

2008-09

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

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

The Chair of the Finance and Public Administration References Committee (Senator Bernardi), by leave, 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 1.50 pm to 2 pm.

Question put and passed.

3 **CORPORATIONS AMENDMENT (IMPROVING ACCOUNTABILITY ON TERMINATION PAYMENTS) BILL 2009**

Order of the day read for the adjourned debate on the motion of the Minister for Climate Change and Water (Senator Wong)—That this bill be now read a second time.

Question put and passed.

Bill read a second time.

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

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*In the committee*

Bill taken as a whole by leave.

Senator Coonan moved the following amendments together by leave:

Schedule 1, item 1, page 3 (lines 4 to 7), omit the item, substitute:

**1 Section 9**

Insert:

*total remuneration* has the meaning specified in regulations made for the purposes of this definition.

Schedule 1, item 31, page 9 (line 13), to page 10 (line 25), omit the item, substitute:

**31 Subsections 200F(3) and (4)**

Repeal the subsections, substitute:

- (3) This subsection applies if the relevant period for the person is less than 1 year. The amount worked out under this subsection is:

$$\frac{\text{Estimated annual total remuneration} \times \text{Number of days in relevant period}}{365}$$

where:

*estimated annual total remuneration* is a reasonable estimate of the total remuneration that the person would have received from the company and related bodies corporate during the relevant period if the relevant period had been 1 year.

Note: The *relevant period* for the person is defined in subsection (5).

- (4) This subsection applies in every other case. The amount worked out under this subsection is:
- (a) if the relevant period is 1 year—the total remuneration that the person received from the company and related bodies corporate during the relevant period; or
  - (b) if the relevant period is more than 1 year but less than 2 years—the average annual total remuneration that the person received from the company and related bodies corporate during the relevant period, worked out as if:
    - (i) the relevant period were 2 years; and
    - (ii) the person’s annual total remuneration for the second year were a reasonable estimate of what the person would have received as total remuneration after the first year of the relevant period had the relevant period been 2 years; or
  - (c) if the relevant period is 2 years—the average annual total remuneration that the person received from the company and related bodies corporate during the relevant period; or
  - (d) if the relevant period is more than 2 years but less than 3 years—the average annual total remuneration that the person received from the company and related bodies corporate during the relevant period, worked out as if:
    - (i) the relevant period were 3 years; and
    - (ii) the person’s annual total remuneration for the third year were a reasonable estimate of what the person would have received as total remuneration after the second year of the relevant period had the relevant period been 3 years; or
  - (e) if the relevant period is 3 years or more—the average annual total remuneration that the person received from the company and related bodies corporate during the last 3 years of the relevant period.

Schedule 1, item 37, page 11 (line 4), to page 12 (line 11), omit the item, substitute:

**37 Subsections 200G(2) and (3)**

Repeal the subsections, substitute:

- (2) This subsection applies if the relevant period for the person is less than 1 year. The amount worked out under this subsection is:

$$\frac{\text{Estimated annual total remuneration} \times \text{Number of days in relevant period}}{365}$$

where:

*estimated annual total remuneration* is a reasonable estimate of the total remuneration that the person would have received from the company and related bodies corporate during the relevant period if the relevant period had been 1 year.

Note: The relevant period for the person is defined in subsection (6).

- (3) This subsection applies in every other case. The amount worked out under this subsection is:
- (a) if the relevant period is 1 year—the total remuneration that the person received from the company and related bodies corporate during the relevant period; or
  - (b) if the relevant period is more than 1 year but less than 2 years—the average annual total remuneration that the person received from the company and related bodies corporate during the relevant period, worked out as if:
    - (i) the relevant period were 2 years; and
    - (ii) the person's annual total remuneration for the second year were a reasonable estimate of what the person would have received as total remuneration after the first year of the relevant period had the relevant period been 2 years; or
  - (c) if the relevant period is 2 years—the average annual total remuneration that the person received from the company and related bodies corporate during the relevant period; or
  - (d) if the relevant period is more than 2 years but less than 3 years—the average annual total remuneration that the person received from the company and related bodies corporate during the relevant period, worked out as if:
    - (i) the relevant period were 3 years; and
    - (ii) the person's annual total remuneration for the third year were a reasonable estimate of what the person would have received as total remuneration after the second year of the relevant period had the relevant period been 3 years; or
  - (e) if the relevant period is 3 years or more—the average annual total remuneration that the person received from the company and related bodies corporate during the last 3 years of the relevant period.

Debate ensued.

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

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

Schedule 1, item 7, page 5 (after line 14), after section 200AB, insert:

**200AC Limitation on benefit**

- (1) Despite any other provision of this Act, an entity must not give, or propose to give, a benefit in connection with a person holding a managerial or executive office which exceeds, or is capable of exceeding, \$5,000,000 in any financial year.
 

Note 1: The recipient of the benefit need not be the manager or executive.

Note 2: *Managerial or executive office* has the meaning given by section 200AA.
- (2) If the benefit is given, or is proposed to be given, in connection with a person holding a managerial or executive office for a period of less than 12 months in a financial year, the figure in subsection (1) is taken to be reduced proportionately to reflect the number of days during which the office is held in that year.

(3) In this section:

**benefit** includes the amount of the benefit or the money value of the benefit (if it is not, or not solely, a payment).

**entity** includes related entities, so that the total or all benefits given by related entities in relation to the holding of a particular managerial or executive office may not exceed the relevant figure.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 6

Senators—

Brown, Bob  
Fielding

Hanson-Young  
Ludlam

Milne

Siewert (Teller)

NOES, 31

Senators—

Back  
Bilyk  
Bishop  
Brown, Carol  
Bushby  
Cameron  
Cash  
Collins

Conroy  
Coonan  
Crossin  
Farrell  
Feeney  
Ferguson  
Fisher  
Furner

Hurley  
Ludwig  
Lundy  
Marshall  
McEwen  
McLucas  
O'Brien  
Parry (Teller)

Polley  
Pratt  
Stephens  
Sterle  
Troeth  
Williams  
Wortley

Question negatived.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, page 6 (after line 32), after item 14, insert:

**14A After section 200B**

Insert:

**200BA Other executive benefits need membership approval**

*Other benefits in connection with managerial or executive office*

- (1) An entity mentioned in subsection (2) must not give a person a benefit in connection with a person's (the *manager's or executive's*) office, or position of employment, in a company or a related body corporate if:
- (a) the office or position is a managerial or executive office; and
  - (b) the benefit is of a kind specified in subsection (3);

unless there is member approval under section 200E for the giving of the benefit.

Note : The recipient of the benefit need not be the manager or executive.

- (2) The entities are as follows:
- (a) the company;
  - (b) an associate of the company (other than a body corporate that is related to the company and is itself a company);
  - (c) a prescribed superannuation fund in relation to the company.
- (3) The benefits are:
- (a) benefits relating to performance or bonuses, however described; and

(b) benefits connected to appointment or engagement of a person, however described;

where the sum of those benefits in any year exceeds, or is capable of exceeding, the amount of the manager's or executive's annual base salary.

(4) In this section:

*give a person a benefit* includes propose to give a person a benefit contingent on a condition or conditions being met.

*superannuation fund* means a provident, benefit, superannuation or retirement fund.

Note 1: The heading to Part 2D.2 is altered by omitting “**termination payments**” and substituting “**termination and other payments**”.

Note 2: The heading to Division 2 is altered by omitting “**termination payments**” and substituting “**termination and other payments**”.

Schedule 1, item 19, page 7 (after line 17), after subsection 200E(1), insert:

(1AA) For the purposes of section 200BA, the conditions set out in subsections (1B) and (2) must be satisfied for there to be member approval under this section for the giving of the benefit.

Debate ensued.

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

Senator Bob Brown moved the following amendments together by leave:

Schedule 1, item 19, page 7 (line 23), omit “a resolution”, substitute “a separate resolution”.

Schedule 1, item 20, page 8 (lines 1 and 2), after “details of the benefit”, insert “(including the maximum dollar value of the benefit)”.

Debate ensued.

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

Question—That the bill be agreed to—divided, at the request of Senator Bob Brown, in respect of Schedule 1, item 22, subsection 200E(2C).

Schedule 1, item 22, subsection 200E(2C) agreed to.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, item 20, page 8 (line 2), before “must”, insert “and the circumstances of the separation”.

Schedule 1, page 8 (after line 6), after item 21, insert:

**21B After paragraph 200E(2)(b)**

Insert:

; and (c) the circumstances of the separation, including:

- (i) whether the person has resigned, retired or been terminated, etc.; and
- (ii) the reason for the resignation, retirement, termination, etc.

Debate ensued.

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

Senator Xenophon moved the following amendments together by leave:

Schedule 1, page 8 (after line 4), after item 20, insert:

**20A Subparagraph 200E(2)(a)(ii)**

After “calculated”, insert “, the maximum amount which may be calculated,”.

Schedule 1, page 8 (after line 6), after item 21, insert:

**21A Subparagraph 200E(2)(b)(ii)**

After “calculated”, insert “, the maximum money value of the benefit which may be calculated,”.

Debate ensued.

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

Senator Bob Brown moved the following amendments together by leave:

Schedule 1, item 19, page 7 (line 14), omit “and (2A)”, substitute “, (2A), (2D) and (2E)”.

Schedule 1, item 22, page 8 (after line 20), after subsection 200E(2C), insert:

*Fourth condition*

(2D) The fourth condition is that a general meeting that considers such a resolution must not have been called for the sole or dominant purpose of passing the resolution.

*Fifth condition*

(2E) The fifth condition is that approval of such a resolution at a general meeting must not occur until the retiree has ceased to hold the relevant offices or positions.

Debate ensued.

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

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

Schedule 1, item 31, page 10 (after line 25), after subsection 200F(4), insert:

(4A) Despite subsections (2), (3) and (4), subsection 200B(1) applies to a benefit given in connection with a person’s retirement from offices or positions in the company and related bodies corporate if the value the benefit, or the value of all such benefits, given in connection with the person’s retirement exceeds \$1 million.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 7

Senators—

Brown, Bob  
Fielding

Hanson-Young  
Ludlam

Milne  
Siewert (Teller)

Xenophon

## NOES, 60

## Senators—

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

Question negatived.

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*After 2 pm:* The President resumed the chair and the Chair of Committees (Senator Ferguson) reported progress.

#### 4 MINISTERIAL ARRANGEMENTS—STATEMENT BY LEAVE

The Leader of the Government in the Senate (Senator Evans), by leave, informed the Senate that the Minister for Defence (Senator Faulkner), the Assistant Treasurer (Senator Sherry) and the Minister for Climate Change and Water (Senator Wong) would be absent from the Senate on parliamentary business at various times during the sitting week.

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*Document:* Senator Evans tabled the following document:

Letter to the Leader of the Australian Greens (Senator Bob Brown), the Leader of the Family First Party (Senator Fielding), the Leader of the Opposition in the Senate (Senator Minchin), the Leader of The Nationals in the Senate (Senator Joyce) and Senator Xenophon from the Leader of the Government in the Senate (Senator Evans), dated 22 October 2009.

#### 5 QUESTIONS

Questions without notice were answered.

#### 6 QUESTIONS ON NOTICE—ANSWERS AND EXPLANATION

Senator Cormann, pursuant to standing order 74, asked the Minister representing the Minister for Health and Ageing (Senator Ludwig) for an explanation of answers not being provided to questions on notice nos 2043 and 2044 (notice given 29 July 2009) relating to macular degeneration.

Senator Ludwig indicated that answers would be provided.

*Order for production of documents:* Senator Cormann moved—That—

- (a) the Senate take note of the minister's response; and
- (b) there be laid on the table no later than 27 October 2009, the answers to questions on notice nos 2043 and 2044.

Debate ensued.

Question put and passed.

#### 7 MOTION TO TAKE NOTE OF ANSWERS

Senator Scullion moved—That the Senate take note of the answers given by the Minister for Immigration and Citizenship (Senator Evans) and the Special Minister of State (Senator Ludwig) to questions without notice asked by Senators Fierravanti-Wells and Johnston today relating to border protection.

Debate ensued.

Question put and passed.

#### 8 DEATH OF FORMER SENATOR JOHN (JACK) GORDON EVANS

The Deputy President (Senator Ferguson) informed the Senate of the death, on 2 October 2009, of John (Jack) Gordon Evans, a senator for the state of Western Australia from 1983 to 1985.

The Leader of the Government in the Senate (Senator Evans), by leave, moved—That the Senate records its deep regret at the death, on 2 October 2009, of John (Jack) Gordon Evans, former Australian Democrat and senator for Western Australia, and places on record its appreciation of his long and meritorious public service and tenders its profound sympathy to his family in their bereavement.

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

Question passed.

#### 9 PETITIONS

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

By Senator Moore, from 2 635 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.

By Senator Siewert, from 278 petitioners, requesting that the Senate take action to assist midwives in private practice to obtain professional indemnity insurance.

#### 10 NOTICES

*Notices of motion:*

The Chair of the Legal and Constitutional Affairs Legislation Committee (Senator Crossin): To move on the next day of sitting—That the Legal and Constitutional Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 29 October 2009, from 3.30 pm, to take evidence for the committee's inquiry into the provisions of the Crimes Legislation Amendment (Serious and Organised Crime) Bill (No. 2) 2009. (*general business notice of motion no. 581*)

The Chair of the Economics References Committee (Senator Eggleston): To move on the next day of sitting—That the Economics References Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 28 October 2009, from 5 pm, to take evidence for the committee's inquiry into the GROCERYchoice website. (*general business notice of motion no. 582*)

The Chair of the Joint Standing Committee on the National Capital and External Territories (Senator Lundy): To move on the next day of sitting—That the Joint Standing Committee on the National Capital and External Territories be authorised to hold public meetings during the sittings of the Senate as follows:

- (a) on Wednesday, 28 October 2009 from 12.30 pm to 2 pm; and
- (b) on Thursday, 29 October 2009 from 10 am to noon. (*general business notice of motion no. 583*)

Senator Lundy: To move on the next day of sitting—That the Joint Committee of Public Accounts and Audit be authorised to hold public meetings during the sittings of the Senate, from 11.45 am to 1.30 pm, to take evidence for the committee's inquiry into the review of Auditor-General's reports, on Wednesday, 28 October, Wednesday, 18 November and Wednesday, 25 November 2009. (*general business notice of motion no. 584*)

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, 28 October 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. 585*)

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, 28 October 2009, from 5 pm, to take evidence for the committee's inquiry into financial products and services in Australia. (*general business notice of motion no. 586*)

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 rural and regional access to secondary and tertiary education opportunities be extended to 11 December 2009. (*general business notice of motion no. 587*)

The Leader of the Australian Greens (Senator Bob Brown): To move on the next day of sitting—That the following matter be referred to the Economics References Committee for inquiry and report by 4 February 2010:

The Reserve Bank of Australia's subsidiaries, Note Printing Australia and Security, with particular reference to:

- (a) allegations of payments to overseas agents into offshore tax havens and corruption in securing note printing contracts and what the Reserve Bank, Austrade and the Australian Government knew about the alleged behaviour;
- (b) any investigations conducted into those allegations;
- (c) any actions taken to press charges against past and existing overseas agents; and
- (d) action which may be taken to prevent improper dealings occurring again.

The Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That the following matter be referred to the Environment, Communications and the Arts References Committee for inquiry and report by 24 November 2009:

The practices and procedures of Australia Post over the past 3 years in relation to the treatment of injured and ill workers, including but not limited to:

- (a) allegations that injured staff have been forced back to work in inappropriate duties before they have recovered from workplace injuries;
- (b) the desirability of salary bonus policies that reward managers based on lost time injury management and the actions of managers to achieve bonus targets;
- (c) the commercial arrangements that exist between Australia Post and InjuryNet and the quality of the service provided by the organisation;
- (d) allegations of compensation delegates using fitness for duty assessments from facility nominated doctors to justify refusal of compensation claims and whether the practice is in breach of the *Privacy Act 1988* and Comcare policies;
- (e) allegations that Australia Post has no legal authority to demand medical assessments of injured workers when they are clearly workers' compensation matters;
- (f) the frequency of referrals to InjuryNet doctors and the policies and circumstances behind the practices; and
- (g) any related matters.

The Leader of the Family First Party (Senator Fielding): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to protect problem gamblers by reducing bet limits to \$1 per spin and load up limits to \$20, and for related purposes. ***Protecting Problem Gamblers Bill 2009***. (general business notice of motion no. 588)

The Leader of the Australian Greens (Senator Bob Brown): To move on 28 October 2009—That the Senate—

- (a) notes the financial plight of Tasmanian logging contractors, who have endured frequent cuts to timber quotas and shutdowns of mills and chippers; and
- (b) calls on the Australian Government to help the Tasmanian Government:
  - (i) fund a financial exit package of a minimum of \$20 million that allows those contractors facing financial ruin to leave the industry with dignity,
  - (ii) assess fair compensation for those contractors leaving the industry,
  - (iii) recover from Gunns Limited and Forestry Tasmania the total cost of the compensation package by the imposition of a levy on all future woodchip sales, and
  - (iv) conserve an areas equivalent to the total contracted volumes of wood from those contractors who exit the industry. (general business notice of motion no. 589)

Senator Xenophon: To move on the next day of sitting—That there be laid on the table by the Minister representing the Treasurer, no later than 4 November 2009, any modelling or analysis commissioned by the Department of the Treasury and/or the Department of Climate Change and all documents prepared by the Department of the Treasury in relation to the August 2009 Frontier Economics report, *The economic impact of the CPRS and modifications to the CPRS*. (general business notice of motion no. 590)

Senator Abetz: To move 4 sitting days after today—That Schedule 2 of the Fair Work Amendment Regulations 2009 (No. 1), as contained in Select Legislative Instrument 2009 No. 164 and made under the *Fair Work Act 2009*, be disallowed.

The Minister for Broadband, Communications and the Digital Economy (Senator Conroy): To move on the next day of sitting—That the Senate—

- (a) notes that the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) in response to the orders of the Senate of 4 February and 13 May 2009 for the production of documents relating to the National Broadband Network tender process, has provided certain documents;
- (b) acknowledges that the Minister has provided to the Senate a statement setting out the basis for claims of public interest immunity for the remaining documents; and
- (c) resolves that consideration of any bills relating to the Government's 'new national broadband network' be in accordance with the Senate's standing orders and any subsequent orders of the Senate.

Senator Xenophon: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to regulate the rate of poker machine losses. *Poker Machine (Reduced Losses) Bill 2009*. (general business notice of motion no. 591)

Senator Birmingham: To move on the next day of sitting—That there be laid on the table by the Minister for Climate Change and Water, no later than noon on 29 October 2009, a copy of a letter to the Victorian Minister for Water (Mr Holding) relating to funding approval for stage 2 of the Northern Victorian Irrigation Renewal Project, referred to by Senator Wong in an answer to a question from Senator Wortley during the supplementary budget estimates hearings of the Environment, Communications and the Arts Legislation Committee on 20 October 2009 (ECA *Hansard*, p.128). (general business notice of motion no. 592)

The Parliamentary Secretary for Social Inclusion (Senator Stephens): To move on the next day of sitting—That the days of meeting of the Senate for 2010 be as follows:

**Autumn sittings:**

Tuesday, 2 February to Thursday, 4 February  
 Monday, 22 February to Thursday, 25 February  
 Tuesday, 9 March to Thursday, 11 March  
 Monday, 15 March to Thursday, 18 March

**Budget sittings:**

Tuesday, 11 May to Thursday, 13 May

**Winter sittings:**

Tuesday, 15 June to Thursday, 17 June  
 Monday, 21 June to Thursday, 24 June

**Spring sittings:**

Tuesday, 24 August to Thursday, 26 August  
 Monday, 30 August to Thursday, 2 September  
 Monday, 20 September to Thursday, 23 September  
 Tuesday, 28 September to Thursday, 30 September

**Spring sittings (2):**

Monday, 25 October to Thursday, 28 October  
 Monday, 15 November to Thursday, 18 November  
 Monday, 22 November to Thursday, 25 November.

The Parliamentary Secretary for Social Inclusion (Senator Stephens): To move on the next day of sitting—

- (1) That estimates hearings by legislation committees for 2010 be scheduled as follows:

**2009-10 additional estimates:**

Monday, 8 February and Tuesday, 9 February 2010, and, if required, Friday, 12 February 2010 (*Group A*)

Wednesday, 10 February and Thursday, 11 February 2010, and, if required, Friday, 12 February 2010 (*Group B*).

**2010-11 Budget estimates:**

Monday, 24 May to Thursday, 27 May 2010, and, if required, Friday, 28 May 2010 (*Group A*)

Monday, 31 May to Thursday, 3 June 2010, and, if required, Friday, 4 June 2010 (*Group B*)

Monday, 18 October and Tuesday, 19 October 2010 (*supplementary hearings—Group A*)

Wednesday, 20 October and Thursday, 21 October 2010 (*supplementary hearings—Group B*).

- (2) That the committees consider the proposed expenditure in accordance with the allocation of departments and agencies to committees agreed to by the Senate.
- (3) That committees meet in the following groups:

**Group A:**

Environment, Communications and the Arts

Finance and Public Administration

Legal and Constitutional Affairs

Rural and Regional Affairs and Transport

**Group B:**

Community Affairs

Economics

Education, Employment and Workplace Relations

Foreign Affairs, Defence and Trade.

- (4) That the committees report to the Senate on the following dates:
- (a) Tuesday, 23 February 2010 in respect of the 2009-10 additional estimates; and
- (b) Tuesday, 22 June 2010 in respect of the 2010-11 Budget estimates.

Senator Milne: To move on the next day of sitting—That the following matter be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 30 November 2009:

The possible impacts and consequences for public health, trade and agriculture of the Government's decision to relax import restrictions on beef, especially relating to the import of beef from countries previously affected by bovine spongiform encephalopathy, otherwise known as mad cow disease, and any related matters.

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

- (a) recognises each senator's role as community leaders and the collective responsibility to conduct debates on matters of public importance in a respectful and accurate manner, using language that is constructive and appropriate; and

- (b) agrees that all debate on the issue of asylum seekers and border protection is framed within the law, terms and definitions of the:
- (a) United Nations Convention relating to the Status of Refugees (1951);
  - (b) *Migration Act 1958*;
  - (c) *Criminal Code Act 1995*;
  - (d) *Racial Discrimination Act 1975*; and
  - (e) *Anti-Discrimination Act 1977* (NSW). (*general business notice of motion no. 593*)

Senators Ludlam and Milne: To move on the next day of sitting—That the Senate—

- (a) notes that:
- (i) the experience from around the world does not support claims from the Productivity Commission and others that removing territorial copyright protection would reduce the market price for books, and
  - (ii) there is ample evidence that removing territorial copyright protection would hurt Australia's writers, publishers and printers, damaging both Australia's culture and economy; and
- (b) calls on the Government to abandon the plans, inherited from the Howard Government, to remove or restrict territorial copyright protection for books. (*general business notice of motion no. 594*)

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Wortley): To move 15 sitting days after today—That the National Health Security (SSBA Standards) Amendment Determination 2009 (No. 1), made under subsection 35(1) of the *National Health Security Act 2007*, be disallowed.

Senator Wortley, by leave, made a statement relating to the notice of motion.

The Parliamentary Secretary for Social Inclusion (Senator Stephens): To move on 28 October 2009—That, in accordance with section 10B(2) of the *Health Insurance Act 1973*, the Senate approves the Health Insurance (Extended Medicare Safety Net) Determination 2009 made under section 10B(1) of the Act on 9 October 2009.

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*Document:* Senator Stephens tabled the following document:

Health Insurance Act—Health Insurance (Extended Medicare Safety Net) Determination 2009 [F2009L03861].

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*Contingent notice of motion:* The Leader of the Opposition in the Senate (Senator Minchin): To move (contingent on any order of the day being read for the consideration of the Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009)—That so much of the standing orders be suspended as would prevent the senator moving that further consideration of the bill be made an order of the day for five sitting days after the government response to the National Broadband Network Implementation Study is laid on the table.

**11 LEAVE OF ABSENCE**

Senator Farrell, by leave, moved—That leave of absence be granted to the following senators on account of parliamentary business overseas:

- (a) Senator Faulkner on 26 October 2009;
- (b) Senators Moore and Sherry from 26 October to 29 October 2009; and
- (c) Senator Wong on 29 October 2009.

Question put and passed.

Senator Parry, by leave, moved—That leave of absence be granted to Senator Barnett for 26 October and 27 October 2009, for personal reasons.

Question put and passed.

**12 ENVIRONMENT, COMMUNICATIONS AND THE ARTS REFERENCES COMMITTEE—  
EXTENSIONS OF TIME TO REPORT**

Senator Parry, by leave and at the request of the Chair of the Environment, Communications and the Arts References Committee (Senator Birmingham), moved—That the time for the presentation of reports of the Environment, Communications and the Arts References Committee be extended as follows:

- (a) forestry and mining operations on the Tiwi Islands—to 29 October 2009; and
- (b) the impact of mining operations on the Murray-Darling Basin—to 19 November 2009.

Question put and passed.

**13 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—  
EXTENSIONS OF TIME TO REPORT**

Senator Parry, by leave and at the request of the Chair of the Rural and Regional Affairs and Transport References Committee (Senator Nash), moved—That the time for the presentation of reports of the Rural and Regional Affairs and Transport References Committee be extended as follows:

- (a) natural resource management and conservation challenges—to 18 December 2009; and
- (b) the provisions of the Social Security and Other Legislation Amendment (Income Support for Students) Bill 2009—to 27 October 2009.

Question put and passed.

**14 LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE—LEAVE TO  
MEET DURING SITTING**

Senator Parry, by leave and at the request of the Chair of the Legal and Constitutional Affairs References Committee (Senator Barnett), moved—That the Legal and Constitutional Affairs References Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 27 October 2009, from 3.30 pm, to take evidence for the committee's inquiry into access to justice.

Question put and passed.

**15 POSTPONEMENTS**

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the names of Senators Boswell and Macdonald for today, proposing the disallowance of the Proclamation dated 14 May 2009 [Coral Sea Conservation Zone], postponed till 28 October 2009.

Business of the Senate order of the day no. 5, proposing the disallowance of the Threat Abatement Plan for disease in natural ecosystems caused by *Phytophthora cinnamomi* (2009), postponed till 28 October 2009.

General business notice of motion no. 508 standing in the name of Senator Humphries for today, relating to former child migrants and children harmed by institutional care, postponed till 16 November 2009.

General business notice of motion no. 527 standing in the name of Senator Xenophon for today, proposing the introduction of the Water Licence Moratorium Bill 2009, postponed till 16 November 2009.

**16 FINANCE—FUTURE FUND—TELSTRA SHARES—ORDER FOR PRODUCTION OF DOCUMENTS**

The Leader of the Family First Party (Senator Fielding), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 579—

- (1) That there be laid on the table, no later than 16 November 2009, a report by the Australian Securities and Investments Commission on its oversight of the disposal by the Future Fund of shares in Telstra during the past 12 months, including the following matters:
  - (a) whether the Future Fund had any information which was not generally available and could be expected to have a material effect on the price or value of Telstra shares; and
  - (b) other related matters.
- (2) That there be laid on the table, no later than 16 November 2009, a report by the Future Fund Board of Guardians on the disposal by the Future Fund of shares in Telstra during the past 12 months, including the following matters:
  - (a) whether the Future Fund had any information which was not generally available and could be expected to have a material effect on the price or value of Telstra shares; and
  - (b) other related matters.

Question put and passed.

**17 KEEPING JOBS FROM GOING OFFSHORE (PROTECTION OF PERSONAL INFORMATION) BILL 2009**

The Leader of the Family First Party (Senator Fielding), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 580—That the following bill be introduced:

A Bill for an Act to protect jobs in Australia by preventing the transfer of personal information to other countries without consent, and for related purposes.

Question put and passed.

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

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

**18 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—IMMIGRATION—BORDER PROTECTION**

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 Rudd Labor Government's failure to adequately manage border protection.

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

**19 ENVIRONMENT—BUSHFIRE SEASON—MINISTERIAL STATEMENT—DOCUMENT**

The Parliamentary Secretary for Social Inclusion (Senator Stephens) tabled the following document:

Environment—Commonwealth's preparations for this bushfire season—Ministerial statement by the Attorney-General (Mr McClelland), dated 20 October 2009.

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

Debate ensued.

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

**20 DEPARTMENT OF THE SENATE—REPORT FOR 2008-09—DOCUMENT**

The Acting Deputy President (Senator Humphries) tabled the following document received on 12 October 2009:

Department of the Senate—Report for 2008-09.

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

**21 DEPARTMENT OF PARLIAMENTARY SERVICES—REPORT FOR 2008-09—DOCUMENT**

The Acting Deputy President (Senator Humphries) tabled the following document received on 19 October 2009:

Department of Parliamentary Services—Report for 2008-09.

**22 ECONOMICS REFERENCES COMMITTEE—INTERIM REPORT—THE GOVERNMENT'S ECONOMIC STIMULUS INITIATIVES**

The Acting Deputy President (Senator Humphries) tabled the following report received on 30 September 2009:

Economics References Committee—The Government's economic stimulus initiatives —Interim report, dated 30 September 2009.

*Reporting date:* Senator O'Brien, by leave and at the request of the Chair of the Economics References Committee (Senator Eggleston), moved—That the report of the Economics References Committee on the Government's economic stimulus initiatives be presented by 27 October 2009.

Question put and passed.

Senator Parry, by leave, moved—That the Senate take note of the report.  
Debate adjourned till the next day of sitting, Senator Parry in continuation.

**23 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—REPORTS—  
MIGRATION AMENDMENT (COMPLEMENTARY PROTECTION) BILL 2009**

The Acting Deputy President (Senator Humphries) tabled the following reports and documents received on the dates indicated:

Legal and Constitutional Affairs Legislation Committee—Migration Amendment (Complementary Protection) Bill 2009 [Provisions]—

Interim report, dated 16 October 2009. [*Received 16 October 2009*]

Report, dated October 2009 and submissions. [*Received 19 October 2009*]

Report—Correction. [*Received 22 October 2009*]

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

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

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

**24 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS LEGISLATION  
COMMITTEE—REPORT—EDUCATION SERVICES FOR OVERSEAS STUDENTS  
AMENDMENT (RE-REGISTRATION OF PROVIDERS AND OTHER MEASURES) BILL  
2009**

The Acting Deputy President (Senator Humphries) tabled the following report and documents received on 16 October 2009:

Education, Employment and Workplace Relations Legislation Committee—  
Education Services for Overseas Students Amendment (Re-registration of  
Providers and Other Measures) Bill 2009 [Provisions]—Report, dated October  
2009 and submissions.

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

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

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

**25 ECONOMICS REFERENCES COMMITTEE—INTERIM REPORT—GROCERYCHOICE  
WEBSITE**

The Acting Deputy President (Senator Humphries) tabled the following report received on 19 October 2009:

Economics References Committee—GROCERYchoice website—Interim report,  
dated 19 October 2009.

*Reporting date:* Senator O'Brien, by leave and at the request of the Chair of the Economics References Committee (Senator Eggleston), moved—That the report of the Economics References Committee on the GROCERYchoice website be presented by 16 November 2009.

Question put and passed.

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

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

**26 HOUSING AFFORDABILITY IN AUSTRALIA—SELECT COMMITTEE—GOVERNMENT RESPONSE**

The Acting Deputy President (Senator Humphries) tabled the following document received on 14 October 2009:

Housing Affordability in Australia—Select Committee—Report—A good house is hard to find: Housing affordability in Australia—Government response.

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

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

**27 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—GOVERNMENT RESPONSE—PERSONAL PROPERTY SECURITIES BILL 2009**

The Acting Deputy President (Senator Humphries) tabled the following document received on 21 October 2009:

Legal and Constitutional Affairs Legislation Committee—Report—Personal Property Securities Bill 2009 [Provisions]—Government response.

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

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

**28 GOVERNMENT DOCUMENTS**

The Acting Deputy President (Senator Humphries) tabled the following documents received on the dates indicated:

Australian Postal Corporation (Australia Post)—Report for 2008-09. [*Received 15 October 2009*]

Australian Research Council—Report for 2008-09. [*Received 16 October 2009*]

Civil Aviation Safety Authority (CASA)—Report for 2008-09. [*Received 13 October 2009*]

Commonwealth Ombudsman—Report for 2008-09. [*Received 16 October 2009*]

Commonwealth Scientific and Industrial Research Organisation (CSIRO)—Report for 2008-09, including financial statements for the Science and Industry Endowment Fund. [*Received 13 October 2009*]

Department of Agriculture, Fisheries and Forestry—Report for 2008-09, including Dairy Adjustment Authority report for the period 1 July to 31 December 2008 and financial statements for Australian Quarantine and Inspection Service, National Residue Survey and Biosecurity Australia. [*Received 8 October 2009*]

Department of Broadband, Communications and the Digital Economy—Report for 2008-09. [*Received 15 October 2009*]

Department of Finance and Deregulation—Campaign advertising by Australian government departments and agencies—Report for 2008-09. [*Received 30 September 2009*]

Department of Human Services—Report for 2008-09, including financial statements for CRS Australia. [*Received 15 October 2009*]

Department of the Prime Minister and Cabinet—Report for 2008-09. [*Received 15 October 2009*]

Electoral reform—Strengthening Australia's democracy—Green paper by the Special Minister of State, dated September 2009. [*Received 23 September 2009*]

Gene Technology Regulator—Report for 2008-09. [*Received 23 October 2009*]  
 Inspector-General of Intelligence and Security (IGIS)—Report for 2008-09. [*Received 13 October 2009*]  
 Medibank Private Limited—Report for 2008-09. [*Received 24 September 2009*]  
 Migration Review Tribunal and Refugee Review Tribunal—Report for 2008-09. [*Received 16 October 2009*]  
 National Competition Council—Report for 2008-09. [*Received 7 October 2009*]  
 NBN Co Limited—Report for the period 9 April to 30 June 2009. [*Received 16 October 2009*]

**29 AUSTRALIAN NATIONAL AUDIT OFFICE—REPORT FOR 2008-09—DOCUMENT**

The Acting Deputy President (Senator Humphries) tabled the following document received on 24 September 2009:

Australian National Audit Office—Report for 2008-09.

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

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

**30 AUDITOR-GENERAL—AUDIT REPORT NO. 6 OF 2009-10—DOCUMENT**

The Acting Deputy President (Senator Humphries) tabled the following document received on 28 September 2009:

Auditor-General—Audit report no. 6 of 2009-10—Performance audit—Confidentiality in government contracts – Senate order for departmental and agency contracts (calendar year 2008 compliance).

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

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

**31 HEALTH—CHEMOTHERAPY TREATMENT—BUDGET CUTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS**

Pursuant to the order of the Senate of 18 August 2009, the Acting Deputy President (Senator Humphries) tabled the following documents received on the dates indicated:

Letter to the President of the Senate from the Special Minister of State (Senator Ludwig), dated 21 September 2009 and attachments [18]. [*Received 21 September 2009*]

Letter to the President of the Senate from the Special Minister of State (Senator Ludwig), dated 24 September 2009 and attachment. [*Received 24 September 2009*]

Letter to the President of the Senate from the Special Minister of State (Senator Ludwig), dated 16 October 2009 and attachments [2]. [*Received 16 October 2009*]

**32 HEALTH—AGED CARE PROVIDERS—GENERAL PURPOSE ACCOUNTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT**

Pursuant to the order of the Senate of 19 August 2009, the Acting Deputy President (Senator Humphries) tabled the following document received on 21 September 2009:

Letter from the Minister for Ageing (Ms Elliot) to the Special Minister of State (Senator Ludwig), dated 17 September 2009.

**33 ENVIRONMENT—STRATEGIC REVIEW OF CLIMATE CHANGE POLICIES—ORDER FOR PRODUCTION OF DOCUMENT—DOCUMENT**

Pursuant to the order of the Senate of 3 September 2008, the Acting Deputy President (Senator Humphries) tabled the following document received on 28 September 2009:

Environment—Strategic review of Australian government climate change programs, Mr Wilkins AO, dated 31 July 2008.

**34 COMMUNICATIONS—NATIONAL BROADBAND NETWORK—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT**

Pursuant to the order of the Senate of 13 May 2009, the Acting Deputy President (Senator Humphries) tabled the following document received on 26 October 2009:

Communications—National Broadband Network—Letter to the President of the Senate from the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) and attachments.

**35 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS**

Pursuant to the order of the Senate of 30 May 1996, as amended, the Acting Deputy President (Senator Humphries) tabled the following documents received on the dates indicated:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2009—Statements of compliance—

Australian Agency for International Development (AusAID). [*Received 12 October 2009*]

Broadband, Communications and the Digital Economy portfolio agencies. [*Received 30 September 2009*]

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

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

**36 DEPARTMENTAL AND AGENCY APPOINTMENTS AND VACANCIES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS**

Pursuant to the order of the Senate of 24 June 2008, as amended, the Acting Deputy President (Senator Humphries) tabled the following documents received on the dates indicated:

Departmental and agency appointments and vacancies—Supplementary budget estimates—Letters of advice—

Agriculture, Fisheries and Forestry portfolio agencies. [*Received 12 October 2009*]

Attorney-General's portfolio agencies. [*Received 12 October 2009*]

Australian Institute of Family Studies [2]. [*Received 28 September and 9 October 2009*]

Australian National Audit Office. [*Received 12 October 2009*]

Australian Public Service Commission. [*Received 12 October 2009*]

Broadband, Communications and the Digital Economy portfolio agencies. [*Received 2 October 2009*]

Climate Change portfolio agencies. [*Received 16 October 2009*]

Commonwealth Ombudsman. [*Received 12 October 2009*]

Defence portfolio agencies. [*Received 14 October 2009*]  
 Education, Employment and Workplace Relations portfolio agencies. [*Received 12 October 2009*]  
 Environment, Water, Heritage and the portfolio agencies. [*Received 14 October 2009*]  
 Families, Housing, Community Services and Indigenous Affairs portfolio agencies. [*Received 13 October 2009*]  
 Finance and Deregulation portfolio agencies. [*Received 12 October 2009*]  
 Foreign Affairs and Trade portfolio agencies. [*Received 19 October 2009*]  
 Health and Ageing portfolio agencies. [*Received 9 October 2009*]  
 Human Services portfolio agencies. [*Received 12 October 2009*]  
 Immigration and Citizenship portfolio agencies. [*Received 9 October 2009*]  
 Infrastructure, Transport, Regional Development and Local Government portfolio agencies. [*Received 13 October 2009*]  
 Innovation, Industry, Science and Research portfolio agencies [2]. [*Received 13 October 2009 and 19 October 2009*]  
 Inspector-General of Intelligence and Security. [*Received 12 October 2009*]  
 National Archives of Australia. [*Received 12 October 2009*]  
 Office of the Privacy Commissioner. [*Received 12 October 2009*]  
 Old Parliament House. [*Received 12 October 2009*]  
 Prime Minister and Cabinet portfolio agencies. [*Received 12 October 2009*]  
 Resources, Energy and Tourism portfolio agencies. [*Received 19 October 2009*]  
 Treasury portfolio agencies. [*Received 12 October 2009*]  
 Veterans' Affairs portfolio agencies. [*Received 13 October 2009*]

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

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

**37 DEPARTMENTAL AND AGENCY GRANTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS**

Pursuant to the order of the Senate of 24 June 2008 the Acting Deputy President (Senator Humphries) tabled the following documents received on the dates indicated:

Departmental and agency grants—Supplementary budget estimates—Letters of advice—

Attorney-General's portfolio agencies. [*Received 12 October 2009*]  
 Australian Institute of Family Studies. [*Received 28 September 2009*]  
 Australian National Audit Office. [*Received 12 October 2009*]  
 Australian Public Service Commission. [*Received 12 October 2009*]  
 Commonwealth Ombudsman. [*Received 12 October 2009*]  
 Defence portfolio agencies. [*Received 13 October 2009*]  
 Department of Agriculture, Fisheries and Forestry. [*Received 12 October 2009*]  
 Department of Broadband, Communications and the Digital Economy. [*Received 6 October 2009*]  
 Department of Climate Change. [*Received 16 October 2009*]  
 Department of Education, Employment and Workplace Relations. [*Received 19 October 2009*]  
 Department of Immigration and Citizenship. [*Received 9 October 2009*]

Department of Infrastructure, Transport, Regional Development and Local Government. [*Received 13 October 2009*]

Department of the Prime Minister and Cabinet. [*Received 12 October 2009*]

Department of Veterans' Affairs. [*Received 13 October 2009*]

Environment, Water, Heritage and the Arts portfolio agencies. [*Received 14 October 2009*]

Families, Housing, Community Services and Indigenous Affairs portfolio agencies. [*Received 13 October 2009*]

Finance and Deregulation portfolio agencies. [*Received 12 October 2009*]

Foreign Affairs and Trade portfolio agencies. [*Received 20 October 2009*]

Health and Ageing portfolio agencies. [*Received 12 October 2009*]

Human Services portfolio agencies. [*Received 12 October 2009*]

Innovation, Industry, Science and Research portfolio agencies [2]. [*Received 13 October and 19 October 2009*]

Inspector-General of Intelligence and Security. [*Received 12 October 2009*]

National Archives of Australia. [*Received 12 October 2009*]

Office of the Privacy Commissioner. [*Received 12 October 2009*]

Old Parliament House. [*Received 12 October 2009*]

Resources, Energy and Tourism portfolio agencies. [*Received 19 October 2009*]

Treasury portfolio agencies. [*Received 12 October 2009*]

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

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

#### 38 AUDITOR-GENERAL—AUDIT REPORT NO. 7 OF 2009-10—DOCUMENT

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

Auditor-General—Audit report no. 7 of 2009-10—Performance audit—Administration of grants by the National Health and Medical Research Council.

#### 39 LEGISLATION—EXAMPLES OF COAT-HANGER LEGISLATION—DOCUMENT

The Minister for Climate Change and Water (Senator Wong) tabled the following document:

Legislation—Examples of coat-hanger legislation enacted between 1996 and 2007.

#### 40 PRIVILEGES—STANDING COMMITTEE—139TH REPORT

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

Privileges—Standing Committee—139th report—Persons referred to in the Senate—Mr Alan Cummine, dated October 2009.

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

Senator Brandis, by leave, moved—That the report be adopted.

Question put and passed.

*Response as recommended by the committee incorporated in Hansard accordingly.*

**41 AUSTRALIAN PARLIAMENTARY DELEGATION TO VIETNAM AND THE ASIA PACIFIC PARLIAMENTARY FORUM—DOCUMENT**

Senator Kroger, by leave, tabled the following document:

Vietnam and the Asia Pacific Parliamentary Forum—17th annual meeting, Vientiane, Laos—Report of the Australian parliamentary delegation, 5 January to 15 January 2009, dated September 2009.

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

Question put and passed.

**42 DOCUMENTS**

The following documents were tabled by the Clerk:

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

A New Tax System (Goods and Services Tax) Act—A New Tax System (Goods and Services Tax) Margin Scheme Valuation Requirements Determination MSV 2009/1 [F2009L03954]\*.

Acts Interpretation Act—Statements pursuant to subsection 34C(6) relating to the extension of specified period for presentation of reports—

Australian Curriculum, Assessment and Reporting Authority—Report for 2008-09.

*Crimes Act 1914*—Controlled Operations—Report for 2008-09.

Aged Care Act—

Aged Care (Residential care subsidy – amount of accommodation supplement) Determination 2009 (No. 2) [F2009L03565]\*.

Aged Care (Residential care subsidy – amount of concessional resident supplement) Determination 2009 (No. 2) [F2009L03564]\*.

Aged Care (Residential care subsidy – amount of hardship supplement) Determination 2009 (No. 1) [F2009L03556]\*.

Aged Care (Residential care subsidy – amount of pensioner supplement) Determination 2009 (No. 2) [F2009L03560]\*.

Aged Care (Residential care subsidy – amount of respite supplement) Determination 2009 (No. 2) [F2009L03563]\*.

Aged Care (Residential care subsidy – amount of transitional accommodation supplement) Determination 2009 (No. 2) [F2009L03562]\*.

Aged Care (Residential care subsidy – amount of transitional supplement) Determination 2009 (No. 2) [F2009L03561]\*.

Residential Care Subsidy Amendment Principles 2009 (No. 1) [F2009L03558]\*.

User Rights Amendment Principles 2009 (No. 2) [F2009L03559]\*.

User Rights Amendment Principles 2009 (No. 3) [F2009L03567]\*.

Air Navigation Act—Select Legislative Instrument 2009 No. 274—Air Navigation Amendment Regulations 2009 (No. 2) [F2009L03775]\*.

*Appropriation Act (No. 3) 2006-2007*—Determination to Reduce Appropriations Upon Request (No. 1 of 2009-2010) [F2009L03843]\*.

*Appropriation Act (No. 3) 2008-2009*—Determination to Reduce Appropriations Upon Request (No. 2 of 2009-2010) [F2009L03844]\*.

Australian Capital Territory (Planning and Land Management) Act—National Capital Plan—Amendment 57—Blocks 12 & 13 Section 9 Barton [F2009L03763]\*.

Australian Citizenship Act—Instruments IMMI—

09/087—Instrument of Authorisation [F2009L03969]\*.

09/095—Special Residence Requirement [F2009L03608]\*.

Australian National University Act—Programs and Awards Statute 2006—Examination Rules (No. 2) 2009 [F2009L03720]\*.

Australian Organ and Tissue Donation and Transplantation Authority Act—Select Legislative Instrument 2009 No. 269—Australian Organ and Tissue Donation and Transplantation Authority Regulations 2009 [F2009L02965]\*.

Australian Participants in British Nuclear Tests (Treatment) Act—Instrument No. R47/2009—Treatment Principles (Australian Participants in British Nuclear Tests) 2006 (HomeFront – Frequency of Subsidy) Instrument 2009 [F2009L03959]\*.

Australian Prudential Regulation Authority Act—Australian Prudential Regulation Authority (Confidentiality) Determinations Nos—

15 of 2009—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 [F2009L03636]\*.

16 of 2009 [F2009L03841]\*.

Australian Research Council Act—Approval of Proposals—ARC Future Fellowships commencing in 2009.

Aviation Transport Security Act and Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act—Select Legislative Instrument 2009 No. 275—Aviation Transport Security Amendment Regulations 2009 (No. 4) [F2009L03774]\*.

Broadcasting Services Act—Variation to Licence Area Plan for Launceston Radio – No. 1 of 2009 [F2009L03738]\*.

Civil Aviation Act—

Civil Aviation Regulations—Instruments Nos CASA—

405/09—Direction under regulation 209 – conduct of parachute training operations [F2009L03395]\*.

415/09—Instructions – for approved use of P-RNAV procedures [F2009L03493]\*.

422/09—Instructions – use of RNAV (GNSS) approaches by RNP-capable aircraft [F2009L03508]\*.

423/09—Instructions – use of RNAV (GNSS) approaches by RNP-capable aircraft [F2009L03519]\*.

427/09—Direction – number of cabin attendants [F2009L03542]\*.

428/09—Direction – number of cabin attendants [F2009L03552]\*.

429/09—Direction – number of cabin attendants [F2009L03566]\*.

437/09—Direction – to investigate major defects in Dornier 328-100 aircraft and report to CASA [F2009L03620]\*.

441/09—Revocation of direction – parachute operations in the vicinity of Barwon Heads aerodrome [F2009L03633]\*.

EX64/09—Exemption – earth point at fuelling site [F2009L03144]\*.

EX67/09—Exemption – recent experience requirements [F2009L03223]\*.

EX69/09—Exemption – from standard take-off minima [F2009L03527]\*.

- EX72/09—Exemption – earth point at fuelling site [F2009L03495]\*.  
 EX73/09—Exemption – from take-off minima inside and outside Australian territory [F2009L03507]\*.  
 EX74/09—Exemption – from take-off minima inside and outside Australian territory [F2009L03517]\*.  
 EX77/09—Exemption – flight and navigation equipment [F2009L03601]\*.  
 EX78/09—Exemption – use of mobile phones and other electronic devices when loading fuel [F2009L03602]\*.  
 EX79/09—Exemption – take-off with residual traces of frost and ice [F2009L03630]\*.  
 EX80/09—Exemption – flight data recording [F2009L03631]\*.  
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Health Insurance (Accredited Pathology Laboratories – Approval) Amendment Principles 2009 (No. 1) [F2009L02453] [*tabled on 24 June 2009*]*—Business Cost Calculator Report.*

Health Insurance (Allied Health Services) Determination 2009 (No. 2) [F2009L03704]\*.

Health Insurance (Positron Emission Tomography) Determination 2009 (No. 2) [F2009L03857]\*.

Health Insurance (Positron Emission Tomography) Facilities Determination 2009 (No. 2) [F2009L03702]\*.

Select Legislative Instruments 2009 Nos—

236—Health Insurance (Pathology Services Table) Regulations 2009 [F2009L02964]\*.

270—Health Insurance Amendment Regulations 2009 (No. 3) [F2009L03138]\*.

271—Health Insurance (Diagnostic Imaging Services Table) Regulations 2009 [F2009L03137]\*.

272—Health Insurance (General Medical Services Table) Regulations 2009 [F2009L03329]\*.

Higher Education Support Act—

Other Grants Guidelines (Research) 2009 [F2009L03950]\*.

VET Provider Approval Nos—

35 of 2009—Jschool: Journalism Education & Training Pty Ltd [F2009L03526]\*.

36 of 2009—The Southern School of Natural Therapies Ltd [F2009L03734]\*.

37 of 2009—Study Group Australia Pty Limited [F2009L03743]\*.

38 of 2009—Kings International College Ltd [F2009L03963]\*.

Imported Food Control Act—Select Legislative Instrument 2009 No. 235—Imported Food Control Amendment Regulations 2009 (No. 1) [F2009L03524]\*.

*Income Tax Assessment Act 1997*—Select Legislative Instrument 2009 No. 247—*Income Tax Assessment Amendment Regulations 2009* (No. 4) [F2009L03523]\*.

*Industry Research and Development Act*—Re-tooling for Climate Change Program Ministerial Directions No. 1 of 2009 [F2009L03525]\*.

*Interstate Road Transport Act*—

Determination of Routes for B-double Vehicles carrying Higher Mass Limits under the Federal Interstate Registration Scheme (FIRS) 2009 (No. 2) [F2009L03628]\*.

Determination of Routes for B-doubles not Operating at Higher Mass Limits under the Federal Interstate Registration Scheme (FIRS) 2009 (No. 1) [F2009L03627]\*.

Determination of Routes for Vehicles, other than B-doubles and Rigid Truck and Trailer Combinations, carrying Higher Mass Limits under the Federal Interstate Registration Scheme (FIRS) 2009 (No. 1) [F2009L03629]\*.

*Migration Act*—

Direction under section 499—Direction No. 42—Order of consideration – certain Skilled Migration Visas.

*Migration Agents Regulations*—MARA Notices—

MN38-09b of 2009—Migration Agents (Continuing Professional Development – Private Study of Audio, Video or Written Material) [F2009L03594]\*.

MN38-09c of 2009—Migration Agents (Continuing Professional Development – Attendance at a Seminar, Workshop, Conference or Lecture) [F2009L03595]\*.

MN38-09f of 2009—Migration Agents (Continuing Professional Development – Miscellaneous Activities) [F2009L03596]\*.

MN38-09g of 2009—Migration Agents (Continuing Professional Development – Pro Bono Activities) [F2009L03597]\*.

*Migration Regulations*—Instrument IMMI 09/115—Classes of persons [F2009L03972]\*.

Select Legislative Instruments 2009 Nos—

237—Migration Amendment Regulations 2009 (No. 11) [F2009L03528]\*.

273—Migration Amendment Regulations 2009 (No. 12) [F2009L03759]\*.

*Military Rehabilitation and Compensation Act*—Instrument No. M46/2009—MRCA Treatment Principles (HomeFront – Frequency of Subsidy) Instrument 2009 [F2009L03955]\*.

*Motor Vehicle Standards Act*—Vehicle Standard (Australian Design Rule 84/00 – Front Underrun Impact Protection) 2009 [F2009L03609]\*.

*Nation Building Program (National Land Transport) Act 2009*—

Conditions Applying to Payments under Part 8 of the Act [F2009L03617]\*.

Variation of the Nation Building Program Roads to Recovery List Instrument No. 2009/3 [F2009L03733]\*.

*National Health Act*—

Instruments Nos PB—

86 of 2009—Amendment declaration and determination – drugs and medicinal preparations [F2009L03544]\*.

87 of 2009—Amendment determination – pharmaceutical benefits [F2009L03545]\*.

- 88 of 2009—Amendment determination – responsible persons [F2009L03543]\*.
- 89 of 2009—Determination – drugs on F1 and drugs in Part A of F2 [F2009L03540]\*.
- 90 of 2009—Amendment – price determinations and special patient contributions [F2009L03537]\*.
- 91 of 2009—Amendment – pharmaceutical benefits supplied by medical practitioners [F2009L03541]\*.
- 92 of 2009—Amendment Special Arrangements – Highly Specialised Drugs Program [F2009L03547]\*.
- 93 of 2009—Amendment Special Arrangements – Chemotherapy Pharmaceuticals Access Program [F2009L03546]\*.
- 94 of 2009—Amendment Special Arrangements – Highly Specialised Drugs Program [F2009L03701]\*.
- 95 of 2009—Amendment determination – weighted average disclosed price [F2009L03722]\*.
- 96 of 2009—Amendment declaration and determination – drugs and medicinal preparations [F2009L03829]\*.
- 97 of 2009—Amendment determination – pharmaceutical benefits [F2009L03821]\*.
- 98 of 2009—Amendment determination – responsible persons [F2009L03798]\*.
- 99 of 2009—Determination – drugs on F1 [F2009L03802]\*.
- 100 of 2009—Amendment – price determinations and special patient contributions [F2009L03820]\*.
- 101 of 2009—Amendment Special Arrangements – Highly Specialised Drugs Program [F2009L03885]\*.
- 102 of 2009—Amendment Special Arrangements – Chemotherapy Pharmaceuticals Access Program [F2009L03892]\*.
- 105 of 2009—Amendment determination – weighted average disclosed price [F2009L03737]\*.

National Health (Immunisation Program – Designated Vaccines) Determination 2009 (No. 2) [F2009L03765]\*.

National Transport Commission Act—Select Legislative Instruments 2009 Nos—

- 238—National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue – Package No. 2) Regulations 2009 [F2009L03553]\*.
- 239—National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue – Package No. 3) Regulations 2009 [F2009L03554]\*.
- 240—National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue – Package No. 4) Regulations 2009 [F2009L03555]\*.
- 241—National Transport Commission (Model Amendments Regulations: Australian Road Rules – Package No. 5 – General) Regulations 2009 [F2009L03569]\*.
- 242—National Transport Commission (Model Amendments Regulations: Australian Road Rules – Package No. 5 – Seatbelts) Regulations 2009 [F2009L03570]\*.

Navigation Act—Marine Orders Nos—

- 3 of 2009—Marine pollution prevention – sewage [F2009L03640]\*.
- 4 of 2009—Operations standards and procedures [F2009L03639]\*.
- 5 of 2009—Prevention of collisions [F2009L03712]\*.

6 of 2009—High-speed craft [F2009L03714]\*.

7 of 2009—Measures to enhance maritime safety [F2009L03717]\*.

Parliamentary Entitlements Act—Select Legislative Instrument 2009 No. 250—Parliamentary Entitlements Amendment Regulations 2009 (No. 1) Amendment Regulations 2009 (No. 1) [F2009L03706]\*.

Private Health Insurance Act—

Private Health Insurance (Benefit Requirements) Amendment Rules 2009 (No. 5) [F2009L03599]\*.

Private Health Insurance (Complying Product) Rules 2009 (No. 2) [F2009L03600]\*.

Private Health Insurance (Insurer Obligations) Rules 2009 [F2009L03634]\*.

Private Health Insurance (Prostheses) Amendment Rules 2009 (No. 3) [F2009L03777]\*.

Protection of the Sea (Oil Pollution Compensation Funds) Act—Select Legislative Instruments 2009 Nos—

243—Protection of the Sea (Oil Pollution Compensation Fund) Amendment Regulations 2009 (No. 1) [F2009L03536]\*.

244—Protection of the Sea (Supplementary Fund) Regulations 2009 [F2009L03539]\*.

Radiocommunications Act—

Radiocommunications Advisory Guidelines (Managing Interference to Apparatus Licensed Receivers—3.4 GHz Band) Amendment 2009 (No. 1) [F2009L03576]\*.

Radiocommunications Licence Conditions (Fixed Licence) Amendment Determination 2009 (No. 1) [F2009L03578]\*.

Remuneration Tribunal Act—

Determinations—

2009/13: Remuneration and Allowances for Holders of Public Office [F2009L03658]\*.

2009/14: Remuneration and Allowances for Holders of Part-Time Public Office [F2009L03676]\*.

2009/15: Specified Statutory Officers – Remuneration and Allowances [F2009L03673]\*.

2009/16: Principal Executive Officer (PEO) Classification Structure and Terms and Conditions [F2009L03680]\*.

2009/17: Judicial and Related Offices – Remuneration and Allowances [F2009L03665]\*.

2009/18: Remuneration and Allowances for Holders of Full-Time Public Office [F2009L03674]\*.

2009/19: Members of Parliament – Entitlements [F2009L03846]\*.

2009/20: Parliamentary Office Holders – Additional Salary [F2009L03979]\*.

Report No. 1 of 2009—Ministers of State – Salaries Additional to the Basic Parliamentary Salary.

Social Security Act—

Social Security (Australian Government Disaster Recovery Payment – Amount of payment for disasters outside Australia) Determination 2009 [F2009L03836]\*.

- Social Security (Australian Government Disaster Recovery Payment) Determination 2009 (No. 6) [F2009L03837]\*.
- Social Security (Australian Government Disaster Recovery Payment) Determination 2009 (No. 7) [F2009L03838]\*.
- Social Security Exempt Lump Sum (Dependant Pension Lump Sum Payment and Closure) (FaHCSIA) Determination 2009 [F2009L03607]\*.
- Social Security (Exempt Lump Sum) (Dependants' Pension Lump Sum Payment and Closure) (DEEWR) Determination 2009 (No. 1) [F2009L03619]\*.
- Social Security Exempt Lump Sum (Disability Sporting Grants) (FaHCSIA) Determination 2009 [F2009L03984]\*.
- Social Security Foreign Currency Exchange Rate Determination 2009 (No. 2) [F2009L03510]\*.
- Social Security (Waiver of Debts – Small APRA Funds) (FaHCSIA) Specification 2009 [F2009L03948]\*.
- Social Security (Administration) Act—
- Social Security (Administration) (Declared relevant Northern Territory areas – Various) Determination 2009 (No. 10) [F2009L03736]\*.
- Social Security (Administration) (Declared voluntary income management areas – Western Australia) Determinations 2009—
- (No. 2) [F2009L03956]\*.
- (No. 3) [F2009L03958]\*.
- (No. 4) [F2009L03960]\*.
- Superannuation Industry (Supervision) Act—Superannuation Industry (Supervision) Modification Declarations Nos—
- 1 of 2009 [F2009L03944]\*.
- 2 of 2009 [F2009L03945]\*.
- Sydney Airport Curfew Act—Dispensation Report 08/09.
- Taxation Administration Act—Private Ancillary Fund Guidelines 2009 [F2009L03700]\*.
- Telecommunications Act—
- Telecommunications Cabling Provider Amendment Rules 2009 (No. 1) [F2009L03729]\*.
- Telecommunications Cabling Provider Rules 2000—Arrangements for the Operation of the Registration System (No. 3) [F2009L03732]\*.
- Telecommunications (Types of Cabling Work) Amendment Declaration 2009 (No. 1) [F2009L03730]\*.
- Therapeutic Goods Act—
- Therapeutic Goods (Listing) Notice 2009 (No. 5) [F2009L03632]\*.
- Therapeutic Goods (Listing) Notice 2009 (No. 6) [F2009L03872]\*.
- Veterans' Entitlements Act—
- Veterans' Entitlements (Treatment Principles – Community Care at Home approved under the *Aged Care Act 1997* for Former Prisoners of War and Victoria Cross Recipients) Instrument 2009—R53/2009 [F2009L03776]\*.
- Veterans' Entitlements (Treatment Principles – HomeFront – Frequency of Subsidy) Instrument 2009—R45/2009 [F2009L03957]\*.

*Governor-General's Proclamation—Commencement of provisions of an Act*

*Protection of the Sea Legislation Amendment Act 2008—Schedule 1—13 October 2009 [F2009L03731]\*.*

\* Explanatory statement tabled with legislative instrument.

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

**FUEL QUALITY STANDARDS AMENDMENT BILL 2009**

Messages from the House of Representatives were reported agreeing to the amendments made by the Senate to the following bills:

Message no. 419, dated 20 October 2009—Federal Court of Australia Amendment (Criminal Jurisdiction) Bill 2008.

Message no. 420, dated 21 October 2009—Fuel Quality Standards Amendment Bill 2009.

**44 CORPORATIONS LEGISLATION AMENDMENT (FINANCIAL SERVICES MODERNISATION) BILL 2009**

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

Message no. 417, dated 17 September 2009—A Bill for an Act to amend the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*, 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.

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*Explanatory memorandum:* Senator Wong tabled a revised explanatory memorandum relating to the bill.

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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.

**45 EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT (RE-REGISTRATION OF PROVIDERS AND OTHER MEASURES) BILL 2009**

**LONG SERVICE LEAVE LEGISLATION AMENDMENT (TELSTRA) BILL 2009**

**STATUTE STOCKTAKE (REGULATORY AND OTHER LAWS) BILL 2009**

**TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009**

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

Message no. 423, dated 21 October 2009—A Bill for an Act to amend the *Education Services for Overseas Students Act 2000*, and for related purposes.

Message no. 422, dated 21 October 2009—A Bill for an Act to amend the law relating to long service leave, and for related purposes.

Message no. 418, dated 17 September 2009—A Bill for an Act to make various amendments of the statute law of the Commonwealth, to repeal certain Acts and provisions of Acts, and for related purposes.

Message no. 421, 21 October 2009—A Bill for an Act to amend the *Trade Practices Act 1974* and the *Australian Securities and Investments Commission Act 2001*, and for other 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.

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*Explanatory memorandum:* Senator Wong tabled a revised explanatory memorandum relating to the Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Bill 2009.

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

*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.

#### 46 TELECOMMUNICATIONS LEGISLATION AMENDMENT (COMPETITION AND CONSUMER SAFEGUARDS) BILL 2009

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

Message no. 424, dated 22 October 2009—A Bill for an Act to amend legislation relating to telecommunications, and for other 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.

*Consideration of legislation:* Pursuant to order of the Senate of 13 May 2009, the debate was adjourned and the resumption of the debate made an order of the day for the next day of sitting after the presentation of documents relating to the National Broadband Network tender process.

#### 47 GOVERNOR-GENERAL'S MESSAGES—ASSENT TO LAWS

Messages from Her Excellency the Governor-General were reported, informing the Senate that she had assented to the following laws:

17 September 2009—Message No. 33—*Native Title Amendment Act 2009* (Act No. 83, 2009).

- 18 September 2009—Message—  
No. 34—  
*Safe Work Australia Act 2008* (Act No. 84, 2009)  
*Migration Amendment (Abolishing Detention Debt) Act 2009* (Act No. 85, 2009).
- No. 35—  
*Higher Education Support Amendment (2009 Budget Measures) Act 2009* (Act No. 86, 2009)  
*National Greenhouse and Energy Reporting Amendment Act 2009* (Act No. 87, 2009)  
*Tax Laws Amendment (2009 Measures No. 4) Act 2009* (Act No. 88, 2009).
- No. 36—*Foreign States Immunities Amendment Act 2009* (Act No. 89, 2009).
- 21 September 2009—Message No. 37—*Australian Citizenship Amendment (Citizenship Test Review and Other Measures) Act 2009* (Act No. 90, 2009).
- 22 September 2009—Message No. 38—  
*Military Justice (Interim Measures) Act (No. 1) 2009* (Act No. 91, 2009)  
*Military Justice (Interim Measures) Act (No. 2) 2009* (Act No. 92, 2009).
- 29 September 2009—Message No. 39—  
*Automotive Transformation Scheme Act 2009* (Act No. 93, 2009)  
*ACIS Administration Amendment Act 2009* (Act No. 94, 2009)  
*Uranium Royalty (Northern Territory) Act 2009* (Act No. 95, 2009)  
*Therapeutic Goods Amendment (2009 Measures No. 2) Act 2009* (Act No. 96, 2009).
- 2 October 2009—Message No. 40—  
*Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009* (Act No. 97, 2009)  
*Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009* (Act No. 98, 2009).
- 6 October 2009—Message No. 41—*Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009* (Act No. 99, 2009).
- 7 October 2009—Message No. 42—  
*National Health Security Amendment Act 2009* (Act No. 100, 2009)  
*Health Insurance Amendment (Extended Medicare Safety Net) Act 2009* (Act No. 101, 2009).
- 8 October 2009—Message No. 43—  
*Offshore Petroleum and Greenhouse Gas Storage Legislation Amendment Act 2009* (Act No. 102, 2009)  
*Offshore Petroleum and Greenhouse Gas Storage (Safety Levies) Amendment Act 2009* (Act No. 103, 2009)  
*Road Transport Reform (Dangerous Goods) Repeal Act 2009* (Act No. 104, 2009)  
*International Tax Agreements Amendment Act (No. 1) 2009* (Act No. 105, 2009).

**48 ENVIRONMENT, COMMUNICATIONS AND THE ARTS LEGISLATION COMMITTEE—  
REPORT—TELECOMMUNICATIONS LEGISLATION AMENDMENT (COMPETITION AND  
CONSUMER SAFEGUARDS) BILL 2009**

Pursuant to order, Senator Farrell, at the request of the Chair of the Environment, Communications and the Arts Legislation Committee (Senator McEwen), tabled the following report and documents:

Environment, Communications and the Arts Legislation Committee—Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2009 [Provisions]—Report, dated October 2009, Hansard record of proceedings, additional information and submissions.

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

*Statement by leave:* The Leader of the Opposition in the Senate (Senator Minchin), by leave, made a statement relating to the report.

**49 ENVIRONMENT—AUSTRALIAN FOREST COVER—MAPS—DOCUMENT**

Pursuant to the order of the Senate of 16 September 2009, the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) tabled the following document:

Environment—Australian forest cover—Maps—Statement responding to the resolution of the Senate of 16 September 2009.

**50 CORPORATIONS AMENDMENT (IMPROVING ACCOUNTABILITY ON TERMINATION PAYMENTS) BILL 2009**

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

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*In the committee*

Consideration resumed of the bill.

Senator Xenophon moved the following amendment:

Schedule 1, page 10 (after line 27), after item 32, insert:

**32A At the end of section 200F**

Add:

*Certain exceptions cease to operate*

- (6) Subsections 200F(2), (3) and (4) cease to have effect 36 months after the commencement of Part 1 of Schedule 1 of the *Corporations Amendment (Improving Accountability on Termination Payments) Act 2009*, unless their operation is continued or varied by a subsequent Act of Parliament.

Note: Subsections 200F(2), (3) and (4) provide exceptions to the member approval requirement for benefits that do not exceed one year's base salary.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 36

Senators—

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

NOES, 25

Senators—

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

Question agreed to.

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

Schedule 1, page 13 (after line 2), after item 40, insert:

**40A At the end of Division 2 in Part 2D.2**

Add:

**200K Executive benefits must comply with remuneration policy**

- (1) An entity mentioned in subsection (2) must not give a person a benefit in connection with a person (the *manager or executive*) holding a managerial or executive office unless:
  - (a) there is member approval under section 200M for a remuneration policy that covers the giving of such a benefit; and
  - (b) the benefit meets the requirements of that policy.

Note 1: The recipient of the benefit need not be the manager or executive.

Note 2: *Managerial or executive office* has the meaning given by section 200AA.
- (2) The entities are as follows:
  - (a) the company;
  - (b) an associate of the company (other than a body corporate that is related to the company and is itself a company);
  - (c) a prescribed superannuation fund in relation to the company.
- (3) In this section:
 

*superannuation fund* means a provident, benefit, superannuation or retirement fund.

**200L Remuneration policy***Remuneration policy*

- (1) A **remuneration policy** proposed for member approval under section 200M must:
- (a) outline the objectives and structure of executive remuneration arrangements generally; and
  - (b) outline the objectives and structure of executive remuneration arrangements in relation to the following kinds of benefits:
    - (i) benefits connected to appointment or engagement of a person, however described;
    - (ii) annual base salary;
    - (iii) benefits relating to performance or bonuses, however described;
    - (iv) superannuation entitlements which exceed statutory requirements;
    - (v) benefits connected to a person's retirement;
    - (vi) benefits of a kind prescribed by the regulations for the purposes of this section; and
  - (c) address any other matters prescribed by the regulations.

*Use of consultants*

- (2) If, in any financial year, an entity engages the services of consultants of any description in the formulation of:
- (a) a remuneration policy; or
  - (b) remuneration packages under such a policy;
- the directors' report required for that financial year under section 298 must set out:
- (c) which consultants were hired and for what purposes; and
  - (d) how much each of the consultants was paid for their services.

**200M Approval of remuneration policy**

- (1) The remuneration policy, and any revision to that policy, must be approved by a resolution passed at a general meeting of:
- (a) the company; and
  - (b) if the company is a subsidiary of a listed domestic corporation—the listed corporation; and
  - (c) if the company has a holding company that:
    - (i) is a domestic corporation that is not listed; and
    - (ii) is not itself a subsidiary of a domestic corporation;
 the holding company.
- (2) Details of the remuneration policy must be set out in, or accompany, the notice of each meeting that is to consider the policy.
- (3) The requirements of this section are in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to giving or receiving a benefit.
- (4) Member approval of a remuneration policy under this section does not relieve a director of a body corporate from any duty to the body corporate (whether under section 180, 181, 182, 183 or 184 or otherwise and whether of a fiduciary nature or not) in connection with the giving of any benefit.

**200N Benefits to be held on trust and repaid**

- (1) If an entity (the *giver*) contravenes section 200K by giving to a person (the *recipient*) a benefit that is not covered by a remuneration policy for which there is member approval under section 200M, then the amount of the benefit, or the money value of the benefit if it is not a payment:
  - (a) is taken to be received by the recipient on trust for the giver; and
  - (b) must be immediately repaid by the recipient to the giver.
- (2) An amount repayable under subsection (1) to the giver:
  - (a) is a debt due to the giver; and
  - (b) may be recovered by the giver in a court of competent jurisdiction.
- (3) Subsection (1) applies to the whole of the amount of a payment or of the money value of the benefit even though giving the benefit would not have contravened section 200K if that amount or value of the benefit had been less.

Note 1: The heading to Part 2D.2 is altered by omitting “**termination payments**” and substituting “**termination and other payments**”.

Note 2: The heading to Division 2 is altered by omitting “**termination payments**” and substituting “**termination and other payments**”.

Debate ensued.

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

Bill, as amended, agreed to.

Bill to be reported with an amendment.

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

On the motion of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) the report from the committee was adopted and the bill read a third time.

**51 NATIONAL CONSUMER CREDIT PROTECTION BILL 2009**

**NATIONAL CONSUMER CREDIT PROTECTION (FEES) BILL 2009**

**NATIONAL CONSUMER CREDIT PROTECTION (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2009**

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

Debate resumed.

Question put and passed.

Bills read a second time.

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

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*In the committee*

Bills taken together and as a whole by leave.

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*Explanatory memoranda:* The Minister for Broadband, Communications and the Digital Economy (Senator Conroy) tabled a supplementary explanatory memoranda [4] relating to the government amendments to be moved to the National Consumer Credit Protection Bill 2009 and the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009.

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On the motion of Senator Conroy the following amendments in respect of the National Consumer Credit Protection Bill 2009, taken together by leave, were debated and agreed to:

Clause 5, page 9 (after line 11), after the definition of *initial National Credit Act*, insert:

*initial National Credit Code*: see subsection 20(2).

Clause 5, page 12 (after line 4), after the definition of *record*, insert:

*referred credit matter*: see subsection 20(1).

Clause 5, page 12 (line 5), omit the definition of *referred credit matters*.

Clause 6, page 16 (table item 1, column 3, paragraph (c)), omit “for or”.

Clause 6, page 16 (table item 3, column 3, paragraph (c)), omit “for or”.

Clause 6, page 16 (table item 4, column 3, paragraph (c)), omit “for or”.

Clause 6, page 17 (table item 5, column 3, paragraph (c)), omit “for or”.

Clause 8, page 18 (line 11), omit “for or”.

Clause 9, page 18 (line 26), omit “for or”.

Clause 19, page 27 (line 8), omit “making laws”, substitute “the making of laws”.

Clause 19, page 27 (lines 11 to 16), omit subclause (4), substitute:

*Reference covering amendments of this Act or the Transitional Act*

- (4) This subsection covers the referred credit matters (see section 20) to the extent of the making of laws with respect to those matters by making express amendments of this Act or the Transitional Act.

Clause 19, page 28 (lines 6 to 14), omit the definition of *express amendment*, substitute:

*express amendment* of this Act or the Transitional Act means the direct amendment of the text of this Act or the Transitional Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by another Commonwealth Act or by an instrument under a Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act or the Transitional Act.

Clause 19, page 28 (line 23), omit the definition of *Trade Practices Act*.

Clause 20, page 28 (line 24) to page 32 (line 3), omit the clause, substitute:

**20 Meaning of referred credit matter**

- (1) **Referred credit matter** means a matter relating to either of the following:
  - (a) credit, being credit the provision of which would be covered by the expression “provision of credit to which this Code applies” in the initial National Credit Code;
  - (b) consumer leases, being consumer leases each of which would be covered by the expression “consumer lease to which Part 11 applies” in the initial National Credit Code.
- (2) **Initial National Credit Code** means Schedule 1 to the initial National Credit Act.

Clause 22, page 33 (lines 9 to 13), omit the clause, substitute:

**22 When Acts bind Crown**

- (1) This Act (other than the National Credit Code) and the Transitional Act do not bind the Crown in any of its capacities.
- (2) Despite subsection (1), the regulations may provide that this Act (other than the National Credit Code) and the Transitional Act, or specified provisions of this Act (other than the National Credit Code) or the Transitional Act, bind either or both of the following in circumstances (if any) prescribed by the regulations:
  - (a) the Crown in right of the Commonwealth;
  - (b) the Crown in all of its other capacities.
- (3) The National Credit Code binds the Crown in each of its capacities.
- (4) This Act and the Transitional Act do not make the Crown liable to be prosecuted for an offence or to any pecuniary penalty.

Heading to subclause 29(3), page 40 (line 19), omit the heading, substitute:

*Defences*

Clause 29, page 41 (after line 5), at the end of the clause, add:

- (4) For the purposes of subsections (1) and (2), it is a defence if:
  - (a) the person engages in the credit activity on behalf of another person (the **principal**); and
  - (b) the person is a representative of the principal; and
  - (c) the person’s conduct in engaging in the credit activity is within the authority of the principal; and
  - (d) the principal is exempted from subsections (1) and (2) under paragraph 109(1)(a), 109(3)(a) or 110(a).

Note: For the purposes of subsection (2), a defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Clause 36, page 47 (line 4), omit “January”, substitute “July”.

Clause 54, page 64 (line 8), omit “ceases to engage in credit activities”, substitute “does not engage, or ceases to engage, in credit activities”.

Clause 97, page 97 (line 8), omit “for or”.

Clause 99, page 98 (line 4), omit “for or”.

Clause 109, page 107 (lines 12 and 13), omit paragraph (1)(a), substitute:

- (a) exempt:
  - (i) a person; or
  - (ii) a person and all of the person's credit representatives;  
from all or specified provisions to which this Part applies; or

Clause 130, page 134 (lines 15 to 28), omit subclause (3).

Clause 153, page 164 (lines 11 to 22), omit subclause (3).

Clause 163, page 178 (lines 11 and 12), omit paragraph (1)(a), substitute:

- (a) exempt:
  - (i) a person; or
  - (ii) a person and all of the person's credit representatives;  
from all or specified provisions to which this Part applies; or

Clause 178, page 188 (after line 34), at the end of subclause (1), add:

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 166.

Clause 179, page 189 (after line 30), at the end of subclause (1), add:

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 166.

Clause 180, page 191 (after line 21), at the end of subclause (1), add:

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 166.

Clause 253, page 249 (lines 6 and 7), omit "in the approved form given to the person", substitute "given to the person in the form prescribed by the regulations".

Clause 274, page 264 (line 28), omit "section 63", substitute "section 290".

Clause 274, page 264 (line 29), omit "subsection 63(3)", substitute "subsection 290(2)".

Clause 284, page 270 (lines 6 and 7), omit "in the approved form given to a person", substitute "given to a person in the form prescribed by the regulations".

Clause 327, page 301 (lines 8 to 10), omit paragraphs (1)(a) and (b), substitute:

- (a) a decision of ASIC under subsection 109(3) (which deals with certain exemptions from, and modifications of, Chapter 2); or
- (b) a decision of ASIC under subsection 163(3) (which deals with certain exemptions from, and modifications of, Chapter 3); or
- (c) a decision of ASIC under section 241 (which deals with approved codes of conduct); or
- (d) a decision of ASIC under Chapter 6 (which deals with compliance and enforcement), except for a decision of ASIC:
  - (i) to make an order under subsection 300(1) (which deals with orders relating to credit contracts, mortgages, guarantees or consumer leases); or
  - (ii) to make, or refuse to make, an order under subsection 301(1) (which deals with orders varying or revoking orders made under section 300); or
- (e) a decision of ASIC to make a determination under subsection 328(3) (which deals with determinations in relation to notice of reviewable decisions etc.); or

- (f) a decision of ASIC under subsection 6(17) of the National Credit Code (which deals with the exclusion of provisions of credit from the application of the National Credit Code); or
- (g) a decision of ASIC under subsection 171(6) of the National Credit Code (which deals with the exclusion of consumer leases from the application of the National Credit Code); or
- (h) a decision of ASIC under subsection 203A(3) of the National Credit Code (which deals with certain exemptions from the National Credit Code); or
- (i) a decision of ASIC under the regulations, unless the regulations specify that an application may be made to the Administrative Appeals Tribunal for review of the decision.

Schedule 1, page 312 (lines 9 and 10), omit “all or any provisions of”.

Schedule 1, page 312 (line 17), omit “all or any provisions of”.

Schedule 1, page 312 (line 26), omit “all or any provisions of”.

Schedule 1, page 313 (after line 2), insert:

*Definitions*

Schedule 1, page 331 (after line 9), at the end of Division 2, add:

**26A Regulations about residential investment property**

The regulations may provide that section 25 or 26 applies in relation to a provision of credit covered by subparagraph 5(1)(b)(ii) or (iii) as if specified provisions were omitted, modified or varied as specified in the regulations.

Schedule 1, page 333 (after line 31), at the end of Division 3, add:

**30A Regulations about residential investment property**

The regulations may provide that this Division applies in relation to a provision of credit covered by subparagraph 5(1)(b)(ii) or (iii) as if specified provisions were omitted, modified or varied as specified in the regulations.

Schedule 1, page 365 (line 3), omit “.”, substitute “; and”.

Schedule 1, page 365 (after line 3), at the end of paragraph (3)(b), add:

- (iii) the reasons for not agreeing to the change.

Schedule 1, page 386 (line 19), omit “.”, substitute “; and”.

Schedule 1, page 386 (after line 19), at the end of paragraph (2)(b), add:

- (iii) the reasons for not agreeing to negotiate.

Schedule 1, page 398 (lines 1 and 2), omit the heading to Part 6, substitute:

**Part 6—Penalties for defaults of credit providers**

Schedule 1, page 398 (lines 3 and 4), omit the heading to Division 1, substitute:

**Division 1—Penalties for breach of key disclosure and other requirements**

Schedule 1, page 399 (lines 15 and 16), omit the heading to clause 113, substitute:

**113 Penalty may be imposed for contravention of key requirement**

Schedule 1, page 405 (line 1), omit the heading to Division 2, substitute:

**Division 2—Other penalties**

Schedule 1, page 438 (lines 20 and 21), omit “all or any provisions of”.

Schedule 1, page 438 (line 24), omit “all or any provisions of”.

Schedule 1, page 438 (line 28), omit “all or any provisions of”.

Schedule 1, page 459 (after line 29), at the end of Part 12, add:

### **Division 5—Exemptions from this Code**

#### **203A Exemptions by ASIC**

##### *Exemptions*

- (1) ASIC may exempt a person, contract, mortgage, guarantee or consumer lease from all or specified provisions of this Code.
- (2) An exemption under subsection (1) is not a legislative instrument.
- (3) ASIC may, by legislative instrument, exempt a class of persons, contracts, mortgages, guarantees or consumer leases from all or specified provisions of this Code.

##### *Conditions on exemptions*

- (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The court may order the person to comply with the condition in a specified way. Only ASIC may apply to the court for the order.

##### *Publication of exemptions under subsection (1)*

- (5) An exemption under subsection (1) must be in writing and ASIC must publish notice of it on its website.

#### **203B Exemptions by the regulations**

The regulations may:

- (a) exempt a person, contract, mortgage, guarantee or consumer lease from all or specified provisions of this Code; or
- (b) exempt a class of persons, contracts, mortgages, guarantees or consumer leases from all or specified provisions of this Code.

Schedule 1, page 466 (line 26), after “affixed”, insert “predominantly”.

Schedule 1, page 466 (line 28), after “affixed”, insert “predominantly”.

Schedule 1, page 466 (line 34), after “affixed”, insert “predominantly”.

Schedule 1, page 467 (line 6), after “affixed”, insert “predominantly”.

Schedule 1, page 467 (line 13), after “affixed”, insert “predominantly”.

On the motion of Senator Conroy the following amendments in respect of the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009, taken together by leave, were agreed to:

Clause 2, page 2 (table item 2), omit the table item, substitute:

- |                                 |                                                                                                     |
|---------------------------------|-----------------------------------------------------------------------------------------------------|
| 2. Schedule 1,<br>items 1 to 21 | At the same time as section 3 of the <i>National Consumer Credit Protection Act 2009</i> commences. |
|---------------------------------|-----------------------------------------------------------------------------------------------------|

- 
- |                            |                                             |
|----------------------------|---------------------------------------------|
| 2A. Schedule 1,<br>item 22 | The day this Act receives the Royal Assent. |
|----------------------------|---------------------------------------------|
-

2B. Schedule 1, At the same time as section 3 of the *National*  
 item 23 *Consumer Credit Protection Act 2009*  
 commences.

Clause 4, page 4 (after line 7), after the definition of *appeal or review proceedings*, insert:

*carried over instrument* means a contract or other instrument that:

- (a) was made before commencement; and
- (b) was in force immediately before commencement; and
- (c) the old Credit Code of a referring State or a Territory applied to immediately before commencement.

Clause 4, page 4 (after line 12), after the definition of *carried over provision*, insert:

*Chapter 3 start day*: see subitem 19(1) of Schedule 1 to this Act.

Clause 4, page 4 (lines 20 and 21), omit the definition of *commencement*, substitute:

*commencement* means the start of 1 July 2010, or a later day prescribed by the regulations.

Clause 4, page 7 (after line 14), after the definition of *registered to engage in a credit activity*, insert:

*registrable corporation* has the same meaning as in section 7 of the *Financial Sector (Collection of Data) Act 2001*.

Clause 4, page 8 (after line 3), after the definition of *this Act*, insert:

*transition end day* means 30 June 2011, or a later day prescribed by the regulations.

Schedule 1, page 13 (after line 23), after Division 1, insert:

## **Division 1A—Application of the new Credit Code**

### **2A Application of the new Credit Code**

(1) The new Credit Code applies from commencement.

Note: The new Credit Code does not apply before commencement. It also does not apply in relation to contracts or other instruments that were made before commencement, unless they are carried over instruments (see item 3).

(2) Subitem (1) is subject to subitem 3(2).

Schedule 1, Division 2, page 13 (line 24) to page 15 (line 3), omit the Division, substitute:

## **Division 2—Treatment of contracts or other instruments made before commencement**

### **3 Application of the new Credit Code to contracts or other instruments made before commencement**

(1) The new Credit Code does not apply in relation to a contract or other instrument that was made before commencement.

(2) Despite subitem (1), the new Credit Code applies in relation to a carried over instrument.

- (3) Despite subitem (2), sections 5, 13 and 172 of the new Credit Code do not apply in relation to a carried over instrument. Instead, sections 6, 11 and 150 of the old Credit Code of a referring State or a Territory, as in force immediately before commencement, apply from commencement in relation to a carried over instrument as if those provisions respectively were sections 5, 13 and 172 of the new Credit Code.
- (4) Despite subitem (2), subsections 6(2) and 50(2), (3), (4), (5) and (8) of the new Credit Code do not apply in relation to a carried over instrument.
- (5) Despite subitem (2), subsection 72(5) of the new Credit Code does not apply in relation to a carried over instrument. Instead, the following provision applies from commencement in relation to a carried over instrument as if the provision were subsection 72(5) of the new Credit Code:

*Application*

- (5) This section and sections 73 to 75 do not apply to a credit contract under which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for the purchase of new dwellings in New South Wales as set out in the Table of Housing Finance Commitments in the most recent publication entitled *Housing Finance, Australia*, as published from time to time by the Australian Bureau of Statistics.
- (6) Despite subitem (2), subsection 94(4) of the new Credit Code does not apply in relation to a carried over instrument. Instead, the following provision applies from commencement in relation to a carried over instrument as if the provision were subsection 94(4) of the new Credit Code:
  - (4) This Division does not apply to a credit contract in respect of which the maximum amount of credit that is or may be provided is more than an amount equal to 110% of the amount of the average loan size for the purchase of new dwellings in New South Wales as set out in the Table of Housing Finance Commitments in the most recent publication entitled *Housing Finance, Australia*, as published from time to time by the Australian Bureau of Statistics.

Schedule 1, item 4, page 15 (line 11), after “commencement”, insert “in relation to a carried over instrument”.

Schedule 1, item 5, page 17 (line 9), after “commencement”, insert “, in relation to a carried over instrument,”.

Schedule 1, item 5, page 17 (line 15), after “commencement”, insert “, in relation to a carried over instrument,”.

Schedule 1, item 8, page 19 (before line 8), before paragraph (2)(a), insert:

- (aa) a contract or other instrument that is not a carried over instrument; or

Schedule 1, item 10, page 20 (line 10), omit “that”.

Schedule 1, Part 3, page 27 (line 1) to page 28 (line 25), omit the Part, substitute:

**Part 3—Application of the National Credit Act (other than the new Credit Code) and Schedule 2 to this Act**

**Division 1—Application of the National Credit Act (other than Chapter 3 and the new Credit Code)**

**17A Application of the National Credit Act (other than Chapter 3 and the new Credit Code)**

(1) The National Credit Act (other than Chapter 3 and the new Credit Code) applies from commencement.

Note 1: The National Credit Act does not apply before commencement. However, see subitem (2), which provides that regulations made under section 329 of the National Credit Act may apply before commencement.

Note 2: See item 19 for the application of Chapter 3 (which deals with responsible lending conduct) of the National Credit Act.

Note 3: See items 2A and 3 for the application of the new Credit Code.

Note 4: Generally, the National Credit Act (other than the new Credit Code) does not apply to contracts or other instruments made before commencement. However, see item 18 for exceptions to this.

(2) Despite subitem (1), regulations made under section 329 of the National Credit Act may apply on and after the day section 3 of the National Credit Act commences.

**18 Treatment of contracts or other instruments made before commencement**

(1) The National Credit Act (other than Chapter 3 and the new Credit Code) does not apply in relation to a contract or other instrument that was made before commencement.

Note 1: See item 19 for the application of Chapter 3 (which deals with responsible lending conduct) of the National Credit Act.

Note 2: See items 2A and 3 for the application of the new Credit Code.

(2) Despite subitem (1), the regulations may provide for the application of all or specified provisions of the National Credit Act to a person (including the licensing of that person) in relation to credit activities engaged in on or after commencement in relation to a carried over instrument.

(3) Despite subitem (1), Part 4-3 of the National Credit Act (which deals with the jurisdiction and procedure of courts) applies to proceedings brought under the new Credit Code after commencement in relation to a carried over instrument.

(4) Despite subitem (1), regulations made under section 329 of the National Credit Act for the purposes of section 330 of that Act or the new Credit Code may make provision in relation to proceedings brought after commencement in relation to a carried over instrument.

## **Division 2—Application of Chapter 3 of the National Credit Act**

### **19 Application of Chapter 3 of the National Credit Act**

*When all of Chapter 3 (responsible lending conduct) applies to all licensees*

- (1) Chapter 3 (which deals with responsible lending conduct) of the National Credit Act applies on and after the day (the *Chapter 3 start day*) that is 1 January 2011, or a later day prescribed by the regulations.

Note: Chapter 3 of the National Credit Act does not apply before the Chapter 3 start day. However, under subitem (2), certain provisions of Chapter 3 apply before then to some licensees (and registered persons because of item 36 of Schedule 2 to this Act).

*When certain provisions of Chapter 3 apply earlier for some licensees*

- (2) Despite subitem (1), sections 112, 115, 116, 117, 118, 119, 122, 123, 124, 128, 129, 130, 131, 133, 135, 138, 139, 140, 141, 142, 145, 146, 147, 151, 152, 153, 154, 156, 162, 163 and 164 (which deal with the main responsible lending conduct rules) of the National Credit Act apply in relation to conduct engaged in by a licensee in the period that:
- (a) starts on commencement; and
  - (b) ends immediately before the Chapter 3 start day;
- if:
- (c) the licensee is neither an ADI nor a registrable corporation; and
  - (d) the conduct is engaged in in relation to a contract or other instrument made on or after commencement.

*Application of Chapter 3 in relation to contracts or other instruments*

- (3) Chapter 3 of the National Credit Act does not apply in relation to a contract or other instrument that was made before commencement.

Note: Chapter 3 of the National Credit Act applies in relation to contracts or other instruments made on or after commencement, but see subitem (4) for exceptions to this.

- (4) Despite subitem (3), sections 120, 132, 143 and 155 of the National Credit Act do not apply in relation to a contract or other instrument that was made before the Chapter 3 start day.
- (5) This item is subject to subitem 18(2) (which deals with regulations that provide for the application to a person of the National Credit Act).

## **Division 3—Application of Schedule 2 to this Act**

### **20 Application of Schedule 2 to this Act in relation to contracts or other instruments**

- (1) Schedule 2 to this Act (which deals with registration) does not apply in relation to a contract or other instrument that was made before commencement.

Note 1: Schedule 2 applies in relation to contracts or other instruments made on or after commencement.

Note 2: Schedule 2 applies from the time it commences (see item 3 of the commencement table in section 2). However, some provisions of Schedule 2 expressly provide that parts of Schedule 2 apply from a later time.

- (2) Despite subitem (1), the regulations may provide for the application of all or specified provisions of Schedule 2 to a person (including the registration of that person) in relation to credit activities engaged in on or after commencement in relation to a carried over instrument.

Schedule 1, item 21, page 29 (lines 2 to 7), omit the item, substitute:

**21 Regulations about ASIC's approach during the transitional period**

The regulations may provide for the approach ASIC must take in the administration of this Act or the National Credit Act during the period that:

- (a) starts on the day section 3 of the National Credit Act commences; and
- (b) ends on 30 June 2011, or a later day prescribed by the regulations.

Schedule 2, heading to Division 1, page 33 (lines 3 to 5), omit the heading, substitute:

**Division 1—Prohibition that applies only from commencement to 31 December 2010, or later prescribed day**

Schedule 2, item 3, page 33 (lines 8 to 11), omit paragraphs (a) and (b), substitute:

- (a) starts on commencement; and
- (b) ends on 31 December 2010, or a later day prescribed by the regulations.

Schedule 2, heading to subitem 4(3), page 33 (line 28), omit the heading, substitute:

*Defences*

Schedule 2, item 4, page 34 (after line 13), at the end of the item, add:

- (4) For the purposes of subitems (1) and (2), it is a defence if:
- (a) the person engages in the credit activity on behalf of another person (the *principal*); and
  - (b) the person is a representative of the principal; and
  - (c) the person's conduct in engaging in the credit activity is within the authority of the principal; and
  - (d) the principal is exempted from subitems (1) and (2) under paragraph 41(1)(a), 41(3)(a) or 42(a).

Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the matter in subitem (4): see subsection 13.3(3) of the *Criminal Code*.

Schedule 2, heading to Division 2, page 34 (lines 14 to 16), omit the heading, substitute:

**Division 2—Prohibition that applies only from 1 January 2011, or later prescribed day, to the transition end day**

Schedule 2, item 5, page 34 (lines 19 to 22), omit paragraphs (a) and (b), substitute:

- (a) starts immediately after the end of the period referred to in item 3; and
- (b) ends on the transition end day.

Schedule 2, heading to subitem 6(3), page 35 (line 9), omit the heading, substitute:

*Defences*

Schedule 2, item 6, page 35 (line 11), omit “for or”.

Schedule 2, item 6, page 35 (after line 27), at the end of the item, add:

- (4) For the purposes of subitems (1) and (2), it is a defence if:
- (a) the person engages in the credit activity on behalf of another person (the *principal*); and
  - (b) the person is a representative of the principal; and
  - (c) the person’s conduct in engaging in the credit activity is within the authority of the principal; and
  - (d) the principal is exempted from subitems (1) and (2) under paragraph 41(1)(a), 41(3)(a) or 42(a).

Note: For the purposes of subitem (2), a defendant bears an evidential burden in relation to the matter in subitem (4): see subsection 13.3(3) of the *Criminal Code*.

Schedule 2, item 7, page 36 (lines 1 and 2), omit paragraph (b), substitute:

- (b) ends on the transition end day.

Schedule 2, item 11, page 38 (lines 8 to 11), omit paragraphs (a) and (b), substitute:

- (a) starts on 1 April 2010, or a later day prescribed by the regulations; and
- (b) ends on 30 June 2010, or a later day prescribed by the regulations.

Schedule 2, item 12, page 39 (after line 29), after subitem (2), insert:

- (2A) For the purposes of paragraph (2)(c), a reference to a credit activity in the definitions of *banned from engaging in a credit activity under a law of a State or Territory* and *State or Territory credit licence* in subsection 5(1) of the National Credit Act (as those definitions apply for the purposes of this Act because of subsection 4(2) of this Act) includes a reference to an activity that would be a credit activity if the new Credit Code had applied from the day section 3 of the National Credit Act commences.

Schedule 2, page 43 (before line 13), before item 16, insert:

**15A Application of this Division**

This Division (other than subitem 16(1)) applies during the period that:

- (a) starts on commencement; and
- (b) ends on the transition end day.

Schedule 2, item 16, page 43 (lines 17 to 20), omit paragraphs (1)(a) and (b), substitute:

- (a) starts at the same time as the start of the period referred to in subitem 11(2); and
- (b) ends on the transition end day;

Schedule 2, item 16, page 43 (lines 24 to 28), omit subitem (2) (not including the heading).

Schedule 2, item 21, page 47 (lines 26 to 29), omit the item, substitute:

**21 Cancellation of all registrations on transition end day**

The registration of every registered person is cancelled at the end of the transition end day.

Schedule 2, item 23, page 48 (line 15), omit “ceases to engage in credit activities”, substitute “does not engage, or ceases to engage, in credit activities”.

Schedule 2, item 23, page 49 (after line 16), after subitem (1), insert:

(1A) For the purposes of paragraph (1)(e), a reference to a credit activity in the definitions of *banned from engaging in a credit activity under a law of a State or Territory* and *State or Territory credit licence* in subsection 5(1) of the National Credit Act (as those definitions apply for the purposes of this Act because of subsection 4(2) of this Act) includes a reference to an activity that would be a credit activity if the new Credit Code had applied from the day section 3 of the National Credit Act commences.

Schedule 2, item 24, page 50 (after line 26), after subitem (2), insert:

(2A) For the purposes of paragraph (2)(c), a reference to a credit activity in the definitions of *banned from engaging in a credit activity under a law of a State or Territory* and *State or Territory credit licence* in subsection 5(1) of the National Credit Act (as those definitions apply for the purposes of this Act because of subsection 4(2) of this Act) includes a reference to an activity that would be a credit activity if the new Credit Code had applied from the day section 3 of the National Credit Act commences.

Schedule 2, item 32, page 54 (line 5), omit “(other than item 36)”, substitute “(other than items 32A, 36 and 39)”.

Schedule 2, item 32, page 54 (lines 7 and 8), omit paragraph (b), substitute:

(b) ends on the transition end day.

Schedule 2, page 54 (after line 8), after item 32, insert:

**32A Application of sections 64 and 65 of the National Credit Act before commencement**

- (1) This item applies during the period that:
  - (a) starts at the same time as the start of the period referred to in subitem 11(2); and
  - (b) ends immediately before commencement.
- (2) Sections 64 and 65 (which deal with the authorisation of credit representatives) of the National Credit Act apply during the period as if:
  - (a) all references to a licensee were references to a registered person; and
  - (b) all references to a licensee’s licence were references to a registered person’s registration.
- (3) An authorisation of a credit representative that is given under section 64 or 65 of the National Credit Act (as those sections apply because of subitem (2)) during the period is taken not to be given until commencement.

- (4) Despite subitem (3), a body corporate that has been authorised as a credit representative under subsection 64(1) of the National Credit Act (as it applies because of subitem (2)) during the period may authorise natural persons as credit representatives under subsection 65(1) of the National Credit Act (as it applies because of subitem (2)) during the period.

Schedule 2, item 33, page 54 (line 30), after “subitem (1)”, insert “or item 32A”.

Schedule 2, item 33, page 55 (line 3), after “subitem (1)”, insert “or item 32A”.

Schedule 2, item 33, page 55 (line 6), after “subitem (1)”, insert “or item 32A”.

Schedule 2, item 36, page 56 (lines 3 to 22), omit the item, substitute:

### **36 Application of Chapter 3 of the National Credit Act**

*When all of Chapter 3 (responsible lending conduct) applies to all registered persons*

- (1) Chapter 3 (which deals with responsible lending conduct) of the National Credit Act applies during the period that:
- (a) starts on the Chapter 3 start day; and
  - (b) ends on the transition end day;
- as if:
- (c) all references to a licensee were references to a registered person or licensee; and
  - (d) all references to licensees were references to registered persons or licensees.

Note: The Chapter 3 start day is 1 January 2011 (or later prescribed day). That day is when Chapter 3 of the National Credit Act starts to apply. However, under subitem (2) of this item, certain provisions of Chapter 3 apply before then to some registered persons.

*When certain provisions of Chapter 3 apply earlier for some registered persons*

- (2) Despite subitem (1), sections 112, 115, 116, 117, 118, 119, 122, 123, 124, 128, 129, 130, 131, 133, 135, 138, 139, 140, 141, 142, 145, 146, 147, 151, 152, 153, 154, 156, 162, 163 and 164 (which deal with the main responsible lending conduct rules) of the National Credit Act apply, in relation to a registered person who is neither an ADI nor a registrable corporation, during the period referred to in subitem 19(2) of Schedule 1 as if:
- (a) all references to a licensee were references to a registered person or licensee; and
  - (b) all references to licensees were references to registered persons or licensees.

Note: The period referred to in subitem 19(2) of Schedule 1 starts on commencement and ends immediately before the Chapter 3 start day.

*Some provisions of Chapter 3 never apply to registered persons*

- (3) Despite subitem (1), the following provisions of Chapter 3 of the National Credit Act do not apply in relation to registered persons:
- (a) paragraphs 113(2)(d), 126(2)(d), 127(2)(d), 136(2)(d), 149(2)(d), 150(2)(d) and 160(3)(d) (which deal with including Australian credit licence numbers in credit guides);

- (b) subparagraphs 113(2)(h)(i), 126(2)(e)(i), 127(2)(e)(i), 136(2)(h)(i), 149(2)(e)(i), 150(2)(e)(i) and 160(3)(f)(i) (which deal with including information about internal dispute resolution procedures in credit guides).

*Application of Chapter 3 in relation to contracts or other instruments*

- (4) Despite subitem 20(1) of Schedule 1, sections 120, 132, 143 and 155 of the National Credit Act do not apply in relation to a contract or other instrument that was made before the Chapter 3 start day.

Note: Subitem 20(1) of Schedule 1 provides that this Schedule applies in relation to contracts or other instruments made after commencement. However, sections 120, 132, 143 and 155 of the National Credit Act, which apply in relation to registered persons because of subitem (1) of this item, do not apply in relation to contracts or other instruments made before the Chapter 3 start day.

- (5) This item is subject to subitem 20(2) of Schedule 1 (which deals with regulations that provide for the application of this Schedule in relation to contracts or other instruments made before commencement).

Schedule 2, item 39, page 57 (lines 12 to 16), omit the item, substitute:

**39 Application of Chapter 7 of the National Credit Act**

- (1) Chapter 7 (which deals with miscellaneous matters) of the National Credit Act, other than sections 327, 329 and 331, applies during the period that:

- (a) starts on the day section 3 of the National Credit Act commences; and  
 (b) ends on the transition end day;

as if all references to “this Act” were references to “this Act and Schedule 2 to the Transitional Act”.

- (2) Section 327 of the National Credit Act applies to a decision made by ASIC under this Schedule (other than subitem 41(3)) that is made during the period referred to in subitem (1) of this item in the same way as it applies to a decision made by ASIC under the National Credit Act on or after commencement.

Schedule 2, item 41, page 58 (lines 17 and 18), omit paragraph (1)(a), substitute:

- (a) exempt:  
 (i) a person; or  
 (ii) a person and all of the person’s credit representatives;  
 from all or specified provisions to which this Part applies; or

The National Consumer Credit Protection Bill 2009, as amended, and the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009, as amended, agreed to and the National Consumer Credit Protection (Fees) Bill 2009 agreed to.

The National Consumer Credit Protection Bill 2009 and the National Consumer Credit Protection (Transitional and Consequential Provisions) Bill 2009 to be reported with amendments and the National Consumer Credit Protection (Fees) Bill 2009 to be reported without amendment.

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

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

**52 CORPORATIONS LEGISLATION AMENDMENT (FINANCIAL SERVICES MODERNISATION) BILL 2009**

Order of the day read for the adjourned debate on the motion of the Minister for Climate Change and Water (Senator Wong)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

On the motion of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) the bill was read a third time.

**53 FEDERAL JUSTICE SYSTEM AMENDMENT (EFFICIENCY MEASURES) BILL (NO. 1) 2008**

Order of the day read for the adjourned debate on the motion of the Minister for Climate Change and Water (Senator Wong)—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.

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*In the committee*

Bill taken as a whole by leave.

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*Explanatory memorandum:* The Minister for Innovation, Industry, Science and Research (Senator Carr) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Clause 2, page 2 (table items 3 to 5), omit the table items, substitute:

3. Schedule 5      The 28th day after this Act receives the  
Royal Assent.

Schedule 2, item 2, page 6 (line 12), omit “had been made by”, substitute “were a judgment or order of”.

Schedule 2, item 4, page 6 (lines 22 and 23), omit “had been made by”, substitute “were a judgment or order of”.

Schedule 5, page 12 (after line 11), after item 1, insert:

**1A Subsection 90G(1)**

Omit “A”, substitute “Subject to subsection (1A), a”.

Schedule 5, item 2, page 12 (lines 14 to 22), omit paragraph 90G(1)(b), substitute:

- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

Schedule 5, page 12 (after line 26), after item 4, insert:

**4A After subsection 90G(1)**

Insert:

- (1A) A financial agreement is binding on the parties to the agreement if:
  - (a) the agreement is signed by all parties; and
  - (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been terminated and has not been set aside by a court.
- (1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a financial agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (1C) To avoid doubt, section 90KA applies in relation to the enforcement application.

**4B Subsection 90J(2)**

Omit “A”, substitute “Subject to subsection (2A), a”.

Schedule 5, item 5, page 12 (line 29) to page 13 (line 5), omit paragraph 90J(2)(b), substitute:

- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and

- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

Schedule 5, page 13 (after line 9), after item 7, insert:

**7A After subsection 90J(2)**

Insert:

- (2A) A termination agreement is binding on the parties if:
  - (a) the agreement is signed by all parties to the agreement; and
  - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (2B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a termination agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90KA applies in relation to the enforcement application.

Schedule 5, item 8, page 13 (line 11), omit “2 to 7”, substitute “1A to 7A”.

Schedule 5, page 13 (after line 16), at the end of item 8, add:

- (3) If, before the commencement of this item, a court has made an order under section 79 or 83 of the *Family Law Act 1975* on the basis that an agreement did not bind the spouses, then, after the commencement of this item, the agreement is taken not to bind them.
- (4) For a financial agreement made before 14 January 2004, paragraph 90G(1)(b) of the *Family Law Act 1975*, as inserted by item 2 of this Schedule, does not apply and the following paragraph 90G(1)(b) of that Act is taken to have been inserted by that item and to apply instead:
  - (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about:
    - (i) the effect of the agreement on the rights of that party; and
    - (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
    - (iii) whether or not, at that time, it was prudent for that party to make the agreement; and

- (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and
- (5) For a termination agreement made before 14 January 2004, paragraph 90J(2)(b) of the *Family Law Act 1975*, as inserted by item 5 of this Schedule, does not apply and the following paragraph 90J(2)(b) of that Act is taken to have been inserted by that item and to apply instead:
- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about:
    - (i) the effect of the agreement on the rights of that party; and
    - (ii) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
    - (iii) whether or not, at that time, it was prudent for that party to make the agreement; and
    - (iv) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable; and
- (6) For a financial agreement made before the commencement of this item, paragraphs 90G(1)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 2 of this Schedule, do not apply.
- (7) For a financial agreement made before the commencement of this item, paragraph 90G(1A)(b) of the *Family Law Act 1975*, as inserted by item 4A of this Schedule, does not apply and the following paragraph 90G(1A)(b) of that Act is taken to have been inserted by that item and to apply instead:
- (b) paragraph (1)(b) is not satisfied in relation to the agreement; and
- (8) For a termination agreement made before the commencement of this item, paragraphs 90J(2)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 5 of this Schedule, do not apply.
- (9) For a termination agreement made before the commencement of this item, paragraph 90J(2A)(b) of the *Family Law Act 1975*, as inserted by item 7A of this Schedule, does not apply and the following paragraph 90J(2A)(b) of that Act is taken to have been inserted by that item and to apply instead:
- (b) paragraph (2)(b) is not satisfied in relation to the agreement; and

Schedule 5, Part 1, page 13 (after line 16), at the end of the Part, add:

**8A Transitional—agreements made on or after 14 January 2004 and before commencement**

- (1) Subitems (2) and (3) apply in relation to a financial agreement made on or after 14 January 2004 and before the commencement of this item.
- (2) Paragraph 90G(1)(b) of the *Family Law Act 1975*, as in force during that period, is also taken to be satisfied in relation to a spouse in relation to the agreement if, before signing the agreement, the spouse party was provided with independent legal advice from a legal practitioner about:
  - (a) the effect of the agreement on the rights of that party; and

- (b) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
  - (c) whether or not, at that time, it was prudent for that party to make the agreement; and
  - (d) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable.
- (3) Paragraph 90G(1)(c) of the *Family Law Act 1975*, as inserted by this Act, applies in relation to the agreement as if the reference in that paragraph to the advice referred to in paragraph (b) included a reference to the advice referred to in subitem (2) of this item.
- (4) Subitems (5) and (6) apply in relation to a termination agreement made on or after 14 January 2004 and before the commencement of this item.
- (5) Paragraph 90J(2)(b) of the *Family Law Act 1975*, as in force during that period, is also taken to be satisfied in relation to a spouse in relation to the agreement if, before signing the agreement, the spouse party was provided with independent legal advice from a legal practitioner about:
- (a) the effect of the agreement on the rights of that party; and
  - (b) whether or not, at the time when the advice was provided, it was to the advantage, financially or otherwise, of that party to make the agreement; and
  - (c) whether or not, at that time, it was prudent for that party to make the agreement; and
  - (d) whether or not, at that time and in the light of such circumstances as were, at that time, reasonably foreseeable, the provisions of the agreement were fair and reasonable.
- (6) Paragraph 90J(2)(c) of the *Family Law Act 1975*, as inserted by this Act, applies in relation to the agreement as if the reference in that paragraph to the advice referred to in paragraph (b) included a reference to the advice referred to in subitem (5) of this item.
- (7) This item does not apply in relation to an agreement if, before the commencement of this item, a court has made an order setting aside the agreement.

Schedule 5, page 14 (after line 10), after item 9, insert:

**9A Subsection 90UJ(1)**

Omit “A”, substitute “Subject to subsection (1A), a”.

Schedule 5, item 10, page 14 (lines 13 to 21), omit paragraph 90UJ(1)(b), substitute:

- (b) before signing the agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the agreement; and

- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the agreement); and
- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

Schedule 5, page 14 (after line 25), after item 12, insert:

**12A After subsection 90UJ(1)**

Insert:

- (1A) A Part VIIIAB financial agreement (other than an agreement covered by section 90UE) is binding on the parties to the agreement if:
  - (a) the agreement is signed by all parties; and
  - (b) one or more of paragraphs (1)(b), (c) and (ca) are not satisfied in relation to the agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (1B) declaring that the agreement is binding on the parties to the agreement; and
  - (e) the agreement has not been terminated and has not been set aside by a court.
- (1B) For the purposes of paragraph (1A)(d), a court may make an order declaring that a Part VIIIAB financial agreement is binding on the parties to the agreement, upon application (the *enforcement application*) by a spouse party seeking to enforce the agreement.
- (1C) To avoid doubt, section 90UN applies in relation to the enforcement application.

**12B Subsection 90UL(2)**

Omit “A”, substitute “Subject to subsection (2A), a”.

Schedule 5, item 13, page 14 (line 28) to page 15 (line 4), omit paragraph 90UL(2)(b), substitute:

- (b) before signing the termination agreement, each spouse party was provided with independent legal advice from a legal practitioner about the effect of the termination agreement on the rights of that party and about the advantages and disadvantages, at the time that the advice was provided, to that party of making the termination agreement; and
- (c) either before or after signing the agreement, each spouse party was provided with a signed statement by the legal practitioner stating that the advice referred to in paragraph (b) was provided to that party (whether or not the statement is annexed to the termination agreement); and

- (ca) a copy of the statement referred to in paragraph (c) that was provided to a spouse party is given to the other spouse party or to a legal practitioner for the other spouse party; and

Schedule 5, page 15 (after line 8), after item 15, insert:

**15A After subsection 90UL(2)**

Insert:

- (2A) A Part VIIIAB termination agreement is binding on the parties if:
- (a) the termination agreement is signed by all parties to the Part VIIIAB financial agreement; and
  - (b) one or more of paragraphs (2)(b), (c) and (ca) are not satisfied in relation to the termination agreement; and
  - (c) a court is satisfied that it would be unjust and inequitable if the termination agreement were not binding on the spouse parties to the agreement (disregarding any changes in circumstances from the time the agreement was made); and
  - (d) the court makes an order under subsection (2B) declaring that the termination agreement is binding on the parties to the agreement; and
  - (e) the termination agreement has not been set aside by a court.
- (2B) For the purposes of paragraph (2A)(d), a court may make an order declaring that a Part VIIIAB termination agreement is binding on the parties to the agreement, upon application (the ***enforcement application***) by a spouse party seeking to enforce the agreement.
- (2C) To avoid doubt, section 90UN applies in relation to the enforcement application.

Schedule 5, item 17, page 15 (line 26), omit “10 to 15”, substitute “9A to 15A”.

Schedule 5, page 15 (after line 34), at the end of item 17, add:

- (3) If, before the commencement of this item, a court has made an order under section 90SI or 90SM of the *Family Law Act 1975* on the basis that an agreement did not bind the spouse parties, then, after the commencement of this item, the agreement is taken not to bind them.
- (4) For an agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* before the commencement of this item, paragraphs 90UJ(1)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 10 of this Schedule, do not apply.
- (5) For an agreement made under section 90UB, 90UC or 90UD of the *Family Law Act 1975* before the commencement of this item, paragraph 90UJ(1A)(b) of the *Family Law Act 1975*, as inserted by item 12A of this Schedule, does not apply and the following paragraph 90UJ(1A)(b) of that Act is taken to have been inserted by that item and to apply instead:
  - (b) paragraph (1)(b) is not satisfied in relation to the agreement; and
- (6) For a Part VIIIAB termination agreement made before the commencement of this item, paragraphs 90UL(2)(c) and (ca) of the *Family Law Act 1975*, as inserted by item 13 of this Schedule, do not apply.

- (7) For a Part VIIIAB termination agreement made before the commencement of this item, paragraph 90UL(2A)(b) of the *Family Law Act 1975*, as inserted by item 15A of this Schedule, does not apply and the following paragraph 90UL(2A)(b) of that Act is taken to have been inserted by that item and to apply instead:

(b) paragraph (2)(b) is not satisfied in relation to the agreement; and

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

**54 ADJOURNMENT**

The Minister for Innovation, Industry, Science and Research (Senator Carr) moved—  
That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 10.13 pm till Tuesday, 27 October 2009 at 12.30 pm.

**55 ATTENDANCE**

Present, all senators except Senators Barnett\*, Faulkner\*, Moore\* and Sherry\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate