

1998-2001

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 170

TUESDAY, 27 FEBRUARY 2001

Contents

1	Meeting of Senate.....	3947
2	Government Documents	3947
3	Questions	3948
4	Pensions—Answer to Question	3948
5	Taxation—Answer to Question	3948
6	Privileges—Standing Committee—Statement by President—Proposed Reference	3948
7	Petitions	3949
8	Notices	3949
9	Postponements.....	3950
10	Parliamentary Zone—Approval of Works Proposal.....	3950
11	Centenary of First Meetings of Parliament	3950
12	Australian Broadcasting Corporation— <i>Heywire</i> Program.....	3951
13	National Crime Authority—Joint Statutory Committee—Leave to Meet During Sitting	3951
14	Albury-Wodonga—Bypass.....	3951
15	Environment, Communications, Information Technology and the Arts References Committee—Leave to Meet During Sitting.....	3952
16	Nuclear Fuel—Shipments	3952
17	Death of Sir Donald Bradman, AC.....	3952
18	Foreign Affairs—Western Sahara	3953
19	Legal and Constitutional Legislation Committee—Leave to Meet During Sitting	3953
20	Immigration—Immigration Detention Procedures—Ministerial Statement— Documents	3954
21	Documents	3954
22	Medicare Levy Amendment (CPI Indexation) Bill (No. 2) 2000	3954

23	Legal and Constitutional Legislation Committee—Report—Sex Discrimination Amendment Bill (No. 1) 2000.....	3955
24	Broadcasting Legislation Amendment Bill 2000 [2001].....	3955
25	Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 2000.....	3966
26	Notice of Motion	3966
27	Legal and Constitutional Legislation Committee—Report—Sex Discrimination Amendment Bill (No. 1) 2000.....	3966
28	Government Documents—Consideration	3966
29	Adjournment.....	3966
30	Attendance	3967

1 MEETING OF SENATE

The Senate met at 2 pm. The President (Senator the Honourable Margaret Reid) took the chair and read prayers.

2 GOVERNMENT DOCUMENTS

The following government documents were tabled:

Australian Broadcasting Corporation—Equity and diversity program—Report for 1 September 1999 to 31 August 2000.

Australian Technology Group Limited—
Financial statements for 1999-2000.
Statement of corporate intent.

Commonwealth Electoral Act—2000 Redistribution into electoral divisions—Northern Territory—Report, together with maps showing proposed boundaries and names and compact disc containing suggestions and comments, objections and comments and transcripts of proceedings at inquiry into objections.

Commonwealth Grants Commission—Report—State revenue sharing relativities—2001 update.

Defence Housing Authority—Statement of corporate intent 2000-2001.

National Environment Protection Council and NEPC Service Corporation—Reports for 1999-2000.

Natural Heritage Trust—Report for 1999-2000.

Stevedoring Levy (Collection) Act 1998—Report for 2000.

Telecommunications carrier industry development plans—Progress report for 1999-2000.

Treaties—

Bilateral—

Text, together with national interest analysis—

Agreement between the Government of Australia and the Government of the Islamic Republic of Pakistan relating to Air Services, done at Islamabad on 7 February 1998.

Agreement between the Government of Australia and the Government of the Kingdom of Denmark for the Reciprocal Protection of Classified Information of Defence Interest, done at Copenhagen on 27 September 1999.

Agreement between the Government of Australia and the Government of the Republic of South Africa for the Reciprocal Protection of Classified Information of Defence Interest, done at Canberra on 11 May 2000.

Agreement between the Government of Australia and the Government of Samoa relating to Air Services, done at Apia on 11 August 2000.

Air Services Agreement between the Government of Australia and the Government of the Kingdom of Denmark, Air Services Agreement between the Government of Australia and the Government of the Kingdom of Norway and Air Services Agreement between the Government of Australia and the Government of the Kingdom of Sweden.

Text, together with national interest analysis and regulation impact statement—
Mutual Recognition Agreement on Conformity Assessment between the
Government of Australia and the Government of the Republic of Singapore.

Multilateral—Text, together with national interest analysis—

Agreement establishing the Pacific Islands Forum Secretariat, done at Tarawa
on 30 October 2000.

Asian-Pacific Postal Union: Second Additional Protocol to the Constitution of
4 December 1985, as amended and the Additional Protocol to the General
Regulations, done at Tehran on 18 September 2000.

Instrument for the Amendment of the Constitution of the International Labour
Organization, done at Geneva on 19 June 1997.

3 QUESTIONS

Questions without notice were answered.

4 PENSIONS—ANSWER TO QUESTION

Senator Evans moved—That the Senate take note of the answer given by the Minister for
Family and Community Services (Senator Vanstone) to a question without notice asked by
Senator Evans today relating to the indexation of pensions.

Debate ensued.

Question put and passed.

5 TAXATION—ANSWER TO QUESTION

Senator Murray moved—That the Senate take note of the answer given by the Assistant
Treasurer (Senator Kemp) to a question without notice asked by Senator Murray today
relating to the taxation of trusts.

Question put and passed.

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

The President made a statement relating to a matter of privilege raised by Senator Collins
concerning whether false or misleading evidence was given at estimates hearings in
relation to a change of evidence on the part of the Employment Advocate and whether
there was improper interference with witnesses in respect of their evidence.

The President informed the Senate that, pursuant to the procedures provided by standing
order 81 and resolutions of the Senate of 25 February 1988, she 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.

Document: The President tabled the following documents:

Letter from Senator Collins to the President, dated 7 February 2001 and attachment.

Notice of motion: Senator Collins 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:

In relation to evidence provided to the Employment, Workplace Relations, Small Business and Education Legislation Committee in the course of its estimates hearings:

- (a) whether false or misleading evidence was given in relation to the proposed provision of copies of Australian Workplace Agreements by the Employment Advocate; and
- (b) whether there was improper interference with witnesses, namely the Employment Advocate and the Acting Employment Advocate, in respect of their evidence.

7 PETITIONS

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

The President, from 3 petitioners, requesting that the Senate undertake an inquiry into the taxation and pricing of petrol.

Senator O'Brien, from 18 petitioners, requesting that the Senate reject the Government's plan to impose a goods and services tax on tampons and sanitary pads.

Senator O'Brien, from 10 petitioners, requesting that the Senate take action to ensure the independence of the Australian Broadcasting Corporation and to increase its funding.

8 NOTICES

Notices of motion:

Senator O'Brien, at the request of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hogg): To move on the next day of sitting—That the time for the presentation of the second report of the Foreign Affairs, Defence and Trade References Committee on the examination of developments in contemporary Japan and the implications for Australia be extended to 24 May 2001.

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

- (a) notes the failure of the New South Wales Carr Government to implement sufficient problem gambling reforms by offering optional self-exclusion programs for the state's hotels and clubs;
- (b) condemns the Carr Government's 'Clayton's' approach to reducing the number of problem gamblers in New South Wales and questions the ability of such a program to reduce the number of compulsive gamblers when the program is voluntary;
- (c) notes the difficulty in reducing problem gambling, when the number of poker machines in the state has risen from 62 000 in 1995 to 101 000 in 2000, according to figures from the Department of Gaming and Racing; and
- (d) calls on the Carr Government to reduce the number of poker machines in the state to at least 1995 levels and to inject funds from gaming taxes back into the industry and to come up with responsible problem gambling initiatives.

Notice of motion withdrawn: Senator Calvert, at the request of the Chairman of the Standing Committee on Regulations and Ordinances (Senator Coonan) and pursuant to notice of intention given on 26 February 2001, withdrew business of the Senate notice of motion no. 1 standing in her name for 4 sitting days after today for the disallowance of GST-free Supply (Drugs and Medicinal Preparations) Determination 2000 (No. 2), made under paragraph 177-10(4)(c) of the *A New Tax System (Goods and Services Tax) Act 1999*.

9 POSTPONEMENTS

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Brown for today, relating to the disallowance of regulation 8 of the Renewable Energy (Electricity) Regulations 2001, postponed till 6 March 2001.

General business notice of motion no. 717 standing in the name of the Leader of the Australian Democrats (Senator Lees) for today, relating to the introduction of the Australian Bill of Rights Bill 2000, postponed till 28 March 2001.

General business notice of motion no. 786 standing in the names of Senators Bourne and Allison for today, relating to nuclear weapons, postponed till 28 February 2001.

General business notice of motion no. 813 standing in the name of Senator Allison for today, relating to the nuclear-free Kobe Formula, postponed till 28 February 2001.

General business notice of motion no. 819 standing in the name of Senator Cook for today, relating to the development and deployment of a national missile defence system, postponed till 1 March 2001.

10 PARLIAMENTARY ZONE—APPROVAL OF WORKS PROPOSAL

The Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell), at the request of the Special Minister of State (Senator Abetz) and pursuant to notice of motion not objected to as a formal motion, moved—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for work within the Parliamentary Zone, being work related to the planting of the International Tree of Peace in Peace Park.

Question put and passed.

11 CENTENARY OF FIRST MEETINGS OF PARLIAMENT

The Deputy President (Senator West), at the request of the President and pursuant to notice of motion not objected to as a formal motion, moved—That, pursuant to the acceptance by the Senate on 26 June 2000 of the invitation of 10 May 2000 of the Houses of the Parliament of Victoria to meet in Melbourne on 9 and 10 May 2001 to mark the centenary of the first meetings of the Houses of the Commonwealth Parliament in 1901:

- (1) (a) The Senate meet with the House of Representatives at 2 pm on 9 May 2001 in the Royal Exhibition Buildings, Melbourne.
- (b) The only business transacted at that meeting be:
 - (i) introductory address by the President;
 - (ii) address by the Governor-General;
 - (iii) addresses by the Prime Minister and the Leader of the Opposition; and
 - (iv) concluding address by the Speaker of the House of Representatives.
- (c) At the conclusion of that business, the Senate stand adjourned till 10 am on 10 May 2001.
- (2) (a) The Senate meet at 10 am on 10 May 2001 in the Legislative Council Chamber, Parliament House, Melbourne.

- (b) The only business transacted at that meeting be:
 - (i) introductory address by the President;
 - (ii) addresses by the Leader of the Government in the Senate, the Leader of the Opposition in the Senate, and the Leader of the Australian Democrats; and
 - (iii) concluding address by the President.
- (c) At the conclusion of that business, the Senate stand adjourned till the next day of sitting.

Question put and passed.

12 AUSTRALIAN BROADCASTING CORPORATION—HEYWIRE PROGRAM

Senator Bourne, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes:
 - (i) the third anniversary of the Australian Broadcasting Corporation (ABC) radio program, *Heywire*, an award scheme for regional and rural young people,
 - (ii) the scheme awards young people from the 40 ABC regional radio locations across Australia who submit a three-minute radio story about their experiences of living in regional Australia, the winning stories being carried on local radio and Triple J, while all stories are carried on ABC Online, and
 - (iii) the importance of giving young people living in rural and regional Australia a voice which provides a link between urban and regional young people and acts to close the gap between Australians living in different parts of Australia; and
- (b) congratulates the ABC on this broadcasting initiative.

Question put and passed.

13 NATIONAL CRIME AUTHORITY—JOINT STATUTORY COMMITTEE—LEAVE TO MEET DURING SITTING

Senator O'Brien, at the request of Senator George Campbell and pursuant to notice of motion not objected to as a formal motion, moved—That the Parliamentary Joint Committee on the National Crime Authority be authorised to hold a public meeting during the sitting of the Senate on 28 February 2001, from 6 pm to 8 pm, to take evidence for the committee's examination of the annual report for 1999-2000 of the National Crime Authority.

Question put and passed.

14 ALBURY-WODONGA—BYPASS

Senator Allison amended her notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes that:
 - (i) in the week beginning 18 February 2001, the Government reversed its decision to fund the highly unpopular internal freeway bypass for Albury-Wodonga, and

- (ii) the Government has also agreed to contribute \$70 million to fund a second river crossing, the subject of an Australian Democrats motion dated 10 May 2000; and
- (b) congratulates the Save Our City group on finally persuading the Federal Government that the external bypass route was shorter, safer and cheaper than the internal route being proposed; and
- (c) calls on the Victorian and New South Wales state governments to share the cost of the second river crossing boulevard.

Question put and passed.

**15 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS
REFERENCES COMMITTEE—LEAVE TO MEET DURING SITTING**

The Chair of the Environment, Communications, Information Technology and the Arts References Committee (Senator Allison), pursuant to notice of motion not objected to as a formal motion, moved—That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold public meetings during the sittings of the Senate on 28 February 2001 and 7 March 2001, from 6 pm, to take evidence for the committee's inquiry into the Environment and Heritage Legislation Amendment Bill (No. 2) 2000 and two related bills.

Question put and passed.

16 NUCLEAR FUEL—SHIPMENTS

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate, aware of the imminent passage between Australia and New Zealand of two more ships carrying highly radioactive mixed-oxide nuclear fuel, including plutonium, calls on:

- (a) the Australian Government to commission an independent international environmental and safety assessment of such shipments;
- (b) the Government to join New Zealand and the Pacific Island countries in opposing these shipments; and
- (c) the companies involved in the shipments to carry complete liability insurance for a worst-case accident scenario.

Question put and passed.

17 DEATH OF SIR DONALD BRADMAN, AC

Senator O'Brien, at the request of Senator Schacht and pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes:
 - (i) the passing of Sir Donald Bradman, AC, not only the greatest cricketer in the history of the sport, but a very great Australian, and
 - (ii) that, as both a sportsperson and a citizen, Sir Donald provided a very fine example to all Australians of how one should conduct oneself, despite being famous;

- (b) in particular, recognises Sir Donald's significance to the South Australian community in which he lived most of his life and contributed greatly to its civic affairs; and
- (c) expresses its sincere condolences to the Bradman family at the passing of a truly great Australian.

Question put and passed.

18 FOREIGN AFFAIRS—WESTERN SAHARA

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved—
That the Senate—

- (a) notes that:
 - (i) 27 February 2001 is the 25th anniversary of the declaration of the Saharawi State, following Morocco's invasion and occupation of Western Sahara in 1975,
 - (ii) 180 000 Western Saharans live in exile in the desert of Algeria,
 - (iii) the United Nations (UN) has still not conducted the referendum agreed in the 1991 peace plan,
 - (iv) it has been claimed the Morocco-backed Paris to Dakar car rally violated the ceasefire agreement, and
 - (v) the British Government has approved an application by Royal Ordnance, owned by BAE Systems, formerly British Aerospace, to restore thirty 105mm guns for the Moroccan army; and
- (b) calls on the Commonwealth Government to make representations to:
 - (i) the UN and the Moroccan Government, urging them to proceed to the fair conduct of a referendum, in accordance with the 1991 peace plan, as soon as possible, and
 - (ii) the British Government, warning of the consequences of engaging in arms trading in the region.

Question put and passed.

19 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Calvert, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne) and pursuant to notice of motion not objected to as a formal motion, moved—That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 5 March 2001, from 7.30 pm, to take evidence for the committee's inquiry into the Freedom of Information Amendment (Open Government) Bill 2000.

Question put and passed.

20 IMMIGRATION—IMMIGRATION DETENTION PROCEDURES—MINISTERIAL STATEMENT—DOCUMENTS

The Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell), by leave, made a statement relating to immigration detention procedures and tabled the following documents:

Immigration—Immigration detention procedures—

Inquiry into immigration detention procedures—Report, dated February 2001.

Statement by the Minister for Immigration and Multicultural Affairs (Mr Ruddock), dated 27 February 2001, and annexe to the statement.

Senator Ian Campbell, by leave, moved—That the Senate take note of the documents.

Debate ensued.

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

21 DOCUMENTS

The following documents were tabled by the Clerk:

Acts Interpretation Act—Statement pursuant to subsection 34C(6) relating to the extension of the specified period for presentation of a report—National Environment Protection Council Report for 1999-2000.

Australian Communications Authority Act and Radiocommunications Act—Radiocommunications (Interpretation) Amendment Determination 2001 (No. 1).

Radiocommunications Act—

Radiocommunications Licence Conditions (Broadcasting Licence) Amendment Determination 2001 (No. 1).

Radiocommunications (Transmitter and Receiver Licences) Amendment Determination 2001 (No. 1).

Radiocommunications (Transmitter Licence Tax) Act—Radiocommunications (Transmitter Licence Tax) Amendment Determination 2001 (No. 1).

Veterans' Entitlements Act—Instruments under section 196B—Instruments Nos 13-16 of 2001.

22 MEDICARE LEVY AMENDMENT (CPI INDEXATION) BILL (NO. 2) 2000

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

Message no. 639, dated 26 February 2001—A Bill for an Act to index thresholds for Medicare levy and Medicare levy surcharge, and for related purposes.

The Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

On the motion of Senator O'Brien the debate was adjourned till the next day of sitting.

23 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—SEX DISCRIMINATION AMENDMENT BILL (NO. 1) 2000

Pursuant to order, Senator Calvert, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), tabled the following report and documents:

Sex Discrimination Amendment Bill (No. 1) 2000, dated February 2001, *Hansard* record of the committee's proceedings [8 vols], documents presented to the committee and submissions [131].

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

24 BROADCASTING LEGISLATION AMENDMENT BILL 2000 [2001]

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

At the end of the motion, add “but the Senate calls on the Government:

- (a) to suspend the auction of datacasting spectrum until the Parliament has completed its consideration of the bill while still allowing the auction process to be completed in the 2000-01 financial year; and
- (b) to rectify its failure to adequately resource the Australian Broadcasting Corporation to effect the national public broadcaster's transition to the digital world”.

Debate resumed.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 37

Senators—

Bartlett	Cook	Hutchins	Ray
Bishop	Cooney	Lees	Ridgeway
Bolkus	Crossin	Ludwig	Schacht
Bourne	Crowley	Lundy	Sherry
Brown	Denman (Teller)	Mackay	Stott Despoja
Buckland	Evans	McKiernan	West
Campbell, George	Gibbs	McLucas	Woodley
Carr	Greig	Murphy	
Collins	Harradine	Murray	
Conroy	Hogg	O'Brien	

NOES, 32

Senators—

Abetz	Ellison	Knowles	Patterson
Alston	Ferguson	Lightfoot	Payne
Boswell	Ferris	Macdonald, Ian	Reid
Brandis	Gibson	Macdonald, Sandy	Tambling
Calvert	Heffernan	Mason	Tchen
Chapman	Herron	McGauran (Teller)	Tierney
Crane	Hill	Minchin	Troeth
Eggleston	Kemp	Newman	Vanstone

Question agreed to.

Main question, as amended, put and passed.

Bill read a second time.

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

In the committee

Explanatory memorandum: Senator Alston tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Bill, taken as a whole by leave, debated.

Senator Bishop moved the following amendments together by leave:

Schedule 1, item 4, page 3 (lines 11 and 12), omit the item, substitute:

4 Part 1 of Schedule 6

Repeal the Part, substitute:

Part 1—Introduction

1 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a system for regulating the provision of datacasting services.
- Datacasting service providers must hold datacasting licences.
- A datacasting service cannot be a broadcasting service.
- The distinction between datacasting and broadcasting services is based on the attributes of the service.
- The ABA will be empowered to determine additional criteria or clarify existing criteria about what constitutes a datacasting service or a broadcasting service.
- The ABA may give advisory opinions, on request, about whether a proposed service is a datacasting service or a broadcasting service.
- The ABA will be empowered to make determinations about whether particular services are datacasting services or broadcasting services.
- A group that represents datacasting licensees may develop codes of practice.
- The ABA has a reserve power to make a standard if there are no codes of practice or if a code of practice is deficient.
- The ABA is to investigate complaints about datacasting licensees.

2 Definitions

Classification Board means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

interactive, in relation to a datacasting service, means a capacity for a user to request specific responses, make choices or engage in digital transactions or communications.

Internet carriage services has the same meaning as in Schedule 5, but does not include a service that transmits content that has been copied from the Internet, where the content is selected by the datacasting licensee concerned, unless the same content is available simultaneously on the Internet.

nominated datacaster declaration means a declaration under clause 45.

non-contemporaneous, in relation to a datacasting service, means that users of the service do not view the same content simultaneously.

non-linear, in relation to a datacasting service, means that content is designed to be selected or accessed at irregular intervals in accordance with user-defined requests and not as a single, continuous stream of data to users.

ordinary electronic mail does not include a posting to a newsgroup.

qualified entity means:

- (a) a company that:
 - (i) is formed in Australia or in an external Territory; and
 - (ii) has a share capital; or
- (b) the Commonwealth, a State or a Territory; or
- (c) the Australian Broadcasting Corporation; or
- (d) the Special Broadcasting Service Corporation; or
- (e) any other body corporate established for a public purpose by a law of the Commonwealth or of a State or a Territory.

related body corporate has the same meaning as in the Corporations Law.

static graphic interface, in relation to a datacasting service, means a method of providing interactivity to a user through menu systems or other control mechanisms common to digital services and applications.

transmitter licence has the same meaning as in the *Radiocommunications Act 1992*.

3 Datacasting services

For the purposes of this Schedule, a **datacasting service** means a service (other than a broadcasting service) that delivers information (whether in the form of data, text, speech, images or in any other form) to persons having equipment appropriate for receiving that information, where the service has the following attributes:

- (a) it uses the broadcasting services bands; and

- (b) it is interactive; and
- (c) it is non-contemporaneous; and
- (d) it is non-linear; and
- (e) it offers frequent user-defined choices; and
- (f) it makes frequent use of static graphic interfaces; and
- (g) it complies with any determinations or clarifications under clause 4 in relation to datacasting services.

4 ABA may determine additional criteria or clarify existing criteria

- (1) The ABA may, by notice in the *Gazette*:
 - (a) determine additional criteria to those specified in clause 3; or
 - (b) clarify the criteria specified in clause 3;for the purpose of distinguishing between datacasting services and broadcasting services.
- (2) The Minister may give specified directions to the ABA as to the making of determinations and clarifications, and the ABA must observe those directions.
- (3) Determinations and clarifications under subclause (1) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

5 Requests to ABA for an advisory opinion on whether a service is a datacasting service or a broadcasting service

- (1) A person who proposes to provide a datacasting service may apply to the ABA for an advisory opinion as to whether the proposed service is a datacasting service or a broadcasting service.
- (2) An application must be in accordance with a form approved in writing by the ABA, and must state the applicant's opinion as to whether the proposed service is a datacasting service or a broadcasting service.
- (3) If the ABA considers that additional information is required before an advisory opinion can be given, the ABA may, by notice in writing given to the applicant within 14 days after receiving the application, request the applicant to provide that information.
- (4) The ABA must, as soon as practicable after:
 - (a) receiving the application; or
 - (b) if the ABA has requested further information—receiving that further information;give the applicant, in writing, its advisory opinion as to whether the proposed service is a datacasting service or a broadcasting service.
- (5) If the ABA does not, within 28 days after:
 - (a) receiving the application; or
 - (b) if the ABA has requested further information—receiving that further information;give the applicant, in writing, its advisory opinion as to whether the proposed service is a datacasting service or a broadcasting service, the

ABA is taken to have given an advisory opinion at the end of that period that accords with the applicant's opinion.

- (6) The ABA may charge a fee for providing an advisory opinion under this clause.

6 Requests to ABA to determine whether a service is a datacasting service or a broadcasting service

- (1) A person may apply to the ABA for a determination as to whether a service is a datacasting service or a broadcasting service.
- (2) An application must be in accordance with a form approved in writing by the ABA, and must state the applicant's opinion as to whether the service is a datacasting service or a broadcasting service.
- (3) If the ABA considers that additional information is required before a determination can be given, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ABA must, as soon as practicable after:
- (a) receiving the application; or
 - (b) if the ABA has requested further information—receiving that further information;
- give the applicant, in writing, its determination as to whether the service is a datacasting service or a broadcasting service.
- (5) If the ABA has given a determination under this clause to the provider of a datacasting service, neither the ABA nor any other Government agency may, while the circumstances relating to the datacasting service remain substantially the same as those advised to the ABA in relation to the application for the determination:
- (a) take any action against the provider of the service for the period of 5 years commencing on the day on which the determination is given on the basis that the service is not a datacasting service; or
 - (b) unless the ABA has made a determination or clarification under clause 4 after that determination was given that places the service outside the definition of a datacasting service—take any action against the provider of the service after the end of that period on the basis that the service is not a datacasting service.
- (6) If the ABA does not, within 45 days after:
- (a) receiving the application; or
 - (b) if the ABA has requested further information—receiving that further information;
- give the applicant, in writing, its determination as to whether the service is a datacasting service, the ABA is taken to have given a determination at the end of that period that accords with the applicant's opinion.
- (7) The ABA may charge a fee for providing a determination under this clause.

7 Matters to be considered by ABA

In making determinations under clause 4 or clause 6 in relation to datacasting services, and in giving advisory opinions under clause 5 in relation to proposed datacasting services, the ABA is to have regard to:

- (a) the attributes of the service and its mode of delivery; and
- (b) the dominant purpose of the service; and
- (c) such other matters as the ABA thinks fit.

4A Division 1 of Part 3 of Schedule 6

Repeal the Division, substitute:

13 Primary condition—datacasting service not to be a broadcasting service

- (1) Each datacasting licence is subject to the primary condition that the licensee will not transmit matter that, if it were broadcast on commercial television or radio, would be a broadcasting service.
- (2) The condition set out in subclause (1) does not prevent the licensee from transmitting live matter that consists of:
 - (a) the proceedings of, or the proceedings of a committee of, a Parliament; or
 - (b) the proceedings of a court or tribunal in Australia; or
 - (c) the proceedings of an official inquiry or Royal Commission in Australia; or
 - (d) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory.
- (3) The condition set out in subclause (1) does not prevent a datacasting licensee from transmitting matter that consists of no more than:
 - (a) text; or
 - (b) text accompanied by associated sounds; or
 - (c) still visual images; or
 - (d) still visual images accompanied by associated sounds; or
 - (e) any combination of matter covered by the above paragraphs; or
 - (f) any combination of:
 - (i) matter that is covered by any of the above paragraphs (the *basic matter*); and
 - (ii) animated images (with or without associated sounds);
 where:
 - (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
 - (iv) the animated images consist of advertising or sponsorship material.
- (4) The condition set out in subclause (1) does not prevent a datacasting licensee from providing an interactive computer game.
- (5) The condition set out in subclause (1) does not apply to the transmission of ordinary electronic mail.

- (6) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclauses (3), (4), and (5) are to be disregarded.

4B Divisions 2 and 2A of Part 3 of Schedule 6

Repeal the Divisions.

4C Paragraph 26(3)(a) of Schedule 6

Repeal the paragraph, substitute:

- (a) clause 13; or

4D Paragraphs 26(3)(b) and (c) of Schedule 6

Repeal the paragraphs.

4E After paragraph 27A(1)(c) of Schedule 6

Omit “and”.

4F Paragraph 27A(1)(d) of Schedule 6

Repeal the paragraph.

Schedule 1, page 3 (after line 19), at the end of the Schedule, add:

7 Paragraph 52(1)(c) of Schedule 6

Repeal the paragraph, substitute:

- (c) the person’s conduct breaches a condition of the licence set out in clause 13, 20B or 24.

8 Subclause 54(2) of Schedule 6

Omit “clause 14, 16, 20B or 21”, substitute “clause 13 or 20B”.

9 Subclause 54(3) of Schedule 6

Omit “clause 14, 16, 20B or 21”, substitute “clause 13 or 20B”.

10 Clause 58 (table item 2A)

Repeal the table item.

Debate ensued.

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

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

Schedule 1, item 1, page 3 (lines 5 and 6), omit the item, substitute:

1 Paragraph 5A(1)(d) of Schedule 4

Repeal the paragraph.

1A Subclauses 5A(2) and (3) of Schedule 4

Repeal the subclauses.

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

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

1A Division 2 of Part 11 (heading)

Repeal the heading, substitute:

Division 2—Complaints relating to national broadcasting services or datacasting services provided by the ABC or SBS

1B Paragraph 150(a)

Omit “that national broadcasting service has acted contrary to a code of practice developed by that national broadcasting service”, substitute “the Corporation has, in providing a national broadcasting service or a datacasting service, acted contrary to a code of practice developed by the Corporation”.

Note: The heading to section 150 is altered by adding at the end “**or datacasting services provided by the ABC or SBS**”.

1C Paragraph 151(2)(b)

Omit “that national broadcasting service”, substitute “the Corporation”.

Schedule 1, page 3 (after line 12), after item 4, insert:

4A After clause 35 of Schedule 6

Insert:

35A This Part does not apply to the ABC or SBS

For the purposes of this Part, the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation are taken not to be datacasting licensees.

Note: If the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation is otherwise a datacasting licensee, it is a duty of the Board of the Corporation to develop a code of practice that relates to the service provided under the licence. See paragraph 8(1)(e) of the *Australian Broadcasting Corporation Act 1983* and paragraph 10(1)(j) of the *Special Broadcasting Service Act 1991*.

4B At the end of clause 37 of Schedule 6

Add:

- (3) Also, this clause does not apply if the datacasting licensee is the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

Note: Sections 150 to 153 deal with complaints about a datacasting service provided by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

Schedule 2, item 3, page 4 (after line 22), at the end of section 6A, add:

- (2) However, subsection (1) is not intended to impose any obligation on the Corporation, in relation to the provision of such a service, beyond that imposed on the Corporation as holder of such a licence.

Schedule 2, page 4, at the end of the Schedule, add:

4 Paragraph 8(1)(e)

Repeal the paragraph, substitute:

- (e) to develop codes of practice relating to:
(i) programming matters; and

- (ii) if the Corporation has the function of providing a datacasting service under section 6A—that service;

and to notify those codes to the Australian Broadcasting Authority.

Schedule 3, item 3, page 5 (after line 22), at the end of section 6A, add:

- (2) However, subsection (1) is not intended to impose any obligation on the SBS, in relation to the provision of such a service, beyond that imposed on the SBS as holder of such a licence.

Schedule 3, page 5, at the end of the Schedule, add:

4 Paragraph 10(1)(j)

Repeal the paragraph, substitute:

- (j) to develop codes of practice relating to:
 - (i) programming matters; and
 - (ii) if the SBS has the function of providing a datacasting service under section 6A—that service;
 and to notify those codes to the Australian Broadcasting Authority.

Senator Bishop moved the following amendments together by leave:

Schedule 2, page 4 (after line 4), before item 1, insert:

1A Subsection 3(1) (definition of *broadcasting service*)

Omit “programs” (wherever occurring), substitute “content”.

1B Subsection 3(1) (paragraph (a) of the definition of *broadcasting service*)

Repeal the paragraph.

1C Subsection 3(1)

Insert:

content means:

- (a) a radio program; or
- (b) a television program; or
- (c) a transmission of data for the purposes of a datacasting service; or
- (d) a publication on the Internet; or
- (e) any other public transmission or publication by electronic means.

Schedule 2, page 4 (after line 12), after item 2, insert:

2A Subsection 3(1) (definition of *program*)

Repeal the definition.

2B At the end of section 3

Add:

- (3) A reference in this Act to ***broadcast*** or ***broadcasting*** includes a reference to:
 - (a) the transmission of data for the purposes of datacasting; and
 - (b) publication on the Internet; and
 - (c) any other public transmission or publication by electronic means.

2C Section 6

Omit “broadcasting programs” (wherever occurring), substitute “content”.
Schedule 2, page 4 (after line 22), at the end of the Schedule, add:

5 Subsections 11(3) and (4)

Omit “broadcasting programs” (wherever occurring), substitute “content”.

6 Paragraphs 25(1)(da), (db) and (dc)

Omit “programs” (wherever occurring), substitute “content”.

7 Subsection 25(3)

Omit “program”, substitute “content”.

8 Subsubparagraph 25(5)(b)(i)(A)

Omit “broadcasting programs”, substitute “content”.

9 Subparagraph 25(5)(b)(ii)

Omit “program”, substitute “content”.

10 Paragraph 25(5)(e)

Omit “program”, substitute “content”.

11 After paragraph 27(5)(c)

Insert:

- or (d) a second or subsequent digital channel; or
- (e) a datacasting service; or
- (f) publication on the Internet, or by other public means, of an electronic communication;

12 Subsubparagraph 29(1)(b)(i)(A)

Omit “programs”, substitute “content”.

13 Subparagraph 29(1)(b)(ii)

Omit “program”, substitute “content”.

14 Section 29A

Omit “broadcasting facilities”, substitute “facilities”.

Schedule 2, page 4 (after line 22), at the end of the Schedule, add:

15 Paragraphs 31(2)(a) and (b)

Omit “a program” (wherever occurring), substitute “content”.

16 Section 78(4)

Repeal the subsection, substitute:

- (4) A direction under this section must be in writing to the Managing Director and may be sent by any means of electronic communication.

17 At the end of subsection 79A(2)

Add:

- ; or (c) if the matter is:
 - (i) a transmission of data for the purposes of datacasting; or

- (ii) a publication on the Internet; or
- (iii) any other public transmission or publication by electronic means;

cause all the required particulars to be transmitted in the form of images or words.

18 At the end of subsection 79B(1)

Add:

; or (c) in the case of:

- (i) a transmission of data for the purposes of datacasting; or
- (ii) a publication on the Internet; or
- (iii) any other public transmission or publication by electronic means;

by retaining a physical or electronic copy of the data transmitted or matter published.

Debate ensued.

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

Senator Bishop moved the following amendment:

Page 5 (after line 22), at the end of the bill, add:

**Schedule 4—Amendment of the Datacasting Charge
(Imposition) Act 1998**

1 Paragraph 6(b)

Repeal the paragraph, substitute:

- (b) the transmitter licence is held by the holder of a commercial television broadcasting licence; and

2 At the end of section 6

Add:

- (2) To avoid doubt, this section does not apply to a national broadcaster.

Debate ensued.

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

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

Question put and passed.

The Deputy President (Senator West) resumed the chair and the Temporary Chair of Committees (Senator Watson) reported that the committee had considered the bill, made progress and asked leave to sit again.

Ordered, on the motion of Senator Alston, that the committee have leave to sit again on the next day of sitting.

25 CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) AMENDMENT BILL (NO. 2) 2000

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

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

26 NOTICE OF MOTION

The Minister for Communications, Information Technology and the Arts (Senator Alston), by leave, gave a notice of motion as follows: To move on the next day of sitting—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the Joint House Department to construct a permanent crowd safety rail at Parliament Drive, in front of Parliament House.

27 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—SEX DISCRIMINATION AMENDMENT BILL (NO. 1) 2000

Senator Harradine, by leave, tabled the following document:

Sex Discrimination Amendment Bill (No. 1) 2000—Dissenting report (*Tabled in substitution for dissenting report contained within report tabled earlier today—see entry no. 23*).

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

At 6.50 pm—

28 GOVERNMENT DOCUMENTS—CONSIDERATION

The following documents tabled earlier today (*see entry no. 2*) were considered:

Stevedoring Levy (Collection) Act 1998—Report for 2000. Motion to take note of document moved by Senator O'Brien and agreed to.

Defence Housing Authority—Statement of corporate intent 2000-2001. Motion to take note of document moved by Senator Murphy and agreed to.

Commonwealth Electoral Act—2000 Redistribution into electoral divisions—Northern Territory—Report. Motion to take note of document moved by Senator Crossin. Debate adjourned till Thursday at general business, Senator Crossin in continuation.

29 ADJOURNMENT

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

Debate ensued.

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

Law and Justice—Court transcript—*Edward Stals v. Victims Compensation Fund Corporation* (139/00)—District Court of New South Wales, 27 October 2000.

Debate continued.

The Senate adjourned at 7.39 pm till Wednesday, 28 February 2001 at 9.30 am.

30 **ATTENDANCE**

Present, all senators except Senator Harris (on leave).

HARRY EVANS
Clerk of the Senate