

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 48

THURSDAY, 27 NOVEMBER 2008

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1 MEETING OF SENATE

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

2 UNPARLIAMENTARY LANGUAGE—STATEMENT BY PRESIDENT

The President made a statement relating to remarks made by the Minister for Immigration and Citizenship (Senator Evans) and a matter raised by senators during question time on 26 November 2008.

3 NOTICES

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

(a) notes that:

- (i) on 15 November 2008, state and territory Labor Treasurers held a pre-Council of Australian Governments (COAG) strategy meeting in preparation for the COAG meeting on 29 November 2008,
- (ii) the Western Australian Treasurer (Mr Buswell) was explicitly told not to attend that meeting by the Treasurer for Victoria (Mr Lenders),
- (iii) the Leader of the Government in the Senate (Senator Evans) has sought to justify the exclusion of the Western Australian Treasurer from the pre-COAG strategy meeting held by all Labor state and territory Treasurers,
- (iv) when asked whether the Government had received any representations or had any discussions on issues relating to the upcoming COAG meeting as a result of that pre-COAG strategy meeting, the Leader of the Government in the Senate responded that ‘certainly there would have been preparations done’,
- (v) the exclusion of the Western Australian Treasurer from COAG preparations and the attitude of the Leader of the Government in the Senate in relation to that are not in the spirit of ‘cooperative federalism’ promoted by the Government before the 2007 federal election, and
- (vi) even the Western Australian Labor Shadow Treasurer (Mr Wyatt) was ‘surprised and disappointed’ that his Labor colleagues from the other states had excluded Western Australia; and

(b) calls on the Prime Minister (Mr Rudd) to reprimand state and territory Labor Governments and the Leader of the Government in the Senate, or at least remind them, in the spirit of cooperative federalism, of the need to work cooperatively, including with the State of Western Australia. (*general business notice of motion no. 304*)

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

(1) On Monday, 1 December 2008:

- (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
- (b) the routine of business from 7.30 pm shall be government business only; and
- (c) the question for the adjournment of the Senate shall be proposed at 11 pm.

- (2) On Tuesday, 2 December 2008:
- (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
 - (b) the routine of business from 7.30 pm shall be government business only; and
 - (c) the question for the adjournment of the Senate shall be proposed at 11 pm.
- (3) On Wednesday, 3 December 2008, the routine of business from 5.30 pm to not later than 7.20 pm shall be valedictory statements relating to Senator Ellison.
- (4) On Thursday, 4 December 2008:
- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 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 3.45 pm shall be government business only;
 - (d) divisions may take place after 4.30 pm; and
 - (e) if the Senate is sitting at 11 pm, the sitting of the Senate shall be suspended till 9 am on Friday, 5 December 2008.
- (5) In making valedictory statements in accordance with paragraph (3) above, a senator shall not speak for more than 20 minutes.

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

- (a) notes that:
- (i) Monday, 1 December 2008 marks the 20th anniversary of World AIDS Day,
 - (ii) World AIDS Day was instituted by the World Health Organization to raise public awareness about AIDS and to promote support and understanding for people living with HIV/AIDS,
 - (iii) globally there are an estimated 33.2 million people living with HIV,
 - (iv) in Australia, between 1981 and 2007, there were 27 331 diagnoses of HIV infection, 10 230 diagnoses of AIDS and 6 767 deaths from AIDS,
 - (v) in 2007, 1 051 people in Australia were diagnosed with HIV,
 - (vi) currently approximately 16 692 people in Australia are living with HIV, and
 - (vii) from 2003 to 2007 the overall rate of new HIV diagnoses in Australia has increased from 4 to 4.4 per 100 000; and
- (b) calls on the Government to review current levels of Commonwealth funding towards research, education and prevention programs in order to reverse the current upward trend in the rate of HIV infections. (*general business notice of motion no. 305*)

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

- (a) notes local government and community opposition to a road, proposed by Forestry Tasmania, through a section of the Tarkine forest; and

- (b) calls on the Government to ensure no federal funding is used, directly or indirectly, for this road unless or until local government concerns are addressed. (*general business notice of motion no. 306*)

The Leader of the Australian Greens (Senator Bob Brown): To move on 2 December 2008—That the Senate—

- (a) notes that the Foreign Press Association has grave concerns about the actions of the Israeli Government that have made access to the Gaza Strip inaccessible to foreign media; and
- (b) calls on the Australian Government to make representations to the Israeli Government to allow proper access for the media into Gaza. (*general business notice of motion no. 307*)

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:

Corporations Amendment (Short Selling) Bill 2008
Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008.

Documents: Senator Ludwig tabled the following documents:

Consideration of legislation—Statements of reasons [2] for introduction and passage of the bills in the 2008 spring sittings.

4 LEAVE OF ABSENCE

Senator Parry, by leave, moved—That leave of absence be granted to Senators Cash, Cormann, Eggleston, Ellison, Johnston, Joyce and Minchin for today, on account of parliamentary business.

Question put and passed.

5 ORDER OF BUSINESS—REARRANGEMENT

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

- No. 8 Migration Legislation Amendment (Worker Protection) Bill 2008.
No. 9 Evidence Amendment Bill 2008.
No. 10 Transport Security Amendment (2008 Measures No. 1) Bill 2008.
No. 11 National Measurement Amendment Bill 2008.
No. 12 Australian Curriculum, Assessment and Reporting Authority Bill 2008.

Question put and passed.

Senator McEwen, by leave and at the request of the Chair of the Economics Committee (Senator Hurley), moved—That business of the Senate order of the day no. 3, relating to the presentation of the report of the Economics Committee on the provisions of the Corporations Amendment (Short Selling) Bill 2008, be postponed till a later hour.

Question put and passed.

6 RURAL AND REGIONAL AFFAIRS AND TRANSPORT—STANDING COMMITTEE—REFERENCE

Senator Parry, at the request of Senator Heffernan and pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the following matter be referred to the Rural and Regional Affairs and Transport Committee for inquiry and report by 19 March 2009:

Issues relating to the import risk analysis (IRA) for the importation of Cavendish bananas from the Philippines, including:

- (a) Biosecurity Australia's administration of the IRA process;
- (b) the scientific and technical information relied upon by the IRA team;
- (c) the feasibility of the risk management measures and operational arrangements proposed in the final IRA report; and
- (d) the capability of the Australian Government and, in particular, the Australian Quarantine Inspection Service, to monitor and enforce compliance with the risk management measures and operational arrangements proposed in the final IRA report.

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

Question put and passed.

7 RURAL AND REGIONAL AFFAIRS AND TRANSPORT—STANDING COMMITTEE—EXTENSION OF TIME TO REPORT

The Minister for Human Services (Senator Ludwig), at the request of Chair of the Rural and Regional Affairs and Transport Committee (Senator Sterle) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 300—That the time for the presentation of the report of the Rural and Regional Affairs and Transport Committee on matters specified in part (2) of the inquiry into the management of the Murray-Darling Basin system be extended to 19 March 2009.

Question put and passed.

8 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—APPROVAL

The Minister for Human Services (Senator Ludwig), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, for the construction of a new cooling plant enclosure at Old Parliament House.

Question put and passed.

9 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS—STANDING COMMITTEE—EXTENSION OF TIME TO REPORT

The Chair of the Education, Employment and Workplace Relations Committee (Senator Marshall), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 301—That the time for the presentation of the report of the Education, Employment and Workplace Relations Committee on academic freedom in school and higher education be extended to 4 December 2008.

Question put and passed.

10 RENEWABLE ENERGY AMENDMENT (INCREASED MANDATORY RENEWABLE ENERGY TARGET) BILL 2008

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 302—That the following bill be introduced:

A Bill for an Act to progressively increase the target for mandatory renewable energy requirements, 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.

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

11 INDUSTRY—FISHING—MORETON BAY

Senator Macdonald amended general business notice of motion no. 303 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

(a) notes that:

- (i) a federally-funded independent review into the sustainability of shark and other protected species in the East Coast Inshore Fin Fish Fishery, which includes Queensland's Moreton Bay, was released on 27 November 2008,
- (ii) the future of fishers in the Moreton Bay area could very much depend on the outcome of this federally-funded review, and
- (iii) the Queensland Government is closing tenders for the Structural Adjustment Package for Moreton Bay fishers on 28 November 2008, the timing of which will prevent fishers from making fully informed decisions, taking into account the outcome of the federally-funded review; and

(b) calls on the Queensland Government to extend the closing date for tenders for the Structural Adjustment Package to 1 February 2009 to give fishers the opportunity of considering the independent federally-funded review to determine whether or not they should be exiting the fishery and making application for the Structural Adjustment Package.

Statements by leave: The Minister for Human Services (Senator Ludwig) and Senator Macdonald, by leave, made statements relating to the motion.

Question put and passed.

12 NOTICE OF MOTION WITHDRAWN

Senator Ludlam withdrew general business notice of motion no. 272 standing in his name for today, relating to the National Rental Affordability Scheme.

13 RURAL AND REGIONAL AFFAIRS AND TRANSPORT—STANDING COMMITTEE—DOCUMENT—WATER AMENDMENT BILL 2008

Senator McEwen, at the request of the Chair of the Rural and Regional Affairs and Transport Committee (Senator Sterle), tabled the following document:

Rural and Regional Affairs and Transport—Standing Committee—Report—Water Amendment Bill 2008 [Provisions]—Corrigenda.

Document ordered to be printed on the motion of Senator McEwen.

14 CORPORATIONS AMENDMENT (SHORT SELLING) BILL 2008

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

Message no. 217, dated 26 November 2008—A Bill for an Act to amend the *Corporations Act 2001*, and for related purposes.

The Minister for Human Services (Senator Ludwig) 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 Ludwig 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.

15 COMMITTEE MEMBERSHIP

The President informed the Senate that he had received a letter nominating senators to be members of a committee.

The Minister for Human Services (Senator Ludwig), by leave, moved—That senators be appointed to the Select Committee on Men's Health as follows:

Senators Lundy and Sterle

Participating members: Senators Arbib, Bilyk, Bishop, Carol Brown, Cameron, Collins, Crossin, Farrell, Feeney, Forshaw, Furner, Hurley, Hutchins, Marshall, McEwen, Moore, O'Brien, Polley, Pratt and Wortley.

Question put and passed.

16 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS—STANDING COMMITTEE—REPORT—SCHOOLS ASSISTANCE BILL 2008 AND EDUCATION LEGISLATION AMENDMENT BILL 2008

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

Education, Employment and Workplace Relations—Standing Committee—Schools Assistance Bill 2008 [Provisions] and Education Legislation Amendment Bill 2008 [Provisions]—Report, dated November 2008, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

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

17 WATER AMENDMENT BILL 2008

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

In the committee

Consideration resumed of the bill, as amended—and of the amendment moved by Senator Nash:

Schedule 2, page 318 (after line 32), after item 162, insert:

162F At the end of Part 12

Add:

262 Inquiry into bulk water arrangements

- (1) The Minister must cause an inquiry to be held into the effects of Commonwealth water purchases from bulk water arrangements.
- (2) The inquiry must consider what steps the Minister should take to prevent third party effects within bulk water arrangements on remaining parties.
- (3) The inquiry must report by 1 July 2009 and the Minister must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of receiving the report.
- (4) The Minister must have regard to the recommendations of the report of the inquiry in proceeding with subsequent purchases of water from bulk water arrangements.

Debate resumed.

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

Senator Nash moved the following amendment:

Schedule 2, page 318 (after line 32), after item 162, insert:

162G At the end of Part 12

Add:

263 Lower Lakes and Coorong emergency assistance

- (1) As soon as practicable after the commencement of this section, the Government must determine an assistance package of a minimum \$50 million for Lower Lakes and Coorong communities to help farmers, small businesses, tourism and community sectors to respond to the crisis caused by the lack of water.
- (2) Payments of assistance in accordance with a scheme determined under subsection (1) are to be made from money appropriated by the Parliament for that purpose.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 36

Senators—

Abetz	Colbeck	Humphries	Payne
Barnett	Coonan	Kroger	Ronaldson
Bernardi	Ferguson	Ludlam	Ryan
Birmingham	Fielding	Macdonald	Scullion
Boswell	Fierravanti-Wells	Mason	Siewert
Boyce	Fifield	McGauran	Troeth
Brandis	Fisher	Milne	Trood
Brown, Bob	Hanson-Young	Nash	Williams (Teller)
Bushby	Heffernan	Parry	Xenophon

NOES, 24

Senators—

Arbib	Farrell	Hutchins	Polley
Bilyk	Feeney	Ludwig	Sherry
Brown, Carol	Forshaw	Lundy	Stephens
Cameron	Furner	Marshall	Sterle
Collins	Hogg	McEwen	Wong
Crossin (Teller)	Hurley	McLucas	Wortley

Question agreed to.

Senator Siewert moved the following amendments together by leave:

Clause 2, page 2 (table item 4), omit “Schedule 3”, substitute “Schedules 3 and 4”.

Page 326 (after line 32), at the end of the bill, add:

**Schedule 4—Amendments related to the recognition of
Indigenous water rights**

Water Act 2007

1 After paragraph 3(d)

Insert:

(da) to give recognition to Indigenous water rights and delivery of cultural flows; and

2 Subsection 4(1)

Insert:

cultural flows are water entitlements that are legally and beneficially owned by the Indigenous Nations of a sufficient and adequate quantity and quality to improve the spiritual, cultural, environmental, social and economic conditions of those Indigenous Nations.

3 Subsection 4(1)

Insert:

cultural water has the meaning given by section 6A.

4 Subsection 4(1) (definition of *relevant international agreement*)

After paragraph (h), insert:

(ha) the United Nations Declaration on the Rights of Indigenous Peoples;

5 After section 6

Insert:

6A Cultural water

- (1) *Cultural water* comprises water entitlements derived from cultural flows.
- (2) Cultural water within the Basin can be used for the following purposes:
 - (a) empowerment and social justice—water is delivered to Country by the peoples;
 - (b) growing native plants;
 - (c) protecting and hunting animals;
 - (d) song, dance, art and ceremony;
 - (e) spiritual sites;
 - (f) improved cultural, economic and health outcomes through the provision of food, medicines and materials for art.

6 At the end of section 21

Add:

Basin Plan to recognise the right to cultural water

- (8) The Basin Plan must be prepared so as to recognise cultural flows and provide recognition of entitlements to cultural water.

Note: *Cultural water* has the meaning given by section 6A.

7 After paragraph 22(3)(e)

Add:

- (ea) the recognition of cultural flows and entitlements to cultural water; and

8 At the end of subsection 28(1)

Add:

- ; and (f) recognise cultural flows and entitlements to cultural water.

9 At the end of subsection 178(3)

Add:

- ; (h) Indigenous water rights and cultural flows.

12 At the end of subsection 202(7)

Add:

- ; or (e) uses water as cultural water.

Note: *Cultural water* has the meaning given by section 6A.

Debate ensued.

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

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

Clause 2, page 2 (table item 4), omit “Schedule 3”, substitute “Schedules 3 and 4”.

Page 326 (after line 32), at the end of the bill, add:

**Schedule 4—Amendments related to the recognition of
Indigenous water rights**

Water Act 2007

10 After paragraph 202(3)(b)

Insert:

and (c) an Indigenous water subcommittee, to guide the consideration of Indigenous matters relevant to the Basin’s water resources;

11 At the end of subsection 202(5)

Add:

; and (c) an individual with expertise in Indigenous matters relevant to the Basin’s water resources.

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

Schedule 1, item 1, page 11 (after line 2), after subsection 18H(1), insert:

(1A) Until the States of New South Wales, Victoria and South Australia have each achieved the objective of increasing the flow of water in the River Murray as required by the *Living Murray Initiative*, these States’ water savings programs are to be independently audited and, as soon as the saved water becomes available, the water must be allocated to the *Living Murray Initiative* and must not be used for any other purpose.

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

Schedule 2, item 50A, after subsection 21(10), insert:

(10A) To avoid doubt:

- (a) the delivery of water for the initiatives of the Water for Rivers project was an existing use of water prior to 3 July 2008; and
- (b) the taking of water for the initiatives of the Water for Rivers project is not contrary to subsection 21(8); and
- (c) the construction and operation of water infrastructure for the initiatives of the Water for Rivers project is not contrary to subsection 257(1); and
- (d) all commenced and provisionally agreed Snowy River environmental flows are preserved and excluded from the provisions of subsections 21(8), 21(9) and 257(1).

Senator Nash moved the following amendment to the amendment moved by the Leader of the Australian Greens (Senator Bob Brown) and agreed to on 26 November 2008 (*see entry no. 5, 26 November 2008, J 1303*):

Schedule 2, item 161A, subsection 255A(1), omit “exploration”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 37

Senators—

Bernardi	Crossin (Teller)	Hutchins	Scullion
Bilyk	Farrell	Kroger	Stephens
Birmingham	Feeney	Lundy	Sterle
Boswell	Ferguson	McEwen	Troeth
Boyce	Fielding	McLucas	Trood
Brown, Carol	Fierravanti-Wells	Nash	Williams
Bushby	Fifield	Parry	Wortley
Cameron	Fisher	Payne	
Colbeck	Furner	Polley	
Collins	Hurley	Ronaldson	

NOES, 6

Senators—

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

Question agreed to.

Senator Nash moved the following amendment to the amendment moved by the Leader of the Australian Greens (Senator Bob Brown) and agreed to on 26 November 2008 (*see entry no. 5, 26 November 2008, J 1303*):

Schedule 2, item 161A, omit subsection 255A(2).

The Leader of the Australian Greens (Senator Bob Brown) moved the following amendment to Senator Nash's proposed amendment:

At the end of the amendment, add “, substitute:

(2) Where a substantial risk is identified, licences must not be granted.”

Debate ensued.

Question—That Senator Bob Brown's amendment to Senator Nash's proposed amendment be agreed to—put.

The committee divided—

AYES, 6

Senators—

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

NOES, 40

Senators—

Barnett	Collins	Hurley	Polley
Bilyk	Crossin	Hutchins	Ronaldson
Birmingham	Farrell	Kroger	Ryan
Bishop	Feeney	Lundy	Scullion
Boswell	Ferguson	Marshall	Sterle
Boyce	Fierravanti-Wells	McEwen	Troeth
Brown, Carol	Fifield	McLucas	Trood
Bushby	Fisher	Nash	Williams
Cameron	Furner	Parry (Teller)	Wong
Colbeck	Hogg	Payne	Wortley

Question negated.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Climate Change and Water (Senator Wong) the report from the committee was adopted and the bill read a third time.

18 FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (EMERGENCY RESPONSE CONSOLIDATION) BILL 2008

Order of the day read for the adjourned debate on the motion of the Minister for Innovation, Industry, Science and Research (Senator Carr)—That this bill be now read a second time.

Debate resumed.

At 12.45 pm: Debate was interrupted while Senator Payne was speaking.

19 MIGRATION LEGISLATION AMENDMENT (WORKER PROTECTION) BILL 2008

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.

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 Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas) the bill was read a third time.

20 EVIDENCE AMENDMENT BILL 2008

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.

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 Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas) the bill was read a third time.

21 TRANSPORT SECURITY AMENDMENT (2008 MEASURES NO. 1) BILL 2008

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

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

22 NATIONAL MEASUREMENT AMENDMENT BILL 2008

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

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

23 AUSTRALIAN CURRICULUM, ASSESSMENT AND REPORTING AUTHORITY BILL 2008

Order of the day read for the adjourned debate on the motion of the Minister for Superannuation and Corporate Law (Senator Sherry)—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 Human Services (Senator Ludwig) the bill was read a third time.

At 2 pm—

24 LEADER OF THE OPPOSITION IN THE SENATE—DEATH OF MR GORDON ADAMS—STATEMENT BY LEAVE

Senator Abetz, by leave, informed the Senate of the absence of the Leader of the Opposition in the Senate (Senator Minchin) to attend the funeral of Mr Gordon Adams, husband of Senator Adams, and extended condolences to Senator Adams and her family.

Statements by leave: The Minister for Immigration and Citizenship (Senator Evans) and the Leader of the Australian Greens (Senator Bob Brown), by leave, made statements relating to the matter.

25 FOREIGN AFFAIRS—INDIA—TERRORIST ATTACKS—MINISTERIAL STATEMENT

The Special Minister of State (Senator Faulkner), by leave, made a statement relating to the terrorist attacks in Mumbai, India.

Statements by leave: Senator Coonan, the Leader of the Australian Greens (Senator Bob Brown), the Leader of the Family First Party (Senator Fielding) and Senator Xenophon, by leave, made statements relating to the matter.

26 QUESTIONS

Questions without notice were answered.

27 MOTION 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.

Debate ensued.

At 3.45 pm: Debate was interrupted while Senator Fisher was speaking.

The Deputy President (Senator Ferguson) reminded the Senate that pursuant to the order of the Senate agreed to on 25 November 2008 (*see entry no. 4, 25 November 2008*), government business was to be called on at this time.

Leave was granted to enable the tabling of certain documents and for a motion relating to the membership of a committee to be moved prior to the commencement of government business.

28 AUSTRALIAN ELECTORAL COMMISSION—ELECTION RESULTS—PERSONAL EXPLANATION

Senator Fifield, by leave, made a personal explanation relating to a booklet produced by the Australian Electoral Commission on the 2007 Federal election results.

Statement by leave: Senator Macdonald, by leave, made a statement relating to the matter.

29 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—GOVERNMENT RESPONSE—REMOVAL, SEARCH FOR AND DISCOVERY OF MS VIVIAN SOLON

The Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens) tabled the following document:

Foreign Affairs, Defence and Trade References Committee—Final report—The removal, search for and discovery of Ms Vivian Solon—Government response.

30 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—GOVERNMENT RESPONSE—AUSTRALIA'S AID PROGRAM IN THE PACIFIC

The Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens) tabled the following document:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Australia's aid program in the Pacific—Government response.

31 ECONOMICS—STANDING COMMITTEE—REPORT—CORPORATIONS AMENDMENT (SHORT SELLING) BILL 2008

Pursuant to order, the Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens), at the request of the Chair of the Economics Committee (Senator Hurley), tabled the following report and documents:

Economics—Standing Committee—Corporations Amendment (Short Selling) Bill 2008 [Provisions]—Report, dated November 2008, Hansard record of proceedings, additional information and submissions.

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

32 AUDITOR-GENERAL—AUDIT REPORT NO. 9 OF 2008-09—DOCUMENT

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

Auditor-General—Audit report no. 9 of 2008-09—Assurance report—Defence Materiel Organisation major projects report 2007-08.

33 AUSTRALIAN PARLIAMENTARY DELEGATION TO CROATIA AND BOSNIA AND HERZEGOVINA—DOCUMENT

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

Croatia and Bosnia and Herzegovina—Report of the Australian parliamentary delegation, 29 September to 8 October 2008, dated November 2008.

34 DOCUMENT

The following document was tabled by the Clerk:

Australian Research Council Act—Approval of Proposals—Determination No. 62—Linkage Infrastructure, Equipment and Facilities commencing in 2009.

35 COMMITTEE MEMBERSHIP

The Deputy President (Senator Ferguson) informed the Senate that the President had received a letter requesting changes in the membership of a committee.

The Parliamentary Secretary for Social Inclusion and the Voluntary Sector (Senator Stephens), by leave, moved—That Senator Hanson-Young replace Senator Siewert on the Education, Employment and Workplace Relations Committee for the committee's inquiry into the oversight of the child care industry, and Senator Siewert be appointed as a participating member of the committee.

Question put and passed.

36 FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS AND OTHER LEGISLATION AMENDMENT (EMERGENCY RESPONSE CONSOLIDATION) BILL 2008

Order of the day read for the adjourned debate on the motion of the Minister for Innovation, Industry, Science and Research (Senator Carr)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Question—That the bill be agreed to—divided in respect of Schedule 1, items 3, 13 and 16.

Schedule 1, items 3, 13 and 16 debated.

Question—That Schedule 1, items 3, 13 and 16 stand as printed—put and negatived.

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

Schedule 1, item 5, page 4 (line 9), omit “declared”.

Schedule 1, item 5, page 4 (line 19), omit “*declared*”.

Schedule 1, item 9, page 5 (line 22), omit “*declared*”.

Schedule 1, item 10, page 6 (line 1) to page 9 (line 16), omit clause 12, substitute:

12 Condition applicable to certain subscription television narrowcasting services provided in the Northern Territory under class licences

- (1) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast an R 18+ program in a way that will enable a subscriber in a prescribed area (within the meaning of the *Northern Territory National Emergency Response Act 2007*) to view the program.

Sunset provision

- (2) Subclause (1) ceases to have effect at whichever is the earlier of the following times:

- (a) the end of the period of 5 years that began on the day after the day on which the *Northern Territory National Emergency Response Act 2007* received the Royal Assent;
- (b) if a shorter period is specified in a written instrument made by the Minister for the purposes of this paragraph—the end of that shorter period.

- (3) An instrument under paragraph (2)(b) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the instrument.

R 18+ programs

- (4) For the purposes of this clause, an **R 18+ program** is a program that has been classified and/or assessed R 18+ by:
- (a) the Classification Board; or
- (b) the provider of the subscription television narrowcasting service concerned.

Schedule 1, item 10, page 9 (after line 16), after clause 12, insert:

12A Application of *Racial Discrimination Act 1975*

- (1) Clause 12 of this Schedule and the remaining provisions of this Act in so far as they relate to clause 12 of this Schedule, and any acts done under or for the purposes of those provisions:
- (a) are special measures for the purposes of the *Racial Discrimination Act 1975*; and
- (b) are excluded from the operation of Part II of the *Racial Discrimination Act 1975*.
- (2) In this clause, a reference to any acts done includes a reference to any failure to do an act.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 10, clause 13.

Schedule 1, item 10, clause 13 debated.

Question—That Schedule 1, item 10, clause 13 stand as printed—put.

The committee divided—

AYES, 44

Senators—

Barnett	Collins	Humphries	Polley
Bilyk	Crossin	Hurley	Pratt
Birmingham	Farrell	Hutchins	Ronaldson
Bishop	Feeney	Kroger	Ryan
Boswell	Ferguson	Lundy	Scullion
Boyce	Fielding	Marshall	Sherry
Brandis	Fifield	McEwen (Teller)	Sterle
Brown, Carol	Fisher	McGauran	Troeth
Bushby	Forshaw	McLucas	Williams
Cameron	Furner	Nash	Wortley
Colbeck	Hogg	Parry	Xenophon

NOES, 4

Senators—

Brown, Bob	Hanson-Young	Ludlam	Siewert (Teller)
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Clause agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2.

Schedule 2 debated and agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 3, items 1 to 9.

Schedule 3, items 1 to 9 debated.

Question—That Schedule 3, items 1 to 9 stand as printed—put.

The committee divided—

AYES, 25

Senators—

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

NOES, 28

Senators—

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

Items negatived.

Bill, as amended, further debated.

The Leader of the Family First Party (Senator Fielding) asked that the question on Schedule 2 be put again.

Leave was granted for the question to be put again.

Question—That Schedule 2 stand as printed—put and negatived.

Senator Scullion moved the following amendment:

Page 18 (after line 12), after Schedule 3, insert:

Schedule 3A—Access to Aboriginal land

Aboriginal Land Rights (Northern Territory) Act 1976

1 Subsection 70B(2)

Omit “may” (first occurring), substitute “must”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 28

Senators—

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

NOES, 26

Senators—

Arbib	Crossin	Hurley	Sherry
Bilyk	Evans	Hutchins	Siewert
Bishop	Farrell	Ludlam	Stephens
Brown, Bob	Feeny	Lundy	Sterle
Brown, Carol	Forshaw	Marshall	Wortley
Cameron	Furner	McEwen (Teller)	
Collins	Hanson-Young	Pratt	

Question agreed to.

Senator Siewert moved the following amendment:

Page 19 (after line 8), at the end of the bill, add:

Schedule 5—Application of National Emergency Response Laws

Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007

1 Section 4

Repeal the section, substitute:

4 Racial Discrimination Act

(1) Without limiting the general operation of the *Racial Discrimination Act 1975* in relation to the following Acts:

- (a) *Aboriginal Land Rights (Northern Territory) Act 1976*;
- (b) *Australian Crime Commission Act 2002*;
- (c) *Australian Federal Police Act 1979*;

(d) *Classification (Publications, Films and Computer Games) Act 1995*;

the provisions of the *Racial Discrimination Act 1975* are intended to prevail over the provisions of this Act.

- (2) The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975*.
- (3) The provisions of this Act, and any acts done under or for the purposes of those provisions are, for the purposes of the *Racial Discrimination Act 1975*, intended to qualify as special measures.
- (4) Any act done, any decision made and any discretion exercised under or for the purposes of this Act must be consistent with the intended beneficial purpose of this Act.
- (5) In this section, a reference to any act done includes a reference to any failure to do an act.

2 Section 5

Repeal the section.

Northern Territory National Emergency Response Act 2007

3 Section 132

Repeal the section, substitute:

132 Racial Discrimination Act

- (1) The provisions of the *Racial Discrimination Act 1975* are intended to prevail over the provisions of this Act.
- (2) The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975*.
- (3) The provisions of this Act, and any acts done under or for the purposes of those provisions are, for the purposes of the *Racial Discrimination Act 1975*, intended to qualify as special measures.
- (4) Any act done, any decision made and any discretion exercised under or for the purposes of this Act must be consistent with the intended beneficial purpose of this Act.
- (5) In this section, a reference to any act done includes a reference to any failure to do an act.

4 Section 133

Repeal the section.

Social Security and Other Legislation Amendment (Welfare Payment Reform) Act 2007

5 Section 4

Repeal the section, substitute:

4 Racial Discrimination Act

- (1) Without limiting the general operation of the *Racial Discrimination Act 1975* in relation to the *Social Security (Administration) Act 1999*, the provisions of the *Racial Discrimination Act 1975* are intended to prevail over the provisions of this Act and the provisions of the *Social Security (Administration) Act 1999*.

- (2) The provisions of this Act do not authorise conduct that is inconsistent with the provisions of the *Racial Discrimination Act 1975*.
- (3) The provisions of this Act, and any acts done under or for the purposes of those provisions are, for the purposes of the *Racial Discrimination Act 1975*, intended to qualify as special measures.
- (4) Any act done, any decision made and any discretion exercised under or for the purposes of this Act must be consistent with the intended beneficial purpose of this Act.
- (5) In this section, a reference to any act done includes a reference to any failure to do an act.

6 Sections 5, 6 and 7

Repeal the sections.

Debate ensued.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Immigration and Citizenship (Senator Evans) the report from the committee was adopted.

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

Question put.

The Senate divided—

AYES, 28

Senators—

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

NOES, 26

Senators—

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

Question agreed to.

Bill read a third time.

37 TAX LAWS AMENDMENT (2008 MEASURES NO. 5) BILL 2008

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.

Question put and passed.

Bill read a second time.

On the motion of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) consideration of the bill in committee of the whole was made an order of the day for the next day of sitting.

38 TAX LAWS AMENDMENT (EDUCATION REFUND) BILL 2008

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Health and Ageing (Senator McLucas)—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 Broadband, Communications and the Digital Economy (Senator Conroy) the bill was read a third time.

**39 TEMPORARY RESIDENTS' SUPERANNUATION LEGISLATION AMENDMENT BILL 2008
SUPERANNUATION (DEPARTING AUSTRALIA SUPERANNUATION PAYMENTS TAX)
AMENDMENT BILL 2008**

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

Debate resumed.

Question put and passed.

Bills read a second time.

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

In the committee

Bills taken together and as a whole by leave.

Explanatory memorandum: Senator Sherry tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the Temporary Residents' Superannuation Legislation Amendment Bill 2008.

Question—That the Temporary Residents’ Superannuation Legislation Amendment Bill 2008 be agreed to—divided in respect of Schedule 1, item 12.

Schedule 1, item 12 debated.

Question—That Schedule 1, item 12 stand as printed—put and negatived.

On the motion of Senator Sherry the following amendments in respect of the Temporary Residents’ Superannuation Legislation Amendment Bill 2008, taken together by leave, were agreed to:

Schedule 1, item 16, page 6 (lines 27 and 28), omit “, by the next date set for the purpose by the Commissioner”.

Schedule 1, item 16, page 7 (line 2), after “interest”, insert “by the next date set for the purpose by the Commissioner”.

Schedule 1, item 16, page 10 (line 13), omit “**by scheduled statement day**”.

Schedule 1, item 16, page 10 (line 23), omit “day.”, substitute “day; or”.

Schedule 1, item 16, page 10 (after line 23), at the end of subsection 20F(1), add:

- (c) if a day is identified for the superannuation provider under the regulations that is later than the day described in paragraph (a) and later than the day described in paragraph (b) if it is relevant—that later day.

Schedule 1, item 16, page 12 (after line 4), after subsection 20F(4), insert:

Regulations for the purposes of paragraph (1)(c)

- (4A) Regulations for the purposes of paragraph (1)(c) may provide for a day to be identified by the Commissioner or the Australian Prudential Regulation Authority. This does not limit the provision that the regulations may make for identification of a day for those purposes.

Schedule 1, item 16, page 15 (after line 31), after subparagraph 20J(6)(a)(i), insert:

- (ia) paragraph 20F(1)(c); and

Senator Xenophon moved the following amendment in respect of the Temporary Residents’ Superannuation Legislation Amendment Bill 2008:

Schedule 1, item 16, page 20 (after line 22), after Part 3A, insert:

Part 3B—Administration of taxation of superannuation of eligible temporary residents

20Q Retention scheme

- (1) The Commissioner must, within 45 days of the commencement of the *Temporary Residents’ Superannuation Legislation Amendment Act 2008*, determine by legislative instrument a scheme that enables an eligible temporary resident to retain a superannuation interest in a fund until the person reaches the age of 60 or some other later date determined by the person.
- (2) Despite anything in section 44 of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a legislative instrument made under subsection (1).
- (3) Section 48 of the *Legislative Instruments Act 2003* does not apply to an instrument made under subsection (1).

- (4) If, under section 42 of the *Legislative Instruments Act 2003*, an instrument made under subsection (1) or a provision of such an instrument is disallowed or is taken to have been disallowed (the *deemed disallowance*), the Commissioner must, within 30 days after the disallowance or deemed disallowance, determine a replacement legislative instrument for the purposes of subsection (1).
- (5) In this section:
eligible temporary resident means a person:
(a) for whom the superannuation provider has a current address and who maintains regular contact with the superannuation provider; and
(b) who would otherwise be subject to Part 3A.

20R Application of Part 3B

Part 3B does not apply to any person unless the Commissioner has determined a scheme in accordance with section 20Q and the scheme has been implemented.

Debate ensued.

At 11 pm: The President resumed the chair and the Temporary Chair of Committees (Senator Forshaw) reported progress.

40 ADJOURNMENT

The President proposed the question—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 11.24 pm till Monday, 1 December 2008 at 12.30 pm.

41 ATTENDANCE

Present, all senators except Senators Adams*, Cash*, Cormann*, Eggleston*, Ellison*, Johnston*, Joyce*, Minchin*, Moore* and O'Brien* (* on leave).

HARRY EVANS
Clerk of the Senate