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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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1 **MEETING OF SENATE**

The Senate met at 9.30 am. The President (Senator the Honourable John Hogg) took the chair and read prayers.

2 **GOVERNMENT DOCUMENTS**

The following documents were tabled:

*Dairy Produce Act 1986*—Deed between the Commonwealth of Australia and Dairy Australia Limited, dated 18 April 2007—Deed of Variation, dated 8 September 2009.

*Migration Act 1958*—Section 486O—Assessment of detention arrangements—Personal identifiers 553/09 to 567/09—

Commonwealth Ombudsman's reports.

Government response to Ombudsman's reports.

Regional Forest Agreements between the Commonwealth of Australia and New South Wales—Reports on implementation—

Eden Region—2004-05.

North East Region—2004-05.

Southern Region—

2004-05.

2005-06.

3 **QUESTION TIME—INCIDENT—STATEMENT BY PRESIDENT**

The President made a statement relating to a point of order raised by the Minister for Immigration and Citizenship (Senator Evans) on 15 September 2009 concerning an incident during question time.

*Statements by leave:* Senator Cormann, the Special Minister of State (Senator Ludwig) and Senators Abetz and Ferguson, by leave, made statements relating to the matter.

4 **AUSTRALIAN CITIZENSHIP AMENDMENT (CITIZENSHIP TEST REVIEW AND OTHER MEASURES) BILL 2009**

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

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*In the committee*

Consideration resumed of the bill, as amended.

Senator Fierravanti-Wells moved the following amendment:

Page 5 (after line 27), at the end of the bill, add:

**Schedule 2—Amendments relating to additional categories**

***Australian Citizenship Act 2007***

**1 After subsection 21(8)**

Insert:

*Australian public interest*

- (9) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) granting a certificate of Australian citizenship to the person would be in the Australian public interest because of exceptional circumstances relating to the applicant; and
  - (b) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application; and
  - (c) the person has met the requirements of subsection (2A).
- (10) As soon as practicable after the end of each financial year, the Department must publish on its website and present to each House of the Parliament a list of all the persons who received citizenship under subsection (9) during the year and the reasons for the decision.

*Individuals employed overseas*

- (11) A person is eligible to become an Australian citizen if the Minister is satisfied that:
- (a) at the time the person made the application, the person is engaged in work that requires them to regularly travel outside Australia; and
  - (b) the person was engaged in that kind of work for a total of at least 2 years during the period of 4 years immediately before the day the person made the application; and
  - (c) the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application; and
  - (d) the person was present in Australia for a total of at least 480 days during the period of 4 years immediately before the day the person made the application; and
  - (e) the person was present in Australia for a total of at least 120 days during the period of 12 months immediately before the day the person made the application; and
  - (f) the person has demonstrated they would suffer significant hardship or disadvantage if they did not receive citizenship; and
  - (g) the person was a permanent resident for the period of 12 months immediately before the day the person made the application; and
  - (h) the person was not present in Australia as an unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application; and
  - (i) the person has met the requirements of subsection (2A).
- (12) As soon as practicable after the end of each financial year, the Department must publish on its website and present to each House of the Parliament a list of all the persons who received citizenship under subsection (11) during the year and the reasons for the decision.

## 2 After section 22

Insert:

### 22A Minister's decision—Australian public interest

- (1) The Minister's decision under subsection 24(1) in relation to a person who is eligible to become an Australian citizen under subsection 21(9) cannot be delegated.
- (2) In making a decision referred to in subsection (1) the Minister must give consideration to the fact that the applicant's becoming an Australian citizen would be of benefit to Australia.

*Ministerial discretion—administrative error*

- (3) For the purposes of paragraph 21(9)(b), the Minister may treat a period as one in which the applicant was not present in Australia as an unlawful non-citizen if the Minister considers the applicant was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

### 22B Minister's decision—individuals employed overseas

- (1) The Minister's decision under subsection 24(1) in relation to a person who is eligible to become an Australian citizen under subsection 21(11) cannot be delegated.
- (2) In making a decision referred to in subsection (1) the Minister must give consideration to the fact that the person would suffer significant hardship or disadvantage if they did not receive citizenship.

*Confinement in prison or psychiatric institution*

- (3) Subject to subsection (4), the person is taken not to satisfy paragraph 21(11)(c) if, at any time during the 4 year period mentioned in that paragraph, the person was:
  - (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (4) The Minister may decide that subsection (3) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

*Ministerial discretion—administrative error*

- (5) For the purposes of paragraph 21(11)(g), the Minister may treat a period as one in which the person was a permanent resident if the Minister considers that, because of an administrative error, the person was not a permanent resident during that period.
- (6) For the purposes of paragraph 21(11)(h), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

## 3 Subsection 24(1A)

Omit "or (8)", substitute ", (8), (9) or (11)".

**4 Subsection 24(2)**

Omit “or (7)”, substitute “, (7), (9) or (11)”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

**AYES, 32**

Senators—

|            |                   |           |                   |
|------------|-------------------|-----------|-------------------|
| Abetz      | Bushby            | Fifield   | McGauran          |
| Adams      | Cash              | Fisher    | Minchin           |
| Back       | Colbeck           | Heffernan | Parry             |
| Barnett    | Coonan            | Humphries | Payne             |
| Bernardi   | Cormann           | Johnston  | Ryan              |
| Birmingham | Eggleston         | Kroger    | Troeth            |
| Boswell    | Ferguson          | Macdonald | Trood             |
| Brandis    | Fierravanti-Wells | Mason     | Williams (Teller) |

**NOES, 34**

Senators—

|              |              |                  |          |
|--------------|--------------|------------------|----------|
| Arbib        | Crossin      | Hutchins         | Pratt    |
| Bilyk        | Farrell      | Ludlam           | Sherry   |
| Bishop       | Feeney       | Marshall         | Siewert  |
| Brown, Bob   | Fielding     | McEwen           | Stephens |
| Brown, Carol | Forshaw      | McLucas          | Sterle   |
| Cameron      | Furner       | Milne            | Wortley  |
| Carr         | Hanson-Young | Moore            | Xenophon |
| Collins      | Hogg         | O'Brien (Teller) |          |
| Conroy       | Hurley       | Polley           |          |

Question negatived.

The Minister for Innovation, Industry, Science and Research (Senator Carr) moved the following amendments together by leave:

Clause 2, page 2 (at the end of the table), add:

3. Schedule 2      The day this Act receives the Royal Assent.

Schedule 1, heading, page 3 (line 1), at the end of the heading, add “**relating to citizenship test review etc.**”.

Page 5 (after line 27), at the end of the bill, add:

**Schedule 2—Amendments relating to special residence requirement**

***Australian Citizenship Act 2007***

**1 Paragraph 21(2)(c)**

Omit “residence requirement (see section 22)”, substitute “general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)”.

**2 Paragraph 21(3)(c)**

Omit “residence requirement (see section 22)”, substitute “general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)”.

### 3 Paragraph 21(4)(d)

Omit “residence requirement (see section 22)”, substitute “general residence requirement (see section 22) or the special residence requirement (see section 22A or 22B)”.

### 4 Subsection 22(1)

Omit “*residence requirement*”, substitute “*general residence requirement*”.

Note: The heading to section 22 is replaced by the heading “**General residence requirement**”.

### 5 After section 22

Insert:

#### 22A Special residence requirement—persons engaging in activities that are of benefit to Australia

- (1) Subject to this section, for the purposes of section 21 a person (the *applicant*) satisfies the *special residence requirement* if:
- (a) the following apply:
    - (i) the applicant is seeking to engage in an activity specified under subsection 22C(1);
    - (ii) the applicant’s engagement in that activity would be of benefit to Australia;
    - (iii) the applicant needs to be an Australian citizen in order to engage in that activity;
    - (iv) in order for the applicant to engage in that activity, there is insufficient time for the applicant to satisfy the general residence requirement (see section 22); and
  - (b) the head of an organisation specified under subsection 22C(2), or a person whom the Minister is satisfied holds a senior position in that organisation, has given the Minister a notice in writing stating that the applicant has a reasonable prospect of being engaged in that activity; and
  - (c) the applicant was present in Australia for a total of at least 180 days during the period of 2 years immediately before the day the applicant made the application; and
  - (d) the applicant was present in Australia for a total of at least 90 days during the period of 12 months immediately before the day the applicant made the application; and
  - (e) the applicant was ordinarily resident in Australia throughout the period of 2 years immediately before the day the applicant made the application; and
  - (f) the applicant was a permanent resident for the period of 2 years immediately before the day the applicant made the application; and
  - (g) the applicant was not present in Australia as an unlawful non-citizen at any time during the period of 2 years immediately before the day the applicant made the application.

*Confinement in prison or psychiatric institution*

- (2) Subject to subsection (3), the applicant is taken not to satisfy paragraph (1)(c) if, at any time during the 2 year period mentioned in that paragraph, the applicant was:
- (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the applicant.
- (3) The Minister may decide that subsection (2) does not apply in relation to the applicant if, taking into account the circumstances that resulted in the applicant's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the applicant.

*Ministerial discretion—administrative error*

- (4) For the purposes of paragraph (1)(f), the Minister may treat a period as one in which the applicant was a permanent resident if the Minister considers that, because of an administrative error, the applicant was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g), the Minister may treat a period as one in which the applicant was not present in Australia as an unlawful non-citizen if the Minister considers the applicant was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

**22B Special residence requirement—persons engaged in particular kinds of work requiring regular travel outside Australia**

- (1) Subject to this section, for the purposes of section 21 a person satisfies the *special residence requirement* if:
- (a) at the time the person made the application, the person is engaged in work of a kind specified under subsection 22C(3) and the person is required to regularly travel outside Australia because of that work; and
  - (b) the following apply:
    - (i) the person was engaged in that kind of work for a total of at least 2 years during the period of 4 years immediately before the day the person made the application;
    - (ii) for the whole or part of that 4 year period when the person was engaged in that kind of work, the person regularly travelled outside Australia because of that work; and
  - (c) the person was present in Australia for a total of at least 480 days during the period of 4 years immediately before the day the person made the application; and
  - (d) the person was present in Australia for a total of at least 120 days during the period of 12 months immediately before the day the person made the application; and
  - (e) the person was ordinarily resident in Australia throughout the period of 4 years immediately before the day the person made the application; and



- (f) the person was a permanent resident for the period of 12 months immediately before the day the person made the application; and
- (g) the person was not present in Australia as an unlawful non-citizen at any time during the period of 4 years immediately before the day the person made the application.

*Confinement in prison or psychiatric institution*

- (2) Subject to subsection (3), the person is taken not to satisfy paragraph (1)(c) if, at any time during the 4 year period mentioned in that paragraph, the person was:
  - (a) confined in a prison; or
  - (b) confined in a psychiatric institution by order of a court made in connection with proceedings for an offence against an Australian law in relation to the person.
- (3) The Minister may decide that subsection (2) does not apply in relation to the person if, taking into account the circumstances that resulted in the person's confinement, the Minister is satisfied that it would be unreasonable for that subsection to apply in relation to the person.

*Ministerial discretion—administrative error*

- (4) For the purposes of paragraph (1)(f), the Minister may treat a period as one in which the person was a permanent resident if the Minister considers that, because of an administrative error, the person was not a permanent resident during that period.
- (5) For the purposes of paragraph (1)(g), the Minister may treat a period as one in which the person was not present in Australia as an unlawful non-citizen if the Minister considers the person was present in Australia during that period but, because of an administrative error, was an unlawful non-citizen during that period.

**22C Special residence requirement—legislative instruments**

- (1) The Minister may, by legislative instrument, specify activities for the purposes of subparagraph 22A(1)(a)(i).
- (2) The Minister may, by legislative instrument, specify organisations for the purposes of paragraph 22A(1)(b).
- (3) The Minister may, by legislative instrument, specify kinds of work for the purposes of paragraph 22B(1)(a).

**6 After paragraph 24(5)(a)**

Insert:

- (aa) the Minister is satisfied that the person did not satisfy the special residence requirement referred to in section 22A or 22B; and

***Australian Citizenship (Transitionals and Consequential) Act  
2007***

**7 Item 5B of Schedule 3**

Omit "*residence requirement*", substitute "*general residence requirement*".

**8 Application**

The amendments made by this Schedule apply in relation to applications made on or after the commencement of this Schedule.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 33

Senators—

|              |              |                  |          |
|--------------|--------------|------------------|----------|
| Arbib        | Crossin      | Ludlam           | Sherry   |
| Bilyk        | Feeney       | Marshall         | Siewert  |
| Bishop       | Fielding     | McEwen           | Stephens |
| Brown, Bob   | Forshaw      | McLucas          | Sterle   |
| Brown, Carol | Furner       | Milne            | Wortley  |
| Cameron      | Hanson-Young | Moore            | Xenophon |
| Carr         | Hogg         | O'Brien (Teller) |          |
| Collins      | Hurley       | Polley           |          |
| Conroy       | Hutchins     | Pratt            |          |

NOES, 31

Senators—

|            |                   |           |                   |
|------------|-------------------|-----------|-------------------|
| Abetz      | Bushby            | Fisher    | Minchin           |
| Adams      | Cash              | Heffernan | Parry             |
| Back       | Colbeck           | Humphries | Payne             |
| Barnett    | Cormann           | Johnston  | Ryan              |
| Bernardi   | Eggleston         | Kroger    | Troeth            |
| Birmingham | Ferguson          | Macdonald | Trood             |
| Boswell    | Fierravanti-Wells | Mason     | Williams (Teller) |
| Brandis    | Fifield           | McGauran  |                   |

Question agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

---

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

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

**5 AUTOMOTIVE TRANSFORMATION SCHEME BILL 2009**

A message from the House of Representatives was reported disagreeing to the amendment made by the Senate to the following bill:

Message no. 408, dated 15 September 2009—Automotive Transformation Scheme Bill 2009.

Ordered, on the motion of the Minister for Innovation, Industry, Science and Research (Senator Carr), that the message be considered in committee of the whole immediately.

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*In the committee*

Senator Carr moved—That the committee does not insist on its amendment to which the House of Representatives has disagreed.

Debate ensued.

Question put and passed.

Resolution to be reported.

---

The Acting Deputy President (Senator Carol Brown) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 408 from the House of Representatives relating to the Automotive Transformation Scheme Bill 2009 and had resolved not to insist on the amendment made by the Senate to which the House had disagreed.

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

**6 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Innovation, Industry, Science and Research (Senator Carr), by leave, moved—That the government business order of the day relating to the Health Insurance Amendment (Extended Medicare Safety Net) Bill 2009 be called on immediately.

Question put and passed.

**7 HEALTH INSURANCE AMENDMENT (EXTENDED MEDICARE SAFETY NET) BILL 2009**

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

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*In the committee*

Bill, taken as a whole by leave, debated.

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

Schedule 1, item 3, page 4 (line 23), before “The”, insert “(1)”.

Schedule 1, item 3, page 4 (after line 31), at the end of section 10B, add:

- (2) A determination made under subsection (1) does not come into effect until it has been approved by resolution of each House of the Parliament.

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

Schedule 1, page 4 (after line 31), after item 3, insert:

**3A After section 10A**

Insert:

**10C Evaluation of the caps measures**

- (1) The Minister must cause an independent evaluation to be conducted of the impact and operation of determinations made by the Minister under section 10B.
- (2) The evaluation must start not later than 1 April 2011.
- (3) The Minister must cause a written report of the evaluation to be prepared.
- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament by 1 July 2011.

Bill, as amended, agreed to.

Bill to be reported with amendments.

---

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

On the motion of the Special Minister of State (Senator Ludwig) the report from the committee was adopted and the bill read a third time.

**8 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator McEwen, by leave and at the request of the Chair of the Legal and Constitutional Affairs Legislation Committee (Senator Crossin), moved—That the Legal and Constitutional Affairs Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today.

Question put and passed.

**9 FEDERAL COURT OF AUSTRALIA AMENDMENT (CRIMINAL JURISDICTION) BILL 2008**

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

Debate resumed.

*At 12.45 pm:* Debate was interrupted.

**10 MATTERS OF PUBLIC INTEREST**

Matters of public interest were discussed.

*Suspension of sitting:* On the motion of the Minister for Immigration and Citizenship (Senator Evans) the sitting of the Senate was suspended at 1.57 pm till 2 pm.

---

*At 2 pm—*

**11 QUESTIONS**

Questions without notice were answered.

**12 MOTION TO TAKE NOTE OF ANSWERS**

The Leader of the Opposition in the Senate (Senator Minchin) moved—That the Senate take note of the answers given by the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) to questions without notice asked by Senator Minchin today relating to Telstra.

Debate ensued.

Question put and passed.

## 13 NOTICES

The Chair of the Select Committee on Agricultural and Related Industries (Senator Heffernan): To move on the next day of sitting—That the report of the Select Committee on Agricultural and Related Industries on the incidence and severity of bushfires across Australia be presented by 26 November 2009. (*general business notice of motion no. 565*)

The Chair of the Select Committee on Fuel and Energy (Senator Cormann): To move on the next day of sitting—That the resolution of the Senate of 25 June 2008, as amended, appointing the Select Committee on Fuel and Energy, be amended to omit “21 October 2009”, and substitute “30 March 2010”. (*general business notice of motion no. 566*)

Senator Boswell: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Renewable Energy (Electricity) Act 2000* in connection with food processing activities. **Renewable Energy (Food Processing Activities) Amendment Bill 2009**. (*general business notice of motion no. 567*)

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

(a) notes that:

- (i) World Alzheimer’s Day, 21 September, is a day when organisations around the globe unite in their efforts to raise awareness about the disease and its impact on our families, communities and nations,
- (ii) in 2010 the first baby boomers will turn 65 years and by 2020 there will be an estimated 75 000 baby boomers with dementia,
- (iii) the prevalence of dementia in Australia is projected to increase from 245 000 today to more than 1.1 million by 2050,
- (iv) dementia will have a dramatic impact on health and care costs, with dementia likely to outstrip any other health condition by the 2060s,
- (v) in 2005 Australia was the first nation to adopt dementia as a national health priority by implementing the ‘Dementia Initiative – making Dementia a National Health Priority’ with bipartisan support, and
- (vi) in 2010 the Government will determine Australian dementia funding priorities for the next 5 years; and

(b) calls on the Government to:

- (i) continue the Dementia Initiative and to support the promotion of prevention, early intervention and diagnosis of dementia to improve access to community and residential care services and to support dementia research, and
- (ii) adopt the twin objectives of a national strategy to improve the provision of quality dementia care for all Australians and to reduce the prevalence and incidence of dementia in the future. (*general business notice of motion no. 568*)

Senator Hanson-Young: To move on the next day of sitting—That the Senate—

(a) notes that:

- (i) Saturday, 19 September 2009 is National Babies Day,
- (ii) this day is about remembering the babies who passed away too soon and celebrating the lives of healthy babies across Australia, and
- (iii) 1 in 4 pregnancies end in miscarriage or stillbirth;

- (b) recognises the great work of the Bonnie Babes Foundation in providing, among other things:
  - (i) much needed support and counselling to families struggling with the loss of a baby through miscarriage, stillbirth or prematurity, and
  - (ii) medical equipment to hospitals for premature babies; and
- (c) calls on the Government to work closely with organisations such as the Bonnie Babes Foundation in assisting with vital medical research projects into pregnancy loss and complications to women's health during and following pregnancy. (*general business notice of motion no. 569*)

The Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to ensure that families of Australians reported missing overseas are given essential help and information, and for related purposes. ***Britt Laphorne Bill 2009***. (*general business notice of motion no. 570*)

Senators Moore and Humphries: To move on the next day of sitting—That the Senate—

- (a) notes that:
  - (i) the right to life is a fundamental human right recognised in:
    - (A) the Universal Declaration of Human Rights, and
    - (B) the International Covenant on Civil and Political Rights,
  - (ii) respect for human life and dignity are values common to all Australians,
  - (iii) abhorrence of the death penalty is a fundamental value in Australian society, and
  - (iv) Australia is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights which is aimed at the universal abolition of the death penalty; and
- (b) calls on all governments to follow the example recently set by Uzbekistan, Argentina and Togo and immediately cease all executions. (*general business notice of motion no. 571*)

Senator Hanson-Young: To move on the next day of sitting—That the Senate—

- (a) notes that:
  - (i) the Socialist Republic of Vietnam continues to apply the death penalty, with at least 19 reported executions in 2008 alone,
  - (ii) the right to life is a fundamental human right recognised in:
    - (A) the Universal Declaration of Human Rights, to which both Australia and Vietnam are parties, and
    - (B) the International Covenant on Civil and Political Rights, to which both Australia and Vietnam are parties,
  - (iii) respect for human life and dignity are values common to Australia and Vietnam,
  - (iv) abhorrence of the death penalty is a fundamental value in Australian society, and
  - (v) Australia is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights which is aimed at the universal abolition of the death penalty; and

- (b) calls on the Government of the Socialist Republic of Vietnam to follow the example recently set by Uzbekistan and Argentina and immediately cease all executions and waive the death sentences of some 59 prisoners currently awaiting execution. (*general business notice of motion no. 572*)

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

- (a) notes the intention of the Government to hold an inquiry into the Montara oil spill; and
- (b) calls on the Government to ensure that the terms of reference for the inquiry include:
  - (i) the resource management implications of the oil spill,
  - (ii) the environmental impact and potential impact of the oil spill,
  - (iii) an assessment of the management and effectiveness of responses to the oil spill, including coordination across the Commonwealth Government and across jurisdictions,
  - (iv) the provision and accessibility of relevant information to affected stakeholders and the public, and
  - (v) other related matters. (*general business notice of motion no. 573*)

Senator Milne: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to introduce an emissions intensity cap and building efficiency certificate trading scheme for non-residential buildings to provide an economic incentive for investment in energy efficiency, and for related purposes. ***Safe Climate (Energy Efficient Non-Residential Buildings Scheme) Bill 2009***. (*general business notice of motion no. 574*)

The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That the Senate—

- (a) notes the effort by the President of the United States of America (US), Barack Obama, and his administration to ensure all US citizens have access to affordable health care; and
- (b) commends this course as one Australia has long since undertaken with success and sends assurances to our trans-Pacific neighbours that since Australia adopted universal health care in 1984:
  - (i) life expectancy for males has increased from 72.6 to 79.1 years and for females from 78.7 to 83.5 years,
  - (ii) spending on health care has increased from 0.99 per cent of gross domestic product to 1.19 per cent in the 2008-09 financial year, or from 3.5 per cent of outlays to 4.4 per cent, and
  - (iii) lives have been saved and suffering reduced in Australia. (*general business notice of motion no. 575*)

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

- (a) notes that the United Nations Security Council will hold a summit on nuclear non-proliferation and disarmament on 24 September 2009 with the President of the United States of America, Barack Obama, presiding; and
- (b) calls on the Government to:
  - (i) seize the opportunity presented by participating in the debate,
  - (ii) welcome the recent renewed optimism for a world free of nuclear weapons as expressed by the leaders of some nuclear weapons states,

- (iii) affirm the commitment made at the 2000 Nuclear Non-proliferation Treaty [NPT] Review Conference to the diminishing role of nuclear weapons in security policies, and
- (iv) urge all states possessing nuclear weapons to concrete and substantive action towards the elimination of their nuclear arsenals. (*general business notice of motion no. 576*)

The Special Minister of State (Senator Ludwig): 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 (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009  
 Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009  
 Foreign States Immunities Amendment Bill 2009.

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*Documents:* Senator Ludwig tabled the following documents:

Consideration of legislation—Statements of reasons [2] for introduction and passage of the bills in the 2009 spring sittings.

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The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That the Senate—

- (a) rejects the assertion by the Queensland Premier, Ms Anna Bligh, that the proposed Traveston Crossing Dam will save threatened species like the Mary River cod, Mary River turtle and Australian lungfish from farmer-induced extinction;
- (b) recognises that, to the contrary, the Traveston Crossing Dam presents real threats to these species and others and to the farmlands in question; and
- (c) calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to reject the Premier's crude and misinformed assessment. (*general business notice of motion no. 577*)

The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That, following the sightings of a flock of swift parrots feeding in the forests of southeast New South Wales surrounding Bermagui, the Senate calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to assess the status of these forests as swift parrot habitats and advise Forests NSW accordingly of any need to protect this vital habitat. (*general business notice of motion no. 578*)

#### 14 POSTPONEMENT

The following item of business was postponed:

Business of the Senate notice of motion no. 2 standing in the name of Senator Colbeck for today, proposing the disallowance of the Inclusion of ecological communities in the list of threatened ecological communities, postponed till 17 September 2009.



**15 APPROPRIATIONS AND STAFFING—STANDING COMMITTEE—ORDINARY ANNUAL SERVICES—GOVERNMENT RESPONSE**

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 561—That the Senate—

- (a) notes that:
  - (i) the inclusion of expenditure not for the ordinary annual services of the government in the appropriation bill for the ordinary annual services, which is required to be separated from other appropriations by section 54 of the Constitution, was raised by the Australian National Audit Office and the Appropriations and Staffing Committee in 2005,
  - (ii) the matter has been the subject of successive reports by the Appropriations and Staffing Committee and the Finance and Public Administration Committee since that time, and
  - (iii) the Minister for Finance and Deregulation has not yet carried out an undertaking to provide to the Appropriations and Staffing Committee proposals whereby this problem might be overcome; and
- (b) calls upon the Minister for Finance and Deregulation to provide a substantive response to the Appropriations and Staffing Committee on this matter by 16 November 2009.

Question put and passed.

**16 FAMILY AND COMMUNITY SERVICES—SOUTH AUSTRALIA—MAGILL YOUTH TRAINING CENTRE**

Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 562—That the Senate—

- (a) notes that:
  - (i) the young people detained in the Magill Youth Training Centre in South Australia are being held in degrading conditions, and
  - (ii) in the assessment of the 2009 Australian Youth Representative to the United Nations (UN), Mr Chris Varney, this represents a breach of the UN Convention on the Rights of the Child;
- (b) recognises that:
  - (i) in 2006, the South Australian Labor Government acknowledged that the centre was in need of replacement as it breached modern building codes and occupational health and safety requirements, and
  - (ii) the South Australian Government is yet to keep its election promise to build a new facility; and
- (c) calls on the Federal Minister for Early Childhood Education, Childcare and Youth (Ms Ellis) to intervene in this urgent matter and ensure that a new centre is built, as promised by the South Australian Government.

*Statement by leave:* The Special Minister of State (Senator Ludwig), by leave, made a statement relating to the motion.

Question put and passed.

*Statement by leave:* Senator O'Brien, by leave, made a statement relating to the motion.

**17 ENVIRONMENT—QUEENSLAND—TRAVESTON CROSSING DAM**

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 563—That the Senate calls on the Minister for the Environment, Heritage and the Arts (Mr Garrett) to make public, in the week beginning 13 September 2009, the draft report on the Traveston Crossing Dam by Queensland's Coordinator-General.

*Statements by leave:* The Special Minister of State (Senator Ludwig) and Senators Bob Brown and Macdonald, by leave, made statements relating to the motion.

Question put and passed.

*Statement by leave:* Senator O'Brien, by leave, made a statement relating to the motion.

**18 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT**

Senator Parry, at the request of the Chair of the Education, Employment and Workplace Relations References Committee (Senator Humphries) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 556—That the time for the presentation of the report of the Education, Employment and Workplace Relations References Committee on the oversight of the child care industry be extended to 29 October 2009.

Question put and passed.

**19 LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT**

Senator Parry, at the request of the Chair of the Legal and Constitutional Affairs References Committee (Senator Barnett) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 557—That the time for the presentation of the report of the Legal and Constitutional Affairs References Committee on Australia's judicial system and the role of judges be extended to 18 November 2009.

Question put and passed.

**20 ENVIRONMENT—VICTORIA—BROWN MOUNTAIN**

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 559—That the Senate—

(a) notes that:

- (i) Brown Mountain in East Gippsland, Victoria, is a natural treasure with 600-year-old trees (carbon dated) and at least five threatened species, including the long-footed potoroo, the spot-tailed quoll, the Orbost spiny crayfish, the sooty owl and the large brown tree frog,
- (ii) the long-footed potoroo and the spot-tailed quoll are federally listed as endangered and the forests are covered by the East Gippsland Regional Forest Agreement which commits Victoria to 'ecologically sustainable' forest management including biodiversity conservation, and
- (iii) Environment East Gippsland has been granted an injunction restraining VicForests from logging two forest areas at Brown Mountain;

(b) calls on the Victorian Government to meet its ecological obligations to protect threatened wildlife by halting logging at Brown Mountain; and

- (c) calls on the Minister for Agriculture, Fisheries and Forestry (Mr Burke) and the Minister for the Environment, Heritage and the Arts (Mr Garrett) to ensure that the Victorian Government fulfils its ecological obligations and to inform the Senate, no later than 26 October 2009, of the steps they are taking to do so.

Question put.

The Senate divided—

AYES, 6

Senators—

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

NOES, 37

Senators—

|              |           |           |                |
|--------------|-----------|-----------|----------------|
| Adams        | Collins   | Hurley    | O'Brien        |
| Back         | Coonan    | Hutchins  | Parry (Teller) |
| Barnett      | Crossin   | Ludwig    | Pratt          |
| Bilyk        | Faulkner  | Lundy     | Sterle         |
| Birmingham   | Feeny     | Macdonald | Troeth         |
| Bishop       | Ferguson  | Marshall  | Williams       |
| Brown, Carol | Fielding  | McEwen    | Wortley        |
| Bushby       | Fisher    | McLucas   |                |
| Cameron      | Furner    | Moore     |                |
| Colbeck      | Heffernan | Nash      |                |

Question negatived.

## 21 ECONOMICS—BANKS—EXECUTIVE SALARIES

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 550—That the Senate—

(a) notes:

- (i) the recent 6 per cent pay rise given to the Commonwealth Bank chief executive, Mr Ralph Norris, providing him a salary package of \$9.2 million at the same time as the bank's annual profit is dropping,
- (ii) that in 2008, in response to the financial crisis, Australian taxpayers guaranteed deposits in the four major banks to the value of \$700 billion, and
- (iii) that tougher rules on banker remuneration was a key topic at the G-20 Finance Ministers' meeting held in September 2009; and

(b) calls on the Government to regulate the banks and link bank executive salaries to the performance of banks.

Question put.

The Senate divided—

AYES, 7

Senators—

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

## NOES, 36

Senators—

|              |           |           |                  |
|--------------|-----------|-----------|------------------|
| Adams        | Collins   | Hurley    | Nash             |
| Back         | Coonan    | Hutchins  | O'Brien (Teller) |
| Barnett      | Crossin   | Ludwig    | Parry            |
| Bilyk        | Faulkner  | Lundy     | Polley           |
| Birmingham   | Feeney    | Macdonald | Pratt            |
| Bishop       | Ferguson  | Marshall  | Sterle           |
| Brown, Carol | Fisher    | McEwen    | Troeth           |
| Cameron      | Furner    | McLucas   | Williams         |
| Colbeck      | Heffernan | Moore     | Wortley          |

Question negatived.

## 22 IMMIGRATION—SUSPECTED ILLEGAL ENTRY VESSELS—REVIEW OF PROTOCOLS

Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 546—That the Senate calls on the Minister for Home Affairs (Mr O'Connor), the Minister for Defence (Senator Faulkner) and the Minister for Immigration and Citizenship (Senator Evans) to conduct a review of the current protocols for the interception of Suspected Illegal Entry Vessels in Australian waters and report back to the Senate by 26 November 2009.

*Statements by leave:* The Minister for Defence (Senator Faulkner) and Senator Hanson-Young, by leave, made statements relating to the motion.

Question put.

The Senate divided—

## AYES, 6

Senators—

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

## NOES, 37

Senators—

|              |           |           |                |
|--------------|-----------|-----------|----------------|
| Adams        | Coonan    | Johnston  | Parry (Teller) |
| Back         | Crossin   | Ludwig    | Pratt          |
| Barnett      | Faulkner  | Lundy     | Sterle         |
| Bilyk        | Feeney    | Macdonald | Troeth         |
| Birmingham   | Ferguson  | Marshall  | Williams       |
| Bishop       | Fisher    | McEwen    | Wortley        |
| Brown, Carol | Furner    | McLucas   | Xenophon       |
| Cameron      | Heffernan | Moore     |                |
| Colbeck      | Hurley    | Nash      |                |
| Collins      | Hutchins  | O'Brien   |                |

Question negatived.

**23 ENVIRONMENT—AUSTRALIAN FOREST COVER—MAPS—ORDER FOR PRODUCTION OF DOCUMENTS**

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 564—That there be laid on the table, no later than 4 pm on 26 October 2009, a map of Australian forest cover using the Kyoto definition of ‘forest’ for each year since 1990, at the highest available resolution, in any widely used GIS format.

Question put and passed.

*Statements by leave:* Senator O’Brien and the Leader of the Australian Greens (Senator Bob Brown), by leave, made statements relating to the motion.

**24 GEOTHERMAL AND OTHER RENEWABLE ENERGY (EMERGING TECHNOLOGIES) AMENDMENT BILL 2009 (NO. 2)**

Senator Parry, at the request of the Leader of the Opposition in the Senate (Senator Minchin) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 560—That the following bill be introduced:

A Bill for an Act to amend the *Renewable Energy (Electricity) Act 2000* in connection with emerging technologies.

Question put and passed.

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

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*Explanatory memorandum:* Senator Parry, by leave, tabled an explanatory memorandum relating to the bill.

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

**25 SCRUTINY OF BILLS—STANDING COMMITTEE—11TH REPORT AND ALERT DIGEST NO. 12 OF 2009**

Senator Parry, at the request of the Chairman of the Standing Committee for the Scrutiny of Bills (Senator Coonan), tabled the following report and document:

Scrutiny of Bills—Standing Committee—

11th report of 2009, dated 16 September 2009.

Alert Digest No. 12 of 2009, dated 16 September 2009.

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

Senator Parry moved—That the Senate take note of the report.

Debate ensued.

Question put and passed.

**26 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—REPORT—  
ANNUAL REPORTS**

Pursuant to order, Senator O'Brien, at the request of the Chair of the Legal and Constitutional Affairs Legislation Committee (Senator Crossin), tabled the following report:

Legal and Constitutional Affairs Legislation Committee—Annual reports referred to committees—Report no. 2 of 2009, dated September 2009.

Report ordered to be printed on the motion of Senator O'Brien.

**27 FINANCE—FISCAL POLICY—MINISTERIAL STATEMENT—DOCUMENT**

The Minister for Defence (Senator Faulkner) tabled the following document:

Finance—Fiscal policy—Ministerial statement by the Minister for Finance and Deregulation (Mr Tanner), dated 16 September 2009.

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

Question put and passed.

**28 WORK OF COMMITTEES—DOCUMENT**

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

Work of committees—Financial year statistics 2008-09; and Half-year statistics: 1 January to 30 June 2009.

Document ordered to be printed on the motion of Senator McEwen.

**29 DOCUMENTS**

The following documents were tabled by the Clerk:

Commonwealth Authorities and Companies Act—Notices under section 45—  
NBN Co Limited.  
NBN Tasmania Limited.

**30 COMMITTEE MEMBERSHIP**

The Acting Deputy President (Senator Barnett) informed the Senate that the President had received a letter requesting changes in the membership of a committee.

The Minister for Defence (Senator Faulkner), by leave, moved—That Senator McLucas replace Senator Crossin on the Legal and Constitutional Affairs Legislation Committee on 19 October and 20 October 2009.

Question put and passed.

**31 FREEDOM OF INFORMATION (REMOVAL OF CONCLUSIVE CERTIFICATES AND  
OTHER MEASURES) BILL 2008 [2009]**

A message from the House of Representatives was reported agreeing to the following bill without amendment:

Message no. 407, dated 15 September 2009—Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill 2008 [2009].

**32 ASIAN DEVELOPMENT BANK (ADDITIONAL SUBSCRIPTION) BILL 2009**

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

Message no. 411, dated 16 September 2009—A Bill for an Act relating to the subscription by Australia for additional shares in the capital stock of the Asian Development Bank, and for related purposes.

The Minister for Defence (Senator Faulkner) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

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

**33 CUSTOMS AMENDMENT (ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2009**

**CUSTOMS TARIFF AMENDMENT (ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2009**

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

Message no. 409, dated 16 September 2009—A Bill for an Act to amend the *Customs Act 1901*, and for related purposes.

Message no. 410, dated 16 September 2009—A Bill for an Act to amend the *Customs Tariff Act 1995*, and for related purposes.

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

Question put and passed.

Bills read a first time.

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

*Consideration of legislation:* Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

**34 THREAT ABATEMENT PLAN—PROPOSED DISALLOWANCE**

Senator Siewert, pursuant to notice, moved business of the Senate notice of motion no. 1—That the Threat Abatement Plan for disease in natural ecosystems caused by *Phytophthora cinnamomi* (2009), made under section 279 of the *Environment Protection and Biodiversity Conservation Act 1999*, be disallowed.

Debate ensued.

On the motion of Senator Parry the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

**35 FEDERAL COURT OF AUSTRALIA AMENDMENT (CRIMINAL JURISDICTION)  
BILL 2008**

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

Debate resumed.

Senator Abetz moved the following amendment:

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

- (a) at least one Federal Court Registry in each state is staffed on a full-time basis; and
- (b) the complement of staff in each such registry includes a full-time Registrar”.

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.

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*In the committee*

Bill taken as a whole by leave.

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*Explanatory memoranda:* The Parliamentary Secretary for Social Inclusion (Senator Stephens) tabled supplementary explanatory memoranda [2] relating to the government amendments to be moved to the bill.

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

Schedule 1, item 2, page 11 (lines 4 and 5), omit “, or alternatively, order pre-trial disclosure (see section 23CD)”, substitute “order pre-trial disclosure (see subsection 23CD(1))”.

Schedule 1, item 2, page 11 (line 15), omit “section 23CD”, substitute “subsection 23CD(1)”.

Schedule 1, item 2, page 12 (line 1), omit the heading to section 23CD, substitute:

**23CD Pre-trial and ongoing disclosure**

Schedule 1, item 2, page 12 (line 2), before “After”, insert “(1)”.

Schedule 1, item 2, page 12 (after line 19), at the end of section 23CD, add:

- (2) The accused must give the following to the prosecutor as soon as practicable after the accused’s first pre-trial hearing before the Court in relation to the indictment:



- (a) if at the trial the accused proposes to adduce supporting evidence of an alibi—notice of particulars, prepared in accordance with the Rules of Court, of that alibi;
- (b) if at the trial the accused proposes to adduce supporting evidence that the accused was suffering from a mental impairment (within the meaning of section 7.3 of the *Criminal Code*)—notice of particulars, prepared in accordance with the Rules of Court, of that impairment.

Note: A party may also be required to disclose additional information as a result of other laws (for example, subsection 44ZZRO(2) of the *Trade Practices Act 1974*).

Schedule 1, item 2, page 13 (line 33), before “The”, insert “(1)”.

Schedule 1, item 2, page 14 (line 5), omit “basis”, substitute “general basis”.

Schedule 1, item 2, page 14 (line 11), omit “basis”, substitute “general basis”.

Schedule 1, item 2, page 15 (lines 1 to 8), omit paragraphs 23CF(i) and (j).

Schedule 1, item 2, page 15 (after line 12), at the end of section 23CF, add:

- (2) Paragraph (1)(a) and subparagraph (1)(b)(ii) do not require the accused to disclose details of the accused’s proposed defence.

Schedule 1, item 2, page 15 (line 23), omit “23CF(k)”, substitute “23CF(1)(k)”.

Schedule 1, item 2, page 16 (line 20), omit “section 23CD”, substitute “subsection 23CD(1)”.

Schedule 1, item 2, page 16 (line 23), omit “subsections (2) and (3)”, substitute “subsection (2)”.

Schedule 1, item 2, page 17 (line 3), omit “or”.

Schedule 1, item 2, page 17 (lines 4 to 6), omit paragraph 23CH(2)(f).

Schedule 1, item 2, page 17 (lines 12 to 14), omit subsection 23CH(3).

Schedule 1, item 2, page 18 (lines 18 and 19), omit “A copy or details of any information, document or other thing is not required to be given under an order under section 23CD”, substitute “Nothing in this Subdivision requires a copy or details of any information, document or other thing to be given”.

Schedule 1, item 2, page 20 (lines 1 to 34), omit section 23CL, substitute:

**23CL Effect on legal professional privilege and other privileges and duties etc.**

*Litigation privilege not an excuse for failing to comply with pre-trial disclosure requirements*

- (1) A party is not excused from disclosing material under this Subdivision on the basis of litigation privilege claimed by the party in relation to the material.

Note: The party can still be excused from disclosing material on the basis of advice privilege (that is, privilege that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 118 of the *Evidence Act 1995*).

- (2) This Subdivision does not otherwise:
  - (a) abrogate or affect the law relating to legal professional privilege;
  - or
  - (b) amount to a waiver of legal professional privilege.

Note: This means, for example, that legal professional privilege will apply for the trial.

*Other privileges and duties unaffected*

- (3) This Subdivision does not abrogate or affect:
- (a) the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or
  - (b) the law relating to public interest immunity.
- (4) This Subdivision does not abrogate or affect the law relating to any duty of a person investigating the accused to ensure that information and other things are disclosed to the prosecutor or the accused.

*Definitions*

- (5) In this section:
- legal professional privilege*** includes privilege (however described) under Division 1 of Part 3.10 of the *Evidence Act 1995*, or a similar law of a State or Territory.
- litigation privilege*** means privilege (however described) that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 119 of the *Evidence Act 1995*.

Schedule 1, item 2, page 21 (lines 1 to 38), omit section 23CM, substitute:

**23CM Consequences of disclosure requirements**

*Orders to ensure non-compliance does not unfairly affect the other party*

- (1) The Court may make such orders as it thinks appropriate to ensure that:
- (a) any failure by the prosecutor to comply with an order under subsection 23CD(1) does not cause unfairness to the accused; and
  - (b) any failure by the accused to comply with an order under subsection 23CD(1) does not prejudice the prosecutor's ability to efficiently conduct the prosecution.
- (2) However, the Court must not make an order under subsection (1) if it would result in an unfair trial.

*Certain evidence cannot be adduced at trial unless there is earlier disclosure*

- (3) If the accused fails to comply with subsection 23CD(2) in relation to an alibi, the accused may only adduce evidence of the alibi with the leave of the Court.
- (4) If the accused fails to comply with subsection 23CD(2) in relation to a mental impairment (within the meaning of section 7.3 of the *Criminal Code*), the accused may only adduce evidence that the accused was suffering from the impairment with the leave of the Court.

Schedule 1, item 2, page 22 (lines 4 and 5), omit "in accordance with an order under section 23CD", substitute "under this Subdivision".

Schedule 1, item 2, page 22 (line 12), omit "order under section 23CD was made", substitute "entrusted person obtained the protected material".

Schedule 1, item 2, page 23 (lines 2 and 3), omit “order under section 23CD was made”, substitute “entrusted person obtained the protected material”.

Schedule 1, item 2, page 23 (lines 10 and 11), omit “some or all of the material disclosed in accordance with an order under section 23CD”, substitute “any or all of the material disclosed under this Subdivision”.

Schedule 1, item 2, page 27 (lines 8 to 20), omit section 23DG, substitute:

**23DG Jury roll for a jury district**

- (1) The Sheriff may prepare a written jury roll for a jury district.
- (2) A jury roll prepared under subsection (1) is not a legislative instrument.

Schedule 1, item 2, page 32 (lines 1 to 6), omit subsection 23DM(2) (including the notes), substitute:

- (2) The *jury list* consists of:
  - (a) the names and addresses; and
  - (b) if readily available to the Sheriff—the dates of birth and sex;
 of persons that the Sheriff selects from the jury roll for the applicable jury district.

Note 1: The jury list may be supplemented under subsection (5).

Note 2: The Sheriff may remove a person’s name from the jury list under section 23DO.

Schedule 1, item 4, page 82 (line 16), omit “significant”, substitute “material”.

Schedule 1, item 4, page 82 (after line 30), after subsection 58DB(2), insert:

- (2A) An accused applying for bail during indictable primary proceedings is entitled to be granted bail during the proceedings in relation to an offence against either of the following sections of the *Trade Practices Act 1974*:
  - (a) section 44ZZRF (making a contract etc. containing a cartel provision);
  - (b) section 44ZZRG (giving effect to a cartel provision);
 unless the Court decides otherwise after considering the matters mentioned in subsection (2).

Schedule 1, item 4, page 83 (line 22) to page 84 (line 3), omit section 58DD, substitute:

**58DD Bail to be stayed pending appeal**

- (1) If:
  - (a) the Court makes a bail order; and
  - (b) the prosecutor requests the Court to stay the bail order pending appeal;
 the bail order is stayed by force of this section for 48 hours.
- (2) If a notice of appeal from the bail order is filed within that 48 hours, the stay of the bail order continues by force of this section until:
  - (a) the appeal is finally disposed of; or
  - (b) the prosecutor withdraws the appeal in accordance with the Rules of Court; or

(c) a Full Court orders, under this subsection, that the stay be set aside;

whichever happens first.

- (3) If the prosecutor makes a request under paragraph (1)(b), the appeal from the making of the bail order must be dealt with as quickly as possible.
- (4) If a bail order is stayed by force of this section, the Court must, by warrant of commitment, remand the accused in custody for the duration of the stay.
- (5) A warrant of commitment under subsection (4) may be signed by any Judge, the Registrar or any Deputy Registrar, District Registrar or Deputy District Registrar of the Court.

Schedule 1, item 21, page 103 (line 2), omit “section 23CD”, substitute “subsection 23CD(1)”.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Stephens, in respect of Schedule 1, item 32.

Question—That Schedule 1, item 32 stand as printed—put and negatived.

On the motion of Senator Stephens the following amendment was agreed to:

Schedule 1, item 3, page 56 (lines 5 to 29), omit subsections 30AE(4) and (5), substitute:

- (4) In relation to criminal appeal proceedings, a single Judge (sitting in Chambers or in open court) or a Full Court may:
  - (a) join or remove a party to an appeal to the Court; or
  - (b) make an order by consent disposing of an appeal to the Court; or
  - (c) make an order that an appeal to the Court be dismissed for want of prosecution; or
  - (d) make an order that an appeal to the Court be dismissed for:
    - (i) failure to comply with a direction of the Court; or
    - (ii) failure of the appellant to attend a hearing relating to the appeal; or
  - (e) vary or set aside an order under paragraph (c) or (d); or
  - (f) give directions about the conduct of an appeal to the Court, including directions about:
    - (i) the use of written submissions; and
    - (ii) limiting the time for oral argument.
- (4A) An application for the exercise of a power mentioned in subsection (4) must be heard and determined by a single Judge unless:
  - (a) a Judge directs that the application be heard and determined by a Full Court; or
  - (b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.
- (5) The Rules of Court may make provision enabling an application of the kind mentioned in subsection (2), (3) or (4A) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Stephens, in respect of Schedule 1, items 60 to 63.

Schedule 1, items 60 to 63 debated.

Question—That Schedule 1, items 60 to 63 stand as printed—put and negatived.

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

Schedule 1, page 112 (after line 23), after item 74, insert:

**74A At the end of section 34**

Add:

- (3) The Governor-General shall cause at least one Registry in each State to be staffed on a full-time basis and the complement of staff in each such Registry to include a full-time Registrar.

Debate ensued.

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*At 6.50 pm:* The Acting Deputy President (Senator Trood) resumed the chair and the Temporary Chair of Committees reported progress.

**36 GOVERNMENT DOCUMENTS—CONSIDERATION**

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

Regional Forest Agreement between the Commonwealth of Australia and New South Wales—Eden Region—Report on implementation for 2004-05. Motion to take note of document moved by Senator Parry and debated. Debate adjourned till Thursday at general business, the Leader of the Australian Greens (Senator Bob Brown) in continuation.

Regional Forest Agreement between the Commonwealth of Australia and New South Wales—North East Region—Report on implementation for 2004-05. Motion to take note of document moved by Senator Parry and debated. Debate adjourned till Thursday at general business, the Leader of the Australian Greens (Senator Bob Brown) in continuation.

Regional Forest Agreement between the Commonwealth of Australia and New South Wales—Southern Region—Report on implementation for 2004-05. Motion to take note of document moved by Senator Parry and debated. Debate adjourned till Thursday at general business, the Leader of the Australian Greens (Senator Bob Brown) in continuation.

Regional Forest Agreement between the Commonwealth of Australia and New South Wales—Southern Region—Report on implementation for 2005-06. Motion to take note of document moved by Senator Parry and debated. Debate adjourned till Thursday at general business, the Leader of the Australian Greens (Senator Bob Brown) in continuation.

**37 ADJOURNMENT**

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

Debate ensued.

The Senate adjourned at 7.17 pm till Thursday, 17 September 2009 at 9.30 am.

**38 ATTENDANCE**

Present, all senators except Senators Boyce\*, Joyce\* and Wong\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate