

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 40

THURSDAY, 16 OCTOBER 2008

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1 MEETING OF SENATE

The Senate met at 9.30 am. The President (Senator the Honourable John Hogg) took the chair and read prayers.

2 PARLIAMENT HOUSE—BREASTFEEDING ACCREDITATION—STATEMENT BY PRESIDENT

The President made a statement relating to the accreditation of Parliament House as a breastfeeding friendly workplace.

3 PETITION

The following petition, lodged with the Clerk by Senator Barnett, was received:

From 822 petitioners, requesting that the Senate disallow item 16525 in Part 3 of Schedule 1 to the Health Insurance (General Medical Services Table) Regulations 2007 and thereby stop the funding of second trimester and late abortions.

Document: The Leader of the Australian Greens (Senator Bob Brown), by leave, tabled the following document:

Environment—Petitioning document relating to the Wielangta Forest in Tasmania.

4 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Human Services (Senator Ludwig) moved—That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

Archives Amendment Bill 2008.

International Tax Agreements Amendment Bill (No. 2) 2008.

Broadcasting Legislation Amendment (Digital Radio) Bill 2008.

Question put and passed.

5 ROUTINE OF BUSINESS—VARIATION

The Minister for Human Services (Senator Ludwig), by leave, moved—That, on Thursday, 16 October 2008—

(a) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) shall not be proceeded with;

(b) the routine of business from 12.45 pm till not later than 2 pm, and from not later than 4.30 pm shall be government business only; and

(c) divisions may take place after 4.30 pm.

Question put and passed.

6 POSTPONEMENT

The following item of business was postponed:

General business notice of motion no. 233 standing in the name of Senator Xenophon for today, proposing an order for the production of a document relating to the Productivity Commission, postponed till 10 November 2008.

7 CONSIDERATION OF LEGISLATION

The Minister for Human Services (Senator Ludwig), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Archives Amendment Bill 2008

Broadcasting Legislation Amendment (Digital Radio) Bill 2008

International Tax Agreements Amendment Bill (No. 2) 2008.

Question put and passed.

8 CULTURE AND THE ARTS—DEEPAVALI—CELEBRATIONS

Senator Ellison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 184—That the Senate—

(a) notes that:

- (i) in 2008, Deepavali will be celebrated on 28 October,
- (ii) Deepavali is of great significance to the Hindu, Sikh, Jain and Buddhist community,
- (iii) 'Diwali' is a shortened version of the Sanskrit term 'Deepavali', which means 'a row of lamps',
- (iv) Diwali is celebrated by lighting small oil lamps called Diyas; which symbolises the lifting of spiritual darkness and the renewal of life, a time to pray for health, knowledge and peace,
- (v) Diwali is an annual celebration, falling on the last day of the month in the lunar calendar and is celebrated as a day of thanksgiving and the beginning of a new year for many Hindus, and for Hindus is a celebration of the victory of good over evil,
- (vi) for Sikhs, Diwali is feted as the day that the sixth founding Sikh Guru, or revered teacher, Guru Hargobind ji, was released from the ruling Mughal Emperor, and
- (vii) for Jains, Diwali marks the anniversary of the attainment of moksha or liberation by Mahavira, the last of the Tirthankaras, who were the great teachers of Jain dharma, at the end of his life in 527 BC,
- (viii) in 2008, Deepavali will be celebrated by many Australians including members of Australia's over 600 000 strong Hindu, Sikh, Jain and Buddhist community,
- (ix) the Hindu, Sikh, Jain and Buddhist communities have a long and strong heritage in Australia, beginning in the 19th century, and
- (x) today the Hindu, Sikh, Jain and Buddhist communities are strong and vibrant communities that continue to make a significant contribution to Australia's economic and social prosperity; and

(b) sends its best wishes to all members of our Hindu, Sikh, Jain and Buddhist communities celebrating Deepavali in 2008.

Question put and passed.

9 DEATH OF MAJOR GENERAL JANAKA PERERA AND MRS PERERA

Senator Hutchins, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 242—That the Senate—

- (a) condemns the terrorist attack in the north of Sri Lanka on 6 October 2008, which killed 28 people and injured more than 80 people;
- (b) notes and expresses its sadness at the assassination in this attack of the former Sri Lankan High Commissioner to Australia, retired Major General Janaka Perera and his wife;
- (c) notes the significant contribution that Major General Perera made as Sri Lanka's High Commissioner to Australia;
- (d) expresses its condolences to retired Major General Perera's four children, three of whom live in Australia;
- (e) condemns all acts of terrorism and the use of child soldiers in the conflict;
- (f) expresses its deep concern about increasing violence in Sri Lanka and the worsening humanitarian situation; and
- (g) urges all parties in Sri Lanka to work towards a political solution that meets the legitimate aspirations of all Sri Lankans.

Question put and passed.

10 AGRICULTURAL AND RELATED INDUSTRIES—SELECT COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Parry, at the request of Chair of the Select Committee on Agricultural and Related Industries (Senator Heffernan) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 249—That the time for the presentation of the report of the Select Committee on Agricultural and Related Industries into pricing and supply arrangements in the Australian and global fertiliser market be extended to 2 December 2008.

Question put and passed.

11 HEALTH—CHILD AND MATERNAL HEALTH

Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 250—That the Senate—

- (a) notes:
 - (i) the important work being done by the international 'Make Poverty History' campaign and the tireless effort of the many non-government agencies, faith groups, community organisations and individuals working around the world to end poverty, and
 - (ii) the impact that poverty has on child and maternal health;
- (b) recognises:
 - (i) the 2008 United Nations report on the Millennium Development Goals that highlights maternal mortality decreased by less than 1 per cent between 1990 and 2005, far below the 5.5 per cent annual reduction needed,
 - (ii) more than half of the 29 developing countries are not on track to achieve the child health goal or the maternal health goal, and
 - (iii) each year, 34 000 mothers and more than 400 000 children die in our immediate region; and

- (c) calls on the Government to work with each of the key maternal health agencies in the region, to identify the core funding arrangements they require, to ensure that Australia is actively promoting the need to reduce the current child and maternal health mortality rate in developing countries.

Question put and passed.

12 FOREIGN AFFAIRS—TIBET—SINO-TIBETAN DIALOGUE

The Leader of the Australian Greens (Senator Bob Brown) amended general business notice of motion no. 251 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes that the eighth round of the Sino-Tibetan dialogue is due to take place in October or November 2008;
- (b) recognises the Dalai Lama has proposed a ‘middle way’ approach to autonomy for Tibet within China; and
- (c) appreciates the offer by the People’s Republic of China to host the dialogue and wishes both parties a successful breakthrough and outcome.

Question put and passed.

13 COMMUNICATIONS—ABC RADIO NATIONAL

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 253—That the Senate—

- (a) notes ABC Radio National’s decision to axe the Religion Report, the Media Report and the Sports Factor;
- (b) notes that:
 - (i) the Religion Report is one of the most important programs on the Australian Broadcasting Corporation (ABC) with a rapidly growing international audience, and
 - (ii) this program broke the Peter Hollingworth scandal, has applied critical analysis of the Exclusive Brethren, Anglican, Catholic and Muslim religions amongst others and provided insightful commentary of various religions over many years; and
- (c) calls on the ABC management:
 - (i) publicly to reveal all formal and informal criticisms made against this program over recent years, and
 - (ii) immediately to make public the reasons for this decision.

Question put and passed.

Statement by leave: Senator Parry, by leave, made a statement relating to the motion.

14 FAMILY AND COMMUNITY SERVICES—CARERS WEEK

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 254—That the Senate—

- (a) notes:
 - (i) that the week beginning 19 October 2008 is Carers Week,
 - (ii) that there are more than 2.5 million carers in Australia today, and
 - (iii) the release on 14 October 2008 of a report into carers by the Australian Bureau of Statistics which stated that:

- (A) almost half of all carers provided care for more than 40 hours per week, the equivalent of a full-time job, and
 - (B) more than 15 per cent of carers reported difficulties in paying bills and more than 20 per cent had borrowed money; and
- (b) calls on the Government to ensure that carers are provided with greater access to respite services and financial support to ensure they are able to continue in their vital work.

Question put and passed.

15 PUBLICATIONS—STANDING COMMITTEE—6TH REPORT

Senator McEwen, on behalf of the Chair of the Standing Committee on Publications (Senator Carol Brown), tabled the following report:

PUBLICATIONS COMMITTEE

6TH REPORT

The Publications Committee reports that it has met in conference with the Publications Committee of the House of Representatives.

The Committee, having considered documents presented to the Parliament since 25 September 2008, recommends that the following be printed:

Aboriginal Land Commissioner—Report for 2007-08.

Aboriginal Land Commissioner—Report and recommendations to the Minister for Families, Housing, Community Services and Indigenous Affairs and to the Administrator of the Northern Territory—No. 70—Crown Hill (Irrinjirrinjirri) land claim No. 106.

Attorney-General's Department—Report for 2007-08.

Australian Competition and Consumer Commission (ACCC)—Report for 2007-08, incorporating report of the Australian Energy Regulator (AER).

Australian Federal Police (AFP)—Report for 2007-08.

Australian Film, Television and Radio School—Report for 2007-08.

Australian Industrial Relations Commission and Australian Industrial Registry—Reports for 2007-08.

Australian Postal Corporation (Australia Post)—Report for 2007-08.

Australian Public Service Commissioner—Report for 2007-08, incorporating report of the Merit Protection Commissioner.

Australian Radiation Protection and Nuclear Safety Agency—Report for 2007-08.

Australian Transaction Reports and Analysis Centre (AUSTRAC)—Report for 2007-08.

Commissioner of Taxation—Report for 2007-08, including financial statements for the Australian Taxation Office and Australian Valuation Office.

Commonwealth Electoral Act 1918—2008 redistributions into electoral divisions—Northern Territory—Report, together with composite map and disc containing supporting information.

Crimes Act 1914—Controlled operations—Report for 2007-08.

CrimTrac Agency—Report for 2007-08.

Defence Force Retirement and Death Benefits Authority—Report for 2007-08.

Department of Families, Housing, Community Services and Indigenous Affairs—Report for 2007-08, including financial statements for Aboriginals Benefit Account and Aboriginal and Torres Strait Islander Land Account.

Indigenous Land Corporation—Report for 2007-08.
 Inspector-General of Intelligence and Security (IGIS)—Report for 2007-08.
 Inspector-General of Taxation—Report for 2007-08.
 International Air Services Commission—Report for 2007-08.
 Medibank Private Limited—Report for 2007-08.
 Military Superannuation and Benefits Board of Trustees—Report for 2007-08,
 including financial statements for the Military Superannuation and Benefits
 Fund.
 Private Health Insurance Ombudsman—Report for 2007-08.
 Regional Telecommunications Independent Review Committee—Regional
 telecommunications review: Framework for the future—Report, dated
 September 2008.
 Torres Strait Regional Authority—Report for 2007-08.
 Wreck Bay Aboriginal Community Council—Report for 2007-08.

Senator Carol Brown

Chair

16 October 2008.

Senator McEwen moved—That the report be adopted.

Question put and passed.

16 COMMITTEES—ADDITIONAL INFORMATION—BUDGET ESTIMATES 2008-09

Senator McEwen, at the request of the chairs of the respective committees, tabled the following documents:

Budget estimates 2008-09—

Education, Employment and Workplace Relations—Standing Committee—
 Additional information received between 24 September and 16 October 2008—
 Education, Employment and Workplace Relations portfolio.

Environment, Communications and the Arts—Standing Committee—
 Additional information received between 4 September and 15 October 2008—
 Broadband, Communications and the Digital Economy portfolio.

Environment, Water, Heritage and the Arts portfolio.

Rural and Regional Affairs and Transport—Standing Committee—Additional
 information received between 23 September and 14 October 2008—
 Infrastructure, Transport, Regional Development and Local Government
 portfolio.

17 DAIRY ADJUSTMENT LEVY TERMINATION BILL 2008

TRADE PRACTICES AMENDMENT (CLARITY IN PRICING) BILL 2008

Messages from the House of Representatives were reported transmitting for the concurrence of the Senate the following bills:

Message no. 169, dated 15 October 2008—A Bill for an Act to amend the *Dairy Produce Act 1986*, and for related purposes.

Message no. 168, dated 15 October 2008—A Bill for an Act to amend the *Trade Practices Act 1974*, and for related purposes.

The Minister for Human Services (Senator Ludwig) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

Senator Ludwig moved—That these bills be now read a second time.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

Senator Ludwig moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

18 FINANCIAL SYSTEM LEGISLATION AMENDMENT (FINANCIAL CLAIMS SCHEME AND OTHER MEASURES) BILL 2008
FINANCIAL CLAIMS SCHEME (ADIS) LEVY BILL 2008
FINANCIAL CLAIMS SCHEME (GENERAL INSURERS) LEVY BILL 2008

Messages from the House of Representatives were reported transmitting for the concurrence of the Senate the following bills:

Message no. 170, dated 15 October 2008—A Bill for an Act to amend the law relating to banking and insurance, and for related purposes.

Message no. 172, dated 15 October 2008—A Bill for an Act to provide for the imposition of a levy on liabilities of authorised deposit-taking institutions to their depositors.

Message no. 171, dated 15 October 2008—A Bill for an Act to provide for the imposition of a levy on general insurers.

The Minister for Human Services (Senator Ludwig) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

Consideration of legislation: Senator Ludwig, by leave, moved—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to these bills, allowing them to be considered during this period of sittings.

Document: Senator Ludwig tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the bills in the 2008 spring sittings.

Debate ensued.

Question put and passed.

Senator Ludwig moved—That these bills be now read a second time.

On the motion of Senator Ludwig the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

19 COMMUNITY AFFAIRS—STANDING COMMITTEE—REPORT—SPECIAL DISABILITY TRUSTS

The Acting Chair of the Community Affairs Committee (Senator Siewert) tabled the following report and documents:

Community Affairs—Standing Committee—Building trust: Supporting families through disability trusts—Report, dated October 2008, Hansard record of proceedings, additional information and submissions.

Report ordered to be printed on the motion of Senator Siewert.

Senator Siewert, by leave, moved—That the Senate take note of the report.

Debate ensued.

Debate adjourned till the next day of sitting, Senator Bernardi in continuation.

20 FINANCIAL SYSTEM LEGISLATION AMENDMENT (FINANCIAL CLAIMS SCHEME AND OTHER MEASURES) BILL 2008

FINANCIAL CLAIMS SCHEME (ADIS) LEVY BILL 2008

FINANCIAL CLAIMS SCHEME (GENERAL INSURERS) LEVY BILL 2008

Order read for the adjourned debate on the motion of the Minister for Human Services (Senator Ludwig)—That these bills be now read a second time.

Debate resumed.

Question put and passed.

Bills read a second time.

The Senate resolved itself into committee for the consideration of the bills.

In the committee

FINANCIAL SYSTEM LEGISLATION AMENDMENT (FINANCIAL CLAIMS SCHEME AND OTHER MEASURES) BILL 2008—

Bill taken as a whole by leave.

The Leader of the Australian Greens (Senator Bob Brown) moved the following amendment:

Page 2 (after line 11), after clause 3, insert:

4 Payments to executives of entities dealt with by this Act

- (1) No authorised deposit-taking institution or other entity which has deposits guaranteed, or which is otherwise protected or regulated under the provisions of this Act, shall pay any of its executives an annual salary of more than \$5 million, or ten times the base wage of the Prime Minister of Australia, whichever is the lesser.

- (2) In this section:

executive can include any person engaged or employed by the entity on any basis.

salary includes any remuneration paid, promised or guaranteed in any form, including through consultancy agreements and grants of shares or other interests, and including any payment made upon resignation or retirement, however described.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 5

Senators—

Brown, Bob Hanson-Young	Ludlam	Siewert (Teller)	Xenophon
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NOES, 44

Senators—

Arbib	Crossin	Furner	Parry (Teller)
Barnett	Eggleston	Hogg	Payne
Bilyk	Farrell	Humphries	Polley
Brown, Carol	Faulkner	Hurley	Pratt
Bushby	Feeney	Hutchins	Ryan
Cameron	Ferguson	Kroger	Scullion
Carr	Fielding	Ludwig	Sherry
Cash	Fierravanti-Wells	Lundy	Stephens
Colbeck	Fifield	Marshall	Sterle
Coonan	Fisher	McEwen	Trood
Cormann	Forshaw	McLucas	Wortley

Question negatived.

Bill further debated and agreed to.

FINANCIAL CLAIMS SCHEME (ADIS) LEVY BILL 2008

FINANCIAL CLAIMS SCHEME (GENERAL INSURERS) LEVY BILL 2008—

Bills, taken together and as a whole by leave, agreed to.

Bills to be reported without amendments.

The Deputy President (Senator Ferguson) resumed the chair and the Temporary Chair of Committees (Senator Trood) reported accordingly.

On the motion of the Minister for Superannuation and Corporate Law (Senator Sherry) the report from the committee was adopted and the bills read a third time.

21 TAX LAWS AMENDMENT (MEDICARE LEVY SURCHARGE THRESHOLDS) BILL (NO. 2) 2008

Order of the day read for the further consideration of the bill in committee of the whole.

In the committee

Consideration resumed of the bill—and of the amendments moved by Senator Xenophon:

Schedule 1, item 2, page 3 (line 13) to page 4 (line 6), omit proposed section 5A, substitute:

5A What is the *singles surcharge threshold*?

- (1) The *singles surcharge threshold* for a person for the 2008-09 year of income is \$69,000.
- (2) This threshold is indexed for each year of income after 2008-09 by multiplying the threshold by the indexation factor in subsection (3) and rounding the result down to the nearest multiple of \$1,000.
- (3) The *indexation factor* is:

$$\frac{\text{Sum of the index numbers for the CPI quarters for the 12 months ending on 31 March of the current year}}{\text{Sum of the index numbers for the CPI quarters for the 12 months ending on 31 March of the previous year}}$$

where:

CPI quarter means a period of 3 months ending 31 March, 30 June, 30 September or 31 December.

index number means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.

The indexation factor is to be calculated to 3 decimal places, but increased by .001 if the fourth decimal place is more than 4.

Calculations:

- (a) are to be made using only the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
- (b) are to disregard index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the reference base).

Schedule 1, item 4, page 4 (line 21), omit "\$150,000", substitute "\$138,000".

Schedule 1, item 4, page 4 (line 21), omit "\$153,000", substitute "\$141,000".

Schedule 1, item 7, page 5 (lines 5 to 24), omit proposed section 3AA, substitute:

3AA Meaning of *singles surcharge threshold*

- (1) The *singles surcharge threshold* for a person for the 2008-09 year of income is \$69,000.
- (2) This threshold is indexed for each year of income after 2008-09 by multiplying the threshold by the indexation factor in subsection (3) and rounding the result down to the nearest multiple of \$1,000.
- (3) The *indexation factor* is:

$$\frac{\text{Sum of the index numbers for the CPI quarters for the 12 months ending on 31 March of the current year}}{\text{Sum of the index numbers for the CPI quarters for the 12 months ending on 31 March of the previous year}}$$

where:

CPI quarter means a period of 3 months ending 31 March, 30 June, 30 September or 31 December.

index number means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician.

The indexation factor is to be calculated to 3 decimal places, but increased by .001 if the fourth decimal place is more than 4.

Calculations:

- (a) are to be made using only the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
- (b) are to disregard index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the reference base).

Schedule 1, item 8, page 6 (line 14), omit "\$150,000", substitute "\$138,000".

Schedule 1, item 8, page 6 (line 14), omit "\$153,000", substitute "\$141,000".

Senator Xenophon, by leave, withdrew the amendments.

Senator Siewert, also on behalf of Senator Xenophon, moved the following amendments together by leave:

Schedule 1, item 2, page 3 (line 15), omit "\$75,000", substitute "\$70,000".

Schedule 1, item 4, page 4 (line 21), omit "\$150,000", substitute "\$140,000".

Schedule 1, item 4, page 4 (line 21), omit "\$153,000", substitute "\$143,000".

Schedule 1, item 7, page 5 (line 7), omit "\$75,000", substitute "\$70,000".

Schedule 1, item 8, page 6 (line 14), omit "\$150,000", substitute "\$140,000".

Schedule 1, item 8, page 6 (line 14), omit "\$153,000", substitute "\$143,000".

Debate ensued.

At 12.45 pm: The Acting Deputy President (Senator Carol Brown) resumed the chair and the Temporary Chair of Committees reported progress.

22 ARCHIVES AMENDMENT BILL 2008

Order read for the adjourned debate on the motion of the Special Minister of State (Senator Faulkner)—That this bill be now read a second time.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of Senator Faulkner the bill was read a third time.

23 INTERNATIONAL TAX AGREEMENTS AMENDMENT BILL (NO. 2) 2008

Order read for the adjourned debate on the motion of the Minister for Human Services (Senator Ludwig)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Special Minister of State (Senator Faulkner) the bill was read a third time.

24 BROADCASTING LEGISLATION AMENDMENT (DIGITAL RADIO) BILL 2008

Order read for the adjourned debate on the motion of the Special Minister of State (Senator Faulkner)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of Senator Faulkner the bill was read a third time.

25 TAX LAWS AMENDMENT (MEDICARE LEVY SURCHARGE THRESHOLDS) BILL (NO. 2) 2008

Order of the day read for the further consideration of the bill in committee of the whole.

In the committee

Consideration resumed of the bill—and of the amendments moved by Senator Siewert, also on behalf of Senator Xenophon (see entry no. 21).

Debate resumed.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 33

Senators—

Arbib	Evans	Hurley	Pratt
Bilyk	Farrell	Hutchins	Sherry
Bishop	Faulkner	Ludlam	Siewert
Brown, Carol	Feeney	Ludwig	Sterle
Cameron	Fielding	Lundy	Wortley
Carr	Forshaw	Marshall	Xenophon
Collins	Furner	McEwen (Teller)	
Conroy	Hanson-Young	McLucas	
Crossin	Hogg	Polley	

NOES, 31

Senators—

Barnett	Colbeck	Heffernan	Parry
Bernardi	Coonan	Humphries	Payne
Birmingham	Cormann	Joyce	Ronaldson
Boswell	Ellison	Macdonald	Ryan
Boyce	Ferguson	Mason	Scullion
Brandis	Fierravanti-Wells	McGauran	Trood
Bushby	Fifield	Minchin	Williams (Teller)
Cash	Fisher	Nash	

Question agreed to.

On the motion of Senator Siewert the following amendment was debated and agreed to:

Page 2 (after line 2), after clause 3, insert:

4 Review of operation of Act

- (1) The Minister for Health and Ageing must cause an independent review of the operation of this Act to be undertaken as soon as possible after each anniversary of the commencement of this Act, for a period of three consecutive years.
- (2) The review is to consider and report on the impact on public hospitals of the amendments made by this Act, including the number of episodes of care, the impact on operating costs and the impact on elective surgery waiting lists.
- (3) The person undertaking the review must give the Minister a written report of the review, and the Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of receiving the report.

Bill, as amended, agreed to.

Bill to be reported with amendments.

The President resumed the chair and the Chair of Committees (Senator Ferguson) reported accordingly.

On the motion of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) the report from the committee was adopted.

Senator Conroy moved—That this bill be now read a third time.

Question put.

The Senate divided—

AYES, 33

Senators—

Arbib	Evans	Hurley	Pratt
Bilyk	Farrell	Hutchins	Sherry
Bishop	Faulkner	Ludlam	Siewert
Brown, Carol	Feeny	Ludwig	Sterle
Cameron	Fielding	Lundy	Wortley
Carr	Forshaw	Marshall	Xenophon
Collins	Furner	McEwen (Teller)	
Conroy	Hanson-Young	McLucas	
Crossin	Hogg	Polley	

NOES, 30

Senators—

Abetz	Cash	Heffernan	Payne
Barnett	Colbeck	Humphries	Ronaldson
Bernardi	Coonan	Joyce	Ryan
Birmingham	Cormann	Kroger	Scullion
Boswell	Ellison	Mason	Trood
Boyce	Ferguson	McGauran	Williams (Teller)
Brandis	Fierravanti-Wells	Nash	
Bushby	Fifield	Parry	

Question agreed to.

Bill read a third time.

At 2 pm—

26 QUESTIONS

Questions without notice were answered.

27 MOTION TO TAKE NOTE OF ANSWERS

Senator Boswell moved—That the Senate take note of the answers given by ministers to questions without notice asked today.

Debate ensued.

Question put and passed.

28 YOUTH—AUSTRALIAN YOUTH FORUM—MINISTERIAL STATEMENT—DOCUMENT

The Minister for Human Services (Senator Ludwig) tabled the following document:

Youth—Australian Youth Forum—Ministerial statement by the Minister for Youth (Ms Ellis), dated 16 October 2008.

29 DEPARTMENT OF THE SENATE—REPORT FOR 2007-08—DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document:

Department of the Senate—Report for 2007-08.

Document ordered to be printed on the motion of Senator Carol Brown.

30 DEPARTMENT OF PARLIAMENTARY SERVICES—REPORT FOR 2007-08—DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document:

Department of Parliamentary Services—Report for 2007-08.

31 PARLIAMENTARY SERVICE COMMISSIONER—REPORT FOR 2007-08—DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document:

Parliamentary Service Commissioner—Report for 2007-08.

Document ordered to be printed on the motion of Senator Carol Brown.

32 AUDITOR-GENERAL—REPORT FOR 2007-08—DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document:

Auditor-General—Report for 2007-08.

33 AUDITOR-GENERAL—AUDIT REPORT NO. 7 OF 2008-09—DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document:

Auditor-General—Audit report no. 7 of 2008-09—Performance audit—Centrelink's tip-off system.

34 TREATIES—JOINT STANDING COMMITTEE—95TH REPORT

Senator Parry, on behalf of the Joint Standing Committee on Treaties, tabled the following report:

Treaties—Joint Standing Committee—95th Report—Treaties tabled on 4 June, 17 June, 25 June and 26 August 2008, dated October 2008.

Senator Parry, by leave, moved—That the Senate take note of the report.

Question put and passed.

35 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 14 OF 2008

Senator Carol Brown, by leave and at the request of the Acting Chair of the Selection of Bills Committee (Senator McEwen), tabled the following report:

SELECTION OF BILLS COMMITTEE

REPORT NO. 14 OF 2008

1. The committee met in private session on Thursday, 16 October 2008 at 12.05 pm.
2. The committee resolved to recommend—That the *provisions* of the Aged Care Amendment (2008 Measures No. 2) Bill 2008 be *referred immediately* to the Community Affairs Committee for inquiry and report by 20 November 2008.
3. The committee resolved to recommend—That the following bills *not* be referred to committees:
 - Customs Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008
 - Customs Tariff Amendment (Australia-Chile Free Trade Agreement Implementation) Bill 2008.

The committee recommends accordingly.

Anne McEwen
Acting Chair
16 October 2008.

Senator Carol Brown moved—That the report be adopted.

Question put and passed.

36 FOREIGN AFFAIRS, DEFENCE AND TRADE—STANDING COMMITTEE—REPORT—AUSTRALIA'S INVOLVEMENT IN PEACEKEEPING OPERATIONS—DOCUMENT

Senator Carol Brown, at the request of the Chair of the Foreign Affairs, Defence and Trade Committee (Senator Bishop), tabled the following document:

Foreign Affairs, Defence and Trade—Standing Committee—Report—Australia's involvement in peacekeeping operations—Addendum.

Document ordered to be printed on the motion of Senator Carol Brown.

37 DOCUMENTS

The following documents were tabled by the Clerk:

Aged Care Act—Aged Care (Conditions of Allocation – Extended Aged Care at Home – Dementia) Determination 2008 (No. 1) [F2008L03765]*.

Civil Aviation Act—Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—

AD/BD-700/1—Elevator PCU Attachment Bolts [F2008L03774]*.

AD/BELL 206/49—Hydraulic Servo Actuator Servo Valve Drive Locknut – Inspection [F2008L03662]*.

AD/BELL 206/52—Heater Fuel Line P/N 206-070-231-1 – Inspection [F2008L03664]*.

AD/BELL 206/54—Tail Rotor Gearbox Assembly – Inspection [F2008L03665]*.

AD/BELL 206/56 Amdt 1—Starter Generator Retaining Clamp T Bolt – Inspection [F2008L03666]*.

AD/BELL 206/58—Full Cell Cavity and Vent Line Modification [F2008L03667]*.

AD/BELL 206/59—Oil Pressure Tube Assemblies – Inspection and Replacement [F2008L03669]*.

AD/BELL 206/60 Amdt 1—Flight Control System Bolts – Inspection and Replacement [F2008L03670]*.

AD/BELL 206/67—Tail Rotor Drive – Inspection of Clamp Type Bearing Hangars [F2008L03671]*.

AD/BELL 206/70 Amdt 2—Hydraulic Servo Actuator Support Assembly – Inspection [F2008L03672]*.

AD/BELL 206/71—Main Rotor Split Cone Set – Inspection [F2008L03673]*.

AD/BELL 206/78—Freewheeling Outer Race Shaft – Inspection [F2008L03674]*.

AD/BELL 206/88—Battery Relay Diode Assembly P/N 30-037-13 – Replacement [F2008L03675]*.

AD/BELL 206/96—Fuel Supply Tube Assembly [F2008L03676]*.

AD/BELL 206/97 Amdt 2—Quick Disconnect Dual Controls [F2008L03677]*.

AD/BELL 206/105 Amdt 1—Airframe Fuel Filter Assembly [F2008L03678]*.

AD/BELL 206/106—Float Inflation Valve [F2008L03679]*.

AD/BELL 206/110—Tail Rotor Pitch Links [F2008L03680]*.

AD/BELL 206/111 Amdt 2—Engine Fuel Valve Electrical Connectors P/N MS3456W14S-5S [F2008L03681]*.

AD/BELL 206/124 Amdt 1—Driveshaft Seal [F2008L03684]*.

AD/CASA/30—Autopilot Servo Drive Actuators [F2008L03685]*.

AD/CL-600/87 Amdt 1—Flap Failure [F2008L03686]*.

AD/CL-600/103—Refuel/Defuel Valve Electrical Bonding [F2008L03687]*.

AD/DH 90/1—Fire Precaution Measures on Refuelling [F2008L03688]*.

AD/DH 104/11—Engine Instrument Arrangement – Modification [F2008L03689]*.

AD/DH 104/16—Flap System Modification to Prevent Crossing of Pneumatic Lines [F2008L03690]*.

AD/DHC-2/2—Hydraulic Control Unit – Selector Lever Hub Inspection [F2008L03691]*.

AD/EC 225/5—Main Rotor Blade Leading Edge Protective Strip [F2008L03704]*.

AD/EMB-120/45 Amdt 1—Stall Warning Computer [F2008L03692]*.

AD/PA-24/24—Propeller Inspection and Operating Instructions [F2008L03695]*.

AD/PA-24/34—Automatic Pilot Roll Servo Shear Pin – Installation [F2008L03694]*.

AD/PA-34/1—Compass Installation – Inspection for Accuracy [F2008L03696]*.

AD/PA-34/26—Fuel Line – Inspection and Modification [F2008L03702]*.

AD/PA-34/30—Hose Assembly – Inspection and Replacement [F2008L03703]*.

AD/PREMIER/5—Cabin Altitude and Barometric Pressure Switches [F2008L03769]*.

Classification (Publications, Films and Computer Games) Act—Select Legislative Instrument 2008 No. 199—Classification (Publications, Films and Computer Games) Amendment Regulations 2008 (No. 1) [F2008L03529]*.

Customs Act—Tariff Concession Orders—

0808251 [F2008L03549]*.

0808275 [F2008L03548]*.

0808302 [F2008L03547]*.

0808724 [F2008L03546]*.

0808853 [F2008L03545]*.

0808856 [F2008L03544]*.

0808968 [F2008L03586]*.

0808971 [F2008L03587]*.

0810248 [F2008L03585]*.

Federal Court of Australia Act—Select Legislative Instrument 2008 No. 206—Federal Court (Corporations) Amendment Rules 2008 (No. 2) [F2008L03766]*.

Higher Education Support Act—VET Provider Approvals—

(No. 5 of 2008) [F2008L03777]*.

(No. 6 of 2008) [F2008L03789]*.

Mutual Assistance in Criminal Matters Act—Select Legislative Instrument 2008 No. 200—Mutual Assistance in Criminal Matters (Thailand) Regulations 2008 [F2008L03492]*.

National Health Act—Instruments Nos PB—

103 of 2008—Amendment determination – pharmaceutical benefits [F2008L03779]*.

104 of 2008—Amendment determination – responsible persons [F2008L03780]*.

105 of 2008—Amendment determination – conditions [F2008L03781]*.

Radiocommunications Act—

Radiocommunications (861-865 MHz Land Stations and Handsets) Class Licence Revocation 2008 [F2008L03752]*.

Radiocommunications (Cordless Telecommunications Devices) Class Licence Variation 2008 (No. 1) [F2008L03751]*.

Radiocommunications Miscellaneous Devices Class Licence Variation 2008 (No. 1) [F2008L03753]*.

Telecommunications Act—

Telecommunications Technical Standard (Customer Access Equipment for connection to a Telecommunications Network AS/ACIF S003:2008) 2008 [F2008L03757]*.

Telecommunications Technical Standard (Requirements for connection to an air interface of a Telecommunications Network — Part 1: General — AS/ACIF S042.1:2008) 2008 [F2008L03764]*.

Telecommunications Technical Standard (Requirements for Customer Equipment for connection to a metallic local loop interface of a Telecommunications Network — Part 2: Broadband — AS/ACIF S043.2:2008) 2008 [F2008L03763]*.

Telecommunications Technical Standard (Requirements for Customer Equipment for connection to a metallic local loop interface of a Telecommunications Network — Part 3: DC, low frequency AC and voiceband — AS/ACIF S043.3:2008) 2008 [F2008L03755]*.

Telecommunications Technical Standard (Requirements for Customer Equipment, operating in the voiceband, for connection to the non-switched Telecommunications Network AS/ACIF S006:2008) 2008 [F2008L03762]*.

Telecommunications Technical Standard (Voice frequency performance requirements for Customer Equipment AS/ACIF S004:2008) 2008 [F2008L03750]*.

* Explanatory statement tabled with legislative instrument.

38 DEPARTMENTAL AND AGENCY APPOINTMENTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The following document was tabled pursuant to the order of the Senate of 24 June 2008:

Departmental and agency appointments—Supplementary budget estimates—Statement of compliance—Environment, Heritage and the Arts portfolio agencies.

39 DEPARTMENTAL AND AGENCY GRANTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The following documents were tabled pursuant to the order of the Senate of 24 June 2008:

Departmental and agency grants—Supplementary budget estimates—Statements of compliance—
Environment, Heritage and the Arts portfolio agencies.
Health and Ageing portfolio agencies.

40 ROUTINE OF BUSINESS—VARIATION

The Minister for Human Services (Senator Ludwig), by leave, moved—That the routine of business for the remainder of the day be as follows:

- (a) not later than 6 pm, consideration of government documents under general business; and
- (b) not later than 7 pm, consideration of committee reports, government responses and Auditor-General's reports.

Question put and passed.

41 FAMILY LAW AMENDMENT (DE FACTO FINANCIAL MATTERS AND OTHER MEASURES) BILL 2008

Order of the day read for the consideration of the bill in committee of the whole.

In the committee

Bill taken as a whole by leave.

On the motion of the Minister for Human Services (Senator Ludwig) the following amendments were debated and agreed to:

Clause 2, page 2 (table item 2), omit the table item, substitute:

2. Schedule 1, items 1 to 4	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
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2A. Schedule 1, item 5	The day on which this Act receives the Royal Assent.
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2B. Schedule 1, items 6 to 20	At the same time as the provision(s) covered by table item 2.
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2C. Schedule 1, item 21	The day on which this Act receives the Royal Assent.
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2D. Schedule 1, items 22 to 93	At the same time as the provision(s) covered by table item 2.
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Clause 2, page 2 (after table item 6), insert:

6A. Schedule 3A	The day on which this Act receives the Royal Assent.
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Schedule 1, item 4, page 5 (line 25), before “the property”, insert “the distribution of”.

Schedule 1, item 4, page 5 (line 27), before “the vested”, insert “the distribution of”.

Schedule 1, item 18, page 9 (line 6), omit “or de facto relationship”, substitute “, de facto relationship or former de facto relationship”.

Schedule 1, item 45, page 20 (lines 28 and 29), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement (that is binding on the person)”.

Schedule 1, item 50, page 23 (after line 31), at the end of the definition of *de facto financial provisions* in subsection 90RC(1), add:
; (d) subsection 114(2A).

Schedule 1, item 50, page 24 (line 21), after “State”, insert “or Territory”.

Schedule 1, item 50, page 24 (line 27), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on the parties”.

Schedule 1, item 50, page 27 (line 18), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on the parties to the agreement”.

Schedule 1, item 50, page 45 (lines 14 and 15), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement (that is binding on the person)”.

Schedule 1, item 50, page 45 (line 23), omit “binding financial agreement”, substitute “financial agreement (that is binding on the person)”.

Schedule 1, item 50, page 57 (lines 26 and 27), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on them”.

Schedule 1, item 50, page 58 (line 21), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on them”.

Schedule 1, item 50, page 59 (line 12), before “de facto relationship”, insert “former”.

Schedule 1, item 50, page 59 (line 15), before “de facto relationship”, insert “former”.

Schedule 1, item 50, page 59 (line 16), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on them”.

Schedule 1, item 50, page 59 (line 20), before “de facto relationship”, insert “former”.

Schedule 1, item 50, page 59 (line 27), before “de facto relationship”, insert “former”.

Schedule 1, item 50, page 60 (lines 19 and 20), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on them”.

Schedule 1, item 50, page 61 (line 4), omit “Note”, substitute “Note 1”.

Schedule 1, item 50, page 61 (after line 6), at the end of subsection 90UE(1), add:

Note 2: Part 2 of Schedule 1 to the Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008 deems certain agreements, made under a law of a State that is or becomes a participating jurisdiction, or made under a law of a Territory, to be Part VIIIAB financial agreements.

Schedule 1, item 50, page 61 (line 31), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on the parties to the agreement”.

Schedule 1, item 50, page 62 (lines 28 to 30), omit “(or last signed by a spouse party to the agreement, if both spouse parties to the agreement have signed)”.

Schedule 1, item 50, page 63 (line 3), omit “binding Part VIIIAB financial agreement”, substitute “Part VIIIAB financial agreement that is binding on the parties to the agreement”.

Schedule 1, Part 1, page 80 (after line 9), at the end of the Part, add:

84A After subsection 114(2)

Insert:

(2A) In a de facto financial cause (other than proceedings referred to in, or relating to, paragraph (e) or (f) of the definition of *de facto financial cause* in subsection 4(1)) the court may:

(a) make such order or grant such injunction as it considers proper with respect to the use or occupancy of a specified residence of the parties to the de facto relationship or either of them; and

(b) if it makes an order or grants an injunction under paragraph (a)—make such order or grant such injunction as it considers proper with respect to restraining a party to the de facto relationship from entering or remaining in:

(i) that residence; or

- (ii) a specified area in which that residence is situated; and
- (c) make such order or grant such injunction as it considers proper with respect to the property of the parties to the de facto relationship or either of them.

Sections 90SB and 90SK apply in relation to an order or injunction under this subsection in a corresponding way to the way in which those sections apply in relation to an order under section 90SM.

Note 1: This subsection does not apply to proceedings referred to in paragraph (g) of the definition of *de facto financial cause* that relate to proceedings referred to in paragraph (e) or (f) of that definition.

Note 2: The same requirements in sections 90SB (length of relationship etc.) and 90SK (geographical requirements) for section 90SM orders must be satisfied for orders and injunctions under this subsection.

Schedule 1, item 89, page 85 (line 4), after “VIII B”, insert “, and subsection 114(2A),”.

Schedule 1, item 91, page 86 (lines 38 and 39), omit “binding Part VIII AB financial agreement”, substitute “Part VIII AB financial agreement that is binding on them”.

Schedule 1, item 92, page 88 (lines 15 and 16), omit “binding Part VIII AB financial agreement”, substitute “Part VIII AB financial agreement that is binding on them”.

Schedule 3, item 16, page 101 (lines 24 to 26), omit “(or last signed by a spouse party to the agreement, if both spouse parties to the agreement have signed)”.

Schedule 3, item 17, page 102 (line 3), omit “binding financial agreement”, substitute “financial agreement that is binding on the parties to the agreement”.

Schedule 3, item 17, page 102 (line 6), omit “binding financial agreement”, substitute “financial agreement that is binding on the parties to the agreement”.

Schedule 3, item 30, page 104 (line 6), omit “binding financial agreement”, substitute “financial agreement that is binding on the parties to the agreement”.

Schedule 4, page 109 (before line 5), before item 1, insert:

1A Paragraph 60I(5)(a)

Omit “the date fixed by Proclamation for the purposes of this paragraph”, substitute “1 July 2008”.

Note: The heading to subsection 60I(5) is altered by omitting “*first proclaimed date*” and substituting “*30 June 2008*”.

1B Subsection 60I(6)

Omit “the date fixed by Proclamation for the purposes of this subsection”, substitute “1 July 2008”.

Note: The heading to subsection 60I(6) is altered by omitting “*second proclaimed date*” and substituting “1 July 2008”.

Senator Brandis moved the following amendment:

Schedule 1, item 21, page 10 (lines 20 to 25), omit subsection (5), substitute:

- (5) For the purposes of this Act a de facto relationship can exist between 2 persons of different sexes and between 2 persons of the same sex.

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

On the motion of Senator Ludwig the following requests for amendments were debated and agreed to:

That the House of Representatives be requested to make the following amendments:

Schedule 1, item 50, page 23 (lines 3 to 21), omit section 90RB, substitute:

90RB Meaning of *child of a de facto relationship*

For the purposes of this Part, a child is a *child of a de facto relationship* if the child is the child of both of the parties to the de facto relationship.

Note: To determine who is a child of a person see Subdivision D of Division 1 of Part VII.

Schedule 1, item 50, page 29 (line 24), omit “application time.”, substitute:
application time;

or that the alternative condition in subsection (1A) is met.

Schedule 1, item 50, page 29 (after line 24), after subsection 90SD(1), insert:

- (1A) The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.

Schedule 1, item 50, page 29 (lines 27 to 31), omit subsection 90SD(3), substitute:

- (3) If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

Schedule 1, item 50, page 39 (line 25), omit “application time.”, substitute:
application time;

or that the alternative condition in subsection (1A) is met.

Schedule 1, item 50, page 39 (after line 25), after subsection 90SK(1), insert:

- (1A) The alternative condition is that the parties to the de facto relationship were ordinarily resident in a participating jurisdiction when the relationship broke down.

Schedule 1, item 50, page 39 (lines 28 to 32), omit subsection 90SK(3), substitute:

- (3) If each State is a referring State, the Governor-General may, by Proclamation, fix a day as the day on which paragraph (1)(b), and the alternative condition in subsection (1A), cease to apply in relation to new applications.

Note: Paragraph (1)(b) and subsection (1A) will continue to apply in relation to applications made before the proclaimed day.

Schedule 1, item 85, page 81 (after line 6), after the definition of *commencement*, insert:

designated agreed matters, in relation to 2 persons, means the following:

- (a) how all or any of the:
 - (i) property; or
 - (ii) financial resources;
 of either person, or both persons, at the time when the agreement is made, or at a later time and during a de facto relationship between them, is to be distributed;
- (b) the maintenance of either of the persons;

in the event of the breakdown of a de facto relationship between them, or in relation to a de facto relationship between them that has broken down, as the case requires.

Schedule 1, item 85, page 81 (before line 7), before the definition of *earlier participating jurisdiction*, insert:

designated State/Territory financial agreement, in relation to 2 persons, means a written agreement:

- (a) signed by both of them with respect to matters that include any designated agreed matters; and
- (b) made under a preserved law of a State or Territory; and
- (c) in relation to which, either:
 - (i) a court could not, because of that preserved law, make an order under that law that is inconsistent with the agreement with respect to any of the designated agreed matters; or
 - (ii) a court could not, because of that preserved law, make an order under that law that is with respect to any of the designated agreed matters.

Schedule 1, heading to Division 2, page 81 (lines 22 to 24), omit the heading, substitute:

Division 2—Application of new Act to de facto relationships breaking down before commencement

Schedule 1, item 86, page 81 (line 27), omit “Parts VIIIAB and VIIIIB of the new Act do not extend”, substitute “Subject to item 86A, Parts VIIIAB and VIIIIB, and subsection 114(2A), of the new Act do not apply in relation”.

Schedule 1, page 82 (after line 17), after item 86, insert:

86A Opting into the new regime

Choosing the new regime

- (1) The parties to a de facto relationship that broke down before commencement may choose for Parts VIIIAB and VIIIIB, and subsection 114(2A), of the new Act to apply in relation to the de facto relationship.

Note 1: Whether the parties will be able to obtain an order under those provisions of the new Act, or make a Part VIIIAB financial agreement, will depend on whether the tests found in those provisions are satisfied for the de facto relationship.

Note 2: Divisions 3 and 4 of this Part, and section 90UE of the new Act, are not affected by a choice under this item. Those Divisions, and that section, relate to de facto relationships that (if they are to break down) will break down after commencement.

When a choice can be made

- (2) A choice under subitem (1) can be made if:
- (a) the choice is unconditional; and
 - (b) subitems (3), (4) and (5) are satisfied for the choice.
- A choice is irrevocable.
- (3) This subitem is satisfied for the choice if no order (other than an interim order) under a preserved law of a State or Territory has been made by a court in relation to either of the following:
- (a) how all or any of the:
 - (i) property; or
 - (ii) financial resources;
 that either or both of the parties to the de facto relationship had or acquired during the de facto relationship is to be distributed;
 - (b) the maintenance of either of the parties to the de facto relationship.
- (4) This subitem is satisfied for the choice if:
- (a) the parties have not made a designated State/Territory financial agreement in relation to their de facto relationship; or
 - (b) if the parties have made such an agreement, that agreement has ceased to have effect without:
 - (i) any property being distributed; or
 - (ii) any maintenance being paid;
 under the agreement.
- (5) This subitem is satisfied for the choice if:
- (a) the choice is in writing and signed by both of the parties to the de facto relationship; and
 - (b) each of the parties was provided, before the choice was signed by him or her, with:
 - (i) independent legal advice from a legal practitioner about the advantages and disadvantages, at the time that the advice was provided, to the party of making the choice; and
 - (ii) a signed statement by the legal practitioner stating that this advice was given to the party.
- (6) For the purposes of Part VIIIAB of the new Act, a choice can be included in a Part VIIIAB financial agreement for which the parties are the spouse parties.

Setting aside a choice

- (7) A court may make an order setting aside a choice if the court is satisfied that, having regard to the circumstances in which the choice was made, it would be unjust and inequitable if the court does not set the choice aside.

- (8) A court setting aside a choice under subitem (7) may make such order or orders (including an order for the transfer of property) as it considers just and equitable to, so far as is practicable, return the rights of:
- (a) the parties to the de facto relationship; and
 - (b) any other interested persons affected by the choice;
- to their position immediately before the choice was made.
- (9) Subsections 90UM(8) and (9) of the new Act apply in relation to setting aside a choice as if:
- (a) a reference in those subsections to subsection 90UM(1) or (6) of the new Act were a reference to subitem (7) or (8); and
 - (b) the reference in those subsections to section 90UM of the new Act were a reference to this item.

Schedule 1, item 89, page 85 (line 5), omit “extend”, substitute “apply in relation”.

Schedule 1, item 89, page 85 (line 6), omit “extend”, substitute “apply in relation”.

Schedule 1, item 89, page 85 (line 8), omit “Note”, substitute “Note 1”.

Schedule 1, item 89, page 85 (line 12), omit “extend”, substitute “apply in relation”.

Schedule 1, item 89, page 85 (after line 13), after the note, insert:

Note 2: The cases covered by paragraph (a) include a case where a de facto relationship has broken down before the transition time for the State and the parties to the relationship make a choice under item 90A.

Schedule 1, item 90, page 85 (line 35), omit “Parts VIIIAB and VIIIB of the new Act do not extend”, substitute “Subject to item 90A, Parts VIIIAB and VIIIB, and subsection 114(2A), of the new Act do not apply in relation”.

Schedule 1, page 86 (after line 17), after item 90, insert:

90A Opting into the new regime

Choosing the new regime

- (1) The parties to a de facto relationship that broke down before the transition time for the State may choose for Parts VIIIAB and VIIIB, and subsection 114(2A), of the new Act to apply in relation to the de facto relationship.

Note 1: Whether the parties will be able to obtain an order under those provisions of the new Act, or make a Part VIIIAB financial agreement, will depend on whether the tests found in those provisions are satisfied for the de facto relationship.

Note 2: Items 91 and 92 are not affected by a choice under this item. Those items relate to de facto relationships that (if they are to break down) will break down after the transition time for the State.

When a choice can be made

- (2) A choice under subitem (1) can be made if:
- (a) the choice is unconditional; and
 - (b) subitems (3), (4) and (5) are satisfied for the choice.

A choice is irrevocable.

- (3) This subitem is satisfied for the choice if no order (other than an interim order) under a preserved law of a State or Territory has been made by a court in relation to either of the following:
- (a) how all or any of the:
 - (i) property; or

- (ii) financial resources; that either or both of the parties to the de facto relationship had or acquired during the de facto relationship is to be distributed;
 - (b) the maintenance of either of the parties to the de facto relationship.
 - (4) This subitem is satisfied for the choice if:
 - (a) the parties have not made a designated State/Territory financial agreement in relation to their de facto relationship; or
 - (b) if the parties have made such an agreement, that agreement has ceased to have effect without:
 - (i) any property being distributed; or
 - (ii) any maintenance being paid; under the agreement.
 - (5) This subitem is satisfied for the choice if:
 - (a) the choice is in writing and signed by both of the parties to the de facto relationship; and
 - (b) each of the parties was provided, before the choice was signed by him or her, with:
 - (i) independent legal advice from a legal practitioner about the advantages and disadvantages, at the time that the advice was provided, to the party of making the choice; and
 - (ii) a signed statement by the legal practitioner stating that this advice was given to the party.
 - (6) For the purposes of Part VIIIAB of the new Act, a choice can be included in a Part VIIIAB financial agreement for which the parties are the spouse parties.
- Setting aside a choice*
- (7) A court may make an order setting aside a choice if the court is satisfied that, having regard to the circumstances in which the choice was made, it would be unjust and inequitable if the court does not set the choice aside.
 - (8) A court setting aside a choice under subitem (7) may make such order or orders (including an order for the transfer of property) as it considers just and equitable to, so far as is practicable, return the rights of:
 - (a) the parties to the de facto relationship; and
 - (b) any other interested persons affected by the choice;
 to their position immediately before the choice was made.
 - (9) Subsections 90UM(8) and (9) of the new Act apply in relation to setting aside a choice as if:
 - (a) a reference in those subsections to subsection 90UM(1) or (6) of the new Act were a reference to subitem (7) or (8); and
 - (b) the reference in those subsections to section 90UM of the new Act were a reference to this item.

Senator Ludwig moved the following request for amendment:

That the House of Representatives be requested to make the following amendment:
Page 108 (after line 17), after Schedule 3, insert:

Schedule 3A—Children

Family Law Act 1975

1 Subsection 4(1)

Insert:

child: Subdivision D of Division 1 of Part VII affects the situations in which a child is a child of a person or is a child of a marriage or other relationship.

Note: In determining if a child is the child of a person within the meaning of this Act, it is to be assumed that Part VII extends to all States and Territories.

2 Before section 60F

Insert:

60EA Definition of *de facto partner*

For the purposes of this Subdivision, a person is the *de facto partner* of another person if:

- (a) a relationship between the person and the other person (whether of the same sex or a different sex) is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
- (b) the person is in a de facto relationship with the other person.

3 Paragraph 60F(1)(c)

After “subsection 60H(1)”, insert “or section 60HB”.

4 After subsection 60F(4)

Insert:

- (4A) To avoid doubt, for the purposes of this Act a child of a marriage is a child of the husband and of the wife in the marriage.

5 Subsection 60G(2)

After “paragraph 60F(4)(a)”, insert “, or paragraph 60HA(3)(a)”.

6 Subsection 60H(1)

Repeal the subsection, substitute:

(1) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to, or a de facto partner of, another person (the *other intended parent*); and

- (b) either:
- (i) the woman and the other intended parent consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; or
 - (ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of the other intended parent;

then, whether or not the child is biologically a child of the woman and of the other intended parent, for the purposes of this Act:

- (c) the child is the child of the woman and of the other intended parent; and
- (d) if a person other than the woman and the other intended parent provided genetic material—the child is not the child of that person.

7 Subsection 60H(4)

Repeal the subsection.

8 At the end of Subdivision D of Division 1 of Part VII

Add:

60HA Children of de facto partners

- (1) For the purposes of this Act, a child is the child of a person who has, or had, a de facto partner if:
 - (a) the child is a child of the person and the person's de facto partner; or
 - (b) the child is adopted by the person and the person's de facto partner or by either of them with the consent of the other; or
 - (c) the child is, under subsection 60H(1) or section 60HB, a child of the person and the person's de facto partner.

This subsection has effect subject to subsection (2).

- (2) A child of current or former de facto partners ceases to be a child of those partners for the purposes of this Act if the child is adopted by a person who, before the adoption, is not a prescribed adopting parent.
- (3) The following provisions apply in relation to a child of current or former de facto partners who is adopted by a prescribed adopting parent:
 - (a) if a court granted leave under section 60G for the adoption proceedings to be commenced—the child ceases to be a child of those partners for the purposes of this Act;
 - (b) in any other case—the child continues to be a child of those partners for the purposes of this Act.
- (4) In this section:

this Act includes:

 - (a) the standard Rules of Court; and
 - (b) the related Federal Magistrates Rules.

60HB Children born under surrogacy arrangements

- (1) If a court has made an order under a prescribed law of a State or Territory to the effect that:
 - (a) a child is the child of one or more persons; or
 - (b) each of one or more persons is a parent of a child;then, for the purposes of this Act, the child is the child of each of those persons.
- (2) In this section:

this Act includes:

 - (a) the standard Rules of Court; and
 - (b) the related Federal Magistrates Rules.

9 Application*Application to children*

- (1) Subject to subitems (2) to (8), the amendments made by this Schedule apply in relation to a child born before, on or after the commencement of this item.

Application to the Aged Care Act 1997

- (2) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect subparagraph 44-11(2)(a)(i) of the *Aged Care Act 1997*, they apply in relation to that subparagraph on and after 1 July 2009.

Application to the A New Tax System (Family Assistance) Act 1999

- (3) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph 22(2)(b) of the *A New Tax System (Family Assistance) Act 1999*, they apply in relation to that paragraph on and after 1 July 2009.

Application to the Child Support (Assessment) Act 1989

- (4) To the extent that the amendment of subsection 60H(1), and the repeal of subsection 60H(4), of the *Family Law Act 1975* made by this Schedule affect paragraph (b) of the definition of **parent** in subsection 5(1) of the *Child Support (Assessment) Act 1989*, they apply in relation to that paragraph on and after 1 July 2009.

Application to the Child Support (Registration and Collection) Act 1988

- (5) To the extent that the amendment of paragraph 60F(1)(c) of the *Family Law Act 1975* made by this Schedule affects the definition of **child of a marriage** in subsection 4(1) of the *Child Support (Registration and Collection) Act 1988*, it applies in relation to that definition on and after 1 July 2009.

Application to the Health Insurance Act 1973

- (6) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph (a) of the definition of **dependent child** in subsection 10AA(7) of the *Health Insurance Act 1973*, they apply in relation to that paragraph on and after 1 January 2009.

Application to the National Health Act 1953

- (7) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph 84(4)(b), and paragraph (a) of the definition of ***dependent child*** in subsection 84B(4), of the *National Health Act 1953*, they apply in relation to those paragraphs on and after 1 January 2009.

Application to the Social Security Act 1991

- (8) To the extent that the amendments of the *Family Law Act 1975* made by this Schedule affect paragraph 5(2)(a), subparagraph (b)(i) of point 1067G-B3AA, subparagraph (b)(i) of subpoint 1067G-G9(2) and subparagraph (a)(i) of point 1068-B1B of the *Social Security Act 1991*, they apply in relation to those provisions on and after 1 July 2009.

Explanatory memoranda: Senator Ludwig tabled a supplementary explanatory memorandum and a revised supplementary explanatory memorandum relating to the government amendments and requests for amendments to be moved to the bill.

Debate ensued.

Senator Brandis moved the following amendment to Senator Ludwig's proposed request for amendment:

Proposed new Schedule 3A, omit item 6, substitute:

6 Subsection 60H(1)

Repeal the subsection, substitute:

(1) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to another person (her ***husband***); and
- (b) either:
 - (i) the woman and her husband consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; or
 - (ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of her husband;

then, whether or not the child is biologically a child of the woman and of her husband, for the purposes of this Act:

- (c) the child is the child of the woman and of her husband; and
- (d) if a person other than the woman and her husband provided genetic material—the child is not the child of that person.

(1A) If:

- (a) a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was a de facto partner of another person (the ***other person in the relationship***); and

- (b) either:
 - (i) the woman and the other person in the relationship consented to the carrying out of the procedure, and any other person who provided genetic material used in the procedure consented to the use of the material in an artificial conception procedure; or
 - (ii) under a prescribed law of the Commonwealth or of a State or Territory, the child is a child of the woman and of the other person in the relationship;

then, whether or not the child is biologically a child of the woman and of the other person in the relationship, for the purposes of this Act:

- (c) the child is the child of the woman, and is deemed to be the child of the other person in the relationship; and
- (d) if a person other than the woman and the other person in the relationship provided genetic material—the child is not the child of that person.

Debate ensued.

Question—That Senator Brandis’ amendment to Senator Ludwig’s proposed request be agreed to—put.

The committee divided—

AYES, 27

Senators—

Abetz	Colbeck	Fisher	McGauran
Adams (Teller)	Coonan	Heffernan	Parry
Bernardi	Cormann	Humphries	Payne
Boyce	Ellison	Joyce	Ronaldson
Brandis	Ferguson	Kroger	Ryan
Bushby	Fielding	Macdonald	Trood
Cash	Fifield	Mason	

NOES, 27

Senators—

Arbib	Crossin	Hurley	Polley
Bilyk	Farrell	Hutchins	Sherry
Bishop	Feeney	Ludlam	Siewert
Brown, Bob	Forshaw	Lundy	Sterle
Brown, Carol	Furner	Marshall	Wortley
Cameron	Hanson-Young	McEwen (Teller)	Xenophon
Collins	Hogg	McLucas	

The ayes and noes were equal and so the question was negatived.

Question—That the request be agreed to—put and passed.

Bill, as amended, agreed to subject to requests.

Bill to be reported with amendments and requests.



The President resumed the chair and the Chair of Committees (Senator Ferguson) reported accordingly.

On the motion of Senator Ludwig the report from the committee was adopted.

- 42 **OFFSHORE PETROLEUM AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008**
OFFSHORE PETROLEUM (ANNUAL FEES) AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008
OFFSHORE PETROLEUM (REGISTRATION FEES) AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008
OFFSHORE PETROLEUM (SAFETY LEVIES) AMENDMENT (GREENHOUSE GAS STORAGE) BILL 2008

Order of the day read for the adjourned debate on the motions of the Minister for Superannuation and Corporate Law (Senator Sherry) and the Minister for Human Services (Senator Ludwig)—That these bills be now read a second time.

Debate resumed.

At 6 pm: Debate was interrupted.

43 **COMMITTEE MEMBERSHIP**

The Acting Deputy President (Senator Forshaw) informed the Senate that the President had received letters requesting changes in the membership of committees.

The Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas), by leave, moved—That senators be discharged from and appointed to committees as follows:

Community Affairs—Standing Committee—

Appointed—

Substitute member: Senator Crossin to replace Senator Carol Brown for the committee's inquiry into Government expenditure on Indigenous affairs and social services in the Northern Territory

Participating member: Senator Carol Brown

Foreign Affairs, Defence and Trade—Standing Committee—

Discharged—Senator Cormann

Appointed—Senator Ferguson.

Question put and passed.

44 **GOVERNMENT DOCUMENTS—ORDERS OF THE DAY—CONSIDERATION**

The following orders of the day relating to government documents were considered:

Great Barrier Reef Marine Park Authority—Report for 2006-07. Motion of Senator Nash to take note of document called on. Debate adjourned till Thursday at general business, Senator Macdonald in continuation.

Regional Forest Agreement between the Commonwealth and Tasmania—Report—Inquiry on the progress with implementation of the Tasmanian Regional Forest Agreement (1997)—Second five yearly review, dated February 2008. Motion of Senator Barnett to take note of document called on. Debate adjourned till Thursday at general business, Senator Macdonald in continuation.

AusLink—Report for 2006-07. Motion of Senator Macdonald to take note of document called on. Debate adjourned till Thursday at general business, Senator Macdonald in continuation.

Indigenous Business Australia—Corporate plan 2008-2013. Motion of Senator Macdonald to take note of document called on. Debate adjourned till Thursday at general business, Senator Macdonald in continuation.

Regional Telecommunications Independent Review Committee—Regional telecommunications review: Framework for the future—Report, September 2008. Motion of Senator Nash to take note of document debated. Debate adjourned till Thursday at general business, Senator Birmingham in continuation.

45 COMMITTEE REPORTS AND GOVERNMENT RESPONSES—ORDERS OF THE DAY— CONSIDERATION

The following orders of the day relating to committee reports and government responses were considered:

Rural and Regional Affairs and Transport—Standing Committee—Report—Water management in the Coorong and Lower Lakes (including consideration of the Emergency Water (Murray-Darling Basin Rescue) Bill 2008). Motion of the chair of the committee (Senator Sterle) to take note of report debated. Debate adjourned till the next day of sitting, Senator Birmingham in continuation.

Legal and Constitutional Affairs—Standing Committee—Report—Independent Reviewer of Terrorism Laws Bill 2008 [No. 2]. Motion of Senator Ludlam to take note of report agreed to.

Community Affairs—Standing Committee—Report—Towards recovery: Mental health services in Australia. Motion of the chair of the committee (Senator Moore) to take note of report called on. Debate adjourned till the next day of sitting, Senator Boyce in continuation.

Foreign Affairs, Defence and Trade—Standing Committee—Fourth progress report—Reforms to Australia's military justice system. Motion of the chair of the committee (Senator Bishop) to take note of report agreed to.

Rural and Regional Affairs and Transport—Standing Committee—Report—Implementation, operation and administration of the legislation underpinning Carbon Sink Forests. Motion of the chair of the committee (Senator Sterle) to take note of report called on. Debate adjourned till the next day of sitting, Senator Macdonald in continuation.

State Government Financial Management—Select Committee—Report. Motion of the chair of the committee (Senator Macdonald) to take note of report called on. Debate adjourned till the next day of sitting, Senator Macdonald in continuation.

Rural and Regional Affairs and Transport—Standing Committee—Report—Administration of the Civil Aviation Safety Authority (CASA) and related matters. Motion of the chair of the committee (Senator Sterle) to take note of report debated and agreed to.

Procedure—Standing Committee—First report of 2008—Restructuring question time; Reference of bills to committees; Questions to chairs of committees; Deputy chairs of committees; Leave to make statements. Motion of the chair of the committee (Senator Ferguson) to take note of report called on—*and on the amendment moved by the Leader of the Family First Party (Senator Fielding)*—At the end of the motion, add “, but the Senate is of the opinion that, instead of restructuring question time in a manner that could reduce the accountability of ministers to the Senate, the rules relating to questions and answers, contained in past presidential rulings, which require, amongst other things, that questions actually be questions relating to ministerial responsibilities, and that answers be responsive and relevant to the questions, be written into the standing orders, and that the Procedure Committee, with the assistance of external expert advisers, review the effectiveness of question time and the application of those rules at the

end of each period of sittings". On the motion of the Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens) debate was adjourned till the next day of sitting.

Environment, Communications and the Arts—Standing Committee—Report—Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008. Motion of Senator Collins to take note of report called on. Debate adjourned till the next day of sitting, Senator Macdonald in continuation.

Environment, Communications and the Arts—Standing Committee—Report—Save Our Solar (Solar Rebate Protection) Bill 2008 [No. 2]. Motion of the chair of the committee (Senator McEwen) to take note of report agreed to.

46 AUDITOR-GENERAL'S REPORTS—ORDERS OF THE DAY—CONSIDERATION

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

Auditor-General—Audit report no. 4 of 2008-09—Performance audit—The Business Partnership Agreement between the Department of Education, Employment and Workplace Relations (DEEWR) and Centrelink. Motion of Senator Parry to take note of document called on. On the motion of Senator Boyce debate was adjourned till the next day of sitting.

Auditor-General—Audit report no. 6 of 2008-09—Performance audit—Illegal, unreported and unregulated fishing in the Southern Ocean—Australian Customs Service. Motion to take note of document moved by Senator Macdonald. Debate adjourned till the next day of sitting, Senator Macdonald in continuation.

Order of the day no. 2 relating to reports of the Auditor-General was called on but no motion was moved.

47 ADJOURNMENT

The Acting Deputy President (Senator Forshaw) proposed the question—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 7.15 pm till Monday, 10 November 2008 at 12.30 pm.

48 ATTENDANCE

Present, all senators except Senators Milne*, Moore*, O'Brien*, Troeth* and Wong* (* on leave).

HARRY EVANS
Clerk of the Senate