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Contents

1	Meeting of Senate	3131
2	Absence of President—Statement by President—Authority of Deputy President	3131
3	Petitions	3131
4	Notices.....	3131
5	Order of Business—Rearrangement.....	3132
6	Environment—Carbon Dioxide Emissions.....	3133
7	Trade—Wheat Export.....	3133
8	Electoral Matters—Political Donations.....	3134
9	Environment—Environmental Assessments—Coal Industry	3135
10	International Day of People with Disability	3136
11	Foreign Affairs—Vietnam	3136
12	Economics—Standing Committee—Extension of Time to Report.....	3137
13	Economics—Standing Committee—Leave to Meet During Sitting	3137
14	Migration Legislation Amendment (Restoration of Fair Process) Bill 2006	3137
15	Health—World AIDS Day	3138
16	Climate Change Action Bill 2006.....	3138
17	Environment—Gwydir Wetlands	3139
18	Parliamentary Zone—Capital Works Proposal—Approval	3139
19	Committees—Additional Information—Budget Estimates 2006-07	3139
20	Order of Business—Rearrangement.....	3139
21	Australian Citizenship Bill 2006 Australian Citizenship (Transitionals and Consequentials) Bill 2006.....	3140
22	Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006	3140
23	Datacasting Transmitter Licence Fees Bill 2006 Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006	3140
24	Australian Securities and Investments Commission Amendment (Audit Inspection) Bill 2006.....	3141

25	Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006.....	3141
26	Environment and Heritage Legislation Amendment Bill (No. 1) 2006.....	3141
27	Medibank Private Sale Bill 2006.....	3143
28	Datacasting Transmitter Licence Fees Bill 2006 Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006	3143
29	Telecommunications Amendment (Integrated Public Number Database) Bill 2006	3144
30	Questions	3144
31	Employment—Workplace Agreements—Answers to Questions.....	3144
32	Legal and Constitutional Legislation Committee—Government Response—Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005...	3144
33	Legal and Constitutional References Committee—Government Response—Effectiveness and Appropriateness of the <i>Privacy Act 1988</i>	3144
34	Issues from the Advance to the Finance Minister—2005-06—Document	3145
35	Employment, Workplace Relations and Education—Standing Committee—Report—Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006.....	3145
36	Documents.....	3145
37	Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2]	3147
38	Committee Reports and Government Responses—Orders of the Day—Consideration.....	3147
39	Auditor-General's Reports—Orders of the Day—Consideration	3148
40	Copyright Amendment Bill 2006	3149
41	Adjournment	3163
42	Attendance.....	3164

1 MEETING OF SENATE

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

2 ABSENCE OF PRESIDENT—STATEMENT BY PRESIDENT—AUTHORITY OF DEPUTY PRESIDENT

The President informed the Senate that he would be absent from the Senate on 1 December 2006 to attend a special sitting of the Parliament of Tasmania marking 150 years since the bicameral parliament was established in 1856.

The Minister for Justice and Customs (Senator Ellison), by leave, moved—

- (1) That, during the absence of the President, the Deputy President shall take the chair of the Senate and may perform the duties and exercise the authority of the President in relation to all proceedings of the Senate and proceedings of committees to which the President is appointed.
- (2) That the President be granted leave of absence on 1 December 2006.

Debate ensued.

Question put and passed.

3 PETITIONS

The following 4 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Allison, from 1 petitioner, requesting that the Senate take action to restore the right of self-government to the original custodians of Australia.

Senator Stephens, from 17 petitioners, requesting that the Senate take action to expedite the entry of Christian refugees into Australia.

Senator Stephens, from 14 petitioners, requesting that the Senate reject any legislation regarding therapeutic cloning for the production of embryonic stem cells.

Senator Stott Despoja, from 112 petitioners, requesting that the Senate take action to alleviate student poverty.

4 NOTICES

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Watson): To move 15 sitting days after today—

No. 1—That A New Tax System (Commonwealth-State Financial Arrangements) Amendment Regulations 2006 (No. 1), as contained in Select Legislative Instrument 2006 No. 258 and made under the *A New Tax System (Commonwealth-State Financial Arrangements) Act 1999*, be disallowed.

No. 2—That the Approved Code of Practice for Manual Handling (Maritime Industry), made under subsection 109(1) of the *Occupational Health and Safety (Maritime Industry) Act 1993*, be disallowed.

No. 3—That the Approved Form for Application for Initial Approval as a Rehabilitation Program Provider, made under paragraph 34C(1)(a) and subsection 34S(1) of the *Safety, Rehabilitation and Compensation Act 1988*, be disallowed.

No. 4—That the Approved Form for Application for Renewal of Approval as a Rehabilitation Program Provider, made under paragraph 34K(1)(a) and subsection 34S(1) of the *Safety, Rehabilitation and Compensation Act 1988*, be disallowed.

No. 5—That Determination No. HIB 29/2006, made under paragraph (1)(bj) of Schedule 1 of the *National Health Act 1953*, be disallowed.

No. 6—That the Direction Relating to Foreign Currency Transactions and to North Korea, made under regulation 5 of the Banking (Foreign Exchange) Regulations 1959, be disallowed.

No. 7—That the Prescribed Courses for Applicants for Registration as a Migration Agent, made under paragraph 5(1)(a) of the Migration Agents Regulations 1998, be disallowed.

No. 8—That Social Security (Public Interest Certificate Guidelines) (DEWR) Determination 2006, made under subparagraph 209(1)(a)(i) and paragraph 209(1)(b) of the *Social Security (Administration) Act 1999*, be disallowed.

No. 9—That the Variation of Criteria for Approval or Renewal of Approval of Rehabilitation Program Providers, made under section 34D of the *Safety, Rehabilitation and Compensation Act 1988*, be disallowed.

Senator Watson, by leave, made a statement relating to the notices of motion.

The Leader of the Australian Greens (Senator Bob Brown): To move on 5 December 2006—That the Senate supports the World Heritage Convention, including its requirement that sites of potential World Heritage value should be protected until a full evaluation has been made. (*general business notice of motion no. 658*)

The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That the Senate—

- (a) noting the Cole Commission of Inquiry's whitewash of the Government's failure to exercise care and diligence over the Australian Wheat Board;
- (b) deploring the damage done to Australia's international reputation by the Australian Wheat Board scandal; and
- (c) expressing deep concern for wheat growers who suffer loss as a result,

calls on the Government, the Prime Minister (Mr Howard) and ministers personally to once again assume responsibility and accountability for the actions of the federal public service and all of its departments. (*general business notice of motion no. 659*)

5 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Justice and Customs (Senator Ellison) moved—That—

- (a) the following government business orders of the day be considered from 1.30 pm till not later than 2 pm today:
 - Datacasting Transmitter Licence Fees Bill 2006
 - Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006.
 - No. 3 Telecommunications Amendment (Integrated Public Number Database) Bill 2006; and
- (b) government business order of the day no. 4 (Copyright Amendment Bill 2006) be considered from 7.30 pm today.

Question put and passed.

Senator Ellison moved—That the order of general business for consideration today be as follows:

- (a) general business order of the day no. 76 (Avoiding Dangerous Climate Change (Kyoto Protocol Ratification) Bill 2006 [No. 2]); and
- (b) orders of the day relating to government documents.

Question put and passed.

6 ENVIRONMENT—CARBON DIOXIDE EMISSIONS

The Leader of the Australian Democrats (Senator Allison), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 647—That the Senate—

- (a) notes that recent research of Drs Raupach and Fraser from the Commonwealth Scientific and Industrial Research Organisation's Marine and Atmospheric Research group found that:
- (i) 7.9 billion tonnes of carbon were emitted into the atmosphere as carbon dioxide in 2005 and the rate of increase is accelerating,
 - (ii) between 2000 and 2005, carbon dioxide emissions rose by more than 2.5 per cent a year,
 - (iii) in 1990 emissions were increasing less than 1 per cent a year, and
 - (iv) on the current path it will be difficult to rein in carbon emissions enough to stabilise the atmospheric carbon dioxide concentration at 450 parts per million; and
- (b) calls on the Federal Government to act urgently to reduce greenhouse gas emissions and:
- (i) ratify the Kyoto Protocol, and
 - (ii) introduce a carbon price signal.

Question put.

The Senate divided—

AYES, 8

Senators—

Allison	Brown, Bob	Murray	Siewert
Bartlett (Teller)	Milne	Nettle	Stott Despoja

NOES, 50

Senators—

Adams	Ferguson	Kirk	Ray
Barnett	Ferris (Teller)	Lightfoot	Ronaldson
Bernardi	Fielding	Ludwig	Scullion
Bishop	Fierravanti-Wells	Macdonald, Ian	Sherry
Brandis	Fifield	Marshall	Stephens
Brown, Carol	Forshaw	McEwen	Sterle
Calvert	Heffernan	Moore	Troeth
Chapman	Hogg	Nash	Trood
Colbeck	Humphries	O'Brien	Watson
Crossin	Hurley	Parry	Webber
Eggleston	Hutchins	Patterson	Wortley
Ellison	Johnston	Payne	
Evans	Joyce	Polley	

Question negatived.

7 TRADE—WHEAT EXPORT

Senator Murray, also on behalf of Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 650—That the Senate—

- (a) notes that:
- (i) the Government will need time to consider possible legislative changes to the wheat export regime, following the report of the Cole Commission of Inquiry, but

- (ii) from a cash flow and revenue perspective, Western Australian wheat growers need urgent resolution in 2006 to present export impediments; and
- (b) asks the Government to consider introducing legislation into the Senate in the sitting week commencing 4 December 2006 to provide that, for a period of 15 months or two seasons, the final approval power for wheat export licences be transferred to the Treasurer.

Question put.

The Senate divided—

AYES, 8

Senators—

Allison	Brown, Bob	Murray	Siewert
Bartlett (Teller)	Milne	Nettle	Stott Despoja

NOES, 48

Senators—

Adams	Evans	Joyce	Polley
Barnett	Ferguson	Kirk	Ray
Bernardi	Ferris (Teller)	Lightfoot	Ronaldson
Bishop	Fierravanti-Wells	Macdonald, Ian	Scullion
Brandis	Fifield	Marshall	Sherry
Brown, Carol	Forshaw	McEwen	Stephens
Calvert	Heffernan	Moore	Sterle
Chapman	Hogg	Nash	Troeth
Colbeck	Humphries	O'Brien	Trood
Crossin	Hurley	Parry	Watson
Eggleston	Hutchins	Patterson	Webber
Ellison	Johnston	Payne	Wortley

Question negatived.

8 ELECTORAL MATTERS—POLITICAL DONATIONS

Senator Murray, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 646—That, in view of:

- (a) the instances of developers being identified in investigations into corrupt influence in local government, and other levels of government;
- (b) public and media perceptions of improper conduct and influence by developers; and
- (c) calls for donations, loans, gifts and favours from developers to be prohibited,

the Senate calls on the Prime Minister (Mr Howard) to put this matter before the Council of Australian Governments with a view to designing amendments to all federal, state and territory electoral laws by 1 July 2007 prohibiting donations, loans, or gifts by developers, either directly or indirectly, to candidates or political parties at any level of government.

Question put.

The Senate divided—

AYES, 8

Senators—

Allison	Brown, Bob	Murray	Siewert
Bartlett (Teller)	Milne	Nettle	Stott Despoja

NOES, 51

Senators—

Adams	Evans	Joyce	Polley
Barnett	Ferguson	Kirk	Ray
Bernardi	Ferris	Lightfoot	Ronaldson
Bishop	Fielding	Macdonald, Ian	Scullion
Brandis	Fierravanti-Wells	Marshall	Sherry
Brown, Carol	Fifield	McEwen	Stephens
Calvert	Forshaw	McGauran	Sterle
Campbell, Ian	Hefferman	Moore	Troeth
Chapman	Hogg	Nash	Trood
Colbeck	Humphries	O'Brien	Watson
Crossin	Hurley	Parry	Webber (Teller)
Eggleston	Hutchins	Patterson	Wortley
Ellison	Johnston	Payne	

Question negatived.

9 ENVIRONMENT—ENVIRONMENTAL ASSESSMENTS—COAL INDUSTRY

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 657—That the Senate—

(a) notes:

- (i) the decision of the Land and Environment Court of New South Wales to require climate change impacts to be considered in environmental assessments of new projects such as coal mines,
- (ii) that coal from the proposed Anvil Hill mine in the Hunter Valley when burnt will cause 27 000 000 tonnes of greenhouse gas emissions, the equivalent of 4 million extra cars on our roads,
- (iii) the growing community opposition to the mine, including miners, wine makers and farmers, and
- (iv) the 42 per cent growth in coal exports in the 2005-06 financial year; and

(b) calls on the Government to:

- (i) ensure that the impact of major projects on climate change be a requirement of all future environmental assessments and federal government decisions, and
- (ii) recognise that the continued expansion of the coal industry is not compatible with curbing climate change.

Question put.

The Senate divided—

AYES, 8

Senators—

Allison	Brown, Bob	Murray	Siewert (Teller)
Bartlett	Milne	Nettle	Stott Despoja

NOES, 50

Senators—

Adams	Ferguson	Kirk	Ray
Barnett	Ferris	Lightfoot	Ronaldson
Bernardi	Fielding	Macdonald, Ian	Scullion
Bishop	Fierravanti-Wells	Marshall	Sherry
Brandis	Fifield	McEwen	Stephens
Brown, Carol	Forshaw	McGauran	Sterle
Calvert	Heffernan	Moore	Troeth
Chapman	Hogg	Nash	Trood
Colbeck	Humphries	O'Brien	Watson
Crossin	Hurley	Parry (Teller)	Webber
Eggleston	Hutchins	Patterson	Wortley
Ellison	Johnston	Payne	
Evans	Joyce	Polley	

Question negatived.

10 INTERNATIONAL DAY OF PEOPLE WITH DISABILITY

Senator Webber, at the request of Senators McLucas and Bartlett and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 653—That the Senate—

(a) notes that:

- (i) 3 December marks the International Day of People with Disability,
- (ii) the International Day of People with Disability was established in 1992 by the United Nations General Assembly to promote an understanding of disability issues and mobilise support for the dignity, rights and well-being of persons with disabilities and to increase awareness of gains to be derived from the integration of persons with disabilities in every aspect of political, social, economic and cultural life,
- (iii) one in 5 Australians (approximately 3.95 million people) has a reported disability and, of those who have a disability, only 53 per cent are in the workforce, compared with 81 per cent of people without a disability, while the unemployment rate among people with disability is 8.6 per cent, compared with 5 per cent for people without a disability, and
- (iv) there are more than 2.5 million Australians who take on a caring role and provide some assistance to people who require help because of their disability or age; and

(b) calls on the Government to recognise that advocacy for people with disability is an essential service and that people with disability need access to advocates to speak on their behalf and direction both individually and systemically.

Question put and passed.

11 FOREIGN AFFAIRS—VIETNAM

Senator Ferris, at the request of Senator Humphries and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 649—That the Senate—

(a) notes:

- (i) the maturing relationship between Vietnam and Australia, the high-level contacts between Prime Ministers, Australia's development cooperation program of approximately \$81 million per year, and the strong people to people links,

- (ii) continuing international concern about human rights issues in Vietnam, including gaoling, administrative detention, harassment of human rights activists for their advocacy of democracy, and religious freedom,
 - (iii) the importance of addressing the cases of individuals such as the Most Venerable Thich Quang Do and Thich Huyen Quang, Hoa Hao Elderly Mr Le Quang Liem, Pastor Nguyen Cong Chinh, Dr Pham Hong Son, journalists Nguyen Khac Toan and Nguyen Vu Binh and many ethnic Montagnard people such as Siu Boch, A Brih, and Y Tim Bya, and
 - (iv) the Australian Government's active support and promotion of democratic freedoms and human rights in Vietnam, including through the annual human rights dialogue, and other cooperation programs, and encourages the Government to continue these efforts; and
- (b) calls on the Vietnamese Government to observe its international obligations on human rights, including the provision of free and fair elections.

Question put and passed.

12 ECONOMICS—STANDING COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Ferris, at the request of the Chair of the Economics Committee (Senator Brandis) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 654—That the time for the presentation of the report of the Economics Committee on petrol pricing in Australia be extended to 7 December 2006.

Question put and passed.

13 ECONOMICS—STANDING COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Ferris, at the request of the Chair of the Economics Committee (Senator Brandis) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 655—That the Economics Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 7 December 2006, from 3.30 pm, to further consider the 2006-07 supplementary Budget estimates.

Question put and passed.

**14 MIGRATION LEGISLATION AMENDMENT (RESTORATION OF FAIR PROCESS)
BILL 2006**

Senator Bartlett, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 652—That the following bill be introduced:

A Bill for an Act to remove the privative clause in the *Migration Act 1958*, and for related purposes.

Question put and passed.

Senator Bartlett presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Bartlett moved—That this bill be now read a second time.

Explanatory memorandum: Senator Bartlett, by leave, tabled an explanatory memorandum relating to the bill.

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

15 HEALTH—WORLD AIDS DAY

Senator Stott Despoja, also on behalf of Senator Payne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 656—That the Senate—

- (a) recognises that 1 December is World AIDS Day, and the theme for 2006 is ‘HIV/AIDS: Let’s talk about it: many faces, different stories’;
- (b) notes:
 - (i) the efforts of those who work to raise consciousness in the community about HIV/AIDS issues and the need for ongoing development of education and prevention initiatives, and
 - (ii) that according to UNAIDS, the Joint United Nations Programme on HIV/AIDS, there are 39.3 million people globally living with HIV, including 4.3 million new infections in 2006, 960 000 of which are in east, south and south-east Asia, and 7 100 in the Oceania region;
- (c) recognises that the Australian Government spends approximately \$48 million directly each year on HIV/AIDS initiatives and supports steps to combat the effects of HIV/AIDS through the Asia-Pacific Business Coalition on HIV/AIDS, the AusAID-Clinton Foundation Partnership, and the Asia Pacific Leadership Forum on HIV/AIDS and Development; and
- (d) notes the work of private and public institutions and non-government organisations in the fight against HIV/AIDS.

Question put and passed.

16 CLIMATE CHANGE ACTION BILL 2006

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 614—That the following bill be introduced:

A Bill for an Act to implement the United Nations Framework Convention on climate change, and for related purposes.

Question put and passed.

Senator Milne presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Milne moved—That this bill be now read a second time.

Explanatory memorandum: Senator Milne, by leave, tabled an explanatory memorandum relating to the bill.

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

17 ENVIRONMENT—GWYDIR WETLANDS

Senator Siewert amended general business notice of motion no. 651 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

(a) notes:

(i) there have been calls by landowners in the Ramsar-listed Gwydir Wetlands for it to be de-listed as a Ramsar site due to its degraded condition, and

(ii) the declining condition of Gwydir Wetlands, Macquarie Marshes, the Coorong and other Ramsar Wetlands of International Importance; and

(b) calls on the Federal Government to establish a review of the health and management of Ramsar wetlands in Australia.

Question put and passed.

18 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—APPROVAL

The Minister for the Environment and Heritage (Senator Ian Campbell), at the request of the Parliamentary Secretary to the Minister for Finance and Administration (Senator Colbeck) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority to provide directional and interpretive signage in the Parliamentary Zone.

Question put and passed.

19 COMMITTEES—ADDITIONAL INFORMATION—BUDGET ESTIMATES 2006-07

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

Budget estimates 2006-07—

Foreign Affairs, Defence and Trade Legislation Committee—Additional information received—

Volume 1—Defence portfolio.

Volume 2—Foreign Affairs and Trade portfolio.

Rural and Regional Affairs and Transport Legislation Committee—Additional information received between 17 October and 28 November 2006—

Agriculture, Fisheries and Forestry portfolio.

Transport and Regional Services portfolio.

Budget estimates 2006-07 (Supplementary)—Rural and Regional Affairs and Transport—Standing Committee—Additional information received between 30 October and 28 November 2006—Transport and Regional Services portfolio.

20 ORDER OF BUSINESS—REARRANGEMENT

Senator Scullion, by leave and at the request of the Chair of the Employment, Workplace Relations and Education Committee (Senator Troeth), moved—That business of the Senate order of the day no. 2, relating to the presentation of the report of the Employment, Workplace Relations and Education Committee on the provisions of the Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006, be postponed till a later hour.

Question put and passed.

21 AUSTRALIAN CITIZENSHIP BILL 2006**AUSTRALIAN CITIZENSHIP (TRANSITIONALS AND CONSEQUENTIALS) BILL 2006**

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

Message no. 443, dated 29 November 2006—A Bill for an Act relating to Australian citizenship.

Message no. 444, dated 29 November 2006—A Bill for an Act to provide for transitional and consequential matters relating to the enactment of the *Australian Citizenship Act 2006*, and for other purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) 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 Ian Campbell moved—That these bills be now read a second time.

Explanatory memoranda: Senator Ian Campbell tabled revised explanatory memoranda [2] relating to the bills.

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.

22 COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT LEGISLATION AMENDMENT BILL 2006

A message from the House of Representatives was reported transmitting for the concurrence of the Senate the following bill:

Message no. 442, dated 29 November 2006—A Bill for an Act to amend the law relating to the management of Commonwealth radioactive waste, and for related purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Ian Campbell moved—That this bill be now read a second time.

On the motion of Senator Ian Campbell the debate was adjourned till the next day of sitting.

**23 DATACASTING TRANSMITTER LICENCE FEES BILL 2006
BROADCASTING SERVICES AMENDMENT (COLLECTION OF DATACASTING
TRANSMITTER LICENCE FEES) BILL 2006**

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

Message no. 445, dated 29 November 2006—A Bill for an Act to impose fees, by way of taxes, in relation to channel A datacasting transmitter licences, and for related purposes.

Message no. 446, dated 29 November 2006—A Bill for an Act to amend the *Broadcasting Services Act 1992*, and for other purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) 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 Ian Campbell moved—That these bills be now read a second time.

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

24 AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AMENDMENT (AUDIT INSPECTION) BILL 2006

A message from the House of Representatives was reported transmitting for the concurrence of the Senate the following bill:

Message no. 448, dated 29 November 2006—A Bill for an Act to facilitate cooperative arrangements concerning audit oversight, and for other purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Ian Campbell moved—That this bill 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.

25 FAMILIES, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND VETERANS' AFFAIRS LEGISLATION AMENDMENT (2006 BUDGET MEASURES) BILL 2006

A message from the House of Representatives was reported agreeing to the amendments made by the Senate to the following bill:

Message no. 447, dated 29 November 2006—Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006.

26 ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2006

Order of the day read for the adjourned debate on the motion of the Minister for Ageing (Senator Santoro)—That this bill be now read a second time—*and on the amendment moved by Senator Carr:*

At the end of the motion, add “but the Senate:

(a) expresses its serious concern that:

- (i) the bill is being rushed through the Parliament without proper consideration or consultation,
- (ii) the Howard Government has failed to halt the decline in Australia's natural environment and best agricultural land,

- (iii) the bill contains no measures to cut Australia's spiralling greenhouse pollution or protect Australia from dangerous climate change,
 - (iv) the bill will increase the Howard Government's politicisation of environment and heritage protection, and
 - (v) many of the proposed changes in the bill will reduce ministerial accountability and opportunities for genuine public consultation; and therefore
- (b) calls on the Howard Government to:
- (i) ensure climate change is properly factored into environmental decision-making under the *Environment Protection and Biodiversity Conservation Act 1999*,
 - (ii) establish a climate change trigger in the Act to ensure large scale greenhouse polluting projects are assessed by the Federal Government, and
 - (iii) allow greater time for public consultation and debate on the bill".

Debate resumed.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 33

Senators—

Allison	Hogg	Milne	Stephens
Bartlett	Hurley	Moore	Sterle
Bishop	Hutchins	Murray	Stott Despoja
Brown, Bob	Kirk	Nettle	Webber (Teller)
Brown, Carol	Ludwig	O'Brien	Wong
Carr	Lundy	Polley	Wortley
Crossin	Marshall	Ray	
Evans	McEwen	Sherry	
Forshaw	McLucas	Siewert	

NOES, 37

Senators—

Abetz	Eggleston	Kemp	Ronaldson
Adams	Ellison	Lightfoot	Santoro
Barnett	Ferguson	Macdonald, Ian	Scullion
Bernardi	Ferris (Teller)	Macdonald, Sandy	Troeth
Brandis	Fielding	McGauran	Trood
Calvert	Fierravanti-Wells	Minchin	Vanstone
Campbell, Ian	Fifield	Nash	Watson
Chapman	Heffernan	Parry	
Colbeck	Johnston	Patterson	
Coonan	Joyce	Payne	

Question negatived.

Main question put.

The Senate divided—

AYES, 40

Senators—

Abetz	Colbeck	Johnston	Parry
Adams	Coonan	Joyce	Patterson
Allison	Eggleston	Kemp	Payne
Barnett	Ellison	Lightfoot	Ronaldson
Bartlett	Ferguson	Macdonald, Ian	Santoro
Bernardi	Ferris (Teller)	Macdonald, Sandy	Scullion
Brandis	Fielding	McGauran	Stott Despoja
Calvert	Fierravanti-Wells	Minchin	Troeth
Campbell, Ian	Fifield	Murray	Trood
Chapman	Heffernan	Nash	Watson

NOES, 29

Senators—

Bishop	Hurley	Milne	Stephens
Brown, Bob	Hutchins	Moore	Sterle
Brown, Carol	Kirk	Nettle	Webber (Teller)
Carr	Ludwig	O'Brien	Wong
Crossin	Lundy	Polley	Wortley
Evans	Marshall	Ray	
Forshaw	McEwen	Sherry	
Hogg	McLucas	Siewert	

Question agreed to.

Bill read a second time.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That consideration of the bill in committee of the whole be made an order of the day for a later hour.

Debate ensued.

Question put and passed. All Australian Greens senators, by leave, recorded their votes for the noes.

27 MEDIBANK PRIVATE SALE BILL 2006

Order of the day read for the adjourned debate on the motion of the Minister for Ageing (Senator Santoro)—That this bill be now read a second time.

Debate resumed.

At 1.30 pm: Debate was interrupted.

**28 DATACASTING TRANSMITTER LICENCE FEES BILL 2006
BROADCASTING SERVICES AMENDMENT (COLLECTION OF DATACASTING
TRANSMITTER LICENCE FEES) BILL 2006**

Order of the day read for the adjourned debate on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell)—That these bills be now read a second time.

Debate resumed.

Question put and passed.

Bills read a second time.

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

On the motion of the Parliamentary Secretary to the Minister for Defence (Senator Sandy Macdonald) the bills were read a third time.

29 TELECOMMUNICATIONS AMENDMENT (INTEGRATED PUBLIC NUMBER DATABASE) BILL 2006

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Finance and Administration (Senator Colbeck)—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 Minister for Communications, Information Technology and the Arts (Senator Coonan) the bill was read a third time.

Suspension of sitting: On the motion of Senator Coonan the sitting of the Senate was suspended at 1.53 pm till 2 pm.

At 2 pm—

30 QUESTIONS

Questions without notice were answered.

31 EMPLOYMENT—WORKPLACE AGREEMENTS—ANSWERS TO QUESTIONS

Senator Wong moved—That the Senate take note of the answers given by the Minister for Fisheries, Forestry and Conservation (Senator Abetz) to questions without notice asked by Senators Wong, Forshaw and Hogg today relating to employment and workplace agreements.

Debate ensued.

Question put and passed.

32 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—GOVERNMENT RESPONSE—DEFENCE LEGISLATION AMENDMENT (AID TO CIVILIAN AUTHORITIES) BILL 2005

The Minister for Finance and Administration (Senator Minchin) tabled the following document:

Legal and Constitutional Legislation Committee—Report—Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005—Government response, dated November 2006.

33 LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE—GOVERNMENT RESPONSE—EFFECTIVENESS AND APPROPRIATENESS OF THE PRIVACY ACT 1988

The Minister for Finance and Administration (Senator Minchin) tabled the following document:

Legal and Constitutional References Committee—Report—The real Big Brother: Inquiry into the *Privacy Act 1988*—Government response.

34 ISSUES FROM THE ADVANCE TO THE FINANCE MINISTER—2005-06—DOCUMENT

The Minister for Finance and Administration (Senator Minchin) tabled the following document:

Finance—Issues from the Advance to the Finance Minister as a final charge for the year ended 30 June 2006.

35 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION—STANDING COMMITTEE—REPORT—COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT LEGISLATION AMENDMENT BILL 2006

Pursuant to order, Senator Ferris, at the request of the Chair of the Employment, Workplace Relations and Education Committee (Senator Troeth), tabled the following report and documents:

Employment, Workplace Relations and Education—Standing Committee—Commonwealth Radioactive Waste Management Legislation Amendment Bill 2006 [Provisions]—Report, dated November 2006, Hansard record of proceedings, additional information and submissions [63].

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

36 DOCUMENTS

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No. 14 of 2006—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 Statement of Financial Position (Domestic Books) [F2006L03853]*.

Banking Act—Banking (Prudential Standard) Determination No. 14 of 2006—Variation to Prudential Standard APS 231 Outsourcing [F2006L03823]*.

Broadcasting Services Act—Variation to Licence Area Plan for Perth Radio – No. 1 of 2006 [F2006L03776]*.

Civil Aviation Act—

Civil Aviation Regulations—Instruments—

CASA 422/06—Authorisation, permission and direction – helicopter special operations [F2006L03706]*.

CASA EX63/06—Exemption – training and checking organisation, flight check system [F2006L03671]*.

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

AD/A330/13 Amdt 4—Life Limits/Monitored Parts [F2006L03852]*.

AD/A330/67—Keel Beam Fastener Holes at Frame 40 – Inspection [F2006L03851]*.

AD/AT/28—Upper Rudder Hinge [F2006L03878]*.

AD/AT 600/5—Wing Main Spar Lower Cap Fastener Hole [F2006L03877]*.

AD/AT 600/6—Upper Rudder Hinge [F2006L03876]*.

AD/AT 800/10—Upper Rudder Hinge [F2006L03875]*.

AD/BELL 222/31 Amdt 1—Tail Rotor Blade [F2006L03846]*.

AD/BELL 430/1 Amdt 3—Tail Rotor Blade [F2006L03845]*.

- AD/CASA/27—Centre Wing Lower Skin [F2006L03856]*.
 AD/CESSNA 310/33 Amdt 2—Wing and Airframe [F2006L03844]*.
 AD/CESSNA 400/40 Amdt 14—Wing and Airframe [F2006L03843]*.
 AD/ECUREUIL/99 Amdt 1—Lateral Cargo Hold Doors [F2006L03842]*.
 AD/EMB-110/53 Amdt 2—Nose Landing Gear Rotating Cylinder Assembly [F2006L03841]*.
 AD/EMB-110/54—Corrosion of Wing and Vertical Stabiliser to Fuselage Attachments, Rib 1 Half-Wing and Cabin Seat Tracks [F2006L03840]*.
 AD/F100/75 Amdt 1—High Pressure Compressor [F2006L03880]*.
 AD/S-92/1—Main Transmission Mounting Bolts [F2006L03874]*.
 AD/S-PUMA/66 Amdt 1—Main Rotor Head Spindles [F2006L03855]*.
 106—AD/TAY/18—HP Compressor Stator Vane Tip Clearances [F2006L03881]*.
- Customs Act—Tariff Concession Orders—
 0616109 [F2006L03861]*.
 0616189 [F2006L03867]*.
 0616286 [F2006L03868]*.
 0616287 [F2006L03869]*.
 0616500 [F2006L03862]*.
 0616831 [F2006L03864]*.
 0616836 [F2006L03865]*.
 0617523 [F2006L03871]*.
- Defence Act—Determinations under section 58B—Defence Determinations—
 2006/69 – Overseas conditions of service – post indexes amendment.
 2006/70 – Navy completion bonus schemes.
- Education Services for Overseas Students Act—ESOS Assurance Fund 2007 Contributions Criteria [F2006L03698]*.
- Environment Protection and Biodiversity Conservation Act—Amendment of list of threatened species, dated 10 November 2006 [F2006L03838]*.
- Fisheries Management Act—
 Southern and Eastern Scalefish and Shark Fishery Management Plan Temporary Order 2006 (No. 2) [F2006L03870]*.
 Southern Squid Jig Fishery Management Plan 2005—Southern Squid Jig Fishery Total Allowable Effort Determination 2006 [F2006L03832]*.
- Gene Technology Act—Determination that dealings with genetically modified carnation lines be included on the GMO Register (Register 001/2004) [F2006L03771]*.
- Industry Research and Development Act—Innovation Investment Fund Program Round Three Direction No. 1 of 2006 [F2006L03854]*.
- Insurance Act—Insurance (Prudential Standard) Determination No. 10 of 2006—Variation to Prudential Standard GPS 231 Outsourcing [F2006L03826]*.
- Life Insurance Act—Life Insurance (Prudential Standard) Determination No. 4 of 2006—Variation to Prudential Standard LPS 231 Outsourcing [F2006L03831]*.

Migration Act—Migration Regulations—Instruments—

IMMI 06/074—Arrangements for Work and Holiday Visa Applicants from Thailand, Iran, Chile and Turkey [F2006L03828]*.

IMMI 06/082—Travel Agents for PRC Citizens applying for Tourist Visas [F2006L03857]*.

National Health Act—Pharmaceutical Benefits Amendment Determination under paragraph 98B(1)(a) No. 3 [F2006L03873]*.

* Explanatory statement tabled with legislative instrument.

General business was called on.

**37 AVOIDING DANGEROUS CLIMATE CHANGE (KYOTO PROTOCOL RATIFICATION)
BILL 2006 [NO. 2]**

Order of the day read for the adjourned debate on the motion of Senator Carr—That this bill be now read a second time.

Debate resumed.

Time expired: Debate was interrupted.

General business concluded.

**38 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:

Australian Crime Commission—Joint Statutory Committee—Report—Trafficking of women for sexual servitude—Government response. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Community Affairs—Standing Committee—Report—Breaking the silence: A national voice for gynaecological cancers. Motion of Senator Scullion to take note of report called on. Debate adjourned till the next day of sitting, Senator Moore in continuation.

Migration—Joint Standing Committee—Report—Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing. Motion of Senator Kirk to take note of report called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade Legislation Committee—First progress report—Reforms to Australia's military justice system. Motion of the chair of the committee (Senator Johnston) to take note of report called on. On the motion of Senator Moore debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—Report—Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. Motion of the chair of the committee (Senator Humphries) to take note of report called on. Debate adjourned till the next day of sitting, Senator Moore in continuation.

Community Affairs References Committee—Report—Beyond petrol sniffing: Renewing hope for Indigenous communities. Motion of the chair of the committee (Senator Moore) to take note of report debated. Debate adjourned till the next day of sitting, Senator Moore in continuation.

Electoral Matters—Joint Standing Committee—Report—Funding and disclosure: Inquiry into disclosure of donations to political parties and candidates. Motion of Senator Carr to take note of report called on. Debate adjourned till the next day of sitting, Senator Moore in continuation.

Foreign Affairs, Defence and Trade References Committee—Report—China's emergence: Implications for Australia. Motion of the chair of the committee (Senator Hutchins) to take note of report agreed to.

Mental Health—Select Committee—First report—A national approach to mental health – from crisis to community. Motion of the chair of the committee (Senator Allison) to take note of report debated. Debate adjourned till the next day of sitting, Senator Moore in continuation.

Community Affairs References Committee—Reports—Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children—Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care—Government responses. Motion of Senator Murray to take note of document called on. Debate adjourned till the next day of sitting, Senator Moore in continuation.

39 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. 3 of 2006-07—Performance audit—Management of Army minor capital equipment procurement projects: Department of Defence; Defence Materiel Organisation. Motion of Senator Bishop to take note of document agreed to.

Auditor-General—Audit report no. 7 of 2006-07—Performance audit—Visa management—Working holiday makers: Department of Immigration and Multicultural Affairs. Motion of Senator Carol Brown to take note of document called on. On the motion of Senator Bartlett debate was adjourned till the next day of sitting.

Auditor-General—Audit report no. 8 of 2006-07—Performance audit—Airservices Australia's upper airspace management contracts with the Solomon Islands Government: Airservices Australia. Motion of Senator O'Brien to take note of document called on. Debate adjourned till the next day of sitting, Senator O'Brien in continuation.

Auditor-General—Audit report no. 10 of 2006-07—Performance audit—Management of the standard defence supply system remediation programme: Department of Defence; Defence Materiel Organisation. Motion of Senator Faulkner to take note of document agreed to.

Auditor-General—Audit report no. 11 of 2006-07—Performance audit—National food industry strategy: Department of Agriculture, Fisheries and Forestry. Motion of Senator O'Brien to take note of document called on. Debate adjourned till the next day of sitting, Senator O'Brien in continuation.

Auditor-General—Audit report no. 12 of 2006-07—Performance audit—Management of family tax benefit overpayments. Motion to take note of document moved by Senator Moore. Debate adjourned till the next day of sitting, Senator Moore in continuation

Orders of the day nos 4 and 7 relating to reports of the Auditor-General were called on but no motion was moved.

Suspension of sitting: On the motion of the Parliamentary Secretary to the Minister for Finance and Administration (Senator Colbeck) the sitting of the Senate was suspended at 6.21 pm till 7.30 pm.

At 7.30 pm—

40 **COPYRIGHT AMENDMENT BILL 2006**

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.

Explanatory memoranda: The Minister for Justice and Customs (Senator Ellison) tabled a supplementary explanatory memorandum and a further supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Senator Ellison moved the following amendments together by leave:

No. 1—Schedule 1, item 6, page 18 (line 17), omit “*offences*”, substitute “*offence*”.

No. 2—Schedule 1, item 6, page 18 (line 28) to page 19 (line 3), omit subsection 132AI(8).

No. 3—Schedule 1, item 6, page 19 (line 4), omit “Subsections (7) and (8) are offences”, substitute “Subsection (7) is an offence”.

No. 4—Schedule 1, item 6, page 27 (line 1), omit subparagraph 132AO(5)(a)(i).

No. 5—Schedule 1, item 8, page 36 (lines 20 to 23), omit subsection 133B(1), substitute:

- (1) The regulations may make provision enabling a person who is alleged to have committed an offence of strict liability against this Division to do both of the following as an alternative to prosecution:
 - (a) pay a penalty to the Commonwealth;
 - (b) forfeit to the Commonwealth:
 - (i) each article (if any) that is alleged to be an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence; and
 - (ii) each device (if any) that is alleged to have been made to be used for making an infringing copy of a work or other subject-matter and that is alleged to have been involved in the commission of the offence.

Note: Regulations made for this purpose will make provision to the effect that a prosecution of an alleged offender will be avoided if the alleged offender both pays a penalty to the Commonwealth and forfeits to the Commonwealth all relevant articles and devices (if any).

No. 6—Schedule 1, item 33, page 50 (line 22) to page 51 (line 1), omit subsections 248PC(5) and (6).

No. 7—Schedule 1, item 33, page 51 (line 3), omit “, (3) and (5)”, substitute “and (3)”.

No. 8—Schedule 1, item 33, page 52 (lines 3 to 12), omit subsections 248PD(5) and (6).

No. 9—Schedule 1, item 33, page 61 (line 8), omit “*offences*”, substitute “*offence*”.

No. 10—Schedule 1, item 33, page 61 (lines 16 to 23), omit subsection 248PJ(8).

No. 11—Schedule 1, item 33, page 61 (line 24), omit “Subsections (7) and (8) are offences”, substitute “Subsection (7) is an offence”.

No. 12—Schedule 1, item 33, page 63 (lines 13 to 15), omit “either for trade or to an extent that will affect prejudicially the financial interests of the performer in the performance”, substitute “for trade”.

No. 13—Schedule 1, item 33, page 71 (line 27), omit “*offences*”, substitute “*offence*”.

No. 14—Schedule 1, item 33, page 72 (lines 2 to 10), omit subsection 248QE(8).

No. 15—Schedule 1, item 33, page 72 (line 11), omit “Subsections (7) and (8) are offences”, substitute “Subsection (7) is an offence”.

No. 16—Schedule 1, item 33, page 73 (lines 29 to 31), omit “either for trade or to an extent that will affect prejudicially the financial interests of the performer in the performance”, substitute “for trade”.

No. 17—Schedule 6, item 1, page 94 (lines 10 to 15), omit subsection 111(1), substitute:

- (1) This section applies if a person makes a cinematograph film or sound recording of a broadcast solely for private and domestic use by watching or listening to the material broadcast at a time more convenient than the time when the broadcast is made.

Note: Subsection 10(1) defines **broadcast** as a communication to the public delivered by a broadcasting service within the meaning of the *Broadcasting Services Act 1992*.

No. 18—Schedule 6, Part 2, page 103 (after line 6), at the end of the Part, add:

9AA Review of new sections 47J and 110AA

- (1) The Minister must cause to be carried out by the end of 31 March 2008 a review of the operation of sections 47J and 110AA of the *Copyright Act 1968*.

Note: Those sections are inserted in that Act by this Part.

- (2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

No. 19—Schedule 8, item 1, page 117 (lines 7 to 33), omit the item, substitute:

1 Subsection 28(2)

Omit “the last preceding subsection”, substitute “this section”.

1A Subsection 28(3)

Omit “subsection (1)”, substitute “this section”.

1B At the end of section 28

Add:

- (5) A communication of a literary, dramatic or musical work, a sound recording or a cinematograph film is taken for the purposes of this Act not to be a communication to the public if the communication is made merely to facilitate:
 - (a) a performance of the work that, because of this section, is not a performance in public; or
 - (b) an act of causing sounds forming part of the recording to be heard that, because of this section, is not an act of causing the sound recording to be heard in public; or
 - (c) an act of causing visual images or sounds forming part of the cinematograph film to be seen or heard that, because of this section, is not an act of causing the film to be seen or heard in public.
- (6) A communication of a television broadcast or sound broadcast is taken for the purposes of this Act not to be a communication of the broadcast, or of a work or other subject-matter included in the broadcast, to the public if:
 - (a) the communication is made merely to facilitate the television broadcast being seen and heard, or the sound broadcast being heard, in class or otherwise in the presence of an audience, in the course of educational instruction that:
 - (i) is given by a teacher; and
 - (ii) is not given for profit; and
 - (b) the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.
- (7) A communication of an artistic work is taken for the purposes of this Act not to be a communication of the work to the public if:
 - (a) the communication is made merely to facilitate the work being seen in class or otherwise in the presence of an audience, in the course of educational instruction that:
 - (i) is given by a teacher; and
 - (ii) is not given for profit; and
 - (b) the audience is limited to persons who are taking part in the instruction or are otherwise directly connected with the place where the instruction is given.

Note: The heading to section 28 is altered by inserting “**and communication**” after “**Performance**”.

No. 20—Schedule 1, item 6, page 23 (line 20), omit “*offences*”, substitute “*offence*”.

No. 21—Schedule 1, item 6, page 23 (line 29) to page 24 (line 3), omit subsection 132AL(9).

No. 22—Schedule 1, item 6, page 24 (line 4), omit “Subsections (8) and (9) are offences”, substitute “Subsection (8) is an offence”.

No. 23—Schedule 1, item 6, page 25 (lines 22 to 31), omit subsections 132AN(5) and (6).

No. 24—Schedule 1, item 33, page 48 (lines 4 to 12), omit subsections 248PA(5) and (6).

No. 25—Schedule 1, item 33, page 53 (line 23) to page 54 (line 5), omit subsections 248PE(6) and (7).

No. 26—Schedule 1, item 33, page 67 (lines 21 to 32), omit subsections 248QB(6) and (7).

No. 27—Schedule 3, page 87 (after line 3), after item 8, insert:

8A Before subsection 54(1)

Insert:

(1A) In this Division:

record means a disc, tape, paper or other device in which sounds are embodied.

No. 28—Schedule 6, page 94 (after line 6), before item 1, insert:

1A Subsection 10(1)

Insert:

private and domestic use means private and domestic use on or off domestic premises.

No. 29—Schedule 6, item 1, page 94 (line 29), at the end of subsection 111(3), add:

- ; or (e) used for causing the film or recording to be seen or heard in public; or
- (f) used for broadcasting the film or recording.

No. 30—Schedule 6, item 8, page 100 (line 1) to page 101 (line 23), omit section 109A, substitute:

109A Copying sound recordings for private and domestic use

- (1) This section applies if:
 - (a) the owner of a copy (the *earlier copy*) of a sound recording makes another copy (the *later copy*) of the sound recording using the earlier copy; and
 - (b) the sole purpose of making the later copy is the owner's private and domestic use of the later copy with a device that:
 - (i) is a device that can be used to cause sound recordings to be heard; and
 - (ii) he or she owns; and
 - (c) the earlier copy was not made by downloading over the Internet a digital recording of a radio broadcast or similar program; and
 - (d) the earlier copy is not an infringing copy of the sound recording, a broadcast or a literary, dramatic or musical work included in the sound recording.
- (2) The making of the later copy does not infringe copyright in the sound recording, or in a literary, dramatic or musical work or other subject-matter included in the sound recording.
- (3) Subsection (2) is taken never to have applied if the earlier copy or the later copy is:
 - (a) sold; or

- (b) let for hire; or
- (c) by way of trade offered or exposed for sale or hire; or
- (d) distributed for the purpose of trade or otherwise; or
- (e) used for causing the sound recording to be heard in public; or
- (f) used for broadcasting the sound recording.

Note: If the earlier or later copy is dealt with as described in subsection (3), then copyright may be infringed not only by the making of the later copy but also by a dealing with the later copy.

- (4) To avoid doubt, paragraph (3)(d) does not apply to a loan of the earlier copy or the later copy by the lender to a member of the lender's family or household for the member's private and domestic use.

No. 31—Schedule 6, page 104 (after line 4), before item 10, insert:

9A After section 41

Insert:

41A Fair dealing for purpose of parody or satire

A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire.

9B After section 103A

Insert:

103AA Fair dealing for purpose of parody or satire

A fair dealing with an audio-visual item does not constitute an infringement of the copyright in the item or in any work or other audio-visual item included in the item if it is for the purpose of parody or satire.

No. 32—Schedule 6, item 10, page 104 (line 13), omit “, (4) or (5)”, substitute “or (4)”.

No. 33—Schedule 6, item 10, page 104 (lines 17 and 18), omit “or a person licensed by the owner of the copyright”.

No. 34—Schedule 6, item 10, page 104 (line 28), at the end of paragraph 200AB(2)(c), add “or profit”.

No. 35—Schedule 6, item 10, page 105 (line 3), at the end of paragraph 200AB(3)(c), add “or profit”.

No. 36—Schedule 6, item 10, page 105 (line 16), at the end of paragraph 200AB(4)(c), add “or profit”.

No. 37—Schedule 6, item 10, page 105 (lines 17 and 18), omit subsection 200AB(5).

No. 38—Schedule 6, item 10, page 105 (after line 37), after subsection 200AB(6), insert:

Cost recovery not commercial advantage or profit

- (6A) The use does not fail to meet the condition in paragraph (2)(c), (3)(c) or (4)(c) merely because of the charging of a fee that:
 - (a) is connected with the use; and
 - (b) does not exceed the costs of the use to the charger of the fee.

No. 39—Schedule 6, item 11, page 107 (lines 14 to 36), omit subsection 40(5), substitute:

- (5) Despite subsection (2), a reproduction, for the purpose of research or study, of not more than a reasonable portion of a work or adaptation that is described in an item of the table and is not contained in an article in a periodical publication is taken to be a fair dealing with the work or adaptation for the purpose of research or study. For this purpose, *reasonable portion* means the amount described in the item.

Works, adaptations and reasonable portions

Item	Work or adaptation	Amount that is reasonable portion
1	A literary, dramatic or musical work (except a computer program), or an adaptation of such a work, that is contained in a published edition of at least 10 pages	(a) 10% of the number of pages in the edition; or (b) if the work or adaptation is divided into chapters—a single chapter
2	A published literary work in electronic form (except a computer program or an electronic compilation, such as a database), a published dramatic work in electronic form or an adaptation published in electronic form of such a literary or dramatic work	(a) 10% of the number of words in the work or adaptation; or (b) if the work or adaptation is divided into chapters—a single chapter

- (6) Subsection (5) applies to a reproduction of a work or adaptation described in both items of the table in that subsection even if the amount of the work or adaptation reproduced is not more than a reasonable portion (as defined in that subsection) on the basis of only one of those items.

(7) If:

- (a) a person makes a reproduction of a part of a published literary or dramatic work or published adaptation of a literary or dramatic work; and
(b) the reproduction is of not more than a reasonable portion (as defined in subsection (5)) of the work or adaptation;

subsection (5) does not apply in relation to any subsequent reproduction made by the person of any other part of the same work or adaptation.

- (8) Subsections 10(2), (2A), (2B) and (2C) do not affect subsection (5), (6) or (7) of this section.

No. 40—Schedule 6, item 26, page 111 (lines 24 and 25), omit the heading to section 51B, substitute:

51B Making preservation copies of significant works in key cultural institutions' collections

No. 41—Schedule 6, item 26, page 111 (lines 28 to 30), omit paragraph 51B(1)(a), substitute:

- (a) the body administering the library or archives:
 - (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
 - (ii) is prescribed by the regulations for the purposes of this subparagraph; and

No. 42—Schedule 6, item 26, page 112 (lines 4 and 5), omit “a single reproduction of the work from the manuscript”, substitute “up to 3 reproductions of the work from the manuscript for the purpose of preserving it against loss or deterioration”.

No. 43—Schedule 6, item 26, page 112 (lines 9 and 10), omit “a comprehensive photographic reproduction of the work from the original artistic work”, substitute “up to 3 comprehensive photographic reproductions of the work from the original artistic work for the purpose of preserving it against loss or deterioration”.

No. 44—Schedule 6, item 26, page 112 (lines 17 and 18), omit “a single reproduction of the work from the copy held in the collection”, substitute “up to 3 reproductions of the work from the copy held in the collection, for the purpose of preserving the work against loss or deterioration.”.

No. 45—Schedule 6, item 27, page 113 (lines 6 and 7), omit the heading to section 110BA, substitute:

110BA Making preservation copies of significant recordings and films in key cultural institutions' collections

No. 46—Schedule 6, item 27, page 113 (lines 10 to 12), omit paragraph 110BA(1)(a), substitute:

- (a) the body administering the library or archives:
 - (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
 - (ii) is prescribed by the regulations for the purposes of this subparagraph; and

No. 47—Schedule 6, item 27, page 113 (line 20), omit “a single copy of the recording from the record”, substitute “up to 3 copies of the recording from the record for the purpose of preserving the recording against loss or deterioration”.

No. 48—Schedule 6, item 27, page 113 (lines 24 and 25), omit “a single copy of the recording from the published record”, substitute “up to 3 copies of the recording from the published record for the purpose of preserving the recording against loss or deterioration”.

No. 49—Schedule 6, item 27, page 113 (lines 31 and 32), omit “a single copy of the film from the first copy or unpublished copy”, substitute “up to 3 copies of the film from the first copy or unpublished copy for the purpose of preserving the film against loss or deterioration”.

No. 50—Schedule 6, item 27, page 114 (lines 4 and 5), omit “a single copy of the film from the published copy held in the collection”, substitute “up to 3 copies of the film from the published copy held in the collection, for the purpose of preserving the film against loss or deterioration.”.

No. 51—Schedule 6, item 29, page 114 (lines 28 and 29), omit the heading to section 112AA, substitute:

112AA Making preservation copies of significant published editions in key cultural institutions' collections

No. 52—Schedule 6, item 29, page 115 (lines 1 to 3), omit paragraph 112AA(1)(a), substitute:

- (a) the body administering the library or archives:
 - (i) has, under a law of the Commonwealth or a State or Territory, the function of developing and maintaining the collection; or
 - (ii) is prescribed by the regulations for the purposes of this subparagraph; and

No. 53—Schedule 6, item 29, page 115 (lines 9 and 10), omit “a single facsimile copy of the edition from the copy held in the collection”, substitute “up to 3 facsimile copies of the edition from the copy held in the collection, for the purpose of preserving the edition against loss or deterioration.”

No. 54—Schedule 8, item 10, page 122 (lines 6 to 27), omit section 200AAA, substitute:

200AAA Proxy web caching by educational institutions

- (1) This section applies if:
 - (a) a computer system is operated by or on behalf of a body administering an educational institution; and
 - (b) the system is operated primarily to enable staff and students of the institution to use the system to gain online access for educational purposes to works and other subject-matter (whether they are made available online using the Internet or merely the system); and
 - (c) the system automatically makes:
 - (i) temporary electronic reproductions of works made available online through the system to users of the system in response to action by the users; and
 - (ii) temporary electronic copies of other subject-matter made available online through the system to users of the system in response to action by the users; and
 - (d) those reproductions and copies are made by the system merely to facilitate efficient later access to the works and other subject-matter by users of the system.
- (2) Copyright in a work or other subject-matter reproduced or copied by the system as described in paragraphs (1)(c) and (d) is not infringed by:
 - (a) that reproduction or copying; or
 - (b) the later communication of the work or other subject-matter, using that reproduction or copy, to a user of the system.
- (3) This section does not limit section 28, 43A, 43B, 111A or 111B.
- (4) Disregard this section in determining whether copyright in a work or other subject-matter is infringed by an act that:

- (a) involves a system like one described in subsection (1) except that the system is not operated as described in paragraphs (1)(a) and (b); and
 - (b) corresponds to an act described in paragraph (2)(a) or (b).
- (5) In this section:

system includes network.

No. 55—Schedule 9, item 1, page 123 (line 15), omit the definition of *broadcaster* in section 135AL, substitute:

broadcaster means a person licensed under the *Broadcasting Services Act 1992* to provide a broadcasting service (as defined in that Act) by which an encoded broadcast is delivered.

No. 56—Schedule 11, item 2, page 157 (lines 14 to 19), omit the definition of *licensor*, substitute:

licensor means a body corporate for which both the following conditions are met:

- (a) the body is incorporated under a law in force in a State or Territory relating to companies;
- (b) the body's constitution:
 - (i) entitles any owner of copyright, or any owner of copyright of a specified kind, to become a member of the body; and
 - (ii) requires the body to protect the interests of its members connected with copyright; and
 - (iii) provides that the main business of the body is granting licences; and
 - (iv) requires the body to distribute to its members the proceeds (after deduction of the body's administrative expenses) from payments to the body for licences; and
 - (v) prevents the body from paying dividends.

No. 57—Schedule 11, item 27, page 163 (lines 19 to 23), omit section 157A, substitute:

157A Tribunal must have regard to ACCC guidelines on request

- (1) In making a decision on a reference or application under this Subdivision, the Tribunal must, if requested by a party to the reference or application, have regard to relevant guidelines (if any) made by the Australian Competition and Consumer Commission.
- (2) To avoid doubt, subsection (1) does not prevent the Tribunal from having regard to other relevant matters in making a decision on a reference or application under this Subdivision.

No. 58—Schedule 11, item 28, page 164 (line 15), at the end of subsection 135SA(2), add “, but does not affect a distribution started before the order was made”.

No. 59—Schedule 11, item 29, page 164 (line 27), at the end of subsection 135ZZEA(2), add “, but does not affect a distribution started before the order was made”.

No. 60—Schedule 11, item 30, page 165 (line 10), at the end of subsection 135ZZWA(2), add “, but does not affect a distribution started before the order was made”.

No. 61—Schedule 11, item 35, page 169 (line 4), at the end of subsection 183F(2), add “, but does not affect a distribution started before the order was made”.

No. 62—Schedule 11, Part 4, page 171 (line 2) to page 174 (line 28), omit the Part, substitute:

Part 4—Records notices

Copyright Act 1968

39 After subsection 135K(2)

Insert:

(2A) A matter that:

- (a) relates to an activity required by paragraph (1)(b), (c) or (d); and
- (b) needs, or is convenient, to be determined; and
- (c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);

is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.

(2B) Sections 135E and 135F do not apply to a copy of a broadcast, or a communication of a copy of a broadcast, made by or on behalf of the administering body during a period in which:

- (a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force; and
- (b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135K(1) is inserted “*If records notice is given*”.

Note 2: The following heading to subsection 135K(3) is inserted “*If sampling notice is given*”.

40 Application

- (1) The amendment of section 135K of the *Copyright Act 1968* made by this Part applies in relation to a records notice given on or after the commencement of the amendment.
- (2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the collecting society make an agreement determining a matter described in subsection 135K(2A) of the *Copyright Act 1968*. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135K of the *Copyright Act 1968*, as in force before the commencement of the amendment, applies.

(3) In this item:

administering body has the meaning given by section 135A of the *Copyright Act 1968*.

collecting society has the meaning given by section 135A of the *Copyright Act 1968*.

records notice has the meaning given by section 135A of the *Copyright Act 1968*.

41 After subsection 135ZX(2)

Insert:

- (2A) A matter that:
- (a) relates to an activity required by paragraph (1)(b), (c) or (d); and
 - (b) needs, or is convenient, to be determined; and
 - (c) is not determined by subsection (1) or (2) or regulations made for the purposes of paragraph (1)(b), (c) or (d) or (2)(a) or (b);
- is to be determined by agreement between the administering body and the collecting society or, failing such agreement, the Copyright Tribunal on the application of either of them.
- (2B) Sections 135ZJ, 135ZK, 135ZL, 135ZMC, 135ZMD, 135ZMDA, 135ZP and 135ZS do not apply to a reproduction or copy of a work or other subject-matter made in hardcopy form or analog form by or on behalf of the administering body during a period in which:
- (a) an agreement, or an order of the Copyright Tribunal, determining a matter described in subsection (2A) is in force; and
 - (b) the body does not comply with the agreement or order.

Note 1: The following heading to subsection 135ZX(1) is inserted “*If records notice is given*”.

Note 2: The following heading to subsection 135ZX(3) is inserted “*If sampling notice is given*”.

Note 3: The following heading to subsection 135ZX(4) is inserted “*Regulations relevant to records notices and sampling notices*”.

42 Application

- (1) The amendment of section 135ZX of the *Copyright Act 1968* made by this Part applies in relation to a records notice given on or after the commencement of the amendment.
- (2) The amendment also applies in relation to a records notice given by or on behalf of an administering body before that commencement, if the body and the relevant collecting society make an agreement determining a matter described in subsection 135ZX(2A) of the *Copyright Act 1968*. In that case, the amendment applies at and after the time the agreement comes into force.

Note: While the amendment does not apply, section 135ZX of the *Copyright Act 1968*, as in force before the commencement of the amendment, applies.

- (3) In this item:

administering body has the meaning given by section 135ZB of the *Copyright Act 1968*.

records notice has the meaning given by section 135ZB of the *Copyright Act 1968*.

relevant collecting society has the meaning given by section 135ZB of the *Copyright Act 1968*.

43 After section 153BA

Insert:

153BAA Application to the Tribunal under subsection 135K(2A)

- (1) The parties to an application to the Tribunal under subsection 135K(2A) for the determination of a matter are the collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135K(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.
- (3) In determining a matter described in subsection 135K(2A), the Tribunal must have regard to such matters (if any) as are prescribed.
- (4) In this section:

administering body has the same meaning as in Part VA.

collecting society has the same meaning as in Part VA.

44 After section 153DA

Insert:

153DB Application to the Tribunal under subsection 135ZX(2A)

- (1) The parties to an application to the Tribunal under subsection 135ZX(2A) for the determination of a matter are the relevant collecting society and the administering body concerned.
- (2) If an application is made to the Tribunal under subsection 135ZX(2A) for the determination of a matter, the Tribunal must consider the application and, after giving the parties to the application an opportunity of presenting their cases, must make an order determining the matter.
- (3) In determining a matter described in subsection 135ZX(2A), the Tribunal must have regard to such matters (if any) as are prescribed.
- (4) In this section:

administering body has the same meaning as in Part VB.

relevant collecting society has the same meaning as in Part VB.

No. 63—Schedule 12, item 9, page 188 (after line 16), after subparagraph 116AN(3)(b)(ii), insert:

- (iia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and

No. 64—Schedule 12, item 9, page 188 (line 20), omit “; and”, substitute “.”.

No. 65—Schedule 12, item 9, page 188 (lines 21 and 22), omit paragraph 116AN(3)(c).

No. 66—Schedule 12, item 9, page 192 (after line 23), after subparagraph 116AO(3)(b)(ii), insert:

- (iia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

No. 67—Schedule 12, item 9, page 192 (line 27), omit “; and”, substitute “.”.

No. 68—Schedule 12, item 9, page 192 (lines 28 and 29), omit paragraph 116AO(3)(c).

No. 69—Schedule 12, item 9, page 195 (after line 16), after subparagraph 116AP(3)(b)(ii), insert:

- (ia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

No. 70—Schedule 12, item 9, page 195 (line 20), omit “; and”, substitute “.”.

No. 71—Schedule 12, item 9, page 195 (lines 21 and 22), omit paragraph 116AP(3)(c).

No. 72—Schedule 12, item 11, page 199 (after line 17), after subparagraph 132APC(3)(b)(ii), insert:

- (ia) relates to elements of the original program that will not be readily available to the person when the circumvention occurs; and

No. 73—Schedule 12, item 11, page 199 (line 21), omit “; and”, substitute “.”.

No. 74—Schedule 12, item 11, page 199 (lines 22 and 23), omit paragraph 132APC(3)(c).

No. 75—Schedule 12, item 11, page 203 (after line 32), after subparagraph 132APD(3)(b)(ii), insert:

- (ia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

No. 76—Schedule 12, item 11, page 203 (line 36), omit “; and”, substitute “.”.

No. 77—Schedule 12, item 11, page 204 (lines 1 and 2), omit paragraph 132APD(3)(c).

No. 78—Schedule 12, item 11, page 207 (after line 16), after subparagraph 132APE(3)(b)(ii), insert:

- (ia) relates to elements of the original program that will not be readily available to the person doing the act when the circumvention occurs; and

No. 79—Schedule 12, item 11, page 207 (line 20), omit “; and”, substitute “.”.

No. 80—Schedule 12, item 11, page 207 (lines 21 and 22), omit paragraph 132APE(3)(c).

Debate ensued.

The question was divided—

Question—That amendments nos 1 to 38 and 40 to 80 be agreed to—put and passed.

Debate continued.

Question—That amendment no. 39 be agreed to—put and passed.

Senator Bartlett moved the following amendments together by leave:

Schedule 1, page 37 (after line 12), after item 12, insert:

12A Subsection 152(1) (after the definition of *broadcasting*)

Insert:

community radio broadcasting licence means a community broadcasting licence allocated by the Australian Broadcasting Authority under the *Broadcasting Services Act 1992* that authorises the holder of the licence to broadcast radio programs.

Schedule 1, page 37 (after line 12), after item 12, insert:

12B Subsection 152(8)

Repeal the subsection, substitute:

- (8) The Tribunal must not make an order that would require a broadcaster who is the holder of a community radio broadcasting licence to pay, in respect of the broadcasting of published sound recordings during the period covered by the order, an amount exceeding 1% of the amount determined by the Tribunal to be the gross earnings of the broadcaster during the period equal to the period covered by the order that ended on the last 30 June that occurred before the period covered by the order.

Schedule 1, page 37 (after line 12), after item 12, insert:

12C Subsection 152(9)

Repeal the subsection, substitute:

- (9) If a broadcaster that is the holder of a licence referred to in subsection (8) has, with the permission of the Australian Broadcasting Authority, adopted an accounting period ending on a day other than 30 June, the reference in subsection (8) to 30 June is, in relation to the broadcaster, a reference to that other day.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 5

Senators—

Allison	Murray	Siewert
Bartlett (Teller)	Nettle	

NOES, 49

Senators—

Adams	Evans	Kemp	Payne
Barnett	Faulkner	Kirk	Polley
Bernardi	Ferguson	Lightfoot	Scullion
Bishop	Ferris	Ludwig	Sherry
Brandis	Fielding	Lundy	Stephens
Brown, Carol	Fierravanti-Wells	Macdonald, Ian	Troeth
Calvert	Fifield	Marshall	Trood
Carr	Forshaw	McEwen	Watson
Chapman	Heffernan	McGauran	Webber
Colbeck	Hogg	McLucas	Wong
Crossin	Humphries	Moore	
Eggleston	Johnston	Nash	
Ellison	Joyce	Parry (Teller)	

Question negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 6, Part 4.

Schedule 6, Part 4 debated and agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 8, item 8.

Schedule 8, item 8 debated and agreed to.

Senator Lundy moved the following amendments together by leave:

Schedule 12, item 1, page 184 (line 15), omit subparagraph (a)(ii) of the definition of *access control technological protection measure*, substitute:

(ii) prevents, inhibits or restricts the doing of an act comprised in copyright; and

Schedule 12, item 9, page 188 (line 19), after “program”, insert “and data”.

Schedule 12, item 13, page 211 (after line 4), after section 202A, insert:

202B Contractual evasion of technological protection measures

A provision of a contract which purports to evade the technological protection measures provided for by this Part is void and of no effect.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 25

Senators—

Allison	Faulkner	McEwen (Teller)	Siewert
Bartlett	Forshaw	McLucas	Stephens
Bishop	Hogg	Moore	Webber
Brown, Carol	Kirk	Murray	Wong
Carr	Ludwig	Nettle	
Crossin	Lundy	Polley	
Evans	Marshall	Sherry	

NOES, 30

Senators—

Adams	Ellison	Kemp	Payne
Barnett	Ferris	Lightfoot	Santoro
Bernardi	Fielding	Macdonald, Ian	Scullion
Brandis	Fierravanti-Wells	Macdonald, Sandy	Troeth
Campbell, Ian	Fifield	McGauran	Trood
Chapman	Heffernan	Minchin	Watson
Colbeck	Humphries	Nash	
Eggleston	Johnston	Parry (Teller)	

Question negatived.

After 11 pm: The Deputy President (Senator Hogg) resumed the chair and the Chair of Committees reported progress.

41 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 11.32 pm till Friday, 1 December 2006 at 9 am.

42 ATTENDANCE

Present, all senators except Senators Boswell, George Campbell*, Conroy* and Mason* (* on leave).

HARRY EVANS
Clerk of the Senate