

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 47

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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 GOVERNMENT DOCUMENTS**

The following documents were tabled:

Australian Postal Corporation (Australia Post)—Equal employment opportunity program—Report for 2007-08.

*Crimes Act 1914*—Authorisations for the acquisition and use of assumed identities—Report for 2007-08—Australian Customs Service.

Equal Opportunity for Women in the Workplace Agency (EOWA)—Report for 2007-08.

*Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Act 2004*—Report on financial assistance granted to each state in respect of 2007.

Treaty—*Bilateral*—Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information, done at New York on 26 September 2007—Text, together with national interest analysis.

**3 FREEDOM OF INFORMATION (REMOVAL OF CONCLUSIVE CERTIFICATES AND OTHER MEASURES) BILL 2008**

The Special Minister of State (Senator Faulkner), pursuant to notice, moved government business notice of motion no. 1—That the following bill be introduced:

A Bill for an Act to amend the law relating to access to information, and for related purposes.

Question put and passed.

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

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*Explanatory memorandum:* Senator Faulkner tabled an explanatory memorandum relating to the bill.

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*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.

**4 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Climate Change and Water (Senator Wong) moved—That government business notice of motion no. 2 standing in the name of the Minister for Human Services (Senator Ludwig) for today, relating to the consideration of legislation, be postponed till a later hour.

Question put and passed.

**5 WATER AMENDMENT BILL 2008**

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, as amended.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2, item 78.

Schedule 2, item 78 debated and agreed to.

Senator Siewert moved the following amendment:

Schedule 2, page 304 (after line 14), after item 90, insert:

**90A At the end of Part 2**

Add:

**Division 5—Investments**

**86AA Investment decisions**

- (1) The Minister, in making investment decisions related to the Murray-Darling Basin, including but not limited to investments relating to modernising on-farm and off-farm irrigation infrastructure, major engineering works and the purchase of water allocations, must:
  - (a) ensure consistency of the investment with the Basin Plan; and
  - (b) ensure consistency of the investment with the National Water Initiative commitments, giving effect to the principles of full-cost recovery, user pays and pricing transparency; and
  - (c) provide transparency and accountability in the expenditure of funds; and
  - (d) monitor and measure the effectiveness of the investment in meeting the objectives of the Basin Plan; and
  - (e) assess the cost effectiveness of the proposal.
- (2) To ensure that where any water entitlement savings are to be shared between the environment and an existing entitlement holder, the Minister must:
  - (a) have the extent of the savings confirmed by an independent auditor;
  - (b) reduce the existing licence holder's access entitlement by at least 50% of the savings that are expected to occur after the investment is made.

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 2, page 304 (after line 16), after item 91, insert:

**91A Part 5 (heading)**

Repeal the heading, substitute:

**Part 5—Murray-Darling Basin Water Rights Information Service and Register**

**91B At the end of Part 5**

Add:

**103A Progressively established Basin Water Register**

- (1) The Authority may establish a Guaranteed Water Rights Register in a manner that is consistent with the Basin Plan.
- (2) The Authority may establish a process enabling the voluntary transfer of registrable water rights issued by States to the Register established under subsection (1).

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 2, page 305 (after line 16), after item 93, insert:

**93A Paragraph 110(1)(a)**

Before “using”, insert “acquiring, holding or”.

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 2, page 306 (after line 1), after item 97, insert:

**97A Subsection 140(1)**

Repeal the subsection (not including the heading), substitute:

- (1) If a person has engaged, is engaging or is proposing to engage in conduct consisting of an act or omission that constituted, constitutes or would constitute a contravention to which this Part applies, an application to a Court for an injunction may be sought by:
  - (a) the appropriate enforcement agency; or
  - (b) an interested person (other than an unincorporated organisation);  
or
  - (c) a person acting on behalf of an unincorporated organisation that is an interested person.

**97B At the end of section 140**

Add:

- (7) For the purposes of an application for an injunction relating to conduct or proposed conduct, an individual is an *interested person* if the individual is an Australian citizen or is ordinarily resident in Australia or an external Territory, and:
  - (a) the individual’s interests have been, are or would be affected by the conduct or proposed conduct; or
  - (b) the individual engaged in a series of activities for protection or conservation of, or research into, water resources or dependent ecosystems, at any time in the 2 years immediately before:
    - (i) the conduct; or
    - (ii) in the case of proposed conduct—making the application for the injunction.

- (8) For the purposes of an application for an injunction relating to conduct or proposed conduct, an organisation (whether incorporated or not) is an *interested person* if it is incorporated (or was otherwise established) in Australia or an external Territory and one or more of the following conditions are met:
- (a) the organisation's interests have been, are or would be affected by the conduct or proposed conduct;
  - (b) if the application relates to conduct—at any time during the 2 years immediately before the conduct:
    - (i) the organisation's objects or purposes included the protection or conservation of, or research into, water resources or dependent ecosystems; and
    - (ii) the organisation has been engaged in a series of activities related to the protection or conservation of, or research into, water resources or dependent ecosystems; and
  - (c) if the application relates to proposed conduct—at any time during the 2 years immediately before the making of the application:
    - (i) the organisation's objects or purposes included the protection or conservation of, or research into, water resources or dependent ecosystems; and
    - (ii) the organisation has been engaged in a series of activities related to the protection or conservation of, or research into, water resources or dependent ecosystems.

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 2, page 306 (after line 1), after item 97, insert:

**97C At the end of Part 8**

Add:

**Division 10—Review of administrative decisions**

**170A Extended standing for judicial review**

- (1) This section extends (and does not limit) the meaning of the term *person aggrieved* in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:
  - (a) a decision made under this Act or the regulations; or
  - (b) a failure to make a decision under this Act or the regulations; or
  - (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.
- (2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:
  - (a) the individual is an Australian citizen ordinarily resident in Australia or an external Territory; and

- (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, water resources or dependent ecosystems.
- (3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:
  - (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
  - (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, water resources or dependent ecosystems; and
  - (c) at the time of the decision, failure or conduct, the objects or purposes of the organisation or association included protection or conservation of, or research into, water resources or dependent ecosystems.
- (4) A term (except *person aggrieved*) used in this section and in the *Administrative Decisions (Judicial Review) Act 1977* has the same meaning in this section as it has in that Act.

#### **170B Applications on behalf of unincorporated organisations**

Applications for a review of decisions under the *Administrative Decisions (Judicial Review) Act 1977* may be made by a person acting on behalf of an unincorporated organisation that is a person aggrieved for the purposes of that Act by:

- (a) a decision made under this Act or the regulations; or
- (b) a failure to make a decision under this Act or the regulations; or
- (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

Schedule 2, page 306 (after line 1), after item 97, insert:

#### **97D Before paragraph 172(1)(a)**

Insert:

- (aa) to pursue and, where appropriate, encourage other agencies to pursue the objects of the Act as set out in section 3;

Schedule 2, page 306 (after line 1), after item 97, insert:

#### **97E Paragraph 172(1)(b)**

After “quantity”, insert “and the threat to the long term health”.

Schedule 2, page 306 (after line 19), after item 100, insert:

#### **100A At the end of paragraph 172(1)(h)**

Add “with specific attention to river, wetland and estuary health”.

Debate ensued.

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

On the motion of Senator Nash, at the request of Senator Xenophon, the following amendment was debated and agreed to:

Schedule 2, page 306 (after line 1), after item 97, insert:

**97D Before paragraph 172(1)(a)**

Insert:

- (aa) to pursue and, where appropriate, make recommendations to other agencies to pursue the objects of the Act as set out in section 3;

Senator Nash moved the following amendment:

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

**162B At the end of Part 12**

Add:

**258 Community Impact Statements**

- (1) For each region in the Basin in which the Commonwealth purchases or intends to purchase any privately-held water entitlement, the Minister must publish a Community Impact Statement specifying:
  - (a) social and cultural impacts;
  - (b) economic impacts;
  - (c) environmental impacts;
  - (d) the criteria used by the Commonwealth in deciding to purchase that water entitlement;
  - (e) any conditions upon which the purchase was made;
  - (f) other water entitlements the Commonwealth is considering purchasing in the region.
- (2) A report published under subsection (1) must specify the modelling and evidence upon which the impacts referred to in paragraphs (1)(a), (b) and (c) were determined.
- (3) The Community Impact Statement must be used in determining the allocation of funds under any structural adjustment package determined under section 259.

Debate ensued.

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

Senator Siewert moved the following amendments together by leave:

No. 1—Schedule 2, page 308 (after line 5), after item 106, insert:

**106A Subsection 175(1)**

After “directions”, insert “, which must be consistent with the objects of this Act,”.

No. 2—Schedule 2, page 308 (after line 5), after item 106, insert:

**106B Before paragraph 175(2)(a)**

Insert:

- (aa) those aspects of the Basin Plan excluded from Ministerial direction under subsection 44(5);

Debate ensued.

The question was divided—

Question—That amendment no. 1 be agreed to—put and passed.

Question—That amendment no. 2 be agreed to—put and passed.

Senator Siewert moved the following amendment:

Schedule 2, page 308 (after line 5), after item 106, insert:

**106C Subsection 178(6)**

Omit “must”, substitute “may”.

Debate ensued.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 40

Senators—

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

NOES, 28

Senators—

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

Question agreed to.

On the motion of the Leader of the Australian Greens (Senator Bob Brown) the following amendment was debated and agreed to:

Schedule 2, page 318 (after line 8), after item 161, insert:

**161A After section 255**

Insert:

**255A Mitigation of unintended diversions**

- (1) Prior to exploration licences being granted for subsidence mining operations on floodplains that have underlying groundwater systems forming part of the Murray-Darling system inflows, an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and groundwater flows and water quality.
- (2) Where a substantial risk is identified exploration licences must not be granted.

Senator Nash moved the following amendment:

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

**162C At the end of Part 12**

Add:

**259 Structural adjustment package**

- (1) The Minister must, by legislative instrument, determine a scheme in the nature of a structural adjustment package to allocate appropriate funding to communities affected by the purchase by the Commonwealth of any privately-held water entitlements.
- (2) A scheme determined under subsection (1) must provide for structural adjustment assistance to be allocated to communities to assist them to adjust to:
  - (a) reduced water availability;
  - (b) reduced economic activity associated with the closure of farming or other enterprises;
  - (c) changes in land use.
- (3) In determining the amount of funding to be allocated to any community under the scheme, regard must be had to the Community Impact Statement in relation to the affected community published under section 258.

Debate ensued.

Senator Xenophon moved the following amendment to Senator Nash's proposed amendment:

At the end of proposed section 259, add:

- (4) The Minister, in considering the content of any structural adjustment package, must take into account the history of relative water efficiencies in irrigation districts and the means by which they have been achieved.

Debate ensued.

Question—That Senator Xenophon's amendment to Senator Nash's proposed amendment be agreed to—put and negatived.

Debate continued.

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:

**162D At the end of Part 12**

Add:

**260 Water saving infrastructure program**

- (1) The Minister must, by legislative instrument, determine a scheme to achieve water efficiency measures through Commonwealth investment in water saving infrastructure.
- (2) A scheme determined under subsection (1) must set clear targets for water to be saved from on-farm and off-farm infrastructure projects.

- (3) A report is to be prepared as at 1 July 2009, and for each subsequent six-month period, containing a schedule for each project being undertaken or planned and, for each project:
  - (a) the expected water savings;
  - (b) the share of savings to be dedicated to environmental, irrigation or other purposes;
  - (c) the licence associated with those savings.

Debate ensued.

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:

**162E At the end of Part 12**

Add:

**261 Water market transparency**

- (1) The Minister must, by legislative instrument, determine a scheme to ensure transparent operation of the water market in respect of the purchase of water entitlements by the Commonwealth.
- (2) The scheme must ensure that there is disclosure of information in relation to price, volume, security, location, terms and conditions attached to the purchase of entitlements; whether the purchase of water entitlements was contingent upon the purchase of real property rights and, if so: the criteria by which it was determined to proceed with the purchase; and the evidentiary basis for any subsequent changes to the use of property so acquired.
- (3) The scheme must also provide for a real-time or live exchange disclosing irrigation region, latest sale and value, bid and offer and price by megalitre.

Debate ensued.

Senator Siewert moved the following amendment to Senator Nash's proposed amendment:

Omit subsections 261(2) and 261(3).

Debate ensued.

Question—That Senator Siewert's amendment to Senator Nash's proposed amendment be agreed to—put and passed.

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

Senator Nash moved the following amendment:

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 ensued.

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

## 6 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 1.37 pm till 2 pm.

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*At 2 pm—*

## 7 QUESTIONS

Questions without notice were answered.

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*Distinguished visitors:* The President welcomed members of a parliamentary delegation from The Kingdom of Saudi Arabia led by the Speaker of the Shura Council, Dr Saleh bin Abdullah bin Hamaid, and, with the concurrence of honourable senators, invited the Speaker to take a seat on the floor of the chamber.

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Further questions without notice were answered.

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*Distinguished visitors:* The President welcomed members of a parliamentary delegation from the Parliament of Singapore led by the Speaker, Mr Abdullah Tarmugi, and, with the concurrence of honourable senators, invited the Speaker to take a seat on the floor of the chamber.

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Further questions without notice were answered.

## 8 MOTION TO TAKE NOTE OF ANSWERS

Senator Bushby moved—That the Senate take note of the answers given by the Minister for Climate Change and Water (Senator Wong) and the Minister for Immigration and Citizenship (Senator Evans) to questions without notice asked by Senators Bushby and Cormann today relating to the carbon pollution reduction scheme and to the Council of Australian Governments.

Debate ensued.

Question put and passed.

Senator Ludlam moved—That the Senate take note of the answer given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to a question without notice asked by Senator Ludlam today relating to the national broadband network.

Question put and passed.

## 9 NOTICES

The Chair of the Rural and Regional Affairs and Transport Committee (Senator Sterle): To move on the next day of sitting—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. (*general business notice of motion no. 300*)

The Chair of the Education, Employment and Workplace Relations Committee (Senator Marshall): To move on the next day of sitting—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. (*general business notice of motion no. 301*)

Senator Milne: To move on the next day of sitting—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. ***Renewable Energy Amendment (Increased Mandatory Renewable Energy Target) Bill 2008***. (*general business notice of motion no. 302*)

Senator Macdonald: To move on the next day of sitting—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, is yet to be publicly released,
- (ii) the future of fishers in the Morton 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:

- (i) the Minister for the Environment, Heritage and the Arts (Mr Garrett) to release the federally-funded review immediately, and

- (ii) 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. (*general business notice of motion no. 303*)

#### 10 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 16 OF 2008

The Acting Chair of the Selection of Bills Committee (Senator McEwen) tabled the following report:

##### SELECTION OF BILLS COMMITTEE REPORT NO. 16 OF 2008

1. The committee met in private session on Wednesday, 26 November 2008 at 10.30 am.
2. The committee resolved to recommend—That—
  - (a) the Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008 be *referred immediately* to the Finance and Public Administration Committee for inquiry and report by 10 March 2009; and
  - (b) the *provisions* of the Tax Agent Services Bill 2008 be *referred immediately* to the Economics Committee for inquiry and report by 12 February 2009.
3. The committee resolved to recommend—That the following bills *not* be referred to committees:
  - Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2008
  - Tax Laws Amendment (Luxury Car Tax—Minor Amendments) Bill 2008.

*The committee recommends accordingly.*
4. The committee considered a proposal to refer the Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008 to the Economics Committee, but **was unable to reach agreement on whether the bill should be referred.**

Anne McEwen  
Acting Chair  
26 November 2008.

Senator McEwen moved—That the report be adopted.

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

At the end of the motion, add “and, in respect of the Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008, the provisions of the bill be referred to the Economics Committee for inquiry and report by 4 December 2008”.

Debate ensued.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 7

Senators—

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

NOES, 49

Senators—

Abetz	Coonan	Johnston	Pratt
Arbib	Cormann	Kroger	Ronaldson
Barnett	Crossin	Ludwig	Ryan
Bernardi	Evans	Lundy	Sherry
Bilyk	Farrell	Macdonald	Stephens
Birmingham	Feeney	Marshall	Sterle
Bishop	Ferguson	McEwen	Troeth
Boyce	Fifield	McGauran	Trood
Brown, Carol	Fisher	McLucas	Williams
Bushby	Forshaw	Nash	Wortley
Cameron	Furner	Parry (Teller)	
Cash	Hurley	Payne	
Colbeck	Hutchins	Polley	

Question negatived.

Main question put and passed.

**11 LEAVE OF ABSENCE**

Senator McEwen, by leave, moved—That leave of absence be granted to Senator Moore for 27 November 2008, on account of parliamentary business.

Question put and passed.

**12 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 the disallowance of the Environmental and Natural Resource Management Guidelines, postponed till 1 December 2008.

Business of the Senate notice of motion no. 2 standing in the name of Senator Heffernan for today, proposing the reference of a matter to the Rural and Regional Affairs and Transport Committee, postponed till 27 November 2008.

General business notice of motion no. 156 standing in the name of Senator Siewert for today, proposing the introduction of the Food Safety (Trans Fats) Bill 2008, postponed till 23 February 2009.

**13 CONSIDERATION OF LEGISLATION**

The Minister for Human Services (Senator Ludwig), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 2—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Guarantee Scheme for Large Deposits and Wholesale Funding Appropriation Bill 2008, allowing it to be considered during this period of sittings.

Question put and passed.

**14 ECONOMICS—STANDING COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator McEwen, 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. 295—That the Economics Committee be authorised to:

- (a) hold a public meeting during the sitting of the Senate on Wednesday, 26 November 2008, from 4.30 pm, to take evidence for the committee's inquiry into matters relating to the gas explosion at Varanus Island, Western Australia; and
- (b) hold an in camera hearing during the sitting of the Senate on Wednesday, 26 November 2008.

Question put and passed.

**15 PRIMARY INDUSTRIES—AGRICULTURAL RESEARCH**

Senator Payne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 296—That the Senate—

- (a) notes and agrees with the comments of the Minister for Agriculture, Fisheries and Forestry (Mr Burke) when he called for all governments to refocus on agricultural research and development so as to boost agricultural productivity;
- (b) condemns:
  - (i) the New South Wales Labor Government for eroding agricultural research and development institutions like Hurlstone Agricultural High School and the Glen Innes Research and Advisory Station, and
  - (ii) the Federal Government's decision to axe funding to various Commonwealth Scientific and Industrial Research Organisation agricultural research institutions, such as JM Rendel Laboratory for livestock research in Rockhampton, Queensland, and the plant research laboratory in Merbein, Victoria; and
- (c) calls on the Federal Government to intervene and prevent the destruction of these institutions and to save the future of the Australian agricultural research and development sector.

Question put and passed.

**16 ENVIRONMENT—TRAVESTON CROSSING DAM—CONSTRUCTION**

Senator Macdonald, also on behalf of Senator Trood, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 299—That the Senate—

- (a) notes the backflip of the Queensland Government in deferring the construction of the Traveston Crossing Dam; and
- (b) calls on the Queensland Government to remove the social threat to people living in the Mary Valley and to ensure protection of the Mary River cod, Mary River turtle and the Australian lungfish, by permanently shelving the proposal to construct the Traveston Crossing Dam.

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

Question put and passed.

**17 FOREIGN AFFAIRS—CYPRUS**

Senator Xenophon, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 298—That the Senate—

- (a) notes the role of the United Nations (UN) Special Envoy for Cyprus, the Honourable Alexander Downer, to achieve a just and lasting solution to the Cyprus problem; and
- (b) urges the Australian Government to continue its support for the independence, sovereignty and territorial integrity of the Republic of Cyprus, and for a just and lasting solution to be achieved in accordance with UN Security Council resolutions on Cyprus which embody the principles enshrined in international and European Union law and norms.

Question put and passed.

**18 FAMILY AND COMMUNITY SERVICES—GROCERYCHOICE WEBSITE**

Senator Barnett, also on behalf of Senator Fisher, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 297—That the Senate—

- (a) notes the Government's GROCERYchoice website is:
  - (i) not delivering any valuable information to consumers with website hits suffering a massive reduction from more than 3 million hits per month on commencement to 104 000 hits in October 2008 and only 54 608 on the last report,
  - (ii) unable to produce a specific cost of a specific grocery item at a specific supermarket, and in some cases compares supermarkets several hundred kilometres apart,
  - (iii) damaging to the best interests of independent supermarket retailers,
  - (iv) wasting \$13 million of taxpayer's funds, and
  - (v) fundamentally flawed and unable to be improved or upgraded so as to provide any consumer benefit or adequate return on taxpayer funds, irrespective of whether the website is managed and operated by the Australian Competition and Consumer Commission or the consumer organisation Choice; and
- (b) calls on the Government to close the website down immediately.

Question put.

The Senate divided—

AYES, 32

Senators—

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

## NOES, 32

## Senators—

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

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

**19 SCRUTINY OF BILLS—STANDING COMMITTEE—ALERT DIGEST NO. 13 OF 2008**

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

Scrutiny of Bills—Standing Committee—

Alert Digest No. 13 of 2008, dated 26 November 2008.

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

Question put and passed.

**20 TRADE—TRANS PACIFIC PARTNERSHIP—MINISTERIAL STATEMENT—DOCUMENTS**

The Minister for Superannuation and Corporate Law (Senator Sherry) tabled the following documents:

Trade—Trans Pacific Partnership—Australia to join efforts to promote free trade in the Asia Pacific—

Ministerial statement by the Minister for Trade (Mr Crean), dated 26 November 2008.

Department of Foreign Affairs and Trade—Priorities and objectives for participation in the Trans Pacific Partnership.

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

**21 ECONOMICS—AUSTRALIA'S RESPONSE TO THE GLOBAL FINANCIAL CRISIS—MINISTERIAL STATEMENT—DOCUMENT**

The Minister for Superannuation and Corporate Law (Senator Sherry) tabled the following document:

Economics—Australia's response to the global financial crisis—Ministerial statement by the Prime Minister (Mr Rudd), dated 26 November 2008.

**22 COMMONWEALTH OMBUDSMAN—ACTIVITIES UNDER PART V OF THE AUSTRALIAN FEDERAL POLICE ACT—DOCUMENT**

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

Commonwealth Ombudsman—Report for 2007-08 on the Ombudsman's activities under Part V of the *Australian Federal Police Act 1979*.

**23 DOCUMENTS**

The following documents were tabled by the Clerk:

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

*Appropriation (Northern Territory National Emergency Response) Act (No. 1) 2007-2008—Determination to reduce appropriations upon request (No. 8 of 2008-2009) [F2008L04347]\*.*

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determination No. 13 of 2008—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 [F2008L04377]\*.

Civil Aviation Act—

Civil Aviation Regulations—Instrument No. CASA EX78/08—Exemption – of authorised flying instructors employed by Singapore Flying College Pte Ltd [F2008L04309]\*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—AD/B737/346—Cabin Altitude Warning Takeoff Briefing [F2008L04349]\*.

Environment Protection and Biodiversity Conservation Act—Amendments of Lists of—

Exempt Native Specimens—

EPBC303DC/SFS/2008/25 [F2008L04417]\*.

EPBC303DC/SFS/2008/34 [F2008L04385]\*.

EPBC303DC/SFS/2008/35 [F2008L04395]\*.

Threatened species, dated 14 November 2008—

[F2008L04356]\*.

[F2008L04359]\*.

Higher Education Funding Act—Declaration under subsection 4(2), dated 11 November 2008 [F2008L04384]\*.

Higher Education Support Act—VET Provider Approval (No. 7 of 2008)—Australian College of Applied Psychology Pty Ltd [F2008L04365]\*.

Migration Act—Migration Regulations—Instruments IMMI—

08/103—Travel agents for PRC citizens applying for tourist visas [F2008L04346]\*.

08/106—eVisitor – eligible passports [F2008L04321]\*.

National Environment Protection Council Act—Variation to the National Environment Protection (National Pollutant Inventory) Measure 2008 (No. 1) [F2008L04326]\*.

National Health Security Act—National Health Security (SSBA Standards) Determination 2008 [F2008L04331]\*.

Social Security Act—Social Security (Australian Government Disaster Recovery Payment) Amendment Determination 2008 (No. 1) [F2008L04379]\*.

Superannuation Industry (Supervision) Act—Superannuation Industry (Supervision) Modification Declaration No. 1 of 2008 [F2008L04381]\*.

Therapeutic Goods Act—

Conformity Assessment Standards Order (Standard for Quality Management Systems and Quality Assurance Techniques) 2008 [F2008L04337]\*.

Medical Device Standards Order (Standards for Biological Safety of Medical Devices) 2008 [F2008L04338]\*.

Trade Practices Act—

Class Exemption Determination No. 3 of 2008 [F2008L04332]\*.

Model Non-Price Terms and Conditions Determination 2008 [F2008L04341]\*.

\* Explanatory statement tabled with legislative instrument.

#### 24 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 Minister for Superannuation and Corporate Law (Senator Sherry), by leave, moved—That senators be discharged from and appointed to committees as follows:

##### **Finance and Public Administration—Standing Committee—**

Appointed—

Substitute members:

Senator Bob Brown to replace Senator Hanson-Young for the committee's inquiry into the Plebiscite for an Australian Republic Bill 2008

Senator Ludlam to replace Senator Hanson-Young for the committee's inquiry into the Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008

Participating member: Senator Hanson-Young

##### **Foreign Affairs, Defence and Trade—Joint Standing Committee—**

Appointed—Senator Ludlam.

Question put and passed.

#### 25 GUARANTEE SCHEME FOR LARGE DEPOSITS AND WHOLESALE FUNDING APPROPRIATION BILL 2008

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

Message no. 214, dated 25 November 2008—A Bill for an Act to provide for an appropriation for the Guarantee Scheme for Large Deposits and Wholesale Funding, and for related purposes.

The Minister for Superannuation and Corporate Law (Senator Sherry) 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 Sherry moved—That this bill be now read a second time.

On the motion of Senator Sherry the debate was adjourned.

Senator Sherry moved—That the resumption of the debate be made an order of the day for a later hour.

Debate ensued.

Question put and passed.

**26 AGED CARE AMENDMENT (2008 MEASURES NO. 2) BILL 2008**

**AUSTRALIAN CURRICULUM, ASSESSMENT AND REPORTING AUTHORITY BILL 2008**

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

Message no. 215, dated 26 November 2008—A Bill for an Act to amend the law in relation to aged care, and for related purposes.

Message no. 216, dated 26 November 2008—A Bill for an Act to establish the Australian Curriculum, Assessment and Reporting Authority, and for related purposes.

The Minister for Superannuation and Corporate Law (Senator Sherry) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

On the motion of the Senator Sherry the debate was adjourned.

*Consideration of legislation:* Senator Sherry moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

**27 SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—GENERAL LAW REFORM) BILL 2008**

A message from the House of Representatives was reported indicating that the House had made the amendments requested by the Senate to the following bill:

Message no. 212, dated 25 November 2008—Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Bill 2008.

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

**28 SAME-SEX RELATIONSHIPS (EQUAL TREATMENT IN COMMONWEALTH LAWS—SUPERANNUATION) BILL 2008**

A message from the House of Representatives was reported as follows:

Message no. 213, dated 25 November 2008—Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008, agreeing to amendments nos 2, 3 and 4 made by the Senate, disagreeing to amendment no. 1 and making amendments in place of that amendment.

Ordered, on the motion of the Minister for Superannuation and Corporate Law (Senator Sherry), that the message be considered in committee of the whole immediately.

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*In the committee*

SCHEDULE OF THE AMENDMENT MADE BY THE SENATE TO WHICH THE  
HOUSE OF REPRESENTATIVES HAS DISAGREED

- (1) Clause 2, page 2, omit the table, substitute:

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	1 July 2008.	1 July 2008
3. Schedules 2 and 3	1 July 2008.	1 July 2008
4. Schedule 4	1 July 2008.	1 July 2008
5. Schedule 5	1 July 2008.	1 July 2008

SCHEDULE OF THE FURTHER AMENDMENTS  
MADE BY THE HOUSE OF REPRESENTATIVES

- (1) Clause 2, page 2 (table item 1, column 1), omit “3”, substitute “4”.

- (2) Clause 2, page 2 (table item 3), omit the table item, substitute:

3. Schedule 2, Part 1	The day on which this Act receives the Royal Assent.	
3A. Schedule 2, Part 2	At the same time as the provision(s) covered by table item 2.	
3B. Schedule 2, Part 3	The day on which this Act receives the Royal Assent.	
3C. Schedule 3	At the same time as the provision(s) covered by table item 2.	

- (3) Clause 2, page 2 (table item 4), omit the table item, substitute:

4. Schedule 4, Parts 1 and 2	1 July 2008.	1 July 2008
4A. Schedule 4, Part 3	The day on which this Act receives the Royal Assent.	

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

**4 Entitlements from 1 July 2008**

- (1) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under an Act that is amended by Schedule 1, 2, 3 or 5 to this Act if the relevant Schedule had commenced on 1 July 2008; and

- (b) because the Schedule did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(2) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Military Superannuation and Benefits Act 1991* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(3) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Superannuation Act 1990* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(4) A determination by the Finance Minister under this subsection must:

- (a) be in writing; and
- (b) set out:
  - (i) the amount and timing of the replacement payments; or
  - (ii) the method of determining the amount and timing of the replacement payments.

(5) An application must be in writing in the form approved by the Finance Minister.

(6) To avoid doubt, a determination of the Finance Minister that a person is entitled to one or more replacement payments does not affect the entitlements of any other person under an Act amended by Schedule 1, 2, 3 or 5 to this Act, the *Military Superannuation and Benefits Act 1991* or the *Superannuation Act 1990*.

(7) Replacement payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

- (8) A determination made under this section is not a legislative instrument.
- (9) In this section:

***Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

Senator Sherry moved—That the committee does not insist on its amendment to which the House of Representatives has disagreed and agrees to the amendments made by the House in place of that amendment.

Debate ensued.

Question put and passed.

Resolution to be reported.

---

The Acting Deputy President (Senator Carol Brown) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 213 from the House of Representatives relating to the Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008 and had resolved not to insist on amendment no. 1 made by the Senate to which the House had disagreed and had agreed to the amendments made in place of that amendment.

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

**29 GUARANTEE SCHEME FOR LARGE DEPOSITS AND WHOLESALE FUNDING  
APPROPRIATION BILL 2008**

Order 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.

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.

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

Page 1 (after line 10), after clause 2, insert:

**2A Sunset**

This Act ceases to have effect on the second anniversary of its commencement.

Debate ensued.

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

Senator Bob Brown moved the following amendment:

Page 2 (after line 28), at the end of the bill, add:

**7 Minister to make statement to Parliament**

- (1) If the Minister borrows money in accordance with subsection 6(1) then the Minister or the Minister's representative must, within 3 days of taking that action, make an explanatory statement to each House of the Parliament.
- (2) If either House of the Parliament is adjourned so that it would not otherwise meet within the time referred to in subsection (1), the Presiding Officer shall summon that House to meet, in spite of anything contained in the resolution of adjournment of that House.
- (3) In this section, *Presiding Officer* in relation to a House of the Parliament means the Presiding Officer of that House within the meaning of the *Parliamentary Presiding Officers Act 1965*, or the person who is deemed to be the Presiding Officer of that House for the purpose of that Act

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 6**

Senators—

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

**NOES, 44**

Senators—

Arbib	Crossin	Hutchins	Pratt
Barnett	Farrell	Kroger	Ronaldson
Bilyk	Faulkner	Lundy	Ryan
Bishop	Ferguson	Marshall	Scullion
Boyce	Fielding	Mason	Sherry
Brown, Carol	Fierravanti-Wells	McEwen	Stephens
Bushby	Fifield	McLucas	Sterle
Cameron	Forshaw	Nash	Troeth
Colbeck	Furner	Parry	Trood
Collins	Humphries	Payne	Williams (Teller)
Coonan	Hurley	Polley	Wortley

Question negatived.

Bill agreed to.

Bill to be reported without amendment.

---

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

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

**30 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Superannuation and Corporate Law (Senator Sherry) moved—That government business order of the day no. 1 (Water Amendment Bill 2008) be postponed till the next day of sitting.

Question put and passed.

**31 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.

*At 7.20 pm:* Debate was interrupted while Senator Cameron was speaking.

**32 ADJOURNMENT**

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

Debate ensued.

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*Documents:* Senator Abetz, by leave, tabled the following documents:

Environment—Tasmania—Logging—Photographs [3].

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Debate continued.

The Senate adjourned at 8 pm till Thursday, 27 November 2008 at 9.30 am.

**33 ATTENDANCE**

Present, all senators except Senators Adams\* and O'Brien\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate