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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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1 MEETING OF SENATE

The Senate met at 12.30 pm. The President (Senator the Honourable Alan Ferguson) took the chair and read prayers.

2 PRIVILEGES—STANDING COMMITTEE—STATEMENT BY PRESIDENT—PROPOSED REFERENCE

The President made a statement relating to a matter of privilege raised by Senator Nettle concerning possible false or misleading evidence given by officers at estimates hearings of the Legal and Constitutional Legislation Committee in May 2004 and February 2005 relating to the Government's knowledge that Mr Mamdouh Habib had been taken to Egypt.

The President informed the Senate that, pursuant to the procedures provided by standing order 81 and resolutions of the Senate of 25 February 1988, he had determined that a motion relating to the matter may have precedence of all other business on the day for which the notice is given.

Documents: The President tabled the following documents:

Privileges—Standing Committee—Proposed reference—

Letter from Senator Nettle to the President, dated 13 September 2007.

Legal and Constitutional Affairs—Standing Committee—Budget and Additional estimates 2004-05—Additional information—Attorney-General's portfolio.

Notice of motion: Senator Nettle gave a notice of motion as follows: To move on the next day of sitting—That the following matter be referred to the Committee of Privileges:

Whether false or misleading evidence was given to the Legal and Constitutional Affairs Committee or any other Senate committee concerning the Government's knowledge of the rendition of Mr Mamdouh Habib to Egypt, and whether any contempt was committed in that regard.

3 TRADE PRACTICES LEGISLATION AMENDMENT BILL (NO. 1) 2007

Order of the day read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan)—That this bill be now read a second time—*and on the amendment moved by Senator Stephens:*

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

(a) notes that:

- (i) the Economics References Committee handed down its report, *The effectiveness of the Trade Practices Act 1974 in protecting small business*, in March 2004, and the Government responded in June 2004 and yet the Government is only now introducing its legislative response,
- (ii) this failure to act represents a disregard for the importance of promoting competition by preventing anti-competitive behaviour directed against small business and consumers, and
- (iii) this bill fails to introduce gaol terms for serious cartel operations, despite the Dawson Review recommending this in 2003 and the

Government accepting this recommendation in 2005 and despite the Australian Competition and Consumer Commission (ACCC) consistently calling for such penalties to be introduced;

- (b) condemns the Government for the failure to legislate for gaol terms for serious cartel conduct;
- (c) further notes with concern that this bill does not give the ACCC power to investigate and regulate ‘creeping acquisitions’; and
- (d) calls on the Government to:
 - (i) legislate for this as soon as possible, and
 - (ii) closely examine options for introducing a regime dealing with unfair contract terms between businesses as well as between businesses and consumers”.

Debate resumed.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 30

Senators—

Allison	Crossin	McEwen	Siewert
Bartlett	Faulkner	Milne	Sterle
Bishop	Fielding	Moore	Stott Despoja
Brown, Bob	Hogg	Murray	Webber (Teller)
Brown, Carol	Hurley	Nettle	Wong
Campbell	Hutchins	O’Brien	Wortley
Carr	Kirk	Ray	
Conroy	Ludwig	Sherry	

NOES, 33

Senators—

Adams	Cormann	Johnston	Patterson
Barnett	Eggleston	Joyce	Payne
Bernardi	Ellison	Lightfoot	Ronaldson
Birmingham	Ferguson	Macdonald, Ian	Scullion
Boswell	Fierravanti-Wells	Mason	Trood
Brandis	Fifield	McGauran	Watson
Bushby	Fisher	Minchin	
Chapman	Heffernan	Nash	
Colbeck	Humphries	Parry (Teller)	

Question negatived.

Main 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.

Explanatory memorandum: The Minister for the Arts and Sport (Senator Brandis) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Senator Murray moved the following amendment:

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

1A After section 6AA

Insert:

6AB Procedures for merit selection of appointments under this Act

- (1) The Minister must by writing establish a code of practice for selecting a person to be appointed by the Commonwealth or a Minister to a position under this Act that sets out general principles on which the selections are made, including but not limited to:
 - (a) merit; and
 - (b) independent scrutiny of appointments; and
 - (c) probity; and
 - (d) openness and transparency.
- (2) As soon as practicable after establishing a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.
- (3) The Minister must conduct a review of the operation of the code of practice established in subsection (1) not later than the fifth anniversary after the code has been established.
- (4) The Minister must invite public comment on the code when a review is conducted in accordance with subsection (3).
- (5) A code of practice established under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Debate ensued.

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

Senator Sherry moved the following amendment:

Schedule 1, page 3 (after line 11), after item 3, insert:

3A After subsection 10(1A)

Insert:

- (1B) At least one of the Deputy Chairpersons must have a small business background.

Debate ensued.

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

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

Schedule 2, page 5 (after line 5), after item 1, insert:

1A After subsection 46(1)

Insert:

- (1AA) A corporation that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the corporation of supplying such goods or services, for the purpose of:

- (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market; or
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a corporation has a substantial share of a market, the Court may have regard to the number and size of the competitors of the corporation in the market.

1B Subsection 46(1A)

Omit “subsection (1)”, substitute “subsections (1) and (1AA)”.

1C Paragraph 46(1A)(a)

Omit “paragraph (1)(a)”, substitute “paragraphs (1)(a) and (1AA)(a)”.

1D Paragraph 46(1A)(b)

After “paragraphs (1)(b) and (c)”, insert “and (1AA)(b) and (c)”.

Schedule 2, page 7 (after line 26), after item 8, insert:

8A Paragraph 151AJ(5)(c)

Omit “paragraph 46(1)(a)”, substitute “paragraphs 46(1)(a) and (1AA)(a)”.

Schedule 2, page 7 (after line 28), after item 9, insert:

9A After subsection 46(1) of the Schedule

Insert:

(1AA) A person that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the person of supplying such goods or services, for the purpose of:

- (a) eliminating or substantially damaging a competitor of the person or of a body corporate that is related to the person in that or any other market; or
- (b) preventing the entry of a person into that or any other market; or
- (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.

(1AB) For the purposes of subsection (1AA), without limiting the matters to which the Court may have regard for the purpose of determining whether a person has a substantial share of a market, the Court may have regard to the number and size of the competitors of the person in the market.

9B Subsection 46(1A) of the Schedule

Omit “subsection (1)”, substitute “subsections (1) and (1AA)”.

9C Paragraph 46(1A)(a) of the Schedule

Omit “paragraph (1)(a)”, substitute “paragraphs (1)(a) and (1AA)(a)”.

9D Paragraph 46(1A)(b) of the Schedule

After “paragraphs (1)(b) and (c)”, insert “and (1AA)(b) and (c)”.

Senator Murray moved the following amendments together by leave:

No. 1—Schedule 2, page 6 (after line 2), after item 2, insert:

2A After subsection 46(3)

Insert:

- (3E) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court may consider the corporation's degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.
- (3F) In determining for the purposes of this section whether a corporation has a substantial degree of power in a market, the Court will at least take into account the following principles:
 - (a) the substantial degree of power in a market threshold does not require a corporation to have an absolute freedom from constraint, it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers; and
 - (b) evidence of a corporation's behaviour in the market is relevant to a determination of a substantial degree of power in a market.
- (3G) For the purposes of this section, without limiting the matters to which the Court may have regard for the purpose of determining whether a body corporate has a substantial degree of power in a market, a body corporate may have a substantial degree of power in a market even though the body corporate does not have the ability to raise prices without losing business to rivals.

No. 2—Schedule 2, item 3, page 6 (after line 12), at the end of subsection (4A), add:

- ; and (c) the capacity of the corporation to supply goods or services at a price below its variable cost.
- (4B) Where it is alleged that a corporation has contravened subsection (1) by undertaking a strategy of predatory pricing, it is not necessary for the Court to be satisfied that the corporation has the capacity to subsequently recoup the losses which arise from that alleged predatory pricing strategy.

No. 3—Schedule 2, page 6 (after line 12), after item 3, insert:

3A After subsection 46(4)

Insert:

- (4C) In determining for the purposes of this section whether a corporation has taken advantage of a substantial degree of power in a market, the Court will disregard what the corporation could or would have done in the absence of a substantial degree of power in a market.

No. 4—Schedule 2, page 6 (after line 12), after item 3, insert:

3B After section 46A

Insert:

46AB Anti-competitive price discrimination

- (1) A corporation must not supply or offer to supply goods or services at different prices to different persons for the purposes of:
 - (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in any market;
 - (b) preventing the entry of a person into any market; or
 - (c) deterring or preventing a person from engaging in competitive conduct in any market.
- (2) It is a defence to an action under subsection (1) if the different prices are justifiable solely by reference to a difference in the costs of supplying or offering to supply the goods or services to the different persons.

46AC Anti-competitive geographic price discrimination

- (1) A corporation must not supply or offer to supply goods or services at different prices in different locations for the purposes of:
 - (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in any location;
 - (b) preventing the entry of a person into any location; or
 - (c) deterring or preventing a person from engaging in competitive conduct in any location.
- (2) It is a defence to an action under subsection (1) if the different prices are justifiable solely by reference to a difference in the costs of supplying or offering to supply the goods or services in the different locations.

Debate ensued.

At 2 pm: The President resumed the chair and the Temporary Chair of Committees (Senator Hutchins) reported progress.

4 QUESTIONS

Questions without notice were answered.

5 ESTIMATES HEARINGS—QUESTIONS ON NOTICE—ANSWERS AND EXPLANATION

Senator Carr, pursuant to standing order 74, asked the Minister representing the Minister for Education, Science and Training (Senator Brandis) for an explanation of answers not being provided to questions placed on notice during the consideration by the Employment, Workplace Relations and Education Committee of the 2007-08 Budget estimates.

Senator Brandis provided an explanation.

Senator Carr moved—That the Senate take note of the explanation.

Debate ensued.

Question put and passed.

6 ECONOMY—INTEREST RATES—ANSWERS TO QUESTIONS

Senator Sherry moved—That the Senate take note of the answers given by the Minister for Community Services (Senator Scullion) to questions without notice asked by Senators Sherry and Hurley today relating to interest rates.

Debate ensued.

Question put and passed.

7 PETITIONS

The following 3 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Forshaw, from 11 petitioners, requesting that the Senate take action to ensure that the changes to industrial relations do not adversely affect Australian employees.

Senator Forshaw, from 112 petitioners, requesting that the Senate take action to reintroduce the Commonwealth Dental Scheme, reduce waiting times for public dental health services and train more public dentists.

Senator Sandy Macdonald, from 12 petitioners, requesting that the Senate take action to adopt a 10-year moratorium on Muslim immigration and review immigration policy to ensure priority for Christians from all races, as both immigrants and refugees.

8 NOTICES

Notices of motion:

Senator Watson: To move on the next day of sitting—That the Joint Committee of Public Accounts and Audit be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 19 September 2007, from 11.15 am to 1.15 pm, to take evidence for the committee's review of Auditor-General's reports. (*general business notice of motion no. 904*)

The Chair of the Community Affairs Committee (Senator Humphries): To move on the next day of sitting—That the Community Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 20 September 2007, from 3.30 pm, to take evidence for the committee's inquiry into the cost of living pressures on older Australians. (*general business notice of motion no. 905*)

The Leader of the Australian Democrats (Senator Allison): To move on the next day of sitting—That the Senate—

- (a) notes the recommendations of Dr Donald R Rothwell, Professor of International Law at the Australian National University, on the minimum requirements the Government should pursue in its negotiations with the Russian Federation (Russia) on a nuclear safeguards agreement, which include:
 - (i) Australia requesting Russia to ratify the International Atomic Energy Agency Additional Protocol which it signed in March 2000,
 - (ii) if Russia fails to ratify the Additional Protocol, Australia seeking to incorporate the essential terms and conditions of the Additional Protocol into the bilateral agreement, and
 - (iii) Australia seeking to incorporate binding human rights and democracy clauses into any such agreement; and
- (b) urges the Government to:

- (i) consider also including a clause stipulating a time frame for disarmament in any bilateral agreement, and
- (ii) reconcile its wider responsibilities to non-proliferation, disarmament and human rights before any benefits to the Australian economy when negotiating the nuclear safeguards agreement with Russia. (*general business notice of motion no. 906*)

The Leader of the Australian Democrats (Senator Allison): To move on the next day of sitting—That the Senate—

- (a) notes that the Metropolitan Transport Forum, comprising of 19 Melbourne municipal councils and 17 associated organisations and members, at a forum at the Melbourne Town Hall on 30 August 2007, has called on the Government to contribute to funding public transport services throughout Australia to meet the needs of public transport users for the following reasons:
 - (i) public transport contributes to the economic performance and liveability of cities and reduces car dependence and the costs of road congestion, estimated to be \$10 billion nationally in 2005 and \$20 billion by 2020,
 - (ii) one suburban train can remove 5 kilometres of cars from congested roads,
 - (iii) public transport enables Australia to respond to rising fuel prices and environmental sustainability,
 - (iv) petrol will continue to increase beyond \$US70 per barrel with increasing world demand for oil, and only one barrel of oil being discovered for nine barrels being produced,
 - (v) public transport assists in access to jobs, education and services for people who cannot afford a car or who are unable to drive, including students, the poor, people with disabilities and the elderly, and helps to reduce socio-economic problems, social isolation and inequity,
 - (vi) public transport helps reduce health costs by reducing the effect of accidents and pollution on the national health bill and hospitals,
 - (vii) in-built walking to and from transport nodes contributes to regular physical activity, essential in reducing risks of cardio-vascular disease, hypertension, obesity, diabetes, depression, bowel and other cancers,
 - (viii) by increasing demand – Melbourne’s public transport use increased by 20 per cent in the past 2 years, and
 - (ix) in an independent Melbourne survey, more than 4 out of 5 respondents (83 per cent) said that the issue of public transport infrastructure would be of importance when deciding who they would vote for in the next federal election; and
- (b) urges the Government to reverse its policy of denying public transport any funding in its transport budget determinations. (*general business notice of motion no. 907*)

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

- (a) review all taxes, grants and concessions, including negative gearing, capital gains tax exemptions and first home owners grants, to assess their impact on the housing market; and
- (b) work with the states and territories to develop an evidence-based national affordable housing plan. (*general business notice of motion no. 908*)

Senator Siewert: To move on 19 September 2007—That the Senate—

- (a) notes:
- (i) that the Coral Sea is one of the world's most diverse and pristine tropical marine regions, covering approximately 800 000 square kilometres, more than twice the size of the Great Barrier Reef Marine Park, and is extraordinarily rich in marine life,
 - (ii) that the region is virtually unprotected and is facing immediate pressures from legal and illegal fishing, as well as long-term impacts from climate change, and
 - (iii) the urgent need to ensure protection and management of this unique ecosystem; and
- (b) calls on the Government to begin the consultation process for the declaration of the entire Coral Sea region as a marine-protected area, which includes a comprehensive network of marine sanctuaries. (*general business notice of motion no. 909*)

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

- (a) notes that Tuesday, 18 September 2007 is National Close the Gap Day, a day on which Australians across the nation are coming together to show their support for closing the 17-year life expectancy gap between Aboriginal and Torres Strait Islanders and other Australians; and
- (b) calls on all federal, state and territory governments to take action to achieve health equality for Aboriginal and Torres Strait Islanders within 25 years by:
- (i) increasing annual Indigenous health funding by \$450 million to enable equal access to health services,
 - (ii) increasing Indigenous control and participation in the delivery of health services, and
 - (iii) addressing critical social issues, such as housing, education and self-determination, which contribute to the Indigenous health crisis. (*general business notice of motion no. 910*)

The Minister for Fisheries, Forestry and Conservation (Senator Abetz): To move on the next day of sitting—That the government business orders of the day relating to the Social Security Amendment (2007 Measures No. 1) Bill 2007 and the Social Security Amendment (2007 Measures No. 2) Bill 2007 may be taken together for their remaining stages.

The Minister for Fisheries, Forestry and Conservation (Senator Abetz): To move on the next day of sitting—That—

- (1) On Tuesday, 18 September 2007:
- (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to adjournment;
 - (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 10 pm.
- (2) On Thursday, 20 September 2007:
- (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 4.30 pm shall be government business only;
- (d) divisions may take place after 4.30 pm; and
- (e) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the bills listed below, including any messages from the House of Representatives:

Australian Crime Commission Amendment Bill 2007
 Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Amendment Bill (No. 2) 2007
 Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007
 Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007
 Communications Legislation Amendment (Information Sharing and Datacasting) Bill 2007
 Families, Community Services and Indigenous Affairs Legislation Amendment (Further 2007 Budget Measures) Bill 2007
 Families, Community Services and Indigenous Affairs Legislation Amendment (Child Disability Assistance) Bill 2007
 Financial Framework Legislation Amendment Bill (No. 1) 2007
 Health Insurance Amendment (Medicare Dental Services) Bill 2007
 Health Legislation Amendment Bill 2007
 Higher Education Endowment Fund Bill 2007
 Higher Education Endowment Fund (Consequential Amendments) Bill 2007
 Higher Education Support Amendment (Extending FEE-HELP for VET Diploma and VET Advanced Diploma Courses) Bill 2007
 Indigenous Education (Targeted Assistance) Amendment (Cape York Measures) Bill 2007
 Judges' Pensions Amendment Bill 2007
 Federal Magistrates Amendment (Disability and Death Benefits) Bill 2007
 National Greenhouse and Energy Reporting Bill 2007
 Quarantine Amendment (Commission of Inquiry) Bill 2007
 Social Security Amendment (2007 Measures No. 1) Bill 2007
 Social Security Amendment (2007 Measures No. 2) Bill 2007
 Social Security Legislation Amendment (2007 Budget Measures for Students) Bill 2007
 Superannuation Legislation Amendment Bill 2007
 Tax Laws Amendment (2007 Measures No. 4) Bill 2007
 Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 1) 2007
 Taxation (Trustee Beneficiary Non-disclosure Tax) Bill (No. 2) 2007
 Tax Laws Amendment (2007 Measures No. 5) Bill 2007
 Tax Laws Amendment (2007 Measures No. 6) Bill 2007
 Telecommunications (Interception and Access) Amendment Bill 2007
 Trade Practices Amendment (Small Business Protection) Bill 2007
 Trade Practices Legislation Amendment Bill (No. 1) 2007.

The Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to create a culture of responsible drinking, and to facilitate a reduction in the alcohol toll resulting from excessive alcohol consumption, and for related purposes. *Alcohol Toll Reduction Bill 2007*. (general business notice of motion no. 911)

The Minister for Fisheries, Forestry and Conservation (Senator Abetz): To move on the next day of sitting—That—

- (a) the following bill be introduced: A Bill for an Act to amend the *Australian Crime Commission Act 2002*, and for related purposes [*Australian Crime Commission Amendment Bill 2007*]; and
- (b) the provisions of paragraphs (5) to (8) of standing order 111 not apply to the bill allowing it to be considered during this period of sittings.

Document: Senator Abetz tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the Australian Crime Commission Amendment Bill 2007 in the 2007 spring sittings.

Intention to withdraw: The Chairman of the Standing Committee on Regulations and Ordinances (Senator Watson), pursuant to standing order 78, gave notice of his intention, at the giving of notices on the next day of sitting, to withdraw business of the Senate notice of motion no. 1 standing in his name for the next day of sitting for the disallowance of the Investigation Principles 2007, made under subsection 96-1(1) of the *Aged Care Act 1997*.

Senator Watson, by leave, made a statement relating to the notice of intention.

9 LEAVE OF ABSENCE

Senator Campbell, by leave, moved—That leave of absence be granted to Senator Forshaw from 17 September to 6 December 2007, on account of parliamentary business overseas.

Question put and passed.

Senator Parry, by leave, moved—That leave of absence be granted to the following senators:

- (a) Senator Kemp from 17 September to the end of the 2007 sittings, on account of parliamentary business overseas; and
- (b) Senator Troeth from 17 September to 21 September 2007, for personal reasons.

Question put and passed.

10 POSTPONEMENTS

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Faulkner for today, proposing the reference of a matter to the Foreign Affairs, Defence and Trade Committee, postponed till 20 September 2007.

Business of the Senate notice of motion no. 2 standing in the name of Senator Siewert for today, proposing the reference of a matter to the Community Affairs Committee, postponed till 19 September 2007.

General business notice of motion no. 897 standing in the name of Senator Bartlett for today, relating to National Child Protection Week, postponed till 18 September 2007.

11 COMMITTEES—UNAUTHORISED DISCLOSURE OF COMMITTEE PROCEEDINGS

The Chair of the Standing Committee of Privileges (Senator Faulkner), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 903—That the sessional order adopted on 6 October 2005 in relation to the unauthorised disclosure of committee proceedings operate as an order of continuing effect.

Question put and passed.

12 ENVIRONMENT—TASMANIA—PROPOSED PULP MILL

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 902—That the Senate calls for approval of the pulp mill proposed by Gunns Limited to be subject to all environmental considerations being fully satisfied.

Question put.

The Senate divided—

AYES, 7

Senators—

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

NOES, 41

Senators—

Abetz	Eggleston	Lundy	Ronaldson
Adams	Fielding	Marshall	Sherry
Barnett	Fierravanti-Wells	McEwen	Sterle
Bernardi	Fifield	McGauran	Trood
Birmingham	Fisher	Moore	Watson
Brown, Carol	Heffernan	Nash	Webber
Bushby	Hogg	Parry (Teller)	Wong
Campbell	Humphries	Patterson	Wortley
Chapman	Hurley	Payne	
Colbeck	Kirk	Polley	
Cormann	Ludwig	Ray	

Question negatived.

Statements by leave: The Minister for Fisheries, Forestry and Conservation (Senator Abetz) and Senator Bob Brown, by leave, made statements relating to the motion.

13 URGENCY MOTION—INDIGENOUS AUSTRALIANS—HEALTH EQUALITY

The Deputy President (Senator Hogg) informed the Senate that the President had received a letter from Senator Siewert advising that today she intended to move—That, in the opinion of the Senate, the following is a matter of urgency:

The need to act to ‘close the gap’ to achieve health equality for Aboriginal and Torres Strait Islanders within a generation.

The proposal was supported by four senators.
Senator Siewert moved the motion.
Debate ensued.

Document: Senator Siewert, by leave, tabled the following document:

Indigenous Australians—Health equality—‘Close the gap: Solutions to the Indigenous health crisis facing Australia’—A policy briefing paper from the National Aboriginal Community Controlled Health Organisation and Oxfam Australia, dated April 2007.

Debate continued.
Question put and passed.

14 PRIVILEGES—STANDING COMMITTEE—132ND REPORT

The Chair of the Standing Committee of Privileges (Senator Faulkner) tabled the following report:

Privileges—Standing Committee—132nd report—Persons referred to in the Senate (Mr Chalid Muhammad and Mr Nurkholis on behalf of staff of the Indonesian Forum for Environment (WALHI)), dated September 2007.

Report ordered to be printed on the motion of Senator Faulkner.
Senator Faulkner, by leave, moved—That the report be adopted.
Question put and passed.

Response as recommended by the committee incorporated in Hansard accordingly.

15 ELECTORAL MATTERS—JOINT STANDING COMMITTEE—REPORT—REVIEW OF CERTAIN ASPECTS OF THE ADMINISTRATION OF THE AUSTRALIAN ELECTORAL COMMISSION

Senator Fierravanti-Wells, on behalf of the Joint Standing Committee on Electoral Matters, tabled the following report:

Electoral Matters—Joint Standing Committee—Review of certain aspects of the administration of the Australian Electoral Commission—Report, dated September 2007.

Senator Fierravanti-Wells, by leave, moved—That the Senate take note of the report.
Debate ensued.
Question put and passed.

16 AUSTRALIAN PARLIAMENTARY DELEGATION TO CANADA AND GERMANY—DOCUMENT

Senator Patterson, by leave, tabled the following document:

Canada and Germany—Report of the Australian parliamentary delegation, 14 to 28 April 2007.

Senator Patterson, by leave, moved—That the Senate take note of the document.
Debate ensued.
Question put and passed.

17 DOCUMENTS

The following documents were tabled by the Clerk:

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

Aged Care Act—Residential Care Subsidy Amendment Principles 2007 (No. 2) [F2007L03627]*.

Australian Bureau of Statistics Act—Proposal No. 10 of 2007—Queensland Interstate Trade Survey.

Class Ruling CR 2007/83.

Commonwealth Authorities and Companies Act—Notice under section 45—Forest and Wood Products Australia Limited.

Defence Act—Section 51X—Utilisation of the Defence Force to protect Commonwealth interests against violence if specified circumstances arise—Report, dated 11 September 2007; and order, dated 22 August 2007.

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

CITES Species, dated 2 September 2007 [F2007L03587]*.

Specimens taken to be suitable for live import, dated 5 September 2007 [F2007L03653]*.

Fuel Taxation Ruling FTR 2007/1.

Goods and Services Tax Ruling—Addendum—GSTR 2000/13.

Migration Act—Migration Regulations—Instruments—

IMMI 07/007—Minimum Salary Levels and Occupations for the Temporary Business Long Stay Visa [F2007L03586]*.

IMMI 07/069—Exemptions to the English Language Requirement for the Temporary Business (Long Stay) Visa [F2007L03570]*.

National Health Act—Instruments Nos—

PB 68 of 2007—Amendment declaration – drugs and medicinal preparations [F2007L03609]*.

PB 70 of 2007—Amendment determination – responsible persons [F2007L03613]*.

PB 71 of 2007—Amendment – price determinations and special patient contributions [F2007L03618]*.

PB 75 of 2007—Determination – drug in Part A of F2 [F2007L03632]*.

PB 77 of 2007—Amendment – conditions [F2007L03626]*.

Navigation Act—Marine Order No. 4 of 2007—Measures to enhance maritime safety [F2007L03599]*.

Product Rulings PR 2007/78-PR 2007/81.

Veterans' Entitlements Act—Statements of Principles concerning—

Hallux Valgus No. 91 of 2007 [F2007L03566]*.

Hallux Valgus No. 92 of 2007 [F2007L03567]*.

Ingrowing Nail No. 93 of 2007 [F2007L03568]*.

Ingrowing Nail No. 94 of 2007 [F2007L03569]*.

Ischaemic Heart Disease No. 89 of 2007 [F2007L03564]*.

Ischaemic Heart Disease No. 90 of 2007 [F2007L03565]*.

Lipoma No. 97 of 2007 [F2007L03573]*.

Lipoma No. 98 of 2007 [F2007L03574]*.
Malignant Neoplasm of the Bladder No. 95 of 2007 [F2007L03577]*.
Malignant Neoplasm of the Bladder No. 96 of 2007 [F2007L03578]*.
Malignant Neoplasm of the Endometrium No. 99 of 2007 [F2007L03575]*.
Malignant Neoplasm of the Endometrium No. 100 of 2007 [F2007L03576]*.

* Explanatory statement tabled with legislative instrument.

18 DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The following document was tabled pursuant to the order of the Senate of 20 June 2001, as amended:

Departmental and agency contracts for 2006-07—Letter of advice—Department of Defence.

19 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2007—Statements of compliance—

Department of Communications, Information Technology and the Arts.
Department of the Prime Minister and Cabinet.
Environment and Water Resources portfolio agencies.
Immigration and Citizenship portfolio agencies.
Office of the Official Secretary to the Governor-General.

20 SUPERANNUATION LEGISLATION AMENDMENT BILL 2007

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

Message no. 650, dated 13 September 2007—A Bill for an Act to amend the law relating to superannuation, and for related purposes.

The Minister for the Arts and Sport (Senator Brandis) 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 Brandis moved—That this bill be now read a second time.

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

**21 NORTHERN TERRITORY NATIONAL EMERGENCY RESPONSE AMENDMENT (ALCOHOL) BILL 2007
AUSTRALIAN POSTAL CORPORATION AMENDMENT (QUARANTINE INSPECTION AND OTHER MEASURES) BILL 2007**

Messages from the House of Representatives were reported agreeing to the following bills without amendment:

Message no. 649, dated 13 September 2007—Northern Territory National Emergency Response Amendment (Alcohol) Bill 2007.

Message no. 651, dated 13 September 2007—Australian Postal Corporation Amendment (Quarantine Inspection and Other Measures) Bill 2007.

22 FOREIGN AFFAIRS, DEFENCE AND TRADE—STANDING COMMITTEE—PROPOSED REFERENCE

Senator Milne, pursuant to notice, moved business of the Senate notice of motion no. 3—That the following matter be referred to the Foreign Affairs, Defence and Trade Committee for inquiry and report by 3 December 2007:

The Australia-Russia Nuclear Cooperation Agreement signed on 7 September 2007, with particular reference to:

- (a) the ramifications of the agreement with respect to global and regional security;
- (b) the risk that Australian uranium would be exported from the Russian Federation (Russia) to third states, contrary to agreements;
- (c) the 2005 Russian deal to sell uranium to Iran to fuel the Russian-built Bushehr nuclear plant, in spite of widespread fears about Iran's suspected nuclear weapons program;
- (d) the implications of the agreement for the sale of nuclear fuel to India;
- (e) the extent to which the supply of Australian uranium would enable Russia to increase its export of nuclear material;
- (f) the weakness of the rule of law, including corporate law, in Russia;
- (g) the ability to verify Russia's compliance with any agreed safeguards noting, in particular, the European Parliament's resolution of 10 May 2007 on the European Union-Russia Summit which expressed concern about, inter alia:
 - (i) Russia's lack of respect for human rights, democracy, freedom of expression, and the rights of civil society and individuals to challenge authorities and hold them accountable for their actions,
 - (ii) the use of force by Russian authorities against peaceful anti-government demonstration and reports of the use of torture in prisons, and
 - (iii) the restriction of democratic freedoms in the run-up to Duma elections in December 2007 and presidential elections in March 2008; and
- (h) any related matters.

Debate ensued.

Question put.

The Senate divided—

AYES, 29

Senators—

Allison	Faulkner	McEwen	Sterle
Bishop	Fielding	Milne	Stott Despoja
Brown, Bob	Hurley	Moore	Webber (Teller)
Brown, Carol	Hutchins	Murray	Wong
Campbell	Kirk	O'Brien	Wortley
Carr	Ludwig	Polley	
Conroy	Lundy	Sherry	
Crossin	Marshall	Siewert	

NOES, 32

Senators—

Abetz	Chapman	Heffernan	Nash
Adams	Colbeck	Humphries	Parry
Barnett	Cormann	Johnston	Patterson
Bernardi	Eggleston	Joyce (Teller)	Payne
Birmingham	Ferguson	Lightfoot	Ronaldson
Boswell	Fierravanti-Wells	Macdonald, Sandy	Scullion
Brandis	Fifield	Mason	Trood
Bushby	Fisher	McGauran	Watson

Question negated.

23 ECONOMICS—STANDING COMMITTEE—INTERIM REPORT—AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (FAIR BANK AND CREDIT CARD FEES) AMENDMENT BILL 2007 AND NATIONAL MARKET DRIVEN ENERGY EFFICIENCY TARGET BILL 2007

The Chair of the Economics Committee (Senator Ronaldson) tabled the following report:

Economics—Standing Committee—Australian Securities and Investments Commission (Fair Bank and Credit Card Fees) Amendment Bill 2007 and National Market Driven Energy Efficiency Target Bill 2007—Interim report.

Extension of time to report: Senator Ronaldson, by leave, moved—That the Senate adopt the recommendation of the interim report that the time for the presentation of the final reports be extended to the last day of the 41st Parliament.

Debate ensued.

Question put and passed.

24 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Minister for Finance and Administration (Senator Colbeck) moved—That intervening business be postponed till after consideration of government business order of the day no. 2 (Commonwealth Electoral Amendment (Democratic Plebiscites) Bill 2007).

Question put and passed.

25 COMMONWEALTH ELECTORAL AMENDMENT (DEMOCRATIC PLEBISCITES) BILL 2007

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

In the committee

Bill taken as a whole by leave.

Senator Murray moved the following amendments together by leave:

Schedule 1, page 3 (after line 4), before item 1, insert;

1A After paragraph 7(1)(fa)

Insert:

(fb) to conduct plebiscites in communities in which a nuclear facility is to be established; and

Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

- (1H) To ensure that communities in which a nuclear facility is to be established have authorised that establishment and have consented to the health, welfare, safety and environmental impacts and risks of the establishment of the nuclear facility, for the purposes of paragraph 7(1)(fb), a plebiscite must be conducted by the Commission in every federal electorate within 0.5km of the boundary of the nuclear facility seeking approval for the establishment of the facility.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Evans	Lundy	Ray
Bishop	Faulkner	Marshall	Siewert
Brown, Bob	Fielding	McEwen	Sterle
Brown, Carol	Hogg	Milne	Stott Despoja
Campbell	Hurley	Moore	Webber
Carr	Hutchins	Murray	Wong
Conroy	Kirk (Teller)	O'Brien	Wortley
Crossin	Ludwig	Polley	

NOES, 33

Senators—

Abetz	Cormann	Joyce	Patterson
Adams	Eggleston	Lightfoot	Payne
Bernardi	Ellison	Macdonald, Ian	Ronaldson
Birmingham	Ferguson	Macdonald, Sandy	Scullion
Boswell	Fierravanti-Wells	Mason	Trood
Brandis	Fisher	McGauran	Watson
Bushby	Heffernan	Minchin	
Chapman	Humphries	Nash (Teller)	
Colbeck	Johnston	Parry	

Question negatived.

Senator Murray moved the following amendments together by leave:

Schedule 1, page 3 (after line 4), before item 1, insert:

1A After paragraph 7(1)(fa)

Insert:

(fb) to conduct plebiscites in Aboriginal communities and townships in the Northern Territory; and

Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

- (1H) To ensure that Aboriginal communities and townships in the Northern Territory in which the Commonwealth is to undertake activities authorised by the *Northern Territory National Emergency Response Act 2007* have the opportunity to express their views, for the purposes of paragraph 7(1)(fb), a plebiscite must be conducted by the Commission in every Aboriginal community or township in which the activities are to be undertaken to ascertain whether the members of that community or township approve the Commonwealth carrying out those activities.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 1, page 3 (after line 4), before item 1, insert:

1A After paragraph 7(1)(fa)

Insert:

(fb) to conduct plebiscites in localities where major infrastructure projects are proposed; and

Note: Examples of major infrastructure projects include a dam, a desalination plant, a pulp mill, a nuclear facility and harbour dredging.

Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

(1H) To ensure that communities in which a major infrastructure project is to be established have authorised that establishment and have consented to the health, welfare, safety and environmental impacts and risks of the establishment of the major infrastructure project, for the purposes of paragraph 7(1)(fb), a plebiscite must be conducted by the Commission in every federal electorate within 0.5km of the boundary of the major infrastructure project seeking approval for the establishment of the facility.

(1I) A major infrastructure project may not proceed unless a plebiscite has first been conducted in accordance with subsection (1H).

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

1A After section 7A

Insert:

7AB Preparation of arguments for and against an infrastructure project for which a plebiscite is to be conducted

- (1) A plebiscite may not be conducted in accordance with paragraph 7(1)(fb) unless an argument in favour of the proposed major infrastructure project (the *project*) and an argument against the proposed major infrastructure project has first been prepared in relation to the plebiscite for that major infrastructure project.
- (2) The argument for and the argument against the project must include a statement consisting of not more than 2,000 words, which includes:
 - (a) an analysis of the costs and benefits of the project;
 - (b) an analysis of the environmental impacts of the project;
 - (c) a consideration of alternative options to the project.
- (3) The argument in favour of the project may be submitted to the Commission by the chief proponent or proponents for the project.
- (4) The argument against the project may be submitted to the Commission by the chief opponent or opponents of the project.
- (5) The Commission must cause to be printed and to be posted to each elector within the area in which the plebiscite is to be conducted a pamphlet containing the arguments for and against the project.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 6

Senators—

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

NOES, 34

Senators—

Barnett	Fielding	Lundy	Payne
Bernardi	Fierravanti-Wells	Macdonald, Ian	Polley
Birmingham	Fifield	Marshall	Sterle
Brown, Carol	Fisher	McEwen	Trood
Bushby	Hogg	McGauran	Watson
Chapman	Hurley	Moore	Webber
Colbeck	Hutchins	Nash	Wortley
Crossin	Kirk	O'Brien	
Eggleston	Ludwig	Parry (Teller)	

Question negatived.

The Leader of the Australian Greens (Senator Bob Brown) moved the following amendments together by leave:

Schedule 1, page 3 (after line 4), before item 1, insert:

1A After paragraph 7(1)(fa)

Insert:

(fb) to conduct a plebiscite about the ratification by Australia of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (the **Kyoto Protocol**); and

Schedule 1, item 1, page 4 (after line 5), at the end of the item, add:

- (1H) To ensure that the electors of Australia have the opportunity to express their opinion, a national plebiscite must be conducted by the Commission on whether or not Australia should ratify the Kyoto Protocol, for the purposes of paragraph 7(1)(fb).
- (1I) The plebiscite mentioned in subsection (1H) must be conducted in conjunction with any general election held in 2007 or 2008.

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

1A After section 7A

Insert:

7AB Preparation of arguments to be put in a plebiscite to be held regarding the question of whether the Kyoto Protocol is to be ratified by Australia

- (1) A plebiscite may not be conducted in accordance with paragraph 7(1)(fb) unless an argument in favour of ratification of the Kyoto Protocol and an argument against ratification of the Kyoto Protocol has first been prepared and provided to all electors.
- (2) The argument for and the argument against the ratification of the Kyoto Protocol must include a statement consisting of not more than 1,000 words in support of each case.
- (3) The argument in favour of the ratification of the Kyoto Protocol may be submitted to the Commission by the Commonwealth government.

- (4) The argument against the ratification of the Kyoto Protocol may be submitted to the Commission by the Opposition.
- (5) The Commission must cause to be printed and to be posted to each elector a pamphlet containing the arguments for and against the ratification of the Kyoto Protocol.
- (6) Except as expressly provided by this section, the arrangements for the plebiscite are to be conducted in accordance with provisions relating to a referendum provided for in the *Referendum (Machinery Provisions) Act 1984*.

Debate ensued.

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

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Parliamentary Secretary to the Minister for Finance and Administration (Senator Colbeck) the report from the committee was adopted.

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

Debate ensued.

Question put and passed.

Bill read a third time.

26 TRADE PRACTICES LEGISLATION AMENDMENT BILL (NO. 1) 2007

Order 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 amendments moved by Senator Murray (see entry no. 3).

Debate resumed.

The question was divided—

Question—That amendments nos 1 and 2 be agreed to—put and negatived.

Question—That amendments nos 3 and 4 be agreed to—put and negatived.

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

Schedule 2, page 6 (after line 12), after item 3, insert:

3A After subsection 46(7)

Add:

- (8) Where a corporation is held to have breached section 46AA of this Act, the corporation shall not be held to have breached this section with respect to the same conduct.

Schedule 2, page 6 (after line 12), after item 3, insert:

3B After section 46

Insert:

46AA Predatory pricing

- (1) A corporation must not engage in predatory pricing which substantially lessens competition in any market.
- (2) For the purposes of this section, *predatory pricing* occurs when a corporation that has a substantial degree of power in a market, or substantial financial power in a market, offers goods or services for sale in a market at prices which have the purpose or effect of substantially lessening competition in that market.
- (3) Without limiting the generality of subsections (1) and (2), in considering whether a corporation has engaged in predatory pricing, the Court may have regard to:
 - (a) whether the goods or services are offered at a price less than their relevant cost; and
 - (b) the price for which competitors of the corporation are offering the same goods or services; and
 - (c) the period of time for which the goods or services are offered at the relevant price; and
 - (d) whether the corporation is offering the same goods or services in other markets for higher prices; and
 - (e) the extent of competition in the market; and
 - (f) the reasons for its conduct.
- (4) In considering whether a corporation has engaged in predatory pricing, regard may be had as to whether or not it has or had the intention or capacity to recoup the costs of its predatory conduct, but actual or potential recoupment is not a necessary requirement of an offence under this section.
- (5) The reference in subsection (2) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors.
- (6) This section does not limit the application of section 46.

Debate ensued.

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

Senator Sherry moved the following amendments together by leave:

Schedule 2, page 6 (after line 12), after item 3, insert:

3A After subsection 46(4A)

Insert:

- (4B) A corporation can have a substantial degree of market power even though there is no proof that the corporation has the ability to, or will have the ability to, recoup losses from pricing below the relevant cost to the corporation supplying the goods or services.

Schedule 2, page 6 (after line 12), after item 3, insert:

3B After subsection 46(7)

Add:

- (8) In determining for the purposes of this section whether a corporation has taken advantage of its market power, the Court shall have regard to whether:
- (a) the conduct of the corporation is materially facilitated by its substantial degree of market power;
 - (b) the corporation engages in the conduct in reliance on its substantial degree of market power;
 - (c) the corporation would be likely to engage in the conduct if it lacked a substantial degree of market power; and
 - (d) the conduct of the corporation is otherwise related to its substantial degree of market power.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 30

Senators—

Allison	Evans	Marshall	Sherry
Bishop	Fielding	McEwen	Siewert
Brown, Bob	Hogg	McLucas	Sterle
Brown, Carol	Hurley	Milne	Webber (Teller)
Campbell	Hutchins	Moore	Wong
Carr	Kirk	Murray	Wortley
Conroy	Ludwig	O'Brien	
Crossin	Lundy	Polley	

NOES, 33

Senators—

Abetz	Colbeck	Johnston	Patterson
Adams	Cormann	Lightfoot	Payne
Barnett	Eggleston	Macdonald, Ian	Ronaldson
Bernardi	Ellison	Macdonald, Sandy	Scullion
Birmingham	Ferguson	Mason	Trood
Boswell	Fierravanti-Wells	McGauran (Teller)	Watson
Brandis	Fisher	Minchin	
Bushby	Heffernan	Nash	
Chapman	Humphries	Parry	

Question negatived.

Senator Murray moved the following amendment:

Schedule 2, page 6 (after line 12), after item 3, insert:

3C After subsection 50(1)

Insert:

- (1A) A corporation must not directly or indirectly:
- (a) acquire shares in the capital of a body corporate; or
 - (b) acquire any assets of a person;

if the acquisition and any previous acquisitions by the corporation in any relevant market in the 5 years preceding the current proposed acquisitions collectively have the effect, or are likely to have the effect, of substantially lessening competition in a market.

- (1B) A person must not directly or indirectly:
- (a) acquire shares in the capital of a body corporate; or

(b) acquire any assets of a person;
 if the acquisition and any previous acquisitions by the person in any relevant market in the 5 years preceding the current proposed acquisitions collectively have the effect, or are likely to have the effect, of substantially lessening competition in a market.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 2, page 6 (after line 12), after item 3, insert:

3D After subsection 51AAB

Insert:

51AAC Unfair contract terms

- (1) A corporation must not, in trade or commerce, in connection with:
 - (a) the supply or possible supply of goods or services to a person (other than a listed public company); or
 - (b) the acquisition or possible acquisition of goods or services from a person (other than a listed public company);
 include in a contract, arrangement or understanding, or proposed contract, arrangement or understanding, an unfair term.
- (2) A person must not, in trade or commerce, in connection with:
 - (a) the supply or possible supply of goods or services to a corporation (other than a listed public company); or
 - (b) the acquisition or possible acquisition of goods or services from a corporation (other than a listed public company);
 include in a contract, arrangement or understanding, or proposed contract, arrangement or understanding, an unfair term.
- (3) A term is to be regarded as unfair for the purposes of subsections (1) and (2) if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance in the parties' rights and obligations arising under the contract, arrangement, or understanding, or the proposed contract, arrangement or understanding, to the detriment of the consumer or small business.
- (4) An unfair term is void.
- (5) The contract will continue to bind the parties if it is capable of existing without the unfair term.
- (6) This section only applies to a contract, arrangement or understanding, or proposed contract, arrangement or understanding entered, or proposed to be entered into, on or after the commencement of this section.

Schedule 2, page 6 (after line 12), after item 3, insert:

3E After subsection 51AC(1)

Insert:

- (1A) For the purposes of this section ***unconscionable conduct*** includes any action in relation to a contract or to the terms of a contract that is unfair, unreasonable, harsh or oppressive, or is contrary to the concepts of fair dealing, fair-trading, fair play, good faith and good conscience.

Debate ensued.

At 9.50 pm: The Acting Deputy President (Senator Crossin) resumed the chair and the Temporary Chair of Committees reported progress.

27 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.27 pm till Tuesday, 18 September 2007 at 12.30 pm.

28 ATTENDANCE

Present, all senators except Senators Boyce, Forshaw*, Kemp*, Stephens and Troeth* (* on leave).

HARRY EVANS
Clerk of the Senate