# Journals of the Senate

No. 127

Monday, 23 November 2015

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1 MEETING OF SENATE

The Senate met at 10 am. The President (Senator the Honourable Stephen Parry) took the chair, read prayers and made an acknowledgement of country.

2 DOCUMENTS

The following documents were tabled pursuant to standing order 61(1)(b):

[Documents presented since the last sitting of the Senate, pursuant to standing order 166, were authorised for publication on the dates indicated]

Auditor-General—Audit report no. 8 of 2015-16—Performance audit—Administration of the National Rental Affordability Scheme: Department of Social Services. [Received 18 November 2015]

Australian Crime Commission (ACC)—Report for 2014-15. [Received 18 November 2015]


Foreign affairs—Sustainable Development Goals—Letter to the President of the Senate from the Minister for Foreign Affairs (Ms Bishop), dated 13 November 2015, responding to the resolution of the Senate of 13 October 2015.


Office of Parliamentary Counsel—Report for 2014-15. [Received 13 November 2015]

Primary industries—Agricultural exports—Letter to the President of the Senate from the Minister for Agriculture and Water Resources (Mr Joyce), dated 10 November 2015, responding to the resolution of the Senate of 27 November 2014.

Surveillance Devices Act 2004—Commonwealth Ombudsman’s reports on inspections of surveillance device records for the period 1 January to 30 June 2015—Australian Commission for Law Enforcement Integrity, Australian Crime Commission and Australian Federal Police for the period 1 January to 30 June 2014—Crime and Corruption Commission and Western Australia Police for the period 1 July 2013 to 30 June 2014—South Australia Police for the period 1 July 2012 to 30 June 2013.


Women—Domestic violence—Letter to the President of the Senate from the Premier of New South Wales (Mr Baird), dated 9 November 2015, responding to the resolution of the Senate of 15 September 2015.
The following documents were tabled by the Clerk pursuant to statute:

[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 1975—


Civil Aviation Act 1988—Civil Aviation Safety Regulations 1998—
Exemption — carriage of children suffering from a serious medical condition (Virgin Australia)—CASA EX187/15 [F2015L01813].
Exemption — carriage of Mode S transponder equipment (Toll Aviation)—CASA EX170/15 [F2015L01814].
Exemption — refuelling in Ordnance Loading Areas (Gojet)—CASA EX190/15 [F2015L01812].


Defence Act 1903—Woomera Prohibited Area Rule 2014—Determination of Exclusion Periods for Amber Zone 1 and Amber Zone 2 for Financial Year 2015-2016 Amendment No. 3 [F2015L01784].

Environment Protection and Biodiversity Conservation Act 1999—
Amendment — List of Specimens taken to be Suitable for Live Import (22 October 2015) [F2015L01807].
Amendment of List of Exempt Native Specimens – New South Wales Sea Urchin and Turban Shell Restricted Fishery (30 October 2015)—EPBC303DC/SFS/2015/32 [F2015L01779].
Amendment of List of Exempt Native Specimens – South Australian Scallop and Turbo Fisheries and South Australian Specimen Shell Fishery (23 October 2015)—EPBC303DC/SFS/2015/40 [F2015L01776].
Amendment of List of Exempt Native Specimens – Western Australian South Coast Crustacean Fishery (23 October 2015)—EPBC303DC/SFS/2015/41 [F2015L01778].
Amendment to the lists of threatened species, threatened ecological communities and key threatening processes under sections 178, 181 and 183 (184) (30 October 2015) [F2015L01798].

Financial Framework (Supplementary Powers) Act 1997—


Migration Act 1958—
Migration Amendment (Clarifying Subclass 457 Requirements) Regulation 2015—Select Legislative Instrument 2015 No. 185 [F2015L01808].


Mutual Recognition Act 1992—
Mutual Recognition (Equivalence of Driving and Property Occupations) Declaration 2015 [F2015L01785].
Mutual Recognition (Equivalence of Gaming and Other Occupations) Amendment Declaration 2015 [F2015L01802].

The following report and documents were presented and authorised for publication on 18 November 2015 pursuant to standing order 38(7)(a):

4 **COMMITTEES—LEAVE TO MEET DURING SITTINGS**

Committees were authorised to hold public meetings during the sittings of the Senate, as follows:

- **Corporations and Financial Services—Joint Statutory Committee**—today, from 7 pm, to take evidence for the committee’s inquiry into impairment of customer loans.
- **Foreign Affairs, Defence and Trade—Joint Standing Committee**—Wednesday, 25 November and Wednesday, 2 December 2015, from 11 am, to take evidence for the committee’s inquiry into Australia’s trade and investment relationships with countries of the Middle East.

5 **SOCIAL SERVICES LEGISLATION AMENDMENT (NO Jab, NO Pay) BILL 2015**

Order of the day read for the adjourned debate on the motion of the Assistant Minister for Agriculture and Water Resources (Senator Ruston)—That this bill be now read a second time.

Debate resumed.

The Leader of the Australian Greens (Senator Di Natale) moved the following amendment:

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

(a) recognises that it is of critical importance that general practitioners remain able to use their clinical judgement in assessing children who are eligible for medical exemption; and

(b) calls on the Government to clarify which vaccinations are mandatory to meet the immunisation requirements, and make this clear on all its relevant websites and publicly available material”.

Debate ensued.

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

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*

Bill taken as a whole by leave.

Senator Di Natale moved the following amendment:

Clause 2, page 2 (table item 2), omit “1 January 2016”, substitute “1 January 2018”.

Debate ensued.

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

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for Communications (Senator Fifield) the report from the committee was adopted and the bill read a third time.

6 **Migration and Maritime Powers Amendment Bill (No. 1) 2015**

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

Debate resumed.

Question put.

The Senate divided—

**AYES, 41**

<table>
<thead>
<tr>
<th>Senators</th>
<th>Back</th>
<th>Fierravanti-Wells</th>
<th>McAllister</th>
<th>Ruston</th>
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<td>Bernardi</td>
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<table>
<thead>
<tr>
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<th>Di Natale</th>
<th>Ludlam</th>
<th>Rice</th>
<th>Waters</th>
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<tr>
<td></td>
<td>Hanson-Young</td>
<td>McKim</td>
<td>Siewert (Teller)</td>
<td>Whish-Wilson</td>
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<td>Leyonhjelm</td>
<td>Rhiannon</td>
<td>Simms</td>
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Question agreed to.

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.

Senator Hanson-Young moved the following amendments together by leave:

Schedule 3, page 11 (before line 4), before item 3, insert:

**3A Section 4AA**

Repeal the section, substitute:

The Parliament affirms as a principle that no minor is to be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a minor must be in conformity with the law and must only be used as a measure of last resort and for the shortest appropriate period of time.
Schedule 3, page 11 (after line 11), after item 3, insert:

**3B Subsection 5(1) (definition of residence determination)**

Omit “subsection 197AB(1)”, substitute “subsections 197AAA(1), (2), (3) and 197AB(1)”.

Schedule 3, page 12 (after line 22), after item 10, insert:

**10A Application—subsection 197AAA(1) of the Migration Act 1958**

(1) This item applies if:

(a) a person is in detention under section 189 of the *Migration Act 1958* on or after the commencement of this item; and

(b) the person is a person to whom Subdivision B of Division 7 of Part 2 of that Act applies; and

(c) before the commencement of this item the person was identified as a minor.

*Residence determination for minor*

(2) The Minister must, as soon as practicable, but in any case within 14 days of commencement make a determination under subsection 197AAA(1) of the *Migration Act 1958*, as inserted by this Part, in relation to the minor.

*Residence determination for member of minor’s family unit*

(3) If:

(a) the Minister makes a determination in accordance with subitem (2) in relation to the minor; and

(b) another person to whom Subdivision B of Division 7 of Part 2 of the *Migration Act 1958* applies is a member of the family unit of the minor;

the Minister must make a determination under subsection 197AAA(2) of that Act in relation to the other person as soon as practicable, but in any case within 14 days of making the determination in accordance with subitem (2).

*Residence determination for minor’s carer or guardian*

(4) If:

(a) the Minister makes a determination in accordance with subitem (2) in relation to the minor; and

(b) another person to whom Subdivision B of Division 7 of Part 2 of the *Migration Act 1958* applies has not been identified as a member of the family unit of the minor; and

(c) the minor, at commencement, is, or has been, in the care of another person (a *guardian*) to whom that Subdivision applies;

the Minister must make a determination under subsection 197AAA(3) in relation to the guardian as soon as practicable, but in any case within 14 days of making the determination in accordance with subitem (2).

Debate ensued.

On the motion of Senator Hanson-Young further consideration of the amendments was postponed.
Senator Hanson-Young moved the following amendment:

Schedule 3, page 12 (after line 10), after proposed item 8A, insert:

8B After section 197AA

Insert:

197AAA Minister must determine that minor is to reside at a specified place rather than being held in detention facility

   Residence determination for minor

   (1) If a person to whom this Subdivision applies is identified as a minor, the Minister must:
   (a) make a determination (a residence determination) to the effect that the person is to reside at a specified place, instead of being detained at a place covered by the definition of immigration detention in subsection 5(1); and
   (b) do so as soon as practicable, but in any case within 30 days, after the person is identified as a minor.

   Residence determination for member of minor’s family unit

   (2) If:
   (a) a determination under subsection (1) is in force requiring a minor to reside at a specified place; and
   (b) a person to whom this Subdivision applies is a member of the family unit of the minor;
   the Minister must, as soon as practicable, make a determination (a residence determination) to the effect that the person is to reside with the minor at the specified place, instead of being detained at a place covered by the definition of immigration detention in subsection 5(1).

   Residence determination for minor’s guardian or carer

   (3) If:
   (a) a determination under subsection (1) is in force requiring a minor to reside at a specified place; and
   (b) a person to whom this Subdivision applies has not been identified as a member of the family unit of the minor; and
   (c) the minor is, or has been, in the care of another person (a guardian) to whom this Subdivision applies;
   the Minister must, as soon as practicable, make a determination (a residence determination) to the effect that the guardian is to reside with the minor at the specified place, instead of being detained at a place covered by the definition of immigration detention in subsection 5(1).

   Minister may refuse to make determination if in best interests of a minor

   (4) Despite subsections (2) and (3), the Minister may refuse to make a determination under either of those subsections if the Minister is satisfied that it is in the best interests of the minor to do so.

Note: Section 4AA sets out principles relevant to making a determination under this subsection.
Residence determination must specify names and conditions

(5) A residence determination must:
   (a) specify the person or persons covered by the determination by name, not by description of a class of persons; and
   (b) specify the conditions to be complied with by the person or persons covered by the determination.

Residence determination must be in writing

(6) A residence determination under subsection (1), (2) or (3) must be made by notice in writing to the person or persons covered by the determination.

Regulations

(7) Regulations made for the purposes of this section must prescribe:
   (a) a method for a person to whom this Subdivision applies to apply for recognition of:
      (i) his or her relationship to a minor for the purposes of subsection (2); or
      (ii) his or her care of a minor for the purposes of subsection (3); and
   (b) that the application must be determined within 30 days of the application being made.

Review

(8) Application may be made to the Administrative Appeals Tribunal for review of a decision under this section.

8C Subsection 197AD(2)

Omit “subsections 197AB(1) and (2)”, insert “subsections 197AAA(1), (2), (3) and (5) and 197AB(1) and (2)”.

8D Section 197AF

Repeal the section, substitute:

197AF Power to make etc. residence determination

Who can make residence determinations

(1) The power to make a residence determination under subsection 197AAA(1), (2) or (3) may only be exercised by:
   (a) the Minister personally; or
   (b) the Secretary; or
   (c) an authorised officer who is an SES employee, an acting SES employee, or equivalent, in the Department.

(2) The power to make a residence determination under subsection 197AB(1) may only be exercised by the Minister personally.

Who can vary or revoke residence determinations

(3) The power to vary or revoke a residence determination made under subsection 197AAA(1), (2) or (3) may only be exercised by:
   (a) the Minister personally; or
   (b) the Secretary; or
   (c) an authorised officer who is an SES employee, an acting SES employee, or equivalent, in the Department.
(4) The power to vary or revoke a residence determination made under subsection 197AB(1) may only be exercised by the Minister personally.

8E At the end of Division 7 of Part 2

Add:

Subdivision C—Miscellaneous

197AH Definitions

In this Subdivision:

designated person means:
(a) an authorised officer; and
(b) a person appointed or employed by, or for the performance of services for:
   (i) the Commonwealth, a State or a Territory; or
   (ii) an authority of the Commonwealth, a State or a Territory; and
(c) a person employed by another person or body that is contracted by the Commonwealth, or an authority of the Commonwealth, to perform services in relation to an immigration detention facility.

immigration detention facility means:
(a) a detention centre established under this Act; or
(b) a place approved by the Minister under subparagraph (b)(v) of the definition of immigration detention in subsection 5(1); or
(c) a place or facility in a regional processing country where restraint is exercised over the liberty of a person who is taken to that country under section 198AD.

journalist has the same meaning as in the Evidence Act 1995.

official employment means:
(a) appointment or employment by, or the performance of services for:
   (i) the Commonwealth, a State or a Territory; or
   (ii) an authority of the Commonwealth, a State or a Territory; or
(b) employment by a person or body contracted by the Commonwealth or an authority of the Commonwealth to perform services in relation to an immigration detention facility.

protected immigration detention facility information means information or a document that:
(a) was obtained by a person in the course of official employment; and
(b) relates to an immigration detention facility.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

relevant authority means:
(a) in any case—the Department and the Australian Federal Police; and
(b) if:
   (i) the victim of an alleged reportable assault is a child; and
   (ii) the alleged assault occurs in a State or Territory;
   a relevant authority of the State or Territory that has functions
   relating to child safety; and
(c) if:
   (i) the victim of an alleged reportable assault is a child; and
   (ii) the alleged assault occurs in a foreign country;
   a police force of the foreign country.

*reportable assault* means any of the following, to the extent that they
occur, or allegedly occur, in an immigration detention facility:
(a) unlawful sexual contact;
(b) sexual harassment;
(c) unreasonable use of force;
(d) any other assault.

197A1 Mandatory reporting of reportable assaults

(1) If a designated person believes on reasonable grounds that a person
has experienced, or is experiencing, a reportable assault, the
designated person must, as soon as practicable, notify the relevant
authorities of:
(a) the alleged assault; and
(b) the grounds on which the person has formed the belief that the
   alleged assault occurred.

Offence

(2) A person commits an offence if:
   (a) the person is required to make a notification under
       subsection (1); and
   (b) the person fails to comply with the requirement.
Penalty: 60 penalty units.

Geographical jurisdiction

(3) Section 15.3 of the *Criminal Code* (extended geographical
jurisdiction—category C) applies to an offence against subsection (2).

197A1 Disclosure of protected immigration detention facility information in
the public interest

(1) A person may disclose or use protected immigration detention facility
information if the person reasonably believes that the disclosure or
use is in the public interest.

(2) If the person discloses or uses information under subsection (1):
   (a) the person is not subject to any civil, criminal or administrative
       liability (including disciplinary action) for making the
       disclosure or the use; and
   (b) no contractual or other remedy may be enforced, and no
       contractual or other right may be exercised, against the
       individual on the basis of the disclosure or the use.

Note: For example, if a term of an enterprise agreement or other
employment contract prohibited such a disclosure, the term would
be of no effect in relation to the disclosure.
To avoid doubt, subsection (2) includes any liability a person may otherwise be subject to under section 42 of the Australian Border Force Act 2015.

Entry to immigration detention facilities for journalists

Journalist not to be refused entry unreasonably

(1) A journalist must not be refused entry to an immigration detention facility unless:
   (a) the entry is refused by an officer, an authorised officer, or the Minister (the decision maker); and
   (b) the decision maker has reasonable grounds to do so.

(2) If a journalist is refused entry to an immigration detention facility, the decision maker must:
   (a) notify the journalist as soon as practicable, in writing, of the reasons for that decision; and
   (b) cause those reasons to be published on the Department’s website within 14 days of making the decision.

Quarterly report

(3) The Minister must, as soon as practicable after the end of each quarter, prepare a report on journalist access to immigration detention facilities during the quarter.

(4) A report under subsection (3) must include the following:
   (a) the number of times journalists have been denied access to immigration detention facilities during the quarter;
   (b) whether or not the Minister was the decision maker for each decision;
   (c) if the Minister was not the decision maker for a decision—the classification of the individual who made the decision;
   (d) the reasons for each decision.

(5) The Minister must cause copies of a report under subsection (3) to be tabled in each House of Parliament within 10 sitting days of that House after the report has been completed.

Extraterritorial operation

(6) This section extends to immigration detention facilities outside Australia.

Term of agreement that contravenes section 197AK has no effect

Any contract or other agreement that purports to limit a journalist’s entry to an immigration detention facility has no effect to the extent that it contravenes section 197AK.

Journalists granted access to immigration detention facilities must have regard to privacy

A journalist who is granted entry to an immigration detention facility:
   (a) must take all reasonable steps to ensure that his or her visit to the facility is conducted with regard to protecting the privacy of detainees in the facility; and
   (b) must not publish any information in relation to the facility that is likely to enable the identification of a detainee.
Senator Carr moved the following amendments to Senator Hanson-Young’s proposed amendment together by leave:

Item 8B, omit subsection 197AAA(4), substitute:

Minister must have regard to matters of public interest

(3A) When making a residence determination under subsection (1), (2) or (3) the Minister must have regard to the public interest.

Minister must not make a residence determination in certain circumstances

(3B) Despite subsections (1), (2) and (3), the Minister must not make a residence determination under any of those subsections in relation to a person if the Minister has been given an adverse security assessment in respect of the person by the Organisation.

(3C) Despite subsections (1), (2) and (3), the Minister must not make a residence determination under any of those subsections that a person reside at a specified place unless the Minister is satisfied, on reasonable grounds, that the living conditions at that place are of a higher standard than a place covered by the definition of immigration detention in subsection 5(1) where the person would otherwise be detained.

Minister may refuse to make determination in certain circumstances

(4) Despite subsections (1), (2) and (3), the Minister may refuse to make a determination under one or more of those subsections if:

(a) the Minister is satisfied that it is in the best interests of the minor to do so; or

(b) the Minister is satisfied that it is in the public interest to do so;

(c) if subsection (2) applies—both:

(i) the Minister has been given an adverse security assessment in respect of a member of the family unit of the minor mentioned in paragraph (2)(b) by the Organisation; and

(ii) the family unit notifies the Minister that the family unit does not want to be separated; or

(d) if subsection (3) applies—both:

(i) the Minister has been given an adverse security assessment in respect of the guardian mentioned in paragraph (3)(c) by the Organisation; and

(ii) the guardian notifies the Minister that the guardian and minor do not want to be separated.

Note: Section 4AA sets out principles relevant to making a determination under this subsection.

Item 8B, at the end of section 197AAA, add:

Definitions

(9) In this section:

adverse security assessment has the same meaning as in Part IV of the Australian Security Intelligence Organisation Act 1979.

Organisation means the Australian Security Intelligence Organisation.
Debate ensued.

Question—That Senator Carr’s amendments to Senator Hanson-Young’s proposed amendment be agreed to—put.

The committee divided—

AYES, 33

Senators—

Brown
Bullock
Cameron
Carr
Collins
Conroy
Dastyari
Di Natale
Gallacher
Gallagher
Hanson-Young
Ketter
Lambie
Leyonhjelm
Lines
Ludlam
Ludwig

Madigan
McAllister
McKim
McLucas
Moore
Muir
O’Neill
Rhiannon

Rice
Siewert
Simms
Singh
Urqhart (Teller)
Waters
Whish-Wilson
Xenophon

NOES, 28

Senators—

Back
Birmingham
Bushby
Canavan
Colbeck
Cormann
Day
Edwards
Fawcett (Teller)
Fieravanti-Wells
Fifield
Ferriman
Johnston
Lindgren

McGrath
McKenzie
Nash
Parry
Payne
Reynolds
Ronaldson

Ruston
Ryan
Scullion
Sinodinos
Smith
Wang
Williams

Question agreed to.

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

The committee divided—

AYES, 32

Senators—

Brown
Bullock
Cameron
Carr
Collins
Conroy
Dastyari
Di Natale
Gallacher
Gallagher
Hanson-Young
Ketter
Lambie
Leyonhjelm
Lines
Ludlam
Ludwig

Madigan
McAllister
McKim
McLucas
Moore
Muir
O’Neill
Rhiannon

Rice
Siewert
Simms
Singh
Urqhart (Teller)
Waters
Whish-Wilson
Xenophon

NOES, 27

Senators—

Back
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Bushby
Canavan
Colbeck
Cormann
Day
Edwards
Fawcett (Teller)
Fieravanti-Wells
Fifield
Ferriman
Johnston
Lindgren

McGrath
McKenzie
Nash
Parry
Payne
Reynolds
Ronaldson

Ruston
Ryan
Scullion
Sinodinos
Smith
Williams

Question agreed to.

Consideration resumed of the amendments moved by Senator Hanson-Young and postponed earlier today.

Debate resumed.
Question—That the amendments be agreed to—put and passed.

Senator Hanson-Young moved the following amendment:

Schedule 3, page 12 (after line 10), after item 8, insert:

8A After section 189

Insert:

189A Certain unlawful non-citizens to be detained in separate immigration detention facilities

(1) This section applies if:

(a) a person is detained as an unlawful non-citizen under section 189; and

(b) the person was an unlawful non-citizen because:

(i) the Minister refused, under subsection 501(1), to grant the person a visa because the person did not satisfy the Minister that the person passes the character test; or

(ii) the Minister cancelled, under subsection 501(2), a visa that had been granted to the person because the person did not satisfy the Minister that the person passes the character test; and

(c) the person is being held in an immigration detention facility.

(2) The person must be held in a facility that only holds other unlawful non-citizens of a kind referred to in paragraph (1)(b).

(3) In this section:

character test has the meaning given by section 501.

immigration detention facility means:

(a) a detention centre established under this Act; or

(b) a place approved by the Minister under subparagraph (b)(v) of the definition of immigration detention in subsection 5(1); or

(c) a place or facility in a regional processing country where restraint is exercised over the liberty of a person who is taken to that country under section 198AD.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 14

Senators—

Di Natale  Madigan  Rice  Wang
Hanson-Young  McKim  Siewert (Teller)  Waters
Leyonhjelm  Muir  Simms  Whish-Wilson
Ludlam  Rhiannon
Question negatived.
Bill, as amended, agreed to.
Bill to be reported with amendments.

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

On the motion of the Assistant Minister for Multicultural Affairs (Senator Fierravanti-Wells) the report from the committee was adopted and the bill read a third time.

7 FOREIGN ACQUISITIONS AND TAKEOVERS LEGISLATION AMENDMENT BILL 2015
Order of the day read for the adjourned debate on the motion of the Minister for Communications (Senator Fifield)—That this bill be now read a second time.

Statement by leave: The Minister for Finance (Senator Cormann), by leave, made a statement relating to the bill.

Documents: Senator Cormann tabled the following documents:
Foreign Acquisitions and Takeovers Legislation Amendment Bill 2015—Copy of letter from the Treasurer (Mr Morrison) and the Minister for Agriculture and Water Resources (Mr Joyce) to the Leader of the Australian Greens (Senator Di Natale), dated 23 November 2015, and attachment.

At 2 pm: Debate was interrupted.

8 FOREIGN AFFAIRS—RECENT TERRORIST ATTACKS—STATEMENT BY LEAVE
The Leader of the Government in the Senate (Senator Brandis), by leave, made a statement relating to recent terrorist attacks.

Statements by leave: The Leader of the Opposition in the Senate (Senator Wong), the Leader of the Australian Greens (Senator Di Natale), the Leader of The Nationals in the Senate (Senator Scullion) and Senator Xenophon, by leave, made statements relating to the matter.

All senators present stood in silence as a mark of respect to the victims.
9 QUESTIONS
Questions without notice were answered.

10 MOTIONS TO TAKE NOTE OF ANSWERS
Senator Dastyari moved—That the Senate take note of the answers given by ministers to questions without notice asked by Opposition senators today.
Debate ensued.
Question put and passed.
Senator Waters moved—That the Senate take note of the answer given by the Attorney-General (Senator Brandis) to a question without notice asked by Senator Waters today relating to climate change.
Question put and passed.

11 PETITION
The following petition, lodged with the Clerk by Senator Rice, was received:
From 2 550 petitioners, requesting that the Senate investigate policies and practices concerning refugee and asylum seeking minors and support the release of all children and their families from detention.

12 NOTICES
Senators Brown, Moore and Siewert: To move on the next day of sitting—That the Senate—
(a) notes that:
(i) throughout Australia, there are tens of thousands of children being raised by their grandparents,
(ii) these grandparents play a significant role in the lives of the grandchildren for whom they care,
(iii) the circumstances of these grandparents, as well as the grandchildren, entail significant challenges that are severely affecting the quality of life for grandparent-headed families,
(iv) it has been over a year since the Community Affairs References Committee tabled its report, Grandparents who take primary responsibility for raising their grandchildren, on 29 October 2014, and
(v) the Government is yet to respond to the report; and
(b) calls on the Government to respond to the report and its recommendations. (general business notice of motion no. 943)

Senator Smith: To move on the next day of sitting—That the Joint Select Committee on Northern Australia be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:
(a) Tuesday, 2 February 2016;
(b) Tuesday, 23 February 2016;
(c) Tuesday, 1 March 2016; and
(d) Tuesday, 15 March 2016. (general business notice of motion no. 944)
Senator Smith: To move on the next day of sitting—That the Joint Select Committee on Trade and Investment Growth be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sittings of the Senate, as follows:

(a) Thursday, 4 February 2016;
(b) Thursday, 25 February 2016;
(c) Thursday, 3 March 2016; and
(d) Thursday, 17 March 2016. (general business notice of motion no. 945)

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

(a) notes that:

(i) 14 November 2015 was World Diabetes Day,
(ii) there are 1.1 million diagnosed cases of diabetes in Australia and this is rising by 100 000 a year,
(iii) Diabetes Australia estimates that:

(A) diabetes currently costs the Australian economy around $14.6 billion per annum, and
(B) the cost of diabetes to the Australian economy is forecast to increase to $30 billion by 2025,
(iv) Australia needs a stronger response to the challenge of diabetes, and
(v) there is evidence that:

(A) the onset of type 2 diabetes can be successfully prevented, and
(B) serious complications and hospitalisations from diabetes can be prevented; and

(b) commits to working towards reducing the impact of diabetes on the lives of Australians. (general business notice of motion no. 946)

The Chair of the Standing Committee of Privileges (Senator Collins): To move on the next day of sitting—That, for the purposes of its inquiry into the matters referred on 10 November 2015, the Committee of Privileges have power to consider and use the minutes of evidence and records of the Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru appointed on 26 March 2015 and reappointed on 10 August 2015. (general business notice of motion no. 947)

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

(a) notes that:

(i) former Newcastle Lord Mayor and developer, Mr Jeff McCloy, lost his High Court case to overturn a New South Wales law banning developers from making political donations,
(ii) in its finding on the case, the High Court identified a more subtle kind of corruption known as clientelism, which is where officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder,
(iii) the High Court also stated that the particular concern is that reliance by political candidates on private patronage may, over time, become so necessary as to sap the vitality, as well as the integrity, of the political branches of government, and
in dealing with solutions, the High Court found that, unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalise, and the best means of prevention is to identify and to remove the temptation; and

(b) calls on the Government to:

(i) ban political donations to parties and candidates from for-profit corporations, and

(ii) establish an independent agency, similar to the New South Wales Independent Commission Against Corruption, which works to expose corruption and enhance integrity at the federal level. (general business notice of motion no. 948)

Senator Whish-Wilson: To move on the next day of sitting—That the Small Pelagic Fishery (Closures Variation) Direction No. 1 2015, made under subsection 41A(3) of the Fisheries Management Act 1991, be disallowed [F2015L01450].

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

(a) notes:

(i) the Victorian National Party’s announcement in early 2015 that they ‘support landowners having the right to say no to coal seam gas extraction activity on their land’,

(ii) comments by the Leader of The Nationals and Minister for Infrastructure and Regional Development, Mr Truss MP, that farmers should have the right to say yes or no to coal seam gas exploration and extraction on their property,

(iii) comments by:

(A) the Deputy Leader of The Nationals and Minister for Agriculture and Water Resources, Mr Joyce MP, and

(B) the Deputy Leader of The Nationals in the Senate and Minister for Rural Health, Senator Nash,

supporting a right for farmers to say no to coal seam gas activity on their land, and

(iv) reports that:

(A) the Assistant Minister to the Deputy Prime Minister, Mr McCormack MP, and

(B) Mr Broad MP, and Senators McKenzie, Williams and Canavan, support the right of farmers to say no to coal seam gas activity on their land; and

(b) agrees that landowners should have the right to say no to coal seam gas activity on their land. (general business notice of motion no. 949)

Senators Canavan, Macdonald and Lindgren: To move on the next day of sitting—That the following matter be referred to the Economics References Committee for inquiry and report by 31 March 2016:

The development of the bauxite resources near Aurukun in Cape York, with particular reference to:

(a) the economic development of the bauxite resources near Aurukun in Cape York;

(b) any issues relating to native title rights and interests on the land on which these resources are located;
(c) the process for the finalisation of an exclusive Mineral Development Licence Application on this land;
(d) any opportunities for traditional owners to receive ongoing benefit from the resources located on this land; and
(e) any other related matter.

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

(a) notes:
(i) the disaster at the Samarco iron ore mine, owned by BHP and Vale, which claimed the lives of 12 people with 22 still missing, left thousands homeless, and has left 280 000 without drinking water,
(ii) comments by the Brazilian Minister of the Environment, Ms Izabella Teixeira, describing this as ‘the worst environmental disaster in Brazil’s history’,
(iii) the emergence of an independent report from 2013 warning of major design flaws in the waste stockpile and tailings dam which was not included in the application or the granting of a licence to Samarco,
(iv) that the pollution from the disaster has contaminated one of Brazil’s most important river systems, the Rio Doce, and
(v) that estimates of the cost of the clean-up range from US$1 billion to US$27 billion;
(b) offers its deepest condolences to the people of Bento Rodrigues, neighbouring communities, and downstream communities in Brazil affected by the disaster;
(c) calls on BHP and all Australian corporations active around the world to uphold local environmental laws and respect human rights; and
(d) supports adequate compensation for affected communities which should be paid by the owners of the Samarco mine. (general business notice of motion no. 950)

13 PRIVATE SENATORS’ BILLS—CONSIDERATION

The Assistant Cabinet Secretary (Senator Ryan) moved—That the following general business orders of the day be considered on Thursday, 26 November 2015 under the order relating to the consideration of private senators’ bills:

No. 63 Freedom of Information Amendment (Requests and Reasons) Bill 2015.

No. 41 Mining Subsidies Legislation Amendment (Raising Revenue) Bill 2014.

Question put and passed.

14 LEAVE OF ABSENCE

Senator Bushby, by leave, moved—That leave of absence be granted to the following senators for personal reasons:

(a) Senator Abetz for today; and
(b) Senator Cash from 23 to 26 November 2015.

Question put and passed.
15 NATIONAL CAPITAL AND EXTERNAL TERRITORIES—JOINT STANDING COMMITTEE—LEAVE TO MEET DURING SITTING
Senator Bushby, by leave and on behalf of the Joint Standing Committee on the National Capital and External Territories, moved—that the Joint Standing Committee on the National Capital and External Territories be authorised to hold a public meeting during the sitting of the Senate today, from 4 pm, to take evidence for the committee’s inquiry into governance in the Indian Ocean Territories.
Question put and passed.

16 LEAVE OF ABSENCE
Senator McEwen, by leave, moved—that leave of absence be granted to Senator Gallacher for 24 November 2015, for personal reasons.
Question put and passed.

17 POSTPONEMENTS
Business was postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Hanson-Young for today, proposing the disallowance of the Child Care Benefit (Children in respect of whom no-one is eligible) Determination 2015, postponed till 3 December 2015.

Business of the Senate notice of motion no. 2 standing in the name of Senator Whish-Wilson for today, proposing a reference to the Economics References Committee, postponed till 25 November 2015.

General business notice of motion no. 854 standing in the name of Senator Muir for today, relating to the theft and export of Australian motor vehicles, postponed till 24 November 2015.

General business notice of motion no. 911 standing in the name of Senator Hanson-Young for today, proposing the introduction of the Migration Amendment (Free the Children) Bill 2015, postponed till 30 November 2015.

General business notice of motion no. 929 standing in the name of Senator Siewert for today, relating to the New South Wales Custody Notification Service, postponed till 30 November 2015.

General business notice of motion no. 933 standing in the name of Senator Xenophon for today, proposing the introduction of the Interactive Gambling Amendment (Sports Betting Reform) Bill 2015, postponed till 24 November 2015.

18 COMMITTEES—EXTENSIONS OF TIME TO REPORT
The following committees were granted extensions of time to report:

Economics References Committee—
  Australia’s innovation system, extended to 15 December 2015.
  Corporate tax avoidance, extended to 25 February 2016.
  Credit card interest rates, extended to 3 December 2015.
  Non-conforming building products, extended to 16 March 2016.

Foreign Affairs, Defence and Trade References Committee—Australia’s bilateral aid program in Papua New Guinea, extended to 29 February 2016.
Legal and Constitutional Affairs References Committee—
Commonwealth payments relating to asylum seeker boat turn backs, extended to 15 March 2016.
Residential fire safety, extended to 16 March 2016.

19 COMMUNICATIONS—REGIONAL AND COMMUNITY MEDIA SERVICES
Senator McEwen, also on behalf of Senators Ludlam and Muir, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 915—That the Senate—
(a) notes that regional and community:
   (i) newspapers service 36 per cent of, or over 8 million, Australians who do not live in a capital city,
   (ii) newspaper media continue to be a trusted source of local information in country communities, and
   (iii) media is frequently overlooked for Federal Government advertising campaigns;
(b) calls on the Government to ensure that federal media advertising campaigns extend to regional Australia; and
(c) calls on the Government to ensure that regional and community media receive its fair share of campaign advertising from the Federal Government.

Question put and passed.

20 ENVIRONMENT—CLIMATE CHANGE
Senator McAllister, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 942—That the Senate—
(a) notes that:
   (i) in December 2015, leaders from across the globe will meet in Paris to determine the way forward to address climate change, and
   (ii) People’s Climate Marches are:
      (A) being organised in hundreds of cities around the world on the last weekend of November 2015 to send a message to world leaders that strong action on climate change is necessary and possible, and
      (B) scheduled to take place that weekend in Melbourne, Sydney, Brisbane, Adelaide, Perth, Canberra, Hobart and Cairns;
(b) applauds the organisers and participants of the marches both overseas and in Australia for their commitment and efforts; and
(c) endorses the message that Australia can, and should, do more to address climate change.

Statement by leave: The Assistant Cabinet Secretary (Senator Ryan), by leave, made a statement relating to the motion.

Question put and passed.
21 FOREIGN AFFAIRS—UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 ON WOMEN, PEACE AND SECURITY

Senator Ludlam, also on behalf of Senator Moore, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 909—That the Senate—

(a) celebrates the 15th anniversary of United Nations Security Council Resolution 1325 on Women, Peace and Security (UNSCR 1325);

(b) recognises that women and girls are disproportionately affected by armed conflict, and that women’s participation in peace processes is vital to international peace and security;

(c) notes the inadequate implementation of UNSCR 1325 internationally, despite repeated commitments from parties to the resolution;

(d) calls:

(i) for the prioritisation of ‘women, peace and security’ programming in Australian aid delivery, and

(ii) on the Australian Government to update the Senate on concrete actions it has taken to implement UNSCR 1325; and

(e) notes the current independent interim review of the Australian National Action Plan on Women, Peace and Security 2012-18.

Statement by leave: The Assistant Cabinet Secretary (Senator Ryan), by leave, made a statement relating to the motion.

Question put and passed.

22 EMPLOYMENT—OLDER AUSTRALIANS

Senator Day, also on behalf of Senators Lazarus, Leyonhjelm and Wang, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 941—That the Senate—

(a) recognises the untapped potential of Australians over the age of 65;

(b) notes that Australia ranks 13th in the Organisation for Economic Co-operation and Development [OECD] for workforce participation of people aged over 65;

(c) acknowledges that raising mature age workforce participation will add tens of billions of dollars to Australia’s gross domestic product; and

(d) in the national interest, calls on the Government to remove the barriers and obstacles to the workforce participation of older Australians.

Statements by leave: Senators Day and Siewert, by leave, made statements relating to the motion.

Question put and passed.

23 HEALTH—INDIVIDUAL RESPONSIBILITY FOR HEALTH AND WELLBEING

Senator Canavan, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 940—That the Senate notes that:

(a) it is not the role of government to tell people what to eat, and that individuals have a responsibility for their own health and wellbeing;

(b) a key to improving the health of Australians is by helping them make healthier choices about their food;
(c) actions such as the new Healthy Food Partnership, the voluntary Health Star Rating system, and the Sporting Schools Initiative will tackle obesity and encourage healthy eating through educating consumers about fresh produce and appropriate portion sizes; and

(d) heavy-handed government intervention through taxes and bans will only limit a person’s choice and not improve long-term results through increased individual responsibility.

Statements by leave: The Leader of the Australian Greens (Senator Di Natale) and Senator Canavan, by leave, made statements relating to the motion.

Question put and passed.

24 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—ARTS—FUNDING

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

The attack on arms-length peer-reviewed arts funding presented by the Abbott-Turnbull Government’s ministerial arts slush fund.

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

25 DOCUMENTS—CONSIDERATION

The documents tabled earlier today (see entry no. 2) were called on but no motion was moved.

26 TRANSPORT—WESTERN AUSTRALIA—PERTH FREIGHT LINK—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The Assistant Minister for Agriculture and Water Resources (Senator Ruston) tabled the following documents:

Transport—Western Australia—Perth Freight Link—Letters to the Clerk of the Senate (Dr Laing), dated 23 November 2015, responding to the order of the Senate of 12 November 2015 from—

Minister for Territories, Local Government and Major Projects (Mr Fletcher), and raising public interest immunity claims.

Minister for Tourism and International Education (Senator Colbeck).

27 COMMITTEE MEMBERSHIP

The Acting Deputy President (Senator Back) informed the Senate that the President had received letters requesting changes in the membership of committees.

The Assistant Minister for Agriculture and Water Resources (Senator Ruston), by leave, moved—That senators be discharged from and appointed to committees as follows:

Legal and Constitutional Affairs Legislation Committee—

Appointed—

Substitute member: Senator Hanson-Young to replace Senator McKim for the committee’s inquiry into the provisions of the Migration Legislation Amendment (Cessation of Visa Labels) Bill 2015

Participating member: Senator McKim
Unconventional Gas Mining—Select Committee—
Appointed—
Senator Waters
Participating members: Senators Di Natale, Hanson-Young, Ludlam, McKim, Rhiannon, Rice, Siewert, Simms and Whish-Wilson.

Question put and passed.

28 CRIMES LEGISLATION AMENDMENT (HARMING AUSTRALIANS) BILL 2015
A message from the House of Representatives was reported agreeing to the following bill without amendment:

29 GOVERNOR-GENERAL’S MESSAGES—ASSENT TO LAWS
Messages from His Excellency the Governor-General were reported, informing the Senate that he had assented to the following laws:
12 November 2015—Messages Nos—
56—
57—
Customs Depot Licensing Charges Amendment Act 2015 (Act No. 140, 2015)
Customs Amendment (Fees and Charges) Act 2015 (Act No. 141, 2015).
58—
Social Services Legislation Amendment (Cost of Living Concession) Act 2015 (Act No. 142, 2015)
59—
Statute Law Revision Act (No. 2) 2015 (Act No. 145, 2015)
60—
Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015 (Act No. 147, 2015)
30 **COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—HEALTH INSURANCE AMENDMENT (SAFETY NET) BILL 2015**

Pursuant to order, Senator Fawcett, at the request of the Chair of the Community Affairs Legislation Committee (Senator Seselja), tabled the following report and documents:


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

31 **FOREIGN ACQUISITIONS AND TAKEOVERS LEGISLATION AMENDMENT BILL 2015**

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

Question put and passed.

Bill read a second time.

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

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*In the committee*

Bill, taken as a whole by leave, debated.

Senator Lazarus, also on behalf of Senators Lambie and Madigan, moved the following amendments together by leave:

No. 1—Schedule 1, item 4, page 44 (lines 10 to 21), omit subsection 52(2), substitute:

**Agricultural land**

(2) The *threshold test is met* in relation to land if the land is agricultural land.

No. 2—Schedule 1, page 111 (after line 16), at the end of the Schedule, add:

**5 Review of when the threshold test is met for agricultural land**

(1) The Minister must cause an independent review of the operation of subsection 52(2) of the *Foreign Acquisitions and Takeovers Act 1975*, as amended by this Schedule, to be undertaken and completed within 2 years after the commencement of this item.

(2) The person who undertakes the review must give the Minister a written report of the review.

(3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of receiving it.

Debate ensued.

The question was divided at the request of the Leader of the Opposition in the Senate (Senator Wong)—

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

The committee divided—

AYES, 3

Senators—

Lambie

Lazarus (Teller)

Madigan
NOES, 44

Senators—
Back    Hanson-Young    McLucas    Ryan
Brown   Johnston        Moore      Siewert
Bullock Ketter          Muir       Simms
Cameron Landgren        O’Neill     Smith
Canavan Lines            Peris       Steer
Colbeck Ludlam          Polley      Urquhart (Teller)
Cormann Ludwig          Reynolds    Wang
Dastyari McAllister     Rhiannon    Waters
Day      McGrath        Rice        Whish-Wilson
Di Natale McKenzie       Ronaldson  Wong
Gallacher McKim          Ruston      Xenophon

Question negatived.

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

The committee divided—

AYES, 25

Senators—
Bilyk      Day            Ludvig    O’Neill
Brown     Gallacher      Madigan    Polley
Bullock   Ketter         McAllister Sterle
Cameron   Lambie         McLucas    Urquhart (Teller)
Carr      Lazarus        Moore      Wong
Conroy     Lines          Muir       Xenophon
Dastyari

NOES, 39

Senators—
Back      Fifield        Nash       Seselja
Bernardi Hanson-Young  Parry      Siewert
Birmingham Johnston    Payne      Simms
Brashby   Leyonhjelm    Reynolds    Snowdon
Canavan (Teller)     Lindgren    Rhiannon  Smith
Colbeck    Ludlam        Rice       Wang
Cormann   Macdonald     Ronaldson  Waters
Di Natale McGrath      Ruston     Whish-Wilson
Edwards   McKenzie       Ryan       Williams
Fawcett   McKim          Scullion

Question negatived.

Senator Xenophon moved the following amendment:

Schedule 1, item 4, page 44 (lines 15 and 16), omit “the total value of the following is more than the value prescribed for the purposes of this paragraph”, substitute “the total value of the following is more than $5 million”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 16
Question negatived.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, item 4, page 54 (after line 16), after subsection 67(1), insert:

(1A) If:

(a) the significant action is to acquire an interest in Australian land; and

(b) the land is agricultural land;

then, in determining whether taking the significant action would be contrary to the national interest for the purposes of subsection (1), the Treasurer must have regard to each of the following matters in so far as the matter is relevant:

(c) national security issues, including Australia’s ability to protect its strategic and security interests;

(d) the impact the significant action will have, if any, on the following:

(i) competition, global industry or market outcomes;

(ii) Australian tax revenues;

(iii) Australia’s food security;

(e) the impact the significant action will have, if any, on the Australian economy, including whether the significant action will, or is likely to, result in:

(i) the creation of new job opportunities in Australia, or the retention of existing jobs in Australia that may otherwise be lost; or

(ii) the introduction into Australia of new technology or business skills; or

(iii) increased export receipts for Australian exporters; or

(iv) additional market competition, greater efficiency or productivity, or enhanced domestic services, in Australia; or

(v) the introduction into Australia of additional investment for development purposes; or

(vi) increased processing in Australia of Australian primary products;

(f) whether Australia’s economic interests are adequately safeguarded and promoted;

(g) whether the significant action will, or is likely to benefit Australia generally, or any part of Australia or group of Australians;
(h) whether the foreign person has demonstrated financial commitment to the interest;
(i) whether the foreign person has business experience and acumen relevant to the interest;
(j) whether the foreign person is of good character;
(k) any other matter the Minister considers relevant.

Schedule 1, item 4, page 59 (after line 36), after subsection 71(1), insert:

(1A) If:

(a) the variation or revocation is of an order under section 67; and
(b) the significant action to which the order relates is to acquire an interest in Australian land; and
(c) the land is agricultural land;

then, in determining whether the variation or revocation is contrary to the national interest for the purposes of paragraph (1)(a), the Treasurer must have regard to each of the following matters in so far as the matter is relevant:

(d) national security issues, including Australia’s ability to protect its strategic and security interests;
(e) the impact the variation or revocation will have, if any, on the following:
   (i) competition, global industry or market outcomes;
   (ii) Australian tax revenues;
   (iii) Australia’s food security;
(f) the impact the variation or revocation will have, if any, on the Australian economy, including whether the result will, or is likely to, result in:
   (i) the creation of new job opportunities in Australia, or the retention of existing jobs in Australia that may otherwise be lost; or
   (ii) the introduction into Australia of new technology or business skills; or
   (iii) increased export receipts for Australian exporters; or
   (iv) additional market competition, greater efficiency or productivity, or enhanced domestic services, in Australia; or
   (v) the introduction into Australia of additional investment for development purposes; or
   (vi) increased processing in Australia of Australian primary products;
(g) whether Australia’s economic interests are adequately safeguarded and promoted;
(h) whether the variation or revocation will, or is likely to benefit Australia generally, or any part of Australia or group of Australians;
(i) whether the foreign person has demonstrated financial commitment to the interest;
(j) whether the foreign person has business experience and acumen relevant to the interest;
(k) whether the foreign person is of good character;
(l) any other matter the Minister considers relevant.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 5

Lambie
Madigan
Muir
Xenophon (Teller)

Lazarus

NOES, 39

Bilyk (Teller)
Gallagher
McKenzie
Scullion

Bullock
Hanson-Young
McKim
Simms

Bushby
Ketter
McLucas
Singh

Cameron
Lindgren
Moore
Smith

Canavan
Lines
O’Neill
Sterle

Colbeck
Ludlam
Peris
Wang

Cormann
Ludwig
Reynolds
Waters

Dastyari
McAllister
Rhiannon
Whish-Wilson

Day
McEwen
Rice
Wong

Gallacher
McGrath
Ruston

Question negatived.

Bill further debated.

Senator Wong moved the following amendments together by leave:

Schedule 1, item 3, page 5 (lines 14 and 15), omit the definition of agribusiness in section 4, substitute:

  agribusiness has the meaning given by section 26A.

Schedule 1, item 3, page 5 (after line 27), after the definition of Australia in section 4, insert:

  Australian and New Zealand Standard Industrial Classification Codes means the Australian and New Zealand Standard Industrial Classification Codes, as in force from time to time, published by the Australian Bureau of Statistics.

Schedule 1, item 3, page 26 (lines 21 to 33), omit subsection 19(3), substitute:

  (3) This section does not apply for the purpose of determining under paragraph 47(2)(b) (meaning of notifiable action—general) whether a foreign person acquires a substantial interest in an Australian entity.

Schedule 1, item 3, page 30 (lines 30 and 31), omit subsection 26(1), substitute:

  (1) A business is a sensitive business if the business:
      (a) meets the conditions specified in the regulations; and
      (b) is not an agribusiness.

Schedule 1, item 3, page 31 (after line 5), after section 26, insert:

26A Meaning of agribusiness

  (1) An Australian entity or Australian business is an agribusiness in the circumstances set out in the following table.
Australian entities and Australian businesses that are *agribusinesses*

<table>
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<tr>
<th>Item</th>
<th>Column 1</th>
<th>Column 2</th>
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<tr>
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<td>This kind of Australian entity or Australian business …</td>
<td>is an <em>agribusiness</em> if …</td>
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</table>
| 1    | an Australian entity | (a) any one or more of the following entities (the *agribusiness entities*) derive earnings from carrying on a business of the kind mentioned in subsection (3):  
(i) the entity;  
(ii) a subsidiary of the entity; and  
(b) the amount of those earnings before interest and tax, derived by the *agribusiness entities* in the most recent financial year for which the financial accounts of the entity have been audited, exceeds 25% of the amount of the total earnings for the entity. |
| 2    | an Australian entity | (a) any one or more of the following entities (the *agribusiness entities*) use assets in carrying on a business of the kind mentioned in subsection (3):  
(i) the entity;  
(ii) a subsidiary of the entity; and  
(b) the value of those assets exceeds 25% of the total asset value for the entity. |
| 3    | an Australian business | (a) the business uses assets in carrying on a business of the kind mentioned in subsection (3); and  
(b) the value of those assets exceeds 25% of the value of the total assets of the business. |

*Meaning of total earnings*  
(2) The *total earnings* for the entity is the total of all earnings before interest and tax derived in Australia in that year by any one or more of the following:  
(a) the entity;  
(b) any subsidiary of the entity that carries on a business of a kind mentioned in subsection (3).
**Classes of business**

(3) The business must be carried on wholly or partly in any of the following classes of the Australian and New Zealand Standard Industrial Classification Codes:

(a) any of the classes in Division A (agriculture, forestry and fishing);

(b) any of the classes in Subdivision 11 of Division C (food product manufacturing), other than any of the following:

(i) class 1113 (cured meat and smallgoods manufacturing);

(ii) class 1132 (ice cream manufacturing);

(iii) class 1162 (cereal, pasta and baking mix manufacturing);

(iv) a class in group 117 (bakery product manufacturing);

(v) class 1182 (confectionery manufacturing);

(vi) a class in group 119 (other food product manufacturing).

**Mixed earnings and mixed-use assets**

(4) Earnings that are derived from carrying on a business that is not wholly in a class mentioned in subsection (3) may be apportioned, on the basis of publicly available information, between the part of the business that is in the class and the other parts of the business.

(5) The value of assets that are used in carrying on a business that is not wholly in a class mentioned in subsection (3) may be apportioned, on the basis of publicly available information, between the part of the business that is in the class and the other parts of the business.

Schedule 1, item 4, page 35 (lines 23 to 25), omit “A different threshold test applies for certain significant actions taken in relation to agribusinesses.”

Schedule 1, item 4, page 36 (lines 11 and 12), omit paragraph 40(2)(a).

Schedule 1, item 4, page 36 (lines 28 to 30), omit the note.

Schedule 1, item 4, page 37 (lines 30 and 31), omit paragraph 41(2)(a).

Schedule 1, item 4, page 38 (lines 3 to 5), omit the note.

Schedule 1, item 4, page 40 (lines 7 and 8), omit:

A notifiable action is a proposed action by a foreign person:

(a) to acquire a direct interest in an Australian entity or Australian business that is an agribusiness; or

(b) to acquire a substantial interest in an Australian entity; or

(c) to acquire an interest in Australian land.

Generally, the action is only notifiable if the entity, business or land meets the threshold test. A different threshold test applies for certain notifiable actions taken in relation to agribusinesses.
Substitute:

A notifiable action is a proposed action by a foreign person:

(a) to acquire a substantial interest in an Australian entity; or
(b) to acquire an interest in Australian land.

Generally, the action is only notifiable if the entity, business or land meets the threshold test.

Schedule 1, item 4, page 41 (lines 3 and 4), omit paragraph 47(2)(a).
Schedule 1, item 4, page 43 (table item 1), omit the table item.
Schedule 1, item 4, page 54 (table item 1), omit “a direct interest in an Australian entity that is an agribusiness, or”.
Schedule 1, item 4, page 55 (table item 5), omit “a direct interest in an Australian business that is an agribusiness, or”.
Schedule 1, item 4, page 55 (table item 1), omit “a direct interest in an Australian entity that is an agribusiness, or”.
Schedule 1, item 4, pages 55 and 56 (table item 2), omit “a direct interest in an Australian business that is an agribusiness, or”.
Schedule 1, item 4, page 57 (table item 1), omit “a direct interest in an Australian entity that is an agribusiness, or”.
Schedule 1, item 4, page 57 (table item 4), omit “a direct interest in an Australian business that is an agribusiness, or”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 21

Senators—

Bilyk (Teller)  Gallacher  McAllister  Peris
Bullock  Gallagher  McEwen  Singh
Cameron  Ketter  McLucas  Sterle
Carr  Leyonhjelm  Moore  Wang
Collins  Lines  O’Neill  Wong
Dastyari

NOES, 42

Senators—

Back  Fifield  McKim  Scullion
Bernardi  Hanson-Young  Muir  Seselja
Birmingham  Johnston  Nash  Stiewert
Bushby  Lamble  Parry  Simms
Canavan  Lazarus  Payne  Sinodinos
Colbeck  Lindgren  Reynolds  Smith (Teller)
Cormann  Ludlam  Rhiannon  Waters
Day  Macdonald  Rice  Whish-Wilson
Di Natale  Madigan  Ruston  Williams
Edwards  McGrath  Ryan  Xenophon
Fawcett  McKenzie

Question negatived.
Question—That the bill stand as printed—divided, at the request of Senator Wong, in respect of Schedule 1, item 4, section 42.

Question—That Schedule 1, item 4, section 42 stand as printed—put.

The committee divided—

**AYES, 38**

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<td>Birmingham</td>
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**NOES, 22**

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<td>Dastyari</td>
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Section agreed to.

Senator Wong moved the following amendment:

Schedule 1, item 4, page 44 (lines 15 to 20), omit paragraph 52(2)(b), substitute:

(b) the value of the interest in the land is more than:

(i) $50 million; or

(ii) if a higher value is prescribed for the purposes of this paragraph—that higher value.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 21**

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Question negatived.

Senator Whish-Wilson moved the following amendments together by leave:

No. 1—Page 126 (after line 33), at the end of the bill, add:

**Schedule 5—Sunset provision for the Register of Foreign Ownership of Agricultural Land Act 2015**

**Register of Foreign Ownership of Agricultural Land Act 2015**

1 Section 31

After:

```
The Commissioner must give the Minister periodic reports, at least annually, for presentation to Parliament.
```

insert:

```
This Act ceases to have effect at the end of 1 December 2016 unless, before then, an Act has provided for a register of foreign ownership of water entitlements.
```

2 After section 34

Insert:

**34A Sunset provision**

(1) This Act ceases to have effect at the end of 1 December 2016 if an Act, or the provisions of an Act, providing for a register of foreign ownership of water entitlements do not commence before that time.

(2) The Minister must announce, by notifiable instrument, the day an Act, or the provisions of an Act, providing for a register of foreign ownership of water entitlements commence.

No. 2—Clause 2, page 2 (at the end of the table), add:

5. Schedule 5 The later of:

(a) the start of the day after this Act receives the Royal Assent; and

(b) immediately after the commencement of the Register of Foreign Ownership of Agricultural Land Act 2015.
Senator Day moved the following amendments to Senator Whish-Wilson’s proposed amendment no. 1 together by leave:

Item 2, subsection 34A(1) omit “register of foreign ownership of water entitlements”, substitute “register of water entitlements”.

Item 2, subsection 34A(2) omit “register of foreign ownership of water entitlements”, substitute “register of water entitlements”.

Debate ensued.

Question—That Senator Day’s amendments to Senator Whish-Wilson’s proposed amendment be agreed to—put and negatived.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Finance (Senator Cormann) the report from the committee was adopted and the bill read a third time.

32 MIGRATION AMENDMENT (CHARGING FOR A MIGRATION OUTCOME) BILL 2015

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

Debate resumed.

At 9.50 pm: Debate was interrupted while Senator Macdonald was speaking.

33 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.27 pm till Tuesday, 24 November 2015 at 12.30 pm.

34 ATTENDANCE

Present, all senators except Senators Abetz*, Cash* and O’Sullivan* (*on leave).

ROSEMARY LAING
Clerk of the Senate

Printed by authority of the Senate