

2008-09

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 54

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**Contents**

1	Meeting of Senate.....	1525
2	Government Documents .....	1525
3	Opposition Deputy Whip—Appointment.....	1525
4	Social Security Legislation Amendment (Employment Services Reform) Bill 2008.....	1525
5	Corporations Amendment (No. 1) Bill 2008 [2009].....	1532
6	Migration Legislation Amendment Bill (No. 2) 2008 [2009].....	1534
7	Matters of Public Interest .....	1535
8	Questions.....	1535
9	Motions to Take Note of Answers .....	1535
10	Death of Former Member the Honourable Peter Howson, CMG.....	1535
11	Petition .....	1536
12	Notices.....	1536
13	Postponements .....	1539
14	Notice of Motion Withdrawn.....	1539
15	Economics—Standing Committee—Extensions of Time to Report.....	1540
16	Carbon Pollution Reduction Scheme—Treasury Modelling—Order for Production of Documents .....	1540
17	Taxation—Alcohol—Order for Production of Documents .....	1541
18	Communications—National Broadband Network—Order for Production of Documents.....	1542
19	Industrial Relations—Occupational Health and Safety Laws .....	1542
20	Death of Mrs Nancy-Bird Walton.....	1543
21	Environment—Wetlands.....	1543
22	Foreign Affairs—Gaza.....	1544
23	Foreign Affairs—Aid Funding .....	1544
24	Scrutiny of Bills—Standing Committee—1st Report and Alert Digest No. 1 of 2009.....	1544
25	Auditor-General—Audit Report No. 19 of 2008-09—Document.....	1544
26	Documents.....	1545
27	Committee Membership.....	1545

28	Migration Legislation Amendment Bill (No. 2) 2008 [2009] .....	1546
29	Horse Disease Response Levy Bill 2008 Horse Disease Response Levy Collection Bill 2008 Horse Disease Response Levy (Consequential Amendments) Bill 2008.....	1546
30	Government Documents—Consideration .....	1547
31	Adjournment .....	1548
32	Attendance .....	1548

**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 GOVERNMENT DOCUMENTS**

The following documents were tabled:

Australian Broadcasting Corporation (ABC)—Equity and diversity—Report for the period 1 September 2007 to 31 August 2008.

Australian Industry Development Corporation—Report for 2007-08.

Copyright Agency Limited—Report for 2007-08.

*Freedom of Information Act 1982*—Report for 2007-08 on the operation of the Act.

Future Fund Board of Guardians and Future Fund Management Agency (Future Fund)—Report for 2007-08—Corrections.

*Migration Act 1958*—

Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 July to 31 October 2008.

Section 440A—Conduct of Refugee Review Tribunal reviews not completed within 90 days—Report for the period 1 July to 31 October 2008.

Section 486O—Assessment of detention arrangements—Personal identifiers 492/08 to 508/09—

Commonwealth Ombudsman's reports.

Government response to Commonwealth Ombudsman's reports.

**3 OPPOSITION DEPUTY WHIP—APPOINTMENT**

The Leader of the Opposition in the Senate (Senator Minchin), by leave, informed the Senate of the appointment of Senator Bushby as Opposition Deputy Whip.

**4 SOCIAL SECURITY LEGISLATION AMENDMENT (EMPLOYMENT SERVICES REFORM) BILL 2008**

The Minister for Human Services (Senator Ludwig), pursuant to notice, moved government business notice of motion no. 1—That the Social Security Legislation Amendment (Employment Services Reform) Bill 2008 be now read a second time.

Debate ensued.

Question put and passed.

Bill read a second time.

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

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*In the committee*

Bill, taken as a whole by leave, debated.

On the motion of Senator Siewert the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, item 1, page 4 (line 22), omit “must”, substitute “may”.

Schedule 1, item 1, page 6 (line 18), omit “must”, substitute “may”.

Schedule 1, item 1, page 8 (line 32), omit “must”, substitute “may”.

Schedule 1, item 1, page 12 (line 10), omit “must”, substitute “may”.

Senator Siewert moved the following amendment:

Schedule 1, item 1, page 5 (lines 28 to 31), omit paragraph 42C(4)(a), substitute:

- (a) the person satisfies the Secretary that the person has a reasonable excuse for the failure; or

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 1, page 6 (line 5), at the end of subsection 42C(5), add “, provided that the penalty amount may not be deducted until at least the instalment after the first instalment made following notification to the person of the no show no pay failure”.

Schedule 1, item 1, page 9 (line 35), at the end of subsection 42H(5), add “, provided that the penalty amount may not be deducted until at least the instalment after the first instalment made following notification to the person of the reconnection failure”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

#### AYES, 32

Senators—

Arbib	Conroy	Hogg	Milne
Bilyk	Crossin	Hurley	Moore
Bishop	Farrell (Teller)	Hutchins	O'Brien
Brown, Bob	Feeney	Ludlam	Siewert
Brown, Carol	Fielding	Ludwig	Stephens
Cameron	Forshaw	Lundy	Sterle
Carr	Furner	Marshall	Wortley
Collins	Hanson-Young	McLucas	Xenophon

#### NOES, 30

Senators—

Abetz	Colbeck	Humphries	Ronaldson
Barnett	Coonan	Kroger	Ryan
Bernardi	Cormann	Macdonald	Scullion
Birmingham	Eggleston	Mason	Troeth
Boswell	Fierravanti-Wells	McGauran	Trood
Boyce	Fifield	Nash	Williams (Teller)
Bushby	Fisher	Parry	
Cash	Heffernan	Payne	

Question agreed to.

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 1, page 6 (line 7), section 42D, omit “If”, substitute “(1) Subject to subsection (2), if”.

Schedule 1, item 1, page 6 (after line 15), at the end of section 42D, add:

*Reconnection and hardship provisions*

- (2) If the Secretary determines that a person commits more than 2 no show no pay failures within the same instalment period, the Secretary may determine that the person's penalty amount is to be reduced or waived if:
- (a) the person begins to comply with a no show no pay requirement imposed on the person; or
  - (b) the Secretary determines that:
    - (i) the person does not have the capacity to undertake any no show no pay requirement; and
    - (ii) the deduction of the penalty amount would cause the person to be in severe financial hardship.

Note: For *in severe financial hardship* see subsection 14A(7) of the 1991 Act.

- (3) If the Secretary determines that a person commits a no show no pay failure, then the Secretary may require the person to comply with a requirement (the *no show no pay failure requirement*).

Schedule 1, item 1, page 9 (after line 30), after subsection 42H(4), insert:

- (4A) The Secretary may end a person's reconnection failure period if the Secretary determines that:
- (a) the person does not have the capacity to undertake the reconnection requirement; and
  - (b) the deduction of the penalty amount would cause the person to be in severe financial hardship.

Debate ensued.

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

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

Schedule 1, item 1, page 12 (after line 22), after section 42N, insert:

**42NA Comprehensive compliance assessment**

- (1) Before the Secretary determines that a person has committed a serious failure under section 42M, the Secretary must conduct a comprehensive compliance assessment in relation to the person.
- (2) The *comprehensive compliance assessment* must assess the following:
  - (a) the reasons why the person may have committed failures under this Division;
  - (b) the reasons why the person may have failed to meet other requirements under the social security law;
  - (c) whether the person has any barriers to employment;
  - (d) whether the person's participation requirements are appropriate.

Senator Siewert moved the following amendment:

Schedule 1, item 1, page 12 (after line 22), after section 42N, insert:

**42NB Serious failure for unemployment resulting from a voluntary act or misconduct**

- (1) The Secretary may determine that a person commits a *serious failure* if:
- (a) the person is unemployed as a result (whether direct or indirect) of a voluntary act of the person; or
  - (b) the person is unemployed as a result of the person's misconduct as an employee.

Note: A participation payment is not payable for 8 weeks for a serious failure (see section 42P).

*Limitations on determination*

- (2) Despite subsection (1), the Secretary must not determine that a person commits a serious failure under that subsection if the person satisfies the Secretary that the person has a reasonable excuse for the failure.

Note: The Secretary must take certain matters into account for the purposes of subsection (2) (see section 42U).

Note: The Secretary may continue the participation payment pending the outcome of an application for review (see sections 131 and 145 of the Administration Act).

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Siewert, in respect of Schedule 1, Part 1, item 1, Subdivision E.

Schedule 1, Part 1, item 1, Subdivision E agreed to.

Senator Siewert moved the following amendment:

Schedule 1, item 1, page 14 (lines 31 to 33), omit subsection 42S(2), substitute:

- (2) Despite subsection (1), the Secretary must not make a determination under that subsection if the Secretary is satisfied that the voluntary act or misconduct was reasonable.

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 1, page 12 (after line 22), after section 42N, insert:

**42NC Determination about serious failure requirements and severe financial hardship**

If the Secretary determines that a person commits a serious failure, the Secretary must also determine that this section applies unless the Secretary is satisfied that:

- (a) the person does not have the capacity to undertake any serious failure requirement; and
- (b) serving the serious failure period would cause the person to be in severe financial hardship.

Schedule 1, item 1, page 12 (line 25), after “serious failure”, insert “and has determined that section 42NC applies”.

Schedule 1, item 1, page 13 (line 28), after the note, insert:

- (1A) The Secretary may make a determination under paragraph (1)(b) on request or on his or her own initiative.

Schedule 1, item 1, page 13 (lines 32 and 33), omit paragraph 42Q(2)(b), substitute:

- (b) if the Secretary makes a determination under paragraph (1)(b) on request—the day before the request was made; or  
 (c) if the Secretary makes a determination under paragraph (1)(b) on his or her own initiative—the day before the Secretary makes the determination.

Schedule 1, item 1, page 13 (line 34), after the note, insert:

- (3) Section 42NC does not affect the operation of this section.

Schedule 1, item 1, page 17 (line 24), omit “42Q(2)(b)”, substitute “42Q(2)(c)”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 34

Senators—

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

NOES, 33

Senators—

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

Question agreed to.

Senator Siewert moved the following amendment:

Schedule 1, item 1, page 15 (after line 27), before section 42T, insert:

**42SA Discretion not to report non-compliance**

- (1) An employment service provider may exercise a discretion not to report to the Secretary that a person has failed to comply with an obligation in relation to a participation payment if the employment service provider considers, on reasonable grounds, that compliance

action under this Division is not the best means of securing re-engagement and is counter-productive to the person obtaining employment.

- (2) For the purposes of this section, an *employment service provider* is a provider of employment services contracted by the Commonwealth.

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Clause 3, page 2 (lines 7 to 11), omit the clause, substitute:

**3 Schedule(s)**

- (1) Each Act, and each determination, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any determination under subsection (1) does not prevent the determination, as so amended, being amended or repealed by the Secretary.

Schedule 1, item 1, page 17 (after line 4), at the end of section 42U, add:

*Homelessness*

- (3) A determination under subsection (1) must provide that, in deciding whether a person has a reasonable excuse for the matters listed in that subsection, the Secretary must take into account whether the person is homeless or is at risk of becoming homeless and, if so, whether that circumstance has affected the person's capacity to meet the person's obligations under this Division.

Note: *homeless* has a meaning affected by section 19DA.

Schedule 4, page 61 (after line 4), before item 1, insert:

**1A After section 19D**

Insert:

**19DA Homelessness**

- (1) For the purposes of the social security law, *homelessness* and *homeless* have meanings affected by this section.
- (2) The following are objectives of the social security law:
  - (a) the need to give people a sustainable pathway out of homelessness; and
  - (b) the need to minimise the risk of people becoming homeless.
- (3) When assessing the social security entitlements and social security benefits of any person, in circumstances in which the Secretary is required to consider the residential status of the person, hardship provisions which may relate to the person's circumstances or the ability of the person to meet obligations imposed by the social security law, the Secretary must have regard to the objectives set out in subsection (2).
- (4) In applying a definition of homelessness, the Secretary must have regard to the following categories of homelessness, drawn from the

Australian Bureau of Statistics' Australian Census Analytic Program document, *Counting the Homeless*:

- (a) **primary homelessness**, which accords with the common sense assumption that homelessness is the same as 'rooflessness' and includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter;
- (b) **secondary homelessness**, which includes people who move frequently from one form of temporary shelter to another and includes people staying in emergency or transitional accommodation, including hostels for the homeless, night shelters and refuges, and also including people residing temporarily with other households because they have no accommodation of their own;
- (c) **tertiary homelessness**, which refers to people who live in boarding houses on a medium- to long-term basis, operationally defined as 13 weeks or longer, whose accommodation situation is below the minimum community standard.

Page 67 (after line 33), at the end of the bill, add:

***Social Security (Reasonable Excuse) (DEWR) Determination 2006***  
**15 Paragraph 4(2)(a)**

Omit the paragraph, substitute:

- (a) the fact that the person is homeless or is at risk of becoming homeless at the time that the failure or refusal occurred;

Debate ensued.

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

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

Page 17 (after line 31), at the end of Part 1 of Schedule 1, add:

**Subdivision G—Review**

**42ZA Review of impact of compliance regime**

- (1) The Minister must cause an independent review of the impact of the amendments made by this Division to be undertaken as soon as possible after 30 June 2010.
- (2) The review must report on:
  - (a) the effectiveness of the compliance regime in:
    - (i) meeting job seeking requirements;
    - (ii) reducing financial hardship;
    - (iii) reducing compliance costs for job seekers, employment services providers and the Government; and
    - (iv) using the 'no show, no pay' provision to increase compliance with job seeking requirements;
  - (b) the impact on vulnerable job seekers including Indigenous job seekers;
  - (c) the impact of the compliance regime on employment participation and long-term unemployment;

- (d) the number of complaints made with the departmental hotline, Social Security Appeals Tribunal or Ombudsman's office in relation to the new arrangements;
  - (e) the gaps between federal policy and state service provision for persons with non-vocational special needs or barriers;
  - (f) the adequacy of non-vocational support services in regional areas;
  - (g) the effectiveness of training for and consistency of understanding of Centrelink staff, employment providers and departmental contract managers in the new arrangements;
  - (h) the adequacy of information and education provided to new and existing clients about the new system;
  - (i) the adequacy of resourcing for Centrelink to implement the new arrangements and deal with related complaints;
  - (j) the effectiveness and use of criteria such as hardship, vulnerability and reasonable exclusion within Comprehensive Compliance Assessments; and
  - (k) any other related matter.
- (3) The review must be conducted by an independent panel, chaired by a person with expertise in social security and employment services matters.
  - (4) The Minister must provide the panel with adequate resources to undertake the review.
  - (5) The panel must give the Minister a written report of the review, and the Minister must cause a copy of the report to be made public and tabled in each House of the Parliament by 30 September 2010.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of Senator Ludwig the report from the committee was adopted and the bill read a third time.

## 5 CORPORATIONS AMENDMENT (NO. 1) BILL 2008 [2009]

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

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### *In the committee*

Consideration resumed of the bill—and of the amendment moved by Senator Milne:

Schedule 1, page 3 (after line 6), after item 1, insert:

#### **1A Paragraph 200F(2)(b)**

Repeal the paragraph, substitute:

- (b) the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with

the person's retirement from board or managerial offices in the company and related bodies corporate, does not exceed the amount worked out under subsection (4).

### **1B Subsections 200F(3), (4) and (5)**

Repeal the subsections, substitute:

- (3) For the purposes of paragraph (2)(b), *other payments* includes:
  - (a) payments of the market value of shares or share-based payments that become exercisable in connection with a person's retirement from a board or managerial office in the company or in a related body corporate; and
  - (b) payments by way of pension or lump sum, including a superannuation, retiring allowance, superannuation gratuity or similar payment.
- (4) The amount worked out under this subsection is:
  - (a) if the period or periods during which the person held a board or managerial office in the company or in a related body corporate total less than 12 months—the amount that is in the same proportion to \$1,000,000 as that total period is to 12 months; or
  - (b) if the period or periods during which the person held a board or managerial office in the company or in a related body corporate totals 12 months or more—\$1,000,000.

### **1C Paragraph 200G(1)(c)**

Omit "subsection (2)", substitute "subsection (3)".

### **1D Subsection 200G(1)**

Omit "In applying paragraph (c), disregard any pensions or lump sums that section 200F applies to.", substitute "In applying paragraph (c), the value of the benefit includes any pensions or lump sums that section 200F applies to."

### **1E Subsections 200G(2) and (3)**

Repeal the subsections, substitute:

- (2) For the purposes of paragraph (1)(c), *other payments* includes:
  - (a) payments of the market value of shares or share-based payments that become exercisable in connection with a person's retirement from a board or managerial office in the company or in a related body corporate; and
  - (b) payments by way of pension or lump sum, including a superannuation, retiring allowance, superannuation gratuity or similar payment.
- (3) The payment limit is \$1,000,000.

### **1F Subsections 200G(5) and (6)**

Repeal the subsections.

Debate resumed.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 7

Senators—

Brown, Bob	Hanson-Young	Milne	Xenophon
Fielding	Ludlam	Siewert (Teller)	

NOES, 35

Senators—

Bernardi	Cormann	Lundy	Ryan
Bilyk	Crossin	Marshall	Sherry
Boswell	Feeney	Mason	Stephens
Boyce	Ferguson	McLucas	Sterle
Brown, Carol	Forshaw	Moore	Troeth
Bushby	Furner	Nash	Trood
Cameron	Hutchins	Parry	Williams (Teller)
Colbeck	Joyce	Payne	Wortley
Collins	Ludwig	Pratt	

Question negatived.

Bill agreed to.

Bill to be reported without amendment.

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

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

## 6 MIGRATION LEGISLATION AMENDMENT BILL (NO. 2) 2008 [2009]

Order of the day 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.

Senator Hanson-Young moved the following amendment:

At the end of the motion, add “but the Senate calls on the Government to immediately put forward amendments to the Migration Act:

- (a) to implement in legislation the principles relating to immigration detention announced by the Minister for Immigration and Citizenship (Senator Evans) on 29 July 2008, in particular the following:
  - (i) detention that is indefinite or otherwise arbitrary is not acceptable and the length and conditions of detention, including the appropriateness of both the accommodation and the services provided, would be subject to regular review,
  - (ii) detention in immigration detention centres is only to be used as a last resort and for the shortest practicable time,
  - (iii) people in detention will be treated fairly and reasonably within the law, and
  - (iv) conditions of detention will ensure the inherent dignity of the human person;

- (b) to ensure that a person placed in immigration detention can apply to a court for an order that he or she be released because there are no reasonable grounds to justify detention; and
- (c) to ensure that a person cannot be kept in immigration detention for more than 30 days unless on the application of the Department of Immigration and Citizenship a court makes an order that it is necessary to detain a person on a specified ground and there are no effective alternatives to detention”.

Debate ensued.

*At 12.45 pm:* Debate was interrupted while the Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas) was speaking.

#### 7 MATTERS OF PUBLIC INTEREST

Matters of public interest were discussed.

*Suspension of sitting:* On the motion of the Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens) the sitting of the Senate was suspended at 1.51 pm till 2 pm.

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*At 2 pm—*

#### 8 QUESTIONS

Questions without notice were answered.

#### 9 MOTIONS TO TAKE NOTE OF ANSWERS

Senator Coonan moved—That the Senate take note of the answers given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to questions without notice asked today relating to the proposed nation building and jobs plan.

Debate ensued.

Question put and passed.

Senator Milne moved—That the Senate take note of the answer given by the Minister for Climate Change and Water (Senator Wong) to a question without notice asked by Senator Milne today relating to the Carbon Pollution Reduction Scheme.

Question put and passed.

#### 10 DEATH OF FORMER MEMBER THE HONOURABLE PETER HOWSON, CMG

The Deputy President (Senator Ferguson) informed the Senate of the death, on 1 February 2009, of the Honourable Peter Howson, CMG, a former minister and member of the House of Representatives for the divisions of Fawkner and Casey, from 1955 to 1969 and 1969 to 1972, respectively.

The Minister for Human Services (Senator Ludwig), by leave, moved—That the Senate records its deep regret at the death, on 1 February 2009, of the Honourable Peter Howson, CMG, former federal minister and member for Fawkner and Casey, and places on record its appreciation of his long and meritorious public service and tenders its profound sympathy to his family in their bereavement.

The motion was supported and all senators present stood in silence—

Question passed.

**11 PETITION**

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

From 193 petitioners, requesting that the Senate take action to ensure that products containing palm oil are accurately labelled.

**12 NOTICES**

The Chair of the Finance and Public Administration Committee (Senator Polley): To move on the next day of sitting—That the Finance and Public Administration Committee be authorised to hold public meetings during the sittings of the Senate, as follows:

- (a) on Thursday, 5 February 2009, from 3.45 pm, to take evidence for the committee's inquiry into the Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008; and
- (b) on Thursday, 26 February 2009, from 3.30 pm, to take evidence for the committee's inquiry into residential and community aged care in Australia. (*general business notice of motion no. 343*)

The Chair of the Legal and Constitutional Affairs Committee (Senator Crossin): To move on the next day of sitting—That the Legal and Constitutional Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 5 February 2009, from 4.30 pm to 6 pm, to take evidence for the committee's inquiry into the provisions of the Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008. (*general business notice of motion no. 344*)

The Minister for Human Services (Senator Ludwig): To move on the next day of sitting—That, on Thursday, 5 February 2009:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7 pm to adjournment;
- (b) 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;
- (c) 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;
- (d) divisions may take place after 4.30 pm;
- (e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:
  - Tax Bonus for Working Australians Bill 2009
  - Tax Bonus for Working Australians (Consequential Amendments) Bill 2009
  - Household Stimulus Package Bill 2009; and
- (f) if the Senate is sitting at midnight, the sitting of the Senate be suspended till 9 am on Friday, 6 February 2009.

The Minister for Human Services (Senator Ludwig): To move on the next day of sitting—That the orders of the Senate agreed to on 12 November 2008 relating to days of meeting of the Senate for 2009, and estimates hearings dates, be varied as follows:

- (a) meeting of Senate for 2009 (as part of the Autumn sittings), omit "Monday, 23 February to Thursday, 26 February", substitute "Monday, 9 February to Thursday, 12 February"; and

(b) **2008-09 additional estimates**

omit:

“Monday, 9 February and Tuesday, 10 February 2009, and, if required, Friday, 13 February 2009 (*Group A*)  
Wednesday, 11 February and Thursday, 12 February 2009, and, if required, Friday, 13 February 2009 (*Group B*)”.

substitute:

“Monday, 23 February and Tuesday, 24 February 2009, and, if required, Friday, 27 February 2009 (*Group A*)  
Wednesday, 25 February and Thursday, 26 February 2009, and, if required, Friday, 27 February 2009 (*Group B*)”.

Senator Hurley: To move on the next day of sitting—That the Senate—

- (a) congratulates organisers of the Tour Down Under cycling event on staging the most successful cycling event since its inception in 1999;
- (b) expresses thanks to all the support staff and others who have contributed to the success of the event;
- (c) congratulates Mr Allan Davis (Quickstep) on winning an outstanding 2009 Tour Down Under cycling event;
- (d) conveys, on behalf of all Australians, the nation’s pride and congratulations for the performances of participants over the course of the competition;
- (e) thanks the South Australian people and the thousands from interstate who cheered cyclists in the 2009 Tour Down Under and participated in the event;
- (f) commends the contribution made by the South Australian State Government in announcing a massive roll-out of bike paths and honouring some of South Australia’s cycling greats;
- (g) notes the generous pledge by the South Australian Premier, Mr Mike Rann, to triple any funds raised by the Cancer Council of South Australia during the 2009 Tour Down Under;
- (h) also thanks Mr Lance Armstrong for his cancer awareness campaign and the high profile media coverage he brought to South Australia and Australia;
- (i) acknowledges the contribution of the International Cycling Union to the success of the Tour Down Under; and
- (j) congratulates the Minister for Sport, Ms Kate Ellis, and the Australian Sports Anti-Doping Authority for ensuring the conduct of a free and fair race. (*general business notice of motion no. 345*)

The Leader of the Opposition in the Senate (Senator Minchin) and the Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That—

- (1) The additional estimates hearings of standing committees scheduled for the week beginning 9 February 2009 not take place.
- (2) The Senate meet from Monday, 9 February to Thursday, 12 February 2009.
- (3) The Senate not meet from Monday, 23 February to Thursday, 26 February 2009.
- (4) That the 2008-09 additional estimates hearings by standing committees be scheduled as follows:
  - Monday, 23 February and Tuesday, 24 February 2009, and, if required, Friday, 27 February 2009 (*Group A*)
  - Wednesday, 25 February and Thursday, 26 February 2009, and, if required, Friday, 27 February 2009 (*Group B*).

- (5) The provisions of the following bills (the bills) be referred to the Finance and Public Administration Committee for inquiry and report by 10 February 2009:
- Appropriation (Nation Building and Jobs) Bill (No. 1) 2008-2009
  - Appropriation (Nation Building and Jobs) Bill (No. 2) 2008-2009
  - Commonwealth Inscribed Stock Amendment Bill 2009
  - Household Stimulus Package Bill 2009
  - Tax Bonus for Working Australians Bill 2009
  - Tax Bonus for Working Australians (Consequential Amendments) Bill 2009.
- (6) Notwithstanding the reference of the provisions of the bills, the Senate may consider the bills to the conclusion of the second reading stage, but shall not further consider the bills until the report of the Finance and Public Administration Committee on the bills has been tabled.
- (7) On Thursday, 5 February 2009:
- (a) the hours of meeting shall be 9.30 am to 7 pm;
  - (b) 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;
  - (c) the routine of business from not later than 4.30 pm till 7 pm shall be consideration of the bills (second reading speeches);
  - (d) divisions may take place after 4.30 pm; and
  - (e) at 7 pm the Senate shall adjourn without any question being put.
- (8) The Finance and Public Administration Committee shall meet from 7 pm to 9 pm on Thursday, 5 February 2009, and from 9 am on Friday, 6 February 2009 to take evidence from government departments and agencies, including (but not limited to):
- (a) Treasury;
  - (b) Centrelink;
  - (c) Education, Employment and Workplace Relations;
  - (d) Environment, Heritage and the Arts; and
  - (e) Families, Housing, Community Services and Indigenous Affairs.
- (9) The Finance and Public Administration Committee shall meet on Monday, 9 February 2009 to take further evidence in relation to the bills from non-government organisations, community groups and other interested parties as determined by the committee, and may meet during the sitting of the Senate for that purpose.
- (10) The presentation of the report of the Finance and Public Administration Committee on the bills be an order of the day for 12.31 pm on Tuesday, 10 February 2009.
- (11) On Thursday, 12 February 2009, the hours of meeting shall be 9.30 am to adjournment, and the question for the adjournment of the Senate shall not be proposed until the Senate has finally considered the bills listed in paragraph (5).
- Senator Siewert: To move on the next day of sitting—That the Senate—
- (a) notes that:
    - (i) on 25 November 2008, the Senate urged the Australian Government to set a timeline for legal proceedings in an international court to stop illegal Japanese whaling if Japan does not commit to stop whaling by 8 December 2008,

- (ii) Japanese whaling operations continued past this deadline, and
- (iii) no such legal action has been undertaken by the Government;
- (b) urges the Government to:
  - (i) strongly oppose the proposal in the document, 'The Future of the IWC', currently before the International Whaling Commission, which seeks to legitimise Japanese whaling operations, and
  - (ii) immediately commence international legal action to stop illegal Japanese whaling; and
- (c) condemns the violent actions of the Japanese whaling fleet, who have reportedly thrown metal balls at environmental activists, and used acoustic weapons to send out painful high frequency sound waves. (*general business notice of motion no. 346*)

The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That there be laid on the table, by 1 March 2009, an analysis of greenhouse gas emissions from the logging of native forests in Tasmania in public and private forests, including an assessment for 2008 of:

- (a) the total amount;
- (b) the component due to regeneration burning;
- (c) the component due to export woodchips; and
- (d) the component due to waste from other losses accrued in transport and manufacturing. (*general business notice of motion no. 347*)

The Minister for Human Services (Senator Ludwig): To move on the next day of sitting—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:

Appropriation (Nation Building and Jobs) Bill (No. 1) 2008-2009  
 Appropriation (Nation Building and Jobs) Bill (No. 2) 2008-2009  
 Household Stimulus Package Bill 2009  
 Tax Bonus for Working Australians Bill 2009  
 Tax Bonus for Working Australians (Consequential Amendments) Bill 2009  
 Commonwealth Inscribed Stock Amendment Bill 2009.

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*Document:* Senator Ludwig tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the bills in the 2009 autumn sittings.

### 13 POSTPONEMENTS

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Milne for today, proposing a reference to the Environment, Communications and the Arts Committee, postponed till 5 February 2009.

General business notice of motion no. 341 standing in the name of Senator Hanson-Young for today, relating to immigration detention policies, postponed till 5 February 2009.

### 14 NOTICE OF MOTION WITHDRAWN

Senator Parry, at the request of Senator Abetz, withdrew general business notice of motion no. 332 standing in the name of Senator Abetz for today, proposing an order for the production of a document by the Chair of the Economics Committee (Senator Hurley).

**15 ECONOMICS—STANDING COMMITTEE—EXTENSIONS OF TIME TO REPORT**

Senator O'Brien, at the request of the Chair of the Economics Committee (Senator Hurley) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 333—That the time for the presentation of the following reports of the Economics Committee be extended to 26 February 2009:

- (a) provisions of the Tax Laws Amendment (Taxation of Financial Arrangements) Bill 2008; and
- (b) provisions of the Trade Practices Amendment (Cartel Conduct and Other Measures) Bill 2008.

Question put and passed.

**16 CARBON POLLUTION REDUCTION SCHEME—TREASURY MODELLING—ORDER FOR PRODUCTION OF DOCUMENTS**

The Chair of the Select Committee on Fuel and Energy (Senator Cormann) amended general business notice of motion no. 334 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes that:
  - (i) the Select Committee on Fuel and Energy contracted Dr Brian Fisher from Concept Economics to conduct an independent peer review of the Department of the Treasury modelling of the impact of the Government's proposed Carbon Pollution Reduction Scheme,
  - (ii) the committee wrote to the Treasurer (Mr Swan) on 9 December 2008 requesting that Dr Fisher be given 'full access to the government's complete documentation of the government's models together with the model codes and databases and any other model simulations undertaken relevant to the policy scenarios, but not publicly released' by 17 December 2008,
  - (iii) the Treasurer has refused the committee's request, and
  - (iv) Dr Fisher has reported that he was impeded in carrying out the work requested by the committee because the information requested from the Treasurer was not made available to him; and
- (b) orders that there be laid on the table by the Minister representing the Treasurer, no later than noon on 5 February 2009, the following information relating to the Department of the Treasury modelling, *Australia's low pollution future: The economics of climate change mitigation*:
  - (i) the model documentation and codes together with all databases for both the global trade and environment model and the Monash multi-regional forecasting model that were employed in the department's modelling of the Carbon Pollution Reduction Scheme scenarios in a form that would allow the reproduction of the department's results, and
  - (ii) any other model simulations undertaken relevant to the abovementioned policy scenarios but not publicly released.

*Statements by leave:* Senators Cormann and Milne, by leave, made statements relating to the motion.

Question put and passed.

**17 TAXATION—ALCOHOL—ORDER FOR PRODUCTION OF DOCUMENTS**

Senator Cormann, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 335—That the Senate—

- (a) notes:
- (i) the response from the Department of the Treasury to straightforward questions regarding the amount of revenue collected as a result of the increase in the excise on ‘alcopops’ effective 27 April 2008 and other excise measures [question no. sbt 3, parts (1), (18), (19) and (20)] placed on notice at hearings of the Economics Committee in October 2008, that ‘This information is not publicly available’, and
  - (ii) that there has never been any suggestion, nor would it be accepted by the Senate, that answers to questions asked by senators at estimates hearings should be limited to publicly available material;
- (b) considers that this response amounts to a refusal to answer the questions;
- (c) orders that there be laid on the table by 5 February 2009 meaningful answers to parts (1), (18), (19) and (20) of question no. sbt 3, previously placed on notice at hearings of the Economics Committee in October 2008; and
- (d) orders that there be laid on the table by 23 February 2009 meaningful answers to the following additional questions:
- (i) what tax revenue has been collected in each of the following categories of alcohol since 27 April 2008:
    - (A) beer,
    - (B) cask wine,
    - (C) bottled wine,
    - (D) cider,
    - (E) spirits, and
    - (F) other excisable beverages, i.e. ready-to-drink (RTD) beverages (alcopops),
  - (ii) for each of the categories in question (d)(i), what volumes of alcohol (measured in litres of alcohol) were either:
    - (A) cleared for home consumption, or
    - (B) subject to tax under the *A New Tax System (Wine Equalisation Tax) Act 1999*,
  - (iii) what is the measured price elasticity of RTD beverages, given the data collected since 27 April 2008,
  - (iv) is the measured elasticity since 27 April 2008 consistent with the Department of the Treasury modelling underlying the revenue impacts of the tax increase measure published in the 2008-09 Budget,
  - (v) what were the Department of the Treasury’s estimates of RTD own-price and cross-price elasticity with other alcohol beverages used to calculate the revenue estimates from different alcohol products included in the *Mid-year economic and fiscal outlook 2008-09*,
  - (vi) what volume growth rates have been assumed by the Department of the Treasury for different alcohol beverages for the financial years included in the *Mid-year economic and fiscal outlook 2008-09*,
  - (vii) what advice was produced by the Department of the Treasury or the Department of Health and Ageing regarding likely substitution effects prior to or following the introduction of the alcopops tax,

- (viii) what evidence has the Government collected regarding reduction in risky or high risk drinking and/or at risk behaviour among:
  - (A) all drinkers,
  - (B) the following age groups – under 18, 18 to 24, 25 to 40 and over 40,
  - (C) men, and
  - (D) women, and
- (ix) what evidence has the Government, including the Australian Institute of Health and Welfare, collected regarding those alcohol products most likely to be associated with low risk, risky and high risk drinking among different age and gender categories.

Question put and passed.

#### 18 COMMUNICATIONS—NATIONAL BROADBAND NETWORK—ORDER FOR PRODUCTION OF DOCUMENTS

Senator Parry, at the request of the Leader of the Opposition in the Senate (Senator Minchin) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 336—That there be laid on the table by the Minister for Broadband, Communications and the Digital Economy, no later than 10 am on Thursday, 5 February 2009:

- (a) the Australian Competition and Consumer Commission's formal report on the National Broadband Network (NBN) proposals to the NBN Panel of Experts; and
- (b) the final report provided to the Government from the NBN Panel of Experts on submissions to the NBN process.

The Leader of the Family First Party (Senator Fielding), by leave, moved the following amendment:

Omit "Thursday, 5 February 2009", substitute "the day after the day the winning bid is announced".

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

Main question, as amended, put and passed.

#### 19 INDUSTRIAL RELATIONS—OCCUPATIONAL HEALTH AND SAFETY LAWS

Senator Parry, at the request of Senator Abetz and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 337—That the Senate—

- (a) notes the comments made by the Deputy Prime Minister (Ms Gillard) and reported in the *Australian Financial Review* on 20 January 2009, regarding the Senate's 2008 amendments to the Safe Work Australia legislation; and
- (b) condemns the Deputy Prime Minister for seeking to circumvent the Senate on the issue of uniform occupational health and safety laws, rather than meet with non-government senators to discuss their concerns about the legislation.

Question put and passed.

**20 DEATH OF MRS NANCY-BIRD WALTON**

Senator Parry, at the request of Senator Nash and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 338—That the Senate—

- (a) notes the sad passing of Mrs Nancy-Bird Walton who died at the age of 93 on 13 January 2009;
- (b) notes and commends her significant and inspirational achievements as an aviation pioneer in Australia;
- (c) pays tribute to her service to Australian aviation including through the foundation of the Australian Women Pilots' Association and her longstanding support for the Royal Flying Doctor Service; and
- (d) expresses its sincere condolences and profound sympathy to her family and loved ones.

Question put and passed.

**21 ENVIRONMENT—WETLANDS**

Senator Siewert, also on behalf of Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 339—That the Senate—

- (a) notes that 2 February 2009 was World Wetlands Day, a date that marks the anniversary of the signing of the Convention of Wetlands of International Importance (Ramsar Convention) in Ramsar, Iran, on 2 February 1971;
- (b) welcomes the release on World Wetlands Day of the 2007 *Ramsar Snapshot Study* noting the significant delay since its completion in December 2007;
- (c) calls on the Government to implement its recommendations and, in particular, to establish regular systematic reporting on wetland health and management;
- (d) notes that the *National report on the implementation of the Ramsar Convention on Wetlands* to the 10th meeting of the Conference of the Contracting Parties in Korea, during October 2008, identified that the greatest challenges Australia faces in delivering on our international wetlands commitments are:
  - (i) providing adequate volumes of water to Ramsar sites, and
  - (ii) securing sufficient human and financial resources to implement the convention consistently and effectively;
- (e) calls on the Government to act immediately to address these challenges by providing sufficient resources for planning, management, monitoring and enforcement and by ensuring sufficient volumes of water are set aside to maintain wetland health and ecosystem resilience;
- (f) expresses concern at the dire state of wetlands in the Murray-Darling Basin, noting that with up to 90 per cent of the systems' original wetlands are already lost and the majority of those remaining are highly stressed, their ability to maintain the health of the river, protect water quality and deliver ecosystem services is severely threatened (Inland Rivers Network, *Wetlands for Our Future* 2008 report); and
- (g) calls on the Government to act to secure sufficient water within the Murray-Darling system to maintain its health and resilience, to prioritise ecological flows to threatened and degraded wetlands in the basin, and to ensure, in particular, that the ecological character of the Coorong and Lower Lakes is not changed irretrievably by their flooding with salt water.

*Statement by leave:* The Minister for Human Services (Senator Ludwig), by leave, made a statement relating to the motion.

Question put and passed.

## 22 FOREIGN AFFAIRS—GAZA

Senator Hanson-Young amended general business notice of motion no. 342 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes with regret the number of people who have been killed in the recent hostilities in Gaza and southern Israel;
- (b) expresses deep concern regarding the 437 Palestinian children killed, as indicated by the Palestinian Health Authority; and
- (c) calls on the Government to:
  - (i) provide urgent additional funding for recovery and reconstruction efforts to the United Nations Relief and Works Agency for Palestinian Refugees in the Near East, including the \$10 million already committed in 2009 to Gaza, and
  - (ii) support medical treatment to assist Palestinian children and their families, including consideration of medical evacuation.

*Statements by leave:* Senator Coonan, the Special Minister of State (Senator Faulkner) and Senator Hanson-Young, by leave, made statements relating to the motion.

Question put and passed.

## 23 FOREIGN AFFAIRS—AID FUNDING

*Motion determined as not formal:* Senator Hanson-Young requested that general business notice of motion no. 340 standing in her name for today, relating to foreign aid, be taken as formal.

An objection was raised and the motion was not proceeded with as a formal motion.

*Statement by leave:* The Leader of the Australian Greens (Senator Bob Brown), by leave, made a statement relating to the motion.

## 24 SCRUTINY OF BILLS—STANDING COMMITTEE—1ST REPORT AND ALERT DIGEST NO. 1 OF 2009

The Chairman of the Standing Committee for the Scrutiny of Bills (Senator Coonan) tabled the following report and document:

Scrutiny of Bills—Standing Committee—

1st report of 2009, dated 4 February 2009.

Alert Digest No. 1 of 2009, dated 4 February 2009.

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

Senator Coonan moved—That the Senate take note of the report.

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

## 25 AUDITOR-GENERAL—AUDIT REPORT NO. 19 OF 2008-09—DOCUMENT

The Acting Deputy President (Senator Carol Brown) tabled the following document:

Auditor-General—Audit report no. 19 of 2008-09—Performance audit—CMAX Communications contract for the 2020 Summit—Department of the Prime Minister and Cabinet.

**26 DOCUMENTS**

The following documents were tabled by the Clerk:

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

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

105—

AD/ML-M4/3—Elevator Trim Control – Modification [F2009L00182]\*.

AD/ML-M4/8—Flight Control System Pulley – Modification [F2009L00183]\*.

AD/ML-M5/2—Control Column Chain and Engine Controls – Inspection [F2009L00185]\*.

AD/ML-M6/3—Elevator Controls [F2009L00187]\*.

107—

AD/ELECT/15—Engine Starter – Bendix – Modification [F2009L00172]\*.

AD/ELECT/16—Magneto – Bendix Scintilla Distributor Gear – Inspection [F2009L00173]\*.

Higher Education Support Act—VET Provider Approval No. 5 of 2009—Australian College of Sports Therapy Pty Ltd [F2009L00249]\*.

\* Explanatory statement tabled with legislative instrument.

**27 COMMITTEE MEMBERSHIP**

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

The Special Minister of State (Senator Faulkner), by leave, moved—That senators be discharged from and appointed to committees as follows:

**Migration—Joint Standing Committee—**

Discharged—Senator Eggleston

Appointed—Senator Fierravanti-Wells

**Selection of Bills—Standing Committee—**

Discharged—Senator Adams from 4 February 2009, Senator Bushby from 12 May 2009

Appointed—Senator Bushby from 4 February 2009, Senator Adams from 12 May 2009

**Senators' Interests—Standing Committee—**

Discharged—Senator Adams from 4 February 2009, Senator Parry from 12 May 2009

Appointed—Senator Parry from 4 February 2009, Senator Adams from 12 May 2009.

Question put and passed.

**28 MIGRATION LEGISLATION AMENDMENT BILL (NO. 2) 2008 [2009]**

Order of the day 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—and on the amendment moved by Senator Hanson-Young (see entry no. 6).

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*Explanatory memorandum:* The Minister for Immigration and Citizenship (Senator Evans) tabled a correction to the explanatory memorandum relating to the bill.

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Debate resumed.

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

Main question put and passed.

Bill read a second time.

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

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*In the committee*

Bill, taken as a whole by leave, debated and agreed to.

Bill to be reported without amendment.

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The Acting Deputy President (Senator Carol Brown) resumed the chair and the Temporary Chair of Committees reported accordingly.

On the motion of Senator Evans the report from the committee was adopted and the bill read a third time.

**29 HORSE DISEASE RESPONSE LEVY BILL 2008****HORSE DISEASE RESPONSE LEVY COLLECTION BILL 2008****HORSE DISEASE RESPONSE LEVY (CONSEQUENTIAL AMENDMENTS) BILL 2008**

Order of the day 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.

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*Declaration of interest:* Senator O'Brien declared an interest in relation to the bills.

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Debate continued.

Question put and passed.

Bills read a second time.

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

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*In the committee*

Bills, taken together and as a whole by leave, debated.

Senator Xenophon moved—That the committee report progress and ask leave to sit again.

Question put and negatived.

Bills agreed to.

Bills to be reported without amendments or requests for amendments.

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

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

Senator Sherry moved—That these bills be now read a third time.

Question put.

The Senate divided—

## AYES, 32

Senators—

Arbib	Crossin	Ludlam	Polley
Bilyk	Evans	Ludwig	Pratt
Bishop	Farrell	Lundy	Sherry
Brown, Bob	Feeney	Marshall	Siewert
Brown, Carol	Forshaw	McLucas	Stephens
Cameron	Furner	Milne	Sterle
Collins	Hanson-Young	Moore	Wong
Conroy	Hurley	O'Brien (Teller)	Wortley

## NOES, 34

Senators—

Barnett	Coonan	Humphries	Payne
Bernardi	Cormann	Johnston	Ryan
Birmingham	Eggleston	Joyce	Scullion
Boswell	Ferguson	Kroger	Troeth
Boyce	Fielding	Macdonald	Trood
Brandis	Fierravanti-Wells	Mason	Williams
Bushby (Teller)	Fifield	McGauran	Xenophon
Cash	Fisher	Nash	
Colbeck	Heffernan	Parry	

Question negatived.

*After 6.50 pm—*

### 30 GOVERNMENT DOCUMENTS—CONSIDERATION

The government documents tabled earlier today (*see entry no. 2*) were called on but no motion was moved.

**31 ADJOURNMENT**

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

Debate ensued.

The Senate adjourned at 7.32 pm till Thursday, 5 February 2009 at 9.30 am.

**32 ATTENDANCE**

Present, all senators except Senators Adams\* and McEwen\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate