## Contents

1. Meeting of Senate ................................................................. 3377
2. Fair Entitlements Guarantee Bill 2012 ......................................... 3377
3. Fair Work Amendment (Transfer of Business) Bill 2012 ..................... 3377
4. Fair Entitlements Guarantee Bill 2012 ......................................... 3388
5. Dental Benefits Amendment Bill 2012 .......................................... 3389
   Clean Energy (Charges—Excise) Amendment Bill 2012
   Clean Energy (Charges—Customs) Amendment Bill 2012
   Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
   Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
   Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
   Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012 .......... 3389
7. Questions ............................................................................. 3390
8. Motions to Take Note of Answers.................................................. 3390
9. Death of Former Member the Honourable Joseph Martin (Joe) Riordan, AO .......................................................... 3390
10. Notices .................................................................................. 3390
11. Leave of Absence .................................................................... 3393
12. Economics References Committee—Finance and Public Administration
    References Committee—Leave to Meet During Sitting ..................... 3394
13. Postponement ........................................................................ 3394
14. Legal and Constitutional Affairs References Committee—Reference .......................................................... 3394
15. Foreign Affairs—United Kingdom—Pension Indexation ..................... 3395
16. Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2012 ...... 3395
17. Historical Events—Ukrainian Famine............................................. 3396
18. Community Affairs Legislation Committee—Leave to Meet During Sittings .. 3396
19. Immigration—Asylum Seekers .................................................... 3396
20. Discussion of Matter of Public Importance—Administration—Governance and Financial Accountability ........................................ 3397
21 Gambling Reform—Joint Select Committee—Report—National Gambling Reform Bill 2012 and Related Bills ................................................................. 3397
22 Appropriations and Staffing—Standing Committee—54th Report .................. 3398
23 Parliamentary Zone—Capital Works Proposals—Documents ....................... 3398
24 Law Enforcement Integrity Legislation Amendment Bill 2012— Explanatory Memorandum ................................................................. 3398
25 ASEAN Inter-Parliamentary Assembly—33rd General Assembly— Document ................................................................................................. 3398
26 Documents .......................................................................................... 3399
27 Education, Employment and Workplace Relations Legislation Committee— Report—Fair Work Amendment Bill 2012 ........................................ 3401
28 Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012
   Clean Energy (Charges—Excise) Amendment Bill 2012
   Clean Energy (Charges—Customs) Amendment Bill 2012
   Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
   Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
   Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
   Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012 ........... 3401
29 Notice ................................................................................................. 3404
30 Adjournment ...................................................................................... 3405
31 Attendance ......................................................................................... 3405
MEETING OF SENATE
The Senate met at 10 am. The President (Senator the Honourable John Hogg) took the chair; read prayers and made an acknowledgement of country.

FAIR ENTITLEMENTS GUARANTEE BILL 2012
Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Prime Minister (Senator McLucas)—That this bill be now read a second time.
Debate resumed.
Question put and passed.
Bill read a second time.
The Senate resolved itself into committee for the consideration of the bill.

In the committee
Bill taken as a whole by leave.
The Leader of the Opposition in the Senate (Senator Abetz) moved the following amendments together by leave:
Clause 23, page 20 (line 8), after “that employment”, insert “, up to a maximum of 16 weeks’ pay”.
Clause 23, page 20 (line 11), after “employer”, insert “and the 16 weeks’ maximum in subparagraph (i) has not been reached”.
Debate ensued.
Question—That the amendments be agreed to—put.
A division was called for.
Pursuant to the order of the Senate of 22 November 2010 consideration of the matter was postponed.

The Acting Deputy President (Senator Fawcett) resumed the chair and the Temporary Chair of Committees reported progress.
Pursuant to the order of the Senate of 22 November 2010, further consideration of the bill in committee of the whole was made an order of the day for a later hour.

FAIR WORK AMENDMENT (TRANSFER OF BUSINESS) BILL 2012
Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Prime Minister (Senator McLucas)—That this bill be now read a second time.
Debate resumed.
Question put and passed.
Bill read a second time.
The Senate resolved itself into committee for the consideration of the bill.
In the committee

Bill, taken as a whole by leave, debated.

Explanatory memorandum: The Parliamentary Secretary for School Education and Workplace Relations (Senator Collins) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Bill further debated.

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

Schedule 1, item 1, page 4 (lines 2 and 3), omit “means a national system employee, and employer means a national system employer”, substitute “and employer have their ordinary meanings”.

Schedule 1, item 1, page 7 (lines 7 to 20), substitute:

(1) If, immediately before the termination time of a transferring employee:
   (a) a State award (the original State award) was in operation under the State industrial law of the State; and
   (b) the original State award covered (however described in the original State award or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State award also covered other persons);

then a copied State award for the transferring employee is taken to come into operation immediately after the termination time.

Schedule 1, item 1, page 8 (line 21) to page 9 (line 3), substitute:

(1) If, immediately before the termination time of a transferring employee:
   (a) a State employment agreement (the original State agreement) was in operation under a State industrial law of the State; and
   (b) the original State agreement covered (however described in the original State agreement or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State agreement also covered other persons);

then a copied State employment agreement for the transferring employee is taken to come into operation immediately after the termination time.

Schedule 1, item 1, page 20 (before line 8), before subsection 768AX(1), insert:

Application of this section

(1A) This section applies if there is, or is likely to be, a transfer of business.
Schedule 1, item 1, page 20 (line 31) to page 21 (line 34), omit subsections 768AX(2) and (3), substitute:

Who may apply for a variation

(2) FWA may make a variation under subsection (1):
   (a) on its own initiative; or
   (b) on application by a person who is, or is likely to be, covered by the copied State instrument; or
   (c) on application by an employee organisation that is entitled to represent the industrial interests of an employee who is, or is likely to be, covered by the copied State instrument.

Note: The copied State instrument for the transferring employee may also cover another transferring employee or a non-transferring employee if a consolidation order is made.

Matters that FWA must take into account

(3) In deciding whether to make a variation under subsection (1), FWA must take into account the following:
   (a) the views of:
      (i) the employees who would be affected by the copied State instrument as varied; and
      (ii) the new employer or a person who is likely to be the new employer;
   (b) whether any employees would be disadvantaged by the copied State instrument as varied in relation to their terms and conditions of employment;
   (c) if the copied State instrument is a copied State employment agreement—the nominal expiry date of the agreement;
   (d) whether the copied State instrument, without the variation, would have a negative impact on the productivity of the new employer’s workplace;
   (e) whether the new employer would incur significant economic disadvantage as a result of the copied State instrument, without the variation;
   (f) the degree of business synergy between the copied State instrument, without the variation, and any workplace instrument that already covers the new employer;
   (g) the public interest.

Schedule 1, item 1, page 22 (lines 15 to 20), omit subsection 768AX(6), substitute:

When variation may be made

(6) A variation may be made under subsection (1) in relation to a copied State instrument of a transferring employee:
   (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
   (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

Restriction on when variation may come into operation

(7) A variation under subsection (1) operates from the day specified in the variation, which may be a day before the variation is made.
Schedule 1, item 1, page 23 (after line 13), after section 768AZ, insert:

768AZA  Orders in relation to a transfer of business

(1) This Division provides for orders to be made if there is, or is likely to be, a transfer of business.

(2) An order may be made under this Division in relation to a copied State instrument of a transferring employee:
   (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
   (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

Schedule 1, item 1, page 23 (line 27) to page 24 (line 30), omit subsections 768BA(2), (3) and (4), substitute:

Who may apply for an order

(2) FWA may make an order under subsection (1):
   (a) on its own initiative; or
   (b) on application by any of the following:
      (i) a transferring employee or an employee who is likely to be a transferring employee;
      (ii) the new employer or a person who is likely to be the new employer;
      (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i);
      (iv) if the application relates to an enterprise agreement—an employee organisation that is, or is likely to be, covered by the agreement.

Matters that FWA must take into account

(3) In deciding whether to make an order under subsection (1), FWA must take into account the following:
   (a) the views of:
      (i) the employees who would be affected by the order; and
      (ii) the new employer or a person who is likely to be the new employer;
   (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
   (c) if the order relates to a copied State employment agreement or an enterprise agreement—the nominal expiry date of the agreement;
   (d) whether the copied State instrument would have a negative impact on the productivity of the new employer’s workplace;
   (e) whether the new employer would incur significant economic disadvantage as a result of the copied State instrument covering the new employer;
   (f) the degree of business synergy between the copied State instrument and any workplace instrument that already covers the new employer;
   (g) the public interest.
Restriction on when order may come into operation

(4) An order under subsection (1) must not come into operation in relation to a particular transferring employee before the later of the following:
   (a) the transferring employee’s re-employment time;
   (b) the day on which the order is made.

Schedule 1, item 1, page 25 (line 17) to page 30 (line 15), omit Division 7, substitute:

Division 7—FWA orders about consolidating copied State instruments etc.

Subdivision A—Guide to this Division

768BC What this Division is about

This Division allows FWA to consolidate the various workplace instruments that may apply in the new employer’s workplace. It achieves this by allowing FWA to make an order that a copied State instrument for a particular transferring employee is also a copied State instrument for one or more other transferring employees or non-transferring employees.

Subdivision B deals with consolidating copied State instruments for transferring employees. Under that Subdivision, FWA may make an order that the copied State instrument for a transferring employee (“employee A”) is also the copied State instrument for one or more other transferring employees. If FWA makes a consolidation order for those other transferring employees, then this Act is modified so that the copied State instrument for employee A is also the copied State instrument for those other transferring employees (see section 768BF).

Subdivision C deals with non-transferring employees. Under that Subdivision, FWA may make an order that the copied State instrument for employee A (who is a transferring employee) is also the copied State instrument for one or more non-transferring employees. If FWA makes a consolidation order for those non-transferring employees, then this Act is modified so that the copied State instrument for employee A is also the copied State instrument for those non-transferring employees (see section 768BI).

768BCA Orders in relation to a transfer of business

(1) This Division provides for orders to be made if there is, or is likely to be, a transfer of business.

(2) An order may be made under this Division in relation to a copied State instrument of a transferring employee:
   (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
   (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.
Subdivision B—Consolidation orders in relation to transferring employees

768BD Consolidation orders in relation to transferring employees

Consolidation order

(1) FWA may make an order (a consolidation order) that a copied State instrument for a transferring employee (employee A) is also a copied State instrument for one or more other transferring employees.

Who may apply for order

(2) FWA may make a consolidation order under subsection (1):
   (a) on its own initiative; or
   (b) on application by any of the following:
      (i) a transferring employee, or an employee who is likely to be a transferring employee;
      (ii) the new employer or a person who is likely to be the new employer;
      (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i).

Matters that FWA must take into account

(3) In deciding whether to make a consolidation order under subsection (1), FWA must take into account the following:
   (a) the views of:
      (i) the employees who would be affected by the order; and
      (ii) the new employer or a person who is likely to be the new employer;
   (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
   (c) if the order relates to a copied State employment agreement—the nominal expiry date of the agreement;
   (d) whether the copied State instrument for employee A would have a negative impact on the productivity of the new employer’s workplace;
   (e) whether the new employer would incur significant economic disadvantage if the order were not made;
   (f) the degree of business synergy between the copied State instrument for employee A and any workplace instrument that already covers the new employer;
   (g) the public interest.

Restriction on when order may come into operation

(4) A consolidation order under subsection (1) must not come into operation in relation to a particular transferring employee (other than employee A) before the later of the following:
   (a) the transferring employee’s re-employment time;
   (b) the day on which the order is made.

768BE Consolidation order to deal with application and coverage

(1) A consolidation order under subsection 768BD(1) must specify when the copied State instrument for employee A applies to, and covers:
   (a) another transferring employee; and
(b) the new employer in relation to the other transferring employee; and
(c) an employee organisation in relation to the other transferring employee;
which must not be before the other transferring employee’s re-employment time.

(2) Once the consolidation order comes into operation in relation to the other transferring employee, the copied State instrument for the other transferring employee ceases to operate.

768BF Effect of this Act after a consolidation order is made
If FWA makes a consolidation order under subsection 768BD(1), then this Act has effect in relation to a particular transferring employee (other than employee A), from the time the order comes into operation in relation to that employee, as if a reference in relation to that employee to the copied State instrument for that employee were a reference to the copied State instrument for employee A.

Subdivision C—Consolidation orders in relation to non-transferring employees

768BG Consolidation orders in relation to non-transferring employees

Consolidation order
(1) FWA may make an order (a consolidation order) that a copied State instrument for a transferring employee (employee A) also is, or will be, a copied State instrument for one or more non-transferring employees who perform, or are likely to perform, the transferring work.

Non-transferring employees
(2) A non-transferring employee of a new employer is a national system employee of the new employer who is not a transferring employee.

Who may apply for order
(3) FWA may make a consolidation order under subsection (1):
(a) on its own initiative; or
(b) on application by any of the following:
   (i) a non-transferring employee who performs, or is likely to perform, the transferring work;
   (ii) the new employer or a person who is likely to be the new employer;
   (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i);
   (iv) if the application relates to an enterprise agreement—an employee organisation that is, or is likely to be, covered by the agreement.

Matters that FWA must take into account
(4) In deciding whether to make a consolidation order under subsection (1), FWA must take into account the following:
(a) the views of:
   (i) the employees who would be affected by the order; and
(ii) the new employer or a person who is likely to be the new employer;
(b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
(c) whether the order relates to a copied State employment agreement or an enterprise agreement—the nominal expiry date of the agreement;
(d) whether the copied State instrument for employee A would have a negative impact on the productivity of the new employer’s workplace;
(e) whether the new employer would incur significant economic disadvantage if the order were not made;
(f) the degree of business synergy between the copied State instrument for employee A and any workplace instrument that already covers the new employer;
(g) the public interest.

Restriction on when order may come into operation
(5) A consolidation order under subsection (1) must not come into operation in relation to a particular non-transferring employee before the later of the following:
(a) the time when the non-transferring employee starts to perform the transferring work for the new employer;
(b) the day on which the order is made.

768BH Consolidation order to deal with application and coverage
(1) A consolidation order under subsection 768BG(1) must specify when the copied State instrument for employee A applies to, and covers:
(a) a non-transferring employee; and
(b) the new employer in relation to the non-transferring employee; and
(c) an employee organisation in relation to the non-transferring employee;
in relation to the transferring work.
(2) If an enterprise agreement covers the non-transferring employee and the new employer, the order must also specify that the agreement does not cover:
(a) the non-transferring employee; or
(b) the new employer in relation to the non-transferring employee; or
(c) an employee organisation in relation to the non-transferring employee;
in relation to that work.

768BI Effect of this Act after a consolidation order is made
If FWA makes a consolidation order under subsection 768BG(1), then this Act has effect in relation to a particular non-transferring employee, from the time the order comes into operation in relation to that employee, as if:
(a) the copied State instrument for employee A were also the copied State instrument for that employee; and
(b) that employee were a transferring employee in relation to that copied State instrument.

Schedule 1, item 24, page 50 (line 12), omit “subparagraph 768AK(1)(b)(i)”, substitute “paragraph 768AK(1)(a)”.  
Schedule 1, item 25, page 50 (line 16), omit “subparagraph 768AI(1)(b)(i)”, substitute “paragraph 768AI(1)(a)”.  

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Collins, in respect of Schedule 1, items 14 and 15.  

Question—That Schedule 1, items 14 and 15 stand as printed—put and negatived.  
The Leader of the Opposition in the Senate (Senator Abetz) moved the following amendments together by leave:  

Schedule 1, item 1, page 4 (line 16), omit “has terminated”, substitute “has been terminated (other than at the employee’s initiative)”.  
Schedule 1, page 54 (after line 31), after item 54, insert:  

54A Paragraph 311(1)(a)  
Omit “has terminated”, substitute “has been terminated (other than at the employee’s initiative)”.

Debate ensued.  
Question—That the amendments be agreed to—put.  
The committee divided—  

AYES, 28  
Back  
Bernardi  
Birmingham  
Boswell  
Boyce  
Bushby  
Cash  
Colbeck  
Cormann  
Edwards  
Fawcett  
Ferravanti-Wells  
Fifield  
Humphries  
Joyce  
Kroger (Teller)  
Macdonald  
Mason  
McKenzie  
Nash  
Parry  
Payne  
Ruston  
Ryan  
Scullion  
Smith  
Williams  
Xenophon  

NOES, 34  
Bilyk  
Bishop  
Cameron  
Collins  
Conroy  
Crossin  
Di Natale  
Farrell  
Feeney  
Furner  
Gallacher  
Hanson-Young  
Hogg  
Ladlam  
Landy  
Marshall  
McEwen (Teller)  
McLucas  
Milne  
Moore  
Polley  
Pratt  
Rhiannon  
Siewert  
Singh  
Stephens  
Sterle  
Thistlethwaite  
Thorp  
Urquhart  
Waters  
Whish-Wilson  
Wright  

Question negatived.  
On the motion of Senator Collins the following amendments, taken together by leave, were agreed to:  

Schedule 1, item 1, page 5 (line 22), omit “paragraphs 768AD(1)(a), (b) and (c)”, substitute “paragraph 768AD(1)(a)”.  
Schedule 1, item 1, page 43 (table item 3, column 1), after “item 13”, insert “(other than note 1 and note 2)”.
Schedule 1, item 3, page 47 (lines 10 to 12), omit the item, substitute:

**3 Section 9A**

Repeal the section, substitute:

**9A Application, transitional and saving provisions for amendments (Schedules)**

The Schedules contain application, transitional and saving provisions relating to amendments of this Act.

Note: Application, transitional and saving provisions relating to the enactment of this Act, and States becoming referring States, are in the Transitional Act.

Schedule 1, page 49 (after line 14), after item 18, insert:

**18A Section 12**

Insert:

*local government employee* has the same meaning as in subsection 30K(1).

**18B Section 12**

Insert:

*local government employer* has the same meaning as in subsection 30K(1).

Schedule 1, item 34, page 51 (line 24), after “law enforcement officer of the State”, insert “but does not include a local government employee of the State”.

Schedule 1, item 35, page 52 (lines 14 and 15), omit “law enforcement officers of the State”, substitute “a law enforcement officer of the State but does not include a local government employer of the State”.

Schedule 1, page 54 (after line 31), after item 54, insert:

**54A Subsection 341(5)**

Omit “Part 2-8 (which deals”, substitute “Part 2-8 or 6-3A (which deal”.

Schedule 1, page 56 (after line 8), after item 62, insert:

**62A Section 795A**

Repeal the section, substitute:

**795A The Schedules**

The Schedules have effect.

Note: The Schedules contain application, transitional and saving provisions relating to amendments of this Act.

Schedule 1, item 67, page 56 (line 22) to page 57 (line 16), omit the item, substitute:

**67 After Schedule 1**

Insert:

**Schedule 2—Amendments made by the Fair Work Amendment (Transfer of Business) Act 2012**

Note: See section 795A.

**1 Definitions**
In this Schedule:

amending Act means the *Fair Work Amendment (Transfer of Business) Act 2012*.

commencement means the commencement of this Schedule.

2 Application of the amendments made by the amending Act

The amendments made by the amending Act apply in relation to a transfer of business referred to in Part 6-3A (as inserted by item 1 of Schedule 1 to the amending Act), but only if the connection between the old State employer and the new employer referred to in paragraph 768AD(1)(d) (as inserted by that item) occurs on or after commencement.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

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

Question put.

The Senate divided—

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Question agreed to.

Bill read a third time.
4 **FAIR ENTITLEMENTS GUARANTEE BILL 2012**

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

---

*In the committee*

Consideration resumed of the bill—and of the question postponed earlier today (see entry no. 2).

Question—That the amendments be agreed to—put.

The committee divided—

**AYES, 27**

Abetz  
Back  
Bernardi  
Birmingham  
Boswell  
Boyce  
Bushby  
Cash  
Colbeck  
Cormann  
Edwards  
Fawcett  
Ferravanti-Wells  
Fifield  
Humphries  
Joyce  
Kroger (Teller)  
Macdonald  
Mason  
McKenzie  
Nash  
Payne  
Ruston  
Ryan  
Scullion  
Smith

**NOES, 36**

Bilyk  
Bishop  
Cameron  
Carr, Kim  
Collins  
Conroy  
Crossin  
Di Natale  
Farrell  
Feeney  
Furner  
Gallacher  
Hanson-Young  
Hogg  
Ludlam  
Lundy  
Madigan  
Marshall  
McEwen (Teller)  
McLucas  
Milne  
Moore  
Polley  
Pratt  
Rhiannon  
Stewart  
Singh  
Stephens  
Sterle  
Thistlethwaite  
Thorpe  
Urquhart  
Waters  
Wright  
Whish-Wilson  
Xenophon

Question negatived.

Question—That the bill stand as printed—put.

The committee divided—

**AYES, 36**

Bilyk  
Bishop  
Cameron  
Carr, Kim  
Collins  
Conroy  
Crossin  
Di Natale  
Farrell  
Feeney  
Furner  
Gallacher  
Hanson-Young  
Hogg  
Ludlam  
Lundy  
Madigan  
Marshall  
McEwen (Teller)  
McLucas  
Milne  
Moore  
Polley  
Pratt  
Rhiannon  
Stewart  
Singh  
Stephens  
Sterle  
Thistlethwaite  
Thorpe  
Urquhart  
Waters  
Wright  
Whish-Wilson  
Xenophon
No. 126—26 November 2012

NOES, 27

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Question agreed to.
Bill to be reported without amendment.

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

On the motion of the Parliamentary Secretary for School Education and Workplace Relations (Senator Collins) the report from the committee was adopted and the bill read a third time.

5 Dental Benefits Amendment Bill 2012

Order of the day read for the adjourned debate on the motion of the Minister for Sport (Senator Lundy)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

On the motion of the Parliamentary Secretary to the Prime Minister (Senator McLucas) the bill was read a third time.

6 Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

Clean Energy (Charges—Excise) Amendment Bill 2012

Clean Energy (Charges—Customs) Amendment Bill 2012

Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012

Order of the day read for the adjourned debate on the motions of the Parliamentary Secretary for Defence (Senator Feeney) and the Minister for Sport (Senator Lundy)—That these bills be now read a second time.

Debate resumed.

At 2 pm: Debate was interrupted.
7 QUESTIONS
Questions without notice were answered.

_Distinguished visitors:_ The President welcomed the Speaker of the Legislative Assembly of Tonga, Lord Fakafanua, and, with the concurrence of honourable senators, invited the Speaker to take a seat on the floor of the chamber.

Further questions without notice were answered.

8 MOTIONS TO TAKE NOTE OF ANSWERS
Senator Mason moved—that the Senate take note of the answers given by the Minister for Sport (Senator Lundy) and the Minister for Finance and Deregulation (Senator Wong) to questions without notice asked by Senators Cash and Cormann today relating to asylum seekers and to the budget.

Debate ensued.

Question put and passed.

Senator Whish-Wilson moved—that the Senate take note of the answer given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to a question without notice asked by Senator Whish-Wilson today relating to the fishing industry.

Question put and passed.

9 DEATH OF FORMER MEMBER THE HONOURABLE JOSEPH MARTIN (JOE) RIORIAN, AO
The President informed the Senate of the death, on 19 November 2012, of the Honourable Joseph Martin (Joe) Riordan, AO, a former minister and member of the House of Representatives for the division of Phillip from 1972 to 1975.

The Leader of the Government in the Senate (Senator Evans), by leave, moved—that the Senate records its deep regret at the death, on 19 November 2012, of the Honourable Joseph Martin (Joe) Riordan, AO, former minister and member for Phillip, places on record its appreciation of his long and meritorious public service and tenders its profound sympathy to his family in their bereavement.

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

Question passed.

10 NOTICES
The Chair of the Standing Committee of Senators’ Interests (Senator Bernardi): To move on the next day of sitting—that the time for the presentation of the report of the Standing Committee of Senators’ Interests on a draft code of conduct for senators be extended to 29 November 2012. (general business notice of motion no. 1061)

Senator Bilyk: To move on the next day of sitting—that the following matters be referred to the Environment and Communications References Committee for inquiry and report:

(a) the commitment by the Australian Broadcasting Corporation (ABC) to reflecting and representing regional diversity in Australia,
(b) the impact that the increased centralisation of television production in Sydney and Melbourne has had on the ABC’s ability to reflect national identity and diversity; and
(c) any related matters.

The Leader of the Opposition in the Senate (Senator Abetz): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the Fair Work (Registered Organisations) Act 2009, and for related purposes. Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012. (general business notice of motion no. 1062)

Senator Waters: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the Environment Protection and Biodiversity Conservation Act 1999 to prevent the Commonwealth from handing responsibility for approving proposed actions that significantly impact matters protected under the Act to a State or Territory, and for related purposes. Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012. (general business notice of motion no. 1063)

Senator Xenophon: To move on 28 November 2012—That item [1] of Schedule 1 to the National Health (Weighted average disclosed price – interim supplementary disclosure cycle) Amendment Determination 2012 (No. 2) [PB98 of 2012], made under subsection 99ADB(4) of the National Health Act 1953, be disallowed.

Senators Rhiannon and Ludlam: To move on the next day of sitting—That the Senate—
(a) notes:
(i) the rare earths miner Lynas Corporation Ltd has established a processing plant at Gebeng in Malaysia to process material from Lynas’ Mount Weld mine in Western Australia,
(ii) rare earths, including radioactive thorium residues, will be transported from Mount Weld to Fremantle, where they will be shipped to Malaysia,
(iii) a rare earths refinery operated by the Mitsubishi group in Perak in northern Malaysia was closed after news broke of cases of birth defects and leukaemia in some local residents,
(iv) Lynas plans to dispose of the waste radioactive material near fishing communities in the Malaysian state of Kuantan,
(v) in early January 2012 the Malaysian press reported severe restrictions on the public’s ability to access information about the proposed Lynas plant, and
(vi) residents who live near the proposed Lynas processing plant and non-government organisations in 2011 marched on Malaysia’s Parliament and held a demonstration at the Australian High Commission calling for the processing plant not to be sited in Malaysia;
(b) expresses grave concerns over the Malaysian Government’s approval for a new rare earth refinery in Pahang, and the process by which it has been established; and
(c) calls on Lynas to process the thorium ore on site at the Mount Weld mine to minimise the risk of damage arising from radioactive waste. (general business notice of motion no. 1064)
The President: To move on 28 November 2012—That the following bill be introduced: A Bill for an Act to amend the Parliamentary Service Act 1999, and for related purposes. Parliamentary Service Amendment Bill 2012. (general business notice of motion no. 1063)

The Parliamentary Secretary for School Education and Workplace Relations (Senator Collins): To move on the next day of sitting—That—

(1) On Tuesday, 27 November, Wednesday, 28 November, and Thursday, 29 November 2012, any proposal pursuant to standing order 75 shall not be proceeded with.

(2) On Tuesday, 27 November 2012:
  (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 not later than 7.30 pm to 8.15 pm shall be consideration of general business order of the day no. 83 (Low Aromatic Fuel Bill 2012);
  (c) the bill listed in paragraph (b) be considered under a limitation of time, and that the time allotted be as follows:
      from 7.30 pm to 7.45 pm—second reading
      from 7.45 pm to 8.15 pm—all remaining stages,
    and this paragraph shall operate as a limitation of debate under standing order 142;
  (d) the routine of business from not later than 4 pm to 6.30 pm and 8.30 pm to 10 pm shall be government business only; and
  (e) the question for the adjournment of the Senate shall be proposed at 10 pm.

(3) On Wednesday, 28 November 2012, the consideration of government documents shall not be proceeded with.

(4) On Thursday, 29 November 2012:
  (a) the hours of meeting shall be 9.30 am to 7.10 pm;
  (b) divisions may take place after 4.30 pm;
  (c) consideration of general business and committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) shall not be proceeded with;
  (d) the routine of business from not later than 12.45 pm to 2 pm and from not later than 3.45 pm shall be government business only; and
  (e) the question for the adjournment of the Senate shall be proposed at 6.30 pm.

Senator Hanson-Young: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the Water Act 2007, and for related purposes. Water Amendment (Save the Murray-Darling Basin) Bill 2012. (general business notice of motion no. 1066)

The Parliamentary Secretary for School Education and Workplace Relations (Senator Collins): To move on the next day of sitting—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Fair Work Amendment Bill 2012
National Gambling Reform (Related Matters) Bill (No. 1) 2012
National Gambling Reform (Related Matters) Bill (No. 2) 2012
National Gambling Reform Bill 2012
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012
Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012
Wheat Export Marketing Amendment Bill 2012.

Documents: Senator Collins tabled the following documents:

The Parliamentary Secretary for School Education and Workplace Relations (Senator Collins): To move on the next day of sitting—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:
Customs Amendment (Malaysia-Australia Free Trade Agreement Implementation and Other Measures) Bill 2012
Customs Tariff Amendment (Malaysia-Australia Free Trade Agreement Implementation) Bill 2012.

Document: Senator Collins tabled the following document:
Consideration of legislation—Statement of reasons for introduction and passage of the bills in the 2012 spring sittings.

The Parliamentary Secretary for School Education and Workplace Relations (Senator Collins): To move on the next day of sitting—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the Law Enforcement Integrity Legislation Amendment Bill 2012, allowing it to be considered during this period of sittings.

Document: Senator Collins tabled the following document:

11 LEAVE OF ABSENCE
Senator Kroger, by leave, moved—That leave of absence be granted to Senator Johnston for today, on account of opposition business.
Question put and passed.
Senator McEwen, by leave, moved—that leave of absence be granted to Senator Pratt for 27 November 2012, on account of government business.

Question put and passed.

12 **ECONOMICS REFERENCES COMMITTEE—FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator Kroger, by leave and at the request of the chairs of the respective committees, moved—that—

(a) the Economics References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 27 November 2012, from 3.30 pm; and

(b) the Finance and Public Administration References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Tuesday, 27 November 2012, from 1.45 pm.

Question put and passed.

13 **POSTPONEMENT**

The following item of business was postponed:


14 **LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE—REFERENCE**

The Chair of the Legal and Constitutional Affairs References Committee (Senator Wright), pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—that the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 16 May 2013:

The value of a justice reinvestment approach to criminal justice in Australia, with particular reference to:

(a) the drivers behind the past 30 years of growth in the Australian imprisonment rate;
(b) the economic and social costs of imprisonment;
(c) the over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss;
(d) the cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures;
(e) the methodology and objectives of justice reinvestment;
(f) the benefits of, and challenges to, implementing a justice reinvestment approach in Australia;
(g) the collection, availability and sharing of data necessary to implement a justice reinvestment approach;
(h) the implementation and effectiveness of justice reinvestment in other countries, including the United States of America;
(i) the scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments; and

(j) any other related matters.

Question put and passed.

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

15 FOREIGN AFFAIRS—UNITED KINGDOM—PENSION INDEXATION

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 1035—That the Senate

(a) acknowledges that:

(i) the United Kingdom (UK) Government has an inconsistent policy of freezing pension indexation for expatriate UK citizens, with the payments frozen for UK citizens living in countries including Australia and Canada, but being appropriately indexed for UK citizens living in other jurisdictions, including the European Union and the United States of America,

(ii) the pension-freeze policy currently affects approximately 250,000 expatriate UK citizens living in Australia,

(iii) approximately 190,000 expatriate UK citizens in Australia access the Australian pensions system to supplement their UK pensions, and

(iv) the annual cost of this pension freeze to Australia is estimated at $110 million per year; and

(b) calls on the Australian Government to continue all reasonable diplomatic efforts to persuade the UK Government to appropriately index pensions for all expatriate UK citizens.

Question put and passed.

16 RESTORING TERRITORY RIGHTS (VOLUNTARY EUTHANASIA LEGISLATION) BILL 2012

Senator Di Natale, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 1053—That the following bill be introduced:

A Bill for an Act to amend certain territory legislation to restore legislative powers concerning euthanasia and to repeal the Euthanasia Laws Act 1997, and for related purposes.

Question put and passed.

Senator Di Natale presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Di Natale moved—That this bill be now read a second time.
Explanatory memorandum: Senator Di Natale, by leave, tabled an explanatory memorandum relating to the bill.

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

17 HISTORICAL EVENTS—UKRAINIAN FAMINE

Senator McEwen, at the request of Senator Bilyk and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 1059—That the Senate—

(a) urges the Australian people to remember those who perished and suffered as a result of the Ukrainian Famine 1932-33 (Holodomor), as a reminder that we should always respect the freedoms bestowed upon us; and

(b) joins with the Ukrainian World Congress and the Australian Federation of Ukrainian Organisations in calling on Australians to acknowledge the International Day of Remembrance on the last Saturday of November, gazetted by the Ukrainian Government in respect of those who suffered and perished in the great famine of 1932-33.

Question put and passed.

18 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTINGS

Senator McEwen, at the request of the Chair of the Community Affairs Legislation Committee (Senator Moore) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 1058—That the Community Affairs Legislation Committee be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:

(a) on Monday, 26 November 2012, from 4.15 pm; and

(b) on Thursday, 29 November 2012, from 4.30 pm.

Question put and passed.

19 IMMIGRATION—ASYLUM SEEKERS

Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 1060—That the Senate—

(a) notes:

(i) that it is not illegal to arrive in Australia to seek asylum, and

(ii) previous attempts by the Australian Greens to have the use of the term ‘illegal’ in reference to asylum seekers ruled as out of order in Senate debate; and

(b) calls on parliamentarians to refrain from using the misleading and inaccurate term ‘illegal’ when referring to asylum seekers.

Question put.
The Senate divided—

AYES, 35

Bilyk, Bishop, Cameron, Carr, Bob, Carr, Kim, Collins, Conroy, Crossin, Di Natale, Farrell, Faulkner, McEwen (Teller), McLucas, Milne, Moore, Rhiannon, Stephens, Sterle, Thistlethwaite, Thorp, Urquhart, Waters, Whish-Wilson, Wright

NOES, 28


Question agreed to.

Statements by leave: Senators Cash and Hanson-Young, by leave, made statements relating to the motion.

20 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—ADMINISTRATION—GOVERNANCE AND FINANCIAL ACCOUNTABILITY

The Acting Deputy President (Senator Bernardi) informed the Senate that Senator Fifield had proposed that the following matter of public importance be submitted to the Senate for discussion:

The need for registered organisations to be subject to equivalent standards of governance and financial accountability as companies under corporations law.

The proposal was supported by four senators and the matter was discussed.

21 GAMBLING REFORM—JOINT SELECT COMMITTEE—REPORT—NATIONAL GAMBLING REFORM BILL 2012 AND RELATED BILLS

The Acting Deputy President (Senator Stephens) tabled the following report and documents received on 23 November 2012:


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

Consideration of document: Senator Thorp, by leave, moved—that consideration of the report of the Joint Select Committee on Gambling Reform be listed on the Notice Paper.

Question put and passed.
22 Appropriations and Staffing—Standing Committee—54th Report

The Acting Deputy President (Senator Stephens) tabled the following report:


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

Notice of motion: The Parliamentary Secretary for Defence (Senator Feeney), by leave, gave a notice of motion as follows: To move on the next day of sitting—that the Senate adopt the recommendation in the 54th report of the Standing Committee on Appropriations and Staffing to amend standing order 19.

23 Parliamentary Zone—Capital Works Proposals—Documents

The Parliamentary Secretary for Defence (Senator Feeney) tabled the following documents:

Parliament Act—Parliamentary Zone—Proposals, together with supporting documentation, relating to—
- Tree removal and replacement.
- The construction of bus shelters.
- The removal and replacement of a pedestrian crossing and the construction of an underpass on Bowen Place.
- Making permanent two temporary sculptures at the National Gallery of Australia.
- The installation of three outdoor exhibits adjacent to the Questacon building.

Notice of motion: Senator Feeney, by leave, gave a notice of motion as follows: To move on 29 November 2012—that, in accordance with section 5 of the Parliament Act 1974, the Senate approves the following proposals by the National Capital Authority for capital works within the Parliamentary Zone:

(a) the removal and replacement of trees;
(b) the construction of bus shelters;
(c) the removal and replacement of a pedestrian and cycle crossing;
(d) making permanent two existing temporary sculptures at the National Gallery of Australia; and
(e) the installation of three outdoor exhibits at Questacon.

24 Law Enforcement Integrity Legislation Amendment Bill 2012—Explanatory Memorandum

The Parliamentary Secretary for Defence (Senator Feeney) tabled a replacement explanatory memorandum relating to the Law Enforcement Integrity Legislation Amendment Bill 2012.

25 ASEAN Inter-Parliamentary Assembly—33rd General Assembly—Document

Senator Singh, by leave, tabled the following document:

ASEAN Inter-Parliamentary Assembly—Report of the Australian parliamentary delegation to the 33rd General Assembly, Lombok, Indonesia, 16 September to 22 September 2012, dated November 2012.

Senator Singh, by leave, moved—that the Senate take note of the document. Question put and passed.
26 DOCUMENTS

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number. An explanatory statement is tabled with an instrument unless otherwise indicated by an asterisk.]


Australian Bureau of Statistics Act—Proposals Nos—
   19—Survey of Average Weekly Earnings.
   20—Interstate Trade Queensland Imports/Exports.

Australian Communications and Media Authority Act—Australian Communications and Media Authority (Allocation Procedures – Reserve Prices) Direction No. 1 of 2012 [F2012L02198].

Census and Statistics Act—Statements Nos—
   4—List of Businesses for the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE).
   5—Release of Lists of Businesses for Safe Work Australia.

Commissioner of Taxation—Public Rulings—
   Self Managed Superannuation Funds Rulings—Addenda—SMSFR 2008/1 and SMSFR 2008/2.
   Taxation Ruling TR 2012/7.

Corporations Act—Select Legislative Instrument 2012 No. 267—Corporations Amendment Regulation 2012 (No. 9) [F2012L02235].

Migration Act—
   Migration Regulations—Instruments IMMI—
      12/080—Class of persons [F2012L02213].
      12/081—Australian values statement for public interest criterion 4019 [F2012L02214].
      12/084—Specifying agreements or arrangements which are not relevant agreements for the purposes of Government Agreement Stream of the International Relations Visa [F2012L02215].
      12/085—Specification of classes of persons and addresses [F2012L02216].
      12/087—Class of persons [F2012L02212].
      12/090—Eligible education providers and educational business partners [F2012L02228].
      12/094—Class of persons [F2012L02217].
      12/098—Specified place [F2012L02219].
      12/101—Class of passports [F2012L02241].
      12/106—Securities in which an investment is a designated investment for the purposes of subclasses 162, 165, 188, 405, 888, 891 & 893 [F2012L02220].
      12/113—Required health assessment [F2012L02227].
      12/114—Classes of persons [F2012L02201].
      12/116—Evidentiary requirements [F2012L02237].
12/117—Eligible managed fund investments [F2012L02238].
12/118—Areas for Business Innovation and Investment (Permanent) Visa and State and Territory Sponsored Business Owner Visa [F2012L02239].
12/121—Payment of visa application charges and fees in foreign currencies [F2012L02192].
12/122—Places and currencies for paying of fees [F2012L02193].

Select Legislative Instrument 2012 No. 255—Migration Amendment Regulation 2012 (No. 7) [F2012L02233].

Migration Act and Australian Citizenship Act—Select Legislative Instrument 2012 No. 256—Migration Legislation Amendment Regulation 2012 (No. 5) [F2012L02236].


Superannuation Industry (Supervision) Act—Superannuation (Prudential Standard) Determinations Nos—
  7 of 2012—Prudential Standard SPS 521 Conflicts of Interest [F2012L02230].
  8 of 2012—Prudential Standard SPS 530 Investment Governance [F2012L02231].


Therapeutic Goods Act—Poisons Standard Amendment No. 4 of 2012 [F2012L02202].


Governor-General’s Proclamations—Commence of provisions of Acts—
  Migration (Visa Evidence) Charge Act 2012—Sections 3 to 7—24 November 2012 [F2012L02232].

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


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

28 Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012

Clean Energy (Charges—Excise) Amendment Bill 2012
Clean Energy (Charges—Customs) Amendment Bill 2012
Excise Tariff Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012
Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Per-tonne Carbon Price Equivalent) Bill 2012

Clean Energy (Unit Issue Charge—Auctions) Amendment Bill 2012

Order of the day read for the adjourned debate on the motions of the Parliamentary Secretary for Defence (Senator Feeney) and the Minister for Sport (Senator Lundy)—That these bills be now read a second time.

Debate resumed.

Question put.

The Senate divided—

AYES, 35

Senators—

Bilyk
Bishop
Brown
Cameron
Carr, Bob
Collins
Conroy
Crossin
Di Natale
Evans
Farrell
Faulkner
Feeney
Gallacher
Hanson-Young
Hogg
Ladlam
Ladwig
Marshall
McEwen (Teller)
McLucas
Milne
Moore
Polley
Rhiannon
Stewart
Singh
Stephens
Sterle
Thistlethwaite
Thorp
Urquhart
Waters
Whish-Wilson
Wright
NOES, 29

Senators—
Abetz Back (Teller) Bernardi Birmingham Boyce Brandis Bushby Cash
Colbeck Cormann Edwards Eggleston Fawcett Fieravanti-Wells Humphries
Kroger Macdonald Madigan Mason Nash Parry Ronaldson
Ruston Ryan Scullion Smith Williams

Question agreed to.

Bills read a second time.
The Senate resolved itself into committee for the consideration of the bills.

In the committee

Bills taken together and as a whole by leave.
The Leader of the Australian Greens (Senator Milne) moved the following amendment in respect of the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012:

Schedule 1, page 59 (after line 25), after item 81, insert:

81A After section 160

Insert:

160A Review by Productivity Commission of financial assistance for coal-fired electricity generation

(1) As soon as practicable after the commencement of this section, the Productivity Minister must, under paragraph 6(1)(a) of the Productivity Commission Act 1998, refer the following matters to the Productivity Commission for inquiry:

(a) the matter of the reasons for, and need for, financial assistance for coal-fired electricity generation;

(b) the matter of the following impacts of the existing arrangements for financial assistance for coal-fired electricity generation:

(i) impacts on Australia’s electricity generation mix and timeframes for retirement of existing electricity generation plants and investment in new generation plants;

(ii) financial impacts for coal-fired generators in receipt of compensation and for other generators across the industry;

(iii) impact on Commonwealth finances;

(iv) impacts on the competitiveness of the Australian electricity market.
(2) In referring the matters to the Productivity Commission for inquiry, the Productivity Minister must, under paragraph 11(1)(b) of the Productivity Commission Act 1998, specify the period ending on 31 December 2012 as the period within which the Productivity Commission must submit its report on the inquiry to the Productivity Minister.

Note: Under section 12 of the Productivity Commission Act 1998, the Productivity Minister must cause a copy of the Productivity Commission’s report to be tabled in each House of Parliament.

(3) For the purposes of paragraph 6(1)(a) of the Productivity Commission Act 1998, each matter mentioned in subsection (1) of this section is taken to be a matter relating to industry, industry development and productivity.

160B Commonwealth Government response

(1) If the report on an inquiry referred to in section 160A sets out one or more recommendations to the Commonwealth Government:

(a) as soon as practicable after receiving the report, the Productivity Minister must cause to be prepared a statement setting out the Commonwealth Government’s response to each of the recommendations; and

(b) the Productivity Minister must cause copies of the statement to be tabled in each House of the Parliament before the end of the period of 7 sitting days of that House after the day on which the Productivity Minister receives the report.

(2) As soon as practicable after the Productivity Minister tables the report in each House of the Parliament, the Productivity Commission must publish the report on the Productivity Commission’s website.

Note: The Productivity Minister must cause a copy of the report to be tabled in each House of Parliament—see section 12 of the Productivity Commission Act 1998.

160C No limit on Productivity Minister’s powers

This Division does not limit the Productivity Minister’s powers under paragraph 6(1)(a) of the Productivity Commission Act 1998.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 9

Senators—

Di Natale  Milne  Siewert (Teller)  Whish-Wilson
Hanson-Young  Rhiannon  Waters  Wright
Ludlam
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Question negatived.
Bills agreed to.
Bills to be reported without amendments.

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

On the motion of the Minister for Agriculture, Fisheries and Forestry (Senator Ludwig) the report from the committee was adopted.

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

Question put.
The Senate divided—

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Question agreed to.
Bills read a third time.

29 NOTICE

Senator Hanson-Young, by leave, gave a notice of motion as follows: To move on the next day of sitting—That the Basin Plan 2012, made under Part 2 of the Water Act 2007, be disallowed.
After 9.50 pm—

30 **ADJournMENT**
   The President proposed the question—That the Senate do now adjourn.
   Debate ensued.
   The Senate adjourned at 10.30 pm till Tuesday, 27 November 2012 at 12.30 pm.

31 **ATTENDANCE**
   Present, all senators except Senator Johnston (on leave).

   **Rosemary Laing**
   Clerk of the Senate

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