these bring into sharp relief the strength of the ties between communities separated by thousands of miles. I do not believe there would be a sin-

gle Australian who has been untouched by the developments in New Zealand over the past few days. Many, of course, have begun to recall our own Beaconsfield mine disaster which occurred over four years ago, and the mix of sorrow and jubilation at Brant Webb and Todd Russell emerging safely whereas their mate Larry Knight had tragically been killed. Similarly, many Australians would remember the outpouring of heartfelt support and well wishes that the Beaconsfield community received from all over the world. Similar expressions of support are flooding in to New Zealand. As I say, there is a particularly strong Australian connection and I know all Australians are very moved, and will continue to support that community. So our thoughts will continue to be with the families of the miners over the coming days, and will continue to be as church memorial services are held.

**Senator STEPHENS**—Mr President, I ask a supplementary question. I thank the minister for his response. Can the minister provide further information on Australia's response to the disaster?

**Senator CHRIS EVANS**—The Australian government has offered and will continue to offer consular support to the Ufer and Joynson families. We will also continue to offer all support and assistance to the New Zealand government. There are currently a total of 48 Australians either in or mobilising to depart for Greymouth. They include personnel from New South Wales and Queensland mines, Centrelink and Emergency Management Australia, DFAT and the Western Australian Water Corporation. The Queensland Mines Rescue Service has also had a further 36 personnel on standby, as have Xstrata, BHP and Rio Tinto. This support again highlights the spirit of mateship and camaraderie that Australia and New Zealand have shared throughout their history, including times of adversity. I would like to

take the opportunity to thank them for their prompt offer of assistance and pay tribute to their commitment in seeking to protect mine workers' health and safety.

**Senator STEPHENS**—Mr President, I ask a further supplementary question. Minister, is any consideration being given to further action that Australia can take in response or any assistance we can offer in the recent events at Pike River?

**Senator CHRIS EVANS**—While the causes of this disaster have yet to be determined, its outcome emphasises again the need to minimise the chances that this will ever happen again. The New Zealand government has announced that there will be a number of inquiries that will begin immediately. The Australian government will closely monitor the outcomes of the inquiries with a view to determining if there are any lessons that Australia can draw from this tragic experience.

This recent event at Pike River reminds us that we must keep critically examining what we can do when it comes to safety. This has been a big issue in Western Australian mines, where we have had a number of deaths in recent years, and I think everyone is focused on the need to continually improve mine safety. As a government, we have committed to funding the National Mine Safety Framework to deliver a high level of safety for Australia's mining industry, using nationally consistent legislation and regulation. As I say, we will closely follow the inquiries into Pike River to ensure that we take any lessons that can be learnt from this tragedy.

#### **Broadband**

**Senator BRANDIS** (2.13 pm)—Mr President, my question is directed to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. I refer to the 36-page summary of the NBN Co. business case released by the govern-

ment yesterday. If it is possible to prepare a detailed summary of the document, doesn't that prove, if any further proof were necessary, that the claim that the commercially confidential information in the document could not have been identified and redacted to enable the release of the full document before parliament rises is a lie?

**Senator CONROY**—I thank Senator Brandis for his ungracious question. NBN Co. has finalised its three-year corporate plan and its 30-year business plan. The company submitted the plan to the government on 8 November 2010. The government is committed to releasing as much information as possible from the business case and released a summary of the business case on 24 November 2010.

As the Prime Minister said yesterday, the summary was released to facilitate the passing of the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, which facilitates the structural separation of Telstra. Following a series of detailed discussions with the Independent senators, the government determined that it was possible to publicly release this material from NBN Co.'s business case in order to answer some of their key questions. The government has been very careful to ensure that the released material does not cause any market uncertainty and that the material does not relate to matters which are under cabinet consideration. As the Prime Minister has made clear, NBN Co.'s business plan will be released in December. The business case summary includes material on capital and operational expenditure, government equity investments, products to be released to consumers, the basis for the pricing of NBN Co.'s products and NBN Co.'s risk management. The summary expands on the information in the letter we received from NBN Co. on 19 November. It confirms that the NBN will be built on a financially viable

basis with affordable prices for consumers. *(Time expired)*

**Senator BRANDIS**—Mr President, I ask a supplementary question. I note that the ground put forward by the minister for not releasing the full document before parliament rises is no longer 'commercial in confidence' but 'consideration by cabinet'. Since the business case has obviously already been the subject of detailed and close analysis by the government, does the minister still maintain the fiction, 16 days after its delivery, that a redacted form of the full document cannot now be released? What interest is the minister protecting—the public interest, or his own collapsing career?

**Senator CONROY**—The business case confirms that prices will decrease over time as the markets become more competitive and more customers join the network.

*Honourable senators interjecting—*

**The PRESIDENT**—Senator Conroy, resume your seat. I remind senators that shouting across the chamber is disorderly.

*Senator McGauran interjecting—*

**Senator CONROY**—I know I should not respond to interjections, but it is hard to ignore the smartest man in the building—

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

**Senator CONROY**—the man who spent his own money keeping the DLP registered so they could feed him preferences so they could defeat him in the election! He spent his own money all the way up to the High Court.

**Senator Abetz**—Mr President, on a point of order: you directed the minister not to continue in that vein. He deliberately ignored you and continued his unseemly attack on a senator opposite, which is completely and utterly irrelevant. I would ask you to draw his attention to the question and ask him to desist.

**The PRESIDENT**—Senator Conroy, I drew your attention to the need to answer the question and not stray into other matters.

**Senator CONROY**—Mr President, I apologise. As I said, the business case confirms that prices will decrease over time as the markets become more competitive and more customers join the network. It confirms that NBN Co. will receive a rate of return higher than the long-term bond rates. *(Time expired)*

**Senator BRANDIS**—Mr President, I ask a further supplementary question. If the minister cannot be honest with the Australian parliament about the cost of the single largest project in Australian history—and he has just represented to the Senate content from the document which it does not in fact say—how can he be expected to maintain the confidence of the public and of the markets?

**Senator CONROY**—As I was saying, the business case says many important and detailed things. It confirms that the NBN Co. will receive a rate of return higher than the long-term bond rate. This means that the NBN is a sound investment, even before taking into account any productivity, economic or social benefits.

**Senator Joyce**—Mr President, on a point of order: Senator Conroy says it reduces prices over time; in fact, that excludes the basic service offering—and that is on page 21.

**The PRESIDENT**—Senator Joyce, that is a debating point; it is not a point of order.

**Senator Joyce**—But he is misleading us.

**Senator CONROY**—The financially illiterate on the other side clearly do not understand the difference between nominal prices and real prices. Let me be very clear: real prices, at least for the base product, will go down; and nominal prices will fall, over time, for the entire product range. I cannot

help the fact that those opposite are economically illiterate. *(Time expired)*

#### **Commonwealth Scientific and Industrial Research Organisation**

**Senator MILNE** (2.21 pm)—My question is to the Minister for Innovation, Industry, Science and Research, Senator Carr. Given the CSIRO's announcement that some 40 scientists working on ecosystem research and space programs in the ACT and Brisbane will lose their jobs, can the minister assure the Senate that public interest research such as maintaining biodiversity is a priority for the government rather than just privatising research that is likely to lead to direct commercial gain? If so, how does the minister explain the CSIRO's decision to slash 10 per cent of the budget for its new Ecosystem Sciences Division?

**Senator CARR**—CSIRO has a responsibility to ensure that research is undertaken. It is aligned with the evolving strategic priorities both of CSIRO and, more particularly, the groups of people it has to deal with, including the Australian public. As a consequence, it has to make difficult decisions about stopping some research activities in order to solve new challenges that are facing the country. On 23 November, CSIRO announced a reduction of 30 staff positions across the Ecosystem Sciences Division and of 10 to 12 staff positions at the Canberra Deep Space Communication Complex at Tidbinbilla. The changes to the division of ecosciences will allow the division to evolve its research capabilities and activities to address new national challenges and up to 27 new appointments will be made in priority areas. In the case of the deep space tracking communications complex, the changes have been made as a result of budget cutbacks that were actually undertaken by NASA. NASA, as I recall, has been funding this research for 47 years, so I think it has to be seen in the

context of who has been paying for that particular research. The proposed changes are to ensure that staffing levels within CSIRO are contained within their budget allocations and will not lead to a net reduction of CSIRO staff in regional centres.

**Senator MILNE**—Mr President, I ask a supplementary question. Can the minister confirm that there is little financial imperative for these cuts, given that the CSIRO has record levels of government and external funding as well as access to the endowment fund created out of the significant court settlement over the ownership of the Wi-fi technology patent?

**Senator CARR**—I would agree with the assumptions that you have made within the question, Senator. The fact is that the CSIRO budget has been expanding under this government. We will see an increase in investment in research for 2010-11 by some \$21.4 million and a 50 per cent increase in expenditure on scientific equipment to \$37 million. The prioritisation of research activity comes about as a result of the increased support for the capability development within CSIRO as a direct result of the increased expenditure that this government has provided for CSIRO. You are right: on top of that, there is additional income being received from external sources, particularly from other government departments and from the WLAN settlements. The anticipated funding increase has to be seen in the context of the fact that there are increased costs, and the government acknowledges that. (*Time expired*)

**Senator MILNE**—Mr President, I ask a further supplementary question. Given the minister's answer that it is not a financial imperative, can the minister confirm that addressing Australia's biodiversity crisis in the Sixth Extinction phase is not a government priority?

**Senator CARR**—No, I cannot confirm that.

**Senator Bob Brown**—It sounds like it, though!

**Senator CARR**—No, Senator Brown, that is not the case. What I have indicated is that the government has increased support for CSIRO quite substantially and it has encouraged, through the Super Science Initiative and other initiatives, a breadth of approach to scientific policy in this country that we have not seen in the previous generation. So it is simply not true to say that the government is narrowing its focus. It is true to say that we rely on CSIRO management to work within the scientific community to ensure that priorities are appropriate to meet the strategic needs of this country. We rely on CSIRO, which is our leading scientific agency, to ensure it is able to respond to the challenges that are emerging in this country. We simply cannot rely upon a presumption that what occurred in the past—(*Time expired*)

#### Broadband

**Senator RONALDSON** (2.27 pm)—My question is to the Minister for Broadband, Communications and the Digital Economy, Senator Conroy. Page 22 of the NBN Co. business case summary has assumed a count of 9.6 million national residential premises this year. Where does the NBN Co. draw this data from? Also, where are interest payments accounted for in the business case summary?

**Senator CONROY**—As I was saying earlier, a range of information has been provided. The government has been committed and remains committed to passing the legislation around these issues. Following a series of detailed discussions with the Independent senators, we decided that to facilitate the passage of this bill we would compromise and provide some of the information that is available and that can sensibly be made

available at this time. I am defining that it would be irresponsible, not sensible, to release information that would jeopardise ongoing commercial negotiations with Telstra, ongoing commercial negotiations with other carriers or ongoing commercial negotiations with construction companies on construction costs.

**Senator Ronaldson**—Mr President, I take a point of order on relevance. These were two quite clear questions that require an answer. Where does the NBN Co. draw this data from on the count of 9.6 million national residential premises? And where are interest payments accounted for in the document?

**Senator Ludwig**—Mr President, on the point of order: the minister was being directly relevant to the question. The question was asked about the business case. The minister is responding to the question asked and I humbly submit there is no point of order.

**The PRESIDENT**—Senator Conroy, you have been going for just over a minute. You have 51 seconds remaining to address the question that has been asked of you.

**Senator CONROY**—As I was saying, Mr Quigley has repeatedly made clear the dangers that there could be in releasing some of this information, and those opposite are being absolutely irresponsible in their ridiculous demands. Senator Ronaldson was drawing from page 22 of the business case, where it states:

Total premise sizing has been based on G-NAF (Geocoded National Address File) national address index, which uses multiple address sources including Government land records, Australia Post and the Australian Electoral Commission. In conjunction with work carried out—

*(Time expired)*

**Senator RONALDSON**—Mr President, I ask a supplementary question. Is the minister aware that ABS data on household numbers

indicates that there are only 8.35 million households in Australia in 2010? How does the NBN Co. know about 1.25 million more residential premises—in effect, a lost city about the size of Perth—than the ABS does?

**Senator CONROY**—The document goes on to say:

In conjunction with work carried out by the Department of Broadband, Communications and the Digital Economy, NBN Co has assumed a starting national premise count of 10.9 million—

in 2010—

comprising 9.6 million residential premises and 1.3 million business premises.

**Senator RONALDSON**—Mr President, I ask a further supplementary question. With an assumed take-up rate of 69 per cent, doesn't this overestimation of residential premise numbers mean that NBN Co. has also overestimated their number of customers by more than 850,000? Doesn't this make a complete and utter mockery of the so-called 'conservative' estimates in the business case?

**Senator CONROY**—Senator Ronaldson is seeking to draw from one source. As the document I have quoted from says, there is a range of sources. I am prepared to back the information in the business plan against Senator Ronaldson's posturing, because at the end of the day what those opposite are about is opposing and wrecking the National Broadband Network. They had 11½ years to try to do something about broadband and the declining fortunes of this country when they were in government, and they failed miserably. They are up to their 20th broadband plan, and the good news is that it is three dot points—after nearly 15 years on broadband, they have a policy of three dot points. *(Time expired)*

### Soccer World Cup

**Senator CAMERON** (2.33 pm)—My question is to the Minister for Sport, Senator Arbib. Can the minister please inform the Senate on the progress of Australia's bid to host the World Cup in 2022? Can the minister advise the Senate about the outcome of the evaluation report on the World Cup bids, and can he update the Senate on the outcome of the report into Australia's bid? What does the evaluation report mean for Australia's bid? Does the minister support my proposition that we should see a Scotland-Australia World Cup final?

**Senator ARBIB**—I appreciate the question from Senator Cameron. I also appreciate the prospect of an Australia-Scotland World Cup final. I inform the Senate that Australia's bid to host the 2022 FIFA World Cup is progressing well. We are now only seven days away from the successful bid being announced in Zurich. Australia stands a very good chance of winning the bid. The Senate may be aware that FIFA recently released its evaluation report of World Cup bidding nations. The FIFA report confirms that Australia has the credentials to host the World Cup. This is something that the government has always known, of course, and that is why it is such a strong supporter of the FFA and their bid to bring the World Cup to our shores. We have an outstanding record of hosting major sporting events, such as the Sydney Olympic Games and the Melbourne Commonwealth Games, and we would host a first-class World Cup if given the opportunity.

The evaluation report is a credit to the work of Frank Lowy, Ben Buckley and all at the FFA, and it shows that the bid is in with a good chance. Both men, who I have spoken to in the last couple of days, are quietly confident and hopeful, and I am sure that everyone in the Senate will wish them well in the

bid. Of course, Australia faces some very stiff competition from countries such as the United States, Qatar, Korea and Japan, and I am sure that the ballot will be extremely close. The announcement on 2 December in Zurich, during which the Governor-General will represent the country and the government, is the culmination of years of hard work from the FFA and the government. Something like \$45.6 million has been pledged to the FFA to support the bid. I note that, despite some of the comments from the other side, the bid has full bipartisan support across the parliament. In the other chamber, as we speak, the scarves are out. Every member of the House of Representatives is currently wearing them. (*Time expired*)

**Senator CAMERON**—Mr President, I ask a supplementary question.

*Honourable senators interjecting—*

**The PRESIDENT**—Senator Cameron, I know there is a little bit of confusion in the chamber momentarily, but you should be heard in silence. Senator Cameron has the call.

**Senator CAMERON**—Can the minister advise the Senate how the government is supporting the bid by the Football Federation of Australia? Can the minister outline the support the bid has received from state and territory governments?

**Senator ARBIB**—As I said, the government has committed \$45.6 million to the Football Federation of Australia to support the campaign. In addition, a task force was set up in January this year of dedicated Commonwealth officers to work with the FFA but also with the states. The bringing of an event such as the World Cup to this country has huge logistical barriers. A World Cup is the largest sporting event globally, has the largest viewership and requires a great deal of work and effort. That is something the government has been doing, working very



closely with the FFA through the task force. All of those people working with the task force should be congratulated for their fine work.

The evaluation report, which I referred to earlier, made particular mention of the strong support of the government for Australia's bid, which is of course very pleasing. The Australian government recognises the important role that football has to play in boosting participation levels and promoting a healthy lifestyle, particularly for younger Australians. Football is already the most popular sport played by Australian children. *(Time expired)*

**Senator CAMERON**—Mr President, I ask a further supplementary question. Can the minister outline for the Senate the benefits of Australia hosting the World Cup in 2022? In particular, can the minister outline the economic, social and cultural benefits that hosting such a large sporting event will have for Australia?

**Senator ARBIB**—The World Cup is the largest sporting event in the world. One of the key benefits of the World Cup coming to Australia is that games would be played in 10 cities across the country, from Townsville to Geelong, from Perth to Sydney. Unlike the Sydney Olympic Games, where events were held in one city, this will benefit all cities across the country. Even those cities that will not host games will have the chance to host teams as they prepare for the event.

Of course, the Australian government, with the FFA, is also bidding for the Asian Cup in 2015. If we are successful with the World Cup bid, we will also host the Confederations Cup in 2021. So there would be a great deal of benefit from it.

In terms of viewership, just to put this in some perspective, the Sydney Olympics was viewed by 3.6 billion people worldwide. The South African World Cup was viewed by 40

billion people. That is the power of the World Cup; that is why the Australian government is working extremely hard— *(Time expired)*

### Broadband

**Senator CORMANN** (2.39 pm)—My question is to the Minister for Finance and Deregulation, Senator Wong. Why does the government claim that the NBN is costing \$35.7 billion when it is clear from the summary of the NBN business case that the real cost of this project is in fact \$49.5 billion, representing a \$6.5 billion blow-out on the government's previously stated worst-case scenario?

**Senator WONG**—It is regrettable that the good senator has not had the opportunity to speak to the shadow minister on this issue and instead has read some of the articles that have appeared in the newspapers. I think the senator is trying to add together the figure for capital expenditure and the figure for operational expenditure. That is a definitional 'apples and oranges' problem. I think the senator will find that even Mr Turnbull is no longer pressing this issue. It is unfortunate that he did not give you a call before question time to let you know that was no longer the line.

**Senator Chris Evans**—That's because he voted for Abbott!

**Senator WONG**—I was just going to say that that might have something to do with the events of a year ago. The reality is that, if you read the business case summary which was released, it is quite clear what the capital expenditure amount is. As you know, it is substantially less than the implementation study previously concluded. That is very good news, because the business case tells us, in the information that the government has received, that this project can be rolled out more cheaply and to more homes than was previously thought.

If you were interested in the transformational technology that broadband is, you would actually welcome that, but what we have from the opposition is this mindless opposition to anything of substance, including on this issue. Extraordinarily, we saw today the opposition, who say they want scrutiny, filibustering and playing procedural games so as to avoid debating the bill.

**Senator CORMANN**—Mr President, I ask a supplementary question. Since the government was forced into an embarrassing backdown in relation to the release of the summary of the NBN business case, what happens if the independent review that the minister for finance has commissioned of the NBN business case by Greenhill Caliburn concludes that the business case does not stack up and that the NBN is simply not viable?

**Senator WONG**—The government is very clear about the importance of this project, because we understand that broadband is the infrastructure of the 21st century. This is the roads, rails and ports of this century. We also understand the importance—

**Senator Cormann**—Mr President, I rise on a point of order in relation to the requirement to be directly relevant. I asked the minister very specifically what would happen if the independent review she commissioned found that the business case was no good. The minister is giving me some sort of a generic statement about the merits of the NBN. That was not the question. It was a very specific question: what would happen if the independent review she commissioned found that the business case was no good? What is she going to do about it?

**Senator Ludwig**—On the point of order, Mr President, one of the challenges Senator Cormann has in asking a question like that is that it is hypothetical—it asks: what would happen—and he confirmed that with his

point of order. Clearly it is a hypothetical question. It should in ordinary circumstances be ruled out of order. The point of it is of little value to the opposition, but the minister in answering the question can answer that part of the question that is capable of being answered, from a senator from the other side who is clearly out of his depth when asking a question of a hypothetical nature, as he has done.

**The PRESIDENT**—The minister had one minute in which to answer the supplementary question and has 38 seconds remaining. I cannot tell the minister how to answer the question but I can draw the minister's attention to the question.

**Senator WONG**—As I was saying when I was interrupted by Senator Cormann, and as I have previously said, it is common practice for governments when making decisions on complex policy to commission advice. That is common practice. I would have thought that the fact that the government is taking a responsible and diligent approach to this issue would have been something that the opposition—

*Honourable senators interjecting—*

**Senator WONG**—At least we do not have to commission advice to know the difference between capex and opex.

**Senator CORMANN**—Mr President, I ask a further supplementary question. Considering the NBN business case states that the \$27.1 billion in acquired government equity is simply based on NBN Co.'s current plan, is it not true that, if this project is not viable, it will be taxpayers who will be forced to shoulder the burden of this significant expense?

**Senator WONG**—I do not accept the premise of the question. We have a very clear view about the financial viability of this project, and that is a view based on the studies undertaken, the expert panel, the implemen-

tation study and the business case which has been received and, of course, the consideration the government will give this. It has been quite clearly indicated by the government that we believe this project is clearly financially viable. There has been a lot of discussion in this place and elsewhere about the fact that there is an internal rate of return above the long-term bond rate. This project stacks up. The reality is that the opposition are not interested in whether the project stacks up. They are not interested in whether this is good policy. They are only interested in opposing it—that is all; just opposition. *(Time expired)*

#### Banking

**Senator FIELDING** (2.47 pm)—Thanks, Mr President. It must be Christmas—I have got two questions this week.

**The PRESIDENT**—It is.

**Senator Abetz**—Was that part of the deal?

**The PRESIDENT**—Senator Fielding, start again.

**Senator FIELDING**—My question is to the Minister representing the Treasurer, Senator Wong. Given that the Treasurer has stated that the banks had no justification in lifting their interest rates above the increase in the official cash rate on 5 October and the fact that banks have seized almost 11,000 Victorian properties in the last five years due to defaulting on mortgages, why is the government allowing the situation to occur unchecked instead of taking real action, other than scrapping fees, against the banks, who are still recording multibillion dollar profits?

**Senator WONG**—I apologise to the good senator, as I had trouble hearing some of that question.

**Senator Ronaldson**—Too much noise going on behind you.

**Senator WONG**—Senator Ronaldson, I do not think you are in a position to lecture anybody about being noisy.

**The PRESIDENT**—Senator Wong, ignore the interjections.

**Senator WONG**—I understand the question is about banking competition. This issue has obviously had a lot of focus in the public arena in recent weeks. I think Australians are rightly angry at the major banks for the moves above the official interest rate increase. As we have said a number of times, the approach that we are taking, and have been taking since we came to government, is to try to support competition. There have obviously been calls for re-regulating interest rates and for putting in place different regulatory mechanisms, but we know from history that many of those mechanisms do not do the right thing by Australians. We know that when interest rates are regulated many Australians find it hard to get access to home loans.

We believe the best way of working to ensure that banks offer products at the right prices is to support competition—and the Treasurer has made it clear that we have done that. An example is the investment in residential mortgage backed securities. Other examples include the approach the government has taken on exit fees and so forth. The Treasurer has also said that there is obviously more to be done and that we will work through the issue very closely and carefully with the regulators. This is a sector where we need to take a sensible approach and make sure that the policies put in place deliver the right outcomes for Australian families, the right outcomes for Australian consumers. We need to make sure the banks understand that people can walk down the road and get a better deal.

**Senator FIELDING**—Mr President, I ask a supplementary question. Has the government sat down with each of the big four banks and specifically asked the banks' CEOs to provide a detailed, written response to why they have chosen to jack up their interests above the increase in the official cash rate?

**Senator WONG**—I cannot speak for meetings the Treasurer has, but obviously the Treasurer would meet regularly with businesspeople and people who operate in the financial sector. That is obviously an important part of his job, and he has made that clear. But I think the issue here is not what explanation the banks would offer—I think people are aware of that; that is in the public arena. The issue is whether people think that explanation is justified. The government has made it clear that, given where net interest margins are and given that they have returned to pre-crisis levels, it does not appear—

**Senator Fielding**—Mr President, my point of order has to do with relevance to the question. The question was: has the government specifically asked the bank CEOs to provide a detailed, written response to why they have chosen to jack up their interest rates above the increase in the official rate? It is either yes or no. Either the government has or it has not.

**The PRESIDENT**—I cannot tell the minister how to answer the question but I do believe the minister has been answering the question.

**Senator WONG**—I started by saying that the Treasurer and other members of the government talk to businesspeople, including in the financial sector and in the banks, regularly. What I was trying to explain to you was that the issue is not the explanation the banks offer; it is whether you accept that explanation. (*Time expired*)

**Senator FIELDING**—Mr President, I ask a further supplementary question. Given that the representing minister has not been able to clarify whether the government has specifically asked the banks, will the government commit to making it a licence requirement for the big four banks to provide a detailed written explanation if they hike up interest rates above the increase in the official cash rate?

**Senator WONG**—In relation to the suggestion from Senator Fielding, I am obviously happy to refer that suggestion to the Treasurer. As I said, we do believe that banks should be held to account publicly for their decisions. The comments the Treasurer, I and other ministers have made have made that clear. We do not accept many of the justifications which have been offered, as I have previously said. Their net interest margins are back to where they were pre the crisis. Australian people are understandably angry at the way the banks have responded. But, in terms of the suggestion about more formal disclosure of the reasons why a move above the official interest rate occurs, that is something I would certainly be happy to pass on to the Treasurer.

#### **Broadband**

**Senator IAN MACDONALD** (2.53 pm)—My question is to Senator Conroy, Minister for Broadband, Communications and the Digital Economy. Can the minister confirm, as the business case does, that \$13.8 billion is to be paid to Telstra by 2020? How much of that will be paid by government debt, understanding that NBN Co. has no money of its own at the moment and is not getting any income? How much of that \$13.8 billion will be paid by government debt and how much will be paid by NBN Co. when it starts making some money?

**Senator CONROY**—Some of the information the good senator is seeking is contained in further information in the full business case. I understand—

*Opposition senators interjecting—*

**Senator CONROY**—The secret document that we will be releasing in a few weeks, after we have made some decisions in cabinet, following ACCC advice, and after we have made sure that no commercially sensitive information is able to be taken from it.

**Senator Cormann**—So it's in a secret document is it?

*Opposition senators interjecting—*

**Senator CONROY**—Yes, that secret document. The financing of the NBN, as has been made clear on a number of occasions, is a cash injection that has been drawn down from current cash reserves. We table them in parliament quite regularly and they are posted—

**Senator Brandis**—How much?

**Senator CONROY**—As to where they are currently up to, I am happy to seek that information for you, George. I am happy to see where those cash payments are up to. The rest of the money comes from bond raisings, which will be passed on, as needed, to the National Broadband Network. Cash has already been moved across. There is more cash available to move across. As the cash expires, bonds will be issued. As to the bond issuance program, that is a finance department issue. All the cash coming across in the early years is clearly coming from the government. As to some of the other information that the senator is asking for, he will have to wait— *(Time expired)*

**Senator IAN MACDONALD**—Mr President, I ask a supplementary question. What can possibly be secretive about the \$13.8 billion that has been paid by NBN Co.

to Telstra? Someone has to pay for it. You indicated in the statement that you have given us that it will be paid by 2020. What I was asking—and I am repeating this after asking about what is secretive—is: how much of that will be government debt and equity and how much will there be when NBN makes its own funds? What is the expected changeover date?

**Senator CONROY**—As I was going to say, Senator Macdonald will just have to wait a few short weeks for that information to be available.

*Opposition senators interjecting—*

**Senator CONROY**—Yet again, what this shows is that those opposite—and you are listening to the cry of the banshees from the other side—are simply involved in trying to denigrate the NBN, destroy the NBN and, to borrow Mr Abbott's favourite phrase, abolish the NBN.

**Senator Brandis**—Mr President, I rise on a point of order. The question was about relativity between debt and equity and it was about a date—the date when private debt and equity would overtake government debt and equity. The minister has merely, for the entire time he has been on his feet, abused the opposition and done nothing else. He has been neither directly nor indirectly relevant to either of the two matters he was asked about.

**Senator Ludwig**—Mr President, on the point of order: Senator Brandis claims the minister has been abusing the opposition. That is untrue. The minister has been going through the business case and explaining it. It is clear that the minister has rejected some of the interjections and quite properly so, because interjections are disorderly. On the main point, the minister has been directly relevant and I humbly submit that there is no point of order.

**The PRESIDENT**—Senator Conroy, there are 31 seconds remaining for you to address the question.

**Senator CONROY**—As I have already pointed out, that information is contained in the expanded business report, which we have not released yet. In a few short weeks that information will be available. Despite their interjections and the point of order, I have been directly relevant to the question. What it exposes is that those opposite are on their ongoing mission to demolish the National Broadband Network.

**Senator IAN MACDONALD**—Mr President, I ask a further supplementary question. I repeat for the third time: why is the information about who is paying the \$13.8 billion that goes to Telstra such a secret? Isn't it a fact that, if it is government equity and debt, that actually adds to the cost and makes a complete mockery of your allegation that costs are falling and it is a cost that has to be added on to the \$35.7 billion NBN capital expenditure? Why is it secret, Minister? Tell us that first and then tell us what the cost is.

**Senator CONROY**—There is not a lot I can add when you are as economically and financially illiterate as has just been demonstrated by that question. There are so many false premises and assertions in that question, Senator Macdonald, it is not possible to answer it.

**Senator Ian Macdonald**—Mr President, I raise a point of order on direct relevance. My question—asked three times now—was very clear and very direct. It was: why is it such a secret how the \$13.8 billion—which the minister said someone is going to pay to Telstra, is to be paid? There is nothing about that—

**Senator Chris Evans**—What's the point of order?

**Senator Ian Macdonald**—Direct relevance. It has got nothing to do with the question of why it is so secret.

**The PRESIDENT**—There is no point of order. The minister is answering the question. I cannot instruct the minister how to answer the question, as I say on numerous occasions. The minister has 36 seconds remaining.

**Senator CONROY**—Let me be clear again. The information that Senator Macdonald is seeking is contained in the full report, and that report will be made available in a few weeks, in December, as the Prime Minister has indicated. That question was so lacking in any coherence that it is not possible to give a further answer.

**The PRESIDENT**—Order! Pursuant to the order agreed to earlier today, questions are concluded.

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

**In Committee**

Consideration resumed.

**The CHAIRMAN**—The committee is considering amendments (1) and (2) on sheet 7006 moved by Senator Ludlam. The question is that the amendments be agreed to.

**Senator ABETZ** (Tasmania) (3.03 pm)—The Senate is still debating the objects of this legislation. It is timely that Media Monitors have provided me with a story from my home state of Tasmania—which Senator Conroy has relied upon so heavily in relation to the rollout of broadband. This is something that was posted around about quarter past one o'clock today. It is headed 'First school superfast broadband "not reliable"'. Here we have the hapless Tasmanian Premier up there in north-west Tasmania visiting the second Tasmanian school to be hooked up to

this superfast broadband. Great cause for celebration! Unfortunately, just down the road, the first school to be connected says that it is struggling with connection speeds that are less than a third of those promised.

The Principal of Circular Head Christian School, Patrick Bakes, says the internet service provider has been trying for months to fix it. If we think about 'months to fix it', it would suggest that it was a problem around the time of the last election. It is, of course, like the three monkeys: see no evil, hear no evil, speak no evil. You squeaked through the election without having these problems exposed to the Australian public. The principal of the school said, 'It was sounding to me like it was an infrastructure problem'—an infrastructure problem that had been around for months on end. Do you know what the Tasmanian Premier said? He said that he is not aware of any problem.

It is really great. It is a bit like Senator Conroy, isn't it? You are not aware of any problem if you do not read your bill, or your explanatory memorandum, or the business case, and then you can honestly say to the people, 'There is no problem.' Why? Because you ensure that you are not clothed with any information that might actually make you cognisant of the difficulties that are being faced. This is a problem in the showcase of Tasmania that has now been around for months, unable to be fixed. I wonder who is going to bear the cost of fixing it? We were told that the rollout in Tasmania was coming in under budget. No wonder it was coming in under budget, because they have got only one-third of what they paid for. Of course, one wonders what the actual cost is now going to be. This is the program that the Greens, the Independents and Labor are going to just wave through the Senate over the next 24 or 48 hours—without any concern for what is already happening on the ground. We are seeing what is

happening on the ground: things are falling apart. The broadband is not working as promised.

Let us turn to the NBN Co.'s so-called 'business plan'. It is very interesting, isn't it? Key conclusions on page 18 state, 'NBN Co. has developed a rigorous process to ensure an attractive product.' Could you imagine NBN Co. going to the marketplace with a business plan and saying that they have got an 'unattractive product'? Of course not. It is just meaningless verbiage.

NBN Co. is so attractive, when they give it away for free in my home state of Tasmania, do you know what the take-up rate is? It is 11 per cent. It is so attractive they cannot give it away to 89 per cent of the population. Those over there in the Senate, the Greens, the Independents and Labor, will be waving it through without citing the business plan and ignoring what is happening in my home state of Tasmania. Broadband is in disarray, collapsing, not working as promised and only being taken up by 11 per cent. Does the business plan reflect the actual on-the-ground experience in Tasmania? Not a word of it. Why? Because it does not suit their cause.

Let us go further into the business plan. On page 33, under the very important heading 'Risk Management'—and listen to this very carefully on the crossbenches:

NBN Co is seeking to develop a sound system of risk oversight.

They still do not have a risk oversight system in place, yet we are supposed to be passing this legislation in the next 24 hours. They are still 'seeking to develop' it. Once they have developed it, once they have told us what it is, we might be in a position to give serious consideration to the plan. Until such time that these fundamental foundation documents are provided to us and the real detailed information is provided to us, it would be an

abrogation of our responsibility to support the proposals that have been put to us.

Let me move to an open letter to Mike Quigley, the CEO of NBN Co. Ltd. This is an open letter from the Alliance for Affordable Broadband. They love broadband, they support broadband and they want affordable broadband. They tell us this about the business case summary:

... the Summary appears to raise more questions than it answers.

No investor or lender would lend money to open a milk bar based on a document with this little detail. It continues:

Yet Members and Senators seem to think this suffices to spend over \$50b of taxpayers' money.

They are wrong on that one. There are some responsible senators in this place who do not think it suffices to spend this much money on such a flimsy business plan. They go on to highlight what Senator Macdonald did in his question that the costs are actually higher than they were expected to be. They go on to indicate that the price of the basic package will not decrease over time but is likely to increase. They say:

- the project is only viable if it is a monopoly in the last mile and in backhaul facing no competitive pressure as to price ...

Of course, 'no competitive pressure as to price' means no competitive pressure on innovation or efficiency either. These issues simply are not responded to.

There is a whole host of issues raised here, including the one raised by Senator Ronaldson on the missing interest cost. There is no reference in the business plan as to how they are going to pay interest or what the interest will be. It makes the business plan look great. I wish I could have done that when I submitted to the bank to be lent some money to set up my legal practice all those years ago. If only I could have said: 'Look, don't worry about interest payments. Do not

worry about that but I think we have got a great business case. Please bankroll me, but don't talk about the interest rate.' Of course the interest has to be included in any sensible business plan.

This is a real kicker, especially for the Labor Party, who pretend to champion the cause of low-income earners. This is what the Alliance for Affordable Broadband say:

By this statement, NBN Co expects to decrease the real—

whatever that means—

prices for products able to be afforded in homes with higher incomes, yet households on low incomes who can only afford the most basic service will not see any similar improvement in affordability and in fact, it would appear that it is NBN Co's intention to make this product *less* affordable over time.

Those opposite pretend to be the champions of the low-income earners. They have a business plan and, not satisfied with the increased cost of living that they are putting on every Australian, they are now going to whack them with increased costs for the NBN as well.

We turn to today's *Australian* editorial which says in part 'the promises that high-speed broadband will improve national productivity'. I assume the minister will not scoff at that suggestion. I assume the government accepts that it will increase national productivity. We do not get a response from the minister, so I suppose that question is still in the ether. That is what he has been saying. The government has been claiming day after day, week after week that the national high-speed broadband system will improve national productivity.

If they are so convinced the NBN will increase national productivity, surely it would be a no-brainer to submit it to the Productivity Commission and have it confirmed. But they will do anything within their power,



including doing all sorts of deals with the crossbenchers, to ensure that their claim about increasing national productivity cannot be tested by the pre-eminent authority in this country that could actually put the ruler across that assertion, namely, the Productivity Commission. They will do everything to avoid that scrutiny. Why? I think we know the answer: because they doubt the claims they have been making.

If I had been making such bold statements all the time, week in and week out, and actually believed them, and the opposition said to me, 'Come on; submit this to the Productivity Commission,' my response would have been, 'Be my guest; we will do it for you because we are confident in our assertions.' The fact that they refused to submit this to the Productivity Commission tells us everything. They are not confident, even in their own rhetoric, because they know how flawed their assertions have been.

This is a major infrastructure project for our country. It deserves proper scrutiny, and it cannot be properly scrutinised until we have the full business plan. I repeat, with great respect to my friend Senator Xenophon: you cannot say that there has been a public release of the 'full summary' of the NBN. It is like saying, 'I've got a full half-glass of water.' A summary, by definition, is not full. Unfortunately, Senator Xenophon has adopted the mantra that, undoubtedly, the Labor Party developed in some sort of focus group. They gave it to Senator Xenophon and he faithfully put it on the front of his media release. I hope I am wrong as to that; I am sure I am. More seriously, we have not been given the business plan, we have not been given the government's response to the implementation study, we have not been given the Greenhill Caliburn investigation into the business study and we have not been given any opportunity to have a Productivity

Commission investigation into this—and so the list goes on.

That which has been rolled out so far in my home state of Tasmania is breaking down as we speak. The Tasmanian Premier, the minister and others pretend they know nothing about it, even though this problem has been in existence for months. Many answers need to be provided by this minister and this government. They have been refusing to provide those answers. That shows that they do not have the robust documentation, the robust support material, that a project of this size deserves.

**Senator LUDLAM** (Western Australia) (3.17 pm)—Seeing these are my amendments that are being debated, I thought it might be worth putting a couple of things on the record, particularly while we have the Leader of the Opposition in the Senate present, as I have a question I want to put to him. I am extremely grateful that the opposition has seen fit to subject amendments (1) and (2) to such an extraordinary degree of scrutiny. So far, I am taking it as a compliment. They are good amendments; several coalition senators have complimented me on the quality of the amendments while indicating that they will be voting them down.

We have approximately 20 pages worth of amendments to get through and we have been on my amendments, (1) and (2), for four or five hours, yesterday and today—not counting the time that the opposition wasted with procedural motions earlier today. I am seeking some guidance from coalition senators. When we finally vote on my amendments, whether or not they get up, Senator Birmingham is, I believe, bringing on 65 amendments, on sheet 7004. Does the coalition have any intention at all of submitting this bill to actual scrutiny, or do you intend to simply tie us down in this pointless filibuster? Several coalition senators have man-

aged to get a pink batts reference into the debate on my amendments. Is there actually a will to debate the amendments, or are you simply going to waste our time until very late this evening?

**Senator ABETZ** (Tasmania) (3.18 pm)—I am more than willing to respond to the senator. This shows the close Labor-Green alliance that has developed. The issues that we have been raising since the committee stage of this bill have required the minister to respond, and he has refused. He walks around the chamber, he leaves the chamber, he sits elsewhere, he plays on his mobile phone and he treats the questions and issues we are raising with absolute and utter contempt. What we need, I say to Senator Ludlam through you, Mr Chairman, is a response as to how anybody can responsibly vote for this legislation and consider the amendments in the context of us being denied the fundamental documents that we need to make a full, proper assessment.

Yes, Senator Ludlam, we do use the pink batts analogy. You and the Greens bear responsibility for that disaster, that debacle, as you waved that legislation through the Senate without giving it the sort of scrutiny that we in the coalition sought to give it at the time. It went through, and you bear the responsibility for not putting those matters under proper scrutiny. I know the pink batts matter was only \$1 billion. To me that is a huge sum of money, but this is 50 times as big. Having not learnt your lesson from the pink batts debacle—

**The CHAIRMAN**—Order! Senator Abetz, you must address the chair.

**Senator ABETZ**—Quite right, Mr Chairman. The Greens, not having learnt their lesson in relation to the pink batts debacle, are now going to try their luck on a project that is 50 times the size. They are just

going to wave it through with the same lack of scrutiny.

I have indicated to the Greens and the crossbenchers what has been happening in my home state of Tasmania, where broadband is collapsing as we speak. Still they say, 'Hear no evil, see no evil, speak no evil—just pass it through the place.' We will not. Because we are sound economic managers, we believe that we have a duty to the Australian people to be responsible. Until the minister provides us with the fundamental information we are seeking, we will continue to raise the questions which we have a duty to our electors and other Australian taxpayers to raise.

**Senator LUDLAM** (Western Australia) (3.21 pm)—I will be very brief, and I thank Senator Abetz for his response to my question. I have no problem at all with the opposition voting against this bill. I think it is irresponsible and politically self-defeating, but it is entirely their right to come in here and vote against it. But Senator Abetz must have a pretty warped idea of the notion of scrutiny if this is what he calls scrutiny. This is filibuster; this is a complete waste of the chamber's time. I will merely wait until I get the opportunity to put my amendments, and I guess we will see a number of other coalition senators giving us the benefit of their views. All I would say, on behalf of everybody who may well be listening in with some sense of disbelief as to what on earth it is that the national parliament is debating, is that we have approximately 20 pages of amendments to get through and the coalition has tied us down for five or six hours on the first two. Can we just stop wasting time and get on with the substantive debate?

**Senator IAN MACDONALD** (Queensland) (3.22 pm)—I want to respond to that rather sanctimonious comment by Senator Ludlam. Yesterday, as the first speaker after

Senator Ludlam moved his amendments, I asked him some questions. He walked out of the chamber. He was not here for the entirety of my speech. Here I was asking him questions and they were falling on deaf ears. So Senator Ludlam should not be so sanctimonious. We did ask him questions, but he chose to leave the chamber—and he is leaving again now. If I want to ask him questions now, how can he possibly answer them because he is walking out of the chamber when I am about to ask questions? I know Senator Johnston has questions as well. But why bother asking Senator Ludlam when he leaves the chamber whenever we asked him a question? What sanctimonious claptrap!

**Senator JOHNSTON** (Western Australia) (3.23 pm)—Prior to question time I was addressing Senator Ludlam's amendments, and I was saying why the opposition had no confidence in this minister, particularly in the face of what has gone before with virtually all other ministers: mining resource rent tax, climate change, health, asylum seekers, water in the Murray-Darling, pink batts and school halls, just to name a few. And when I turn to this minister, it is impossible to have any confidence in him. This is the minister who single-handedly has vaporised \$30 million. The Australian National Audit Office put a \$30 million price tag on the failed National Broadband Network tender process, blaming the department and the minister for that loss. Very few ministers in our Federation's history have been able to achieve the vaporisation of \$30 million of taxpayers' money. But this minister has an outstanding and infamous track record in that regard. No wonder the opposition is taking every opportunity to scrutinise every walking, living, breathing movement of this particular minister. The fact is we simply do not have any confidence in him. He has not even read his own legislation. He was caught out by Senator Joyce last night saying things that are not

accurate. I want to get to the bottom of this costing.

These amendments that have been put forward by Senator Ludlam all relate to ministerial discretion and to strengthening accountability of the government. But the point that I am very interested in is these new numbers that we now have. The \$43 billion has gone back to \$36 billion with an implementation tag of \$13 billion. Does that mean that once upon a time the actual cost of this project in, maybe, 2010 dollars or 2009 dollars was \$56 billion? My question to the minister is: was, at some point, the total cost of the capital and implementation of this project \$56 billion? I think that is a legitimate question that he needs to answer.

When this government released the guidelines for Infrastructure Australia in 2009, it said:

... all initiatives proposed to Infrastructure Australia ...should include a thorough and detailed economic cost-benefit analysis ... In order to demonstrate that the Benefit Cost Analysis is indeed robust, full transparency of the assumptions, parameters and values which are used in each Benefit Cost Analysis is required.

That is in their own guidelines. But for some reason this minister clearly is outside those guidelines. He thumbs his nose at them and at the same time thumbs his nose at this parliament. Why so secret? Why is this minister so secretive? What is this all about? Could it be that the CEO of NBN Co. is on \$1.95 million annually as a salary? Could it be that reason? Could it be that Mr Mike Kaiser, a former Queensland Labor MP who had to resign after his involvement in vote rigging, has been appointed by this minister to NBN Co.? All of these things are reasons the opposition is so concerned. Indeed, when there are so many amendments then that sends a very, very clear signal.

In closing, the parliament must be the first port of call in a project of this magnitude. If

this project is so good and has such a robust analysis, then the parliament needs to be engaged and the parliament needs to see where the government is going. All we have here so far from a very incompetent minister has been obfuscation and secrecy. This has been simply and utterly unprecedented for the amount of money involved and is an absolute disgrace.

**Senator BACK** (Western Australia) (3.28 pm)—Mr Chairman, I thank you for the opportunity to put my questions in this particular debate. Already we have seen the scant regard and courtesy with which this minister, Minister Conroy, holds this place, and I will refer to that in a few moments. This time last year we were debating the ETS and Minister Wong, with carriage and responsibility of that legislation at that time, had the courtesy to sit in this chamber for all of about 56 hours and to answer questions, to engage with senators and to give us the benefit of her input and knowledge. This minister, Minister Conroy, has been spectacular by his absence, and what a tragedy it is.

In my many years in business and running government enterprises I had one overriding principle: the best indicator of future performance is past performance. Senator Ludlam asked why it was we were expressing such concern. The past performance of this government has been a joke, reprehensible. Senator Ludlam asked why we mentioned pink batts. The reason for mentioning pink batts, as has been eloquently put, Senator Ludlam, was the billion dollars of waste without it ever having been the subject of any scrutiny and, regrettably, the four deaths that we know about to date—and all of the other costs that we do not yet know about with pink batts.

I sat through the hearings into the Gillard memorial halls and once again saw the gross incompetence that was visited upon this

country as a result of it. Senator Ludlam and his colleagues would know well about the failed Green Loans scheme that cost so many small-business people their livelihoods and for which there has been no restitution from this government. We saw the issue with the allocation of funds for Aboriginal housing in the Northern Territory of some \$300-plus million. Before the first roof was on the first building the Northern Territory government had accumulated for itself a figure in excess of \$30 million for no action at all. Only this afternoon we heard in Tasmania of the very first school in Smithton linked to this famous new NBN and, unfortunately, it seems as though they are having infrastructure problems because it has not yet met anywhere near its objectives.

I suggest to my good colleagues—Senator Ludlam and his colleagues and Senator Xenophon—before it is too late, before you are party to the next failure, to take a good, long look at the first performance of this NBN, which has in itself failed, along with the other projects that we have seen in the three years.

We return to costs. I look at this document that was forced, kicking and screaming out of government in the last couple of days. It is a project of \$50,000 million of borrowed money to be repaid by the Australian taxpayer, and in '6.6 Funding', we have not even three lines but 2½ lines:

#### 6.6 Funding

NBN Co's funding requirement is driven by the Company's earnings before interest, taxes, depreciation and amortisation (EBITDA) and Capex profiles, including working capital.

That is the sum total we are to learn of funding for a \$50 billion project. Senator Sterle would not lend 50c to his sons or daughters if that was the best they could come up with in terms of a funding activity.

We were told originally the project was \$43 billion. We were then told it was \$26 billion. When you add \$35½ billion to \$13.8 billion of infrastructure spending, it comes to \$50 billion. And for those of you with calculators, that is—before we link up a business, before we link up a home—\$2,272 for every man woman and child in this country. That is before you start adding debt. That is before you actually link up to this project and to this process.

But what is going to be the cause to increase it? I did some quick figures on that \$50 billion and at a six per cent average interest over the next 11 years, because we were told that it would not top out until 2021. That, if you don't mind, is a cool figure of \$1.6 billion per annum at six per cent, which until 2021 would be \$17.8 billion added to the bill.

**Senator Cameron**—Don't do a Barnaby!

**Senator BACK**—That would be added to the debt, Senator Cameron.

**Senator Cameron**—Don't do a Barnaby!

**The CHAIRMAN**—Order! I want some order on my right! And I would remind senators, particularly those who might not be listening, that it is disorderly to come into the chamber eating. Read your standing orders.

**Senator BACK**—I refer again to the cost of borrowing as the first factor that will increase it. Between now and 2021 at six per cent we are looking at nearly \$18 billion added to the cost. At seven per cent, a mere one per cent more, we are up over \$20 billion. That is the cost of borrowing. The second concern I have would be the likely industrial conditions. The other side could not answer a question in question time yesterday as to what is going to be the blow-out effect over the time. The third—and I will come to it in a moment with regard to Tasmania—is the take-up rate. The fourth, of course, will be, if they are allowed, any competing tech-

nologies. If we think of the advances in technology over the past eight years ago—2002 to 2010—and if we project that forward another eight years, heaven forbid, where do we think we will be with internet connectivity and various IT activities? This is tying this country up. It is locking us into aged and already outdated technology. By 2018 we have got no idea where it will be.

Therefore, what are the risks? The risks of this project are incredible. As has been said, only now do we see, Senator Ludlam, that NBN Co. is seeking a risk oversight, risk management and internal control process. Back in March of this year in this place when I spoke to this issue I spoke about the need to develop a business plan before you get started—where you have a cost-benefit analysis, where you do a risk management plan, where you do a SWOT analysis and when you look at likely competition. It was ignored. It was ignored by this arrogant minister, who does not even have the decency to be in this place to respond to his lousy legislation—legislation he has not even read, explanatory memorandum which he does not understand.

That allows me to come to Senator Conroy, but before I do I hope my Greens and Labor colleagues from Western Australia take careful note of this. If you address yourselves to page 7 of this lamentable document you will see that it involves only towns with more than a thousand people. Senator Evans, if he were here, Senator Sterle, Senator Bishop, my two Greens colleagues and I know that more than 80 per cent of towns in Western Australia will be denied access. Research from the Parliamentary Library tells me that 80 per cent of Western Australian towns have fewer than a thousand people.

*Honourable senators interjecting—*

**The CHAIRMAN**—Order! I will have order on my right. Senator Back has a right to be heard.

**Senator BACK**—Only today did I obtain the information necessary to make the comment about towns in WA with fewer than 1,000 people. It may well be that nationally 97 per cent of the population are going to be linked up to the NBN. It simply shows the lack of regard that this Labor government—

**Senator Mark Bishop**—That's 97 per cent, you dill.

**The CHAIRMAN**—Order! You will withdraw that comment, Senator Bishop.

**Senator Mark Bishop**—I withdraw that comment, Mr Chairman.

**Senator BACK**—Unfortunately this speaks of the lack of regard this government has for the state of Western Australia, the state that is providing the greatest level of economic input to this nation. Yet we are going to see most of the communities in the Kimberley denied the opportunity to access this service. We see it in the goldfields, the southeast, and through the southwest, the wheat-belt areas of the state. It is a joke and the two Greens senators from Western Australia will not stand up to it.

I turn again to Senator Conroy who is still not here to respond. On national television last night, Senator Conroy described the Senate as being 'arcane'. I rushed to learn the definition of 'arcane' and it is most interesting. The definition is:

... requiring secret knowledge to be understood; mysterious, esoteric; information—

Senator Cameron will be interested in this—that is known or understood by a limited number of people.

Inadvertently, Senator Conroy was quite right when he used the word arcane—but it is not the Senate that is arcane, it is Senator Conroy. He is mysterious, secret, hidden,

esoteric, cabbalistic with the information. What do we see now? Conroy the cabbalistic, the master of mystery, the archangel of 'arcaneity'. That is who Senator Conroy is. He is a person who cannot appear, who is hidden. He is prepared to share information with some in this place. He had to be overruled even to come up with this summary of the NBN business plan. What an insult it must be to the Secretary of the Treasury, Dr Ken Henry—I would have thought there would be some respect for him—who said when asked about this project:

Government spending that does not pass an appropriately defined cost-benefit test necessarily detracts from Australia's wellbeing.

The government's Secretary of the Treasury is being totally and utterly ignored. I ask of Senator Conroy, in his absence, these questions, and I ask those on the crossbenches and the Greens to reflect on the responses. When the program was piloted in Tasmania, how much did it cost people to connect? Was it free of charge, as we have heard? How much did service providers pay to be connected? Was it free of charge for them? Is it true that even when it was given free of charge, less than 12 per cent of those to whom it was given for nothing bothered to sign up? Of the 11 per cent who signed up, to what use have they put this new technology? Have they simply downloaded videos a bit more quickly or has it been a complete waste? How often have they logged on? All of the interviews I have seen, in luminous places like Midway Point, have been with young people who have used it for computer games and to download movies. What will we get from this facility that will cost 50,000 million dollars plus interest?

I conclude with what I regard as the reprehensible abuse of process in this chamber this morning. To see the Greens party and the two Independents gag debate to the extent they did was an absolute disgrace. I recom-

mend that they go back to *Odgers Australian Senate Practice* and read chapter 1 which relates to the Senate and its constitutional role as 'an essential of federalism'. It says the functions of the Senate are:

To ensure that legislative measures are exposed to the considered views of the community and to provide opportunity for contentious legislation to be subject to electoral scrutiny.

Another function is:

To provide protection against a government, with a disciplined majority in the House of Representatives—

In this case, read the majority gained through the Greens and the Independents—

introducing extreme measures for which it does not have broad community support.

All I am doing is reading from the constitutional objectives in *Odgers Australian Senate Practice*. Another function listed:

To provide adequate scrutiny of financial measures, especially by committees...

I thank you for the opportunity to speak.

#### **DISTINGUISHED VISITORS**

**The DEPUTY PRESIDENT**—Order! I draw the attention of honourable senators to the presence in the gallery of former distinguished President the Hon. Paul Calvert. I am quite sure that, observing proceedings today, he is glad he retired.

**Honourable senators**—Hear, hear!

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

##### **In Committee**

Consideration resumed.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (3.44 pm)—I think it is quite appropriate that Senator

Back finished on Odgers and the role of Senate committees in scrutinising bills, because it is worth reminding senators opposite that this bill was the subject of a Senate inquiry some time ago. It is appropriate that complex legislation that has long-term effects be subject to such scrutiny by the Senate, and I, for one, believe that opposition senators were afforded every opportunity to participate in that inquiry.

With regard to the assertion from those opposite that this issue has lacked scrutiny, I remind them that, when the opposition had full control of the Senate, they constituted the Select Committee on the National Broadband Network. That committee made no fewer than four reports to the Senate through the course of the introduction of the National Broadband Network and during the phases when greater detail about the network was coming to light, including, importantly, on the implementation study, which did make a series of observations about the nature of the network, and on the absolute relevance of the cutting-edge technology being deployed in terms of fibre to the home. Indeed, the committee provided much information about the crossover point on the financials with regard to the rollout and returns and revenues to NBN Co. So no fewer than four reports were delivered.

Senator Macdonald at one point chaired the committee and Senator Fisher also chaired the committee. In fact, the committee was structured so that the opposition had a full and clear majority at every step of the way. So the opposition had the perfect opportunity to extract the information they wanted, and they were able to have access to those who put together the implementation study as witnesses providing evidence to the committee.

When you come in here and make a song and dance about not being able to access in-

formation—and we also had Senator Back’s immature reference to the dictionary definition of ‘arcane’—it is clear that this is a filibuster. The opposition does not have anything substantive to say about the National Broadband Network and, more importantly, the structure of our telecommunications industry, which is the subject of this bill. It is disappointing that the contributions are so light on in their actual interest in the policy at hand, given that the rhetoric that has been thrown across the chamber is about wanting more information.

Another thing I would like to mention is the way in which the opposition are presenting their issues. They are making a lot of stuff up. Every speaker has used a different number, in terms of billions of dollars, so very clearly they are trying to create a fear campaign. Senator Back used a figure of \$50 billion, which has no bearing on the issue we are discussing at all. They are just making it up and doing scribbled numbers on notepaper in front of them to generate a campaign of misleading information to put into the public arena. If the opposition had good intentions to scrutinise this bill and scrutinise the government, they would not only support this amendment—

*Honourable senators interjecting—*

**Senator LUNDY**—Let me read it again. Senator Ludlam has moved an amendment on behalf of the Greens to add these words to the objectives of the act:

The availability of accessible and affordable carriage services that enhance the welfare of Australians.

No-one is arguing with that, yet senators opposite not only do not address the issue of the benefits of accessible and affordable carriage services but continue to throw misleading statements into this debate.

**Senator Colbeck**—You haven’t proven that it is affordable.

**Senator LUNDY**—I will take that interjection because the whole idea is that this is going to be an affordable network. If you knew anything about the structure of the telecommunications industry you would know that the reason affordability is an issue for us is that, under the former government, telecommunications costs in this country were among the highest in the OECD. This was because the former government—the coalition, the Liberal Party—did not care enough about the economic relevance of our telecommunications infrastructure and the importance of affordable connectivity to our future economic and social wellbeing. If they had, conceivably we would have had stronger competition in the retail market and that would have forced telecommunications companies to invest in fibre infrastructure. The fact is that the coalition government themselves created the preconditions for the need for a National Broadband Network that will serve this country’s economic and social needs in the future.

The former coalition government were negligent in their management of telecommunications policy. To be negligent in telecommunications policy means you are negligent in economic policy, because so many of our future prospects for economic growth rely on telecommunications infrastructure. The digital environment resolves the issue of geographic isolation and allows our participation in a whole range of markets, including important services markets like financial services and those creative industries that sit on the back of the digital environment that the NBN will provide. Colleagues, it is important to understand that we have significant strengths as a country in all of these areas. The constraints on our sectors to expand their export offerings to grow our economy and create jobs have been caused by the former government through their neglect of our telecommunications infrastruc-



ture. The NBN is designed to resolve those constraints and make the most of the opportunity for economic expansion.

I would like to address some other matters—in particular, the lack of courtesy in the chamber at the moment. Nothing is more discourteous to the Australian people than to refuse to actually debate the substance of the bill at hand and address pretty straightforward amendments like this one so that we can get to the next one—which, interestingly, is an amendment to be moved by the opposition. But, so far, we have seen no intention from the opposition to vote on this first, very straightforward amendment—it was moved by the Greens, and the government have indicated that we are supporting it—so that they can move to their own amendment. What does that tell you about the tactics that are being perpetrated across the chamber? What it tells me is that the discourtesy we are experiencing from the opposition is because they are not interested in debating the issue.

I feel compelled to address the misleading statements that have been made. Senator Back and other coalition senators have said that the fibre technology is not future proof. That is not true. It is the best technology. If you want to spend money on infrastructure, putting fibre in place is absolutely the best way. We have run through the issues in this chamber about the capacity constraints of wireless. We have run through the issues about the degradation of bandwidth, the more people that subscribe through a given tower. We understand there are technological developments. But the world jury, all the telecommunications experts, concur that a fibre-to-the-home network is the most future proof technology and it is worth saying again and again and again. Upgrades in technology can be built into the system, and this is why it is future proof, at either end of the fibre. You do not need to roll out new fibre. As far as we can foresee, the fibre-to-the-home

technology is absolutely spot-on and worthy of the investment we are making. Senator Back said that somehow in eight years time this technology will be outmoded. That is not true. To say in here that it is outdated is just shallow, spurious and misleading to the Australian people. This opposition needs to be called to account—and I would be happy to play this role, as we no doubt hear further contributions from those opposite.

Finally, I want to talk about Western Australia. My experience with Western Australia comes from those many long-suffering residents who are attached to a system of network technology called pair gain systems. Whether it is about the Wanneroo exchange or an exchange in one of the outer metropolitan areas of WA, I still get emails from people who cannot get a broadband service. They are on the waiting list for an ADSL service and are completely and utterly frustrated because of the capacity constraints of the existing copper network. We know and they know that the only permanent solution to the problems of the existing network is to build a fibre-to-the-home network. So I find it fascinating that Senator Back and others come in here and use the west as an example. These people have been so riddled by a depleted copper network that they are fed up, and frustrated. For those home based businesses in WA—and, let us face it, it is a significant growing economy—if you do not have a reliable high-bandwidth connection to your home you cannot run your business from your home. You cannot do it. And what about the old copper long tails, out of town? If you are a business trying to function and set up in an industrial area you cannot run your business if you cannot get a reliable high-bandwidth connection. This is the fact of the matter in the 21st century. The NBN is the only technological solution that will resolve this problem—not just for homes but for the small businesses and home based

businesses right around this country, who cannot even start thinking about it until they can guarantee that connection.

When I visited Narooma many years ago I learnt a lesson about what the National Broadband Network offers Australians. I talked to an engineer who was trying to use CAD software, computer-aided design software, for an engineering firm in Melbourne. His home of choice was Narooma. It is a beautiful town. He was not able to connect with his employer in Melbourne because there was not an adequate high-bandwidth connection available at that time. Just imagine if all Australians had an affordable high-bandwidth connection. It would allow them, if they so chose, to run their businesses and interact with their employers from wherever they chose to live. There is no more compelling reason for investing in national infrastructure. We do not want to discriminate. We want to make sure all Australians benefit from this. Only the National Broadband Network, with its fibre-to-the-home technology, is capable of providing this profound opportunity for everybody in this country.

*Senator Cameron interjecting—*

*Senator Wortley interjecting—*

**The CHAIRMAN**—Order! Senator Cormann, before you start, can I remind senators on my right that Senator Lundy was heard in almost silence for the whole of her speech—

*Senator Cameron interjecting—*

**The CHAIRMAN**—Senator Cameron, I am talking. I expect Senator Cormann to receive the same treatment from your side.

**Senator CORMANN** (Western Australia) (3.58 pm)—I note at the outset that the government has clearly made a very strategic decision on the handling of this legislation. It has pulled off the Minister for Broadband, Communications and the Digital Economy

and sent in Senator Lundy because Senator Lundy is at least able to ad lib and give a speech without looking at her laptop all the time about the concepts of the government's proposed NBN legislation. It is certainly a very smart move by the government to pull Senator Conroy away from this legislation and to move in Senator Lundy. I congratulate Senator Lundy for putting on display today all of her passion, expertise and commitment to this portfolio. In the last week we have witnessed the Gillard government sending in the Minister for Finance and Deregulation, Minister Wong, to run a bit of a check-up on Senator Conroy, to run a bit of an independent review, because the government is clearly having second thoughts about this whole NBN process. We now have this pincer movement—with Senator Wong on one side and Senator Lundy on the other side—and they are holding up Senator Conroy in the face of battle.

Essentially, Senator Lundy has just said: 'Trust us—we're from the government. These are the assertions we're making about the NBN. Just take our word for it.' The reality is that the government have not demonstrated that their proposal is the best way to achieve faster and more affordable broadband. That is what this debate is all about. In fact, under the Rudd government, the then Minister for Finance and Deregulation, Lindsay Tanner, was just about bragging about the fact that they were not going to do a cost-benefit analysis—they were not going to go out of their way to demonstrate that this was the best value for money and the best way of ensuring faster and more affordable broadband for all Australians. Of course everyone agrees with the object of this amendment. Senators on this side agree with the concept that we want faster and more affordable broadband. That is not at issue; nobody disagrees with it. The question is whether the government's proposal of the pursuit of a

project that is now worth \$49.5 billion and already has an overrun of \$6½ billion is the most effective way to deliver faster and more affordable broadband for all Australians.

Senator Lundy tells the chamber: 'Trust us—we're from the government. We're telling you that this is future-proofed technology; we're telling you that this is the best way to go, so just take our word for it.' But I remind the chamber and people around Australia that this government was not able to give away \$2½ billion worth of pink batts. Even the then Prime Minister, Kevin Rudd, apparently told caucus that that was one of the great failings of the government. The government could not give away \$2½ billion worth of pink batts for free, so how can we trust them with a \$49.5 billion project sight unseen?

The fundamental problem of this government is their total incompetence, because that drives everything else. There are incompetent ministers on the front bench and 'zombies' on the back bench. In saying that, I am quoting Senator Cameron, a very authoritative source. Senator Cameron knows a zombie when he sees one, and he has identified the whole Labor backbench as zombies. These are not my words; these are Senator Cameron's words. We are in a circumstance now where there is a combination in the government of incompetence and zombiism, and what happens? When they stuff up, they have to cover it up. Everything they do is driven by this need to cover up their stuff-ups. That is where the secrecy and the cutting of corners again and again come from. That is what got the Rudd government into trouble and why the then Prime Minister eventually lost his job—fundamental incompetence could no longer be swept under the carpet.

Essentially, the process that ran this morning was a demonstration of all of the funda-

mental problems of this government. They knew that they wanted to bring this legislation on. They knew that they wanted to run a gag motion. They knew that they wanted to vary the hours for debate. They knew that they wanted to stop us from even having debate on the gag motion. But were they ready? No, they were not. As we were debating a motion to suspend standing orders this morning, people were busily drafting the motion behind the doors—they did not even have their paperwork ready. They were not even ready to apply a gag, just as they were not ready last night.

Today is an incredible day in the history of the Greens' contribution to parliamentary democracy. In years gone by, Senator Brown always prided himself on occupying the high moral ground in his scrutinising of governments, whoever those governments were. In seeing his smile from one ear to the other while jumping up to move the gag motion last night, his absolute pleasure in trying to cut down debate, his anger when the move failed last night and his enthusiastic attempts to limit debate on this important legislation today, we have also seen a significant shift in the way the Greens contribute to Australian political life. Senator Bob Brown has demonstrated that the Greens are now a party of power. They are the ones who are running this government—they are the ones who are in charge—and what happened last night and today is an indication of the sorts of things that will happen from 1 July next year, when they are going to be totally in charge. At least now there is still a little bit of restraint—Senators Xenophon and Fielding have to be on board for some of these little power games. Graham Richardson would have been proud of what Senator Bob Brown did last night and today.

Today I asked some questions of Senator Wong. One of them was: 'Why does the government say that this project cost \$37.5

billion when, according to the summary business case, it actually cost \$49.5 billion?' Before Senator Wong could even jump to her feet, Senator Conroy was jumping out of his skin and interjecting like mad, trying to run the line, 'You cannot add together capital expenditure and operating expenditure' and 'It is inappropriate to add those figures together.' That might well be the case if the NBN was a company that was actually generating revenue, but the problem is that the NBN has no money whatsoever. The NBN is starting at ground zero. The NBN is going to be fed entirely by taxpayers' money, borrowed money or by money that is coming from bonds or other means.

The reality is that, according to the summary business case that has been released, \$35.7 billion will go to NBN Co. as total capital expenditure and \$13.8 will be spent as part of the Telstra agreements for decommissioning and infrastructure payments by June 2020. That is \$49.5 billion. So on the table now is \$6½ billion more than the figure we were given as the worst case scenario figure. That is black and white; I am not inventing this. This is in the summary business case that Julia Gillard, the Prime Minister, was shamed into releasing last night in order for the government to be able to get this process underway today.

This week we have had the revelation—it is not something the government has volunteered—that the Minister for Finance and Deregulation, Penny Wong, commissioned an independent review to check up on Senator Conroy. The minister for finance did what ministers for finance should be doing; she wants to make sure—to the extent that she can—although it is a bit late in the process for her to be doing so, that the money put into this project is well spent.

The problem, though, is: what happens if this independent review says the business

case does not stack up? We will have already passed this legislation. Why have an independent review of a business case, which would seem to suggest that the government has some second thoughts and concerns, if you do not leave yourself room to move depending on the outcomes of that review? If there is no capacity for this parliament to make decisions depending on the outcomes of the independent review, why have it at all? It is a waste of money, isn't it? Why should the Senate make a decision in relation to a business case which still has not been released when we do not know whether the independent auditors that have been asked to look at it actually agree that it is a legitimate proposition?

Senator Lundy tells me, 'Trust us—we're from the government.' Julia Gillard, the Prime Minister, does not trust Senator Conroy, because she has asked Senator Wong to commission an independent review. She has asked Senator Wong to check what Senator Conroy is up to. If the Prime Minister and Senator Wong cannot trust Senator Conroy, why should the Senate trust him? Why should we be making decisions on this sort of legislation, with \$49.5 billion at stake, without having the benefit of some third-party endorsement that says either, 'Yes, this business case stacks up,' or, 'No, it doesn't'? All we have is the government's word for it, but we know that the government itself does not think that it quite stacks up. Why otherwise would we be having this independent review?

There are all these issues and additional questions that emerge from the business case summary that was released. The summary states:

The equity requirement from Government based on our current plan is \$27.1bn.

For 'government equity requirement', read 'taxpayers' dollars invested in the system

that is going to be set up'. That is what this is: \$27.1 billion in required government equity is essentially the share that taxpayers have to put in now. Furthermore, what does 'current plan' mean? How many plans are there? Are we going to have a plan this week, a plan next week, a plan in January and a plan in March? How often do these plans get adapted? When I asked that question of Senator Wong, she was not prepared to entertain it at all. Why make a business case that says, 'We need \$27.1 billion if we do what we are telling you today that we want to do'? What is the import of the word 'current', Senator Lundy? I would be very interested to know what that word means in your business case summary. Is there an intention to have another plan next week, in January, in February and in March? How much beyond \$49.5 billion will it go?

Other speakers in this debate have very clearly laid out the problems in terms of some of the expenses that have not been taken into account even in the summary of the business case that was presented to us. Government expenditure on the NBN has already increased by over \$1 billion since the implementation study. The government, as I have just mentioned, says that on current projections it will need to provide \$27.1 billion for the NBN to be viable. It used to be \$26 billion; now it is \$27.1 billion. What is it going to be next week and the week after? If this keeps going up at \$1 billion a month, where will it end? I am sure that Senator Lundy, who has been put in the position of having to defend the indefensible because of the incompetence of Senator Conroy, will probably find it difficult to answer some of these questions.

The next problem is that there is absolutely no guarantee that the price of broadband will decrease. Page 21 of the business case summary states it very clearly:

... NBN Co. anticipates being able to reduce real prices for all products and nominal prices for all products, except the basic service offering ...

The basic service is 12 mbps. Most regional and remote areas will receive the basic service, as they will rely on satellite and wireless broadband. They face the prospect, as Senator Lundy well knows, of real price increases. Maybe Senator Lundy, living in Canberra, is not so worried about the real price increases that people in rural and regional Australia will face. It is very comfortable living in Canberra when you are close to the centre of power, where all the federal decisions are made about spending taxpayers' dollars.

There are many other problems and issues that I would like to raise, but I am conscious that Senator Xenophon, who was so kind as to organise a coffee for me, has something to contribute to the debate. I will defer to him.

**Senator XENOPHON** (South Australia) (4.12 pm)—I think Senator Cormann's coffee may be cold by now. If I may speak to the amendments we are dealing with—that might be a radical notion at this stage of the debate—I indicate that I will be supporting Senator Ludlam's amendment, one of the premises of which is:

... the availability of accessible and affordable carriage services that enhance the welfare of Australians.

After all, that is what it is about. It should be about ensuring the maximum benefit for consumers and small businesses. It has huge benefits both at a social level and in the potential for productivity in this nation.

I secured a number of undertakings from the Prime Minister as a result of meetings that I had with her on the afternoon and evening of 23 November and some subsequent discussions on the morning of 24 November. As a result of that, the Prime Minister provided me with a letter. I think it is important,

for the benefit of transparency, that that letter be tabled, which I will seek leave to do in a moment. It was an open letter; it was not a confidential letter. I do not think the government would have any difficulty with that. It is consistent with what the Prime Minister has previously said in relation to this, and I am grateful for the details it contains.

However, I do note that the letter is dated 23 November, which on my reckoning was Tuesday. It is now 25 November. I can assure the chamber—and I want to make this absolutely clear—that this letter was only received by me yesterday around lunchtime. I just want to make it clear that, whilst the letter is dated 23 November, it clearly refers to discussions that I had with the Prime Minister. It says: ‘I am writing after our discussions yesterday.’ Those discussions actually took place on 23 November. So there has been a mix-up with the date, and I think that can be confirmed through the Prime Minister’s office. In the interests of transparency, I seek leave to table that letter so that it is on the public record.

Leave granted.

**Senator XENOPHON**—Thank you. I so tender that letter. I also wish to indicate for the benefit of the committee as a whole that I and my staff have been working around the clock on a number of amendments—and I again thank Evelyn Ek for her work on this. I will be replacing the amendments that I have filed with another set of amendments. Some I will be withdrawing for the purpose of expediting the resolution of the committee stage, because Senator Ludlam is moving almost identical amendments—and I would join with Senator Ludlam, if I could, in terms of co-sponsoring his amendments.

I have had extensive discussions with the minister’s office and the Prime Minister’s office as well as other agencies, such as the ACCC, in relation to the amendments that I

will be moving relating to transparency and greater accountability for consumers. An appropriate set of amendments has been struck in relation to that. I would have liked to have gone further, but I am trying to be pragmatic and realistic in relation to those amendments. These amendments go to the issue of transparency.

I note that the government has agreed to establish a joint committee on the National Broadband Network to provide progress reports every six months to the parliament until completion of the project. To quote from the Prime Minister’s letter:

The composition of the committee will mirror the Joint Committee of Public Accounts and Audit and it will report on the roll-out process, report against the final business plan, assess risk management processes and look at other matters. The committee which determines a relevance to its deliberations ... The committee will commence its work from 1 July 2011 and draw on any relevant material from previous committees.

It was also made clear to me by the government that, in addition to the voting members of that committee, all members can be participating members of that committee. I would like to get clarification on that from the government so that it is put on the record. It does not have to be now, but I would like this clarification during the course of this committee stage.

It was made very clear to me that, if a senator or member who is not a voting member wants to attend that committee to ask questions about particular concerns for their constituents or on behalf of their electorate, they will be able to do so. The government also indicated—and, again, Senator Lundy may wish to confirm this—in my discussions with Senator Wong that the Productivity Commission will receive the appropriate resources it needs insofar as it will be advising this committee, which I think is useful in terms of transparency.

Senator Macdonald and others have made the point that this summary of the business plan—the 36-page summary—is not much chop. I respectfully disagree. It does give an additional degree of information that was not there in the public arena. I was not prepared to take a confidential briefing—a briefing that meant that I would have had to stand up in this chamber and say, ‘I know things about the business plan but I can’t tell my colleagues about it.’ I thought it was important that the opposition and the public could have access to that information.

**Senator Ian Macdonald**—Thanks for that, but it doesn’t tell us much.

**Senator XENOPHON**—Senator Macdonald says: ‘Thanks for that but it doesn’t tell you much.’ I think it does give some further information.

**Senator Ian Macdonald**—Can you answer the questions I asked Senator Conroy? He couldn’t answer them.

**Senator XENOPHON**—I am not the minister. I will never be a minister in any government—Labor, coalition or Green. That will never happen.

**Senator Ronaldson**—So that wasn’t part of the deal, then?

**Senator XENOPHON**—That was not part of the deal, I reassure you, Senator Ronaldson. So that is where it is at in relation to the process issues. As to the issue of the structural separation of Telstra, I think the government does have a difficult task. Some coalition senators, in their heart of hearts, will acknowledge that the way that Telstra was privatised and structured—with one of the highest levels of vertical integration anywhere in the world for a telco—has been bad for consumers and bad for the development of telecommunications in this country. I think the government has had an invidious task of trying to unscramble the egg.

I should also say that Telstra was quite upset with some of the amendments I have proposed—screaming blue murder, in a sense, saying, ‘This will be the end of us if there are strong competition principles.’ I would like to remind Telstra that I do not think that there are any Telstra representatives or members for Telstra in this chamber or in the other chamber. The parliament has a job to do in the interests of all Australians. I understand the difficulties involved. I understand that David Thodey, as the chief executive officer of Telstra, has had a rocky time lately. We saw what the chair of the Future Fund did last week, as he is entitled to do. I think it indicates that there is an opportunity here to structurally separate Telstra. It has not been smooth sailing for the Telstra board. David Thodey, to his credit, has been much more engaging than the previous CEO of Telstra. That has been a good thing for public policy in this country.

I think the imperative is to structurally separate. The issue of the NBN legislation is a separate issue. Whilst the two are interlinked, what will happen next year in terms of the whole NBN Co. legislation is a separate issue. I have been upfront with the government and they know that I will reserve my position on that legislation in terms of the consumer safeguards and ensuring the greatest degree of transparency and competition in the marketplace so that consumers can get the best benefit and also ensuring a continual level of transparency and scrutiny for the project through some of the mechanisms described.

I indicate that I support Senator Ludlam’s amendment. I am hoping that my amendments will be provided shortly. My office has prepared explanatory notes—not explanatory memoranda—in relation to those amendments to assist my colleagues. Given the time available and given the process, I thought that was the right thing to do. Again,

I thank Evelyn Ek for that. I hope she will still be working for me after this week from hell for my office. I am looking forward to further stages of the committee's deliberations on this bill.

**Senator RONALDSON** (Victoria) (4.22 pm)—I ask whether Senator Xenophon will still proceed with the amendments scheduled on the list.

**Senator XENOPHON** (South Australia) (4.22 pm)—There is a new set of amendments, on sheet 7005 revised, that I do not think has been circulated. Senator Macdonald asked me for a copy, as did the member for Wentworth, the shadow minister, and I gave them copies immediately. Hopefully they are on their way. I am doing all I can. I hope my colleagues and Senator Ronaldson and Senator Macdonald can understand that my office has been in long discussions, particularly with the government and the ACCC, to ensure that the amendments that have been put up are workable and practical in the context of what I am trying to achieve.

**The TEMPORARY CHAIRMAN (Senator Fisher)**—To assist the committee, the revised amendments are being circulated at the moment and a revised running sheet is in the process of being prepared. Are there further speakers on Greens amendments (1) and (2)?

**Senator IAN MACDONALD** (Queensland) (4.23 pm)—I am not actually speaking to that. We are very keen to progress this debate. It is an important piece of legislation. The opposition has some very sensible amendments that we want to move. I am conscious that no more of my coalition colleagues want to speak on the Greens amendments. Perhaps Senator Ludlam has a response to the questions that were asked, although he was out of the chamber when they were being asked, so I suspect he will not be

able to. If he did that, then we could actually vote on Senator Ludlam's amendments.

We are still getting new amendments as we speak. Senator Conroy suggested that we have had a year to look at this, but, here we are, a minute before voting and we are still getting new amendments. Clearly, we have not had a year. In fact, we have not had a month, we have not had a week, we have not had a day. We will end up having about half an hour to look at the amendments as they come in. I am not being critical of that except to say that Senator Conroy's hyperbole about having had a year is clearly false.

I urge the Senate to deal with Senator Ludlam's amendments so that we can move on to the coalition amendments, which are listed next, and then, hopefully, we will get to Senator Xenophon's amendments, which seem interesting. That is the course of action I urge upon the Senate.

Just to recapitulate: the coalition will not be supporting Senator Ludlam's amendments, but we are very keen to progress this debate. We do not want to filibuster and keep this debate going in the way the Labor Party have been proceeding. We want to move on. We are very keen to do that. I am looking forward to moving our amendments. We will not be dividing, unlike the Greens, who divide on everything and waste so much time in doing that. We will not do that, because we are very keen to make sure the Senate has the maximum amount of time.

**The TEMPORARY CHAIRMAN (Senator Fisher)**—As to Senator Macdonald's invitation, does Senator Ludlam wish to respond?

**Senator LUDLAM** (Western Australia) (4.26 pm)—I will speak very briefly. Since I gave Senator Macdonald a hard time for wasting the time of the chamber, I will speak very briefly in response. If Senator Macdonald or, indeed, any other coalition senator



had asked me genuine questions about these amendments and what they contribute to the bill, I would have been very happy to take them on, but the opposition has engaged in six or seven hours of questions—or pointless, rhetorical flourishes disguised as questions—which could more properly be submitted to the minister, I suppose, because they go to the overall objects of the legislation and the matters that we are dealing with writ large. If the opposition were keen to ask about matters arising from either this amendment or others—I have about six pages to move during the course of this debate—I would happily, as would others, sit here all night to take those questions, but Senator Macdonald had no intention of engaging on the merits or otherwise of these amendments and that is why I left the chamber when I did.

I commend these amendments to the Senate. I find it a bit puzzling that the opposition and a number of coalition senators congratulated me on how wonderful these amendments are before telling me that they would not be supporting them—

**Senator Ian Macdonald**—Name them.

**Senator Cash**—Name them.

**Senator LUDLAM**—Do not be cute. Without further ado, I commend these amendments to the Senate so that we can move on to the next batch of coalition amendments.

**The TEMPORARY CHAIRMAN (Senator Fisher)**—The committee is considering amendments (1) and (2), on sheet 7006, moved by Senator Ludlam. The question is that the amendments be agreed to.

Question agreed to.

**The TEMPORARY CHAIRMAN**—We move to opposition amendments on sheet 7004.

**Senator IAN MACDONALD** (Queensland) (4.29 pm)—by leave—I move opposition amendments (1) (5), (6), (8), (9), (11), (12), (14), (15), (17), (24), (34) (36) to (40), (45) to (57), (64) and (65) together:

(1) Schedule 1, before item 1, page 4 (line 5), omit the heading (Act name).

(5) Schedule 1, item 17, page 6 (lines 27 and 28), omit “, 577CD or 577ED”.

(6) Schedule 1, item 17, page 6 (lines 29 and 30), omit the note, substitute:

Note: Section 577AD deals with an undertaking given by Telstra.

(8) Schedule 1, item 19, page 7 (lines 10 and 11), omit “, 577CD or 577ED”.

(9) Schedule 1, item 19, page 7 (lines 12 and 13), omit the note, substitute:

Note: Section 577AD deals with an undertaking given by Telstra.

(11) Schedule 1, item 22, page 7 (lines 27 and 28), omit “, 577CD or 577ED”.

(12) Schedule 1, item 23, page 7 (lines 31 and 32), omit the note, substitute:

Note 1A: Section 577AD deals with an undertaking given by Telstra.

(13) Schedule 1, item 26, page 8 (lines 12 and 13), omit “, 577CD or 577ED”.

(14) Schedule 1, item 27, page 8 (lines 16 and 17), omit the note, substitute:

Note 1A: Section 577AD deals with an undertaking given by Telstra.

(15) Schedule 1, item 30, page 9 (lines 5 to 24), omit section 577, substitute:

#### **577 Simplified outline**

The following is a simplified outline of this Part:

- Telstra may give an undertaking about structural separation.

- The undertaking comes into force when it is accepted by the ACCC.

- (24) Schedule 1, item 30, page 14 (lines 32 and 33), omit subparagraphs 577AA(1)(c)(vii) and (viii).
- (34) Schedule 1, item 30, page 44 (line 29), omit “, 577C or 577E”.
- (36) Schedule 1, item 30, page 52 (line 7), omit paragraph 577M(1)(a).
- (37) Schedule 1, item 30, page 52 (line 8), omit “another”, substitute “a”.
- (38) Schedule 1, item 30, page 53 (line 20), after “control of”, insert “a telecommunications network if”.
- (39) Schedule 1, item 30, page 53 (lines 21 and 22), omit paragraphs 577Q(1)(a) and (b).
- (40) Schedule 1, item 30, page 53 (line 23), omit “if”.
- (45) Schedule 1, item 36, page 76 (line 16), omit “, 577C or 577E”.
- (46) Schedule 1, item 36, page 76 (line 18), omit “Note 1”, substitute “Note”.
- (47) Schedule 1, item 36, page 76 (lines 20 to 23), omit notes 2 and 3.
- (48) Schedule 1, item 38, page 77 (line 7), omit “, 577C or 577E”.
- (49) Schedule 1, item 39, page 77 (line 17), omit “, 577C or 577E”.
- (50) Schedule 1, item 39, page 77 (line 19), omit “Note 1”, substitute “Note”.
- (51) Schedule 1, item 39, page 77 (lines 21 to 24), omit notes 2 and 3.
- (52) Schedule 1, item 74, page 87 (line 26), omit “, 577C or 577E”.
- (53) Schedule 1, item 93, page 94 (line 7), omit “, 577C or 577E”.
- (54) Schedule 1, item 96, page 95 (line 12), omit “, 577C or 577E”.
- (55) Schedule 1, item 102, page 96 (line 13), omit “, 577C or 577E”.
- (56) Schedule 1, item 107, page 97 (line 28), omit “, 577C or 577E”.
- (57) Schedule 1, item 113, page 100 (line 18), omit “, 577C or 577E”.
- (64) Schedule 1, item 249, page 194 (line 28), omit “, 577CD or 577ED”.
- (65) Schedule 1, item 249, page 195 (lines 1 and 2), omit subparagraph 572E(4)(b)(iv) .
- We also oppose schedule 1 in the following terms:
- (2) Schedule 1, items 1 to 5, page 4 (lines 6 to 24), items **TO BE OPPOSED**.
- (3) Schedule 1, item 6, page 5 (lines 2 to 5), item **TO BE OPPOSED**.
- (4) Schedule 1, items 11 to 15, page 5 (line 22) to page 6 (line 19), items **TO BE OPPOSED**.
- (7) Schedule 1, item 18, page 7 (lines 1 to 6), item **TO BE OPPOSED**.
- (10) Schedule 1, item 21, page 7 (lines 18 to 23), item **TO BE OPPOSED**.
- (13) Schedule 1, items 24 and 25, page 8 (lines 1 to 8), items **TO BE OPPOSED**.
- (16) Schedule 1, items 28 and 29, page 8 (lines 18 to 25), items **TO BE OPPOSED**.
- (33) Schedule 1, item 30, page 35 (line 26) to page 44 (line 24), Divisions 3 and 4 **TO BE OPPOSED**.
- (35) Schedule 1, item 30, page 46 (line 4) to page 52 (line 2), Division 6 **TO BE OPPOSED**.
- (43) Schedule 1, item 31, page 70 (line 18) to page 75 (line 28), Part 10 **TO BE OPPOSED**.

The coalition has always been very keen to progress debate on this bill and to establish some principles and conditions that can improve what we think is generally a very bad bill that holds a gun to the head of Telstra Corporation.

These amendments remove those gun-at-the-head provisions which the bill contains. The bill gives ministerial discretion to bar Telstra from bidding for next generation 4G wireless spectrum via a disallowable instrument. As I have said in this chamber before, that is the sort of legislation you would expect to see in communist Russia: ‘We won’t let a commercial company bid for next generation 4G wireless spectrum unless you do what we tell you to do in relation to other

matters. That is, you have got to sell your copper network to NBN. If you don't do that, we're going to penalise you by saying that you can't bid for the next generation 4G wireless spectrum—which is a very valuable asset which Telstra, like everyone else, should have the ability to bid for. The government would threaten Telstra, saying, 'Unless you agree with everything we say, you can't bid. You'll be the only Australian who can't bid for this.' That is the sort of dictate that you would get from communist Russia of old. Our amendments will remove those provisions of the bill which provide ministerial discretion.

Our amendments will also remove the gun-at-the-head provisions of the bill which threaten Telstra with being forced to divest its high-frequency coaxial cable—the HFC pay television cables—or its 50 per cent interest in Foxtel if it does not voluntarily structurally separate in ways acceptable to government. This is legislation that would be unheard of in most other democratic countries of the world. It is the Labor government saying to a commercial company operating in Australia—a businessman, so to speak—'Unless you do what we, Big Brother the government, tell you to do, we are going to make you divest your pay television cable and your 50 per cent interest in Foxtel.' That is un-Australian, undemocratic and the sort of thing you would not expect to find in any legislation in any democratic institution anywhere in the world.

These amendments are moved together for drafting reasons, largely so that consequential changes to the bill are consistent. While the government claims that the proposed deal between Telstra and NBN Co. render these amendments unnecessary, we actually believe that, at a philosophical level, this approach to obtaining agreement to the change of structure from private entity is absolutely indefensible.

These are worthwhile amendments. I could go on at some length about them, but I am aware that Senator Cash wants to speak to the amendments and perhaps elaborate on them. So I will not take further time of the Senate in line with my view that we should be progressing this and getting through the amendments as quickly as we reasonably can.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (4.34 pm)—I have got a few things to say about these amendments, and I think it is very important for all those in the chamber to understand that coalition amendments (1) to (17), (24), (33) to (40), (43), (45) to (57), (64) and (65) relate to spectrum and undertakings about hybrid fibre-coaxial networks and subscription television broadcasting licences. I know that was difficult to discern from the previous speaker, but I think it is important clarification.

These amendments are not necessary. There is no longer an automatic prohibition on the acquisition of spectrum if Telstra does not structurally separate and divest its interests in the HFC network and Foxtel. The bill has been amended to give Telstra sufficient regulatory certainty to take a firm proposal to its shareholders to structurally separate by allowing Telstra to acquire specified bands of spectrum unless the minister determines otherwise in a legislative instrument—in other words, unless a legislative instrument is debated in the chamber.

The bill does not require Telstra to divest its interests in Foxtel but still provides a framework for Telstra to voluntarily divest its interests in Foxtel and its hybrid fibre-coaxial cable network. In the event that Telstra does not proceed with structural separation, the minister could take into account

Telstra's ownership of Foxtel and HFC networks in determining whether to use the powers in the bill to prevent Telstra from acquiring certain spectrum to address Telstra's power in telecommunications markets.

I think it is important to note in this regard that the bill is about the structure of the telecommunications industry, and it is absolutely the purview of this parliament to legislate on behalf of all Australians to ensure that the structure of the industry is able to respond to the long-term interests of end users as outlined and to do so quite effectively. These amendments are not necessary. The concern that the opposition is putting forward has been addressed in the bill and is no longer the case. We will be opposing the amendments because they are no longer necessary.

**Senator CASH** (Western Australia) (4.36 pm)—The government claims that these amendments are not necessary. The government also claims that the proposed deal between Telstra and the NBN Co. renders these amendments unnecessary. The problem I have with that is based on the lack of information that the government has given the Senate to date. We have been placed in a situation where we have to move these amendments. Having listened to the minister's excuses as to why the Labor Party will not be supporting the coalition's amendments, I am not reassured. This is all about accountability and transparency. I was also in the chamber earlier, listening to comments from Senator Ludlam regarding the opposition's attempts to properly scrutinise this legislation that will actually result in the biggest spend of taxpayers' money on infrastructure that Australia has ever seen. Senator Ludlam criticised the opposition for taking the time to properly scrutinise the legislation. So I have to say that the question the Australian people are entitled to ask is: when will the Greens grow up? When will the Greens mature as a political party and under-

stand that the spending of such a huge amount of taxpayers' money requires a full and comprehensive analysis? I will tell Labor and I will tell the Greens: that is what responsible government is all about.

Responsible government is something that we on this side of the chamber know all about. Responsible government is when a government are able to show to the people of Australia that they are good economic managers. What does that actually take? We proved that you can return a surplus. You can also, if you are prepared to take tough economic decisions, eliminate debt. That is something that those on that side of the chamber will never, in their wildest dreams, be able to stand in this place and say. When you are responsible economic managers, as we are on this side of the chamber, you actually understand what type of analysis needs to be undertaken to ensure that taxpayers' money is properly spent. I am going to quote my colleague Senator Ryan here. As he has often said about the Labor Party, but it applies equally to the Greens, they have never seen a taxpayer's dollar that they cannot spend, and then some.

Because this bill and these amendments are of such a significant financial nature, and because of the significance of the economic incompetence of those on the other side of the chamber, I will take this opportunity, as brief as it may be, to raise the question of accountability and openness when it comes to spending taxpayers' money. Accountability and openness in government require those who exercise power whilst performing the functions of government to demonstrate in an open and practical sense that they are doing so with honesty, integrity, appropriate skill and judgment and that they have discharged their duty in a proper manner for the common good and in the public interest. Perhaps the worst aspects of dealing with the former Rudd government and the current

Gillard Labor government are the lack of transparency and their adherence to secrecy, which has reached the stage of being almost all-consuming and dominating the Gillard Labor government's agenda. The current Labor government and the current Prime Minister are unable to accept that secrecy in government breeds suspicion and suspicion breeds mistrust. That mistrust in the Gillard Labor government is extremely well-placed.

Every senator, as an elected member of the Senate, has fundamental constitutional and other rights conferred upon them which they are entitled to exercise in this chamber. There is no doubt that as a senator you have a fundamental right as an elected person to ask questions. Not only that; you are entitled to receive considered answers to those questions. That is something that the government and, in particular, the relevant minister would know nothing about. To enable the discharge of a senator's constitutional duty, it is critical that the government answer the substance of the questions and the various issues that are raised. It is not good enough for a minister to come into this place and give an answer to a senator that seeks to avoid the very question that has been asked. It is not good enough for a government or the relevant minister in this case to refuse to answer questions, to refuse to table documents as required by the Senate and, in doing so, to reinforce the culture of secrecy that the community believes exists amongst this government. That is what we have seen in relation to the NBN: a complete lack of information being provided to the people of Australia and, indeed, to the Senate. That is why the coalition are moving so many amendments to this legislation. The reason we are moving them is that we cannot trust those on the other side.

When the Prime Minister, Julia Gillard, was elected, one of the promises that she made to the Australian people—and we can

clearly see that it has been broken in relation to the current legislation—was that she would open the windows and 'let the sunshine in'. That was reported in the *Sydney Morning Herald* on 7 September—after the election—in an article with the banner headline 'Let the sunshine in'. The article continues:

The Prime Minister, Julia Gillard, says her minority government will be held to higher standards of accountability as a result of the deal struck with the independents.

... ..

"We will be held to higher standards of transparency and reform and it's in that spirit I approach the task of forming a government."

I refer to Senator Ludlam's comments today in the chamber, in which he effectively criticised those on this side of the chamber for attempting to properly scrutinise this legislation. You are part of a government that the Prime Minister says will be held to higher standards of accountability. Again, on 7 September—at which time it was clear to the Labor Party that, now that they had formed this deal with the Independents, they would be in government—she said:

... let's draw back the curtains and let the sunshine in, let our parliament be more open than it was before.

Today we are trying to scrutinise the biggest ever spend of taxpayer money on infrastructure in this country and we are being criticised.

It did not take Prime Minister Gillard very long to break her pre- and post-election promise that she would be subject to higher levels of accountability, that she would run a government that was open and transparent. This piece of legislation is the perfect example of the entrenched culture of secrecy on the other side. On an almost daily basis, this government makes out that it is transparent and accountable. Yet members of parliament

on this side of the chamber come into this place day after day and ask questions of the minister about the NBN legislation, and we are given nonanswers.

In fact, it has got to the stage where the Labor Party will not even ask the relevant minister questions about the NBN. Any questions they have on the NBN they conveniently redirect to a minister in another portfolio—because they know that the minister is unable to answer any of our questions, which are legitimate, about this legislation.

*Government senators interjecting—*

**Senator CASH**—I can hear the ‘zombies’ bleating like sheep on the other side of the chamber. Go back to zombie land; go back to where you came from. Any claim or assertion by this government that it is being transparent and accountable on the NBN is nothing more than hollow and cynical media spin that is undermining the democratic processes in this country.

This Senate is entitled to be properly informed. Relevant information about interests or issues that come before this parliament should be made available to us. In relation to this legislation, it is not.

*Government senators interjecting—*

**Senator CASH**—The Gillard Labor government is a government that is full of pathetic excuses—and it has a lot of sheep in it that continue to bleat on the other side of the chamber. If this government was truly serious about winning, in the proper manner, the support of the parliament for its legislation, it would have been open, accountable and transparent from day one.

Instead of this, the government has provided today to the Australian taxpayer—after backing away from requiring certain senators to sign a seven-year confidentiality agreement in relation to any information they might be given on the NBN business case—

what they like to call a ‘summary’ of the NBN business case. We all know it is actually a few scraps of information with some warm, fuzzy words and pretty little pictures. They deign to call that a ‘summary of a business case’! Australians are entitled to know the full details of the business plan for the spend of their taxpayer dollar. This government has a track record of being negligent when it comes to economic policy. It is incumbent on those on the other side to show the people of Australia exactly how they intend spending an inordinately large amount of taxpayer money.

**Senator LUDLAM** (Western Australia) (4.51 pm)—I will be reasonably brief; I just thought I should address directly the coalition amendments that we are considering. I suppose I cannot help myself, but I want to provide a brief response to Senator Cash after that unusual little outburst. I have no difficulty whatsoever with the coalition providing scrutiny.

**Senator Cash**—Then why did you criticise us?

**Senator LUDLAM**—Perhaps the issue here is what we might define as ‘scrutiny’. Reading big slabs of *Odgers Australian Senate Practice* at us is not scrutiny. Tying us up with two or three hours of procedural blocking tactics is not scrutiny.

*Opposition senators interjecting—*

**Senator LUDLAM**—You did vote for that.

*Honourable senators interjecting—*

**The TEMPORARY CHAIRMAN** (**Senator Fisher**)—Order!

**Senator LUDLAM**—I will address my remarks to the coalition’s amendments. So far the coalition has failed to do that, but I am happy to address them and acknowledge that they have been put up in good faith in an attempt to improve the bill. I think Senator

Macdonald used the phrase 'gun to the head', or it might have been Senator Cash. To a large extent these arguments, if they were ever genuine or relevant, probably are now moot and really have been set to rest. Telstra has made an agreement since the first iteration of this bill was drafted and debated briefly late last year and early this year. We now have a heads of agreement with Telstra and we have some quite substantive amendments to this part of the bill that make the gun to the head argument somewhat redundant.

Telstra have been working the building during the past couple of weeks urging people to pass the bill—and pass it as quickly as possible. It should also be acknowledged that the gun, if ever there was one, is holstered, shall we say, in the present version of the bill. It can only be placed at the company's head by a legislative instrument, which this parliament may disallow. I hope that coalition senators are willing to acknowledge that if the minister was seen to be abusing this power of forced divestiture of some of Telstra's assets it could be brought back to this parliament. That is a disallowable instrument and it is probably appropriate that it should be. That is an amendment to the second draft of the bill that we would support.

The incentive remains important though. The notion that Telstra would simply voluntarily structurally separate and that that was something they might be planning on doing anyway—giving up the market power that arose from its vertically integrated monopoly status—is quite clearly mistaken. I will quote Telstra's own remarks on this point, from a couple of years ago now, from Mr Quilty at the Senate select committee that has been mentioned once or twice in this debate so far. On 11 November 2008 he said:

There is no doubt in the mind of Telstra management, and all of the analyst reports concur, that further separation of Telstra is not in our share-

holders' interests. We simply cannot contemplate it.

That was the situation that this government faced. The previous government—for the 12½ or 13 years under the coalition government—did nothing about this apart from privatise this entity and then watch it run amok and exercise its dominant market power as a vertically integrated monopoly. It is quite clearly its directors' legal obligation to do so for the benefit of its shareholders. What an extraordinary change in the past two years from Telstra.

The current version of the bill, from my reading of it, also provides that Telstra may not need to divest itself of its HFC and Foxtel assets in order to retain access to 4G wireless spectrum. That now becomes discretionary; that is no longer automatic and again that is an amendment that we support, particularly in the context of the heads of agreement that was signed some months ago.

If the minister is satisfied that the structural separation undertakings sufficiently addresses the extent of Telstra's market power, then that divestiture is no longer mandatory, it becomes discretionary. Hopefully this gives the coalition some comfort that the intention is not to protect NBN from fixed line competition, but it is rather to address Telstra's horizontal integration. And in any case, if the government is not able to reassure parliament on this point, we can disallow the legislative instrument that permits the government to move what has been seen as quite a substantial intervention in the operations of a private company.

So we will not be supporting the coalition's amendments. I would be delighted if any of the coalition senators want to actually address the subject of their amendments because perhaps there are merits there that would be worth pointing out to the chamber, and might even change somebody's mind.

But if they are simply going to be reading big slabs of Odgers at us until late into the evening, I will continue to call them on it because such a thing can in no way be considered scrutiny of a bill. It is quite simply wasting people's time.

**Senator BARNETT** (Tasmania) (4.56 pm)—I am particularly interested in group 3 of these coalition amendments with respect to competition, ensuring the normal operation of the Competition and Consumer Act, and note also the group 4 amendments, merit review, regarding the reviews by the ACCC. They have a lot of merit. They make a lot of sense. The issue of procedural fairness in group 5 amendments are also very thoughtful.

But in the broad, what we have learnt today, as a result of the release of this flimsy 36-page summary of the 400-page business plan, is that the cost of the NBN to this country's taxpayers is a global cost increase of \$6.5 billion. You have the total capital expenditure on the NBN estimated at \$35.7 billion provided the deal with Telstra goes through—and we will not know that for many months yet—and that Telstra deal will cost \$13.8 billion. So you have the total cost being \$49.5 billion, and that is up from the \$43 billion. That is a huge increase, a huge impost on the taxpayers here in this great country of Australia.

One thing I do note in that summary document is the connection rates. In Tasmania, what we do know is that it is 11 per cent. Out of the 4,000 people in Midway Point, Scottsdale and Smithton, there has been an 11 per cent connection rate.

*Senator Williams interjecting—*

**Senator BARNETT**—Yes, 11 per cent. It is not a very good record. Under the business plan they are expecting a signup rate of 69 per cent. Of course that is different again to the KPMG McKinsey report, for which the

government paid \$25 million, which had an 80 per cent signup rate. These figures are vastly different, and in Tasmania we know that so far it has been mismanaged. The maladministration has been something shocking with respect to the rollout of the NBN in Tasmania. I want to put on the record my strong support for the involvement of the Auditor-General to investigate the rollout of the NBN in Tasmania to date.

This government has injected—and this has been put on the public record many months ago—\$100 million into the rollout in Tasmania and yet they refuse to say exactly how much the rollout has cost to date. They refuse to say the cost of the total rollout—what it will cost the budget. They refuse to say how much the federal government is putting in and how much the state government is putting in. Yet we heard last week that the joint venture agreement between the Tasmanian government, the federal government and Aurora Energy—the energy retailer in Tasmania—has collapsed. The minister has admitted and conceded it has been abandoned. That agreement was started in August last year when there were meetings to say, 'We're going to have this joint venture.' They had this fancy, publicity-driven announcement with much fanfare and much media, saying, 'Yes, this is a goer; it's fantastic,' and they got themselves on the front page. It is a hoax that has been foisted on the Tasmanian people. We have been used as a guinea pig for this enormous white elephant. This investment has been plagued with problems day after day from the start, with cost blow-outs, connection problems and dismal sign-up rates. They are just some of the problems affecting the project in the state of Tasmania.

Earlier last week, as I indicated, we were advised that the joint venture had collapsed. You have only 11 per cent out of the 4,000 homes around those three stage 1 towns.



Only seven per cent, by the way, are actually active and operating. That is a very poor record indeed. Today we heard about the first school that was connected—again, with much fanfare by this government. Senator Conroy and Premier David Bartlett stand responsible. Premier Bartlett is up there today in Circular Head touting the merits of the program. The first school connected in Tasmania—in Smithton at Circular Head, north-west Tasmania—is reportedly having problems with reliability and connection speeds. This is public today. It has been referred to in this place. I commend the ABC for their report earlier today noting the concerns that have been expressed.

It has been a joke. Those responsible should hang their heads in shame with respect to the rollout in Tasmania to date. We have had problems with the Tasmania NBN board. Three directors were appointed. How long did they last? How long were they there for? They lasted one year. They were either sacked, terminated or their term expired. Some of them I know well and I admire. The principal place of residence, the registered company, is actually based at the NBN Co. headquarters in Melbourne. It is simply not working as was planned. It proves that they were not acting on any business plan; it was based on simply a few words on the back of an envelope, saying, 'Let's do it this way.'

This is a shameful display. What we need in Tasmania is an Auditor-General's inquiry. Malcolm Turnbull and Andrew Robb have written to the Auditor-General. That letter was sent to him yesterday. I am on the Joint Committee of Public Accounts and Audit, a very important committee. I hope that that letter is received positively and that that inquiry is undertaken as a matter of urgency. I do support these coalition amendments. I think they have great merit. I draw that to the attention of the Senate. I thank the Senate.

**Senator TROOD** (Queensland) (5.03 pm)—It is a great pleasure indeed to rise and support these amendments that are pressed on the Senate by the coalition. We do so because we think there is a very important principle involved here. When a government chooses to spend a great deal of taxpayers' money—in this case perhaps \$43 billion but in all likelihood a great deal more than that in light of what is in the part of this business plan we have seen. When a government spends so much taxpayers' money it ought to be subject to scrutiny and it ought to be subject to oversight. It ought to be subject to the oversight of the parliament and it ought to be subject to the oversight of the agencies which have been established by governments over a long period of time to ensure transparency, to ensure that the objectives of the legislation are being achieved and to ensure that taxpayers' money is being used for good purposes. That is what we have been aiming to secure and that is what these amendments seek to do.

These amendments seek to bring into the process from which the government has excluded them agencies such as the Australian Competition and Consumer Commission. We are anxious to have this legislation looked at. We do this because we are highly sceptical of the capacity of this government to spend taxpayers' money in a responsible fashion. We have many, many examples of absolute abject failure in this area. Let me just remind the Senate of the failings of the Building the Education Revolution program, a \$1.5 billion blow-out; the Home Insulation Program, another \$1 billion wasted; the laptops in schools program, a \$1 billion blow-out; the broadband network first iteration, \$4.7 billion, replaced now by a \$43 billion plan; and the broadband tender process, \$220 million or thereabouts. There is a list. Every senator in this place knows what this list contains and every senator in this place should be

embarrassed by the consequences of it. This is not just an arcane idea. It is not just steps we ought to take because we want to feel warm and fuzzy about the way in which we conduct the nation's business. There are some key principles here.

There are two issues that are raised by the need for scrutiny and oversight. The first is a sad observation about the place we have reached in this country with regard to this legislation. For 25 years a succession of governments have committed themselves to economic reform. They have committed themselves to reform which has produced higher levels of productivity in this country, and that has made Australia a much more competitive and effective actor in the international system. I think we have argued this point consistently: the progress made under that reform and the changes that have taken place over this 25-year period allowed Australia to come through the global financial crisis in the way it did.

Those were not just the reforms of the Howard government. In fact, one could argue reasonably persuasively that many of the most effective reforms, many of the reforms that actually made the difference, were those that took place under the Hawke and Keating governments. Those reforms introduced oversight and competition into Australia, where in the past, sadly, there had not been much. They enforced the principle that competition should be an elemental part of the Australian economy, and they set up the agencies which would be necessary for that to occur.

So we have had a process of reform over a long period of time which has been bipartisan. Yet the Rudd-Gillard government has now reached the point where it is retarding that process of reform. It is a sad commentary on the state of the nation, and, most particularly, on the capacity of this government

to see the way forward into the future, that the government cannot appreciate that this piece of legislation, by excluding the scrutiny we seek and precluding competition—that is inherent in the way in which this bill has been drafted—will set back that process of reform.

All we need to do is to think about the way in which the mobile phone market has expanded as a result of competition, how it has affected prices and provided efficiencies in that overall market. That is an interesting example of the way in which competition, allowed to occur and properly regulated, can indeed produce a great deal of efficiency for the Australian nation.

But of course this is not an argument that just I am seeking to make. It is not an argument that is uncommon out there. I refer the Senate to what I thought was a very compelling article by Mr Michael Stutchbury which appeared in the *Weekend Australian* of Saturday, 20 November. He raised this question and made this point. The article is headed 'Gillard at forefront of the slide back to the bad old days of regulation'. I would invite every senator—particularly government senators—to read this article and pay close attention to its contents—

**Senator Lundy**—You should get a briefing on the structure of the telecommunications industry. Get a proper briefing and then come and talk to us.

**Senator TROOD**—and particularly you, Senator Lundy. You should pay close attention to its contents, because it actually provides a great deal of insight into the failures of this government and the consequences they are having for competition and productivity—most particularly productivity—in this country. In this article, Mr Stutchbury—eloquently, I thought—made this point:

Virtually none of the acceleration in real national income growth in the 2000s has come from pro-

ductivity growth, which has slumped to the weakest on record.

He is making the point that we need to do more to improve productivity. And this is not just Mr Stutchbury's view; he looks to a report by the OECD.

The Organisation for Economic Cooperation and Development is a highly respected organisation. We all know that there have been frequent occasions when ministers of this government have come into this chamber and cited the OECD as an authority for the decisions which have been made—as a foundation, one of wisdom and insight, for the policy changes which they have introduced. So this is an organisation with street cred on not only this side but also that side of the chamber. In the article, Mr Stutchbury says:

... the Organisation for Economic Co-operation and Development says Labor must put the brakes on the NBN so it can rethink a business model that would stifle competition by imposing a government-owned fibre optic monopoly.

And the Productivity Commission has made an similar point. But, in the way in which it has introduced this legislation to the Senate and progressed the matter ever since it conceived this crazy idea, the government has sought to avoid the Productivity Commission scrutinising the legislation in ways which would be entirely appropriate.

Mr Stutchbury—eloquently, as I have said—goes on to make the point that:

... Labor's NBN wholesale monopoly model legally kills off competition from Telstra's existing copper network and its pay-TV cable while further limiting mobile cherry-picking.

He then cites the OECD. He says:

The OECD points to "multiple empirical studies" ...

So this is not just something that has been thrown out as a wild possibility—something

that is not necessarily relevant. He says that the OECD's empirical studies:

... stress the pay-off from "competition between technological platforms".

Here is an internationally respected organisation making a compelling case for the fact that, at the very heart of the productivity gains that we should be looking for in this country in the 21st century—particularly in the context of the introduction of new technologies—and at the very heart of the changes we make, we ought to have competition. And this bill absolutely denies that possibility; it denies us the chance to have that.

I think I heard earlier in the day my colleague Senator Ronaldson allude to—entirely appropriately, I thought—an article by Terry McCrann which appeared in the *Courier-Mail* this morning. Mr McCrann made a similar point about the costs and the failure to introduce competition into the network.

*Government senators interjecting—*

**Senator TROOD**—Mr McCrann's credibility may not be very strong on the other side of the chamber, but there are other people who have a not dissimilar perspective. I cite once again the writing of Kevin Morgan in today's *Australian*. Mr Morgan served on Kim Beazley's ministerial committee on telecommunications reform. So, he is not a plant; he is someone who, one would think, has some credibility on the other side of the chamber. In his contribution to the debate, Mr Morgan asked:

Was it worth holding out for and is the sketchy outline of the NBN's business case sufficient to warrant the independent senator, and indeed the Senate at large, supporting the passage of the most far-reaching changes seen in any telecommunications market?

He was asking the essential question. His answer is simple:

Scarcely. The summary adds little to our understanding of the economics of the NBN that is not already outlined in the \$25 million McKinsey implementation study, other than to stress the importance to the NBN of an effective national monopoly.

As I have done in relation to Mr Stutchbury's article, I commend this article to the Senate and, in particular, to those on the government side. Mr Morgan says that this \$43 billion enterprise—or is it \$50 billion or is it a greater amount of money?—if it works, will only have the capacity to return any money to the government because at its core is a monopoly. At the very core of this enterprise is legislation which precludes the thing which has made Australia competitive, the thing which has made Australia a strong economy in the context of a world where economies are failing. A commitment to reform by not just one government but a succession of governments has put Australia into a position of economic strength. At the very core of that, at the very least, has been a commitment to productivity gains and at the very core of those productivity gains has been the capacity of the economy to produce competition. That is what we ought to be thinking about as we pass this legislation, as we think about this legislation, as we contemplate the consequences of this legislation. We ought to be thinking about the consequences of depriving the telecommunications industry of competition. Competition is central to the progress we have made over the last 25 years and it allowed us to come through the GFC. (*Time expired*)

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.18 pm)—I would like to take a few minutes to respond to that contribution. I guess it is embarrassing to the opposition that the whole design of the National Broadband Network and the

associated bills we are debating today is about the structure of industry. I think it is very important to understand that even the opposition spokesperson, Malcolm Turnbull, understands the relationship between structural separation and competition in telecommunications. The fact of the matter is that to structurally separate the telecommunications industry and build a wholesale-only, open-access fibre-to-the-home network to permit a competitive environment for retail service providers on that wholesale network is the absolute epitome of providing a competitive environment for telecommunications. In his contribution, Senator Trood lacked sufficient appreciation of a structurally separated telecommunications industry to even grasp the fundamentals of what we are debating today. Unfortunately, this is the character of the conversation that is occurring in this place.

I reiterate that we are investing in a National Broadband Network that will construct a world-class competitive environment. It is the model that nations aspire to but cannot have because of the way their incumbent telecommunications monopolies have embedded themselves in the market and protect their interests, in part, through a vertical relationship between wholesale and retail. The strength of our model is in fact the wholesale-only investment in the fibre-to-the-home network. Even a basic understanding of the debate before us today would have prevented Senator Trood and others from making such garbled presentations on the issues. This is the character of the debate. We are still waiting to hear a senator opposite address the opposition's own amendments in any detail and with any understanding of the implications of the amendments or of what they are seeking to achieve. At the moment, there is basically a slogan about 'removing the gun to Telstra's head'. But, as I explained previously, that is not necessary anymore because

of the changes that have occurred in the legislation.

I have undertaken to point out a couple of other points to expose the flaws in the arguments put by members of the opposition. Senator Trood's speech was interesting because he tried to mount an argument that Labor was somehow responsible for reregulating not only the telecommunications sector but the economy in general. He put forward a fairly inconsistent presentation using quotes from the *Weekend Australian* as evidence of this reregulation. In fact, it is the opposite: by addressing the structure of the telecommunications industry in Australia we are able to resolve the mountainous regulation put in place by the former government, which attempted to over-regulate but found it very difficult—it was unsuccessful—because the industry structure had a vertical integration element that helped perpetuate the residual monopoly that Telstra had in our market, pushing the prices up.

These issues have been debated at length in this place for well over a decade. I remember well the telecommunications competition bills of 1997, which were the piece de resistance of the then new Howard government. I remember the mountain of legislation that sought to put in place what they claimed was the appropriate regulatory framework to stimulate competition. Senate inquiry after Senate inquiry demonstrated that the coalition's attempt to regulate telecommunications failed dismally. Telstra was able to gain those regulations, retain its dominant position in the market and keep prices high. This was sustained because of the previous government's motivation to help Telstra keep its price high in the interest of privatisation.

So I ask the opposition: get your speakers to come in here and address the issues at hand, the amendments that we are currently

debating, with at least a basic understanding of what it is to structurally separate the telecommunications industry and the relationship that has with stimulating competition at the retail level, and we might be able to have a discussion that even listeners of this debate will be able to follow with some cohesion.

My final comment relates to mobile telecommunications and competition. There has been competition there, but the coalition cannot claim too much credit for that either. The competition in that sector was stimulated well before the Howard government and we have seen mobile telecommunications competition proliferate. So to argue that somehow there is an example in mobile telecoms and that this is analogous with what we need to do in the fixed infrastructure, the National Broadband Network, again exposes quite a hapless misunderstanding of what the regulatory environment of telecommunications needs to be. This is evidence of disjointed and inconsistent arguments being put by the coalition. I know they are poorly briefed, I know this stuff has a long history and I know it is subject to some quite detailed amendments being moved, but at least get your speakers to address the amendment.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.25 pm)—I acknowledge the consummate knowledge of the parliamentary secretary on this facet. I have a couple of technical questions. In schedule 1, part 1, proposed sections 577BA(7), (8) and (10), with the statement that an action becomes authorised for the purposes of section (51)(1) of the Competition and Consumer Act, could the minister give an indication as to how those actions preclude a proper investigation by the ACCC as a deeming of compliance rather than actual compliance? Please tell me about that.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.26 pm)—Could I recommend that Senator Joyce phrase the question rather than use the technical references in the amendments and address the issue at hand. Senator Joyce well knows that these changes do recognise the structurally separated nature of the industry and the arrangements that will promote competition, not restrict it, as he claims.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.26 pm)—That is not an answer. I do not know quite what that response was. I direct you once more to the question, Minister. In proposed section 577BA, is there a deemed acceptance of section 51(1) of the Trade Practices Act, even though it might not necessarily be a compliance of section 51(1)?

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.27 pm)—I do have an explanation of how section 51 authorisation provisions in the bill will work. I will take the time now to respond to your question. Section 51 of the Competition and Consumer Act, currently the Trade Practices Act, provides that in determining whether a person has contravened part IV of that act certain matters must be disregarded, including anything specified in and specifically authorised by an act. So proposed section 577BA specifies and specifically authorises certain conduct for the purposes of section 51. These authorisation provisions are required due to the agreement that was reached between Telstra and NBN Co., as you well know, and the implementation of that agreement will provide for the progressive migration of services from Telstra's copper and hybrid fibre coaxial cable networks to the National Broadband Network.

The purpose of authorising certain conduct under that agreement is that there could be scope for such an agreement to involve conduct by the two parties that could be argued to lessen competition when it is considered in isolation of the overall structural reforms delivered by the agreement. Therefore, in light of the role of the ACCC to consider the competitive impacts of the arrangements as part of its scrutiny of Telstra's structural separation undertaking, the bill authorises the entering into of the agreement and associated conduct in the event that the ACCC accepts the undertaking. This will remove any need for a separate authorisation inquiry while still ensuring appropriate scrutiny by the ACCC of the agreement between Telstra and NBN Co., as set out in Telstra's structural separation undertaking.

Under proposed sections 577BA(2) the bill authorises the giving by Telstra to the ACCC of a structural separation undertaking, a variation to a structural separation undertaking, a draft migration plan or a variation to a final migration plan. Furthermore, to allow for early preparatory work to commence in carrying out this historic structural reform of the telecommunications industry, the provisions under the proposed section 577BA also authorise certain matters before a structural separation undertaking comes into force. Please note, these are specifically proposed subsections 577BA(3), which provide that where Telstra and NBN Co. enter into a contract, arrangement or understanding prior to a structural separation undertaking coming into force, and the operative provisions in the agreement are subject to the condition precedent of a structural separation undertaking coming into force, then the entering into of that agreement by Telstra and NBN Co. is authorised. And if a written copy of the agreement was given to the ACCC by Telstra or NBN Co. before the ACCC had accepted the structural separation undertak-

ing then conduct engaged in by Telstra and NBN Co. to give effect to that agreement is authorised after the structural separation undertaking has come into force.

Importantly, the requirement for the contract to be given to the ACCC—and I know this is specifically your area of concern and I think we have now addressed it—will allow the ACCC to scrutinise the agreements between Telstra and NBN Co. before the ACCC decides whether to accept the structural separation undertaking. Proposed subsections 577BA(4) and (5) also authorise certain matters before a structural separation undertaking comes into force. For the sake of completion I will continue, because these are specifically sections that provide that where Telstra and NBN Co. enter into a contract, arrangement or understanding prior to a structural separation undertaking coming into force and ‘the contract, arrangement or understanding contains a migration provision’, then the entering into of those agreements is authorised to the extent that the contract contains the migration provision and conduct engaged in by Telstra or NBN Co. in order to give effect to the migration provision is authorised unless the structural separation undertaking has been rejected by the ACCC or the structural separation undertaking has been accepted subject to the occurrence within a specified period of specified events and that period has ended without the structural separation undertaking coming into force.

It is important, I think, to clarify that a migration provision, which is defined under proposed subsection 577BA(11), relates to Telstra ceasing to supply services on its copper network or commencing to supply services on the NBN. In the situation where Telstra never lodges a structural separation undertaking, the authorisation of certain conduct will cease when an in-force functional separation undertaking is in place.

This is set out under proposed paragraph 577BA(5)(g). This means that the authorisation will not continue once it is clear that Telstra is not proceeding with its structural separation undertaking. Once the ACCC has scrutinised and accepted Telstra’s structural separation undertaking and, if applicable, its migration plan and these arrangements have come into force, the legislation authorises certain conduct performed in order to comply with those documents.

Proposed subsection 577BA(6) and (10) authorise conduct engaged in by Telstra in order to comply with an in-force structural separation undertaking or an in-force migration plan. In addition, the acquisition of an asset by Telstra by a person specified by Telstra in an in-force structural separation undertaking is authorised under proposed subsection 577BA (7), where disposal of that asset is required in order for Telstra to comply with its structural separation undertaking. I trust you are following all of this, Senator Joyce. Where Telstra and NBN Co. enter into a contract, arrangement or understanding in order that Telstra complies with an in-force structural separation undertaking then under proposed subsection 577BA (8) the entering into of that contract, arrangement or understanding is authorised and conduct engaged in by Telstra or NBN Co. to give effect to that contract, arrangement or understanding is authorised.

For further clarity, under subsection 577BA (9) the minister is also empowered to determine by legislative instrument that the entering into of a particular contract, arrangement or understanding between Telstra and NBN Co. was required in order for Telstra to comply with an in-force structural separation undertaking. The purpose of this subsection is to provide certainty to both Telstra and NBN Co. by providing a mechanism for the minister to ensure that a contract falls within the scope of that authorisation.

However, the minister's determination under subsection (9) is a legislative instrument, so each house of the parliament can disallow the minister's authorisation of the contract. This provides for appropriate parliamentary scrutiny of the minister's exercise of this power.

Structural reform of the telecommunications sector, as we all know, is in the national interest, and these provisions take into account the ACCC's role in considering the competitive impacts of the arrangements between Telstra and NBN Co. while also giving Telstra and NBN Co. the necessary certainty to move ahead with the agreed arrangements. I therefore hope, Senator Joyce, that this detailed response to your question, which is about clarity on the operation of section 577BA, satisfies your query and puts your mind at rest that there is nothing in this act that is cause for concern. The specificity of the provisions have now been outlined for your benefit. If you have any further questions, that is fine, but I think the detailed explanation has now been provided.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.36 pm)—A detailed explanation was provided—but not by you. It was by the person who wrote that speech. The only part I disagreed with was your closing statement, which said, 'I hope this puts your mind at ease.' Because of your consummate knowledge in the subject matter, I want you to put, in your own words, whether you believe that the full coverage by the ACCC has been in any way inhibited by the provisions of this act as pertinent to the arrangement between NBN Co. and Telstra.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.37 pm)—I think it is very important for Senator Joyce to understand that he now has an answer to

the question he asked and yet he is seeking to play some kind of game in the chamber. Senator Joyce, you well know that the provisions of this bill are incredibly detailed. I have just read out a very formal response to a very specific question by you, and I trust it satisfies you.

As to the overarching satisfaction of this regime, it is built on a structurally separated National Broadband Network and I know for a fact that the National Party understands the importance of structural separation as far as resolving the many problems in the telecommunications sector are concerned. Indeed, it is in your constituents' interests that we get the industry structure right. I recall several investments by the National Party in trying to respond to the question of appropriate competition, appropriate competitive policy safeguards and appropriate consumer safeguards, and I am absolutely flabbergasted that you come into this chamber opposing this legislation in the way that you do.

As I said, if you want to play silly games that is up to you. I think everyone listening to this debate will understand that your question has been fully answered and your query satisfied, leaving you absolutely no grounds to sustain your opposition on this particular point.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.38 pm)—Quod erat demonstrandum, obviously. Minister, I am absolutely convinced that you have not got a clue what you are talking about. That was a remarkable nonanswer from a crowd who have not got a clue. They are clueless. A trained monkey could do as good a job as what we just heard then; probably better.

It is really simple. You believe that the full operation of the ACCC is impeded by the agreement between Telstra and NBN Co., or it isn't? I am going to make it really simple



for you, Minister: it is yes or no. It is a really simple answer. Just have a crack at it.

**The TEMPORARY CHAIRMAN (Senator Boyce)**—Senator Lundy, are you intending to respond to that?

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.40 pm)—I have responded at length and in detail to Senator Joyce. He can stand up and say, ‘Answer my question.’ The question is the provision of the bill, and I have outlined it. So there is nothing more to say about it. I suggest Senator Joyce tries and addresses the actual amendments that are before the chamber. Are you going to bother doing that, Senator Joyce? I suspect not.

Let me remind the senator what the amendments are that we are actually debating. They are opposition amendments. The opposition claim there is a gun held to Telstra’s head around these issues. That is actually not the case. I responded in the opening remarks—if you had bothered to be in the chamber, seeing we’re playing that game this afternoon—as to why the opposition amendments are no longer necessary to address this specific point. We are yet to hear Senator Joyce address the opposition’s specific amendments. It has been a day for games; it is a day that is continuing with games from the opposition. As Senator Joyce well knows, the answer to his question was contained in my detailed response. I do not accept—

**Senator Joyce**—Give the answer.

**Senator LUNDY**—I have, at length. The answer is what I read out to you as to how those provisions of the act will operate to address how the agreement between Telstra and NBN Co. and the migration issues are going to be dealt with. Senator Joyce, come in here and hoot and holler all you like. We

are trying to progress the bills. You are obviously the opposition’s latest tactic in delaying consideration of these amendments. I was going to say I do not think you are enhancing the credibility of the opposition, but you actually do not have any on these bills—hooting and hollering, throwing abuse across the chamber and demanding answers to questions that you have just received a complex answer to, which you perhaps do not understand.

I know the *Hansard* will be available in a few hours or so and you can review the response I gave to you. I think you know the answer is there and you are just coming in here to waste a bit more time. You can stand up again have a hoot and a holler, but it is not progressing the debate. I think it shows the ongoing immaturity of the opposition’s handling of these bills.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.42 pm)—I know the answer is there; it is just that you do not know where it is. That is the whole point. You read out that whole palaver, when it was an extremely simple question: whether section 51 part (1) and the ACCC’s capacity for oversight over that, has been impeded, yes or no? You cannot answer it because you have not got a clue. All you can give is some babble that has been handed to you by the gentleman sitting immediately to your left. If you do not understand what on earth you are talking about, what on earth are you doing sitting there?

I will direct you back to some of the other things you said. You said there is a capacity to disregard. You also said it would be deemed to be a reduction in competition. You also talked about how it would be resolved by disallowance. One would presume that that would mean that the minister has a discretion which impedes the full and total operation of the ACCC in its ability to over-

sight section 51 part (1). I am trying to help you out with your own answer, Minister, because you are struggling a little bit.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.44 pm)—Far from it. In fact, if Senator Joyce had any clue he would understand that I responded to him in the most comprehensive way possible. What I in fact did, Senator Joyce, was outline precisely what the bill does in relation to the provisions in those proposed sections for the ACCC to scrutinise and approve the competitive impacts of the agreement between Telstra and the NBN Co.

I refer you back to the overall approach of the National Broadband Network, which is to create—wait for it—a wholesale only, open access fibre-to-the-home network. In providing that network, the ACCC, specifically will consider the competitive impacts of the Telstra and NBN Co. arrangements as part of its scrutiny of Telstra's structural separation undertaking. So, contrary to your outburst, the answer explained in detail how the ACCC responds to that agreement.

**Senator Joyce**—What is the answer?

**Senator LUNDY**—The answer is that the ACCC can respond to it and can still scrutinise—

**The TEMPORARY CHAIRMAN (Senator Boyce)**—Order! Senator Lundy, I had been about to ask Senator Joyce to direct his remarks through the chair when he sat down. I ask you to do the same.

**Senator LUNDY**—It is painful to listen to for many people. Senator Joyce came in here and attempted to ask a specific question, hoping to catch the government out on the specific requirements, I am sure. He got a detailed answer but cannot absorb it and cannot interpret it. I have explained that the ACCC has a specific role to play and I have

described exactly what that is. If that is not enough, or you are just here to make your simplistic political point, that is fine, but you have the answer. If you are incapable of understanding the detailed provisions of the relationship between the ACCC and its consideration of the competitive impacts of the Telstra and NBN Co. arrangements as part of its scrutiny, that is your problem not the government's.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (5.46 pm)—If the minister knew anything about the act she would know it is impeded. That is all she had to say, but she cannot say that because she does not have a clue.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (5.46 pm)—Far from being impeded, it is managed by this bill in a way that recognises the NBN Co. and Telstra arrangement. These provisions are detailed and comprehensive, and I outlined them. Senator Joyce is coming in here, trying to justify the cheap political point he has been making all week that somehow competition is undermined. It is obvious that the ACCC will have a role in scrutinising this agreement. He has come in here just to, I suspect, do his shift and kill another 15 minutes of debating time for this bill. He has left the chamber, so obviously he is not able to absorb the information with enough nous to come back and have a follow-up question, perhaps about the detailed function of these provisions. Quite frankly, that is probably because I gave such a detailed response and he has nowhere left to go.

**Senator RONALDSON** (Victoria) (5.47 pm)—I will just sum up on behalf of the opposition. I think it is Joyce one, the government nil, after the last 15 minutes. I am not

going to expand that further except to say in relation to these amendments that it is a gun to the head of Telstra. It is simply not good enough for the government to say, 'Well, there's been an agreement in relation to this matter.' Quite frankly, to hold a gun to the head of a publicly listed company in the way that has been done by the government is indefensible, and that is why we are opposed to the government's approach in relation to this matter and why we have moved the amendments.

**Senator CAMERON** (New South Wales) (5.48 pm)—I rise in support of the bill. I want to take up where I left off on this issue yesterday—that is, the importance of having modern broadband in Australia for future generations. What we have heard today is the wrecking ball of the Liberal Luddites on the other side of the chamber. They want to argue that we should continue with copper wire that is decaying, copper wire that is not providing proper broadband services to this nation. If we continued and we accepted the Luddite approach of the opposition, the capacity for this country to compete internationally in a modern economy would be nil, because to compete internationally you need access to the best technology.

What do the opposition say? They say, as they said for 11½ years, 'We should just wait and see what happens; in five or six years time there might be a new technology that will make everything better.' We all know—we do not all know; probably the opposition do not know—that the technology we are proposing is the technology of the future. It is the technology that will take this country forward. But you are not interested in taking the country forward. You want the country to continue to have the worst technology, a decaying technology, a technology that requires millions and millions of dollars to maintain. It is not—

**Senator Ronaldson**—Madam Temporary Chairman, on a point of order: I am just wondering, during this extraordinary filibuster, whether Senator Cameron could even mention remotely the details and what is involved in the amendments—just for a nano-second.

**Senator CAMERON**—I have heard some wide-ranging debate here, some debate, certainly from the opposition, that does not make much sense. I am just trying to bring this back to what the realities are for this nation in terms of its productivity, its international efficiency and being able to provide the Australian community with the best possible access to the technology of the future—and what is that? That is the NBN.

Yet all we have heard from the other side are attempts to wreck it. We heard Senator Joyce today. You have only to go back to what Senator Joyce said last week, and that is—it is no secret—that not only is this about trying to destroy one of the greatest and most effective propositions that this country has seen and that will take us into the new technology approach, but that it is also quite clear that the opposition see an opportunity to try and destroy the government through trying to destroy the NBN. That is what it is all about, and we know why that is: they are extremely unhappy because they are still sitting on the opposition benches. The Australian public were not prepared to put them in government, and they were not prepared to do that because they knew that the opposition were not prepared to embrace the technology of the future, and the technology of the future is the National Broadband Network.

Those opposite would see the regions of Australia denied access to high-speed broadband simply for their own political objectives—very base objectives, let me say. They are objectives that have nothing to do with

the national interest; they are simply about trying to destroy a major initiative for this country and trying to destroy a government that has some vision about where we go on technology—a government that recognises that young people in this country, businesses in this country and consumers in this country should have the best. But what would the opposition do? They would say to wait until we see some fairytale technology appear on the horizon, and that fairytale technology will be the technology that supersedes the National Broadband Network. They know that is a nonsense. They know that is not a credible proposition. They know that is simply about the worst type of politics—trying to stop a major initiative on broadband for this country.

Telstra, we are being told, has a gun at their heads. The only gun that is being held to anyone's head is the gun that the coalition are holding to the heads of the Australian community. They are holding a gun to the heads of the Australian community by denying them access to the best technology.

I do go into the bush now and again. As I said yesterday, one of the areas I look after is New England, and the engineering businesses in New England want their businesses to have the same access that businesses in Melbourne, Perth, Adelaide and the other capital cities have. They want to be able to compete from regional Australia. They want to build regional Australia for the future and they want to do that through the National Broadband Network. They know and they accept that there is only one party that has the way forward for the future of this economy, and that is the Australian Labor Party. The Luddites in the Liberal Party would walk away from or destroy new technology if they thought that gave them a competitive political position. Well, we are not about competitive political positions. We are about the national interest, and it is about time the

opposition put the national interest before their base political interests. The national interest is about dragging this country—after 11½ years of economic and technological incompetence on the part of the Liberal-National coalition—into the new century and into a position where we can compete internationally with companies around the world.

That is the benefit of the National Broadband Network. The National Broadband Network delivers. It delivers for the community, for business and for the nation. And the opposition would walk away from that. That is what we have seen demonstrated here.

We had Senator Joyce on his feet. I do not know what Senator Joyce's expertise is. He certainly has no financial expertise; that is why he was sacked as economic spokesperson for the coalition. He is now demonstrating that he has no competence and no understanding, absolutely no idea, of what is needed in this country in terms of the technology of the future. Senator after senator on the other side have stood in here and demonstrated that they are prepared to put their political interests before the interests of the nation.

I want the community in New England, the community in Tamworth and the community in Armidale to have access to the best broadband available. That is what we need. We need appropriate technology, good technology, the best technology available, to make sure that we can compete internationally. Those opposite are not interested in competition. You actually proved that over the 11½ years in which you sat back and did nothing in terms of the challenges that were facing this country. But you have the hide, the cheek, to come in here and lecture us about what we are doing. What we are doing is acting in the national interest. What we are doing is making sure that we can compete

internationally. What we are doing is making sure that the national interest comes first.

**Senator RONALDSON** (Victoria) (5.59 pm)—Let the record show that about 10 minutes ago I summed up effectively on behalf of the opposition on these amendments and then, having been abused all day for filibustering, Senator Cameron got up and filibustered for 10 minutes. So, to use his words, it is cheeky to come in here and lecture us, Senator Cameron. I will now sit down again and I will be fascinated to see whether somebody else jumps up to filibuster. Let us put it to the test. You had the opportunity and you started filibustering. Let us put this to the test, as I sit down, and we will see who is going to jump.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (6.00 pm)—I cannot let Senator Ronaldson's making of such a pompous statement go past when we have spent about six hours fighting to get even to this debate and then having to endure not only so many contributions through the course of the afternoon that are informed by a complete misunderstanding of the topic at hand but also speaker after speaker, on behalf of the coalition, coming in here to fill up time. I am completely empathetic with my colleague Senator Cameron to feel the need to come and throw back some of the ridiculous rhetoric that has been served up to the government from across the chamber.

It is clear the opposition are taking this as a game. It is clear they are trying to prevent the consideration of this bill. We saw some 2½ hours of specific motion moving this morning to delay this debate to even begin on the procedures. We find ourselves now with this mock outrage. They are so bored in their tactics that they think, 'Oh well, we'll just come in and put our amendment for

once.' It is quite absurd. It brings this whole chamber down. Unfortunately, that reflects on all of us, not just the shameless members of the opposition.

Given we have had such a lack of clarity on the opposition amendments, I think it is entirely appropriate to ask Senator Ronaldson to reiterate the detail of why they believe these amendments are necessary. We are actually discussing opposition amendments. I know that has not been obvious because we have not had any contention put forward by the opposition as to why their amendments should be supported, so I will assist the opposition. They have moved their amendments (1) to (17), (24), (33) to (40), (43), (45) to (57), (64) and (65) related to spectrum, undertakings about hybrid fibre coaxial networks and subscription television broadcasting licences. They have not been able to present arguments as to why they support these amendments. I have, nonetheless, responded in detail to why these amendments are no longer necessary, but we have heard no arguments as to why they are. We have also had the opportunity, through the course of the debate on these amendments, to respond in detail to questions about how the reforms promote competition and why it is necessary, in the provision of proposed section 577A, for the ACCC to scrutinise and approve the competitive impacts of the deal between NBN Co. and Telstra as it relates to structural separation undertakings and the migration to new networks. But we get nothing from the opposition. Who is your spokesperson for telecommunications in the Senate, anyway? Is that you, Senator Ronaldson?

**The TEMPORARY CHAIRMAN** (**Senator Troeth**)—Order! Those questions should be directed through the chair.

**Senator LUNDY**—I am sorry. Out of interest, I ask the opposition, through the chair, who the spokesperson is for telecommunications. I would be interested to know why you are moving these amendments, given that we have provided satisfactory responses as to why they are no longer necessary.

**Senator MARK BISHOP** (Western Australia) (6.04 pm)—Telstra and telecommunications generally is not an area of involvement in which I have spent a great deal of time in the last seven or eight years, although it is one of those areas I do have a nodding familiarity with, having had some frontbench responsibilities for it a long time ago—before most people in this chamber came into this chamber—between 1998 and 2001. In those days a long discussion went on about a range of telecommunications matters. I do not want to visit the subject of those discussions and those debates long past, because those were the long, lonely, weary days of the Howard government when there was a range of matters rammed through time and time again. I do remember in those days when we sat on those terrible hard benches over there that there were protracted debates on a range of topical issues of the day. I remember there was a clear distinction. I remember now, having watched this debate for the last five to six hours today, a clear distinction and a clear difference in approach between—

**Senator Humphries**—Madam Temporary Chair, on a point of order: I am fascinated to hear Senator Bishop's life story in the Senate, but there is some legislation in front of the chamber at the moment dealing with the National Broadband Network. I would like to return to that subject matter, if we may.

**The TEMPORARY CHAIRMAN** (**Senator Troeth**)—I would draw your attention—

**Senator Moore**—Madam Temporary Chair, on the point of order: we have been listening to this all day. In the context of the wide-ranging nature of the debate we have listened to, I think it is entirely amusing that Senator Humphries would call to mind a point of order in this debate. Senator Bishop is talking about the debate and the process and I think he is entirely within his rights.

*Honourable senators interjecting—*

**The TEMPORARY CHAIRMAN**—Order! There is no point of order, but I would draw your attention, Senator Bishop, to the amendments we are discussing and to relevance.

**Senator MARK BISHOP**—Thank you, Madam Temporary Chair, I do appreciate the tact with which you chair the committee and the guidance you have given to speakers in this debate in such a fine professional fashion. The point I was developing was that the debates in the telecommunications area, having to do with ABC, spectrum, SBS, the privatisation of Telstra and a range of other matters in those days, were long technical debates. The distinction between the persons who participated in those debates in those days and those who participate on the part of the opposition today—mainly new, it must be conceded—was that in those days we had a clear view of the role of public policy and a clear view of the role of public enterprise fitting within a market economy in bringing benefits and concessions to those who most needed them in rural and regional Australia.

Today, when one considers the range of contributions that senators from Western Australia and New South Wales have made in debating the amendments before the chair, the one clear and salient factor that every speaker from the opposition has chosen to avoid—for reasons that are not clear to me—is that when this bill goes through we will have the structural separation of Telstra into

retail and wholesale, and broadband will be laid out to Australian homes in the most cost-effective manner. We will have coverage from the most modern communications technology for something like 96 or 97 per cent of the Australian population.

Senator Back tried to make a big deal about there being a limited number of towns in Western Australia with populations of fewer than 1,000 that would not immediately benefit from the spread of the new broadband network. The fact is—and this needs to be put on the record—that something like 96 per cent of the population of the state of Western Australia will have immediate and improved access to the most modern telecommunications when the fibre is laid to their homes. You cannot ask for a better benefit than that: 96 per cent of the population will have the most modern communications system connected to their homes.

There was some commentary earlier that people on that side, I suspect, were trying to filibuster and delay debate for reasons not clear to me, but I am happy to surrender and let others on that side perhaps raise new and additional points that we can consider in due course, because that is clearly their intent. They do not want to waste time and we do not want to waste time. I have only spoken for five minutes and I would be happy to resume in the debate later—I have one or two other points to raise—but at the moment I am happy to surrender.

**Senator Parry**—I move that the question be now put.

**The TEMPORARY CHAIRMAN (Senator Troeth)**—Senator Parry, I am informed by the clerk that under standing order 142 that motion cannot be put when we are under a limitation of time.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary

Secretary to the Prime Minister) (6.09 pm)—We are still waiting for an answer from the opposition, who are the movers of the amendments to the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 on sheet 7004. I think that the question at hand deserves to be answered because, as I said, we have heard many unrelated contributions this afternoon and I am not surprised my colleagues feel compelled to respond to some of them. I have responded in detail as to why these amendments are not necessary, including the so-called ‘gun to Telstra’s head’ that is the subject matter of the amendments before us.

As I said before, there is no longer an automatic prohibition on the acquisition of spectrum if Telstra does not structurally separate and divest its interests in its HFC network and Foxtel. The government has been at great pains to amend the bill to ensure that Telstra has sufficient regulatory certainty to take a firm proposal to its shareholders to structurally separate by allowing Telstra to acquire specific bandwidth spectrum. I placed all of this on the record before. I am interested in a response from the opposition as to why they want to persist with these amendments. I think it is very clear they do not need to and I think we deserve an opportunity to get their response.

I also think it is timely to revisit the whole issue of the detail of the regulations we are discussing. Contrary to everything the opposition have said in the chamber today and their associated attempts to delay the discussion of this legislation, they have taken the approach of depriving the chamber of a detailed conversation about the amendments. We are now asking the opposition to justify their amendments, given the government has responded to the concerns they expressed. In the absence of that, I feel the responsibility to further expose the political motivations of

the coalition in how they are handling these bills. I revert to comments made by Senator Joyce earlier in the week. The comments were not made during a debate about the bill. They ought to have been, but the comments were on a motion that the coalition moved to talk about the NBN, even though they did not want to discuss the actual bill. In that contribution by Senator Joyce earlier in the week, I confess he was a little provoked by government senators who were challenging him across the floor about the shallow nature of his contribution. But Senator Joyce did Australia a great favour, and today I want to thank Senator Joyce for telling the people of Australia that the coalition's motivation for their opposition to these bills actually has nothing to do with structural separation.

We know the National Party were advocates of structural separation because they knew it would respond to some of the anti-competitive elements, aspects and characteristics of telecommunications in Australia under which their constituents have suffered. No, what Senator Joyce shared with all Australians and us in the chamber was that their opposition to these bills and to NBN Co. was about bringing the government down. He stated on the record that he thought the only reason Labor was in power was the NBN. Whether that is true or not, I know that it was the subject of some discussion during the period of negotiations and the formation of the minority government, but I have no doubt that it was a significant policy in the minds of Australians when they voted. Frankly, it is a policy that the vast majority of Australians want and need. In this chamber, Senator Joyce made very clear their opposition to these bills was not about the detail and it was not about this feigned protection of the competition structure. We know that is not true because our structurally separated wholesale only National Broadband Network with fibre to the premises addresses

all of those concerns. But we know that Senator Joyce has a propensity to fly off at the hip and he really did let the cat out of the bag for the whole of the coalition.

Every time we come into this chamber to discuss the telecommunications bills, I remember it took us 5½ hours of actual procedural debate to bring this bill on that we find ourselves now debating amendment by amendment. I think it is also very important to understand, as far as Senator Joyce's contribution here today goes, that he tried to purport that somehow the government was being negligent and the competitive provisions around handling the agreement with NBN Co. and Telstra were somehow deficient. He knows full well that section 577BA specifically authorises certain conduct for the purposes of section 51 because NBN Co. and Telstra do need to make an arrangement that will make the implementation of a National Broadband Network that is wholesale only, fibre to the premises, independently regulated and open access function efficiently. We know that it was the coalition that argued so strongly in the public domain for an arrangement to occur whereby Telstra and NBN Co. came to such an agreement. It is hypocritical for them to then criticise the very provisions of the Trade Practices Act that are designed to manage that agreement between NBN Co. and Telstra so effectively. Senator Joyce's attempts to make cheap points on this issue are thoroughly exposed by the fact that once the answer was provided he had nowhere to go but to stand up and hoot and holler.

I would like to reflect on my colleagues' contributions and the contributions of those opposite. It is frustrating for the government to have to endure misleading contributions by members of those opposite through the course of this debate. We have heard all sorts of big numbers bandied about and, despite more realistic figures being released into the



public domain today, we have had no fewer than four different speakers from the coalition continue to use not only the \$43 billion figure but higher figures—\$50 billion, \$53 billion, \$57 billion, I think I heard at one point, I cannot remember—which they are making up. Information about the likely cost of the NBN is clearly on the public record, so to continue to bandy those higher figures around is irresponsible, misleading and unconstructive to the debate.

I also think that in providing those unconstructive comments we need to go to the heart of the confidence in this technology. I have been on many inquiries. I am even sick of saying that because people know how many inquiries my colleagues, the opposition and the crossbenchers have participated in over the years. But to come in here and assert that fibre is not the technology of the future or that somehow it will be outmoded in just a few years, as Senator Back did, is irresponsible in the extreme. It is unfortunate because what it tells the people of Australia is that you have a government, on the one hand, committed to the detail, to an elegant market structure that is structurally separated, addressing the vast majority of concerns about anticompetitive behaviour, and an opposition, on the other hand, that cannot even grasp the fundamentals or the facts and mount a debate or an argument.

In addition, they have also been incredibly inconsistent in the way they present their arguments. On the one hand, they say there should be less regulation. They fail to acknowledge that a structurally separated market allows for less regulation because so much of the competitive structure in stimulating competition at the retail level is dealt with by virtue of structural separation. They fail to grasp that most basic point and mount an argument for less regulation. We heard today, I think it was Senator Trood who came in here and mounted an argument to say that

we were re-regulating with these bills. Clearly there is an absence of knowledge such that I think inevitably, unfortunately, the people of Australia who are listening to this debate can only conclude that people are not properly briefed and that we do not take our work seriously. I think from the contribution of senators opposite that it is reasonable that some people draw that conclusion about the opposition.

I think the other feature of this debate over many, many years has been that we all know where we needed to end up with structural separation. Senator Xenophon made a strong point in his presentation earlier about unscrambling the egg. It is difficult when the egg that we are unscrambling is about decades of regulation in trying to regulate a structurally imperfect industry. It is incredibly hard to do that but, because of Labor's commitment and understanding of the importance of a national economic infrastructure for the future, we have been able to do it with our NBN policy. It is complex and there are some big issues to grapple with, but we are doing it step by step as we progress the National Broadband Network policy.

This is one piece of legislation. There will obviously be others. This one deals with the structural separation issues and takes into account, as the coalition demanded, the issues around the NBN Co. and Telstra agreement. I cannot fathom, as I said, why they would oppose it given it is such an important step in addressing all the things they feign to be concerned about.

That is where we go full circle back to Senator Joyce's arguments. It is not about telecommunications, it is not about internet connectivity, it is not about bandwidth; it is about senators opposite thinking that they have a right to govern. They cannot get over the fact that our excellent NBN policy may have been a factor in determining our vision-

ary policy for the whole of the nation. The visionary nature of this policy sits at the heart of regional Australia too. I note with interest that the coalition would send their regional spokespeople in to say that this is going to abandon the needs of regional Australians, and it is going to cost too much.

The fact of the matter is that regional Australia needs high-bandwidth services. The businesses, commerce and the farmers will tell you about the latency problems with their satellite connections. So we do need an investment in the next generation of satellite to soak up and address the demands of those on farms. But we know that regional Australia's needs will be served by the NBN, whereas no policy under the former coalition government addressed these concerns.

Back to the coalition amendments that are currently before us: they are amendments that are addressing a problem that no longer exists. So I say to those opposite: have you considered withdrawing your amendments given that I have explained in detail that we have responded to them so comprehensively? Do you think that, in your efforts to amend this bill, by addressing the facts of the matter you might have been motivated to restore even a smidgeon of credibility to the stance that you are taking on this bill? I think the reasonable observation of commentators who are following this debate is that your representatives contributing to the debate not only have little understanding or knowledge about the history, background and nature of the industry structure and how it relates to competition but care little for the crucial economic and social infrastructure that the National Broadband Network will provide. I think it is unfortunate.

I am glad Senator Joyce has come back into the chamber, because I was talking early on about Senator Joyce and about how grateful we are to him for letting the cat out of the

bag. But it is not about the merits of this legislation and how it relates to the structure of the telecommunications industry; it is, in fact, about the political tactics of a desperate opposition who want to try and stop the passage of a piece of legislation that, in general, is symbolic of the NBN and looks at some of the aspects of the relationship in the Telstra and NBN agreement and how it responds to the competition framework. It addresses many of the issues in relation to the structure of the industry, and I think it is a very important piece of legislation to progress the framework in which the NBN will function in the future.

*Senator Sterle interjecting—*

**Senator RONALDSON** (Victoria) (6.25 pm)—I thank Senator Sterle for acknowledging this is a filibuster.

**Senator Ian Macdonald**—By Labor, you mean.

**Senator RONALDSON**—By Labor—that is right. I have one question for Senator Lundy. I want you to listen, Senator.

**Senator Sterle**—I listened. Five and a half hours it took for you lot to stop prattling on.

**Senator RONALDSON**—It would be very wise, Senator Sterle, for you to be quiet. I have a question for Senator Lundy: did you or did you not say to Senator Xenophon—I overheard it before—that you were talking it out and you had been instructed to talk it out but you did not know why? Did you use words to that effect to Senator Xenophon? Senator Lundy, I want you to think very clearly about this and I want you to stand up if you did not.

**The TEMPORARY CHAIRMAN (Senator Troeth)**—Senator Ronaldson, that should be directed through the chair.

**Senator RONALDSON**—That is right. I ask Senator Lundy through the chair to stand up and deny that what I overheard her say to Senator Xenophon is correct—that indeed you had been told to talk it out and you did not know why. On the back of the commentary that has been made during the day about an alleged filibuster, I remind you that I effectively asked for this question to be put nearly an hour ago. I also remind the chamber that Senator Parry, at 10 minutes past six, tried to move a motion that the question be put. So will the record please show that the opposition has made it quite clear that we want to get these amendments through? Will it be shown on the public record not only that the Labor Party have not done that but that they have acknowledged an attempt to talk it out? I assume Senator Lundy will jump up in a second and refute it if it is not true, but if she remains sitting there then we will know that it is. What is the fix? What fix is on that has caused you to filibuster for the last three-quarters of an hour? What filibuster is on for Senator Lundy to say to Senator Xenophon that she does not know why but she has been told to talk it out? What is the fix?

**Senator Birmingham**—What deal is falling apart?

**Senator RONALDSON**—As Senator Birmingham says, what deal is falling apart, who is getting shaky, why would you make that comment to Senator Xenophon and why is it—

**Senator Jacinta Collins**—Stretching your ears distorts the sound.

**Senator RONALDSON**—What an extraordinary intervention! We cup hands now for interjections, do we? What a remarkable thing! It is like a football game. Honestly and truly!

*Government senators interjecting—*

**The TEMPORARY CHAIRMAN**—Order! Those senators who have questions or comments will be allowed to make them in due course through the chair.

**Senator RONALDSON**—I indicate to the senator that what we are saying is that we want Senator Lundy to answer the question: why are you filibustering—through you, Madam Chair? Why did you say to Senator Xenophon that you have to talk it out but you do not know why? You have been instructed to talk it out but you do not know why—those were the comments you made to Senator Xenophon. What is going on? Who is getting shaky? What deal has been done? What dirty deal has been done outside this chamber? There are the sorts of dirty deals we have seen with the Australian Greens over the last three months. What dirty deals have been done? Why are you filibustering? We have the acknowledgement by Senator Sterle that the Labor Party is filibustering. The public record will say so. Senator Lundy, I am looking forward to you rising and refuting the question that I have put to you.

**The TEMPORARY CHAIRMAN**—Minister, do you wish to reply to that?

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (6.28 pm)—I feel provoked, because what we are dealing with here is someone who purports to have such big ears, and now I feel compelled to say to the senators opposite that if this is the best you can do to answer these questions then you are completely and utterly exposed. Not only do the opposition have ample opportunity to stand here and respond to the specific questions about their amendments, but they choose not to.

**Senator Ronaldson**—Madam Temporary Chairman, on a point of order: I draw to your attention that Senator Lundy refuses to refute the matters that I have put to her about her conversation with Senator Xenophon. Yes or no?

**Senator XENOPHON** (South Australia) (6.29 pm)—I want to make it absolutely clear that the conversation I had with Senator Lundy was a private conversation. I did not realise that the acoustics in this place were so good!

**Senator Ian Macdonald**—Yes, but is it true?

**Senator Joyce**—That confirms that it happened.

**Senator XENOPHON**—No, only that any conversation could be heard.

**Senator Joyce**—Will you withdraw the comment?

**Senator XENOPHON**—No, I will not withdraw the comment. I can honestly say—

**Senator Ian Macdonald**—What, has Steve gone against you?

**Senator XENOPHON**—Sorry?

**Senator Ian Macdonald**—Has Steve gone against you?

**Senator XENOPHON**—Which Steve?

**Senator Ian Macdonald**—Steve Fielding—Senator Fielding.

**Senator XENOPHON**—Senator Fielding? No.

**The TEMPORARY CHAIRMAN (Senator Troeth)**—Senator Macdonald! Through the chair, thanks.

**Senator XENOPHON**—I cannot assist the Senate on the speculation that has arisen. I think journalists are already speculating as to why there has been a delay, but the delay has nothing to do with me. In future I think I will need to whisper in the chamber, but that does not mean that what has been put is nec-

essarily completely accurate in terms of verbatim.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (6.30 pm)—This is a fine example of Senator Ronaldson coming in here and causing trouble in the absence—

**Senator Ronaldson**—Oh, scallywag!

**Senator LUNDY**—Senator Ronaldson calls me a scallywag, so I will take that—I have been called worse. Senator Ronaldson, I think your game-playing in this chamber is reaching new heights. There are certain courtesies and protocols that need to be acknowledged but that you have breached, and I—like Senator Xenophon—am not confirming anything, despite your allegations. The issue at hand, I reiterate, is that I have asked the opposition why they are persisting with a series of amendments that have been comprehensively responded to and are no longer necessary. We are yet to get a decent answer from the coalition about their putting forward of these amendments. I suspect that they do not have anyone in the chamber capable of explaining why their amendments are so important, now that they have an answer from the government as to why they are no longer necessary.

It is important to understand that the coalition have spent 5½ hours getting to this debate, and they have now thrown their hands up in glee and delight, saying, ‘We must put this amendment.’ We have a right as a government to make clear our position, and there are only so many untruths and misrepresentations that can be put forward by coalition senators about the National Broadband Network. I am sure my colleagues understand why I feel compelled to talk about why the NBN is so important to Australia.

We are dealing with the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010. This bill sets a regulatory framework that is an important precondition for the NBN Co. and Telstra arrangement because it addresses structural separation and the issues surrounding the new structure of the industry that will exist when the NBN is built. For some unfathomable reason, the opposition have decided to oppose this bill. We are now in the midst of a series of detailed amendments in the committee stage, yet the opposition cannot answer the question of why they are persisting with amendments that seek to address problems that do not exist.

**Senator Joyce**—Madam Acting Deputy President, on a point of order: is this prattle going to be concluded by reason of Senator Evans and Senator Conroy now being here? Will whatever you are prattling on about soon come to a conclusion?

**The TEMPORARY CHAIRMAN (Senator Troeth)**—There is no point of order; however, at this point I remind all senators that we have a bill and a series of amendments before us. The depths to which some of the discussion has descended in the last 10 minutes are regrettable to say the least.

**Senator Ian Macdonald**—Hear, hear!

**The TEMPORARY CHAIRMAN**—On both sides.

**Senator LUNDY**—The National Broadband Network, as it is envisaged and being built by this government, will service the demand for bandwidth into the future. I remember reflecting some years ago on how poorly Australia was faring if you looked at, to take one measure, the OECD ratings; but perhaps a more important measure was the actual experience of citizens of this country. Some years ago I embarked upon a campaign called the pair gain victims campaign. I

know Senator Joyce has a great appreciation of this campaign, because many of his constituents were so affected. The pair gain victims campaign was about recognising the physical constraints of the existing copper network. It took a long time and several inquiries, but a realisation was dawning on everybody in this place that the copper network was not going to support Australia's bandwidth needs into the future.

Surprise, surprise, it was not long before this was confessed by Telstra themselves when they said on the public record. 'We acknowledge that our network is at "five minutes to midnight"'. They were acknowledging that that network would not support Australia's future needs, and yet that same telecommunications company, which had a residual monopoly in that physical terrestrial network, were not prepared to invest in the new technology that would sustain the next generation. Before embarking upon the NBN policy, we tested the market to give the market an opportunity to respond to the future needs of this country. The market was incapable of responding to the future needs of this country, and that was the precondition for developing our National Broadband Network policy.

'Scrutiny and oversight' were the terms used by coalition senators earlier when, clamouring for the release of the business case—which everybody knows will be released in the future—they said, 'They ought to be subject to scrutiny and oversight.' The fact about the scrutiny and oversight—

**Senator Ian Macdonald**—Madam Temporary Chairman, I rise on a point of order: relevance. We are very keen to progress these amendments that have been moved by the coalition. I remind you and the speaker that these amendments are removing the 'gun at the head of Telstra' approach relating to the inability to bid for spectrum and shut-

ting down their Foxtel and HFC cable. That is what the amendment before the chair is. What Senator Lundy is doing might be very interesting as a treatise on history or something, but it is not the amendment before us, and we really want to put it, because we want to pursue these issues and get them voted on. So can I again ask you, Madam Temporary Chairman, to invite Senator Lundy to actually address the amendment, rather than give us general historical babble.

**The TEMPORARY CHAIRMAN**—I have attempted to put the amendment several times, Senator Macdonald, but there are still speakers on both sides who wish to express a point of view. I have encouraged them to be relevant and I will continue to do that.

**Senator LUNDY**—Thank you. I would like to continue with the point I was making about the inadequacies of the opposition's argument. They talk about scrutiny and oversight. I hasten to point out that there have been so many opportunities for scrutiny and oversight that we find ourselves in a situation where they just do not have anything else to say.

**Senator Ian Macdonald**—Why don't you speak to the amendments?

**Senator LUNDY**—For Senator Macdonald's benefit, I want to say that I have addressed the amendments very specifically and at length and I have responded to a detailed question from Senator Joyce in relation to his purported pet issue—that is, as he claims, the lessening of competition. I have pointed out that the adjustments—

**Senator Ian Macdonald**—But that is not the amendment before the chair.

**Senator LUNDY**—Senator Macdonald, in response to your question yelled at me across the chamber, my point is that I was responding to a question put by a member of the coalition. Do you understand? Through

you, Madam Temporary Chairman, my apologies—

**The TEMPORARY CHAIRMAN**—Thank you.

**Senator LUNDY**—I was responding to a detailed question from a member of the coalition in relation to proposed section 557AB. I have not only given a detailed answer—a response, if you like—to the coalition's proposed amendments but also revisited that response a number of times. I am now throwing back to the coalition—

**The TEMPORARY CHAIRMAN**—Order! Senator Joyce, you have a point of order?

**Senator Joyce**—She can't even get it right.

**Senator Jacinta Collins**—'She'?

**The TEMPORARY CHAIRMAN**—Senator Joyce, would you please refer to the senator by her proper name.

**Senator Joyce**—Minister: '557AB'? Try 577BA.

**The TEMPORARY CHAIRMAN**—Is that a point of order?

**Senator Joyce**—I wanted to correct the record.

**The TEMPORARY CHAIRMAN**—I am ruling it out of order. Senator Lundy has the call.

**Senator LUNDY**—Thank you.

**Senator Joyce**—You can't even read off a sheet.

**Senator LUNDY**—Actually I was not reading off a sheet. Technically, the reference to the clause is in fact as Senator Joyce describes. So thank you for that clarification. I was not reading from a sheet when I mentioned that. I think I had the numbers right but slightly in the wrong order, so I would like to offer my second big thank you to Senator Joyce today. I have already thanked

Senator Joyce for letting the cat out of the bag on why we are enduring this persistent opposition to these bills. Now, as we can see, there is persistent moving of amendments that are no longer relevant, because the government has actually resolved the problems that the amendments seek to fix. So, Senator Joyce, I feel completely indebted to you now for helping us out with this and for making it clear to the Australian people that of course it is not about telecommunications; it is about political tactics.

For the National Party this is a particularly painful scenario, because the role the National Party played previously was very much one of trying to hold the Liberal Party to account on telecommunications issues. Why? Well, quite correctly there was a sensitivity to the poor performance of the telecommunications industry in regional Australia, the constituency the National Party claims to represent. So, right up until the minority Gillard Labor government was elected, the National Party at least pretended to play a constructive role in trying to argue for greater services to regional constituents and to regional citizens in the area of telecommunications.

They invested in the Page report, which went through a series of propositions, including addressing the very important issue of—guess what—structural separation as one of the solutions necessary to resolve the ongoing anticompetitive conduct of the residual monopolist, Telstra, in the marketplace. Do we hear any references to this research, invested in by the National Party, that they found so compelling then and have so walked away from now? Absolutely not. Why not? Because, as far as they are concerned, the political tactic is far more important than the policy and the issue of substance.

We have seen unprecedented behaviour in the chamber this morning. Procedural cycle after procedural cycle of motions was used to delay the beginning of this debate. We have heard contributions from coalition senators who clearly have not constructed an adequate brief, or briefing notes, from their opposition, so they were unable to consistently convey the position of the opposition through the course of the debate. We find ourselves none the wiser as to what the coalition actually wants to do, except oppose, obfuscate, block, deny—

**Senator Jacinta Collins—Wreck.**

**Senator LUNDY**—and wreck. I think that their opposition to the NBN underpins an incredibly irresponsible attitude by the coalition, and I have a little bit of sympathy for those on the opposite benches who find the whole stance of their party uncomfortable. I say that on the basis that, like me, they have experienced the real world and understand what citizens want. In fact, I was distracted by a point of order when making this point earlier, but I will go back to it because it relates to the real-world experience of real people who are trying to establish home based businesses, who are trying to embark on long-distance education endeavours, who are trying to access improved government services in an online environment and who consider reliable, affordable, high-bandwidth services absolutely essential to their future prospects.

The other great strength of the NBN is that it allows people to choose where they live. Being from Canberra, I take issue with the point made by one of the coalition senators that somehow I am not privy to the real-world challenges of bandwidth availability. I can assure you that I am. Here in Canberra I benefit from feedback from three important groups of people in relation to telecommunications. The first one is the constituency of

Canberrans who retire to the surrounding region, particularly down the coast. They tell me of the absolute frustration they feel when they invest their life savings in their retirement home only to find that there is no infrastructure that they can access that will provide them with an affordable high-bandwidth service. It is quite a tragedy, because many people, particularly here in Canberra with the work demographic, are used to having online access.

We have also benefited as Canberrans from having more competition than usual in Canberra because of the presence of TransACT, which is a BDSL fibre-to-the-node independent network. That has created some competition with Telstra in the past. So we are rather unique. But for some areas of Canberra we are in exactly the same position as many regional people around the country. In outer metropolitan areas, relatively new areas, Telstra invested in an infrastructure called remote integrated multiplexers, which are like a sub-exchange, but this had the effect of inhibiting the number of ADSL or broadband services that were able to be provided. As all of my colleagues have heard over many years, the people of Gungahlin are long-suffering victims of the RIM pair gains systems and still find themselves on waiting lists just to get the basic ADSL2+ services.

This is the experience of so many communities around the country, where new estates have been built and Telstra, for all of the wrong reasons, invested on the cheap in their infrastructure, denying a proportion of the population that needed a higher bandwidth service in the ADSL service the ability to access it. This outer metropolitan problem is even experienced by very large, multistorey high-rise inner city developments where these RIMs were installed in the basement. People who thought they were buying a state-of-the-art apartment in some of our

biggest cities had problems once the densities and demands for ADSL started to increase. The NBN, of course, addresses all of these problems.

There is another constituency, and that is the people in the outlying areas around Canberra. There was nothing in the former government's 20 or so reports and responses to the problems of regional connectivity that serviced the needs of people who found themselves on ageing copper unable to sustain broadband services and for whom the only solution was a satellite service riddled with latency problems, not to mention expense. Those who found themselves—wait for it—in the doughnut, outside of the footprint of the metropolitan terrestrial delivery area but not inside the subsidised area under the schemes that were designed to support people in more remote areas, were not able to get any satisfaction, support or help to—*(Time expired)*

**Senator BIRMINGHAM** (South Australia) (6.48 pm)—I do not know what is going on here, but there is a challenge to Senator Lundy and to the government. This chamber is meant to be going to a recess at 7 pm, in about 12 minutes time. We would like to see these amendments from the opposition dealt with by 7 pm. So I am not going to say terribly much here, Senator Lundy. We do not know what is happening in the chaos of the government ranks. We have seen Senator Evans and Senator Ludwig zoom in and out of the chamber at different times. Senator Conroy just had his arm around Senator Fielding—who has just disappeared. Senator Wong is up in the corner with Senator Xenophon. We have had all sorts of little huddles and groups happening. I do not know what sort of chaos is going on. I do not know whether your deal with one of the cross-benchers is somehow falling apart. But your opportunity is here. If you want to move this on, if you want to end the government fili-



buster, you can get on with the job now and resolve the question on these amendments. Let it go to a vote so that we can move on to the next amendments.

There are pages of these amendments to get through, as you know. You have put in place a gag to apply tomorrow morning. We would like to see all of these amendments appropriately debated and not all rushed through at the end of the gag. So why not cooperate in the chamber and allow us to get on with this? Is there some reason that tax laws amendments are being circulated in the chamber? Why is it that that is happening at present? Has the government authorised circulation of amendments in the chamber because it is planning to change the agenda? What is going on here? Please tell us: what are you planning to do? What are you planning with a bill that is not before us at present?

Senator Lundy, you keep saying that you do not understand what the opposition's case is on these amendments. You understand it very well. You know very well that there is a very clear and distinct matter of principle and difference between the government and the opposition. We do not think you should be negotiating with Telstra with a gun pointed at their head. That is the firm principle here. We think that, when it comes to their HFC cables and their right to bid for spectrum, they should maintain that right. If you want to get a deal with them, you should get a fair-dinkum deal with them on fair-dinkum terms, not by using ministerial discretion to take away other key parts of their business.

It is that simple: we disagree. You know that; I know that. That is not unusual between the government and the opposition. We disagree. We have established that. We have established that you do not like our amendments. That is okay—do not vote for

them. But put them to a vote and do it before 7 pm.

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (6.51 pm)—I am very glad that Senator Birmingham has come in here. Very specifically, the bill has been amended allowing Telstra to acquire specific bands of spectrum—unless the minister determines otherwise in a legislative instrument—giving Telstra the regulatory certainty they were looking for so that they could take a firm proposal to their shareholders regarding structural separation. I appreciate that Senator Birmingham has come in here to explain what the amendments mean. He is right: we do know what the amendments mean. But what I would put back to you is that we think we have fixed the problem that your amendments seek to address.

Telstra may have raced around and said, 'We've got a gun to our head,' but whether or not they did is irrelevant—the coalition have chosen to characterise this issue in that way. We feel we have addressed the problem. We understand that Telstra believe we have addressed it. So why, if everyone else is in agreement that this problem has been addressed, does the coalition persist with these amendments? Why don't you withdraw the amendments and acknowledge that the government has fixed the problem?

**Senator BIRMINGHAM** (South Australia) (6.52 pm)—Again, let me put it very clearly, Senator Lundy: we do not think you have fixed the problem. We think the capacity remains for the minister to exercise powers that effectively put a gun at the head of Telstra. We think that is very clear-cut in the legislation before us. We accept that you think you have fixed the problem. We do not believe you have. Let's get on with it, put these amendments and move on to the next

one so that we have time to effectively debate all of them.

**Senator STERLE** (Western Australia) (6.53 pm)—I wish to speak to the amendments but, firstly, I have sat in this chamber for nearly four hours and, for the last hour and a half of the debate on the amendments by the opposition, have heard the minister repeatedly ask shadow ministers of the opposition to explain what is going on. They have no idea. In all fairness, let's just cast our minds back to last night. There was an opportunity for the opposition to debate this bill for three hours. They did not have the bottle. They did not have the intestinal fortitude to stay here for three hours last night and have the debate.

We sat here this morning and watched a most ridiculous situation—a waste of Senate time for three hours. There were some of the most ridiculous points of order by the usual suspects, including Senator Macdonald from Queensland—a usual suspect in filibustering and stalling. Another usual suspect for wasting time is Senator Brandis. The two of them, with Senator Joyce jumping in, made no sense. It took three hours before we could even debate the bill. Then we had Senator Birmingham lecturing us. I do not know—he might be hungry or there might be a barbecue outside. I have no idea. How dare they come in here and lecture us when they had three hours available last night! They have no guts and no bottle. They went missing in action, and then they have the audacity to lecture us. They do not even have the guts to come into the chamber. The minister on duty spent nearly two hours debating this set of amendments and not one of those opposite showed some decency. Perhaps they have no idea. I do not know. Mr Turnbull, the shadow minister, was in here earlier. Perhaps they do not have any directions from him. I have no idea. But for Senator Birmingham to come in here at the last minute is so disingenuous. It

does him no credit. It does that side of the chamber no credit. Senator Joyce screamed at the minister and did not make any sense—hang on, I will rephrase that: that is normal for Senator Joyce. What a complete waste of the Senate's time.

**Senator FERGUSON** (South Australia) (6.55 pm)—My contribution will be more brief than most. I would suggest that when Senator Sterle makes a contribution he should be more careful about choosing what he says about our shadow parliamentary secretary in relation to this. Senator Birmingham has been home in Adelaide to attend his wife's grandfather's funeral today and has only just got back. I think it is a bit rough to say that he has only come to the debate now. Senator Birmingham would have liked to be here all day but was unable to be here. When people make a contribution in this debate they ought to do a bit of homework first, because it is understandable that the responsible person on this side would have liked to be here all day. It certainly was not his fault that he was not.

**Senator WONG** (South Australia—Minister for Finance and Deregulation) (6.56 pm)—I rise to speak for the first time in this debate. Obviously, this debate has been very effectively led for the government by Senator Lundy and Senator Conroy. As senators would know, I am one of the two shareholder ministers in NBN Co., so I have a keen interest in this issue. I have a particular interest in rising to speak to the coalition's amendments, which seek to deal with issues that the government has already dealt with. It seems somewhat odd that the opposition, despite the fact that many of its members at other times have recognised the importance of the structural separation of Telstra and have recognised that the current structure of Telstra has been an impediment to the development of competition and to the development of innovative products that Australians can use

in this area, has nevertheless moved amendments that in many ways seek to undermine the policy intent of the legislation, which is to deliver the capacity for the structural separation of Telstra by giving effect to the arrangements that are in place between NBN Co. and Telstra. I find it extraordinary that the opposition chooses to come in here and lecture the government about contributions in this debate. We have had to move heaven and earth to get this debate on.

I have been in this chamber for quite some time. I was elected in 2001 and took office in 2002. I do not think I have ever seen the extent to which the opposition went this morning to move sequential procedural motions—

**Senator Jacinta Collins**—And points of order.

**Senator WONG**—and take spurious points of order to avoid debating this legislation. They have the hide to come in here and accuse the government and the responsible—

**Senator Brandis**—Madam Chair, I rise on a point of order. The procedural motions in debate, which went for a little over two hours this morning, were directed to extending the length of time available for debate and resisting the gagging of the debate by the government. Senator Wong is misleading the chamber by misrepresenting the position to the contrary.

**The TEMPORARY CHAIRMAN (Senator Troeth)**—There is no point of order.

**Senator WONG**—That is just another example of what I am talking about. We see Senator Brandis, in his desire to demonstrate just how tough he is, continuing to take spurious and pompous points of order in an attempt to look relevant. It is quite extraordinary.

**Sitting suspended from 7.00 pm to 7.30 pm**

**Senator LUNDY** (Australian Capital Territory—Parliamentary Secretary for Immigration and Citizenship and Parliamentary Secretary to the Prime Minister) (7.30 pm)—We are considering the first series of opposition amendments. It is reasonably obvious that there are discussions going on between the respective leaders in the Senate, and I expect them to return to the chamber shortly. In the meantime, I would like to continue my comments in relation to the amendments and their broader legislative context.

Prior to our brief dinner break, I was reflecting on the preconditions that led to the need for addressing the structural nature of telecommunications. The bill that we are considering, the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010, seeks to make the adjustments to the structure of the telecommunications sector in Australia as a precondition for the effective operation of the National Broadband Network policy. The policy is, as everybody knows, a wholesale-only, fibre-to-the-home, open-access, independently regulated network. The elegance in that visionary policy lies within the structural separation of the wholesale and retail arms.

Much comment has been made about the impact of the National Broadband Network on the competitive regime. In essence, the telecommunications competition problems that we have endured in the past are a product of vertical integration within the telecommunications market and the way that that has evolved over time. In particular, one of the persistent problems was the hold with which the residual incumbent, Telstra, was able to leverage the vertical that existed in their market. Vast tracts of regulation were designed to try and redress the anti-competitive characteristics of that industry structure. That, of course, led to much legis-

lation, starting with, in my recollection, the Telecommunications Act 1997.

There were several Senate inquiries and there was a great deal of negotiation about the details of that act, but the characteristic of the problem was that regulations were never able to solve the anti-competitive impact. There was a lot of regulatory gaming and lip-service on the problem by the government, who were obsessed with their privatisation agenda. From opposition, there were several efforts by Labor to strengthen the competition regime, none of which were able to make a real difference because we never had the comprehensive numbers in the Senate to make a real impact. So there were many years of disappointment about the failure of the competition regime to drive the kind of investment that we needed to get a telecommunications network of high enough bandwidth to service all Australians for the future.

That is where the NBN policy came in. We recognised that those preconditions of an underinvested copper network were not going to service our future needs, so we did what any sensible government would do: we tested the market to see if there could be a private sector response to address the problem. In testing the market, we found that the market was incapable of responding to the infrastructure needs of this country. It was in the knowledge of the market failure that we constructed the National Broadband Network policy. Initially it was a fibre-to-the-node policy. I think it is important to acknowledge—as I have not yet done so in this lengthy debate—that it was the coalition's broadband select committee that highlighted and raised concerns about the strength of a fibre-to-the-home network as opposed to a fibre-to-the-node network. We took evidence in the broadband select committee that a fibre-to-the-node network would not be as future proof as a fibre-to-the-home network

could be. Hence, a modification to our policy, informed by the failure of the market but also by several months of further inquiry about the strength of a fibre-to-the-home network, during which it was universally acknowledged as the only way for us to proceed. That is how our National Broadband Network policy as it is currently constructed came to be announced. I am incredibly proud of it because it does—

**Senator Joyce**—Madam Temporary Chairman, I seek leave to make a short statement.

Leave not granted.

**Senator LUNDY**—The National Broadband Network is world's best practice in the style of policy that most nations have aspired to. Here in Australia, we have actually got it right.

Progress reported.

#### **BUSINESS**

##### **Rearrangement**

**Senator LUDWIG** (Queensland—Minister for Agriculture, Fisheries and Forestry) (7.37 pm)—I move:

I move:

That the committee have leave to sit again at a later hour of the day.

Question agreed to.

##### **Rearrangement**

**Senator LUDWIG** (Queensland—Manager of Government Business in the Senate) (7.38 pm)—I seek leave to move a motion relating to divisions being called today.

Leave granted.

**Senator LUDWIG**—I move:

That divisions may take place after 4.30 pm today.

We have become aware that the motion moved this morning contained a technical oversight in that standing orders provide for

no divisions and no quorums after 4.30 pm on Thursday, which is standing order 57(3). As a consequence, that order still stands. This means that no divisions can take place today if a motion is moved and a division is called. The chair would then move that the division shall be moved to the next day of sitting, which is Friday, 26 November.

**Senator FIFIELD** (Victoria)—Manager of Opposition Business in the Senate (7.39 pm)—The opposition understands the circumstances which have necessitated this particular motion. As we are all aware, standing order 57(3) states:

If a division is called for on Thursday after 4.30 pm, the matter before the Senate shall be adjourned until the next day of sitting at a time fixed by the Senate.

We understand that it is inadvertent that that provision is still in effect. The government clearly wants a resolution to legislation that is before the chamber. It is certainly not our intention to thwart a resolution, so we do understand that it was through inadvertence that this situation has arisen.

**Senator CHRIS EVANS** (Western Australia—Minister for Tertiary Education, Skills, Jobs and Workplace Relations) (7.40 pm)—On behalf of the government, I thank the opposition—Senator Fifield and Senator Brandis, acting opposition leader in the Senate—for their cooperation. I also thank the Greens and the Independents for their cooperation in working our way out of the little procedural conundrum we ended up in. I do appreciate the cooperation of the chamber.

Question agreed to.

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

**In Committee**

Consideration resumed.

**Senator XENOPHON** (South Australia) (7.41 pm)—Madam Chair, I am going to do something quite radical: I am going to talk for less than two minutes and I will be speaking directly to the opposition's amendment. I do not support the opposition's amendment. I believe there are sufficient safeguards in the government's legislation to allow any decision made by the minister to be a disallowable instrument. It is important that you have a series of penalties, a combination of carrots and sticks if you like. The carrot is the \$11 billion or so that Telstra will receive if it structurally separates, but you need to have some sticks there to ensure compliance and to give the minister that discretion. The fact that it is a disallowable instrument has a requisite level of accountability for this parliament to scrutinise any decision made by the minister. It is an improvement on the earlier version of the bill. Therefore, I will continue to support the government's position on this, not the opposition's—and I have done it in less than two minutes.

**The TEMPORARY CHAIRMAN (Senator Boyce)**—The question is that the various amendments in schedule 1—being opposition amendments (1), (5), (6), (8), (9), (11), (12), (14), (15), (17), (24), (34), (36) to (40), (45) to (57), (64) and (65)—on sheet 7004 be agreed to.

The committee divided. [7.47 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	31
Noes.....	33
Majority.....	2

**AYES**

Barnett, G.	Bernardi, C.
Birmingham, S.	Boswell, R.L.D.
Boyce, S.	Brandis, G.H.
Bushby, D.C.	Cash, M.C.
Colbeck, R.	Cormann, M.H.P.
Ferguson, A.B.	Fierravanti-Wells, C.

Fifield, M.P.	Fisher, M.J.	Ayes.....	33
Heffernan, W.	Humphries, G.	Noes.....	<u>31</u>
Johnston, D.	Joyce, B.	Majority.....	<u>2</u>
Kroger, H.	Macdonald, I.		
Mason, B.J.	McGauran, J.J.J.		

## AYES

Minchin, N.H.	Nash, F.	Bilyk, C.L.	Bishop, T.M.
Parry, S. *	Ronaldson, M.	Brown, B.J.	Brown, C.L.
Ryan, S.M.	Scullion, N.G.	Cameron, D.N.	Carr, K.J.
Troeth, J.M.	Trood, R.B.	Collins, J.	Conroy, S.M.
Williams, J.R.		Crossin, P.M.	Evans, C.V.
		Faulkner, J.P.	Feeney, D.
		Fielding, S.	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.	Siewert, R.
		Stephens, U.	Sterle, G.
		Wong, P.	Wortley, D.
		Xenophon, N.	

## NOES

Bilyk, C.L.	Bishop, T.M.	Barnett, G.	Bernardi, C.
Brown, B.J.	Brown, C.L.	Birmingham, S.	Boswell, R.L.D.
Cameron, D.N.	Carr, K.J.	Boyce, S.	Brandis, G.H.
Collins, J.	Conroy, S.M.	Bushby, D.C.	Cash, M.C.
Crossin, P.M.	Evans, C.V.	Colbeck, R.	Cormann, M.H.P.
Faulkner, J.P.	Feeney, D.	Ferguson, A.B.	Fierravanti-Wells, C.
Fielding, S.	Forshaw, M.G.	Fifield, M.P.	Fisher, M.J.
Furner, M.L.	Hanson-Young, S.C.	Heffernan, W.	Humphries, G.
Hogg, J.J.	Ludlam, S.	Johnston, D.	Joyce, B.
Ludwig, J.W.	Lundy, K.A.	Kroger, H.	Macdonald, I.
Marshall, G.	McEwen, A. *	Mason, B.J.	McGauran, J.J.J.
McLucas, J.E.	Milne, C.	Minchin, N.H.	Nash, F.
Moore, C.	Polley, H.	Parry, S. *	Ronaldson, M.
Pratt, L.C.	Siewert, R.	Ryan, S.M.	Scullion, N.G.
Stephens, U.	Sterle, G.	Troeth, J.M.	Trood, R.B.
Wong, P.	Wortley, D.	Williams, J.R.	
Xenophon, N.			

## PAIRS

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

\* denotes teller

Question negated.

**The CHAIRMAN**—The question now is that the following items in schedule 1 stand as printed: items 1 to 6, items 11 to 15, item 18, item 21, item 24, item 25, items 28 and 29, divisions 3, 4 and 6 in item 30, and part 10 in item 31.

Question put.

The committee divided. [7.51 pm]

(The Chairman—Senator the Hon. AB Ferguson)

## PAIRS

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

\* denotes teller

Question agreed to.

**Senator XENOPHON** (South Australia) (7.55 pm)—by leave—I move amendments (1) to (3) on sheet 7005 revised standing in my name:

- (1) Schedule 1, item 30, page 10 (line 20), omit the heading to subsection 577A(2), substitute:

*Transparency and equivalence*

- (2) Schedule 1, item 30, page 10 (line 21), after “relating to”, insert “transparency and”.
- (3) Schedule 1, item 30, page 10 (line 32), after “provides for”, insert “transparency and”.

These amendments insert the term ‘transparency’ into the ACCC’s consideration of whether or not to accept a structural separation undertaking. This is essentially about the concept of equivalence, and in terms of wholesalers having access to the services. Essentially, by inserting the concept of transparency it will allow for a more forensic examination of issues in relation to the concept of equivalence. It will allow for a greater level of scrutiny, which I believe would be relevant in terms of giving protection to consumers. The three amendments are related to that.

It is important to have this additional level of scrutiny, in a sense, by incorporating the concept of transparency. That is why I urge my colleagues to support this amendment. These amendments are practical and sensible. They are amendments that would work and I believe would not cause difficulty to the ACCC in the sense that they would fit in well with the current statutory scheme.

I also want to say that I am grateful for the advice I have been receiving from Associate Professor Frank Zumbo from the University of New South Wales, who is a long-time champion of competition issues. I figure he cannot be too bad, because he seems to annoy whoever is in government, whether it is a Liberal or Labor government. So he must be doing something right. I am grateful for

his advice on these and other issues. This would advance the bill in terms of strengthening provisions that I think would assist consumers when it comes to determining a structural separation undertaking.

**Senator BIRMINGHAM** (South Australia) (7.57 pm)—I thank Senator Xenophon for moving these amendments. The opposition’s position is fairly clear in this space. We have further amendments listed on the running sheet and we look forward to their being debated. Those amendments go very much to maintaining the current integrity of the ACCC in their current processes and to ensuring that the Competition and Consumer Act processes, as they exist, are upheld in relation to this deal.

However, we recognise that, as a consequence of certain arrangements and agreements that have been made in this chamber between different members, it is unlikely that our amendments will succeed. We will put them vigorously when the time comes but we are pragmatists and we think that Senator Xenophon’s amendments, which have been moved with some variation following discussions with the opposition, are a useful improvement on what the government had originally provided. As a consequence of that the coalition will be supporting Senator Xenophon’s amendments as he has moved in the different groupings he has indicated.

We believe it is important that there be decent ACCC analysis of the deal with Telstra. We think that is important and we think that the government is being negligent in the approach they have taken in that regard. Senator Xenophon’s amendments will at least ensure that there is some level of transparency to the type of analysis that could be undertaken. We welcome that, and we think that that will be a positive step forward. We will be supporting his amendments, and we hope that in the meantime he will reconsider

his position on our amendments, which would uphold the entire processes of the Competition and Consumer Act with regard to ACCC inquiry.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.00 pm)—The government supports these amendments. Amendments (1) to (3) make it clear that the structural separation undertaking must provide for transparency in the equivalence arrangements that are to apply during the period that Telstra is engaging in the process of structural separation. It is entirely appropriate that stronger equivalence and transparency arrangements apply during this period.

**Senator LUDLAM** (Western Australia) (8.00 pm)—I speak in support of Senator Xenophon's amendments (1) through (3). They go some way towards making some of the improvements the Australian Greens have sought to make to this bill, where we thought it could be improved. I do not need to speak at great length about Senator Xenophon's amendments; they seem entirely sensible to us, and they will probably improve the processes of transparency as these processes move forward, so we will be supporting the amendments.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.01 pm)—I have some questions about the TPA. Does the minister agree with the assessment of the Parliamentary Library that 'the bill allows the ACCC to accept such an undertaking, which is currently likely to be in contravention of the TPA'?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.01

pm)—We believe that it allows the ACCC to consider all of the competition aspects.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.02 pm)—Therefore, obviously the Parliamentary Library has this wrong. Is that what you are saying?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.02 pm)—We stand by our statement that the ACCC can consider all of the competition aspects when they are considering the undertaking.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.02 pm)—I seek leave to table the advice from the Parliamentary Library. In fact, I will have to correct the record—the document is from the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010. It must be from the explanatory memorandum.

Leave not granted.

**The TEMPORARY CHAIRMAN** (**Senator Boyce**)—The government is not giving you leave to table the document, Senator Joyce.

**Senator JOYCE**—They are not giving me leave to table something from the explanatory memorandum of their own bill?

**The TEMPORARY CHAIRMAN**—That is correct, Senator Joyce.

**Senator JOYCE**—They have a problem with the explanatory memorandum of their own bill?

**The TEMPORARY CHAIRMAN**—As I understand it, Senator Joyce, it has already been tabled.

**Senator JOYCE**—I rephrase the question: does the minister agree with the explanatory memorandum of his own bill? It



says that the bill ‘allows the ACCC to accept such an undertaking, which is currently likely to be in contravention of the TPA’.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.04 pm)—We seek some further information from you, Senator Joyce: which page are you referring to?

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.04 pm)—Isn’t it great when they know their work? Every day is a delight with Senator Conroy! I just love debating Senator Conroy! Senator Conroy, it is on page 15 of your explanatory memorandum.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.05 pm)—Perhaps Senator Joyce is reading two different parts together and drawing a conclusion. Just so that we are absolutely clear, Senator Joyce, the section you are referring to says:

Section 51 of the CCA provides that, in determining whether a person has contravened Part IV of the CCA, certain matters must be disregarded, including anything specified in, and specifically authorised by, an Act. Proposed section 577BA specifies and specifically authorises certain conduct for the purposes of section 51 of the CCA. The result of this is that the conduct specifically authorised under proposed section 577BA must be disregarded when considering whether a person who has engaged in that conduct has contravened Part IV of the CCA.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.06 pm)—What I have here is the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill, so the document I am referring to must be from the *Bills Digest*.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.07 pm)—I want to ensure that we are on the same page, Senator Joyce. The bill includes provisions in proposed section 577A for the ACCC to scrutinise and approve the competitive impacts of the agreement between Telstra and the NBN Co. Specifically, the ACCC will consider the competitive impacts of the Telstra and NBN Co. arrangements as part of its scrutiny of Telstra’s structural separation undertaking. If the ACCC accepts the undertaking, then the bill authorises the entering into the agreement and associated conduct for the purposes of the trade practices law as set out in section 51 of the Trade Practices Act. This is entirely appropriate and it removes any need for a separate authorisation inquiry while still ensuring appropriate scrutiny of the arrangements between Telstra and the NBN Co. by the ACCC.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.08 pm)—I refer you to page 15 of the *Bills Digest* for the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010:

The Bill facilitates at least two significant outcomes. First, the threat of a spectrum determination preventing Telstra from acquiring bands of spectrum for advanced wireless broadband services should it not provide an undertaking, that is accepted by the ACCC, to structurally separate and divest its HFC cable network and its interests in Foxtel. Secondly, it allows the ACCC to accept such an undertaking which is currently likely to be in contravention of the TPA.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.08

pm)—Was that a question? Or were you just making a point?

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.08 pm)—I was making a point. I will follow it up with a question: if the deal between Telstra and the NBN Co. is in breach of the TPA, is the ACCC obliged to reject Telstra's structural separation undertaking? If so, please point to the part of this bill which imposes that obligation on the ACCC.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.09 pm)—Thanks, Senator Joyce, and I apologise for being repetitive. The bill includes provisions in proposed section 577A for the ACCC to scrutinise and approve the competitive impacts of the agreement between Telstra and the NBN Co. Specifically, the ACCC will consider the competitive impacts of the Telstra and NBN Co. arrangements as part of its scrutiny of Telstra's structural separation undertaking. I am not sure I can add much more to that.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.10 pm)—Can the ACCC reject any subsequent variation of the deal between NBN Co and Telstra?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.10 pm)—The bill allows for a variation to be lodged and for the ACCC to take into consideration the competitive impact in making its decision.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.10 pm)—Obviously they can consider, but considering is not the issue. I can consider what the weather is like outside. Are they obligated to reject?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.11 pm)—The ACCC would consider it on its merits, Senator Joyce.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.11 pm)—Do they have the power to reject? If it is in clear contravention, are they obligated to reject?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.11 pm)—They have a range of matters that they consider. They have the power to reject and they have the power to consider the impacts on structural reform, so they make a balanced judgment.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.11 pm)—You say they have the power to reject. Are they obligated, if it is in contravention, to reject? The question involves obligation—my stress is on the word 'obligated'. If it is in contravention, are they obligated to reject?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.12 pm)—I am advised no, Senator Joyce.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.12 pm)—They are not obligated to reject—thank you very much. What is the meaning of 'in force' in proposed section 577BA(9)(a)?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.13 pm)—I am advised that 'in force' means after the undertaking has been accepted.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.13 pm)—Does ‘in force’ refer to an agreement that has been authorised by the ACCC in Telstra’s structural separation undertakings?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.13 pm)—To add to my previous answer, Senator Joyce, in this particular case, if it is the subject of a vote of Telstra shareholders later, it does not come into effect until after the shareholders vote. It has no force until the transactional point where the Telstra shareholders say yes or no. Would you repeat your last question?

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.14 pm)—So ‘in force’ involves a post hoc position dependent upon a shareholders’ vote?

**Senator Conroy**—Yes.

**Senator JOYCE**—Does ‘in force’ mean an agreement that has been authorised by the ACCC in Telstra’s structural separation undertaking? Does it have the imprimatur of the ACCC?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.14 pm)—Yes.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.14 pm)—Can the minister point in this bill to any protections against uncompetitive behaviour that is as broad and comprehensive as the safeguards in section 51(1) of the Trade Practices Act?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.15

pm)—I am advised that the authorisation will set out the conduct that is authorised.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.16 pm)—So the authorisation sets out the conduct that is authorised. Does that mean that particular to this bill there is no specific section that promotes the safeguards of 51(1) of the Trade Practices Act? But I will move on from that. Does the exemption given to Telstra and NBN Co. cover all aspects of their relations? What are the limits of the exemption in terms of Telstra and NBN Co.’s relations and Telstra and NBN Co.’s relations with third parties?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.17 pm)—Without trying to sound circular, the ACCC considers those things in deciding about the undertaking. There is not actually an undertaking at the moment, so there is nothing that we can discuss concretely to try to facilitate the discussion, which I am sure is what you are trying to do.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.17 pm)—It is a serious question. I am not trying to—

**Senator Conroy**—I know.

**Senator JOYCE**—So you are saying that the authorisation sits in proxy for 51(1). So the obvious question is: is the assessment and criteria or that authorisation of an equivalent nature to 51(1)?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.18 pm)—I understand the criteria are in 577A(6). It considers what it thinks to be relevant.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.19 pm)—It considers what it thinks to be relevant? In considering what it thinks to be relevant, is it considering the same issues that would have otherwise been considered by the ACCC under 51(1)?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.19 pm)—Perhaps I can just describe it, Senator Joyce. There is also an important piece of information to add. I quote:

In deciding whether to accept an undertaking under this section, the ACCC must have regard to:

(a) the matters set out in an instrument in force under subsection (7); and

(b) such other matters (if any) as the ACCC considers relevant.

But there is a Senator Xenophon amendment to come on this specific area which may be of interest.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.20 pm)—I am quite happy for you to say it will be discussed with Senator Xenophon's amendment, but can you disclose what the minister will set out in section 577A(7)?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.20 pm)—While the officials are looking for that, I will just indicate the criteria I mentioned before. These criteria are the national interest in structural reform of the telecommunications industry and the impact of that structural reform on consumers and competition in the telecommunications market. They are a couple of things that I think Senator Xenophon is moving. I will see if we have any more information on the other question.

One key example is that the ACCC should have regard to the conduct that would be authorised under section 577BA as a consequence of the acceptance of the undertaking. Another example is that the minister will set out guidance on improved equivalence and transparency matters that should be implemented by Telstra during the period it is migrating its customer services to the NBN. This will provide for the better treatment of Telstra's wholesale customers during the industry's transition to the NBN.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.21 pm)—You will probably rule this one out, Madam Temporary Chair. Is the government inclined towards Senator Xenophon's amendment?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.22 pm)—We have indicated that we are supporting Senator Xenophon's amendment.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.22 pm)—This is my last question on this section. It is a central element of trade practices law that exemptions should only be granted following an authorisation process which clearly demonstrates the public interest of that authorisation. Can the minister point to a part of this bill which requires an investigation of the public benefits of a deal between Telstra and NBN Co.?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.22 pm)—As I mentioned, Senator Xenophon is moving some amendments specifically on the national interest and structural reform of the telecommunications industry which we have indicated we will be supporting.

**The TEMPORARY CHAIRMAN (Senator Crossin)**—The question before the chair is that amendments (1), (2) and (3) on sheet 7005 revised be agreed to.

Question agreed to.

**Senator XENOPHON** (South Australia) (8.23 pm)—I will not proceed with amendment (4) on an independent telecommunications adjudicator. Do I simply withdraw that or could I give reasons before withdrawing that?

**The TEMPORARY CHAIRMAN**—You could speak to it, not speak to it or just not move it. Let us move on.

**Senator XENOPHON**—I will do a bit of both. I will not proceed with amendment (4) on the basis of advice that there is scope for an independent telecommunications adjudicator within the framework of the act. From my point of view, it would be preferable to have it in there. I am being pragmatic. Discussions I have had with the opposition on this indicate that a robust structure can still exist without it, so I will not be moving that amendment.

I seek leave to move amendments (5) to (8) together.

Leave granted.

**Senator XENOPHON** (South Australia) (8.25 pm)—I move amendments (5) to (8) on sheet 7005 revised:

- (5) Schedule 1, item 30, page 11 (before line 26), before paragraph 577A(6)(b), insert:
  - (aa) the national interest in structural reform of the telecommunications industry; and
  - (ab) the impact of that structural reform on:
    - (i) consumers; and
    - (ii) competition in telecommunications markets; and
- (6) Schedule 1, item 30, page 11 (after line 28), after subsection 577A(7), insert:

(7A) Before making or varying an instrument under subsection (7), the Minister must:

- (a) cause to be published on the Department's website a notice:
  - (i) setting out the draft instrument or variation; and
  - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
- (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

(7) Schedule 1, item 30, page 14 (after line 10), after the definition of *fixed-line carriage service*, insert:

*telecommunications market* has the same meaning as in Part XIB of the *Competition and Consumer Act 2010*.

(8) Schedule 1, item 30, page 18 (after line 10), after subsection 577B(5), insert:

- (5A) Before making or varying an instrument under subsection (5), the Minister must:
  - (a) cause to be published on the Department's website a notice:
    - (i) setting out the draft instrument or variation; and
    - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
  - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).

Amendment (5) relates to an undertaking on structural separation. Further to the discussion between Senator Joyce and the minister, which the minister alluded to, this amendment requires that, in deciding whether to accept a structural separation undertaking, the ACCC must also have regard to the na-

tional interest in structural reform in the telecommunications industry and the impact of that structural reform on consumers and on competition in the telecommunications market. This effectively ensures that the ACCC, in deciding whether to accept the undertaking, considers the broader consumer and competition impacts of the structural reform. I think that is an important consumer protection. It is something that I have discussed at length with the government. Senator Conroy and I will not disagree about the 'at length' discussions with his office. I am grateful to his officers. My office and his office have been tormenting each other for the last few days in relation to these amendments. I am grateful for the discussions that I have had with the coalition—in particular with the member for Wentworth, Mr Turnbull—on this series of amendments.

I will speak briefly to amendment (7). This amendment inserts into the bill the definition of 'telecommunications market' as it currently exists in the Competition and Consumer Act 2010. It ties it together so that there is no ambiguity.

Amendments (6) and (8) go to undertakings on structural separation. These amendments provide that, before making or varying an instrument on matters of structural reform, the minister must publish the draft instrument or variation. The minister must also invite submissions to be made within 14 days to which the minister must have regard. In a sense, this provides accountability to the provisional transparency provision. It allows for feedback. It is not intended to unduly delay the process but provides for a period of 14 days for interested parties to have an opportunity to participate. It gives an extra layer of transparency and scrutiny, and I think that would strengthen the ACCC's role in the entire process. It also includes an important transparency mechanism for the minister in a way that does not unduly delay de-

terminations but provides for necessary input from interested stakeholders.

I commend these amendments to my colleagues.

**Senator BIRMINGHAM** (South Australia) (8.28 pm)—Briefly, because these flow on from amendments (1) to (3) that Senator Xenophon moved, I restate the opposition's general position that we would prefer our amendments, which would ensure the normal operation of the Competition and Consumer Act, to be accepted by the chamber. Notwithstanding that and our belief that we should have the normal testing process, we think that, should our amendments be unsuccessful, Senator Xenophon's amendments would be of benefit to the operation of the act and would ensure that there is a greater level of test. In particular, Senator Xenophon's amendment (5) focuses on a national interest test of some description. We have highlighted, time and time again—in relation to the overall basis of the National Broadband Network, which has led to the policies that have driven the government to this legislation around the structural separation of Telstra—that there has been a chronic lack of testing the national interest and whether this is the best way to proceed. We know this test will not achieve all that we had hoped for in that regard. However, we acknowledge that, if our amendments are unsuccessful, it would be some improvement in giving the ACCC the capacity to operate under normal provisions. With that, we support Senator Xenophon's amendments (5) to (8).

**Senator LUDLAM** (Western Australia) (8.29 pm)—The Australian Greens will be supporting this batch. As Senator Birmingham noted, amendment (5) is a particularly valuable one. We have sought, as Senator Xenophon has done and I suppose as the coalition has done as well, to insert at every important juncture a reminder to regulators

that what we are considering here is not just competition—which is important but it is only a subset of what the telecommunications sector should be providing—but the national interest, the impact of structural reform on consumers and competition in telecommunications markets.

I also foreshadow that two of Senator Xenophon's amendments, (6) and (8), are identical to two Australian Greens amendments. When we get to the second page of the running sheet, we will not be moving ahead with Australian Greens amendments (3) and (6) on sheet 7006. So we will start moving things along a little bit quicker.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.31 pm)—Under the Trade Practices Act there are three public benefit tests of equivalence. The onus is on the applicant to prove that the authorisation is required. Under this bill, is the onus on NBN Co. and Telstra to prove that the authorisation is required?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.31 pm)—Telstra will lodge the structural separation undertaking and, as we have been discussing, the ACCC will consider all the facts. I think we are now about to accept Senator Xenophon's amendments, and I indicate that the government also supports Senator Xenophon's amendments.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.32 pm)—I am not quite sure what the answer is there, whether the onus of proof is on NBN Co. and Telstra to prove the authorisation. I am going to presume that the answer to that was yes, unless you want to disagree with me. If that is the case, will the ACCC be conducting a cost-benefit analysis to determine whether NBN Co. and Telstra agreement—

*Senator Conroy interjecting—*

**Senator JOYCE**—It's no?

**Senator Conroy**—I didn't say anything. I sighed heavily.

**Senator JOYCE**—Will the ACCC be conducting a cost-benefit analysis to determine whether the NBN Co.-Telstra agreement is in the national interest? If not, how else are you going to assess whether it is in the national interest?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.33 pm)—The ACCC is qualified to make its own judgments about these things, Senator Joyce. It is about to get some new criteria to include in its considerations, and the ACCC are well qualified to make these judgment calls.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.33 pm)—The question, I suppose, is: who is the onus on? In any other form of the TPA it is on the applicant. One would presume that the onus for the authorisation must be with NBN Co. and Telstra to prove that. Is that the case? Do Telstra and NBN Co. have to prove that they warrant the authorisation?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.34 pm)—The bill includes provisions in proposed 577A for the ACCC to scrutinise and approve the competitive impacts of the agreement between Telstra and NBN Co. Specifically the ACCC will consider the competitive impacts of the Telstra and NBN Co. arrangements as part of its scrutiny of Telstra's structural separation undertaking. If the ACCC accepts the undertaking then the bill authorises the entering into the agreement and associated conduct for the purposes

of trade practices law as set out in section 51 of the Trade Practices Act. As I think I have said, this is entirely appropriate because it removes any need for a separate authorisation inquiry.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.34 pm)—It seems we are just about to the point where you are saying that NBN Co. and Telstra have to prove that the authorisation is warranted. Is that what you are saying? Or was that not the case?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.35 pm)—It is up to Telstra to lodge the structural separation undertaking, and then the ACCC will consider it with the criteria already in the bill and with the amended criteria if the Senate does ultimately pass Senator Xenophon's amendments. I am not trying to obfuscate, I am just trying to be very clear in explaining the position, Senator Joyce. Perhaps I am just a bit slow tonight. It has been a busy few days. Perhaps I am misunderstanding or the officials are misunderstanding what you are seeking.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.35 pm)—What I am seeking is: are NBN and Telstra on an easier ride because, within this bill, there is a process set out so that they can obtain an authorisation which, if they were out in the market and it was anybody else, they might not have to obtain? Then they would have to actually prove that they warranted the authorisation, and they have been given leniency by things that are written in this bill. That is basically what I am saying.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.36

pm)—I am advised—and I think I have already made this point, so I apologise if it sounds circular, Senator Joyce—but the ACCC makes its decisions on authorisations on their merits. The ACCC makes its own decision based on individual circumstances.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.36 pm)—It is a balance of probabilities test. Okay. Is there an onus on either party, is there a default position, in proving the authorisation?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.37 pm)—Clearly, the ACCC have to judge it on its merits, and they take into account all of the things we have been talking about, including the criteria that Senator Xenophon is moving—provided, as I expect, it will be passed by the chamber.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.37 pm)—There are three different tests under the TPA, as I mentioned before, and they are of equivalence. Are the tests that are applied under this act similar to the tests of public benefit currently under the act? Has the ACCC made any comments with regard to the tests?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.38 pm)—The ACCC considers the application on its merits. It has the capacity to accept the undertaking or reject the undertaking, but it considers it on its merits. You asked if the ACCC had made any comments, Senator Joyce—on?

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.38 pm)—Has the ACCC made any comments on the public



benefit test as applied in the act—in the NBN Co.-Telstra act?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.38 pm)—We are not aware if the ACCC have made any comments in this area.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.39 pm)—The Trade Practices Act 1974 says the onus is on the applicant to satisfy the commission or tribunal that the public benefit test is satisfied. It also says the applicant must demonstrate that there is a nexus between the proposed conduct and the claimed public benefit. So, quite evidently, in the act the onus is on the applicant to satisfy the commission. The onus, therefore, if this is equivalent, is obviously on Telstra and NBN Co. to prove to the ACCC the public benefit test so as to get the authorisation.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.39 pm)—I think you have scrolled down the page too far. You have jumped a section.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (8.39 pm)—It is from the ACCC, so it is not before you. It reflects on exactly what we are talking about here, because we are trying to prove whether the NBN Co. and Telstra are sneaking around the process of authorisation and the public benefit test because you have put things in the act there to allow the minister to have oversight so as to get them round what otherwise would not be able to be proved by other players in the market, especially players that have to compete against this organisation.

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

Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.40 pm)—Hopefully this may clarify it for you, Senator Joyce. There is no default in favour of acceptance of the undertaking. I hope that assists.

**The TEMPORARY CHAIRMAN (Senator Crossin)**—The question is that amendments (5) to (8) inclusive on sheet 7005 revised, moved by Senator Xenophon, be agreed to.

Question agreed to.

**The TEMPORARY CHAIRMAN**—Senator Xenophon, do you want to move your amendment (20) now?

**Senator XENOPHON** (South Australia) (8.41 pm)—I was going to withdraw a number of amendments that are on the sheet.

**The TEMPORARY CHAIRMAN**—I am just wondering if you want to deal with (20) and then we can dispense with the first page on the amendments schedule.

**Senator XENOPHON**—My colleague Senator Ludlam will be moving another amendment similar to mine. I am happy to do (20) now.

**The TEMPORARY CHAIRMAN**—That will clear it up a little, because if we do (20) then the first page on the schedule is dealt with.

**Senator XENOPHON**—I move amendment (20) standing in my name:

(20) Schedule 1, page 83 (after line 8), after item 64, insert:

**64A Section 104**

After:

- The ACMA may be directed by the Minister to monitor, and report on, specified matters relating to the performance of carriers and carriage service providers.

insert:

- The ACCC is to monitor, and report each financial year to the Minister on, breaches by

Telstra of an undertaking about structural separation.

**64B At the end of Part 5**

Add:

**105C Monitoring of breaches by Telstra of an undertaking about structural separation**

*Monitoring*

- (1) The ACCC must monitor, and report each financial year to the Minister on, breaches by Telstra of an undertaking in force under section 577A.

*Report*

- (2) The ACCC must give a report under subsection (1) to the Minister as soon as practicable after the end of the financial year concerned.
- (3) The Minister must cause a copy of a report under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the report.

This amendment requires the ACCC to provide an annual report to the minister on the progress of the structural separation undertaking. Again, it is one of providing more transparency in the process. It is in relation to a monitoring of compliance by the ACCC on structural separation undertakings. I commend this amendment to have the ACCC monitor and report each financial year to the minister. It also allows for the ACCC to monitor and report each financial year to the minister on breaches by Telstra of an undertaking about structural separation. Again, it puts a greater onus, I believe, in relation to allowing for a greater degree of transparency. If there is a concern about breaches then the ACCC is to monitor and report each year in the context of the undertakings as to structural separation. I think this is a good thing for consumers, it is a good thing for businesses and it is a good thing for those other wholesalers that Telstra will be providing services to in this transitional period before

the final build of the NBN in the context of this legislative framework.

**Senator BIRMINGHAM** (South Australia) (8.43 pm)—Being all for transparency and accountability, as the opposition are, we are happy to support Senator Xenophon's amendment (20) that will cause an annual report on the progress of the structural separation and, in particular, breaches of undertakings made by Telstra to be presented to the minister and, most importantly, to be tabled in this place. Notwithstanding my comments previously that we think it would be far preferable to accept the opposition's amendments to maintain the ACCC's existing powers, we accept this. I would flag that I think it is an amendment that at some stage will warrant repealing from provisions; that in perpetuity such an annual report is probably not warranted. However, noting that this chamber, Senator Xenophon and the certainly the opposition are not privy—I assume Senator Xenophon is not privy—to the time line of any deal with Telstra or the arrangement that exists with Telstra and how long that will take, it is a little difficult to put a sunset clause in such an amendment. I would take it that the ACCC will, hopefully, one day present a report that simply says that the structural separation is complete and successful and such further reports are no longer warranted, but we will be supporting amendment (20).

Question agreed to.

**The TEMPORARY CHAIRMAN**—Senator Xenophon, I might just deviate for a moment and go to you. You wanted to withdraw some amendments. Do you think we should do that now so that we have got a tidy process?

**Senator XENOPHON** (South Australia) (8.45 pm)—Yes. I am not sure whether Hansard was able to record that the minister indicated his support for the last amendment. It

might be useful to have it on the record that it was supported by the government. I think Senator Conroy is nodding in the affirmative.

**Senator Conroy**—I am just coming to that point.

**Senator XENOPHON**—That is right. I think it is good to know that. Can I indicate that I will be—

**The TEMPORARY CHAIRMAN**—We might just tidy up this sheet. Can you tell us what you are going to withdraw—

**Senator XENOPHON**—Yes, very well.

**The TEMPORARY CHAIRMAN**—Or ‘not move’—that is the technical term!

**Senator XENOPHON**—I indicate that I will not be moving at this stage amendments (9), (10), (11), (12), (13), (14) and (15). I will still be moving amendment (16) standing in my name. I propose to withdraw amendment (17). Madam Chair, do you want to keep going through the ones I will be withdrawing?

**The TEMPORARY CHAIRMAN**—Yes, the ones you will not be moving.

**Senator Birmingham**—And amendment (18)?

**Senator XENOPHON**—I will be proceeding with amendment (18).

**The TEMPORARY CHAIRMAN**—Will you still be moving amendment (19)?

**Senator XENOPHON**—I will move it but I will not spend too much time on it. I will be moving amendments (21) and (22).

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.47 pm)—Can I seek clarity there. I have also amendments (12) and (13) revised in your name. I did not quite catch what you said there. I think you indicated you would not be moving (10) and (11).

**The TEMPORARY CHAIRMAN**—We have (12) and (13) revised and (14) and (15) not to be moved.

**Senator Xenophon**—That is right.

**Senator CONROY**—And (12) and (13) were—

**Senator Xenophon**—Yes, because I think there are similar amendments by—

**Senator CONROY**—Thank you. I missed that when you were going through them.

**Senator BIRMINGHAM** (South Australia) (8.48 pm)—by leave—I move opposition amendments (18), (19), (25), (26), (28), (31) and (41) on sheet 7004:

- (18) Schedule 1, item 30, page 11 (line 27), omit “writing”, substitute “legislative instrument”.
- (19) Schedule 1, item 30, page 12 (line 4), omit “written”, substitute “legislative”.
- (25) Schedule 1, item 30, page 15 (line 7), omit “writing”, substitute “legislative instrument”.
- (26) Schedule 1, item 30, page 15 (line 13), omit “writing”, substitute “legislative instrument”.
- (28) Schedule 1, item 30, page 18 (line 9), omit “writing”, substitute “legislative instrument”.
- (31) Schedule 1, item 30, page 25 (line 8), omit “writing”, substitute “legislative instrument”.
- (41) Schedule 1, item 31, page 59 (line 9), omit “make a written”, substitute “, by legislative instrument, make a”.

We also oppose schedule 1 in the following terms:

- (22) Schedule 1, item 30, page 13 (lines 28 to 32), subsections 577A(22) and (23) **TO BE OPPOSED**.
- (27) Schedule 1, item 30, page 16 (lines 7 to 12), subsections 577AA(9) and (10) **TO BE OPPOSED**.

- (29) Schedule 1, item 30, page 18 (lines 14 to 16), subsections 577B(8) and (9) **TO BE OPPOSED**.
- (32) Schedule 1, item 30, page 25 (lines 22 to 27), subsections 577BB(3) and (4) **TO BE OPPOSED**.
- (42) Schedule 1, item 31, page 63 (line 18), subsection 75(6) **TO BE OPPOSED**.

These amendments relate very much to some of the topics we were traversing before. They relate to the accountability of the government in this process, the transparency of this process and ultimately the role of the parliament as an arbiter in this process. Unfortunately, much of that normal transparency, accountability and the role of the parliament has been stripped from this process by the government's proposals to put in place very special arrangements for the Telstra deal which would exclude it very much from the normal operations of the Competition and Consumer Act. Notwithstanding the changes that we have just made courtesy of Senator Xenophon's amendments, there are still significant exclusions.

These amendments work in particular to ensure that any ministerial direction given to the ACCC regarding the criteria for acceptance of a functional separation or a structural separation would be a disallowable instrument and therefore subject to the scrutiny of this place and of course the other place. They are fairly straightforward amendments; they simply propose to replace the words 'in writing' in a number of places with 'in a legislative instrument' and in other places they strike out the words that specify in particular that a direction of the minister is not a legislative instrument. We believe that that level of transparency and accountability is valid for an arrangement of this significance, that it is appropriate that it should be brought to this place and the other place and that members and senators should at the very least have a chance to see whether a ministerial

direction is a reasonable direction, that it does provide for the types of protections that Senator Joyce and others have raised and that it does ensure we get a competitive outcome, not a sweetheart deal.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.51 pm)—Under the Legislative Instruments Act 2003 there are three key requirements that apply to legislative instruments: they are subject to parliamentary disallowance, they are published on the Federal Register of Legislative Instruments to ensure their availability to the public and industry and they are subject to sunset after 10 years. Sunset is not of relevance here as each of the instruments in question will cease to have effect before the 10-year period provided for. For most of the instruments in question, there is a requirement for publication on the department's website, meaning publication on the register is not necessary. In each case, there are sound reasons for not making these instruments subject to parliamentary disallowance.

The government's strong view is that these instruments should not be disallowable, as the risk of disallowance would cause uncertainty for Telstra to progress its decision to structurally separate. For example, in amendment 18 and under proposed section 577A (9) Telstra is not entitled to give a structural separation undertaking to the ACCC unless an instrument under proposed section 577A (7) is in force. If this instrument was subject to parliamentary disallowance and as a consequence the instrument was disallowed by the parliament, Telstra would not be permitted to lodge a structural separation undertaking. This has the effect that under the arrangements set out in the bill Telstra would be required to implement functional separation even though Telstra may

wish to proceed with structural separation, which is clearly a preferable outcome.

**Senator LUDLAM** (Western Australia) (8.53 pm)—I will just provide the coalition with an indication that the Greens will not be supporting this batch of amendments, although we gave it very careful consideration. As Senator Birmingham has already outlined, the amendments that the Greens have put forward in this regard and the amendments that the coalition has put forward come at the problem with the same intent but probably with a difference in emphasis. So we have stopped short of creating any new disallowable instruments at key junctures in the bill, effectively because we are very aware that this is the kind of industry and certainly the kind of process where these instruments would be open to abuse. Regrettably, the opposition's form on procedural motions and procedural tactics on this issue left us with serious doubt as to whether these instruments would be used in good faith. As a general rule, senators in here well know that the Australian Greens are in favour of more parliamentary involvement rather than less. This is probably the first time I will have voted against the proposal to insert a disallowable instrument to an important piece of legislation. But in the present case more parliamentary engagement means greater scope for the opposition to exercise its professed policy of demolishing the NBN, with little thought for the specific merit of each particular initiative that it seeks to obstruct.

Under these circumstances, I think the amendments that Senator Xenophon is moving, that we are moving and that the coalition has supported to create public greater scrutiny, greater consultation and more windows of transparency into the process are a better compromise than opening up the door to parliamentary levers that would be very open to abuse. Unfortunately, the history of the pas-

sage of this particular legislation shows that these fears are probably well founded. So while we support the intent, we do not support the methods that the coalition is putting forward.

**Senator XENOPHON** (South Australia) (8.55 pm)—For similar reasons I cannot support this amendment but do acknowledge and am grateful for the support of the coalition in other amendments that I moved that would strengthen transparency and strengthen accountability of this process. The imperative is to structurally separate Telstra. The risk, if you have a legislative instrument which can be disallowed at any time within—

*Senator Joyce interjecting—*

**Senator XENOPHON**—I am grateful to Senator Joyce for that very helpful lesson in procedure. If you have a legislative instrument which can be disallowed at any time within 15 sitting days that could be over a period of several months, depending on when the break was. Each time that happens it will put a spanner in the works in terms of allowing the structural separation of Telstra to progress. That is a real risk. That is a public policy imperative. As I said earlier, I think there are some coalition senators who, in their heart of hearts, acknowledge that the current vertical integration of Telstra as a telecommunications quasi-monopoly has been bad for consumers and bad for the development of telecommunications in this country. If we have this mechanism in place, however well intentioned it may be, it will end up slowing down the process significantly—to the extent that it could well become unworkable. For those reasons, I feel that I cannot support this series of amendments.

**Senator BIRMINGHAM** (South Australia) (8.56 pm)—In his response, the Minister for Broadband, Communications and the

Digital Economy, Senator Conroy, highlighted a particular lodgement of an undertaking by Telstra. The minister did not deal with the fact that these amendments—and I am happy for senators to consider them separately, by any means, if that would influence their thinking—would also, most importantly, require the minister's directions to the ACCC to be tabled and be a disallowable instrument.

The minister and the government have structured this legislation so that when the ACCC is asked to take into account certain matters they are limited to what is specified by the minister in writing. We are simply proposing that those written instructions of the minister be a disallowable instrument. Not only would you get the transparency of it being made public—and the minister talked about publishing on the website—but also you would get the opportunity to debate the merits of the minister's determination and the manner in which he decides to limit that ACCC consideration. That is the real heart of the issue here.

I acknowledge the comments of Senator Ludlam and Senator Xenophon. Sadly, they are taking a narrow view on this. They are viewing it through one area of debate that has taken place in the chamber over a period of time, rather than recognising that if you want to hold to principles of such matters being disallowable you should stick to those principles. You should stick to those principles regardless of who is in government and regardless of what you think the opposition tactics of the day will be. If you are looking at it in terms of the short term you should note that the composition this place is set to change quite markedly in just six to seven months time. However, I would ask the minister to respond to the matter of why his instructions to the ACCC should not be subject to disallowance.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (8.59 pm)—Under the registered instruments act, ministerial directions to any entity are overwhelmingly not disallowable.

**Senator BIRMINGHAM** (South Australia) (9.00 pm)—Why should these ones be not disallowable?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.00 pm)—As I said, the overwhelming majority fall into that category, and we are consistent with the overwhelming majority.

**Senator BIRMINGHAM** (South Australia) (9.00 pm)—Very briefly, 'because the overwhelming majority are' is not a good reason as to why they should not be in this case. This is a matter of particular significance. It is of course distorting the usual operations of the ACCC. It is the minister intervening in an extraordinary way in what would normally be a decision-making process of the ACCC. We think those extraordinary arrangements do warrant—although it may be an unusual process, or not the norm—some oversight by this parliament as a disallowable instrument. The minister has not been able to give a reason—other than, 'This is what happens in the majority of other similar circumstances'—why in this case he should not be subject to that scrutiny.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.01 pm)—It is not appropriate for these instruments to be legislative instruments because Telstra will require clarity and certainty on the matters set out in the instruments before it proceeds with structural separation. You

have a balance between wanting to guarantee that certainty and wanting another level of oversight. The level of oversight would genuinely not allow the process to proceed in an appropriate time frame and with the certainty, and that would be a self-defeating exercise.

Question put:

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

The committee divided. [9.06 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	30
Noes.....	<u>32</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.	Cormann, M.H.P.
Ferguson, A.B.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Johnston, D.
Joyce, B.	Kroger, H.
Macdonald, I.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Nash, F.	Parry, S.
Ronaldson, M.	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.
Collins, J.	Conroy, S.M.
Crossin, P.M.	Evans, C.V.
Feeney, D.	Fielding, S.
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.

Siewert, R.  
Sterle, G.  
Wortley, D.

Stephens, U.  
Wong, P.  
Xenophon, N.

#### PAIRS

Abetz, E.	Sherry, N.J.
Adams, J.	O'Brien, K.W.K.
Back, C.J.	Hutchins, S.P.
Coonan, H.L.	Farrell, D.E.
Eggleston, A.	Arbib, M.V.
Humphries, G.	Faulkner, J.P.
Payne, M.A.	Hurley, A.

\* denotes teller

Question negatived.

**The CHAIRMAN**—I now put the question that sections 577A(22) and (23), 577AA(9) and (10), 577B(8) and (9), 577BB(3) and (4) in item 30, and section 75(6) in item 31, stand as printed.

Question agreed to.

**Senator LUDLAM** (Western Australia) (9.09 pm)—To clean up the running sheet, as Senator Xenophon has done, I would just indicate that the Australian Greens will not be moving amendments (3) and (6) on sheet 7006, which were to be the next items moved on the running sheet. While I have the floor, I will also indicate that we will not be proceeding with amendments (16) and (17) on page 3 of the running sheet, which means the ball is back in the opposition's court.

**Senator BIRMINGHAM** (South Australia) (9.10 pm)—by leave—I move opposition amendments (20), (21) and (23) on sheet 7004 together:

- (20) Schedule 1, item 30, page 13 (lines 17 and 18), omit "the associated provisions", substitute "subsection 577BC(2)".
- (21) Schedule 1, item 30, page 13 (line 24), omit "the associated provisions", substitute "subsection 577BC(2)".
- (23) Schedule 1, item 30, page 14 (lines 3 to 5), omit the definition of *associated provision*.

We also oppose schedule 1 in the following terms:

(30) Schedule 1, item 30, page 18 (line 17) to page 25 (line 5), section 577BA **TO BE OPPOSED**.

(44) Schedule 1, item 33, page 75 (line 34) to page 76 (line 5), item **TO BE OPPOSED**.

As we see it, this is probably one of the most important parts of the amendments to be proposed to this legislation. I have referred to it already with regard to Senator Xenophon's previous amendments. These relate very much to ensuring that we maintain the normal operation of the Competition and Consumer Act and that the ACCC—the protectors of competition, fair trade and fair practice in this country—get a decent opportunity to have proper oversight of the deal between NBN Co. and Telstra. We want to make sure that this arrangement does protect the interests of consumers, does promote competition, is a fair and good one, and is one that is in the national interest. As we have flagged before, we are not against structural separation—we are not against this proceeding—but we want to make sure that it proceeds in a proper way. We want to make sure that it is a good arrangement for everyone concerned—consumers and the nation—and that it is one that will promote proper competition into the future and not at all inhibit proper competition.

Unfortunately, the government, through the way they have structured this legislation, seek to have extraordinary powers to dictate the terms on which the ACCC will consider the proposed deal between NBN Co. and Telstra. By dictating it, we will give the government quite unfettered powers. And regrettably, as a result of the division just had in this place, where we saw all of the crossbenchers side with the government, those unfettered powers have all been put in the hands of the minister to make rules that will limit the extent of consideration by the ACCC of the effectiveness and fairness of this deal. We do not think that is the right

thing. We do not believe the minister should have those unfettered powers. It is regrettable in the extreme that the crossbenchers, who so often talk about and champion the power of the parliament and talk about the need for government accountability to the parliament, decided on this occasion to not make the government accountable to the parliament.

Here they get a second chance in a sense, not through disallowable instruments but through reinstating the normal operative provisions of the Competition and Consumer Act—the former Trade Practices Act—and the ACCC. In doing that, we can ensure that consumers are looked after, that the telco industry is looked after and that, most importantly, competition is promoted in a fair and transparent way. There should be nothing for the government to fear from this. There should be nothing for NBN Co. to fear from this. Parties of all persuasions have for many years, since the Trade Practices Act was first passed around the year of my birth—

*Senator Brandis interjecting—*

**Senator BIRMINGHAM**—In fact, in the year of my birth—thank you, Senator Brandis. The Trade Practices Act has been supported, enhanced and bettered by people on both sides of politics. Rather regrettably, it has also been renamed by the current government.

However, this legislation has grown and has brought about, we believe, the operation of an organisation—the ACCC—that has the skills, the capacity and the know-how to make sure that these arrangements and deals are competitive and work for consumers. I would urge the crossbenchers, whom I suspect have already predetermined their position on these amendments, to think again and to realise that they have each played a role in championing the cause of good competition legislation in this country and that they have



each played a role in promoting the role of the ACCC and building that role up. I know that Senator Xenophon in particular is a strong advocate for the role of the ACCC and is deeply involved in many ways. He has passed some amendments that help to make a bad policy less bad. We think it would be far preferable to abandon the bad policy of shutting out the ACCC and to actually give them the opportunity to examine this deal just as they would any other deal.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.15 pm)—We are going to revisit a little bit of what we discussed with Senator Joyce a little earlier and some of Senator Xenophon's amendments.

Senator Birmingham, your concern is touching, except that you did make an offer that you would pass the bill if we accepted a cost-benefit analysis, and you did not care about any of these things. So, please, do not raise passion on the evening—it is a long evening as it is. If your passion for this particular principle was so high you should not have offered to pass the bill publicly—

**Senator Birmingham**—It wasn't quite an offering speech!

**Senator CONROY**—It was in the newspapers—I read it. You were offering publicly to pass the bill unamended if we agreed to a cost-benefit analysis. But I will cease with my across the chamber banter—I apologise, Mr Temporary Chairman.

The bill already includes provision in proposed sections 577A, under which the ACCC will scrutinise the competitive impacts of the agreement between Telstra and the NBN Co. and we have accepted some amendments recently to strengthen that particular area. Specifically, the ACCC will consider the competitive impacts of the Telstra and NBN

arrangements as part of its scrutiny of Telstra's structural separation undertaking. If the ACCC accepts the undertaking then the bill authorises the entering into of the agreement and associated conduct for the purposes of trade practices law as set out in section 51 of the Trade Practices Act. This is entirely appropriate as it removes any need for a separate authorisation inquiry, whilst still ensuring appropriate scrutiny of the arrangements between Telstra and the NBN Co. by the ACCC.

By way of background, section 51 of the Trade Practices Act is a well-established mechanism which has been used extensively by Australian governments. The ACCC website currently lists 80 separate pieces of Commonwealth, state and territory legislation where section 51 authorisations are used.

So, unfortunately, we will not be able to support Senator Birmingham's heartfelt plea for us to support this amendment.

**The CHAIRMAN**—The question is that opposition amendments (20), (21) and (23) on sheet 7004 be agreed to.

Question put.

The committee divided. [9.22 pm]

(The Chairman—Senator the Hon. AB Ferguson)

Ayes.....	31
Noes.....	<u>33</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.	Cormann, M.H.P.
Ferguson, A.B.	Fierravanti-Wells, C.
Fifield, M.P.	Fisher, M.J.
Heffernan, W.	Humphries, G.
Johnston, D.	Joyce, B.

Kroger, H.  
Mason, B.J.  
Minchin, N.H.  
Parry, S. \*  
Ryan, S.M.  
Troeth, J.M.  
Williams, J.R.

## NOES

Bilyk, C.L.  
Brown, B.J.  
Cameron, D.N.  
Collins, J.  
Crossin, P.M.  
Faulkner, J.P.  
Fielding, S.  
Furner, M.L.  
Hogg, J.J.  
Ludwig, J.W.  
Marshall, G.  
McLucas, J.E.  
Moore, C.  
Pratt, L.C.  
Stephens, U.  
Wong, P.  
Xenophon, N.

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Eggleston, A.  
Payne, M.A.

Macdonald, I.  
McGauran, J.J.J.  
Nash, F.  
Ronaldson, M.  
Scullion, N.G.  
Trood, R.B.  
  
Bishop, T.M.  
Brown, C.L.  
Carr, K.J.  
Conroy, S.M.  
Evans, C.V.  
Feeney, D.  
Forshaw, M.G.  
Hanson-Young, S.C.  
Ludlam, S.  
Lundy, K.A.  
McEwen, A. \*  
Milne, C.  
Polley, H.  
Siewert, R.  
Sterle, G.  
Wortley, D.

\* denotes teller

Question negatived.

**The CHAIRMAN**—The question now is that section 577BA in item 30 and item 33 stand as printed.

Question agreed to.

**Senator LUDLAM** (Western Australia) (9.25 pm)—by leave—I move Greens amendments (4) and (5) on sheet 7006 together:

(4) Schedule 1, item 30, page 13 (after line 21), after subsection 577A(20), insert:

(20A) The Minister must not make a legislative instrument under subsection (20) unless the Minister has obtained advice

from the ACCC that confirms that the proposed exemption regarding the fixed-line carriage service would promote the long-term interests of end users.

(5) Schedule 1, item 30, page 13 (after line 27), after subsection 577A(21), insert:

(21A) The Minister must not make a legislative instrument under subsection (21) unless the Minister has obtained advice from the ACCC that confirms that the proposed exemption regarding the telecommunications network would promote the long-term interests of end users.

Greens amendments (4) and (5) insert two safety-net provisions in schedule 1 of the bill. This is intended to guide the minister's discretion in exempting a specific fixed line carriage service offered by Telstra to retail customers. The whole purpose of this legislation is to separate out Telstra's wholesale and retail arms. Section 577A sets up the framework for Telstra to offer its structural separation undertaking for the ACCC to assess. Subsections (20) and (21) set out two exemptions to this fundamental process by way of a legislative instrument. That is why we have sought to hold the process up here: because these two subsections set out two very important carve-outs to the overall purpose of what this legislation is for.

We understand that there are instances in which there could be a legitimate reason for the minister to create such exemptions or carve-outs, so we are not proposing to remove them from the bill. But we are concerned that at the moment the process is entirely opaque. There is no process there at all for transparency, for reasons or for anything of this sort.

Australian Greens amendments (4) and (5) provide that, if the minister is going to allow such an exemption, he must seek the advice

of the ACCC, which, to quote briefly from the amendment itself:

... confirms that the proposed exemption regarding the telecommunications network—

or the fixed line carriage service, as the case may be—

would promote the long-term interests of end users.

So there is your operative phrase right there. If there is going to be a carve-out from the fundamental provisions of the bill, and if Telstra is going to be exempted and is going to be able to continue to offer these services, then the ACCC must provide advice that that carve-out is in the long-term interests of end users. It may seem like a subtle point, but we are introducing a fairly simple requirement that a minimal public interest test be a consideration in the minister granting any such exemption. I commend these amendments to the Senate.

**Senator BIRMINGHAM** (South Australia) (9.27 pm)—The opposition will not be supporting these amendments of the Australian Greens. We have argued strongly in this place thus far during the course of this debate for there to be decent oversight, for there to be the maintenance of, ideally, the existing provisions and powers of the ACCC and for there to be strong accountability for the minister. We see these, frankly, as token measures, well intentioned though they may be, I am sure—because I know Senator Ludlam is always well intentioned. I have great respect for Senator Ludlam's intentions, but frankly these two amendments require the minister to get some advice. That is all. They do not require the minister to heed that advice in any way whatsoever. And, as we know, there is far from the necessary oversight in this chamber to ensure that the minister is heeding advice that is given, is acting in the national interest, is acting in consum-

ers' interests and is acting in the interests of competition.

While Senator Ludlam and the Greens come here with good intentions in moving these amendments, I regret to say that we do not think they will make one iota of difference to the way the processes operate and to what is actually going to happen. We would have far preferred that the Greens or the other crossbenchers recognise that, if you want to hold the government to account, to ensure that the minister is promoting the long-term interests of end users, to ensure that the minister is promoting real competition and to ensure that the minister is not ticking off on some type of sweetheart deal, you should put all of the deal through the usual paces of the ACCC's scrutiny. You should put all of the deal through the usual operations of the Competition and Consumer Act.

These amendments—which just tell the minister to get some advice—sound great, but making them would be a little bit like changing the objects. In some ways I am reluctant to mention that, because I know it will bring back to Senator Ludlam memories of the debate we had about amendments (1) and (2) to change the objects. I am not suggesting that we should repeat that debate, Senator Ludlam—I am certainly not suggesting that—but these amendments, whilst they require the minister to talk to somebody and whilst they make some work for public servants, do not require the minister to heed any advice or to do anything meaningful to be any more accountable to this parliament or anybody else in his decision making, and that is why the coalition will not be supporting them.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.30

pm)—The government opposes these amendments. The relevant legislative instruments will give effect to structural separation arrangements agreed between Telstra and NBN Co. The ACCC will consider the exemption in the context of the overall agreement when deciding whether to accept the structural separation undertaking. It is not appropriate to apply the test of the long-term interests of end users test to one element of the arrangements on their own. There are some technical problems with these amendments as drafted because they do not appropriately cross-reference the long-term interests of end users as it is used in the telecommunications legislation.

**Senator XENOPHON** (South Australia) (9.31 pm)—I support Senator Ludlam's amendments. I think Senator Birmingham calls them well-intentioned and I am not sure if that is damning with faint praise—I always worry if anyone accuses me of being well-intentioned! I think these amendments are sensible. They are intended to add to the transparency of these provisions, and I would have thought that, if the government thought there were issues with the drafting of the amendments, they could have found a way through that—if there were some technical issues, they could have been dealt with.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (9.32 pm)—Since this has to do once more with the implications of a cost-benefit analysis, I draw the minister's attention to interpretations of public benefit by the ACCC. According to the ACCC, public benefit is defined as:

... anything of value to the community generally, any contribution to the aims of society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress'. Plainly the assessment of efficiency and progress must be from the perspective of society as a whole: the best use of society's resources. We

bear in mind that (in the language of economics today) efficiency is a concept that is taken to encompass "progress" and that commonly efficiency is said to encompass allocative efficiency, production efficiency and dynamic efficiency.

That definition would be very broad if applied properly, and it would obviously mean that you would need a cost-benefit analysis of the NBN Co. and Telstra agreement. So how are you going to determine the public benefit test without one?

Question negatived.

**Senator LUDLAM** (Western Australia) (9.33 pm)—by leave—I move Australian Greens amendments (7) to (15) on sheet 7006 together:

- (7) Schedule 1, item 30, page 26 (after line 24), after subsection 577BC(5), insert:

*Consultation*

- (5A) Before making an instrument under subsection (3) or (4), the Minister must:
- (a) cause to be published on the Department's website a notice:
    - (i) setting out the proposed instrument; and
    - (ii) inviting persons to make submissions to the Minister about the proposed instrument within 14 days after the notice is published; and
  - (b) cause to be published on the Department's website a copy of each submission received within the 14-day period mentioned in paragraph (a); and
  - (c) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (8) Schedule 1, item 30, page 36 (after line 4), after subsection 577C(1), insert:
- (1A) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:

- 
- (a) the matters (if any) set out in an instrument in force under subsection (1B); and
    - (b) such other matters (if any) as the ACCC considers relevant.
  - (1B) The Minister may, by writing, set out matters for the purposes of paragraph (1A)(a).
  - (1C) Before making or varying an instrument under subsection (1B), the Minister must:
    - (a) cause to be published on the Department's website a notice:
      - (i) setting out the draft instrument or variation; and
      - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
    - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
  - (9) Schedule 1, item 30, page 36 (after line 14), at the end of section 577C, add:
    - (7) The Minister must cause a copy of an instrument under subsection (1B) to be published on the Department's website.
    - (8) An instrument under subsection (1B) is not a legislative instrument.
  - (10) Schedule 1, item 30, page 40 (after line 1), after subsection 577D(3), insert:
    - (3A) In deciding whether to accept the variation, the ACCC must have regard to:
      - (a) the matters (if any) set out in an instrument in force under subsection (3B); and
      - (b) such other matters (if any) as the ACCC considers relevant.
    - (3B) The Minister may, by writing, set out matters for the purposes of paragraph (3A)(a).
    - (3C) Before making or varying an instrument under subsection (3B), the Minister must:
      - (a) cause to be published on the Department's website a notice:
        - (i) setting out the draft instrument or variation; and
        - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
      - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
  - (11) Schedule 1, item 30, page 40 (after line 4), at the end of section 577D, add:
    - (6) The Minister must cause a copy of an instrument under subsection (3B) to be published on the Department's website.
    - (7) An instrument under subsection (3B) is not a legislative instrument.
  - (12) Schedule 1, item 30, page 40 (after line 15), after subsection 577E(1), insert:
    - (1A) In deciding whether to accept an undertaking under subsection (1), the ACCC must have regard to:
      - (a) the matters (if any) set out in an instrument in force under subsection (1B); and
      - (b) such other matters (if any) as the ACCC considers relevant.
    - (1B) The Minister may, by writing, set out matters for the purposes of paragraph (1A)(a).
    - (1C) Before making or varying an instrument under subsection (1B), the Minister must:
      - (a) cause to be published on the Department's website a notice:
        - (i) setting out the draft instrument or variation; and
        - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
      - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
-

- (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (13) Schedule 1, item 30, page 40 (after line 29), at the end of section 577E, add:
  - (7) The Minister must cause a copy of an instrument under subsection (1B) to be published on the Department's website.
  - (8) An instrument under subsection (1B) is not a legislative instrument.
- (14) Schedule 1, item 30, page 44 (after line 21), after subsection 577F(3), insert:
  - (3A) In deciding whether to accept the variation, the ACCC must have regard to:
    - (a) the matters (if any) set out in an instrument in force under subsection (3B); and
    - (b) such other matters (if any) as the ACCC considers relevant.
  - (3B) The Minister may, by writing, set out matters for the purposes of paragraph (3A)(a).
  - (3C) Before making or varying an instrument under subsection (3B), the Minister must:
    - (a) cause to be published on the Department's website a notice:
      - (i) setting out the draft instrument or variation; and
      - (ii) inviting persons to make submissions to the Minister about the draft instrument or variation within 14 days after the notice is published; and
    - (b) consider any submissions received within the 14-day period mentioned in paragraph (a).
- (15) Schedule 1, item 30, page 44 (after line 24), at the end of section 577F, add:
  - (6) The Minister must cause a copy of an instrument under subsection (3B) to be published on the Department's website.
  - (7) An instrument under subsection (3B) is not a legislative instrument.

I indicate at this stage that Senator Xenophon will probably seek to add his name to these amendments. They are very similar—in most cases, I think, they are identical—to the amendments that Senator Xenophon withdrew a short time ago, so they are effectively trying to achieve much the same thing. The bill was fairly prescriptive with regard to the obligations of various parties in the event that Telstra pursues functional separation, but obligations of the minister under a structurally separated model are much less prescriptive and actually leave quite wide discretion. In many cases they are quite opaque, and it would be very difficult for the public or other players in the industry to tell what was going on. At the very least, stakeholders should be given the opportunity to consult on the draft determination and its various components, having the ACCC call for submissions and placing them in the public domain.

Our amendments, which I sought leave to move in a batch, open a series of windows on the process, providing for publication of draft documents on the department's website, including the structural separation undertaking itself—which is covered by amendments (3) and (6)—the migration plan, the hybrid fibre-coaxial undertaking and the pay-TV undertaking. So that takes us right through the batch of amendments that I have just sought leave to roll together. In all instances, draft instruments are to be posted on the department's website, and 14-day submission periods are mandated for each form of undertaking.

I acknowledge that this does not go as far as the coalition's foreshadowed amendments, which sought to make some of those instruments disallowable and subject to continued intervention by the ACCC. We have had a fair bit of back and forth tonight about the coalition's proposals and how they do differ from what the Australian Greens have sought to do. We believe that these amendments

provide a greater degree of transparency without actually providing those points of intervention whereby the process could be wrecked, or at least derailed, for substantial periods of time. I commend those amendments to the chamber.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.36 pm)—After careful consideration, the government opposes this amendment. The amendment requires public consultation—

**The TEMPORARY CHAIRMAN** (**Senator Marshall**)—We are actually dealing with amendments (7) to (15) together.

**Senator LUDLAM** (Western Australia) (9.36 pm)—If it is the minister's will, I am happy to move amendment (7) separately and then move the others as a batch, but I will seek the guidance of either the chair or the minister—whoever has the best idea.

**The TEMPORARY CHAIRMAN**—Given that you have indicated that, Senator Ludlam, I will simply divide the question. So we will put amendment (7) separately.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.37 pm)—Sorry about that. The government opposes amendment (7). It requires public consultation on the ministerial instruments, which provide for what a migration plan may or may not deal with. The government does not consider consultation on these instruments will be necessary. The bill already provides for consultation on the migration plan principles in proposed subsection 577BB(2). Under subsection 577BD(2), the ACCC can only approve the migration plan if it complies with the principles. The ACCC is also required to consult when deciding whether to approve the original plan. Ac-

cordingly, we believe there are already sufficient opportunities for stakeholder input on the migration plan. Mr Temporary Chairman, should I speak on the other amendments now?

**The TEMPORARY CHAIRMAN** (**Senator Marshall**)—I think that would probably be easier.

**Senator CONROY**—The government supports amendments (8) to (11) for the purposes of consistency with Greens amendments (3) and (6). Similar amendments have been made to the HFC undertakings and variations to those undertakings provisions. These amendments allow the minister to set out in an instrument the matters the ACCC must have regard to and require public consultation to occur on those instruments. The government also supports amendments (12) to (15) for the purposes again of consistency with amendments (3), (6) and (8) to (11). Similar amendments have been made to the subscription television undertakings and variations to those undertakings provisions. These amendments allow the minister to set out in an instrument the matters the ACCC must have regard to and require public consultation to occur on these instruments. Sorry for that confusion.

**Senator BIRMINGHAM** (South Australia) (9.38 pm)—The opposition we will be opposing these amendments. Senator Ludlam has made some reference to the overall tone of the debate tonight and the nature of discussion around previous amendments and some of the opposition's other amendments. They have been well canvassed. He understands as well as any of us that we would have rather seen a full and rigorous ACCC assessment, as I have said on many occasions already.

With regard to these particular amendments, we believe that, in a similar vein to the previous amendments, to some extent

they seek to engage the public more. They seek to provide a longer process and they are very much process driven, but they do not fundamentally change the capacity of the ACCC to make independent decisions free of the government's interference. In particular, I note in amendment (8) that there is further capacity, even in a Greens amendment, for the minister to set out purposes and intervene to some extent. This is, I think, a case where the Greens, in signing up to a deal with the government, have in many ways given up on many of the things that they so often talk about in this place and given up on ensuring that ministers are held to account and independent statutory bodies are genuinely independent and able to operate of their own accord. This is not a case where the Greens are holding true to the types of things that they espouse so often. So often we hear, particularly from their leader, sanctimonious comments about the need in this place for us to be—

*Senator Hanson-Young interjecting—*

**The TEMPORARY CHAIRMAN** (Senator Marshall)—Order!

**Senator BIRMINGHAM**—Thank you, Senator Hanson-Young. I am more than happy to be the purest party in this debate, if that is what you want, because you are the ones that seem to have a great capacity nowadays for caving in to the government first. Senator Xenophon at least held out for something; all you did was hold out to ensure that you would ultimately make privatisation harder. That just shows, of course, that the Greens are living in some type of North Korean empire still, where you want to mandate—

**Senator Hanson-Young**—We've sold it off and now we have to buy it back!

**The TEMPORARY CHAIRMAN**—Order!

**Senator BIRMINGHAM**—There it is, isn't it—we sold it off and now we have to buy it back. That says it all. Senator Conroy is even cringing at that comment. These are your partners in this little adventure, Senator Conroy, you know.

Whilst you may want to see the NBN ultimately privatised and you may believe that is the goal you will eventually reach, we would question whether it is ever going to be worth anywhere near what you are going to spend on it so that when privatised it can provide the taxpayer with any reasonable level of value for money.

All along for the Australian Greens this has been about renationalising telecommunications in this country. That is what Senator Hanson-Young has indicated—it has all been about renationalising telecommunications. They have sold out to the government lock, stock and barrel in the hope of renationalising telecommunications in this country. They have given up on their usual belief that ministers should be accountable to this place.

**Senator Hanson-Young**—It would be wonderful!

**Senator McGauran**—You signed a seven-year confidentiality agreement!

**The TEMPORARY CHAIRMAN**—Order! I ask senators to cease injecting and encourage senators to come back to the question before the chair.

**Senator BIRMINGHAM**—Thank you, Mr Temporary Chairman. Senator Conroy and I were both commenting before that we would not mind moving on from here. I assume that Senator Hanson-Young's intervention in the debate means that the gatherings that I saw in the courtyard before have come to a close and there is potentially nothing for us to move on to now, Senator Conroy.

With these amendments, what we have is the Greens once again trying to cover their



trail in this legislation. They just want to be able to say, 'We pursued a few things to make the government somewhat more accountable or transparent.' That is not at all what these amendments do. They certainly do not make the government any more accountable, because accountability means that there are some consequences if the government does not act. There is no accountability in these amendments, just as there was none in the other amendments. In the end, the government can seek all the advice it wants. It can go out and allow public submissions if it wants—it can do all of those sorts of things—but, ultimately, as we see littered throughout this legislation, the minister still has the capacity at the end of the day to basically do what he wants. For all the Greens' carry-on, that is the point. The minister has the capacity to do what he wants. What we fear we will see is that, in curtailing the powers of the ACCC and the arrangements, along with what is happening with the National Broadband Network, we will get a less competitive outcome in Australia.

That is not what we want. It is not what anyone in this chamber says they want; yet by excluding the nation's competition watchdog from exercising their full powers in the way that the Greens have assisted the government to do will only hurt us. It will risk our getting it wrong rather than ensuring that we get it right. The Greens had the chance in previous amendments and divisions to get it right. They chose not to take the chance. This amendment will not make a difference and will not provide an opportunity to fix or cover their failure to actually hold the government to account and seek a real deal on structural separation.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.45 pm)—I just want to make a brief contribu-

tion. I could not let it pass that Senator Birmingham felt the need to point to what he believed was a hidden agenda for some of those involved in this debate, when all of us here know that the overwhelming number of senators opposite actually support this bill. They actually support the separation of Telstra. They have just been caught in a bit of a time warp. It was Senator Joyce's stated public position at the Page Research Centre, where he was, apparently, with Senator Nash, at a National Party think tank. That is not an oxymoron. That document from the Page Research Centre was actually their own document. It was adopted by the Queensland National Party. I am not sure if the Liberal-National Party of Queensland has still got the same policy on its books, but it was the policy of the National Party at one stage before they sold out their principles. As for the Liberal right-wing economic rationalists, they could not but support this bill.

So I think, Senator Birmingham, that it might be a case of the pot calling the kettle black in this particular instance. But I am interested to see if there are any takers on an idea that we include an amendment in one of the NBN bills that those senators who vote in the chamber against the National Broadband Network voluntarily ask to be connected last to the National Broadband Network. Are there any takers? Can we get that up, Senator Xenophon?

**Senator Birmingham**—You won't tell us which streets it is going down last.

**Senator CONROY**—We will be; don't you worry. Just give us your address and we will make sure that you have the capacity to get signed on last—you too, Senator McGauran. And that will include staff, too, for this atrocity. We will collect all the addresses and you can just voluntarily agree to go last. But I will not hold the chamber up any longer.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (9.47 pm)—Seeing that we are back to where we started, we might as well ask a few pertinent questions. You talk now about your upfront capital cost, which I think is \$35.7 billion—even though your own Prime Minister nominated it as \$37.5 billion. But that is all right; she is allowed to make a mistake of a couple of billion dollars.

*Senator Conroy interjecting—*

**Senator Hanson-Young**—You were a fantastic shadow finance minister, weren't you?

**The TEMPORARY CHAIRMAN**—Senator Conroy and Senator Sarah Hanson-Young, I would appreciate you ceasing your interjecting, particularly when you are not in your places.

**Senator JOYCE**—They are as pure as the driven snow, those who are sitting behind us here! You have now got this mischievous way of describing the costs, where you are now talking about the upfront capital costs as opposed to where you were in the past when it was more of an all-encompassing cost. I would suggest that that is one of the main reasons that you have gone from your \$43 billion down to \$35.7 billion. Do you include in that \$35.7 billion the cost of finance? If you do not—because it is an upfront capital cost—do you feel that is an appropriate way to cost it? If you have not included the cost of finance, are you not drastically short in the real cost of this project? Likewise, you are saying that there is a better return on your cost of capital and because you removed your leases from the project. Would it not have been more appropriate to also put the leases in there as a better reflection of your total costs for the project? Are you not way below what would be an honest interpretation of the costs as initially displayed in the

way that you calculated your costs in the \$43 billion figure?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.49 pm)—I am not quite sure how any of those questions were relevant to the bill, Senator Joyce—no offence.

**Senator Joyce**—I can explain it.

**Senator CONROY**—They are not actually relevant to the bill. I am not quite sure if I can seek any advice on them because we came here to debate the bill. What I do congratulate you on, Senator Joyce, is actually doing a bit of research yourself—I mean that quite sincerely—and, more importantly, not trying to suggest that you should add operating expenses and capital expenses together and coming up with that dodgy \$50 billion figure. When those opposite during question time were asking that question, I saw you looking at the floor. As an accountant you should have perhaps given them a bit of friendly advice.

*Senator Hanson-Young interjecting—*

**Senator CONROY**—To be fair, Senator Hanson-Young, Senator Joyce had the decency to look at the floor and not add up two numbers because they were in the same box and say, 'Wow; that must be the cost.' As to the questions you have asked, Senator Joyce, all will be revealed shortly. I think you will actually be quite interested in the information that you have been asking about. But I will just hold out on you a little longer, because I would not want to spoil the surprise. Quite seriously, Senator Joyce, you do deserve congratulations for looking at the floor during question time when the bozos were trying to prove how financially illiterate they are.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (9.51 pm)—Thank you very much. I am blushing!

**Senator Hanson-Young**—You always are.

**Senator JOYCE**—You cannot get a kind word out of Senator Hanson-Young. She is a hard one to please. It is hard work down in this corner, I can tell you! I put a green tie on to try to make them feel better and even that does not work. They are very cross and cantankerous benchers. In getting a proper association and a proper reflection of cost, in whatever form of cost-benefit analysis you did, did you do it in relation to your upfront costs of capital, as you have prescribed your \$35.7 billion, or to a more encompassing figure that took into account other factors such as your cost of finance and your long-term leases? Which one did you use?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.52 pm)—As I said, we have revealed all the information we wish to reveal at this stage. The Prime Minister has given a very public commitment that we will reveal the rest of the information we are able to, without jeopardising commercial-in-confidence material, in a few weeks. I do not really want to spoil the surprise. I can only suggest, in terms of the harassment you are getting in that corner, that I would lose the tie!

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (9.53 pm)—Good luck on that one! The problem is that it is like waiting for Christmas: the present is wrapped up but we cannot actually determine what it is. However, we have to vote on this tomorrow.

**Senator Hanson-Young**—Have you been a good boy?

**Senator JOYCE**—I am a very good boy when I am around you, Sarah. The question is: wouldn't it be more appropriate that the Australian people have the right to see this information prior to voting on it rather than afterwards?

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.54 pm)—I appreciate that, while you have been able to convince yourselves, certainly, that this is a bill that revolves around the National Broadband Network, it is a bill that you have been opposed to for over 12 months. First of all, you demanded to see the expert panel's advice. You said, 'We can't deal with this bill until after that is made available,' so we gave you what was available. Then you said, 'We want to see the ACCC's advice to the expert panel,' and, when we tabled that, did that make a difference? No, you kept opposing it. Then you said you wanted a cost-benefit analysis. Then you said that you wanted this piece of information and that piece of information. The truth is that you have been opposed to this all along, even though, as I said earlier, many of you—perhaps even Senator Brandis—also believe in the structural separation of Telstra.

**Senator Brandis**—I've never said that.

**Senator CONROY**—I said 'perhaps'.

**Senator Brandis**—Don't speculate on what I believe.

**Senator CONROY**—I said 'perhaps'. I am sure that some of the people sitting near you privately support this bill. Senator Joyce, it will be only be a few short weeks. This bill is not about the business case of the National Broadband Network. You say, 'We must have this information,' but that is what you have said about five other pieces of information and, when you got it, it made no difference; you found a new reason to oppose the

bill. It is hard to take your claims seriously, although you are far more diligent at looking into these issues than many of those opposite, and you do, after all, know the difference between operating expenses and capex expenses.

**Senator JOYCE** (Queensland—Leader of the Nationals in the Senate) (9.56 pm)—The issue is that a lot in the bill refers to the NBN. Without going over old ground, so much of the bill is structured with the intent of dealing with the NBN. You talk about people's viewpoints on broadband. The Labor Party lost the plot when they went from \$4.7 billion up to \$43 billion and back down to \$35.7 billion, and we know that a better portrayal of the costs is far in excess of that. Diligence around such a massive figure is just not apparent. The paraphernalia that was delivered to us this morning is just atrocious in the paucity of detail. That is what creates concern in the community. This is not our money; we are going to borrow it, and borrowed money has to be repaid. If you cannot repay it, you are in a world of strife. Nothing we have seen from the Labor Party thus far shows that they can repay it. They always make promises to repay—the consummate art of the IOU—but they are absolutely atrocious at actually delivering the capacity to repay. We have \$172.7 billion in gross debt. We have to have an appropriations bill once we get to \$200 billion. Last week they borrowed an extra \$2.8 billion. We are racing ahead. We have every right in the world—in fact, it is our duty—to make sure that they do not send us down the gurgler.

**The TEMPORARY CHAIRMAN** (**Senator Marshall**)—The question is that Australian Greens amendment (7) be agreed to.

Question negatived.

**The TEMPORARY CHAIRMAN**—The question now is that Australian Greens amendments (8) to (15) be agreed to.

Question agreed to.

**Senator LUDLAM** (Western Australia) (9.58 pm)—I move Australian Greens amendment (R18) on sheet 7019:

(R18) Schedule 1, item 31, page 55 (line 24), at the end of paragraph (b) of the definition of *equivalence*, add:

- , including (but not limited to) terms and conditions in relation to:
  - (i) ordering and provisioning; and
  - (ii) fault detection, handling and rectification; and
  - (iii) technical and operational quality of services.

This is a fairly simple amendment. It goes some way towards specifying what we mean by 'equivalence' in the event of Telstra choosing to go down the pathway of functional separation. I suppose everybody in here, as well as Telstra, would hope that we never go down that track. We have added three subclauses to more tightly define what 'equivalence' means in this context. Senator Xenophon has an amendment that probably tightens up the definition in the case of structural separation. Australian Greens amendment (R18) deals with the same terminology in the event that Telstra chooses to go down the functional separation path. I commend Greens amendment (R18) to the chamber.

**Senator CONROY** (Victoria—Minister for Broadband, Communications and the Digital Economy and Minister Assisting the Prime Minister on Digital Productivity) (9.59 pm)—The government supports the amendment. The amendment clarifies the definition of 'equivalence' as provided for in subclause 69 of proposed part 9 of schedule 1 to the Telecommunications Act. The amendment provides that 'equivalence' includes terms and conditions relating to ordering and pro-

visioning fault detection, handling and rectification, and technical and operational quality of services.

Progress reported.

**Senate adjourned at 10.00 pm**

### QUESTIONS ON NOTICE

The following answers to questions were circulated:

#### **Attorney-General's: Accommodation (Question No. 39)**

**Senator Humphries** asked the Minister representing the Minister for Justice, upon notice, on 28 September 2010:

Do any of the departments or agencies within the Minister's portfolio consider that new or additional office accommodation may be required in the next 2 years; if so, would that accommodation be provided in Canberra; and if so, approximately how many staff are estimated to need accommodation in the new or additional offices.

**Senator Ludwig**—The Minister for Justice has provided the following answer to the honourable senator's question:

The Attorney-General's Portfolio Agency responses to the question are as follows:

The table below comprises the Attorney-General's Department and other agencies in the Attorney-General's portfolio that are considering new or additional office accommodation that may be required in Canberra in the next two years. The staff estimates in the table are the estimated number of staff to be accommodated in new or additional offices.

Agency	Staff Estimate	Additional Information
Attorney-General's Department	500	AGD proposes to vacate Deakin, CA House and Arts House, Barton and relocated staff around 1 July 2012 to 4 National Circuit, Barton, subject to the approval of the Public Works Committee.
Australian Commission for Law Enforcement Integrity	30	ACLEI will test the market in 2011-12 to ensure that agency accommodation continues to meet strategic and operational needs and provide value for money prior to expiration of their lease.

The table below comprises the Attorney-General's Department and other agencies in the Attorney-General's portfolio that are considering new or additional office accommodation that may be required outside of Canberra in the next two years. The staff estimates in the table are the estimated number of staff to be accommodated in new or additional offices.

Agency	Location	Staff Estimate	Additional Information
Australian Federal Police	Sydney and Adelaide	250	The 'Additional 500' Police Officers funded by the Government will require additional accommodation to meet increased operational requirements in Sydney and Adelaide.

**Indonesia**

**(Question No. 174)**

**Senator Bob Brown** asked the Minister representing the Minister for Resources and Energy, upon notice, on 28 October 2010:

- (1) Did the tsunami warning system work correctly on Monday, 25 October 2010 for the tsunami that hit the Sumatran coast; if so, what went wrong with the warnings to, and the evacuation of, residents.
- (2) If the system did not work correctly, why not.

**Senator Sherry**—The Minister for Resources and Energy has provided the following answer to the honourable senator's question:

Indonesia has its own operating Tsunami Early Warning System which worked correctly following the large earthquake on 25 October.

The combination of the tsunami being generated so close to shore, the time of arrival (late night), and the low-lying nature of the land meant that lives were lost.