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1 MEETING OF SENATE

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

2 GOVERNMENT DOCUMENTS

The following documents were tabled:

Australian Competition and Consumer Commission—Telstra's compliance with the price control arrangements—Report for 2008-09.

Australian Law Reform Commission—Report No. 112—Secrecy laws and open government in Australia, dated December 2009.

Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period 1 October to 31 December 2009.

Dental Benefits Act 2008—Review on the operation of the Act—Report, dated 18 December 2009.

Department of Immigration and Citizenship—Review of personal identifier provisions introduced in 2004 to *Migration Act 1958*—Final report, dated 11 September 2009.

Department of Infrastructure, Transport, Regional Development and Local Government—National aviation policy: Flight path to the future—White paper, dated December 2009.

Migration Act 1958—Report for the period 1 July to 31 October 2009—

Section 91Y—Protection visa processing taking more than 90 days.

Section 440A—Conduct of Refugee Review Tribunal reviews not completed within 90 days.

Regional Forest Agreements between the Commonwealth of Australia and New South Wales—Final report on progress with implementation of New South Wales regional forest agreements—Report of the independent assessor, dated November 2009.

Treaties—

Bilateral—Agreement between the Government of Australia and the Government of the former Yugoslav Republic of Macedonia on Social Security, Canberra, 26 October 2009—Text, together with national interest analysis.

Multilateral—Explanatory statements 2010—

No. 2—Amendment to Annex I of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005.

No. 3—Amendment to Annex II of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention Against Doping in Sport of 19 October 2005.

3 **HEALTH LEGISLATION AMENDMENT (MIDWIVES AND NURSE PRACTITIONERS)**
BILL 2009
MIDWIFE PROFESSIONAL INDEMNITY (COMMONWEALTH CONTRIBUTION) SCHEME
BILL 2009
MIDWIFE PROFESSIONAL INDEMNITY (RUN-OFF COVER SUPPORT PAYMENT)
BILL 2009

Order of the day read for the adjourned debate on the motion of the Special Minister of State (Senator Ludwig)—That these bills be now read a second time—and on the amendment moved by Senator Siewert:

At the end of the motion, add “and the Senate calls on the Government:

- (a) to ensure that midwives have access to a contract of insurance that provides midwife professional indemnity cover for a person irrespective of the location or venue of the births that they attend; and
- (b) to undertake a thorough review, 12 months after the regulations under this legislation commence, to ensure that the collaborative arrangements as stipulated in the regulations are effective and have in no way obstructed independent midwifery practice”.

Debate resumed.

Explanatory memorandum: Senator Ludwig tabled a replacement explanatory memorandum relating to the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009.

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

Main question put and passed.

Bills read a second time.

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

In the committee

Bills taken together and as a whole by leave.

Explanatory memoranda: Senator Ludwig tabled supplementary explanatory memoranda [2] relating to the government amendments to be moved to the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009.

Senator Ludwig moved the following amendments in respect of the Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 together by leave:

Schedule 1, item 6, page 4 (line 10), omit paragraph (b) of the definition of *participating midwife*, substitute:

- (b) otherwise—an eligible midwife;

so far as the eligible midwife renders a service in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in the regulations, with one or more medical practitioners of a kind or kinds specified in the regulations, for the purposes of this definition.

Schedule 1, item 6, page 4 (line 18), omit paragraph (b) of the definition of *participating nurse practitioner*, substitute:

(b) otherwise—an eligible nurse practitioner;

so far as the eligible nurse practitioner renders a service in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in the regulations, with one or more medical practitioners of a kind or kinds specified in the regulations, for the purposes of this definition.

Schedule 1, item 70, page 22 (line 2), at the end of the definition of *authorised midwife*, add “, so far as the eligible midwife provides midwifery treatment in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in a legislative instrument made by the Minister for the purposes of this definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument”.

Schedule 1, item 71, page 22 (line 6), at the end of the definition of *authorised nurse practitioner*, add “, so far as the eligible nurse practitioner provides nurse practitioner treatment in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in a legislative instrument made by the Minister for the purposes of this definition, with one or more medical practitioners of a kind or kinds specified in the legislative instrument”.

Debate ensued.

Senator Siewert moved the following amendment to Senator Ludwig’s proposed amendments:

After “medical practitioners” (wherever occurring), insert “or one or more health services”.

Debate ensued.

Question—That Senator Siewert’s amendment to Senator Ludwig’s proposed amendments be agreed to—put.

The committee divided—

AYES, 7

Senators—

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

NOES, 30

Senators—

Adams (Teller)	Collins	Hurley	Payne
Bernardi	Cormann	Joyce	Polley
Bilyk	Crossin	Ludwig	Pratt
Brown, Carol	Farrell	Marshall	Sterle
Bushby	Feeney	McEwen	Troeth
Cameron	Fierravanti-Wells	Moore	Williams
Cash	Fifield	Nash	
Colbeck	Furner	Parry	

Question negatived.

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

The Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009, as amended, the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009 agreed to.

The Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 to be reported with amendments, the Midwife Professional Indemnity (Commonwealth Contribution) Scheme Bill 2009 to be reported without amendments and the Midwife Professional Indemnity (Run-off Cover Support Payment) Bill 2009 to be reported without requests for amendments.

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

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

4 ORDER OF BUSINESS—REARRANGEMENT

The Special Minister of State (Senator Ludwig) moved—That intervening business be postponed till after consideration of government business order of the day no. 3 (Trade Practices Amendment (Australian Consumer Law) Bill 2009).

Question put and passed.

5 TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009

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

Debate resumed.

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

6 QUESTIONS

Questions without notice were answered.

Document: The Minister for Broadband, Communications and the Digital Economy (Senator Conroy) tabled the following document:

Communications—Internet filtering and cyber safety—Summary of Electronic Frontiers Australia's comments and the Government's responses, dated 16 March 2010.

Further questions without notice were answered.

7 MOTION TO TAKE NOTE OF ANSWERS

Senator Johnston moved—That the Senate take note of the answers given by the Minister for Immigration and Citizenship (Senator Evans) and the Minister for Defence (Senator Faulkner) to questions without notice asked by Senators Humphries and Johnston today relating to asylum seekers.

Debate ensued.

Question put and passed.

8 NOTICES*Notices of motion:*

Senators Cormann and Birmingham: To move on the next day of sitting—That the Senate—

- (a) notes:
 - (i) the persistent and continuing refusal of the Prime Minister and several other ministers to clarify when they were first told about inadequate training and safety issues for workers involved in the home insulation program,
 - (ii) reports that direct advice was provided to the Prime Minister and other ministers involved in Labor's home insulation fiasco about fraud, safety risks and training inadequacies in relation to the ill-fated program, and
 - (iii) reports that the home insulation program implemented was redesigned from that initially recommended by the Department of the Environment, Water, Heritage and the Arts so as to spend the funds allocated faster as part of the stimulus package;
- (b) considers that public release of all information about what the Government knew about inadequate training and safety issues for workers is in the public interest; and
- (c) orders that there be laid on the table by noon on Thursday, 18 March 2010, any information, including, but not limited to, letters, emails, spreadsheets, minutes of meetings, reports, and briefing notes, held by the Prime Minister, the Minister for the Environment, Heritage and the Arts, the Minister for Climate Change, the Minister Assisting the Prime Minister for Government Service Delivery, the Minister Assisting the Minister for Climate Change, and their respective offices and departments, concerning:
 - (i) safety warnings in relation to the home insulation program,
 - (ii) training issues in relation to the home insulation program,
 - (iii) fraud in the home insulation program,
 - (iv) the design of the home insulation program initially proposed by the Department of the Environment, Water, Heritage and the Arts, and
 - (v) changes made to the design of the home insulation program initially proposed by the Department of the Environment, Water, Heritage and the Arts. (*general business notice of motion no. 748*)

Senator Siewert: To move on the next day of sitting—That the Senate calls on the Government to investigate, through the processes of the International Whaling Commission, the recent claims by Greenpeace and the 'Tokyo Two' Junichi Sato and Toru Suzuki of corruption and embezzlement within the whaling industry. (*general business notice of motion no. 749*)

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

- (a) the 5 March 2010 report of the United Nations Special Rapporteur on the situation of human rights in Myanmar documents 'a pattern of gross and systematic violation of human rights which has been in place for many years and still continues';
- (b) the Special Rapporteur states these violations 'may entail categories of crimes against humanity or war crimes under the terms of the Statute of the International Criminal Court';

- (c) the Special Rapporteur recommends that ‘UN institutions may consider the possibility to establish a commission of inquiry with a specific fact finding mandate to address the question of international crimes’;
- (d) on 9 March 2010 Burma announced the election laws for the forthcoming election based on the 2008 constitution that:
 - (i) excludes political activists who have been arrested, Buddhist monks and nuns and public servants from standing for election,
 - (ii) prevents the National League for Democracy (NLD), headed by Aung San Suu Kyi, and winners of the country’s last election, from registering if Aung San Suu Kyi remains a party member, and
 - (iii) annuls the results of the 1990 election, which saw the NLD win more than 80 per cent of the vote; and
- (e) on 10 March 2010 the United States of America (US) Assistant Secretary of State, Dr Philip Crowley, said that the US would not accept the results of the Burmese election ‘Given the tenor of the election laws that they’ve put forward, there’s no hope that this election will be credible’. (*general business notice of motion no. 750*)

Senator Payne: To move on the next day of sitting—

- (1) That a select committee, to be known as the Select Committee on the Reform of the Australian Federation, be appointed on 13 May 2010 to:
 - (a) inquire into and report by 24 August 2010 on key issues and priorities for the reform of relations between the three levels of government within the Australian federation; and
 - (b) explore a possible agenda for national reform and to consider ways it can best be implemented in relation to, but not exclusively, the following matters:
 - (i) the distribution of constitutional powers and responsibilities between the Commonwealth and the states (including territories),
 - (ii) financial relations between federal, state and local governments,
 - (iii) possible constitutional amendment, including the recognition of local government,
 - (iv) processes, including the Council of Australian Governments, and the referral of powers and procedures for enhancing cooperation between the various levels of Australian government, and
 - (v) strategies for strengthening Australia’s regions and the delivery of services through regional development committees and regional grant programs.
- (2) That the committee consist of 6 senators, 2 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate, and 1 nominated by any minority group or groups or independent senator or independent senators.
- (3) That:
 - (a) participating members may be appointed to the committee on the nomination of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate and minority groups and independent senators;
 - (b) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee; and

- (c) a participating member shall be taken to be a member of the committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.
- (4) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.
 - (5) That the committee elect as chair one of the members nominated by the Leader of the Opposition in the Senate.
 - (6) That the committee elect a Government member as its deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.
 - (7) That, in the event of an equally divided vote, the chair, or the deputy chair when acting as chair, has a casting vote.
 - (8) That 3 members of the committee constitute a quorum of the committee.
 - (9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.
 - (10) That 2 members of a subcommittee constitute a quorum of that subcommittee.
 - (11) That the committee and any subcommittee have power to send for and examine persons and documents, to move from place to place, to sit in public or in private, notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives, and have leave to report from time to time its proceedings, the evidence taken and such interim recommendations as it may deem fit.
 - (12) That the committee be provided with all necessary staff, facilities and resources and be empowered to appoint persons with specialist knowledge for the purposes of the committee with the approval of the President.
 - (13) That the committee be empowered to print from day to day such documents and evidence as may be ordered by it, and a daily Hansard be published of such proceedings as take place in public. (*general business notice of motion no. 751*)

Senator Xenophon: To move on 18 March 2010—That the following bill be introduced: A Bill for an Act to enable the Murray-Darling Basin Authority to manage the water resources of the Basin as a single system during periods of extreme crisis, and for related purposes. ***Water (Crisis Powers and Floodwater Diversion) Bill 2010.*** (*general business notice of motion no. 752*)

The Leader of the Opposition in the Senate (Senator Minchin): To move on the next day of sitting—That there be laid on the table by the Minister for Broadband, Communications and the Digital Economy, no later than 9.30 am on Thursday, 18 March 2010, the interim report of the National Broadband Network Implementation Study provided to the department in August 2009. (*general business notice of motion no. 753*)

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

(a) notes that:

- (i) the National Human Rights Consultation delivered its report to the Attorney-General (Mr McClelland) on 30 September 2009, more than 6 months ago, and

- (ii) the Attorney-General released a statement that the Government will provide a response in the coming months; and
- (b) orders that there be laid on the table by the Minister representing the Attorney-General, no later than 4 pm on 11 May 2010, the Government's response to the National Human Rights Consultation report which was delivered to the Attorney-General on 30 September 2009. (*general business notice of motion no. 754*)

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

- (a) notes:
 - (i) the first same-sex marriages were celebrated in Mexico City in the week beginning 7 March 2010, following the recent passage of legislation removing discrimination on the basis of sexual orientation, under that city's Marriage Act, and
 - (ii) Mexico City joins Portugal, Canada, the Netherlands, Sweden, Belgium, Norway, Spain, South Africa and many states in the United States of America that already recognise same-sex marriage as a reality;
- (b) recognises that all Australians deserve to be treated fairly and equally, regardless of their sexual orientation and that Australia is becoming increasingly isolated internationally, by refusing to remove discrimination on the basis of sexual orientation from the *Marriage Act 1961* (the Act); and
- (c) calls on the Australian Government to remove all discrimination from the Act on the basis of sexuality and gender identity and extend the legal right to marry to all. (*general business notice of motion no. 755*)

Senator Xenophon: To move on 18 March 2010—

- (1) That the following matters be referred to the Economics References Committee for inquiry and report by 24 June 2010:
 - (a) allegations of abuse, recently widely reported in the Australian media, against employees, volunteers and followers (including ex-employees, ex-volunteers and ex-followers) of the Church of Scientology and any associated entities, including:
 - (i) coerced abortions,
 - (ii) unsafe occupational health and safety practices,
 - (iii) unconscionable, misleading and deceptive conduct in the context of goods and services provided and charged for by the Church of Scientology and any associated entities, and
 - (iv) the harassment of followers and ex-followers of the Church of Scientology and any associated entities;
 - (b) the adequacy of the Model Criminal Code and its application in respect of the offence of psychological harm;
 - (c) the adequacy of current consumer protection laws in respect of goods and services provided by the Church of Scientology and any associated entities, and its fundraising practices generally;
 - (d) the adequacy of current occupational health and safety laws and workplace relations laws in respect of the allegations of conduct occurring within the Church of Scientology and any associated entities; and
 - (e) any related matters.

- (2) That, in undertaking this inquiry, the committee will not inquire into the validity or otherwise of the belief systems of the Church of Scientology and any associated entities.

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

- (a) notes Labor's advertising attacking Liberal opponents in South Australia and the Greens in Tasmania using inferences of support for criminality; and
- (b) deplores this desperate tactic and calls on Labor to restore decency to its campaigning and to not mislead voters on the way to the elections on Saturday, 20 March 2010. (*general business notice of motion no. 756*)

Notice of motion withdrawn: Senator O'Brien, at the request of the Deputy Chair of the Legal and Constitutional Affairs Legislation Committee (Senator Barnett), withdrew general business notice of motion no. 742 standing in the name of Senator Barnett for today, proposing an extension of time for the committee to report.

9 ROUTINE OF BUSINESS—VARIATION

The Special Minister of State (Senator Ludwig), by leave, moved—That consideration of government documents not be proceeded with today, and that government business continue till 7.20 pm.

Debate ensued.

Question put and passed.

10 AUSTRALIAN CRIME COMMISSION—JOINT STATUTORY COMMITTEE—LEAVE TO MEET DURING SITTING

Senator O'Brien, by leave and at the request of the Chair of the Parliamentary Joint Committee on the Australian Crime Commission (Senator Hutchins), moved—That the Parliamentary Joint Committee on the Australian Crime Commission be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate today from 4.30 pm.

Question put and passed.

11 POSTPONEMENTS

The following items of business were postponed:

Government business notice of motion no. 1 standing in the name of the Minister for Broadband, Communications and the Digital Economy (Senator Conroy) for 17 March 2010, relating to the consideration of legislation, postponed till 15 June 2010.

General business notice of motion no. 694 standing in the name of the Leader of the Family First Party (Senator Fielding) for today, proposing the introduction of the Protection of Personal Information Bill 2010, postponed till 17 March 2010.

General business notice of motion no. 738 standing in the name of the Leader of the Family First Party (Senator Fielding) for today, proposing the introduction of the Responsible Takeaway Alcohol Hours Bill 2010, postponed till 17 March 2010.

12 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—EXTENSIONS OF TIME TO REPORT

Senator O'Brien, at the request of the Chair of the Community Affairs Legislation Committee (Senator Moore) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 744—That the time for the presentation of reports of the Community Affairs Legislation Committee be extended as follows:

- (a) provisions of the Health Practitioner Regulation (Consequential Amendments) Bill 2010—to 11 May 2010; and
- (b) Poker Machine (Reduced Losses—Interim Measures) Bill 2009 and Protecting Problem Gamblers Bill 2009—to 30 June 2010.

Question put and passed.

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

Senator Parry, at the request of the Chair of the Environment, Communications and the Arts References Committee (Senator Fisher) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 743—That the time for the presentation of reports of the Environment, Communications and the Arts References Committee be extended as follows:

- (a) Australia Post's treatment of injured and ill workers—to 12 May 2010; and
- (b) Energy Efficient Homes Package—to 6 May 2010.

Question put and passed.

14 ENVIRONMENT, COMMUNICATIONS AND THE ARTS REFERENCES COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Parry, at the request of the Chair of the Environment, Communications and the Arts References Committee (Senator Fisher) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 745—That the Environment, Communications and the Arts References Committee be authorised to hold an in camera hearing during the sitting of the Senate on Wednesday, 17 March 2010.

Question put and passed.

15 ENVIRONMENT—RENEWABLE ENERGY

Senator Barnett, also on behalf of Senator Fisher, amended general business notice of motion no. 740 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) notes that:
 - (i) major flaws in the design of the Federal Government's renewable energy target legislation have led to a dramatic drop in the price of renewable energy certificates and stalled investment in the renewable energy sector,
 - (ii) the Federal Government has now acknowledged these concerns and foreshadowed legislation to remedy these flaws and advised that the bill will be introduced mid-2010 with a start date of 1 January 2011,

- (iii) delays have already caused a loss of jobs, including at the Musselroe Bay Wind Farm development in north-east Tasmania, and have threatened the proposed expansion of the Hallett Wind Farm in South Australia, and
 - (iv) any further delay will cause a further loss of jobs; and
- (b) calls on the Government to:
- (i) work cooperatively with industry, the community and the opposition parties to ensure the bill is properly designed and introduced without delay,
 - (ii) without delay, release any modelling or other analysis on which this proposal is based, and
 - (iii) provide assurances that the legislation will not result in additional costs to end users significantly greater than the \$3 to \$4 per annum increases anticipated by the Government.

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

Question put and passed.

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

16 FOREIGN AFFAIRS—INDIA—WOMEN

Senator Hanson-Young amended general business notice of motion no. 741 by leave and, pursuant to notice of motion not objected to as a formal motion, moved—That the Senate—

- (a) recognises that only 10 per cent of seats in India's Lok Sabha (the lower house of India's Parliament) are held by women;
- (b) congratulates India's Rajya Sabha on passing the first stage of the historic legislation seeking to impose a 33 per cent quota for women in the nation's federal and state assemblies; and
- (c) notes that Prime Minister Singh has stated that the legislation is 'a giant step towards empowering women'.

Question put and passed.

17 URGENCY MOTION—FAMILY AND COMMUNITY SERVICES—PAID PARENTAL LEAVE—RETIREMENT INCOMES

The Deputy President (Senator Ferguson) informed the Senate that the President had received a letter from Senator Hanson-Young advising that today she intended to move—That, in the opinion of the Senate, the following is a matter of urgency:

The failure of the Rudd Government's paid parental leave scheme to support parents for the World Health Organization's recommended minimum of 6 months, and to address the great inequity between male and female retirement incomes.

The proposal was supported by four senators.

Senator Hanson-Young moved the motion.

Debate ensued.

Question put and passed.

18 TRANSPORT—ASIA-PACIFIC MINISTERIAL CONFERENCE ON AVIATION SECURITY—MINISTERIAL STATEMENT—DOCUMENT

The Minister for Immigration and Citizenship (Senator Evans) tabled the following document:

Transport—Asia-Pacific Ministerial conference on aviation security in Tokyo, Japan, 13 March 2010—Ministerial statement by the Minister for Infrastructure, Transport, Regional Development and Local Government (Mr Albanese), dated 15 March 2010.

Senator Macdonald, by leave, moved—That the Senate take note of the document. Question put and passed.

19 TREATIES—JOINT STANDING COMMITTEE—PRESIDING OFFICERS' RESPONSE—106TH REPORT

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

Treaties—Joint Standing Committee—106th report—Nuclear non-proliferation and disarmament—Presiding Officers' response, dated March 2010.

Senator Ludlam, by leave, moved—That the Senate take note of the document. Question put and passed.

20 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—DOCUMENTS

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

Parliament Act—Parliamentary Zone—Proposal, together with supporting documentation, relating to the construction of a new vehicle storage facility near the loading dock in the Parliament House precinct.

Notice of motion: The Minister for Defence (Senator Faulkner), by leave, gave a notice of motion as follows: To move on 18 March 2010—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the Department of Parliamentary Services to construct a vehicle storage facility near the Parliament House loading dock.

21 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—SOCIAL SECURITY AND OTHER LEGISLATION AMENDMENT (WELFARE REFORM AND REINSTATEMENT OF RACIAL DISCRIMINATION ACT) BILL 2009 AND RELATED BILLS—DOCUMENTS

Senator Farrell, at the request of the Chair of the Community Affairs Legislation Committee (Senator Moore), tabled the following documents:

Community Affairs Legislation Committee—Report—Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009 [Provisions], Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 [Provisions] and Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009—

Additional information.

Correction.

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

22 TREATIES—JOINT STANDING COMMITTEE—110TH REPORT

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

Treaties—Joint Standing Committee—110th report—Treaties tabled 18, 25 [2] and 26 November 2009 and 2 [2] February 2010, dated March 2010.

Senator McGauran, by leave, moved—That the Senate take note of the report. Question put and passed.

23 DOCUMENTS

The following documents were tabled by the Clerk:

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

Air Navigation Act—Select Legislative Instrument 2010 No. 39—Air Navigation (Aircraft Noise) Amendment Regulations 2010 (No. 1) [F2010L00641]*.

Civil Aviation Act—Civil Aviation Regulations and Civil Aviation Safety Regulations—Instrument No. CASA EX13/10—Exemption – agricultural rating (incendiary dropping at or above 500 feet); Exemption – CASR Part 137 (incendiary dropping above or below 500 feet) [F2010L00506]*.

Corporations Act—ASIC Class Order [CO 10/105] [F2010L00667]*.

Defence Act—Determinations under section 58B—Defence Determinations—2010/8—Maternity leave – amendment.

2010/10—Director-General Navy Personnel and Training – title amendment.

2010/11—Overseas benchmark and summer schools – amendment.

Environment Protection and Biodiversity Conservation Act—Adoption of State Plan as Recovery Plan, dated 5 March 2010 [F2010L00643]*.

Life Insurance Act—Life Insurance (Prudential Standard) Determinations Nos—3 of 2010—Prudential Standard LPS 510 Governance [F2010L00621]*.

4 of 2010—Prudential Standard LPS 520 Fit and Proper [F2010L00622]*.

Mutual Recognition Act—Select Legislative Instrument 2010 No. 41—Mutual Recognition Act 1992 Amendment Regulations 2010 (No. 1) [F2010L00651]*.

National Consumer Credit Protection Act—Select Legislative Instrument 2010 No. 44—National Consumer Credit Protection Regulations 2010 [F2010L00631]*.

National Consumer Credit Protection (Transitional and Consequential Provisions) Act—Select Legislative Instrument 2010 No. 45—National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010 [F2010L00633]*.

Trans-Tasman Mutual Recognition Act—Select Legislative Instrument 2010 No. 42—Trans-Tasman Mutual Recognition Act 1997 Amendment Regulations 2010 (No. 1) [F2010L00653]*.

* Explanatory statement tabled with legislative instrument.

24 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 July to 31 December 2009—Statement of compliance—Department of Education, Employment and Workplace Relations.

25 COMMITTEE MEMBERSHIP

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

The Minister for Defence (Senator Faulkner), by leave, moved—That senators be discharged from and appointed to committees as follows:

Environment, Communications and the Arts Legislation Committee—

Appointed—

Substitute member: Senator Barnett to replace Senator Troeth from 26 March to 12 April 2010

Participating member: Senator Troeth

Environment, Communications and the Arts References Committee—

Appointed—

Substitute member: Senator Barnett to replace Senator Troeth from 26 March to 12 April 2010

Participating member: Senator Troeth

Rural and Regional Affairs and Transport References Committee—

Appointed—

Substitute member: Senator Adams to replace Senator Heffernan for the committee's inquiry into the management of aircraft noise by Airservices Australia

Participating member: Senator Heffernan.

Question put and passed.

26 GOVERNOR-GENERAL'S MESSAGE—ASSENT TO LAW

A message from Her Excellency the Governor-General was reported, informing the Senate that she had assented to the following law:

15 March 2010—Message No. 8—*Tax Laws Amendment (Political Contributions and Gifts) Act 2010* (Act No. 16, 2010).**27 ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (RECREATIONAL FISHING FOR MAKO AND PORBEAGLE SHARKS) BILL 2010
HIGHER EDUCATION SUPPORT AMENDMENT (FEE-HELP LOAN FEE) BILL 2010
TRANS-TASMAN PROCEEDINGS BILL 2009
TRANS-TASMAN PROCEEDINGS (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2009**

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

Message no. 538, dated 15 March 2010—A Bill for an Act to amend the *Environment Protection and Biodiversity Conservation Act 1999*, and for related purposes.Message no. 539, dated 15 March 2010—A Bill for an Act to amend the *Higher Education Support Act 2003*, and for related purposes.

Message no. 542, dated 16 March 2010—A Bill for an Act relating to proceedings in Australian and New Zealand courts and tribunals, and for related purposes.

Message no. 543, dated 16 March 2010—A Bill for an Act to deal with transitional and consequential matters in connection with the *Trans-Tasman Proceedings Act 2009*, and for related purposes.

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

Question put and passed.

Bills read a first time.

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

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

Senator Faulkner moved—That the Trans-Tasman Proceedings Bill 2009 and the Trans-Tasman Proceedings (Transitional and Consequential Provisions) Bill 2009 be listed on the *Notice Paper* as one order of the day, and the remaining bills be listed as separate orders of the day.

Question put and passed.

28 FAMILY ASSISTANCE LEGISLATION AMENDMENT (CHILD CARE) BILL 2010

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

Message no. 540, dated 15 March 2010—A Bill for an Act to amend the law relating to family assistance, and for related purposes.

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

Question put and passed.

Bill read a first time.

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

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

29 COMMITTEE MEMBERSHIP

A message from the House of Representatives was reported informing the Senate of the appointment of a member of the House of Representatives to a joint committee, as follows:

Message no. 541, dated 16 March 2010—Joint Standing Committee on the Parliamentary Library, Mr Melham.

30 CYBER-SAFETY—JOINT SELECT COMMITTEE—VARIATION OF APPOINTMENT

A message from the House of Representatives was reported as follows:

Message no. 544, dated 16 March 2010—Agreeing to the amendment made by the Senate to the resolution of appointment of the Joint Select Committee on Cyber-Safety.

31 COMMITTEE MEMBERSHIP

The Acting Deputy President (Senator Hurley) informed the Senate that the President had received a letter nominating senators to be members of a committee.

The Minister for Defence (Senator Faulkner), by leave, moved—That Senators Lundy and Wortley be appointed to the Joint Select Committee on Cyber-Safety.

Question put and passed.

Senator Hurley informed the Senate that the President had received letters from a minor party senator and an independent senator nominating to be members of the Joint Select Committee on Cyber-Safety.

Senator Hurley indicated that there were two nominations, Senators Fielding and Ludlam, for one position on the committee, and announced that it would be necessary to proceed to a ballot.

The Senate proceeded to a ballot.

The President reported the result as follows:

Senator Fielding: 34 votes.

Senator Ludlam: 32 votes.

The President declared that Senator Fielding had been chosen to serve as a member of the committee.

**32 FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE—REPORT—
FREEDOM OF INFORMATION AMENDMENT (REFORM) BILL 2009 AND INFORMATION
COMMISSIONER BILL 2009**

Pursuant to order, Senator Farrell, at the request of the Chair of the Finance and Public Administration Legislation Committee (Senator Polley), tabled the following report and documents:

Finance and Public Administration Legislation Committee—Freedom of Information Amendment (Reform) Bill 2009 [Provisions] and Information Commissioner Bill 2009 [Provisions]—Report, dated March 2010, Hansard record of proceedings, document presented to the committee and submissions.

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

33 TRADE PRACTICES AMENDMENT (AUSTRALIAN CONSUMER LAW) BILL 2009

Order of the day read for the adjourned debate on the motion of the Minister for Climate Change, Energy Efficiency 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.

In the committee

Bill taken as a whole by leave.

Explanatory memorandum: The Minister for Immigration and Citizenship (Senator Evans) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill and corrections to the explanatory memorandum.

Bill debated.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, item 1, page 5 (lines 17 to 22), omit subsection 2(3), substitute:

- (3) A **consumer contract** is a contract for:
- (a) the supply of goods or services; or
 - (b) a sale or grant of an interest in land;
- where:

- (c) if the contract is for supply, sale or grant to an individual—acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption; or
- (d) in any other case—the upfront price payable for the goods, services or interest supplied under the contract does not exceed \$2 million.

Schedule 3, item 7, page 52 (lines 17 to 20), omit subsection 12BF(3), substitute:

- (3) A **consumer contract** is a contract where:
 - (a) if at least one of the parties to the contract is an individual—the acquisition of what is supplied under the contract is wholly or predominantly for personal, domestic or household use or consumption; or
 - (b) in any other case—the upfront price payable for what is supplied under the contract does not exceed \$2 million.

Debate ensued.

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

Question—That the bill be agreed to—divided, at the request of the Leader of The Nationals in the Senate (Senator Joyce), in respect of Schedule 1, item 1, subsections 3(4) and 7(1).

Schedule 1, item 1, subsections 3(4) and 7(1) debated and agreed to.

Senator Xenophon moved the following amendment:

Schedule 1, item 1, page 7 (after line 21), after section 4, insert:

4A Unfair term—payments in person, in cash

- (1) Without limiting section 3, a term that enables, or has the effect of enabling, a party to charge a fee for receiving a payment in person or in cash is taken to be an **unfair term** of a consumer contract.
- (2) In this section:

fee means an amount additional to the upfront price payable under a consumer contract.

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, 36

Senators—

Back	Cash	Furner	Moore
Barnett	Colbeck	Hogg	O'Brien
Bernardi	Collins	Hurley	Parry
Bilyk	Conroy	Joyce	Polley
Birmingham	Crossin	Ludwig	Pratt
Bishop	Evans	Marshall	Stephens
Boswell	Farrell	McEwen	Sterle
Brown, Carol	Feeney	McGauran	Troeth
Cameron	Forshaw	McLucas	Williams (Teller)

Question negatived.

Senator Xenophon moved the following amendment:

Schedule 1, item 1, page 7 (after line 21), after section 4, insert:

4B Unfair term—personal information

(1) Without limiting section 3, a term that enables, or has the effect of enabling, one party to transfer personal information about another party to a person outside Australia without that other party's written, informed consent is taken to be an *unfair term* of a consumer contract.

(2) In this section:

personal information has the meaning given by section 6 of the *Privacy Act 1988*.

transfer, in relation to personal information, means communicate, send, trade or republish that information by any means to any person.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 7

Senators—

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

NOES, 24

Senators—

Adams	Colbeck	Hurley	Moore
Barnett	Crossin	Joyce	Parry
Bilyk	Evans	Ludwig	Polley
Birmingham	Feeney	Marshall	Pratt
Boswell	Fierravanti-Wells	McEwen	Stephens
Brown, Carol	Furner	McLucas	Williams (Teller)

Question negatived.

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

Clause 2, page 2 (table item 4, 1st column), omit "39", substitute "32".

Clause 2, page 2 (table item 7, 1st column), omit "75", substitute "74".

Schedule 1, heading to Part 1, page 4 (line 2), omit "**and prohibited**".

Schedule 1, item 1, page 4 (line 22), omit the definition of *prohibited term* in section 1.

Schedule 1, item 1, page 5 (line 9), omit the heading to Part 2, substitute:

Part 2—Unfair contract terms

Schedule 1, item 1, page 5 (line 10), omit the heading to Division 1.

Schedule 1, item 1, page 8 (line 19), omit the heading to Division 3.

Schedule 1, item 5, page 12 (lines 3 and 4), omit “or 6(1)”.

Schedule 2, item 40, page 46 (line 2), omit “38”, substitute “32”.

Schedule 2, item 43, page 46 (line 20), omit “or a prohibited term”.

Schedule 2, item 47, page 46 (line 30), omit “or 6(1)”.

Schedule 2, item 59, page 48 (line 9), omit “or a prohibited term”.

Schedule 2, item 60, page 48 (lines 15 and 16), omit “of Part VC or of the Australian Consumer Law”, substitute “or of Part VC”.

Schedule 2, item 73, page 50 (line 6), omit “or a prohibited term”.

Schedule 3, heading to Part 1, page 51 (line 3), omit “**and prohibited**”.

Schedule 3, item 7, page 52 (line 6), omit “**and prohibited**”.

Schedule 3, item 7, page 56 (line 25), omit “or 12BJ(1)”.

Schedule 3, heading to Part 8, page 79 (line 2), omit “**and prohibited**”.

Schedule 3, item 37, page 79 (line 28), omit “or a prohibited term”.

Schedule 3, item 42, page 80 (line 19), omit “or a prohibited term”.

Schedule 3, item 44, page 80 (line 29), omit “or a prohibited term”.

Schedule 3, item 45, page 81 (line 3), omit “BA.”.

Question—That the bill, as amended, be agreed to—divided, at the request of Senator Evans, in respect of Schedule 1, Division 2; Schedule 2, items 28, 30, 33 to 39, 44 and 45, 51 to 55, 71 and 75; and Schedule 3, items 2 and 7, section 12BJ, and items 33, 35 and 36, 38 to 41, 43 and 56.

Schedule 1, as amended, Division 2; Schedule 2, items 28, 30, 33 to 39, 44 and 45, 51 to 55, 71 and 75; and Schedule 3, items 2 and 7, section 12BJ, and items 33, 35 and 36, 38 to 41, 43 and 56 debated.

Question—That Schedule 1, as amended, Division 2; Schedule 2, items 28, 30, 33 to 39, 44 and 45, 51 to 55, 71 and 75; and Schedule 3, items 2 and 7, section 12BJ, and items 33, 35 and 36, 38 to 41, 43 and 56 stand as printed—put and negatived.

Senator Xenophon moved the following amendments together by leave:

Schedule 1, item 1, page 6 (lines 1 to 14), omit subsections 3(2) and (3), substitute:

- (2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the contract as a whole.

Schedule 3, item 7, page 52 (line 29) to page 53 (line 11), omit subsections 12BG(2) and (3), substitute:

- (2) In determining whether a term of a consumer contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the contract as a whole.

Debate ensued.

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

Senator Evans moved the following amendments together by leave:

Schedule 1, item 1, page 5 (line 29), omit “term.”, substitute “term; and”.

Schedule 1, item 1, page 5 (after line 29), at the end of subsection 3(1), add:

(c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

Schedule 1, item 1, page 6 (lines 4 to 7), omit paragraph 3(2)(a).

Schedule 3, item 7, page 52 (line 28), omit “term.”, substitute “term; and”.

Schedule 3, item 7, page 52 (after line 28), at the end of subsection 12BG(1), add:

(c) it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

Schedule 3, item 7, page 53 (lines 1 to 4), omit paragraph 12BG(2)(a).

At 7.20 pm: The Acting Deputy President (Senator Boyce) resumed the chair and the Temporary Chair of Committees reported progress.

34 ADJOURNMENT

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

Debate ensued.

Documents: Senator Barnett, by leave, tabled the following documents:

Education—National School Chaplaincy Program—Petitioning document and correspondence relating to continued funding for the National School Chaplaincy Program in its current form.

Debate continued.

The Senate adjourned at 10.20 pm till Wednesday, 17 March 2010 at 9.30 am.

35 ATTENDANCE

Present, all senators except Senators Kroger*, Lundy, Sherry* and Wortley* (* on leave).

ROSEMARY LAING
Clerk of the Senate