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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 GOVERNMENT DOCUMENTS

The following documents were tabled:

Australian Competition and Consumer Commission—Telecommunications reports for 2007-08—Report 1: Telecommunications competitive safeguards; Report 2: Changes in the prices paid for telecommunications services in Australia.

Australian Meat and Live-stock Industry Act 1997—Report for 2007-08 in relation to compliance with the funding agreement between the Commonwealth of Australia and Australian Livestock Export Corporation Limited (LiveCorp).

Australian Military Court—Chief Military Judge—Report for 2008.

Director of Military Prosecutions—Report for 2008.

Judge Advocate General—Report for 2008.

Legislative Instruments Act 2003—Review of the operation of the Act—Report, 31 March 2009.

Northern Territory Fisheries Joint Authority—Report for 2006-07.

Product Stewardship (Oil) Act 2000—Second independent review—Final report by Pricewaterhouse Coopers, February 2009.

Queensland Fisheries Joint Authority—Report for 2005-06.

Office of the Renewable Energy Regulator—Report for 2008.

Surveillance Devices Act 2004—Commonwealth Ombudsman's report on inspections of surveillance device records for the period 1 July to 31 December 2008—Australian Crime Commission and Australian Federal Police.

Sydney Airport Demand Management Act 1997—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 January to 31 March 2009.

Western Australian Fisheries Joint Authority—Report for 2004-05.

3 HOURS OF MEETING—STATEMENT BY LEAVE

The Special Minister of State (Senator Ludwig), by leave, made a statement relating to the hours of meeting for today.

Statements by leave: Senator Parry, the Leader of the Australian Greens (Senator Bob Brown), the Leader of the Family First Party (Senator Fielding) and Senator Xenophon, by leave, made statements relating to the matter.

4 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Innovation, Industry, Science and Research (Senator Carr) moved—That intervening business be postponed till after consideration of government business order of the day no. 3 (Nation Building Program (National Land Transport) Amendment Bill 2009).

Question put and passed.

**5 NATION BUILDING PROGRAM (NATIONAL LAND TRANSPORT) AMENDMENT
BILL 2009**

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

Debate resumed.

Senator Macdonald moved the following amendment:

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

- (a) calls on the Minister, when approving a Nation Building Program Off-Network project, to consider the extent to which the project benefits regional Australia; and
- (b) calls on the Government to ensure that black spot funding continue to apply to roads that are not included in the National Land Transport network.

Debate ensued.

The Minister for Broadband, Communications and the Digital Economy (Senator Conroy) moved the following amendment to Senator Macdonald’s proposed amendment:

Paragraph (a), omit “regional Australia”, substitute “the national interest”.

Debate ensued.

Question—That Senator Conroy’s amendment to Senator Macdonald’s proposed amendment be agreed to—put and negatived.

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

Main question, as amended, put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

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

Question put and passed.

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

Ordered, on the motion of Senator Conroy, that the committee have leave to sit again at a later hour.

Senator Conroy sought leave for the questions on the motion that the bill be now read a second time be put again.

Statements by leave: Senators Macdonald and Ludlam, by leave, made statements relating to the matter.

Leave was granted for the questions to be put again.

Question—That Senator Conroy’s amendment to Senator Macdonald’s proposed amendment be agreed to—put and passed.

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

Main question, as amended, put and passed.

Bill read a second time.

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

In the committee

Consideration resumed of the bill.

Senator Ludlam moved the following amendments together by leave:

Schedule 1, page 6 (after line 6), after item 22, insert:

22A At the end of section 9

Add:

- (3) An instrument approving a project with a value exceeding \$200 million is a disallowable instrument for the purposes of section 46B of the *Acts Interpretation Act 1901*.

Schedule 1, page 6 (after line 8), after item 23, insert:

23A Section 11

Before “The”, insert “(1)”.

23B At the end of section 11

Add:

- (2) The matters to which the Minister must have regard in deciding whether it is appropriate to approve a project with a value exceeding \$50 million include, but are not limited to, the following matters:
 - (a) the results of the Environmental Impact Assessment;
 - (b) the results of an assessment of the economic and social costs or benefits of the project;
 - (c) the alternatives to the development;
 - (d) the extent to which energy price sensitivity has bearing on the project.
- (3) Before approving a project with a value exceeding \$50 million, the Minister must cause to be tabled in each House of the Parliament a statement of reasons for the Minister’s decision to approve the project, addressing at a minimum the matters set out in subsection (2).

Schedule 1, page 6 (after line 12), after item 25, insert:

25A Paragraph 13(1)(d)

Omit “.”, substitute “; and”.

25B At the end of subsection 13(1)

Add:

- (e) include any statement of reasons provided pursuant to subsection 11(3).

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 6

Senators—

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

NOES, 65

Senators—

Abetz	Colbeck	Furner	Moore
Adams (Teller)	Collins	Hogg	O'Brien
Arbib	Conroy	Humphries	Parry
Back	Coonan	Hurley	Pratt
Barnett	Cormann	Hutchins	Ronaldson
Bernardi	Crossin	Johnston	Ryan
Bilyk	Eggleston	Joyce	Scullion
Birmingham	Evans	Kroger	Sherry
Bishop	Farrell	Ludwig	Sterle
Boswell	Faulkner	Lundy	Troeth
Boyce	Feeney	Macdonald	Trood
Brandis	Ferguson	Marshall	Williams
Brown, Carol	Fielding	Mason	Wong
Bushby	Fierravanti-Wells	McEwen	Wortley
Cameron	Fifield	McGauran	
Carr	Fisher	McLucas	
Cash	Forshaw	Minchin	

Question negatived.

Bill agreed to.

Bill to be reported without amendment.

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

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

After 2 pm—

6 QUESTIONS

Questions without notice were answered.

7 MOTIONS TO TAKE NOTE OF ANSWERS

Senator Fifield moved—That the Senate take note of the answers given by the Minister for Employment Participation (Senator Arbib) to questions without notice asked by Senators Fierravanti-Wells and Fifield today relating to employment services.

Debate ensued.

Question put and passed.

Senator Siewert 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 Siewert today relating to phytophthora dieback in Western Australia. Question put and passed.

8 PETITION

The following petition, lodged with the Clerk by Senator Ryan, was received:

From 116 petitioners, requesting that the Senate reject any arbitrary increase in excise on just one type of alcoholic beverage and to work together in the national interest to find real solutions to binge drinking.

9 NOTICES

Notices of motion:

The Special Minister of State (Senator Ludwig): To move on the next day of sitting—That the government business order of the day relating to the Social Security and Veterans' Entitlements Amendment (Commonwealth Seniors Health Card) Bill 2009 be discharged from the *Notice Paper*.

The Special Minister of State (Senator Ludwig): To move on the next day of sitting—That on Monday, 22 June 2009:

- (a) the hours of meeting shall be 10.30 am to 6.30 pm and 7.30 pm to 10.30 pm; and
- (b) the routine of business from 10.30 am to 2 pm shall be government business only.

The Chair of the Rural and Regional Affairs and Transport References Committee (Senator Nash): To move on the next day of sitting—That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on public passenger transport in Australia be extended to 20 August 2009. (*general business notice of motion no. 446*)

The Chair of the Education, Employment and Workplace Relations References Committee (Senator Humphries): To move on the next day of sitting—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 17 September 2009. (*general business notice of motion no. 447*)

Senator Lundy: To move on the next day of sitting—That the Joint Committee of Public Accounts and Audit be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 24 June 2009, from 11.30 am to 1.30 pm, to take evidence for the committee's review of Auditor-General's reports. (*general business notice of motion no. 448*)

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 public meetings during the sittings of the Senate on Wednesday, 17 June and Wednesday, 24 June 2009, from 5.30 pm. (*general business notice of motion no. 449*)

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 meet during the sitting of the Senate on Thursday, 18 June 2009, from 9.30 am to 11.30 am, to allow officers of the Australian Securities and Investments Commission, to provide a private briefing to the committee. (*general business notice of motion no. 450*)

The Chair of the Select Committee on Fuel and Energy (Senator Cormann): To move on the next day of sitting—That the Senate notes with concern:

- (a) that the Select Committee on Fuel and Energy has been seeking unsuccessfully to gain information from the Government regarding the modelling undertaken by the Department of the Treasury titled, *Australia's Low Pollution Future: The Economics of Climate Change Mitigation*, since December 2008;
- (b) the following history of the Government's refusal to provide the information needed to properly scrutinise the Government's proposed Carbon Pollution Reduction Scheme:
 - (i) the committee wrote to the Treasurer on 9 December 2008 seeking additional information about the modelling,
 - (ii) the committee eventually received a response from the Treasurer on 3 February 2009 refusing the committee's request stating 'The Treasury is obligated, under contractual agreements ... to not disclose or make public any Confidential Information of the other party',
 - (iii) on 4 February 2009 the Senate made an order requiring the production of information by 5 February 2009,
 - (iv) on 5 February 2009, Senator the Honourable Ursula Stephens, Parliamentary Secretary for Social Inclusion and the Voluntary Sector, made a statement in the Senate on behalf of the Government that the 'Treasury is obligated, under contractual agreements ... to not disclose or make public any confidential information of the other party',
 - (v) the committee again wrote to the Treasurer on 6 February 2009 pointing out that the Senate in passing the order of 4 February 2009, had accepted the judgement of the committee that contractual obligations to consultants did not constitute a valid reason for declining to produce documents because parliamentary privilege overrides any contractual obligations,
 - (vi) Senator Stephens made another statement in the Senate on behalf of the Government on 11 February 2009, attempting to make a new and different case of commercial harm,
 - (vii) following the response from the Government, the committee wrote to Monash University and Purdue University on 11 February 2009 seeking to work with the universities to protect the intellectual property of the universities while allowing the committee to properly scrutinise the material,
 - (viii) on 12 February 2009 the committee received correspondence from Purdue University stating that commercial harm to its Global Trade and Analysis Project, would be avoided by the simple purchase of a licence,
 - (ix) on 19 February 2009 the committee received correspondence from Monash University which stated that 'The University wishes to assist your Committee in every way possible',

- (x) on 11 March 2009, the Senate made a further order requiring the production of information by 13 March 2009 and specifying that some of the requested information was to be treated as confidential, meaning that any disclosure or use of the information otherwise than in accordance with the order would be a contempt of the Senate and a criminal offence under the *Parliamentary Privileges Act 1987*,
 - (xi) on 12 March 2009 the committee again wrote to Monash University informing it of the Senate's order of 11 March 2009 and seeking to establish whether the protections afforded by the Senate sufficiently protected the university's intellectual property in relation to the Monash Multi Regional Forecasting model,
 - (xii) on 17 March 2009 Senator Stephens made a further statement to the Senate in response to the Senate order of 11 March 2009, in which she stated 'the government continues to believe that the provision of the proprietary model code and data related to the modelling conducted for *Australia's low pollution future: the economics of climate change mitigation* would cause commercial harm to organisations that were contracted to assist Treasury',
 - (xiii) the committee received further correspondence from Monash University on 18 March 2009 attaching a letter the university had sent to the Treasurer which stated that 'Monash University waives its requirements of confidentiality on the basis that confidentiality is protected under the provisions of Order SJ61-11 March 2009',
 - (xiv) following receipt of the 18 March 2009 correspondence from Monash University, the committee wrote to the Treasurer on 18 March 2009 once again requesting the relevant information and reiterating the committee's judgement 'that contractual obligations to consultants do not constitute a valid reason for declining to produce information' and pointing out that 'given the information is required under an order of the Senate, parliamentary privilege overrides any relevant contractual obligations of the government',
 - (xv) the committee heard evidence from the Department of the Treasury on 2 April 2009 stating that it was the Government's position that 'there is potential for commercial harm for aspects of the information to be provided', and
 - (xvi) following this evidence provided by the Department of the Treasury, and in the absence of a response to the Treasurer's letter of 18 March 2009, the committee again wrote to the Treasurer on 3 April 2009 seeking the information as ordered by the Senate on 11 March 2009 and stating that the committee views the response from the Government and the Department of the Treasury 'as unnecessarily bureaucratic, baseless and deliberately unhelpful to the Committee';
- (c) that the committee has gone to considerable lengths and provided robust protections to accommodate any issues of potential commercial harm to Monash University and Purdue University;
 - (d) that the Government has failed to respond to either the committee's letters of 18 March 2009 and 3 April 2009;
 - (e) that the Government has failed to provide any information to the committee despite the considerable efforts taken by the committee to avoid any commercial harm, and the Government's claim of commercial harm only applying to some of the information sought; and

- (f) that the Government has failed to provide any explanation to the Senate or the committee as to why the remainder of the information was not provided or responded to the fact that Monash University has informed both the committee and the Treasurer that the university is prepared to waive its requirements of confidentiality in accordance with the order of the Senate of 11 March 2009. (*general business notice of motion no. 451*)

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

- (a) notes the decision by the New South Wales Mining Warden permitting BHP Billiton to proceed with exploration for coal near and under prime food-growing floodplain at Caroona, in the centre of the Liverpool Plains, near Gunnedah;
- (b) acknowledges the undiminished opposition to this exploration by local farmers and other members of the local communities and the independent Member for New England in the House of Representatives, Mr Tony Windsor; and
- (c) calls on the Government:
- (i) to exercise all legal and ethical options available to cease the exploration activities of BHP Billiton at Caroona until the completion of the independent expert evaluation of the hydrology of the region, and also
 - (ii) to cease the granting of all exploration licences for the purpose of resource and mineral extraction and undertake further independent studies into impacts of mining on the surficial and underground aquifer systems which form part of the Murray-Darling system if significant risks are identified in the expert evaluation currently underway. (*general business notice of motion no. 452*)

Senator Hanson-Young: To move on the next day of sitting—That the following matters be referred to the Education, Employment and Workplace Relations References Committee for inquiry and report by 16 November 2009:

- (a) the roles and responsibilities of education providers, migration agents, state and federal governments, and relevant departments, in ensuring the quality and adequacy in information, advice, service delivery and support, with particular reference to:
- (i) student safety,
 - (ii) adequate and affordable accommodation,
 - (iii) social inclusion,
 - (iv) student visa requirements,
 - (v) employment rights and protections from exploitation, and
 - (vi) adequate international student supports and advocacy;
- (b) the identification of quality benchmarks and controls for service, advice and support for international students studying at an Australian education institution; and
- (c) any other related matters.

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

- (a) notes the findings of Professor Brendan Mackey, Professor David Lindenmayer and Dr Heather Keith of the Australian National University that Victoria's *Eucalyptus regnans* (mountain ash) forests are the most carbon dense on Earth; and

- (b) calls on the Government to inform the Senate by 24 June 2009:
- (i) whether the report has validity,
 - (ii) what government measures are being taken or considered to protect *Eucalyptus regnans* forests in Australia that are currently targeted for logging,
 - (iii) what area and volume of such forests are available for logging under current planning regimes, and
 - (iv) whether ending native forest and woodland removal in Australia would reduce the nation's greenhouse gas emissions by 10 to 20 per cent. (*general business notice of motion no. 453*)

Notices of motion withdrawn: The Chairman of the Standing Committee on Regulations and Ordinances (Senator Wortley), pursuant to notice of intention given on 15 June 2009, withdrew notices of motion standing in her name as follows:

Business of the Senate notice of motion no. 1 for 6 sitting days after today for the disallowance of Instrument number CASA 627/08, made under regulation 208 of the Civil Aviation Regulations 1988.

Business of the Senate notices of motion nos 2, 4, 5 and 6 for 9 sitting days after today for the disallowance of the following instruments:

Banking Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 280 and made under the *Banking Act 1959*.

Family Law Amendment Regulations 2008 (No. 3), as contained in Select Legislative Instrument 2008 No. 258 and made under the *Family Law Act 1975*.

Instrument number CASA 51/09, made under regulation 208 of the Civil Aviation Regulations 1988.

Insurance Amendment Regulations 2008 (No. 2), as contained in Select Legislative Instrument 2008 No. 281 and made under the *Insurance Act 1973*.

10 LEAVE OF ABSENCE

Senator O'Brien, by leave, moved—That leave of absence be granted to Senator Stephens from 16 June to the end of the 2009 winter sittings, for personal reasons.

Question put and passed.

11 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT

Senator O'Brien, by leave and at the request of the Chair of the Legal and Constitutional Affairs Legislation Committee (Senator Crossin), moved—That the time for the presentation of the report of the Legal and Constitutional Affairs Legislation Committee on the AusCheck Amendment Bill 2009 be extended to 18 June 2009.

Question put and passed.

12 ECONOMICS LEGISLATION COMMITTEE—REFERENCE

Senator Parry, at the request of Senator Abetz and pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the Car Dealership Financing Guarantee Appropriation Bill 2009 be referred to the Economics Legislation Committee for inquiry and report by 23 June 2009 and, in undertaking its inquiry, the committee hear evidence from relevant bodies and individuals, including the Department of Treasury, about the operation and management of the proposed OzCar scheme.

Question put and passed.

**13 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—
REFERENCE**

Senator Nash, also on behalf of Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 2—That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 30 August 2009:

An assessment of the adequacy of Government measures to provide equitable access to secondary and post-secondary education opportunities to students from rural and regional communities attending metropolitan institutions, and metropolitan students attending regional universities or technical and further education (TAFE) colleges, with particular reference to:

- (a) the financial impact on rural and regional students who are attending metropolitan secondary schools, universities or TAFE;
- (b) the education alternatives for rural and regional students wanting to study in regional areas;
- (c) the implications of current and proposed government measures on prospective students living in rural and regional areas;
- (d) the short- and long-term impact of current and proposed government policies on regional university and TAFE college enrolments;
- (e) the adequacy of government measures to provide for students who are required to leave home for secondary or post-secondary study;
- (f) the educational needs of rural and regional students;
- (g) the impact of government measures and proposals on rural and regional communities; and
- (h) other related matters.

Statement by leave: Senator Hanson-Young, by leave, made a statement relating to the motion.

Question put and passed.

**14 ENVIRONMENT, COMMUNICATIONS AND THE ARTS REFERENCES COMMITTEE—
EXTENSION OF TIME TO REPORT**

Senator Parry, at the request of the Chair of the Environment, Communications and the Arts References Committee (Senator Birmingham) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 437—That the time for the presentation of the report of the Environment, Communications and the Arts References Committee on forestry and mining operations on the Tiwi Islands be extended to 17 September 2009.

Question put and passed.

15 FUEL AND ENERGY—SELECT COMMITTEE—VARIATION OF APPOINTMENT

Senator Parry, at the request of Chair of the Select Committee on Fuel and Energy (Senator Cormann) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 438—That the resolution of the Senate of 25 June 2008, as amended, appointing the Select Committee on Fuel and Energy, be amended as follows:

- (a) paragraph (1)(a), omit “petroleum, diesel and gas”, insert “fuel and energy”;
- (b) paragraph (1)(c), after “domestic,”, add “energy markets, and”;

- (c) paragraph (1)(e):
 - (i) after “set of”, add “federal and”, and
 - (ii) omit “petroleum, diesel and gas”, insert “fuel and energy”;
 - (d) paragraph (1)(f), omit “petroleum, diesel and gas”, insert “fuel and energy”;
 - (e) paragraph (1)(g), after “role of”, add “alternative sources of energy to coal and”;
 - (f) paragraph (1)(h), before “the domestic oil”, add “domestic energy supply and”;
 - (g) paragraph (1)(h)(i), omit “this industry”, insert “these industries”;
 - (h) after paragraph (1)(h)(iii), add “(iv) securing Australia’s future domestic energy supply;”; and
 - (i) after paragraph (1)(i), add “(j) any related matters.”.
- Question put and passed.

16 FOREIGN AFFAIRS—POLAND

Senator O’Brien, at the request of Senators Hutchins, Hurley, Furner, Polley, Farrell, Sterle, Feeney, Bilyk, Collins and Bishop and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 439—That the Senate—

- (a) notes that 4 June 2009 was the 20th anniversary of the free elections in Poland, elections which were the beginning of the end of communist party rule not only in Poland but in all the countries of central and eastern Europe, and eventually also in the republics of the Soviet Union;
- (b) congratulates the people of Poland for their courageous struggle over more than 40 years to reclaim their independence and to restore democracy and freedom, and on the increasing security, prosperity and freedom which Poland has enjoyed since 1989; and
- (c) recalls that it was the Solidarity free trade union which led the successful struggle of the Polish people to achieve independence and democracy in Poland, and declares that strong, free and independent trade unions are an essential part of the fabric of a democratic society.

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

Question put and passed. All Australian Greens senators, by leave, recorded their votes for the ayes.

Senator Humphries, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 440—That the Senate—

- (a) notes that 4 June 2009 was the 20th anniversary of the first free elections in the Republic of Poland since World War II;
- (b) acknowledges Poland’s tremendous contribution to the fall of communism in Europe and notes Poland’s democratic achievements, particularly that the citizens of Poland resolutely voted to restore their Senate and reinstate the accountability and transparency of their government; and
- (c) notes the 40 years of struggle and hardship endured by those who fought to assure the independence of judges and the courts, to assure that Poles could freely form associations and clubs, and to bring about an overhaul of the economy.

Question put and passed. All Australian Greens senators, by leave, recorded their votes for the ayes.

17 FOREIGN AFFAIRS—CHINA—HUMAN RIGHTS

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. 441—That the Senate—

- (a) remembers the thousands of people who were killed 20 years ago on 4 June 1989 in the Tiananmen Square massacre;
- (b) supports the pro-democracy and pro-human rights principles outlined in Charter 08, which has been written by prominent Chinese academics and activists; and
- (c) condemns the detention and interrogation of signatories to the Charter 08 by Chinese authorities, including the continued detention of acclaimed author Liu Xiaobo.

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

Question put.

The Senate divided—

AYES, 6

Senators—

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

NOES, 37

Senators—

Adams	Colbeck	Ludwig	Pratt
Arbib	Collins	Lundy	Ronaldson
Back	Farrell	Marshall	Sterle
Barnett	Feeney	McEwen	Troeth
Bilyk	Fisher	McGauran	Trood
Bishop	Heffernan	McLucas	Williams
Boyce	Hurley	Moore	Wortley
Brown, Carol	Hutchins	Nash	
Bushby	Joyce	O'Brien	
Cameron	Kroger	Parry (Teller)	

Question negatived.

18 FOREIGN AFFAIRS—PERUVIAN AMAZON—INDIGENOUS PEOPLES

The Leader of the Australian Greens (Senator Bob Brown) amended general business notice of motion no. 444 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) supports the rights of Indigenous peoples living in the Peruvian Amazon to peaceful protest against the exploitation of their ancestral lands by oil, logging and mining companies; and
- (b) has concern about the violence that occurred when police tried to break-up protests and resulted in injuries and deaths of protestors and police officers.

Question put and passed.

19 ENVIRONMENT—ANTARCTICA—WORLD CULTURAL AND NATURAL HERITAGE LIST

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. 442—That the Senate—

- (a) recognises, with the Australian Government, the effective protection of Antarctica that is already in place through global agreements;
- (b) notes that Australia is an active participant in the Antarctic Treaty Consultative Meeting and plays a lead role in its Committee for Environmental Protection; and
- (c) calls on the Australian Government to pursue the lead role towards inscribing Antarctica on the World Cultural and Natural Heritage list.

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

Question put and passed.

20 ADMINISTRATION—PROPOSED INDEPENDENT PARLIAMENTARY STANDARDS COMMISSIONER

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. 443—That the Senate calls on the Rudd Government to establish an independent Parliamentary Standards Commissioner to give clear and independent advice on the legitimate expenditure of electorate allowance, and other allowances to members of parliament and to monitor and publicly report on the expenditure of the \$32 000 per annum electorate allowance.

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

Question put.

The Senate divided—

AYES, 6

Senators—

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

NOES, 34

Senators—

Arbib	Cash	Ludwig	Parry (Teller)
Back	Colbeck	Lundy	Pratt
Bilyk	Collins	Marshall	Ronaldson
Birmingham	Cormann	McEwen	Sterle
Bishop	Farrell	McGauran	Troeth
Brandis	Feeney	McLucas	Williams
Brown, Carol	Fifield	Moore	Wortley
Bushby	Hurley	Nash	
Cameron	Hutchins	O'Brien	

Question negatived.

**21 ENVIRONMENT—AUSTRALIAN TERRESTRIAL BIODIVERSITY ASSESSMENT—
PROPOSED ORDER FOR PRODUCTION OF DOCUMENTS**

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 445—That there be laid on the table by the Minister representing the Minister for the Environment, Heritage and the Arts (Senator Wong), by 22 June 2009, the Australian Terrestrial Biodiversity Assessment 2008 and all documents used in its preparation, including drafts.

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

Question put and negatived.

**22 PROPOSED MATTER OF PUBLIC IMPORTANCE—FAMILY AND COMMUNITY
SERVICES—INDEPENDENT YOUTH ALLOWANCE**

The Acting Deputy President (Senator Marshall) informed the Senate that Senator Williams had withdrawn the proposed matter of public importance he had submitted to the President today relating to the Independent Youth Allowance.

**23 DEPARTMENT OF THE SENATE—SURVEY OF SENATORS' SATISFACTION WITH
DEPARTMENTAL SERVICES—DOCUMENT**

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

Department of the Senate—Senators' satisfaction with departmental services—
Report prepared by Ipsos-Eureka Social Research Institute, dated June 2009.

**24 FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE—
DOCUMENT—PLEBISCITE FOR AN AUSTRALIAN REPUBLIC BILL 2008**

Senator McEwen, at the request of the Chair of the Finance and Public Administration Legislation Committee (Senator Polley), tabled the following document:

Finance and Public Administration Legislation Committee—Report—Plebiscite for
an Australian Republic Bill 2008—Correction.

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

**25 AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY—JOINT
STATUTORY COMMITTEE—REPORT—INTEGRITY COMMISSIONER—REPORT FOR
2007-08**

Senator Parry, on behalf of the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, tabled the following report and documents:

Australian Commission for Law Enforcement Integrity—Joint Statutory
Committee—Examination of the annual report for 2007-08 of the Integrity
Commissioner—Report, dated June 2009, Hansard record of proceedings and
documents presented to the committee.

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

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

Question put and passed.

26 TREATIES—JOINT STANDING COMMITTEE—101ST REPORT

Senator Parry, on behalf of the Joint Standing Committee on Treaties, tabled the following report:

Treaties—Joint Standing Committee—101st report—Treaties tabled on 3 February 2009, dated May 2009.

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

Debate ensued.

Question put and passed.

27 DOCUMENTS

The following documents were tabled by the Clerk:

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

Australian Research Council Act—Approval of Proposals—Determination No. 66—Linkage Projects Round 2 commencing in 2009.

Civil Aviation Act—

Civil Aviation Regulations—Instrument No. CASA 250/09—Amendment of instrument CASA 206/09 [F2009L02299]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part—105—

AD/B737/355—Forward Airstair Doorway Backup Intercostals and Upper Sill Web [F2009L02177]*.

AD/B737/356—MLG Retract Actuator Beam [F2009L02178]*.

AD/B747/392—Fuselage Upper Lobe Doubler [F2009L02180]*.

AD/B747/393—Section 41 Upper Deck Floor Beam Upper Chords [F2009L02181]*.

AD/CL-600/108—Air Driven Generator Power Feeder Harness [F2009L02257]*.

AD/ERJ-170/23—Airframe Structural Components [F2009L02196]*.

AD/ERJ-190/21—Airframe Structural Components [F2009L02197]*.

AD/FA-200/18—Fuel System - Placard Installation [F2009L02277]*.

AD/FA-200/24—Elevator Torque Tube Corrosion [F2009L02205]*.

AD/FU24/67—Vertical Stabiliser [F2009L02207]*.

AD/L200/3—Propeller De-Icing Control – Modification [F2009L02278]*.

AD/L200/4—Nose Wheel Retract Strut – Inspection [F2009L02208]*.

106—AD/CFM56/31—High Pressure Compressor [F2009L02256]*.

107—AD/APU/23—Saphir 2 Exhaust Thermal Insulation [F2009L02248]*.

Financial Management and Accountability Act—Financial Management and Accountability Determination 2009/22—Other Trust Moneys – Office of the Fair Work Ombudsman Special Account Variation 2009 [F2009L02361]*.

Higher Education Support Act—VET Provider Approvals Nos—

24 of 2009—Australian English & Business College Pty Ltd [F2009L02357]*.

25 of 2009—MEGT (Australia) Ltd [F2009L02358]*.

26 of 2009—Swinburne University of Technology [F2009L02359]*.

27 of 2009—The Board of the Gordon Institute of Technical and Further Education [F2009L02360]*.

* Explanatory statement tabled with legislative instrument.

28 INTERNATIONAL MONETARY AGREEMENTS AMENDMENT (FINANCIAL ASSISTANCE) BILL 2009

SOCIAL SECURITY AMENDMENT (TRAINING INCENTIVES) BILL 2009

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

Message no. 343, dated 15 June 2009—A Bill for an Act to amend the *International Monetary Agreements Act 1947*, and for other purposes.

Message no. 344, dated 15 June 2009—A Bill for an Act to amend the *Social Security Act 1991*, and for related purposes.

The Minister for Climate Change and Water (Senator Wong) 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 Wong moved—That these bills be now read a second time.

On the motion of Senator Wong the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

Consideration of legislation: Senator Wong moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

29 HEALTH INSURANCE AMENDMENT (EXTENDED MEDICARE SAFETY NET) BILL 2009

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

Message no. 345, dated 15 June 2009—A Bill for an Act to amend the *Health Insurance Act 1973*, and for related purposes.

The Minister for Climate Change and Water (Senator Wong) 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 Wong moved—That this bill be now read a second time.

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

30 SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) (CONSEQUENTIAL AND TRANSITIONAL) BILL 2009

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

Message no. 346, dated 15 June 2009—A Bill for an Act to amend the *Social Security Act 1991*, and for related purposes.

The Minister for Climate Change and Water (Senator Wong) 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 Wong moved—That this bill be now read a second time.

On the motion of Senator Wong the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

Consideration of legislation: Senator Wong, by leave, moved—That this bill and the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 may be taken together for their remaining stages.

Question put and passed.

31 COMMITTEE MEMBERSHIP

Messages from the House of Representatives were reported informing the Senate of changes in the membership of joint committees, as follows:

Message no. 347, dated 16 June 2009—Joint Committee of Public Accounts and Audit—Mr Butler, discharged.

Message no. 348, dated 16 June 2009—Joint Standing Committee on Foreign Affairs, Defence and Trade—Mr Fitzgibbon in place of Mr KJ Thomson.

Message no. 349, dated 16 June 2009—Public Works—Joint Statutory Committee—Ms Hall in place of Mr Butler.

Message no. 350, dated 16 June 2009—Australian Commission for Law Enforcement Integrity—Joint Statutory Committee—Mr Clare, discharged.

32 ECONOMICS LEGISLATION COMMITTEE—REPORT—GUARANTEE OF STATE AND TERRITORY BORROWING APPROPRIATION BILL 2009

Pursuant to order, Senator McEwen, at the request of the Chair of the Economics Legislation Committee (Senator Hurley), tabled the following report and documents:

Economics Legislation Committee—Guarantee of State and Territory Borrowing Appropriation Bill 2009 [Provisions]—Report, dated June 2009, Hansard record of proceedings and submissions.

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

33 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—PRIVATE HEALTH INSURANCE (NATIONAL JOINT REPLACEMENT REGISTER LEVY) BILL 2009

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

Community Affairs Legislation Committee—Private Health Insurance (National Joint Replacement Register Levy) Bill 2009 [Provisions]—Report, dated June 2009, Hansard record of proceedings, additional information and submissions.

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

34 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—FAMILY ASSISTANCE AMENDMENT (FURTHER 2008 BUDGET MEASURES) BILL 2009

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

Community Affairs Legislation Committee—Family Assistance Amendment (Further 2008 Budget Measures) Bill 2009 [Provisions]—Report, dated June 2009 and submissions.

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

35 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—PRIVATE HEALTH INSURANCE LEGISLATION AMENDMENT BILL 2009

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

Community Affairs Legislation Committee—Private Health Insurance Legislation Amendment Bill 2009 [Provisions]—Report, dated June 2009 and submissions.

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

36 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—HEALTH WORKFORCE AUSTRALIA BILL 2009

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

Community Affairs Legislation Committee—Health Workforce Australia Bill 2009 [Provisions]—Report, dated June 2009, Hansard record of proceedings and submissions.

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

37 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Climate Change and Water (Senator Wong) moved—That intervening business be postponed till after consideration of government business order of the day no. 2 (Australian Business Investment Partnership Bill 2009 and a related bill).

Question put and passed.

**38 AUSTRALIAN BUSINESS INVESTMENT PARTNERSHIP BILL 2009
AUSTRALIAN BUSINESS INVESTMENT PARTNERSHIP (CONSEQUENTIAL AMENDMENT) BILL 2009**

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

In the committee

Consideration resumed of the Australian Business Investment Partnership Bill 2009, as amended, and of the Australian Business Investment Partnership (Consequential Amendment) Bill 2009.

Explanatory memorandum: The Minister for Climate Change and Water (Senator Wong) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the Australian Business Investment Partnership Bill 2009.

The Leader of the Australian Greens (Senator Bob Brown) moved the following amendments together by leave in respect of the Australian Business Investment Partnership Bill 2009:

Clause 8, page 5 (line 11), after “(3),” insert “(3A),”.

Clause 8, page 6 (after line 7), after subclause (3), insert:

Limit on other party

(3A) The annual salary of any officer of any other party to the arrangement is not greater than \$1,000,000.

Clause 8, page 6 (after line 19), at the end of the clause, add:

(7) In this section:

officer has the same meaning as in the *Corporations Act 2001*.

salary includes any remuneration paid, promised or guaranteed in any form, including though consultancy agreements and grants of shares or other interests, and including any payment made upon resignation or retirement, however described.

Clause 10, page 7 (after line 8), after paragraph (1)(a), insert:

(aa) a provision that a member of ABIP Limited must not pay any officer an annual salary greater than \$1,000,000.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 5

Senators—

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

NOES, 34

Senators—

Adams	Collins	Hogg	O'Brien
Back	Coonan	Humphries	Parry
Barnett	Cormann	Hurley	Pratt
Bilyk	Crossin	Hutchins	Sherry
Bishop	Farrell	Lundy	Sterle
Brown, Carol	Feeney	McEwen	Williams
Bushby (Teller)	Ferguson	McLucas	Wortley
Cash	Fielding	Moore	
Colbeck	Fifield	Nash	

Question negatived.

On the motion of the Leader of the Family First Party (Senator Fielding) the following amendment was debated and agreed to in respect of the Australian Business Investment Partnership Bill 2009:

Clause 8, page 6 (lines 16 and 17), omit “or such longer period as is specified in the regulations”.

On the motion of Senator Bob Brown the following amendments, taken together by leave, were debated and agreed to in respect of the Australian Business Investment Partnership Bill 2009:

Clause 10, page 7 (line 9), omit “5”, substitute “6”.

Clause 10, page 7 (lines 10 to 12), omit paragraph (1)(c), substitute:

- (c) a provision that each member of ABIP Limited (other than the Commonwealth) is to nominate one of the 6 directors and may remove the nominated director from office;
- (ca) a provision that the Commonwealth is to nominate 2 of the 6 directors and may remove either or both of those nominated directors from office;

Clause 10, page 7 (line 13), omit “the director”, substitute “a director”.

Clause 10, page 7 (lines 20 to 26), omit paragraph (1)(f), substitute:

- (f) a provision requiring enforcement resolutions to be passed by a majority that includes:
 - (i) at least 75% of the votes cast by directors who were entitled to vote on the resolution and were not nominated by the Commonwealth; and
 - (ii) the vote of the Chairperson of the Board of ABIP Limited;

On the motion of the Assistant Treasurer (Senator Sherry) the following amendments, taken together by leave, were agreed to in respect of the Australian Business Investment Partnership Bill 2009:

Clause 4, page 2 (before line 8), before the definition of *ASIC*, insert:

ADI (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

Clause 4, page 2 (after line 18), after the definition of *Deed of Guarantee*, insert:

disclosing entity has the same meaning as in the Corporations Act.

Clause 4, page 3 (before line 6), before the definition of *Shareholders' Agreement*, insert:

modifications includes additions, omissions and substitutions.

Clause 10, page 8 (after line 7), at the end of subclause (1), add:

- : (j) a provision requiring ABIP Limited to comply, in relation to remuneration that it provides, with prudential standards determined under section 11AF of the *Banking Act 1959*:
 - (i) to the extent that the standards relate to remuneration; and
 - (ii) with such modifications of the standards, as they apply to ABIP Limited, as are prescribed by the regulations;
 as if ABIP Limited were an ADI.

Page 8 (after line 19), after clause 10, insert:

10A Remuneration information to be included in directors' report for ABIP Limited

- (1) Subject to subsection (2) of this section, section 300A of the Corporations Act applies to the directors' report for a financial year for ABIP Limited as if ABIP Limited were a disclosing entity that is a company registered under that Act.
- (2) The regulations may prescribe modifications of section 300A of the Corporations Act as it applies under subsection (1) of this section.

- (3) Regulations made for the purposes of subsection (2) must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

Page 8 (before line 20), before clause 11, insert:

10B Termination payments

- (1) Subject to subsection (2) of this section, Division 2 of Part 2D.2 of the Corporations Act applies in relation to ABIP Limited as if ABIP Limited were a disclosing entity that is a company registered under that Act.
- (2) The regulations may prescribe modifications of Division 2 of Part 2D.2 of the Corporations Act as it applies under subsection (1) of this section.
- (3) Regulations made for the purposes of subsection (2) must not:
 - (a) increase, or have the effect of increasing, the maximum penalty for any offence; or
 - (b) widen, or have the effect of widening, the scope of any offence.

On the motion of Senator Xenophon the following amendment was agreed to in respect of the Australian Business Investment Partnership Bill 2009:

Page 10 (after line 3), before clause 16, insert:

15A Additional functions of EFIC

- (1) The functions of the Export Finance and Insurance Corporation (*EFIC*) include assisting ABIP Limited, as agreed between EFIC and ABIP Limited, in relation to:
 - (a) ABIP Limited entering into financing arrangements in accordance with section 8; or
 - (b) ABIP Limited borrowing money in accordance with section 9; or
 - (c) ABIP Limited doing such other things as are incidental to the matters mentioned in paragraphs (a) and (b).
- (2) Without limiting subsection (1), the assistance may include all or any of the following:
 - (a) services relating to the management of financing arrangements;
 - (b) services relating to the administration of payments and repayments in relation to financing arrangements;
 - (c) services relating to accounting, financial management or asset management.
- (3) EFIC may charge a fee for assistance that it provides in performing any of its functions provided for by this section or exercising any of its powers in connection with those functions.
- (4) A fee under subsection (3) must not be such as to amount to taxation.
- (5) Section 8 (other than paragraph 8(2)(a)) of the *Export Finance and Insurance Corporation Act 1991* does not apply to EFIC's performance of the functions provided for by this section.

The Australian Business Investment Partnership Bill 2009, as amended, agreed to and the Australian Business Investment Partnership (Consequential Amendment) Bill 2009 agreed to.

The Australian Business Investment Partnership Bill 2009 to be reported with amendments and the Australian Business Investment Partnership (Consequential Amendment) Bill 2009 to be reported without amendments.

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

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

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

Debate ensued.

Question put.

The Senate divided—

AYES, 29

Senators—

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

NOES, 37

Senators—

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

Question negated.

39 HOURS OF MEETING—VARIATION

The Assistant Treasurer (Senator Sherry), by leave, moved—That, on Tuesday, 16 June 2009:

- (a) the hours of meeting shall be 12.30 pm to adjournment;
- (b) the routine of business after the consideration of government documents shall be government business only;
- (c) the question for the adjournment of the Senate shall be proposed at 9.50 pm or after the Senate has finally considered the following bills, whichever is the earlier:

Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 and the Social Security Legislation Amendment (Improved Support for Carers) (Consequential and Transitional) Bill 2009

Fair Work (State Referral and Consequential and Other Amendments) Bill 2009 and the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009; and

(d) the time limit for the adjournment debate is 40 minutes.

Debate ensued.

Question put and passed.

40 ORDER OF BUSINESS—REARRANGEMENT

The Assistant Treasurer (Senator Sherry) moved—That intervening business be postponed till after consideration of government business order of the day no. 4 (Social Security Legislation Amendment (Improved Support for Carers) Bill 2009 and a related bill).

Question put and passed.

41 SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) BILL 2009

SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) (CONSEQUENTIAL AND TRANSITIONAL) BILL 2009

Order of the day read for the adjourned debate on the motions of the Minister for Defence (Senator Faulkner) and the Minister for Climate Change and Water (Senator Wong)—That these bills be now read a second time.

Debate resumed.

At 6.50 pm: Debate was interrupted while Senator Carol Brown was speaking.

42 GOVERNMENT DOCUMENTS—CONSIDERATION

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

Australian Competition and Consumer Commission—Telecommunications reports for 2007-08—Report 1: Telecommunications competitive safeguards; Report 2: Changes in the prices paid for telecommunications services in Australia. Motion to take note of document moved by Senator Barnett and agreed to.

General business orders of the day nos 59 to 62 relating to government documents were called on but no motion was moved.

43 SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) BILL 2009

SOCIAL SECURITY LEGISLATION AMENDMENT (IMPROVED SUPPORT FOR CARERS) (CONSEQUENTIAL AND TRANSITIONAL) BILL 2009

Order of the day read for the adjourned debate on the motions of the Minister for Defence (Senator Faulkner) and the Minister for Climate Change and Water (Senator Wong)—That these bills be now read a second time.

Debate resumed.

Declaration of interest: The Leader of the Family First Party (Senator Fielding) declared an interest in relation to the bill.

Debate continued.

Question put and passed.

Bills read a second time.

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

In the committee

Bills, taken together and as a whole by leave, debated.

Senator Siewert moved the following request for an amendment in respect of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009:

That the House of Representatives be requested to make the following amendment: Schedule 1, item 10, page 10 (after line 14), after section 197E, insert:

197EA Qualification—exchanged care of children

Purpose of section

- (1) The purpose of this section is to allow a person to qualify under section 197B, 197D, 197E, 197G or 197H, or a combination of them, for a carer payment for caring for a person who is aged under 16, or for 2 or more persons who include a person aged under 16, despite the fact that the person is not personally providing constant care for that person.

When section applies

- (2) This section applies if:
- (a) the person is a parent of a person aged under 16; and
 - (b) the person (the *carer*) is personally providing care for that person (the *care receiver*); and
 - (c) the care receiver would qualify the carer for a carer payment under section 197B, 197D, 197E, 197G or 197H, apart from:
 - (i) the fact that the carer is not personally providing constant care for the care receiver; and
 - (ii) the fact that the care receiver has or may have more than one home; and
 - (d) the circumstances in subsection (3) apply in relation to the care receiver.

Circumstances—family law arrangements

- (3) The circumstances are:
- (a) under one or more registered parenting plans, parenting plans or parenting orders that are in force, the care receiver is to live with, or spend time with the carer and the care receiver's other parent (whether or not the care receiver is to live with, or spend time with, someone else); and
 - (b) the length or percentage of time (however described) that the care receiver is to live with, or spend time with, the carer and the other parent is specified in, or worked out in accordance with, the plans or orders; and

- (c) the carer personally provides constant care for the care receiver when the care receiver is living with, or spending time with, the carer; and
- (d) the carer does not personally provide constant care for the care receiver only because the terms of the plans or orders require the care receiver to live with, or spend time with, the other parent or someone else.

Qualification for a carer payment

- (4) If this section applies, the carer is taken to be qualified for a carer payment under section 197B, 197D, 197E, 197G or 197H, or a combination of them, for caring for the care receiver or for persons who include the care receiver, as the case requires.

Example: The parents of a child with a disability or medical condition are divorced or separated. Under a registered parenting plan, one parent (the *first parent*) personally provides care to the child in week 1.

In week 2, under the plan, the parents swap care arrangements for the child.

The first parent would not qualify for a carer payment under section 197B because he or she is not providing constant care for the same children. However, this section allows the first parent to qualify for a carer payment for providing care for the child.

Debate ensued.

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

Senator Siewert moved the following amendment in respect of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009:

Schedule 1, item 10, page 16 (after line 30), after section 197K, insert:

197L Qualification—short term or episodic care of disabled adult

Secretary's determination

- (1) The Secretary may determine that a person is qualified for a carer payment for a period if:
 - (a) the person is personally providing constant care for a person (the *care receiver*) with:
 - (i) a severe disability or severe medical condition; or
 - (ii) a disability or medical condition; and
 - (b) a treating health professional has certified in writing that, because of the severe disability or severe medical condition or because of the disability or medical condition:
 - (i) the care receiver will need personal care for at least 3 months but less than 6 months; and
 - (ii) the care is required to be provided by a specified number of persons; and
 - (c) apart from the fact that the care receiver will need personal care for less than 6 months, the person would qualify for a carer payment under section 198.

Limits on period determined

- (2) The period determined by the Secretary:
 - (a) must be 3 months or more and less than 6 months; and
 - (b) must not begin before the person's start day.

197M Qualification—extension of short term or episodic care of disabled adult*Extension of qualification under section 197L*

- (1) This section applies if:
 - (a) a person is qualified for a carer payment for caring for a person (the *care receiver*) for a period (the *preceding period*):
 - (i) under section 197L; or
 - (ii) if this section has previously applied to the person and the care receiver—under the most recent application of this section; and
 - (b) before the end of the preceding period, the person gives the Secretary a certificate from a treating health professional certifying that:
 - (i) because of a severe disability or severe medical condition, or a disability or medical condition, the care receiver will need personal care for a further period of less than 3 months starting immediately after the end of the preceding period; and
 - (ii) the severe disability or severe medical condition, or the disability or medical condition, is the same as, or related to, the severe disability or severe medical condition, or the disability or medical condition, that necessitated the care for the preceding period; and
 - (iii) the care is required to be provided by a specified number of persons.

Person qualified for further period determined by Secretary

- (2) The person is qualified for a carer payment for a further period if:
 - (a) apart from the fact that the care receiver will need personal care for less than 6 months, the person would qualify for a carer payment under section 198; and
 - (b) the Secretary determines that a carer payment should be granted to the person for the period.
- (3) The period determined must end not later than 6 months after the first day on which the person started to receive a carer payment under section 197L.

Debate ensued.

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

Senator Siewert moved the following request for an amendment in respect of the Social Security Legislation Amendment (Improved Support for Carers) Bill 2009:

That the House of Representatives be requested to make the following amendment:

Schedule 1, item 16, page 18 (lines 13 to 18), omit subsection 198AA(3).

Debate ensued.

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

Bills agreed to.

Bills to be reported without amendments.

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

On the motion of the Minister for Immigration and Citizenship (Senator Evans) the report from the committee was adopted and the bills read a third time.

44 NOTICE

The Leader of The Nationals in the Senate (Senator Joyce), by leave, gave a notice of motion as follows—To move on the next day of sitting—That the Senate—

- (a) notes the decision by the New South Wales and Queensland governments to allow coal exploration near Caroonah, in the centre of the Liverpool Plains, near Gunnedah, and other proposed mining ventures at the Haystack Plains on the Darling Downs, Queensland;
- (b) acknowledges the concern expressed by some local farmers and members of the local communities about this exploration; and
- (c) calls on the respective state governments to ensure that appropriate and thorough independent environmental assessments, including the impact on groundwater systems, are undertaken in advance of any approval to mine in these regions of high agricultural significance. (*general business notice of motion no. 454*)

45 FAIR WORK (STATE REFERRAL AND CONSEQUENTIAL AND OTHER AMENDMENTS) BILL 2009 FAIR WORK (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2009

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

In the committee

Bills taken together and as a whole by leave.

Explanatory memorandum: The Minister for Employment Participation (Senator Arbib) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009.

On the motion of Senator Arbib the following amendments, taken together by leave, were debated and agreed to in respect of the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009:

Clause 2, page 2 (table item 9, column 1), omit “and 2”, substitute “to 2E”.

Clause 2, page 2 (after table item 13), insert:

- | | |
|-----------------|---|
| 13A. | Immediately after the commencement of |
| Schedule 23, | Part 3-1 of the <i>Fair Work Act 2009</i> . |
| items 9A and 9B | |

Clause 2, page 2 (after table item 15), insert:

- | | |
|---------------|---|
| 15A. | Immediately after the commencement of |
| Schedule 23, | Part 6-1 of the <i>Fair Work Act 2009</i> . |
| item 21A | |
| 15B. | Immediately after the commencement of |
| Schedule 23, | Part 6-4 of the <i>Fair Work Act 2009</i> . |
| items 21B and | |
| 21C | |

Page 165 (before line 1), before Schedule 13, insert:

Schedule 12A—Unfair dismissal

1 Meanings of *employee* and *employer*

In this Schedule, *employee* and *employer* have their ordinary meanings.

2 Meaning of *small business employer*, for unfair dismissal purposes, prior to 1 January 2011

- (1) For the purposes of the application of Part 3-2 of the FW Act in relation to the dismissal of a person before 1 January 2011, a national system employer is a ***small business employer*** if, and only if, the employer's number of full-time equivalent employees, worked out under this item, is less than 15 at the earlier of the following times (the ***notice or dismissal time***):
 - (a) the time when the person is given notice of the dismissal;
 - (b) immediately before the dismissal.
- (2) The employer's ***number of full-time equivalent employees*** at the notice or dismissal time is worked out as follows:

Method statement

Step 1. For each person who was an employee of the employer at any time during the period of 4 weeks immediately preceding the day on which the notice or dismissal time occurs, work out the number of ordinary hours (including parts of hours) of the person as the employer's employee during the period.

Note: Subitem (3) sets out what are a person's ordinary hours.

Step 2. If, during the period, the person took leave to which subitem (4) applies, work out the number of hours of leave to which that subitem applies that the person took during the period.

Step 3. Add together all of the numbers of ordinary hours worked out under step 1, and subtract all of the number of hours of leave worked out under step 2.

Step 4. Divide by 152 the number worked out under step 3. The result is the employer's ***number of full-time equivalent employees*** at the notice or dismissal time.

Note: The number 152 is based on the maximum number of hours that a full-time employee would work in 4 weeks (being 38 hours per week) excluding reasonable additional hours.

- (3) For the purposes of step 1 of the method statement in subitem (2), the ordinary hours of work of a person as the employer's employee are:
- (a) to the extent that a modern award, enterprise agreement or workplace determination applied to the person, and the person was not a casual employee—the ordinary hours of work specified or provided for in that award, agreement or determination; or
 - (b) to the extent that a transitional instrument applied to the person, and the person was not a casual employee—the person's ordinary hours of work under item 33 of Schedule 3; or
 - (c) to the extent that:
 - (i) a State industrial instrument applied to the person as a non-national system employee; and
 - (ii) the instrument specified, or provided for the determination of, the person's ordinary hours of work, and
 - (iii) the person was not a casual employee; the ordinary hours of work as specified in, or determined in accordance with, that instrument; or
 - (d) to the extent that no such award, agreement, determination or instrument applied to the person, and the person was not a casual employee:
 - (i) if the person was a national system employee—the person's ordinary hours of work under section 20 of the FW Act; or
 - (ii) if the person was a non-national system employee—what would have been the person's ordinary hours of work under that section if the person had been a national system employee; or
 - (e) to the extent that the person was a casual employee—the lesser of:
 - (i) 152 hours; and
 - (ii) the number of hours actually worked by the person.
- (4) This subitem applies to leave, whether paid or unpaid, that the person took if:
- (a) the person was entitled to the leave in connection with:
 - (i) the birth of a child of the person or the person's spouse or de facto partner; or
 - (ii) the placement of a child with the person for adoption; and
 - (b) the duration of the period of leave has been at least 4 weeks; whether or not the person took any other kind of paid leave while taking that leave.
- (5) For the purposes of this item, a national system employer and the employer's associated entities are taken to be one entity.
- (6) This item has effect despite section 23 of the FW Act.

Schedule 13, item 13, page 172 (line 16), omit “item 15”, substitute “items 14A and 15”.

Schedule 13, page 172 (after line 27), after item 14, insert:

14A FWA may order that industrial action is taken to be authorised by a protected action ballot

- (1) A person who is a bargaining representative for a proposed enterprise agreement may apply to FWA for an order under this item if, before the WR Act repeal day, the person was an applicant specified in an order for a protected action ballot in relation to a proposed collective agreement.
- (2) The application must be made within 28 days after the WR Act repeal day.
- (3) FWA may order that industrial action that was authorised under section 478 of the WR Act in relation to the proposed collective agreement is taken to be authorised, in relation to the proposed enterprise agreement, by a protected action ballot under subsection 459(1) of the FW Act, if FWA is satisfied that:
 - (a) on or after 1 March 2009, the person organised or engaged in industrial action, for the purpose of supporting or advancing claims in relation to the proposed collective agreement; and
 - (b) all such industrial action organised or engaged in by the person was:
 - (i) authorised by a protected action ballot under section 478 of the WR Act; and
 - (ii) protected action within the meaning of the WR Act; and
 - (c) the person did not first organise or engage in such industrial action on or after the WR Act repeal day; and
 - (d) no collective agreement covering the employees whose employment would have been subject to the proposed collective agreement was approved by those employees before the WR Act repeal day; and
 - (e) the proposed enterprise agreement will cover those employees; and
 - (f) the person is genuinely trying to reach agreement in relation to the proposed enterprise agreement; and
 - (g) it is reasonable in all the circumstances to make the order.
- (4) Industrial action that is taken to be authorised because of the operation of subitem (3) is only taken to be authorised in relation to employees who:
 - (a) will be covered by the proposed enterprise agreement; and
 - (b) were relevant employees (within the meaning of section 450 of the WR Act) in relation to the proposed collective agreement.
- (5) For the purposes of subsection 414(3) of the FW Act, the results of the protected action ballot under that Act are taken to have been declared on the day of the order.

Schedule 22, page 246 (after line 28), after item 62, insert:

62A Subsection 158(1) of Schedule 1

Repeal the subsection, substitute:

- (1) A change in the name of an organisation, or an alteration of the eligibility rules of an organisation, does not take effect unless:
 - (a) in the case of a change in the name of the organisation—FWA consents to the change under this section; or
 - (b) in the case of an alteration of the eligibility rules of the organisation:
 - (i) FWA consents to the alteration under this section; or
 - (ii) the General Manager consents to the alteration under section 158A.

Schedule 22, page 247 (before line 25), before item 64, insert:

63A After section 158 of Schedule 1

Insert:

158A Alteration of eligibility rules of organisation by General Manager

- (1) The General Manager must, on application by an organisation in accordance with subsection (2), consent to an alteration of the eligibility rules of the organisation to extend them to apply to persons within the eligibility rules of an association of employers or employees that is registered under a State or Territory industrial law, if the General Manager is satisfied:
 - (a) that the alteration has been made under the rules of the organisation; and
 - (b) that the organisation is a federal counterpart of the association; and
 - (c) that the alteration will not extend the eligibility rules of the organisation beyond those of the association; and
 - (d) that the alteration will not apply outside the limits of the State or Territory for which the association is registered; and
 - (e) as to such other matters (if any) as are prescribed by the regulations.

Note: If the General Manager consents to the alteration, FWA may make orders that reflect State representation orders (see section 137F).

- (2) The application must not be made before 1 January 2011, or such later day as the Minister declares in writing.
- (3) A declaration made under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to the declaration.
- (4) If the General Manager consents, under subsection (1), to an alteration, the alteration takes effect on:
 - (a) if a day is specified in the consent—that day; or
 - (b) in any other case—the day of the consent.

Schedule 22, item 82, page 249 (lines 18 to 21), omit subparagraph 6(c)(i), substitute:

- (i) unless subparagraph (ii) or (iii) applies—the fifth anniversary of the earliest day on which an organisation can make an application in accordance with subsection 158A(2); or

Schedule 22, item 82, page 249 (line 25), omit “commencement”, substitute “day”.

Schedule 22, item 82, page 249 (line 28), omit “commencement”, substitute “day”.

Schedule 22, item 89, page 257 (line 23), omit “employee organisations”, substitute “organisations of employees”.

Schedule 22, item 89, page 258 (after line 12), at the end of section 137B, add:

(3) If:

- (a) the eligibility rules of an organisation of employees have been altered with the consent of the General Manager under section 158A; and
- (b) because of the alteration, members of an association of employees registered under a State or Territory industrial law have become eligible for membership of the organisation;

a reference in this section to the organisation includes a reference to the association referred to in paragraph (b) of this subsection.

Schedule 22, item 89, page 258 (after line 30), after the heading to Part 4, insert:

137F FWA may make orders reflecting State representation orders

(1) If:

- (a) the eligibility rules of an organisation of employees have been altered with the consent of the General Manager under section 158A; and
- (b) because of the alteration, members of an association of employees that is registered under a State or Territory industrial law (a *State registered association*) have become eligible for membership of the organisation; and
- (c) immediately before the alteration took effect, an order (a *State representation order*) was in force that:
 - (i) was made by a State industrial authority in relation to the State registered association; and
 - (ii) was an order of the same kind as, or of a similar kind to, an order that FWA could make under this Chapter in relation to an organisation;

FWA may, on application by the organisation or by a party to the State representation order, make an order in relation to the organisation that is to the same effect, or substantially the same effect, as the State representation order.

(2) The order under subsection (1) applies to each organisation that is:

- (a) a federal counterpart of the State registered association; or
- (b) a federal counterpart of any other association of employees:
 - (i) that is registered under a State or Territory industrial law; and
 - (ii) to which the State representation order applied.

Schedule 22, page 286 (after line 9), after item 359, insert:

359A Subsection 158(5) of Schedule 1

Omit “the Commission” (wherever occurring), substitute “FWA”.

Schedule 23, page 315 (after line 10), after item 2, insert:

2A At the end of subsection 22(2)

Add:

; (c) any other period of a kind prescribed by the regulations.

2B After subsection 22(3)

Insert:

(3A) Regulations made for the purposes of paragraph (2)(c) may prescribe different kinds of periods for the purposes of different provisions of this Act (other than provisions to which subsection (4) applies). If they do so, subsection (3) applies accordingly.

2C Paragraph 22(4)(a)

Repeal the paragraph, substitute:

- (a) a period of *service* by a national system employee with his or her national system employer is a period during which the employee is employed by the employer, but does not include:
- (i) any period of unauthorised absence; or
 - (ii) any other period of a kind prescribed by the regulations;
- and

2D Paragraph 22(4)(b)

Omit “of unauthorised absence”, substitute “referred to in subparagraph (a)(i) or (ii)”.

2E After subsection 22(4)

Insert:

(4A) Regulations made for the purposes of subparagraph (4)(a)(ii) may prescribe different kinds of periods for the purposes of different provisions to which subsection (4) applies. If they do so, paragraph (4)(b) applies accordingly.

Schedule 23, page 316 (after line 26), after item 9, insert:

9A At the end of subsection 371(2)

Add “, or within such period as a court allows on an application made during or after those 14 days”.

9B At the end of section 371

Add:

Note: In *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion under a similarly worded provision of the *Industrial Relations Act 1988*.

Schedule 23, page 319 (after line 29), after item 21, insert:

21A Paragraph 722(a)

Omit “5 of Part 6-1”, substitute “3 of Part 6-4”.

21B At the end of subsection 779(2)

Add “, or within such period as a court allows on an application made during or after those 14 days”.

21C At the end of section 779

Add:

Note: In *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion under a similarly worded provision of the *Industrial Relations Act 1988*.

Question—That the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009, as amended, be agreed to—divided, at the request of Senator Arbib, in respect of Schedule 22, items 63 and 353.

Question—That Schedule 22, items 63 and 353 stand as printed—put and negatived.

Senator Abetz moved the following amendments together by leave in respect of the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009:

Schedule 3, item 23, page 34 (lines 5 to 11), omit subitem (1) and note 1, substitute:

- (1) Where a transitional instrument deals with a matter that is dealt with under the National Employment Standards, the transitional instrument is of no effect to the extent that the overall entitlements of the transitional instrument in relation to the matter are detrimental to the employee when compared to the overall entitlements of the National Employment Standards in relation to the matter.

Schedule 3, item 23, page 34 (line 23), omit “in any respect”.

Debate ensued.

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

Senator Xenophon moved the following amendment in respect of the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009:

Schedule 3, item 23, page 34 (after line 17), after subitem (1), insert:

- (1A) If there is a dispute about the application of this item which must be resolved by FWA in accordance with item 26, FWA may compare the entitlements which are in dispute:
 - (a) on a ‘line-by-line’ basis, comparing individual terms; or
 - (b) on a ‘like-by-like’ basis, comparing entitlements according to particular subject areas; or
 - (c) using any combination of the above approaches FWA sees fit.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 33

Senators—

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

NOES, 31

Senators—

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

Question agreed to.

Senator Abetz moved the following amendment in respect of the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009:

Schedule 5, item 2, page 58 (line 23), after “employment”, insert “, on business profitability”.

Debate ensued.

At 9.50 pm: The Acting Deputy President (Senator Moore) resumed the chair and the Temporary Chair of Committees reported progress.

46 **ADJOURNMENT**

The President proposed the question—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 10.27 pm till Wednesday, 17 June 2009 at 9.30 am.

47 **ATTENDANCE**

Present, all senators except Senators Payne*, Polley* and Stephens* (* on leave).

HARRY EVANS
Clerk of the Senate