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1 **MEETING OF SENATE**

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

2 **PRIVILEGES—STANDING COMMITTEE—LEAVE TO MEET DURING SITTINGS**

Senator O'Brien, by leave and at the request of the Chair of the Standing Committee of Privileges (Senator Brandis), moved—That the Standing Committee of Privileges be authorised to hold private meetings otherwise than in accordance with standing order 33(1) during the sitting of the Senate today and Tuesday, 24 November 2009.

Question put and passed.

3 **CARBON POLLUTION REDUCTION SCHEME BILL 2009 [No. 2]**

CARBON POLLUTION REDUCTION SCHEME (CONSEQUENTIAL AMENDMENTS) BILL 2009 [No. 2]

AUSTRALIAN CLIMATE CHANGE REGULATORY AUTHORITY BILL 2009 [No. 2]

CARBON POLLUTION REDUCTION SCHEME (CHARGES—CUSTOMS)

BILL 2009 [No. 2]

CARBON POLLUTION REDUCTION SCHEME (CHARGES—EXCISE)

BILL 2009 [No. 2]

CARBON POLLUTION REDUCTION SCHEME (CHARGES—GENERAL)

BILL 2009 [No. 2]

CARBON POLLUTION REDUCTION SCHEME (CPRS FUEL CREDITS)

BILL 2009 [No. 2]

CARBON POLLUTION REDUCTION SCHEME (CPRS FUEL CREDITS)

(CONSEQUENTIAL AMENDMENTS) BILL 2009 [No. 2]

EXCISE TARIFF AMENDMENT (CARBON POLLUTION REDUCTION SCHEME)

BILL 2009 [No. 2]

CUSTOMS TARIFF AMENDMENT (CARBON POLLUTION REDUCTION SCHEME)

BILL 2009 [No. 2]

CARBON POLLUTION REDUCTION SCHEME AMENDMENT (HOUSEHOLD

ASSISTANCE) BILL 2009 [No. 2]

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens)—That these bills be now read a second time—*and on the amendment moved by the Leader of the Australian Greens (Senator Bob Brown) in respect of the Carbon Pollution Reduction Scheme Bill 2009 [No. 2]:*

At the end of the motion, add “provided that the Government first commits to entering the climate treaty negotiations at the end of 2009 with an unconditional commitment to reduce emissions by at least 25 per cent below 1990 levels by 2020 and a willingness to reduce emissions by 40 per cent below 1990 levels by 2020 in the context of a global treaty”.

Debate resumed.

At 2 pm: Debate was interrupted while Senator Ryan was speaking.

4 **QUESTIONS**

Questions without notice were answered.

5 MOTIONS TO TAKE NOTE OF ANSWERS

Senator Williams moved—That the Senate take note of the answer given by the Minister for Climate Change and Water (Senator Wong) to a question without notice asked by Senator Williams today relating to bushfires.

Debate ensued.

Question put and passed.

Senator Siewert moved—That the Senate take note of the answer given by the Special Minister of State (Senator Ludwig) to a question without notice asked by Senator Siewert today relating to a transportable dialysis machine in Alice Springs, Northern Territory.

Question put and passed.

6 PETITIONS

The following 2 petitions, lodged with the Clerk by the senators indicated, were received:

By Senator Milne, from 1 186 petitioners, requesting that the Senate take action to adopt targets for greenhouse gas reduction, and to pass legislation that will ensure Australia becomes powered by renewable energy and ensure the creation of new and sustainable energy industries.

By Senator Moore, from 246 petitioners, requesting that the Senate take action to pressure the Sri Lankan Government to embark on a genuine reconciliation process which addresses the grievances of Tamils.

7 NOTICES

Notices of motion:

The Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Forshaw): To move on the next day of sitting—That the Joint Standing Committee on Foreign Affairs, Defence and Trade be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 25 November 2009, from 11 am, to take evidence for the committee's inquiry into Australia's trade and investment relations with Asia, the Pacific and Latin America. (*general business notice of motion no. 646*)

The Chair of the Community Affairs References Committee (Senator Siewert): To move on the next day of sitting—That the time for the presentation of the report of the Community Affairs References Committee on the impact of gene patents on the provision of healthcare in Australia be extended to 18 March 2010. (*general business notice of motion no. 647*)

The Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That the question for the third reading of the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills not be put until the third sitting day in February 2010. (*general business notice of motion no. 648*)

Senator Boyce: To move on the next day of sitting—That the following matter be referred to the Community Affairs References Committee for inquiry and report by 2 September 2010:

Access to planning options and services for people with a disability to ensure their continued quality of life as they and their carers age, and to identify any inadequacies in the choice and funding of planning options currently available to people ageing with a disability and their carers.

The Deputy Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Mason): To move on the next day of sitting—That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 25 November 2009, from 5 pm, to take evidence for the committee's inquiry into the continuing oversight of the operations of the Australian Securities and Investments Commission. (*general business notice of motion no. 649*)

The Chair of the Select Committee on Agricultural and Related Industries (Senator Heffernan): To move on the next day of sitting—That the Select Committee on Agricultural and Related Industries be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 24 November 2009, from 4 pm, to take evidence for the committee's inquiry into food production in Australia. (*general business notice of motion no. 650*)

The Special Minister of State (Senator Ludwig): To move on the next day of sitting—That, on Tuesday, 24 November 2009:

- (a) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm;
- (b) the routine of business from 7.30 pm shall be consideration of the government business order of the day relating to the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills; and
- (c) the question for the adjournment of the Senate shall be proposed at 11 pm.

Senator Fierravanti-Wells: To move on the next day of sitting—That there be laid on the table by the Minister representing the Prime Minister, no later than 2 pm on Wednesday, 25 November 2009, documents outlining, or including the following:

- (a) the date, time and duration of the meetings of the Border Protection Committee of Cabinet since it was established in about April 2009;
- (b) in relation to each of the meetings referred to above, details of all the attendees at each meeting, including the name and position of each attendee and the capacity in which they attended the meeting;
- (c) in relation to any ministerial staff attending any meeting, the level of security clearance of all ministerial staff who attended each meeting;
- (d) all documents relating to the formulation, discussion and approval (including any drafts) of the letter from Mr Jim O'Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled *Message to the 78 passengers on the Oceanic Viking*, dated November 2009, including by the Border Protection Committee of Cabinet or any other committee, taskforce or entity;
- (e) all documents relating to the formulation, discussion and approval (including any drafts) of the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009, including by the Border Protection Committee of Cabinet or any other committee, taskforce or entity;

- (f) in relation to the formulation, discussion or approval referred to in paragraphs (d) and (e), which was undertaken by any other committee, taskforce or entity other than the Border Protection Committee of Cabinet, documents outlining or including:
 - (i) the name of the other committee, taskforce or entity,
 - (ii) the date, time and duration of the meeting/s of the other committee, taskforce or entity, and
 - (iii) details of all the attendees at each meeting of the other committee, taskforce or entity, including the name and position of each attendee and the capacity in which they attended the meeting;
- (g) in relation to any ministerial staff attending any meeting, the level of security clearance of all ministerial staff who attended each meeting of the Border Protection Committee of Cabinet or any other committee, taskforce or entity;
- (h) in relation to approval referred to in paragraphs (d) and (e) above, details of the date, time, duration and attendees at the meeting or meetings that resulted in such approval by the Border Protection Committee of Cabinet or any other committee, taskforce or entity;
- (i) details of when the Prime Minister became aware of the decision of the Border Protection Committee of Cabinet or any other committee, taskforce or entity to make the offer referred to in paragraphs (d) and (e) above and how he became aware of this decision;
- (j) in relation to the letter from Mr Jim O'Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled *Message to the 78 passengers on the Oceanic Viking*, dated November 2009, all documents relating to the formulation, discussion and approval (including drafts) of any arrangements, undertakings or special circumstances with the United Nations High Commissioner for Refugees regarding processing and resettlement of the asylum seekers;
- (k) in relation to the letter from Mr Jim O'Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled *Message to the 78 passengers on the Oceanic Viking*, dated November 2009 and the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009, all documents relating to the formulation, discussion and approval (including drafts) of any arrangements, undertakings or special circumstances with Indonesia regarding the detention, processing and resettlement of the asylum seekers; and
- (l) in relation to any approval covered by paragraphs (h) and (i), a statement of whether the Prime Minister or any member of the Prime Minister's staff approved any part, aspect, detail or condition contained in the letter from Mr Jim O'Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled *Message to the 78 passengers on the Oceanic Viking*, dated November 2009 and in the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009. (*general business notice of motion no. 651*)

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

- (a) Rwanda's nomination to join the Commonwealth will be decided at the Commonwealth Heads of Government Meeting in Trinidad and Tobago from 27 November to 29 November 2009; and

- (b) Rwanda's ruling party, the Rwandan Patriotic Front, has actively stopped alternative political parties from operating and has been implicated in electoral irregularities and restrictions on press freedom,

calls on the Government to review Rwanda's record on human rights according to the standards agreed to by the Commonwealth's 1991 Harare Declaration, before supporting its membership of the Commonwealth. (*general business notice of motion no. 652*)

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:

Foreign Acquisitions and Takeovers Amendment Bill 2009
Higher Education Legislation Amendment (Student Services and Amenities) Bill 2009.

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.

Notice of motion withdrawn: The Chairman of the Standing Committee on Regulations and Ordinances (Senator Wortley), pursuant to notice of intention given on 19 November 2009, withdrew business of the Senate notice of motion no. 1 standing in her name for 7 sitting days after today for the disallowance of the National Health Security (SSBA Standards) Amendment Determination 2009 (No. 1), made under subsection 35(1) of the *National Health Security Act 2007*.

8 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Cash, by leave and at the request of the Chair of the Finance and Public Administration References Committee (Senator Bernardi), moved—That the Finance and Public Administration References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today, from 4 pm to 5 pm, in relation to its inquiry on the relationship between the Central Land Council and Centrecorp Aboriginal Investment Corporation Pty Ltd.

Question put and passed.

9 POSTPONEMENT

The following item of business was postponed:

Business of the Senate notice of motion no. 2 standing in the name of Senator Xenophon for today, proposing a reference to the Community Affairs References Committee, postponed till 24 November 2009.

10 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REFERENCE

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—

- (1) That the following bills:
 Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009
 Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009
 Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009,
 be again referred to the Community Affairs Legislation Committee, together with the Government amendments to the bills circulated on 28 October 2009, for inquiry and report by 1 February 2010.
- (2) In undertaking this inquiry, the committee shall consider:
- (a) whether the consequences of the Government's amendments for professional regulation of midwifery will give doctors medical veto over midwives' ability to renew their licence to practice;
 - (b) whether the Government's amendments' influence on the health care market will be anti-competitive;
 - (c) whether the Government's amendments will create difficulties in delivering intended access and choice for Australian women;
 - (d) why the Government's amendments require 'collaborative arrangements' that do not specifically include maternity service providers including hospitals;
 - (e) whether the Government's amendments will have a negative impact on safety and continuity of care for Australian mothers; and
 - (f) any other related matter.

Question put and passed.

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

**11 PARLIAMENT—HEALTH INSURANCE AMENDMENT (REVIVAL OF TABLE ITEMS)
 BILL 2009—LEGAL ADVICE—ORDER FOR PRODUCTION OF DOCUMENT**

Senator Cormann, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 637—That the Senate—

- (a) Notes that:
- (1) the Minister for Health and Ageing told the House of Representatives on 29 October 2009, that the Government had legal advice that the Health Insurance Amendment (Revival of Table Items) Bill 2009 was unconstitutional, that it should not have been introduced in the Senate and had not been appropriately passed;
 - (2) the Minister also told the House of Representatives that the Government was "happy to provide that legal advice" (9.59 am, 29/10/2009);

- (3) on 17 November the Senate ordered “that there be laid on the table by the Minister representing the Minister for Health and Ageing in the Senate, by no later than 5 pm on 17 November 2009, a copy of the legal advice referred to by the Minister on 29 October 2009, indicating that the Health Insurance Amendment (Revival of Table Items) Bill 2009 was unconstitutional” under section 53 of the Constitution;
 - (4) in response, on 18 November the Minister for Health and Ageing tabled a letter stating that the legal advice would not be provided to the Senate on the grounds that it could “prejudice the Commonwealth’s position in the event of future legal proceedings”; and
 - (5) advice from the Clerk of the Senate makes it clear that section 53 of the Constitution is non-justiciable and “[t]herefore there cannot be any legal proceedings which might be prejudiced by disclosure of advice to the government on its interpretation of section 53”.
- (b) Considers that release of a copy of the legal advice referred to by the Minister on 29 October 2009 is in the public interest.
 - (c) Orders that there be laid on the table by the Minister representing the Minister for Health and Ageing in the Senate, by no later than noon on 24 November 2009, a copy of the legal advice referred to by the Minister on 29 October 2009, indicating that the Health Insurance Amendment (Revival of Table Items) Bill 2009 was unconstitutional.

Question put and passed.

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

**12 CORPORATIONS AND FINANCIAL SERVICES—JOINT STATUTORY COMMITTEE—
EXTENSION OF TIME TO REPORT**

Senator Parry, at the request of the Deputy Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Mason) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 638—That the time for the presentation of the report of the Parliamentary Joint Committee on Corporations and Financial Services on financial products and services in Australia be extended to 24 November 2009.

Question put and passed.

**13 NATIONAL BROADBAND NETWORK—SELECT COMMITTEE—EXTENSION OF TIME TO
REPORT**

Senator Parry, at the request of the Chair of the Select Committee on the National Broadband Network (Senator Fisher) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 641—That the time for the presentation of the report of the Select Committee on the National Broadband Network be extended to 25 November 2009.

Question put and passed.

14 NATIONAL BROADBAND NETWORK—SELECT COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Parry, at the request of the Chair of the Select Committee on the National Broadband Network (Senator Fisher) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 642—That the Select Committee on the National Broadband Network be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Monday, 23 November 2009, from 3.30 pm.

Question put and passed.

15 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REPORTING DATE

Senator Parry, at the request of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Trood) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 645—That the report of the Foreign Affairs, Defence and Trade References Committee on its inquiry into the security challenges facing Papua New Guinea and the island states of the southwest Pacific be presented by 24 December 2009.

Question put and passed.

16 SOCIAL ISSUES—MILLENNIUM DEVELOPMENT GOALS—HEALTH FUNDING

Senator Moore, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 595—That the Senate—

- (a) notes the Government's increase of total health funding in the foreign aid budget and its support for maternal, newborn and child health and acknowledges that this is much needed when in our region, including South Asia, 200 000 mothers and 3.2 million children are dying every year from preventable causes;
- (b) notes that:
 - (i) Australia still requires a strong commitment to provide health funding through the foreign aid budget to progress towards Millennium Development Goals (MDGs) 4 and 5 by 2015,
 - (ii) MDG 4, to reduce child mortality by two-thirds, and MDG 5, to reduce maternal mortality by three-quarters, have made slow progress and are off-track to being achieved by 2015,
 - (iii) MDG 5 has made virtually no progress globally and has reversed in most of sub-Saharan Africa in the past 20 years, and
 - (iv) the health MDGs are achievable but require increased effort and greater cooperation from all developing and developed countries, given that evidence indicates that successful proven, cost-effective strategies exist that can reduce child deaths by at least 60 per cent and maternal deaths by 75 per cent, saving the lives of 240 000 children and 26 000 mothers in our immediate region each year;
- (c) acknowledges the Australian Government's support for health systems in the Asia-Pacific region (through coordinated mechanisms including the international Health Partnership) to ensure that adequate, coordinated, long-term and predictable donor resources are available in each developing country in our region;

- (d) recognises that greater focus must be placed on training health professionals and midwives to ensure significant reductions in newborn, child and maternal mortality and that system strengthening must also be ensured to provide incentives for staff to remain in country and in areas of need; and
- (e) recognises that continued Australian commitment to maternal and child health is required to support the provision of basic health services and strengthened health systems and that this will demonstrate Australia's leadership and commitment to ending the preventable deaths of children and mothers globally.

Question put and passed.

17 ENVIRONMENT—BUSHFIRES—NATIONAL DISASTER RESPONSE PLAN

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 643—That the Senate—

- (a) notes that:
 - (i) Commonwealth Scientific and Industrial Research Organisation scientists have warned that Australia will experience more high fire danger days as a result of climate change,
 - (ii) three Australian states are on high fire danger alert and record high temperatures are being recorded for November 2009 in several Australian cities and towns including Adelaide,
 - (iii) a government report in 2005 said that no single state or territory is likely to have the human and material resources required to resolve a catastrophic event, and
 - (iv) Emergency Management Australia, the national coordination unit for operational responses to disasters:
 - (A) was not called in on Black Saturday in Victoria, and
 - (B) did not ask the Department of Defence or Defence Imaging to track the Victorian fires because no request to do so was made from Victoria; and
- (b) calls on the Government immediately to:
 - (i) develop and implement a national disaster response plan,
 - (ii) appoint the operational fire chiefs from each state and territory to Emergency Management Australia,
 - (iii) reverse the onus so that the Commonwealth has the power to oversee a national disaster and to intervene without having to wait for a state to request such assistance, and
 - (iv) implement the remaining recommendations of the 2005 Commonwealth report into national disaster readiness.

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

Question put.

The Senate divided—

AYES, 6

Senators—

Brown, Bob
Hanson-Young

Ludlam
Milne

Siewert (Teller)

Xenophon

NOES, 39

Senators—

Adams	Cash	Hurley	O'Brien
Back	Colbeck	Hutchins	Parry (Teller)
Barnett	Cormann	Kroger	Polley
Bilyk	Farrell	Ludwig	Pratt
Bishop	Feeney	Lundy	Sterle
Boswell	Ferguson	Marshall	Troeth
Boyce	Fielding	McEwen	Trood
Brown, Carol	Fierravanti-Wells	McLucas	Williams
Bushby	Forshaw	Moore	Wortley
Cameron	Furner	Nash	

Question negatived.

18 FOOD STANDARDS AMENDMENT (TRUTH IN LABELLING—PALM OIL) BILL 2009

Senator Xenophon, also on behalf of the Leader of the Australian Greens (Senator Bob Brown) and the Leader of The Nationals in the Senate (Senator Joyce), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 631—That the following bill be introduced:

A Bill for an Act to provide for the accurate labelling of palm oil in food, and for related purposes.

Question put and passed.

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

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

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

19 ENVIRONMENT—PHYTOPHTHORA CINNAMOMI—THREAT ABATEMENT PLAN

Senator Siewert, also on behalf of Senator Macdonald, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 639—That the Senate—

- (a) notes the significant disease threat posed by the introduced species *Phytophthora cinnamomi* to ecological communities across Australia;
- (b) expresses disappointment with the lack of effective action at the national level to address the scale of this threat; and
- (c) calls on the Commonwealth Government to:
 - (i) develop an effective national threat abatement plan including specific, measurable, achievable, relevant, time-bound goals, objectives and actions, and

- (ii) negotiate on the basis of this plan with state and territory agencies and land managers to leverage the resources, commitments and expertise needed to deliver its outcomes.

Statements by leave: The Special Minister of State (Senator Ludwig) and Senator Siewert, by leave, made statements relating to the motion.

Question put and passed.

20 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—IMMIGRATION—IMMIGRATION POLICY

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

The failure of the Rudd Labor Government's immigration policy.

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

21 HEALTH INSURANCE AMENDMENT (COMPLIANCE) BILL 2009

Leave refused: Senator Cormann sought leave to move a motion to provide that the Health Insurance Amendment (Compliance) Bill 2009 be called on immediately and have precedence over all other government business till determined.

An objection was raised and leave was not granted.

Suspension of standing orders: Senator Cormann, at the request of the Leader of the Opposition in the Senate (Senator Minchin) and pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent Senator Minchin moving a motion relating to the conduct of the business of the Senate, namely a motion to provide that the Health Insurance Amendment (Compliance) Bill 2009 be called on immediately and have precedence over all other government business today till determined.

Debate ensued.

Question put.

The Senate divided—

AYES, 36

Senators—

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

NOES, 34

Senators—

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

Question agreed to.

Senator Cormann, at the request of Senator Minchin, moved—That the Health Insurance Amendment (Compliance) Bill 2009 be called on immediately and have precedence over all other government business today till determined.

Question put.

The Senate divided—

AYES, 37

Senators—

Abetz	Cash	Humphries	Ronaldson
Adams	Colbeck	Johnston	Ryan
Back	Cormann	Joyce	Scullion
Barnett	Eggleston	Kroger	Troeth
Bernardi	Ferguson	Mason	Trood
Birmingham	Fielding	McGauran	Williams
Boswell	Fierravanti-Wells	Minchin	Xenophon
Boyce	Fifield	Nash	
Brandis	Fisher	Parry (Teller)	
Bushby	Heffernan	Payne	

NOES, 35

Senators—

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

Question agreed to.

Order of the day read for the adjourned debate on the motion of Senator McEwen—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

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

Schedule 1, item 2, page 3 (line 23), at the end of paragraph 129AAD(1)(b), add:
 ; and (c) has taken reasonable steps to consult with a relevant professional body about the types of documents that contain information relevant to ascertaining whether amounts paid in respect of professional services of the same kind or kinds as the service or services referred to in paragraph (a) should have been paid.

Schedule 1, item 2, page 3 (after line 30), after subsection 129AAD(1), insert:

(1A) In this section:

relevant professional body means a body declared by the Minister to be a relevant body for the purpose of this section.

Senator Siewert moved the following amendments together by leave:

Schedule 1, item 2, page 3 (line 32), omit “If”, substitute “Subject to section 129AADA, if”.

Schedule 1, item 2, page 6 (after line 7), after section 129AAD, insert:

129 AADA Additional requirements for personal clinical records

When section applies

- (1) This section applies if, in relation to a decision under section 129AAD to require a person to produce or copy a document or an extract of any document:
- (a) the Medicare Australia CEO; or
 - (b) the medical practitioner referred to in paragraph 129AAD(1)(b);
- knows or believes on reasonable grounds that the document, extract or copy contains clinical details relating to an individual.

What happens

- (2) Any decision to require the person to produce or copy the document or an extract of the document:
- (a) may only be made by the CEO; and
 - (b) must be made with oversight by qualified medical advisers.
- (3) Before requiring the person to produce or copy the document or an extract of the document, the CEO must cause a Privacy Impact Assessment to be prepared, which must address:
- (a) whether there is any other way to obtain the information being sought; and
 - (b) whether the requirement to produce the document is in the public interest; and
 - (c) whether the information being sought could be gained using de-identified records without undermining the integrity of the audit process.
- (4) Before requiring the person to produce or copy the document or an extract of the document, the CEO must take all reasonable steps to advise the individual, or the individual’s representative, that his or her personal clinical records are to be accessed for the purpose of a compliance audit.

- (5) If the individual, or the individual's representative, objects to the use of the individual's personal clinical records:
- (a) the individual, or the individual's representative, must be given the opportunity to provide reasons for that objection; and
 - (b) the CEO must review the decision to seek information by requiring the person to produce or copy the document or an extract of the document; and
 - (c) if the CEO decides to proceed to require the person to produce or copy the document or an extract of the document—the patient must be provided with written reasons for that decision.

Debate ensued.

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

Senator Scullion moved the following amendments together by leave:

No. 1—Schedule 1, item 2, page 4 (line 14), omit “request”, substitute “written request”.

No. 2—Schedule 1, item 2, page 5 (after line 19), after paragraph 129AAD(8)(b), insert:

- (ba) specify the information relevant to ascertaining whether amounts paid in respect of each such service should have been paid; and

No. 3—Schedule 1, item 2, page 5 (after line 31), at the end of subsection 129AAD(8), add:

Note: For the purpose of paragraph (8)(ba) the notice will include the reason for the CEO's concern about the payment and explain the factual issue that the person is required to substantiate.

No. 4—Schedule 1, item 2, page 6 (after line 7), at the end of section 129AAD, add:

- (11) Notices to produce documents issued under this section will not include requests for information about whether a particular service was clinically relevant.

Debate ensued.

Senator Scullion, by leave, amended amendment no. 4 to read as follows:

Schedule 1, item 2, page 6 (after line 7), at the end of section 129AAD, add:

- (11) The CEO may not develop a reasonable concern under this section about the clinical relevance of a particular service.

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

The Leader of the Family First Party (Senator Fielding) moved the following amendment:

Schedule 1, item 2, page 8 (lines 13 to 15), omit subsection 129AAG(7), substitute:

- (7) Where a document has been produced to an employee of Medicare Australia who is a medical practitioner, this section does not authorise an employee who is not a medical practitioner to exercise powers under subsection (2) in relation to the document.

Debate ensued.

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

Senator Siewert moved the following amendment:

Schedule 1, page 10 (after line 19), after section 129AAJ, insert:

129AAK Routine audit requirements

- (1) The regulations may prescribe requirements for medical practitioners to submit routine records of consultations online for the purposes of Medicare audit processes, including the following:
 - (a) the purpose of the consultation;
 - (b) the service or services rendered;
 - (c) length of time;
 - (d) referrals made.
- (2) The regulations may prescribe a timeframe for compliance with the requirement to submit records, reflecting a general intention that records will be submitted online during each consultation as a matter of course.
- (3) The Minister must take all reasonable steps to ensure that regulations for the purposes of subsection (1) are made before 1 July 2010.

Debate ensued.

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

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

Schedule 1, item 2, page 10 (after line 5), after subsection 129AAJ(1), insert:

- (1A) In making an application under subsection (1), the person or estate may provide the Medicare Australia CEO with additional information to substantiate (wholly or partly) that the amount paid, purportedly by way of benefit or payment under this Act in respect of the service, should have been paid.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Scullion, in respect of Schedule 1, item 2, subsection 129AAJ(5).

Question—That Schedule 1, item 2, subsection 129AAJ(5) stand as printed—put and negatived.

Senator Cormann, also on behalf of Senators Fielding and Xenophon, moved the following amendments together by leave:

Clause 2, page 1 (lines 7 and 8), omit the clause, substitute:

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	1 January 2010.	
3. Schedule 2	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

Page 19 (after line 16), at the end of the bill, add:

Schedule 2—Amendment relating to disallowance of medical services items

Health Insurance Act 1973

1 At the end of section 4

Add:

- (3) If an item in a table of medical services prescribed in accordance with subsection (1) is disallowed under section 42 of the *Legislative Instruments Act 2003*, the corresponding item, if any, in the previous regulations is taken to apply in place of the disallowed item from the time of disallowance.

- (4) In subsection (3):

corresponding item means:

- (a) the item in the previous regulations with the same item number;
or

- (b) if no item satisfies paragraph (a)—the item in the previous regulations covering the same medical services;

as the disallowed item.

previous regulations means the regulations that were in force immediately prior to the commencement of the disallowed item.

2 Application

The amendment made by this Schedule applies in relation to any disallowance after 26 October 2009 of an item in a table of medical services prescribed in accordance with subsection 4(1) of the *Health Insurance Act 1973*.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 41

Senators—

Abetz	Coonan	Joyce	Ronaldson
Adams	Cormann	Kroger	Ryan
Back	Eggleston	Ludlam	Scullion
Barnett	Ferguson	Macdonald	Siewert
Bernardi	Fielding	Mason	Troeth
Birmingham	Fierravanti-Wells	McGauran	Trood
Boyce	Fisher	Milne	Williams (Teller)
Brown, Bob	Hanson-Young	Minchin	Xenophon
Bushby	Heffernan	Nash	
Cash	Humphries	Parry	
Colbeck	Johnston	Payne	

NOES, 29

Senators—

Arbib	Crossin	Hutchins	Polley
Bilyk	Evans	Ludwig	Pratt
Bishop	Farrell (Teller)	Lundy	Sherry
Brown, Carol	Feeney	Marshall	Sterle
Cameron	Forshaw	McEwen	Wortley
Carr	Furner	McLucas	
Collins	Hogg	Moore	
Conroy	Hurley	O'Brien	

Question agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

The Deputy President (Senator Ferguson) resumed the chair and the 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.

22 GOVERNMENT DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document received on 20 November 2009:

Australian Prudential Regulation Authority (APRA)—Report for 2008-09.

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

Question put and passed.

23 HEALTH—CATARACT SURGERY TIMES—DATA—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The Deputy President (Senator Ferguson) tabled the following document received on 20 November 2009:

Health—Cataract surgery times—Data—Statement responding to the resolution of the Senate of 19 November 2009.

24 NOTICE

Senator Williams gave a notice of motion as follows: 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 August 2010:

The role of liquidators and administrators, their fees and their practices, with particular reference to:

- (a) the role and practices of liquidators and administrators and associated companies, including accounting and law firms, prior to and following the collapse of a business; and
- (b) the involvement and activities of the Australian Securities and Investments Commission following the collapse of a business.

25 PRIVILEGES—STANDING COMMITTEE—141ST REPORT

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

Privileges—Standing Committee—141st report—Possible interference with, or imposition of a penalty on, a witness before the Legal and Constitutional Affairs References Committee, dated November 2009.

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

Senator Brandis, by leave, moved—That—

- (a) the Senate endorse the finding in paragraph 1.25 of the report, that no contempt should be found in respect of the Chief Executive Officer, or another staff member, of the Aboriginal Legal Service of Western Australia; and
- (b) that the Chairs' Committee, established under standing order 25(10), consider the adequacy of information provided to witnesses on the subject of possible intimidation or imposition of a penalty in consequence of a witness's evidence to a Senate committee.

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

26 PUBLIC WORKS—JOINT STATUTORY COMMITTEE—6TH AND 7TH REPORTS OF 2009

The Chair of the Parliamentary Standing Committee on Public Works (Senator McLucas) tabled the following reports:

Public Works—Joint Statutory Committee—

6th report of 2009—Redevelopment of the Villawood immigration detention facility—Report, dated November 2009.

7th report of 2009—Referrals made August to October 2009: Construction of housing at Gordon Olive Estate, Brisbane, Qld; construction of housing at Larrakeyah Barracks, Darwin, NT; midlife engineering services refurbishment of the Australian Embassy, Paris, France; Enhanced Land Force Stage 2, various locations; redevelopment of Tarin Kowt, Afghanistan; tropical marine research facilities, Cape Ferguson and Townsville, Qld—Report, dated November 2009.

Senator McLucas, by leave, moved—That the Senate take note of the reports.

Question put and passed.

**27 AUSTRALIAN PARLIAMENTARY DELEGATION TO TONGA AND VANUATU—
DOCUMENT**

Senator Macdonald, by leave, tabled the following document:

Tonga and Vanuatu—Report of the Australian parliamentary delegation, 22 July to 1 August 2009.

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

Question put and passed.

28 DOCUMENTS

The following documents were tabled by the Clerk:

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

Airspace Act—Airspace Regulations—Instrument No. CASA OAR 192/09—Determination of controlled aerodrome – Broome [F2009L04201]*.

Australian Research Council Act—Approval of Proposals—Determination No. 73—Linkage Projects Round 2 commencing in 2009.

Civil Aviation Act—

Civil Aviation Regulations—Instruments Nos CASA—

EX92/09—Exemption – flight instructor (aeroplane) rating [F2009L04022]*.

EX93/09—Exemption – flight instructor (aeroplane) rating [F2009L04023]*.

Civil Aviation Safety Regulations—Airworthiness Directives—AD/ARRIEL/34—Module M05 – Lubrication Duct [F2009L04243]*.

Commonwealth Authorities and Companies Act—Notice under section 45—Medibank Private Limited.

Customs Act—Tariff Concession Orders—

0902741 [F2009L04184]*.

0904258 [F2009L04172]*.

0907328 [F2009L04179]*.

0908196 [F2009L04170]*.

0908209 [F2009L04171]*.

0908814 [F2009L04173]*.

0910929 [F2009L04181]*.

0910937 [F2009L04183]*.

0911155 [F2009L04180]*.

0911234 [F2009L04178]*.

0911257 [F2009L04174]*.

0911322 [F2009L04185]*.

0911326 [F2009L04186]*.

0911493 [F2009L04175]*.

0911985 [F2009L04176]*.

Federal Magistrates Act—Select Legislative Instruments 2009 Nos—

316—Federal Magistrates Court Amendment Rules 2009 (No. 3) [F2009L04279]*.

317—Federal Magistrates Court (Bankruptcy) Amendment Rules 2009 (No. 1) [F2009L04280]*.

National Health Act—Instruments Nos PB—

106 of 2009—Amendment declaration and determination – drugs and medicinal preparations [F2009L04287]*.

107 of 2009—Amendment determination – pharmaceutical benefits [F2009L04284]*.

108 of 2009—Amendment determination – responsible persons [F2009L04286]*.

109 of 2009—Determination – drugs on F1 [F2009L04272]*.

110 of 2009—Amendment – price determinations and special patient contributions [F2009L04253]*.

111 of 2009—Amendment determination – prescription of pharmaceutical benefits by authorised optometrists [F2009L04285]*.

112 of 2009—Amendment determination – conditions [F2009L04263]*.

113 of 2009—Amendment Special Arrangements – Highly Specialised Drugs Program [F2009L04290]*.

Trade Practices Act—Class Exemption (Variation) Determinations Nos—

1 of 2009 [F2009L04298]*.

2 of 2009 [F2009L04299]*.

3 of 2009 [F2009L04296]*.

* Explanatory statement tabled with legislative instrument.

29 APPROPRIATION (WATER ENTITLEMENTS AND HOME INSULATION)

BILL 2009-2010

APPROPRIATION (WATER ENTITLEMENTS) BILL 2009-2010

CRIMES LEGISLATION AMENDMENT (SERIOUS AND ORGANISED CRIME) BILL 2009

FAIR WORK AMENDMENT (STATE REFERRALS AND OTHER MEASURES) BILL 2009

FAMILY ASSISTANCE LEGISLATION AMENDMENT (PARTICIPATION REQUIREMENT)

BILL 2009

HIGHER EDUCATION SUPPORT AMENDMENT (VET FEE-HELP AND TERTIARY ADMISSION CENTRES) BILL 2009

PERSONAL PROPERTY SECURITIES (CONSEQUENTIAL AMENDMENTS) BILL 2009

TAX LAWS AMENDMENT (RESALE ROYALTY RIGHT FOR VISUAL ARTISTS)

BILL 2009

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

Message no. 457, dated 19 November 2009—A Bill for an Act to appropriate additional money out of the Consolidated Revenue Fund for the ordinary annual services of the Government in relation to water entitlements and home insulation, and for related purposes.

Message no. 458, dated 19 November 2009—A Bill for an Act to appropriate additional money out of the Consolidated Revenue Fund for certain expenditure in relation to water entitlements, and for related purposes.

Message no. 460, dated 19 November 2009—A Bill for an Act to amend various Acts relating to the enforcement of the criminal law, and for other purposes.

Message no. 453, dated 19 November 2009—A Bill for an Act to amend the *Fair Work Act 2009*, and for related purposes.

Message no. 454, dated 19 November 2009—A Bill for an Act to amend the law relating to family assistance, and for related purposes.

Message no. 459, dated 19 November 2009—A Bill for an Act to amend the *Higher Education Support Act 2003*, and for related purposes.

Message no. 455, dated 19 November 2009—A Bill for an Act to deal with consequential matters arising from the enactment of the *Personal Property Securities Act 2009*, to amend that Act, and for related purposes.

Message no. 456, dated 19 November 2009—A Bill for an Act to amend the law relating to taxation, and for related purposes.

The Assistant Treasurer (Senator Sherry) 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 Sherry moved—That these bills be now read a second time.

Explanatory memoranda: Senator Sherry tabled revised explanatory memoranda [2] relating to the Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009 and the Fair Work Amendment (State Referrals and Other Measures) Bill 2009.

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

Consideration of legislation: Senator Sherry moved—That the Appropriation (Water Entitlements and Home Insulation) Bill 2009-2010 and the Appropriation (Water Entitlements) Bill 2009-2010 be listed on the *Notice Paper* as one order of the day, and the remaining bills be listed as separate orders of the day.

Question put and passed.

30 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS REFERENCES COMMITTEE—REPORT—PROVISION OF CHILDCARE

Pursuant to order, the Chair of the Education, Employment and Workplace Relations References Committee (Senator Humphries) tabled the following report and documents:

Education, Employment and Workplace Relations References Committee—Provision of childcare—Report, dated November 2009, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

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

Senator Humphries, by leave, moved—That the Senate take note of the report.

Debate ensued.

Debate adjourned till the next day of sitting, Senator Hanson-Young in continuation.

**31 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—REPORT—
PERSONAL PROPERTY SECURITIES (CONSEQUENTIAL AMENDMENTS) BILL 2009**

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

Legal and Constitutional Affairs Legislation Committee—Personal Property Securities (Consequential Amendments) Bill 2009 [Provisions]—Report, dated November 2009, Hansard record of proceedings, additional information and submissions.

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

**32 CARBON POLLUTION REDUCTION SCHEME BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CONSEQUENTIAL AMENDMENTS) BILL
2009 [No. 2]
AUSTRALIAN CLIMATE CHANGE REGULATORY AUTHORITY BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CHARGES—CUSTOMS)
BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CHARGES—EXCISE)
BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CHARGES—GENERAL)
BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CPRS FUEL CREDITS)
BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME (CPRS FUEL CREDITS)
(CONSEQUENTIAL AMENDMENTS) BILL 2009 [No. 2]
EXCISE TARIFF AMENDMENT (CARBON POLLUTION REDUCTION SCHEME)
BILL 2009 [No. 2]
CUSTOMS TARIFF AMENDMENT (CARBON POLLUTION REDUCTION SCHEME)
BILL 2009 [No. 2]
CARBON POLLUTION REDUCTION SCHEME AMENDMENT (HOUSEHOLD
ASSISTANCE) BILL 2009 [No. 2]**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens)—That these bills be now read a second time—and on the amendment moved by the Leader of the Australian Greens (Senator Bob Brown) in respect of the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] (see entry no. 3).

Debate resumed.

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

33 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.20 pm till Tuesday, 24 November 2009 at 12.30 pm.

34 **ATTENDANCE**

Present, all senators.

HARRY EVANS
Clerk of the Senate