

2008-09

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 104

THURSDAY, 26 NOVEMBER 2009

AND

FRIDAY, 27 NOVEMBER 2009

**Contents**

1	Meeting of Senate .....	2881
2	Petitions .....	2881
3	Notice .....	2881
4	Days and Hours of Meeting and Routine of Business—Variation— Statement by Leave .....	2881
5	Order of Business—Rearrangement .....	2882
6	Postponement .....	2882
7	Foreign Affairs, Defence and Trade References Committee—Reference .....	2883
8	Consideration of Legislation .....	2884
9	Trade Practices Amendment (Material Lessening of Competition— Richmond Amendment) Bill 2009 .....	2885
10	Health—National Preventative Health Taskforce Report—Order for Production of Document .....	2885
11	Agricultural and Related Industries—Select Committee—Extensions of Time to Report .....	2886
12	National Year of Action on Marriage Equality .....	2887
13	Law and Justice—Australian Capital Territory—Civil Partnerships Amendment Bill .....	2887
14	Law and Justice—Territories—Legislative Power .....	2888
15	Science and Technology—Research Paper—Dr Clive Spash—Order for Production of Document .....	2889
16	Indigenous Australians—Northern Territory Emergency Response Redesign Consultation Process—Proposed Order for Production of Documents .....	2889
17	Environment—Snowy Water Licence Review .....	2889
18	Family and Community Services—Volunteers .....	2890
19	Environment, Communications and the Arts References Committee— Extension of Time to Report .....	2890
20	Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2009 .....	2891

21	Days and Hours of Meeting and Routine of Business—Variation— Consideration.....	2891
22	Appropriations and Staffing—Standing Committee—48th Report .....	2891
23	Publications—Standing Committee—15th Report .....	2891
24	Education, Employment and Workplace Relations References Committee— Document—Provision of Childcare .....	2894
25	Committees—Additional Information—Budget Estimates 2009-10 .....	2894
26	ACIS Administration Amendment (Application) Bill 2009 Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009 Foreign Acquisitions and Takeovers Amendment Bill 2009.....	2895
27	Australian Centre for Renewable Energy Bill 2009 Aviation Transport Security Amendment (2009 Measures No. 2) Bill 2009 Native Title Amendment Bill (No. 2) 2009 Safety, Rehabilitation and Compensation Amendment Bill 2009.....	2896
28	Health Insurance Amendment (Compliance) Bill 2009.....	2896
29	Education, Employment and Workplace Relations References Committee— Report—Welfare of International Students .....	2899
30	National Broadband Network—Select Committee—Third Report.....	2899
31	ACIS Administration Amendment (Application) Bill 2009 .....	2900
32	Order of Business—Rearrangement.....	2900
33	Resale Royalty Right for Visual Artists Bill 2009 Tax Laws Amendment (Resale Royalty Right for Visual Artists) Bill 2009.....	2901
34	Tax Laws Amendment (2009 Measures No. 5) Bill 2009 .....	2902
35	Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009 .....	2903
36	Family Assistance Legislation Amendment (Participation Requirement) Bill 2009 .....	2903
37	Customs Tariff Amendment (Incorporation of Proposals) Bill 2009.....	2903
38	Personal Property Securities Bill 2009 Personal Property Securities (Consequential Amendments) Bill 2009 .....	2903
39	Notice .....	2904
40	Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009.....	2904
41	Foreign Affairs—India—Terrorist Attacks—Anniversary—Ministerial Statement .....	2905
42	Questions .....	2905
43	Questions on Notice—Answers and Explanation—Statement by Leave.....	2905
44	Administration—Travel Allowance—Statement by Leave.....	2905
45	Motion to Take Note of Answer.....	2905
46	Women—White Ribbon Day—Ministerial Statement—Document .....	2905
47	Defence—Afghanistan—Ministerial Statement .....	2905
48	Science and Technology—Research Paper—Dr Clive Spash—Order for Production of Document—Documents .....	2906
49	Parliamentary Committee Reports—Government Response—President’s Report on Government Responses.....	2906
50	Community Affairs References Committee—Government Response—Lost Innocents and Forgotten Australians Revisited.....	2906
51	Notice .....	2906

52	Parliamentary Committee Reports—President’s Report—Government Responses Outstanding .....	2907
53	Department of the Senate—Register of Senate Senior Executive Officers’ Interests—Document .....	2907
54	Auditor-General—Audit Reports Nos 14 and 15 of 2009-10—Documents .....	2907
55	Particulars of Proposed Additional Expenditure—2009-10—Documents.....	2907
56	Estimates of Proposed Additional Expenditure for 2009-10—Portfolio Additional Estimates Statements—Portfolios and Executive Departments—Documents.....	2907
57	Environment—Geoscience Australia—Carbon Dioxide Storage Sites—Order for Production of Documents—Document .....	2908
58	Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and Related Bills—Draft Rules and Regulations—Order for Production of Documents—Document .....	2908
59	Parliamentarians’ Travel Costs—Document.....	2908
60	Former Parliamentarians’ Travel Costs—Document.....	2908
61	Parliamentarians’ Overseas Study Travel Reports—Document.....	2908
62	Department of Defence—Special Purpose Flights—Documents.....	2909
63	Selection of Bills—Standing Committee—Report No. 18 of 2009 .....	2909
64	Legal and Constitutional Affairs References Committee—Interim Report—Australia’s Judicial System and the Role of Judges and Access to Justice ..	2910
65	Documents.....	2911
66	Committee Membership .....	2912
67	Legal and Constitutional Affairs Legislation Committee—Report—Marriage Equality Amendment Bill 2009 .....	2912
68	Economics Legislation Committee—Report—Food Standards Amendment (Truth in Labelling Laws) Bill 2009.....	2912
69	Regional and Remote Indigenous Communities—Select Committee—Third Report .....	2913
70	Finance and Public Administration References Committee—Report—Relationship Between the Central Land Council and Centrecorp Aboriginal Investment Corporation Pty Ltd.....	2913
71	Carbon Pollution Reduction Scheme Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 [No. 2] Australian Climate Change Regulatory Authority Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Charges—Customs) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Charges—Excise) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Charges—General) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009 [No. 2] Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2] Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2009 [No. 2] .....	2913
72	Prayers .....	2915

73	Carbon Pollution Reduction Scheme Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 [No. 2] Australian Climate Change Regulatory Authority Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Charges—Customs) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Charges—Excise) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (Charges—General) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (CPRS Fuel Credits) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme (CPRS Fuel Credits) (Consequential Amendments) Bill 2009 [No. 2] Excise Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2] Customs Tariff Amendment (Carbon Pollution Reduction Scheme) Bill 2009 [No. 2] Carbon Pollution Reduction Scheme Amendment (Household Assistance) Bill 2009 [No. 2] .....	2916
74	Adjournment .....	2950
75	Attendance.....	2950

**1 MEETING OF SENATE**

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

**2 PETITIONS**

The following 2 petitions similar in wording, lodged with the Clerk by Senator Siewert, were received:

From 182 and 26 petitioners, requesting that the Senate take action to end the export of live animals from Australia to the Middle East.

**3 NOTICE**

*Contingent notice of motion:* The Leader of the Australian Greens (Senator Bob Brown): To move (contingent on business being called on 2 February 2010)—That so much of the standing orders be suspended as would prevent the senator moving—That:

- (a) Senator Bob Brown may immediately move a motion on the involvement and deployment of Australian troops in Afghanistan; and
- (b) the motion have precedence over all other business until determined.

**4 DAYS AND HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION—STATEMENT BY LEAVE**

The Special Minister of State (Senator Ludwig), by leave, made a statement relating to the days and hours of meeting and routine of business.

*Statements by leave:* Senators Parry and Ludwig, by leave, made statements relating to the matter.

Senator Ludwig, by leave moved government business notice of motion no. 3 in an amended form—That—

- (1) On Thursday, 26 November 2009:
  - (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
  - (b) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) shall not be proceeded with;
  - (c) the routine of business from 12.45 pm till not later than 2 pm shall be government business only, and from not later than 4.15 pm shall be the government business order of the day relating to the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills;
  - (d) divisions may take place after 4.30 pm; and
  - (e) if the Senate is sitting at 11 pm, the sitting of the Senate be suspended till 9.30 am on Friday, 27 November 2009.
- (2) On Friday, 27 November 2009, the question for the adjournment of the Senate shall be put at 3.45 pm.
- (3) The Senate meet on Monday, 30 November 2009, and that:
  - (a) the hours of meeting shall be 10 am to adjournment;
  - (b) the routine of business from 10 am shall be government business only; and

- (c) the question for the adjournment of the Senate shall be proposed after the Senate has finally considered the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills, including any messages from the House of Representatives.

Debate ensued.

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

At the end of the motion, add:

- (4) On each new calendar day on which the Senate sits a period of a least one hour be set aside for question time.

Debate ensued.

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

Main question put and passed.

#### 5 **ORDER OF BUSINESS—REARRANGEMENT**

The Special Minister of State (Senator Ludwig) moved—That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

ACIS Administration Amendment (Application) Bill 2009.

No. 10 Tax Laws Amendment (2009 Measures No. 5) Bill 2009.

Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009.

No. 11 Family Assistance Legislation Amendment (Participation Requirement) Bill 2009.

Customs Tariff Amendment (Incorporation of Proposals) Bill 2009.

No. 12 Personal Property Securities Bill 2009.

No. 13 Personal Property Securities (Consequential Amendments) Bill 2009.

No. 14 Resale Royalty Right for Visual Artists Bill 2009.

No. 15 Tax Laws Amendment (Resale Royalty Right for Visual Artists) Bill 2009.

No. 16 Higher Education Support Amendment (VET FEE-HELP and Tertiary Admission Centres) Bill 2009.

Question put and passed.

The Chair of the Legal and Constitutional Affairs References Committee (Senator Barnett), by leave, moved—That business of the Senate orders of the day nos 8 and 9, relating to the presentation of reports of the Legal and Constitutional Affairs References Committee, be postponed till a later hour.

Question put and passed.

#### 6 **POSTPONEMENT**

The following item of business was postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Xenophon for today, proposing a reference to the Community Affairs References Committee, postponed till 30 November 2009.

**7 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REFERENCE**

Senator Johnston, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 2—That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 18 March 2010:

- (a) the nature, scope and purpose of an 'Equity and Diversity Health Check' in the Royal Australian Navy, and under what authority such an investigation is conducted;
- (b) the equity and diversity issues at large on board HMAS *Success* (*Success*) giving rise to the 'Equity and Diversity Health Check' which was carried out on board *Success* between 21 April and 9 May 2009 including *inter alia* all disciplinary issues, the transfer of a Royal Navy exchange sailor, the management of equity and diversity issues by the ship's Commanding Officer and his Executive Officer both before and after the 'Equity and Diversity Health Check';
- (c) the nature and veracity of complaints and allegations made by a Petty Officer or any other person concerning equity and diversity issues on *Success*;
- (d) the reasons and factual evidentiary basis for the ship's Commanding Officer resolving to land a Chief Petty Officer and two Petty Officers (the senior sailors) at Singapore on 9 May 2009 from *Success* and the circumstances of that landing and removal from the ship including whether the Commanding Officer acted under the direction of any superior officer;
- (e) whether the senior sailors were informed of the full nature of the allegations and factual evidentiary basis for the subsequent landing in a timely fashion or at all, and whether procedural fairness was provided to those senior sailors;
- (f) the circumstances and events that led to the Commanding Officer of *Success* addressing members of the crew in relation to the landing of the senior sailors, whether the Commanding Officer referred to the senior sailors by stating words to the effect of 'there was a rotten core on this ship and the core has now been removed' and if so, the extent that those comments may have prejudiced any subsequent inquiry;
- (g) whether the Inquiry Officer as appointed pursuant to terms of reference, dated 15 May, and as set out in Minute S1804843, dated 10 July 2009, declined to interview any relevant witnesses in circumstances where the senior sailors were prohibited from attending *Success* and or contacting any of the ship's company;
- (h) the way in which the inquiry into the events on *Success* was conducted, whether the method of questioning witnesses and gathering evidence was conducted according to the principles of justice, whether the inquiry process was free from any perception of bias, and whether any witnesses were threatened with disciplinary or other action during the course of giving evidence;
- (i) whether the senior sailors requested access to evidence gathered during the inquiry into the events on *Success*, whether any such request was denied, and whether any subsequent finding is reasonable in the circumstances;
- (j) the facts and circumstances of the treatment of the Legal Officer (the lawyer) assigned to the management and defence of the case of the senior sailors including any threats, bullying, adverse conduct and prejudice generally, including any threat of posting to Western Australia, and whether any such conduct constituted an attempt to compromise the lawyer's capacity to represent the best interests of the senior sailors without fear or favour;

- (k) the knowledge and awareness of the ship's Commanding Officer, the Australian Defence Force Investigative Service investigators and the broader naval chain of command of the facts and circumstances relating to the Channel 7 News reports on 4 July and 7 July 2009 (the media reports) and the dates and times of such personnel being availed of such knowledge and awareness;
- (l) the knowledge and awareness of the media reports by the responsible Minister and the dates and times of the Minister being availed of such knowledge and awareness; and
- (m) all and any other matters relating to the justice and equity of the management of the senior sailors in their removal from the ship and the subsequent administrative process or processes, including their complaints as to the flawed process as set out herein.

Senator Xenophon, by leave, moved the following amendment:

At the end of the motion, add:

- (2) That the committee not conduct any hearings until after 1 February 2010.

*Statement by leave:* The Minister for Defence (Senator Faulkner), by leave, made a statement relating to the motion.

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

Main question, as amended, put and passed.

## 8 CONSIDERATION OF LEGISLATION

The Special Minister of State (Senator Ludwig), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That standing orders 120(3) and 122(1) and (2) not apply to the consideration of the Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and 10 related bills.

*Statements by leave:* Senators Ludwig and Parry, by leave, made statements relating to the motion.

Question put and passed.

Senator Ludwig, pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 2—That the government business orders of the day relating to the following bills may be taken together for their remaining stages:

- (a) Personal Property Securities Bill 2009 and Personal Property Securities (Consequential Amendments) Bill 2009; and
- (b) Resale Royalty Right for Visual Artists Bill 2009 and Tax Laws Amendment (Resale Royalty Right for Visual Artists) Bill 2009.

Question put and passed.

Senator Ludwig, pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 4—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

- ACIS Administration Amendment (Application) Bill 2009
- Coal Mining Industry (Long Service Leave Funding) Amendment Bill 2009
- Customs Tariff Amendment (Incorporation of Proposals) Bill 2009
- Foreign Acquisitions and Takeovers Amendment Bill 2009.

Question put and passed.



9 **TRADE PRACTICES AMENDMENT (MATERIAL LESSENING OF COMPETITION—RICHMOND AMENDMENT) BILL 2009**

Senator Xenophon, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 664—That the following bill be introduced:

A Bill for an Act to amend the *Trade Practices Act 1974* in relation to mergers and acquisitions, and for related purposes.

Question put and passed.

Senator Xenophon presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

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

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

10 **HEALTH—NATIONAL PREVENTATIVE HEALTH TASKFORCE REPORT—ORDER FOR PRODUCTION OF DOCUMENT**

Senator Cormann, also on behalf of Senator Barnett, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 665—That there be laid on the table by the Minister representing the Minister for Health and Ageing, no later than Friday, 4 December 2009, a copy of the Government's response to all of the recommendations set out in the National Preventative Health Taskforce report, *National Preventative Health Strategy*.

Question put.

The Senate divided—

AYES, 37

Senators—

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

## NOES, 35

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

Question agreed to.

### 11 AGRICULTURAL AND RELATED INDUSTRIES—SELECT COMMITTEE—EXTENSIONS OF TIME TO REPORT

The Chair of the Select Committee on Agricultural and Related Industries (Senator Heffernan), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 666—That the time for the presentation of the following final reports of the Select Committee on Agricultural and Related Industries be extended to 30 June 2010:

- (a) food production in Australia; and
- (b) incidence and severity of bushfires across Australia.

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

Question put.

The Senate divided—

## AYES, 36

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

## NOES, 33

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

Question agreed to.

**12 NATIONAL YEAR OF ACTION ON MARRIAGE EQUALITY**

Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 671—That the Senate notes that Saturday, 28 November 2009 marks the start of the National Year of Action on Marriage Equality and that rallies will be held in capital cities across the country.

*Statements by leave:* The Special Minister of State (Senator Ludwig), the Leader of the Australian Greens (Senator Bob Brown) and the Leader of the Family First Party (Senator Fielding), by leave, made statements relating to the motion.

*Leave refused:* Senator Hanson-Young sought leave to make a statement relating to the motion.

An objection was raised and leave was not granted.

Question put.

The Senate divided—

AYES, 6

Senators—

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

NOES, 48

Senators—

Abetz	Coonan	Hogg	Moore
Barnett	Cormann	Humphries	O'Brien
Bernardi	Crossin	Hurley	Parry (Teller)
Bilyk	Eggleston	Hutchins	Polley
Bishop	Farrell	Johnston	Ryan
Boswell	Feeney	Joyce	Scullion
Brown, Carol	Ferguson	Kroger	Stephens
Bushby	Fielding	Ludwig	Sterle
Carr	Fifield	Lundy	Troeth
Cash	Fisher	Mason	Trood
Colbeck	Forshaw	McGauran	Williams
Collins	Furner	McLucas	Wortley

Question negatived.

**13 LAW AND JUSTICE—AUSTRALIAN CAPITAL TERRITORY—CIVIL PARTNERSHIPS AMENDMENT BILL**

Senator Hanson-Young, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 674—That the Senate—

- (a) notes the recent passing by the Australian Capital Territory Legislative Assembly of the Civil Partnerships Amendment Bill 2009; and
- (b) congratulates the first couple to hold a legally-recognised ceremony in the Australian Capital Territory, Mr Warren McGaw and Mr Chris Rumble, who on 25 November 2009 celebrated their love and commitment in front of family and friends.

Question put.

The Senate divided—

AYES, 6

Senators—

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

## NOES, 47

Senators—			
Abetz	Coonan	Hurley	O'Brien
Barnett	Cormann	Hutchins	Parry (Teller)
Bernardi	Crossin	Johnston	Polley
Bilyk	Eggleston	Joyce	Pratt
Bishop	Farrell	Kroger	Ryan
Boswell	Feeney	Ludwig	Scullion
Brown, Carol	Ferguson	Lundy	Stephens
Bushby	Fielding	Marshall	Sterle
Carr	Fifield	Mason	Troeth
Cash	Forshaw	McGauran	Trood
Colbeck	Furner	McLucas	Wortley
Collins	Hogg	Moore	

Question negatived.

## 14 LAW AND JUSTICE—TERRITORIES—LEGISLATIVE POWER

Senator Hanson-Young, also on behalf of Senator Humphries, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 675—That the Senate recognises the sovereignty of the territory parliaments to legislate within the powers conferred on them by the Federal Parliament, without interference from the Federal Government.

Question put.

The Senate divided—

## AYES, 7

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

## NOES, 50

Senators—			
Abetz	Collins	Hurley	O'Brien (Teller)
Adams	Coonan	Hutchins	Parry
Barnett	Cormann	Johnston	Polley
Bernardi	Crossin	Joyce	Pratt
Bilyk	Eggleston	Kroger	Ryan
Bishop	Farrell	Ludwig	Scullion
Boswell	Feeney	Lundy	Stephens
Boyce	Ferguson	Marshall	Sterle
Brown, Carol	Fielding	Mason	Troeth
Bushby	Fifield	McGauran	Trood
Carr	Forshaw	McLucas	Wortley
Cash	Furner	Moore	
Colbeck	Hogg	Nash	

Question negatived.

*Statements by leave:* The Special Minister of State (Senator Ludwig) and the Leader of the Australian Greens (Senator Bob Brown), by leave, made statements relating to general business notices of motion nos 674 and 675.

**15 SCIENCE AND TECHNOLOGY—RESEARCH PAPER—DR CLIVE SPASH—ORDER FOR PRODUCTION OF DOCUMENT**

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 673—That there be laid on the table, no later than 1 pm on 26 November 2009, Dr Clive Spash's uncensored and unamended research paper, *The brave new world of carbon trading*.

*Statements by leave:* The Minister for Innovation, Industry, Science and Research (Senator Carr) and Senator Milne, by leave, made statements relating to the motion.

Question put and passed.

**16 INDIGENOUS AUSTRALIANS—NORTHERN TERRITORY EMERGENCY RESPONSE REDESIGN CONSULTATION PROCESS—PROPOSED ORDER FOR PRODUCTION OF DOCUMENTS**

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 667—That there be laid on the table by the Minister representing the Minister for Families, Housing, Community Services and Indigenous Affairs (Senator Evans), no later than Friday, 4 December 2009, the complete and unedited transcripts of all four tiers of consultation meetings held under the Northern Territory Emergency Response Redesign Consultation process and any associated documents.

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

Question put and negatived.

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

**17 ENVIRONMENT—SNOWY WATER LICENCE REVIEW**

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 668—That the Senate—

(a) notes:

- (i) the failure of the New South Wales Government to establish the Snowy Scientific Committee in a timely fashion prior to the first 5 year review of the Snowy Water Licence, as required by legislation,
- (ii) that a decision on whether to allow environmental water to be released to the Snowy River from Mowamba Weir, in addition to Jindabyne Dam, would require at least 6 months to allow the Snowy Scientific Committee to complete further studies as required, and
- (iii) that a decision to amend the licence to allow environmental water releases via Mowamba Weir as well as Jindabyne Dam made after the finalisation of the Snowy Water Licence review could result in substantial compensation being provided to Snowy Hydro Limited; and

- (b) calls on the Commonwealth Government to insist that the New South Wales Government delay finalisation of the Snowy Water Licence review for at least 6 months, to allow the Snowy Scientific Committee to review the environmental benefits of permitting releases from Mowamba Weir, in order to make a decision on this issue during the time of the review and thus avoid the risk of unnecessary payment of compensation.

Question put and passed.

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

#### 18 FAMILY AND COMMUNITY SERVICES—VOLUNTEERS

Senator Barnett, also on behalf of Senator Fifield, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 669—That the Senate—

- (a) notes:
  - (i) the outstanding contribution volunteers and volunteer supporting organisations make to Australian society, estimated to be worth more than \$42 billion per annum,
  - (ii) that more than 5.4 million adults (34 per cent of the population) do voluntary work each year, contributing more than 700 million hours annually,
  - (iii) that volunteering has benefits of promoting a sense of community belonging, personal fulfilment and professional skills development for those who volunteer, as well as providing services to the community that may otherwise not be provided by government,
  - (iv) the sacrificial efforts of volunteers and volunteer organisations throughout Australia is under recognised and undervalued and without them society as we know it would collapse, and
  - (v) that International Volunteer Day will be celebrated around the world on 5 December 2009; and
- (b) calls on the Government to continue to recognise and support volunteers and volunteer supporting organisations in our community.

Question put and passed.

#### 19 ENVIRONMENT, COMMUNICATIONS AND THE ARTS REFERENCES COMMITTEE— EXTENSION OF TIME TO REPORT

The Chair of the Environment, Communications and the Arts References Committee (Senator Birmingham), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 670—That the time for the presentation of the report of the Environment, Communications and the Arts References Committee on the impact of mining operations on the Murray-Darling Basin be extended to 4 December 2009.

Question put and passed.

**20 AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) AMENDMENT  
(DISALLOWANCE AND AMENDMENT POWER OF THE COMMONWEALTH) BILL 2009**

The Leader of the Australian Greens (Senator Bob Brown), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 672—That the following bill be introduced:

A Bill for an Act to abolish the power of the Commonwealth executive government to disallow or amend any Act of the Legislative Assembly of the Australian Capital Territory, and for related purposes.

Question put and passed.

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

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

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

**21 DAYS AND HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION—  
CONSIDERATION**

*Leave refused:* Senator Macdonald sought leave to ask the Special Minister of State (Senator Ludwig) for clarification of an order of the Senate agreed to earlier today (*see entry no. 4*), relating to the days and hours of meeting and routine of business.

An objection was raised and leave was not granted.

**22 APPROPRIATIONS AND STAFFING—STANDING COMMITTEE—48TH REPORT**

The President tabled the following report:

Appropriations and Staffing—Standing Committee—48th report—Appointment of the Clerk of the Senate, dated November 2009.

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

**23 PUBLICATIONS—STANDING COMMITTEE—15TH REPORT**

Senator McEwen, at the request of the Chair of the Standing Committee on Publications (Senator Carol Brown), tabled the following report:

PUBLICATIONS COMMITTEE  
15TH REPORT

The Publications Committee reports that it has met in conference with the Publications Committee of the House of Representatives.

The Committee, having considered documents presented to the Parliament since 29 October 2009, recommends that the following be printed:

- Aboriginal Hostels Limited—Report for the period 29 June 2008 to 27 June 2009.
- Aged Care Commissioner—Report for 2008-09.
- Aged Care Standards and Accreditation Agency Ltd—Report for 2008-09.
- Anglo-Australian Telescope Board—Anglo-Australian Observatory (AAO)—Report for 2008-09.
- Auditing and Assurance Standards Board—Report for 2008-09.
- Australian Accounting Standards Board—Report for 2008-09.
- Australian Building and Construction Commissioner—Report for 2008-09.
- Australian Commission for Law Enforcement Integrity—Report of the Integrity Commissioner for 2008-09.
- Australian Communications and Media Authority—Report for 2008-09—Addendum.
- Australian Crime Commission (ACC)—Report for 2008-09.
- Australian Curriculum, Assessment and Reporting Authority—Report for the period 28 May to 30 June 2009.
- Australian Customs and Border Protection Service (formerly the Australian Customs Service)—Report for 2008-09.
- Australian Fair Pay Commission—Report for 2008-09 [Final report].
- Australian Fair Pay Commission Secretariat—Report for 2008-09, including reports of the Commission and Secretariat for July 2009 [Final report].
- Australian Fisheries Management Authority—Report for 2008-09.
- Australian Human Rights Commission—Report for 2008-09.
- Australian Institute of Health and Welfare—Australia's welfare 2009—Ninth biennial report.
- Australian Maritime Safety Authority—Report for 2008-09.
- Australian National Maritime Museum—Report for 2008-09.
- Australian Organ and Tissue Donation and Transplantation Authority—Report for the period 1 January to 30 June 2009.
- Australian Prudential Regulation Authority (APRA)—Report for 2008-09.
- Australian Public Service Commissioner—Report for 2008-09, including report of the Merit Protection Commissioner.
- Australian Safeguards and Non-Proliferation Office—Report for 2008-09.
- Australian Securities and Investments Commission (ASIC)—Report for 2008-09.
- Australian Sports Commission—Report for 2008-09.
- Commonwealth Ombudsman—Report for 2008-09 on the Ombudsman's activities in monitoring controlled operations conducted by the Australian Crime Commission, the Australian Federal Police and the Australian Commission for Law Enforcement Integrity.
- Cotton Research and Development Corporation—Report for 2008-09.
- Department of Defence—Reports for 2008-09—  
Volume 1—Department of Defence, including report on the administration and operation of the *Defence Force (Home Loans Assistance) Act 1990*.  
Volume 2—Defence Materiel Organisation.
- Department of Health and Ageing—Report for 2008-09, including financial statements for the Therapeutic Goods Administration.
- Department of Immigration and Citizenship—Report for 2008-09, including report on the operation of the *Immigration (Education) Act 1971*.



- Department of Infrastructure, Transport, Regional Development and Local Government—Report for 2008-09.
- Department of the Environment, Water, Heritage and the Arts—Reports for 2008-09—  
Volume 1—Department of the Environment, Water, Heritage and the Arts.  
Volume 2—Legislation.
- Department of the Treasury—Report for 2008-09.
- Equal Opportunity for Women in the Workplace Agency (EOWA)—Report for 2008-09.
- Family Court of Australia—Report for 2008-09.
- Fisheries Research and Development Corporation (FRDC)—Report for 2008-09.
- Food Standards Australia New Zealand—Report for 2008-09.
- Future Fund Board of Guardians and Future Fund Management Agency (Future Fund)—Report for 2008-09.
- Grains Research and Development Corporation (GRDC)—Report for 2008-09.
- Grape and Wine Research and Development Corporation—Report for 2008-09.
- Indigenous Business Australia—Report for 2008-09.
- Land and Water Resources Research and Development Corporation (Land & Water Australia)—Report for 2008-09.
- Murray-Darling Basin Authority—Report for the period 15 December 2008 to 30 June 2009, including final report of the Murray-Darling Basin Commission for the period 1 July to 14 December 2008.
- National Film and Sound Archive (formerly the Australian Film Commission)—Report for 2008-09.
- National Gallery of Australia—Report for 2008-09.
- National Health and Medical Research Council (NHMRC)—Report for 2008-09.
- National Library of Australia—Report for 2008-09.
- National Residue Survey—Report for 2008-09.
- Native Title Act 1993*—Native title representative bodies—Reports for 2008-09—  
Central Land Council.  
Northern Land Council.
- Office of the Commonwealth Director of Public Prosecutions—Report for 2008-09.
- Old Parliament House—Report for 2008-09.
- Pharmaceutical Benefits Pricing Authority—Report for 2008-09.
- Privacy Act 1988*—Report for 2008-09 on the operation of the Act, including financial statements for the Office of the Privacy Commissioner.
- Private Health Insurance Administration Council—Report for 2008-09.
- Productivity Commission—Report for 2008-09.
- Professional Services Review—Report for 2008-09.
- Remuneration Tribunal—Report for 2008-09.
- Royal Australian Mint—Report for 2008-09.
- Rural Industries Research and Development Corporation (RIRDC)—Report for 2008-09.
- Social Security Appeals Tribunal—Report for 2008-09.
- Sugar Research and Development Corporation—Report for 2008-09.

Supervising Scientist—Report for 2008-09 on the operation of the *Environment Protection (Alligator Rivers Region) Act 1978*.

Torres Strait Protected Zone Joint Authority—Report for 2007-08.

Tourism Australia—Report for 2008-09.

Workplace Authority—Report for 2008-09.

Workplace Ombudsman—Report for 2008-09 [Final report].

Senator Carol Brown

Chair

26 November 2009.

Senator McEwen moved—That the report be adopted.

Question put and passed.

**24 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS REFERENCES COMMITTEE—DOCUMENT—PROVISION OF CHILDCARE**

The Chair of the Education, Employment and Workplace Relations References Committee (Senator Humphries) tabled the following document:

Education, Employment and Workplace Relations References Committee—Report—Provision of childcare—Errata.

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

**25 COMMITTEES—ADDITIONAL INFORMATION—BUDGET ESTIMATES 2009-10**

Senator McEwen, at the request of the chairs of the respective committees, tabled the following documents:

Budget estimates 2009-10—

Community Affairs Legislation Committee—Additional information received between—

23 October and 25 November 2009—Indigenous issues across portfolios—Families, Housing, Community Services and Indigenous Affairs; Education, Employment and Workplace Relations.

29 October and 25 November 2009—Health and Ageing portfolio.

Finance and Public Administration Legislation Committee—Additional information received between 20 August and 26 November 2009—

Department of Climate Change.

Finance and Deregulation portfolio.

Human Services portfolio.

Prime Minister and Cabinet portfolio.

Budget estimates 2009-10 (Supplementary)—

Economics Legislation Committee—Additional information received between 21 October and 25 November 2009—

Innovation, Industry, Science and Research portfolio.

Treasury portfolio.

Finance and Public Administration Legislation Committee—

Hansard record of proceedings.

Additional information received between 19 October and 26 November 2009—

Department of Parliamentary Services.

Department of the Senate.

Finance and Deregulation portfolio.

Legal and Constitutional Affairs Legislation Committee—Additional information received between 28 October and 25 November 2009—Immigration and Citizenship portfolio.

**26 ACIS ADMINISTRATION AMENDMENT (APPLICATION) BILL 2009  
COAL MINING INDUSTRY (LONG SERVICE LEAVE FUNDING) AMENDMENT  
BILL 2009  
FOREIGN ACQUISITIONS AND TAKEOVERS AMENDMENT BILL 2009**

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

Message no. 470, dated 24 November 2009—A Bill for an Act to amend the *ACIS Administration Amendment Act 2009*, and for related purposes.

Message no. 469, dated 24 November 2009—A Bill for an Act to amend the law relating to long service leave in the black coal mining industry, and for related purposes.

Message no. 466, dated 24 November 2009—A Bill for an Act to amend the *Foreign Acquisitions and Takeovers Act 1975*, and for related purposes.

The Parliamentary Secretary for Social Inclusion (Senator Stephens) 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 Stephens moved—That these bills be now read a second time.

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*Explanatory memorandum:* Senator Stephens tabled a revised explanatory memorandum relating to the Foreign Acquisitions and Takeovers Amendment Bill 2009.

---

On the motion of Senator Stephens the debate was adjourned.

Senator Stephens moved—That the resumption of the debate be made an order of the day for a later hour.

Debate ensued.

Question put and passed.

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

Question put and passed.

**27 AUSTRALIAN CENTRE FOR RENEWABLE ENERGY BILL 2009**  
**AVIATION TRANSPORT SECURITY AMENDMENT (2009 MEASURES NO. 2)**  
**BILL 2009**  
**NATIVE TITLE AMENDMENT BILL (NO. 2) 2009**  
**SAFETY, REHABILITATION AND COMPENSATION AMENDMENT BILL 2009**

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

Message no. 471, dated 25 November 2009—A Bill for an Act to establish the Australian Centre for Renewable Energy Board, and for related purposes.

Message no. 473, dated 25 November 2009—A Bill for an Act to amend the *Aviation Transport Security Act 2004*, and for related purposes.

Message no. 468, dated 24 November 2009—A Bill for an Act to amend the *Native Title Act 1993*, and for related purposes.

Message no. 472, dated 25 November 2009—A Bill for an Act to amend the *Safety, Rehabilitation and Compensation Act 1988*, and for related purposes.

The Parliamentary Secretary for Social Inclusion (Senator Stephens) 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 Stephens 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 Stephens moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

**28 HEALTH INSURANCE AMENDMENT (COMPLIANCE) BILL 2009**

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

Message no. 467, dated 24 November 2009—Health Insurance Amendment (Compliance) Bill 2009, agreeing to amendments nos 2 to 9 made by the Senate and disagreeing to amendments nos 1 and 10.

The Parliamentary Secretary for Social Inclusion (Senator Stephens) moved—That consideration of the message in committee of the whole be made an order of the day for the next day of sitting.

Debate ensued.

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*Document:* Senator Cormann, by leave, tabled the following document:

Parliament—Health Insurance Amendment (Revival of Table Items) Bill 2009—  
 Legal advice—Letter from the Clerk of the Senate to Senator Cormann, dated  
 25 November 2009.

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Senator Cormann, also on behalf of the Leader of the Family First Party (Senator Fielding) and Senator Xenophon, moved the following amendment:

Omit “for the next day of sitting”, substitute “immediately”.

Debate ensued.

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

*Statement by leave:* Senator McEwen, by leave, made a statement relating to the matter.

Main question, as amended, put and passed.

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

—————  
*In the committee*

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE TO WHICH THE  
HOUSE OF REPRESENTATIVES HAS DISAGREED

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

**2 Commencement**

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

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

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.
- (10) Page 19 (after line 16), at the end of the bill, add:

**Schedule 2—Amendment relating to disallowance of  
medical services items**

***Health Insurance Act 1973***

**1 At the end of section 4**

Add:

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

(4) In subsection (3):

**corresponding item** means:

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

as the disallowed item.

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

## 2 Application

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

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

Debate ensued.

Question put.

The committee divided—

### AYES, 30

Senators—

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

### NOES, 41

Senators—

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

Question negatived.

Resolution to be reported.

---

The Deputy President (Senator Ferguson) resumed the chair and the Chair of Committees reported that the committee had considered message no. 467 from the House of Representatives relating to the Health Insurance Amendment (Compliance) Bill 2009 and had resolved to insist on amendments nos 1 and 10 made by the Senate to which the House had disagreed.

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

**29 EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS REFERENCES COMMITTEE—REPORT—WELFARE OF INTERNATIONAL STUDENTS**

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

Education, Employment and Workplace Relations References Committee—Welfare of international students—Report, dated November 2009, Hansard record of proceedings, additional information and submissions.

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

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

Debate ensued.

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

**30 NATIONAL BROADBAND NETWORK—SELECT COMMITTEE—THIRD REPORT**

Pursuant to order, the Chair of the Select Committee on the National Broadband Network (Senator Fisher) tabled the following report and documents:

National Broadband Network—Select Committee—Third report, dated November 2009, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

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

Senator Fisher, by leave, moved—That recommendation no. 12 contained in the report, adding a further term of reference, be adopted.

Debate ensued.

Question put.

The Senate divided—

AYES, 36

Senators—

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

## NOES, 34

Senators—

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

Question agreed to.

*Variation of appointment:* Accordingly, the resolution of the Senate of 25 June 2008, as amended, appointing the Select Committee on the National Broadband Network was varied as follows:

Omit “25 November 2009”, substitute “30 April 2010”.

Add the following paragraph to the committee’s terms of reference:

- (2A) The committee is to examine the findings of the National Broadband Network Implementation Study, the Government’s response to the Implementation Study and any subsequent implications of that report for the National Broadband Network policy.

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

Debate ensued.

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

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At 12.45 pm—

**31 ACIS ADMINISTRATION AMENDMENT (APPLICATION) BILL 2009**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens)—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 Immigration and Citizenship (Senator Evans) the bill was read a third time.

**32 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Immigration and Citizenship (Senator Evans) moved—That intervening business be postponed till after consideration of government business orders of the day no. 14 (Resale Royalty Right for Visual Artists Bill 2009) and no. 15 (Tax Laws Amendment (Resale Royalty Right for Visual Artists) Bill 2009).

Question put and passed.



**33 RESALE ROYALTY RIGHT FOR VISUAL ARTISTS BILL 2009**  
**TAX LAWS AMENDMENT (RESALE ROYALTY RIGHT FOR VISUAL ARTISTS)**  
**BILL 2009**

Order of the day read for the adjourned debate on the motions of the Special Minister of State (Senator Ludwig) and the Assistant Treasurer (Senator Sherry)—That these bills be now read a second time.

Debate resumed.

Senator Milne moved the following amendment in respect of the Resale Royalty Right for Visual Artists Bill 2009:

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

- (a) in consultation with relevant stakeholders in the community, develop and fund a program to educate and assist Indigenous artists in securing the succession of their resale royalty rights, including through the making of wills;
- (b) commit to addressing the outstanding issues of protecting Indigenous intellectual property, including the provision of communal moral rights, taking into account Article 31(1) of the United Nations Declaration on the Rights of Indigenous Peoples; and
- (c) provide further support, including financial support, to young and emerging artists, especially those who will not immediately gain any benefit under the resale royalty scheme”.

Debate ensued.

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.

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*In the committee*

Bills taken together and as a whole by leave.

Senator Milne moved the following amendment in respect of the Resale Royalty Right for Visual Artists Bill 2009:

Clause 11, page 7 (lines 11 to 16), omit the clause, substitute:

**11 Compensation for acquisition of property**

- (1) If the operation of this Act or the regulations would, but for this section, result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:  
*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

Debate ensued.

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

Senator Milne moved the following amendment in respect of the Resale Royalty Right for Visual Artists Bill 2009:

Clause 23, page 15 (lines 14 to 24), omit subclause (1).

Debate ensued.

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

Senator Milne moved the following amendment in respect of the Resale Royalty Right for Visual Artists Bill 2009:

Clause 12, page 9 (after line 4), after subclause (3), insert:

*Communal ownership*

(3A) If the artwork was created by an Indigenous artist under the direction of an Indigenous cultural group, the resale royalty right on a commercial resale of the artwork:

(a) is held by the group; and

(b) may be asserted by a custodian nominated by the group as its representative for this purpose.

Debate ensued.

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

Bills agreed to.

Bills to be reported without amendments.

---

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

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

**34 TAX LAWS AMENDMENT (2009 MEASURES NO. 5) BILL 2009**

Order of the day read for the adjourned debate on the motion of the Assistant Treasurer (Senator Sherry)—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 Immigration and Citizenship (Senator Evans) the bill was read a third time.

**35 COAL MINING INDUSTRY (LONG SERVICE LEAVE FUNDING) AMENDMENT  
BILL 2009**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary for Social Inclusion (Senator Stephens)—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 Immigration and Citizenship (Senator Evans) the bill was read a third time.

**36 FAMILY ASSISTANCE LEGISLATION AMENDMENT (PARTICIPATION REQUIREMENT)  
BILL 2009**

Order of the day read for the adjourned debate on the motion of the Assistant Treasurer (Senator Sherry)—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 Immigration and Citizenship (Senator Evans) the bill was read a third time.

**37 CUSTOMS TARIFF AMENDMENT (INCORPORATION OF PROPOSALS) BILL 2009**

Order of the day read for the adjourned debate on the motion of the Assistant Treasurer (Senator Sherry)—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 Innovation, Industry, Science and Research (Senator Carr) the bill was read a third time.

**38 PERSONAL PROPERTY SECURITIES BILL 2009  
PERSONAL PROPERTY SECURITIES (CONSEQUENTIAL AMENDMENTS) BILL 2009**

Order of the day read for the adjourned debate on the motions of the Special Minister of State (Senator Ludwig) and the Assistant Treasurer (Senator Sherry)—That these bills be now read a second time.

Debate resumed.

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*Explanatory memorandum:* The Minister for Innovation, Industry, Science and Research (Senator Carr) tabled a replacement explanatory memorandum relating to the Personal Property Securities Bill 2009.

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Question put and passed.

Bills read a second time.

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

On the motion of Senator Carr the bills were read a third time.

### 39 NOTICE

Senator Xenophon gave a notice of motion as follows: To move on the next day of sitting—That—

- (1) The following matter be referred to the Community Affairs References Committee for inquiry and report by 14 May 2010:

The prevalence of interactive and online gambling in Australia and the adequacy of the *Interactive Gambling Act 2001* to effectively deal with its social and economic impacts.

- (2) In undertaking the inquiry, the committee must consider:

- (a) the recent growth in interactive sports betting and the changes in online wagering due to new technologies;
- (b) the development of new technologies, including mobile phone and interactive television, that increase the risk and incidence of problem gambling;
- (c) the relative regulatory frameworks of online and non-online gambling;
- (d) inducements to bet on sporting events online;
- (e) the impact of betting exchanges, including the ability to bet on losing outcomes;
- (f) appropriate regulation, including codes of disclosure, for persons betting on events over which they have some participation or special knowledge, including match fixing of sporting events; and
- (g) any other related matters.

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

Order of the day read for the adjourned debate on the motion of the Assistant Treasurer (Senator Sherry)—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 Innovation, Industry, Science and Research (Senator Carr) the bill was read a third time.

**41 FOREIGN AFFAIRS—INDIA—TERRORIST ATTACKS—ANNIVERSARY—  
MINISTERIAL STATEMENT**

The Minister for Defence (Senator Faulkner), by leave, made a statement relating to the anniversary of the terrorist attacks in Mumbai, India.

*Statements by leave:* The Leader of the Opposition in the Senate (Senator Minchin) and the Leader of the Australian Greens (Senator Bob Brown), by leave, made statements relating to the matter.

*Suspension of sitting:* On the motion of Senator Faulkner the sitting of the Senate was suspended at 1.58 pm till 2 pm.

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*At 2 pm—*

**42 QUESTIONS**

Questions without notice were answered.

**43 QUESTIONS ON NOTICE—ANSWERS AND EXPLANATION—STATEMENT BY LEAVE**

The Minister for Climate Change and Water (Senator Wong), by leave, gave an explanation of answers not being provided to questions on notice nos 2038 and 2039 (*see entry no. 8, 25 November 2009*).

**44 ADMINISTRATION—TRAVEL ALLOWANCE—STATEMENT BY LEAVE**

The Special Minister of State (Senator Ludwig), by leave, made a statement relating to electoral staff travel allowances.

**45 MOTION TO TAKE NOTE OF ANSWER**

Senator Barnett moved—That the Senate take note of the answer given by the Minister for Innovation, Industry, Science and Research (Senator Carr) to a question without notice asked by Senator Mason today relating to the National School Chaplaincy Program.

Debate ensued.

Question put and passed.

**46 WOMEN—WHITE RIBBON DAY—MINISTERIAL STATEMENT—DOCUMENT**

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

Women—White Ribbon Day—Ministerial statement by the Minister for the Status of Women (Ms Plibersek), dated 25 November 2009.

**47 DEFENCE—AFGHANISTAN—MINISTERIAL STATEMENT**

The Minister for Defence (Senator Faulkner), by leave, made a statement relating to Australian Defence Force personnel in Afghanistan.

Senator Johnston, by leave, moved—That the Senate take note of the statement.

Debate ensued.

Question put and passed.

**48 SCIENCE AND TECHNOLOGY—RESEARCH PAPER—DR CLIVE SPASH—ORDER FOR PRODUCTION OF DOCUMENT—DOCUMENTS**

Pursuant to the order of the Senate of 26 November 2009 (*see entry no. 15*), the Minister for Innovation, Industry, Science and Research (Senator Carr) tabled the following documents:

Science and technology—Research paper—Dr Clive Spash—

Letter from Dr Megan Clark to the Minister for Innovation, Industry, Science and Research (Senator Carr), dated 26 November 2009.

The brave new world of carbon trading, by Dr Clive Spash, in Australia New Zealand Society for Ecological Economics (published online at [www.anzsee.org](http://www.anzsee.org), printed 26 November 2009).

**49 PARLIAMENTARY COMMITTEE REPORTS—GOVERNMENT RESPONSE—PRESIDENT'S REPORT ON GOVERNMENT RESPONSES**

The Assistant Treasurer (Senator Sherry) tabled the following document:

Government response to the schedule of government responses outstanding to parliamentary committee reports tabled by the President of the Senate on 25 June 2009, dated 25 November 2009.

**50 COMMUNITY AFFAIRS REFERENCES COMMITTEE—GOVERNMENT RESPONSE—LOST INNOCENTS AND FORGOTTEN AUSTRALIANS REVISITED**

The Assistant Treasurer (Senator Sherry) tabled the following document:

Community Affairs References Committee—Report—Lost innocents and forgotten Australians revisited: Report on the progress with the implementation of the recommendations of the lost innocents and forgotten Australians reports—Government response, dated November 2009.

**51 NOTICE**

Senator Parry, by leave and at the request of Senator Fierravanti-Wells, gave a notice of motion as follows: To move on 2 February 2010—That there be laid on the table by the Minister representing the Prime Minister, no later than 2 pm on 3 February 2010, documents outlining or including the following:

- (a) details of the formulation, discussions and approval of the letter from Mr Jim O'Callaghan, Minister-Counsellor Immigration, Australian Embassy, Jakarta, Indonesia, entitled *Message to the 78 passengers on the Oceanic Viking*, dated November 2009, and the letter from Mr Andrew Metcalfe, Department of Immigration and Citizenship, to Senator Evans, Minister for Immigration and Citizenship, dated 16 November 2009, including any arrangements, undertakings or special circumstances with the United Nations High Commissioner for Refugees and Indonesia regarding processing and resettlement of the asylum seekers from the *Oceanic Viking*; and
- (b) details of any committee involvement in relation to the letters referred to in paragraph (a), including:
  - (i) the name of the committee,
  - (ii) the date, time and duration of the meeting of the other committee, and
  - (iii) details of all the attendees at each meeting, including the name and position of each attendee and the capacity in which they attended the meeting. (*general business notice of motion no. 676*)

**52 PARLIAMENTARY COMMITTEE REPORTS—PRESIDENT’S REPORT—GOVERNMENT RESPONSES OUTSTANDING**

The Deputy President (Senator Ferguson) tabled the following document:

President’s report to the Senate on government responses outstanding to parliamentary committee reports as at 26 November 2009.

**53 DEPARTMENT OF THE SENATE—REGISTER OF SENATE SENIOR EXECUTIVE OFFICERS’ INTERESTS—DOCUMENT**

The Deputy President (Senator Ferguson) tabled the following document:

Department of the Senate—Register of Senate Senior Executive Officers’ Interests incorporating statements of registrable interests and notifications of alterations of interests of Senate senior executive officers lodged between 23 June and 23 November 2009, dated November 2009.

**54 AUDITOR-GENERAL—AUDIT REPORTS NOS 14 AND 15 OF 2009-10—DOCUMENTS**

The Deputy President (Senator Ferguson) tabled the following documents:

Auditor-General—Audit reports for 2009-10—

No. 14—Performance audit—Agencies’ contract management—Australian Federal Police; Austrade; Department of Foreign Affairs and Trade.

No. 15—Performance audit—AusAID’s management of the expanding Australian aid program—The Australian Agency for International Development (AusAID).

**55 PARTICULARS OF PROPOSED ADDITIONAL EXPENDITURE—2009-10—DOCUMENTS**

The Assistant Treasurer (Senator Sherry) tabled the following documents:

Particulars of proposed additional expenditure in respect of the year ending on 30 June 2010 [Appropriation Bill (No. 3) 2009-2010].

Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2010 [Appropriation Bill (No. 4) 2009-2010].

Senator Sherry, by leave, moved—That—

- (a) the documents, together with the final budget outcome 2008-09 (*see entry no. 2, 27 October 2009*) and the Issues from the advances under the annual Appropriation Acts for 2008-09 (*see entry no. 2, 27 October 2009*), be referred to committees for examination and report; and
- (b) consideration of the Issues from the advances under the annual Appropriation Acts in committee of the whole be made an order of the day for the day on which committees report on their examination of the additional estimates.

Question put and passed.

**56 ESTIMATES OF PROPOSED ADDITIONAL EXPENDITURE FOR 2009-10—PORTFOLIO ADDITIONAL ESTIMATES STATEMENTS—PORTFOLIOS AND EXECUTIVE DEPARTMENTS—DOCUMENTS**

The Assistant Treasurer (Senator Sherry) tabled the following documents:

Estimates of proposed additional expenditure for 2009-10—Portfolio additional estimates statements—Portfolios and executive departments—

Agriculture, Fisheries and Forestry.

Attorney-General.

Broadband, Communications and the Digital Economy.

Department of Climate Change.  
 Department of Veterans' Affairs.  
 Defence.  
 Education, Employment and Workplace Relations.  
 Environment, Water, Heritage and the Arts.  
 Families, Housing, Community Services and Indigenous Affairs.  
 Finance and Deregulation.  
 Foreign Affairs and Trade.  
 Health and Ageing.  
 Human Services.  
 Immigration and Citizenship.  
 Infrastructure, Transport, Regional Development and Local Government.  
 Innovation, Industry, Science and Research.  
 Prime Minister and Cabinet.  
 Resources, Energy and Tourism.  
 Treasury.

**57 ENVIRONMENT—GEOSCIENCE AUSTRALIA—CARBON DIOXIDE STORAGE SITES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT**

Pursuant to the order of the Senate of 25 November 2009, the Assistant Treasurer (Senator Sherry) tabled the following document:

Environment—Geoscience Australia—Carbon dioxide storage sites—Statement responding to the resolution of the Senate of 25 November 2009.

**58 HEALTH LEGISLATION AMENDMENT (MIDWIVES AND NURSE PRACTITIONERS) BILL 2009 AND RELATED BILLS—DRAFT RULES AND REGULATIONS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT**

Pursuant to the order of the Senate of 25 November 2009, the Assistant Treasurer (Senator Sherry) tabled the following document:

Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 and related bills—Draft rules and regulations—Statement responding to the resolution of the Senate of 25 November 2009.

**59 PARLIAMENTARIANS' TRAVEL COSTS—DOCUMENT**

The Assistant Treasurer (Senator Sherry) tabled the following document:

Parliamentarians' travel paid by the Department of Finance and Deregulation—1 January to 30 June 2009, dated November 2009.

**60 FORMER PARLIAMENTARIANS' TRAVEL COSTS—DOCUMENT**

The Assistant Treasurer (Senator Sherry) tabled the following document:

Former parliamentarians' travel paid by the Department of Finance and Deregulation—1 January to 30 June 2009, dated November 2009.

**61 PARLIAMENTARIANS' OVERSEAS STUDY TRAVEL REPORTS—DOCUMENT**

The Assistant Treasurer (Senator Sherry) tabled the following document:

Parliamentarians' overseas study travel reports—1 January to 30 June 2009, dated November 2009.



**62 DEPARTMENT OF DEFENCE—SPECIAL PURPOSE FLIGHTS—DOCUMENTS**

The Assistant Treasurer (Senator Sherry) tabled the following documents:

- Department of Defence—Special purpose flights—
- Schedule for the period 1 January to 30 June 2008—Errata.
- Schedule for the period 1 January to 30 June 2009.

**63 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 18 OF 2009**

Senator McEwen, by leave and at the request of the Chair of the Selection of Bills Committee (Senator O'Brien), tabled the following report:

## SELECTION OF BILLS COMMITTEE

## REPORT NO. 18 OF 2009

1. The committee met in private session on Wednesday, 25 November 2009 at 6.31 pm.
2. The committee resolved to recommend—That—
  - (a) the Food Standards Amendment (Truth in Labelling—Palm Oil) Bill 2009 be *referred immediately* to the Community Affairs Legislation Committee for inquiry and report by 15 June 2010;
  - (b) the Plain Tobacco Packaging (Removing Branding from Cigarette Packs) Bill 2009 be *referred immediately* to the Community Affairs Legislation Committee for inquiry and report by 17 March 2010;
  - (c) the *provisions* of the Social Security and Other Legislation Amendment (Welfare Reform and Reinstatement of Racial Discrimination Act) Bill 2009, the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Bill 2009 together with the Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Restoration of Racial Discrimination Act) Bill 2009 be *referred immediately* to the Community Affairs Legislation Committee for inquiry and report by 9 March 2010;
  - (d) the *provisions* of the Tax Laws Amendment (2009 Measures No. 6) Bill 2009 be *referred immediately* to the Economics Legislation Committee for inquiry and report by 25 February 2010;
  - (e) the *provisions* of the Tax Laws Amendment (Confidentiality of Taxpayer Information) Bill 2009 be *referred immediately* to the Economics Legislation Committee for inquiry and report by 25 February 2010; and
  - (f) the *provisions* of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Building Innovative Capability) Bill 2009 be *referred immediately* to the Economics Legislation Committee for inquiry and report by 25 February 2010.
3. The committee resolved to recommend—That the following bills *not* be referred to committees:
  - Australian Astronomical Observatory Bill 2009
  - Australian Astronomical Observatory (Transitional Provisions) Bill 2009
  - Australian Capital Territory and Other Legislation Amendment (Water Management) Bill 2009
  - Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill 2009
  - Fairer Private Health Insurance Incentives Bill 2009 [No. 2]

Fairer Private Health Insurance Incentives (Medicare Levy Surcharge) Bill 2009 [No. 2]  
 Fairer Private Health Insurance Incentives (Medicare Levy Surcharge—Fringe Benefits) Bill 2009 [No. 2]  
 International Arbitration Amendment Bill 2009  
 International Tax Agreements Amendment Bill (No. 2) 2009  
 National Health Security Amendment (Background Checking) Bill 2009  
 Tax Laws Amendment (2009 GST Administration Measures) Bill 2009  
 Veterans' Affairs and Other Legislation Amendment (Miscellaneous Measures) Bill 2009.

*The committee recommends accordingly.*

4. The committee deferred consideration of the following bills to its next meeting:
- Britt Laphorne Bill 2009
  - Fisheries Legislation Amendment Bill 2009
  - Health Insurance Amendment (Diagnostic Imaging Accreditation) Bill 2009
  - Keeping Jobs from Going Offshore (Protection of Personal Information) Bill 2009
  - Therapeutic Goods Amendment (2009 Measures No. 3) Bill 2009
  - Therapeutic Goods (Charges) Amendment Bill 2009
  - Trans-Tasman Proceedings Bill 2009
  - Trans-Tasman Proceedings (Transitional and Consequential Provisions) Bill 2009.

Kerry O'Brien  
 Chair  
 26 November 2009.

Senator McEwen moved—That the report be adopted.

Question put and passed.

**64 LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE—INTERIM REPORT—AUSTRALIA'S JUDICIAL SYSTEM AND THE ROLE OF JUDGES AND ACCESS TO JUSTICE**

Senator Parry, at the request of the Chair of the Legal and Constitutional Affairs References Committee (Senator Barnett), tabled the following report:

Legal and Constitutional Affairs References Committee—Australia's judicial system and the role of judges; and access to justice—Interim report, dated 26 November 2009.

*Extension of time to report:* Senator Parry, by leave, moved—That the recommendation contained in the report, proposing an extension of time for the committee to report on Australia's judicial system and the role of judges and access to justice to 8 December 2009, be adopted.

Question put and passed.

## 65 DOCUMENTS

The following documents were tabled by the Clerk:

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

### Broadcasting Services Act—

Broadcasting Services (Simulcast Period for Metropolitan Licence Areas) Determination (No. 1) 2009 [F2009L04281]\*.

Broadcasting Services (Simulcast Period for Mildura/Sunraysia Licence Area) Determination (No. 2) 2009 [F2009L04283]\*.

### Civil Aviation Act—

#### Civil Aviation Regulations—Instruments Nos CASA—

518/09—Direction – number of cabin attendants [F2009L04115]\*.

EX100/09—Exemption – design of modification or repair [F2009L04155]\*.

Civil Aviation Safety Regulations—Airworthiness Directives—AD/ARRIEL/19 Amdt 1—Fuel Metering Unit Acceleration Controller Axle [F2009L04309]\*.

Commissioner of Taxation—Public Rulings—Class Rulings CR 2009/64-CR 2009/66.

Currency Act—Currency (Perth Mint) Amendment Determination 2009 (No. 1) [F2009L04327]\*.

### Customs Act—Tariff Concession Orders—

0909967 [F2009L04270]\*.

0910407 [F2009L04275]\*.

0911258 [F2009L04271]\*.

0911262 [F2009L04273]\*.

0911338 [F2009L04230]\*.

0912025 [F2009L04274]\*.

0912064 [F2009L04244]\*.

0912065 [F2009L04245]\*.

0912093 [F2009L04247]\*.

0912095 [F2009L04249]\*.

0912098 [F2009L04248]\*.

0912099 [F2009L04264]\*.

0912184 [F2009L04246]\*.

0912299 [F2009L04266]\*.

0912405 [F2009L04265]\*.

0912407 [F2009L04258]\*.

0912435 [F2009L04251]\*.

0912636 [F2009L04267]\*.

0912799 [F2009L04255]\*.

0912987 [F2009L04259]\*.

0912990 [F2009L04261]\*.

0912993 [F2009L04269]\*.

0913050 [F2009L04256]\*.

0913167 [F2009L04241]\*.

0913169 [F2009L04242]\*.

0913561 [F2009L04250]\*.

0913961 [F2009L04262]\*.

0914077 [F2009L04257]\*.

Migration Act—Migration Regulations—Instrument IMMI 09/128—Classes of persons [F2009L04288]\*.

National Health Act—Instruments Nos PB—

114 of 2009—Amendment Special Arrangements – Chemotherapy Pharmaceuticals Access Program [F2009L04291]\*.

116 of 2009—Amendment Special Arrangements – Highly specialised drugs program for public hospitals [F2009L04304]\*.

Navigation Act—Marine Order No. 9 of 2009—Construction – Fire protection, fire detection and fire extinction [F2009L04161]\*.

Navigation Act and Protection of the Sea (Prevention of Pollution from Ships) Act—Marine Order No. 8 of 2009—Marine pollution prevention – Packaged harmful substances [F2009L04163]\*.

\* Explanatory statement tabled with legislative instrument.

#### 66 COMMITTEE MEMBERSHIP

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

The Assistant Treasurer (Senator Sherry), by leave, moved—That Senator Milne be discharged from the Select Committee on Agricultural and Related Industries, and be appointed as a participating member of that committee.

Question put and passed.

#### 67 LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE—REPORT—MARRIAGE EQUALITY AMENDMENT BILL 2009

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

Legal and Constitutional Affairs Legislation Committee—Marriage Equality Amendment Bill 2009—Report, dated November 2009, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

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

#### 68 ECONOMICS LEGISLATION COMMITTEE—REPORT—FOOD STANDARDS AMENDMENT (TRUTH IN LABELLING LAWS) BILL 2009

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

Economics Legislation Committee—Food Standards Amendment (Truth in Labelling Laws) Bill 2009—Report, dated November 2009, Hansard record of proceedings, documents presented to the committee, additional information and submissions.

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

**69 REGIONAL AND REMOTE INDIGENOUS COMMUNITIES—SELECT COMMITTEE—  
THIRD REPORT**

Pursuant to order, Senator Parry, at the request of the Chair of the Select Committee on Regional and Remote Indigenous Communities (Senator Scullion), tabled the following report and documents:

Regional and Remote Indigenous Communities—Select Committee—Third report, dated November 2009, Hansard record of proceedings, documents presented to the committee and submissions.

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

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.

**70 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—REPORT—  
RELATIONSHIP BETWEEN THE CENTRAL LAND COUNCIL AND CENTRECORP  
ABORIGINAL INVESTMENT CORPORATION PTY LTD**

Pursuant to order, Senator Parry, at the request of the Chair of the Finance and Public Administration References Committee (Senator Bernardi), tabled the following report and documents:

Finance and Public Administration References Committee—Relationship between the Central Land Council and Centrecorp Aboriginal Investment Corporation Pty Ltd—Report, dated November 2009, additional information and submissions.

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

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.

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

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

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*In the committee***CARBON POLLUTION REDUCTION SCHEME BILL 2009 [No. 2]—**

Consideration resumed of the bill, as amended.

Senator Milne moved the following amendment:

Clause 3, page 3 (line 10), at the end of subclause (3), add “including the provision of financial support to developing countries for nationally appropriate mitigation actions and adaptation”.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 6

Senators—

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

NOES, 37

Senators—

Adams (Teller)	Conroy	Joyce	Parry
Arbib	Farrell	Ludwig	Polley
Back	Feeney	Lundy	Pratt
Bilyk	Fielding	Macdonald	Stephens
Bishop	Fierravanti-Wells	Marshall	Sterle
Boyce	Forshaw	McEwen	Wong
Brown, Carol	Furner	McLucas	Wortley
Cameron	Hogg	Moore	
Colbeck	Hurley	Nash	
Collins	Hutchins	O'Brien	

Question negatived.

Senator Milne moved the following amendments together by leave:

Clause 3, page 3 (lines 13 to 25), omit paragraphs (4)(a) and (b), substitute:

(a) to take action directed towards meeting Australia’s target of reducing net greenhouse gas emissions to at least 25% to 40% below 1990 levels by 2020; and

Clause 3, page 3 (line 26), omit “or (b)”.

Debate ensued.

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*Document:* Senator Xenophon, by leave, tabled the following document:

Carbon Pollution Reduction Scheme Bill 2009 [No. 2] and related bills—Fiscal effects of ‘revised offer’ CPRS, by Frontier Economics, November 2009.

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Debate continued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 6

Senators—

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

NOES, 46

Senators—

Adams	Evans	Joyce	O'Brien
Arbib	Farrell	Ludwig	Parry (Teller)
Back	Faulkner	Lundy	Polley
Barnett	Feeney	Macdonald	Pratt
Bilyk	Fielding	Marshall	Sherry
Bishop	Fisher	Mason	Stephens
Brown, Carol	Forshaw	McEwen	Sterle
Cameron	Furner	McGauran	Williams
Carr	Heffernan	McLucas	Wong
Collins	Hogg	Minchin	Wortley
Conroy	Hurley	Moore	
Eggleston	Hutchins	Nash	

Question negatived.

Senator Xenophon moved the following amendment:

Clause 3, page 3 (lines 24 and 25), omit “between 5% and 15%”, substitute “at least 20%”.

Debate ensued.

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*At 11 pm:* The Acting Deputy President (Senator Moore) resumed the chair and the Temporary Chair of Committees reported progress.

*Suspension of sitting:* The sitting of the Senate was suspended at 11 pm till 9.30 am, Friday, 27 November 2009.

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FRIDAY, 27 NOVEMBER 2009

*At 9.30 am—*

The sitting of the Senate resumed.

**72 PRAYERS**

The President read prayers.

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

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

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*In the committee*

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

Consideration resumed of the bill, as amended—*and of the amendment moved by Senator Xenophon (see entry no. 71).*

Debate resumed.

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

Senator Xenophon moved the following amendment:

Clause 3, page 3 (lines 24 and 25), omit “between 5% and 15%”, substitute “at least 10%”.

Debate ensued.

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

Senator Milne moved the following amendments together by leave:

Page 3 (after line 32), after clause 3, insert:

**3A Additional abatement**

- (1) For the purposes of this Act, *additional abatement* means abatement in emissions that can be estimated to have resulted from the behaviour of the Commonwealth, States and Territories, local government bodies, other entities and individuals, that is calculated to be over and above the emission reductions that could reasonably be expected to result from the increase in energy prices and other factors associated with the introduction of the emissions trading scheme.



- (2) The regulations must determine a mechanism for the purposes of the scheme embodied in this Act to take into account additional abatement by governments, other entities and individuals in such a way that:
  - (a) there remains an incentive for additional abatement; and
  - (b) additional abatement does not reduce the obligations of participants in the scheme embodied in this Act.
- (3) The Minister must establish an independent expert advisory committee to estimate the level of additional abatement for a year.
- (4) After the committee has estimated the level of additional abatement for a year, the Minister by legislative instrument must reduce the national scheme cap number for the following year by the amount of the estimated level of additional abatement.
- (5) If, after the committee has estimated the level of additional abatement for a year, Australia is a party to a comprehensive international agreement that is capable of stabilising atmospheric concentrations of greenhouse gases, Australia's target reduction of net greenhouse gas emissions under that international agreement is deemed to be increased by the amount of the estimated level of additional abatement.
- (6) Section 42 (disallowance) of the *Legislative Instruments Act 2003* does not apply to a legislative instrument made under subsection (4).
- (7) Sections 359 to 373 apply to a committee established under this section.

Clause 5, page 5 (after line 13), after the definition of *acquire*, insert:

*additional abatement* has the meaning given by subsection 3A(1).

Clause 5, page 13 (line 27), after "section", insert "3A or".

Debate ensued.

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

On the motion of the Minister for Climate Change and Water (Senator Wong) the following amendments, taken together by leave, were debated and agreed to:

Clause 5, page 5 (after line 13), after the definition of *acquire*, insert:

*adjusted base period fugitive emissions intensity number* has the meaning given by section 173U.

*adjusted base period fugitive emissions number* has the meaning given by section 173V.

Clause 5, page 7 (after line 10), after the definition of *Authority*, insert:

*base period fugitive emissions number* has the meaning given by section 173S.

*base period saleable coal number* has the meaning given by section 173T.

Clause 5, page 7 (after line 22), after the definition of *cancellation account*, insert:

*capped base period saleable coal number* has the meaning given by section 173TA.

Clause 5, page 8 (after line 11), after the definition of *certificate of eligible synthetic greenhouse gas destruction*, insert:

*certificate of entitlement to coal mining assistance* means a certificate issued under section 173K.

Clause 5, page 8 (after line 32), after the definition of *coal-based char*, insert:

*coal mining control test* has the meaning given by section 173W.

*coal mining title* means:

- (a) a lease that:
  - (i) permits the lessee to extract coal from the whole or a part of the area of land covered by the lease; and
  - (ii) is granted by or under a law of the Commonwealth, a State or a Territory; or
- (b) a licence that:
  - (i) permits the licensee to extract coal from the whole or a part of the area of land covered by the licence; and
  - (ii) is issued by or under a law of the Commonwealth, a State or a Territory; or
- (c) an authority that:
  - (i) permits the holder of the authority to extract coal from the whole or a part of the area of land covered by the authority; and
  - (ii) is given by or under a law of the Commonwealth, a State or a Territory.

For the purposes of this definition, *land* includes submerged land.

Clause 5, page 11 (after line 4), after the definition of *electronic notice transmitted to the Authority*, insert:

*eligible coal mining area* has the meaning given by section 173R.

Clause 5, page 16 (after line 3), after the definition of *fuel oil*, insert:

*fugitive emissions* has the meaning given by the regulations.

Clause 5, page 25 (after line 25), after the definition of *reviewable decision*, insert:

*saleable coal* has the meaning given by the regulations.

Clause 13, page 33 (after line 17), after paragraph (b) of the note, insert:

- (ba) the total number of free Australian emissions units issued in accordance with Part 8A (coal mining); and

Clause 82, page 128 (after line 15), after paragraph (b) of the dot-point relating to the national scheme cap, insert:

- (ba) the total number of free Australian emissions units issued in accordance with Part 8A (coal mining); and

Clause 88, page 131 (after line 16), after paragraph (c), insert:

- (ca) in accordance with Part 8A (coal mining); or

Clause 93, page 137 (after line 3), after paragraph (1)(b), insert:

- (ba) the total number of free Australian emissions units with that vintage year issued in accordance with Part 8A (coal mining); and

Clause 101, page 141 (after line 25), after subparagraph (1)(a)(i), insert:

(ia) in accordance with Part 8A (coal mining); or

Clause 103A, page 143 (after line 31), after subparagraph (1)(a)(i), insert:

(ia) in accordance with Part 8A (coal mining); or

Clause 103B, page 144 (after line 18), after subparagraph (1)(a)(i), insert:

(ia) in accordance with Part 8A (coal mining); or

Clause 129, page 173 (after line 10), after subparagraph (5A)(a)(i), insert:

(ia) in accordance with Part 8A (coal mining); or

Clause 167, page 207 (after line 15), after subclause (2), insert:

(2A) Before 30 June 2016, the emissions-intensive trade-exposed assistance program must not provide that the extraction of coal is an activity that, under the program, is taken to be an emissions-intensive trade-exposed activity.

Page 214 (after line 3), after Part 8, insert:

## **Part 8A—Coal mining**

### **Division 1—Introduction**

#### **173D Object**

The object of this Part is to provide limited transitional assistance in respect of coal mining that has significant fugitive emissions of greenhouse gases.

#### **173E Simplified outline**

The following is a simplified outline of this Act:

- Free Australian emissions units may be issued in respect of coal mining that meets certain eligibility requirements.
- Free units will be issued during:
  - (a) the financial year beginning on 1 July 2011; and
  - (b) each of the next 4 financial years.
- The number of free units is capped.

### **Division 2—Issue of free Australian emissions units in respect of coal mining**

#### **173F Issue of free Australian emissions units in respect of coal mining**

##### *Scope*

- (1) This section applies if a certificate of entitlement to coal mining assistance is in force in respect of an eligible coal mining area for an eligible financial year.

Note: For *eligible coal mining area*, see section 173R.

##### *Issue of free units*

- (2) As soon as practicable after the day on which the certificate was issued, the Authority must issue to the holder of the certificate a number of free Australian emissions units equal to the number specified in the certificate as the unit entitlement for that certificate.

- (3) Free Australian emissions units issued in accordance with subsection (2) during an eligible financial year are to have a vintage year of the eligible financial year.
- (4) The Authority must not issue a free Australian emissions unit to a person in accordance with subsection (2) unless the person has a Registry account.

### **Division 3—Certificate of entitlement to coal mining assistance**

#### **173G Application for certificate of entitlement to coal mining assistance**

- (1) During the first 4 months of:
  - (a) the eligible financial year beginning on 1 July 2011; or
  - (b) the eligible financial year beginning on 1 July 2012; or
  - (c) the eligible financial year beginning on 1 July 2013; or
  - (d) the eligible financial year beginning on 1 July 2014; or
  - (e) the eligible financial year beginning on 1 July 2015;

a person may apply to the Authority for the issue to the person of a certificate of entitlement to coal mining assistance in respect of an eligible coal mining area for the eligible financial year.

Note: For *eligible coal mining area*, see section 173R.

- (2) An application must state that coal mining operations carried out in the eligible coal mining area are not likely to permanently cease during the eligible financial year.
- (3) An application must specify the number of tonnes of saleable coal produced from coal mining operations carried out in the eligible coal mining area during the previous financial year.

#### **173H Form of application**

- (1) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Authority; and
  - (c) be accompanied by such information as is specified in the regulations; and
  - (d) be accompanied by such documents (if any) as are specified in the regulations; and
  - (e) be accompanied by a prescribed report.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

#### **173J Further information**

- (1) The Authority may, by written notice given to an applicant, require the applicant to give the Authority, within the period specified in the notice, further information in connection with the application.
- (2) If the applicant breaches the requirement, the Authority may, by written notice given to the applicant:
  - (a) refuse to consider the application; or
  - (b) refuse to take any action, or any further action, in relation to the application.

**173K Issue of certificate of entitlement to coal mining assistance***Scope*

- (1) This section applies if an application under section 173G has been made for the issue of a certificate of entitlement to coal mining assistance in respect of an eligible coal mining area for an eligible financial year (the *current eligible financial year*).

*Issue of certificate*

- (2) The Authority must issue a certificate of entitlement to coal mining assistance in respect of the eligible coal mining area for the current eligible financial year if:
- (a) the applicant passes the coal mining control test in relation to the eligible coal mining area for the previous financial year; and
  - (b) throughout the previous financial year, there was a coal mining title over the area of land; and
  - (c) during the whole or a part of the previous financial year, coal mining operations were carried out in the whole or a part of the area of land; and
  - (d) if:
    - (i) during a period that is included in, or consists of, the previous financial year, coal mining operations carried out in the eligible coal mining area were a facility; and
    - (ii) a nomination is or will be required under subsection 11B(2) or 11C(2) of the *National Greenhouse and Energy Reporting Act 2007* in relation to the facility for that period;
 such a nomination has been made.

Note: For *coal mining control test*, see section 173W.

- (3) A certificate of entitlement to coal mining assistance must state that a specified number is the unit entitlement in respect of the certificate.

Note: See section 173L (unit entitlement).

*Transitional*

- (4) If:
- (a) during a period that is included in, or consists of, the previous financial year, coal mining operations carried out in the eligible coal mining area were a facility; and
  - (b) the current eligible financial year is the eligible financial year beginning on 1 July 2011;
- sections 11B and 11C of the *National Greenhouse and Energy Reporting Act 2007* have effect, in relation to the facility, as if:
- (c) those sections had commenced on 1 July 2010; and
  - (d) the financial year beginning on 1 July 2010 had been an eligible financial year.

Note: Sections 11B and 11C of the *National Greenhouse and Energy Reporting Act 2007* deal with operational control of facilities.

*Timing*

- (5) The Authority must take all reasonable steps to ensure that a decision is made on the application:
- if the Authority requires the applicant to give further information under subsection 173J(1) in relation to the application—within 90 days after the applicant gave the Authority the information; or
  - otherwise—within 90 days after the application was made.

*Refusal*

- (6) If the Authority decides to refuse to issue a certificate of entitlement to coal mining assistance, the Authority must give written notice of the decision to the applicant.

*Publication of copy of certificate*

- (7) As soon as practicable after issuing a certificate of entitlement to coal mining assistance, the Authority must publish a copy of the certificate on its website.

**173L Unit entitlement**

- (1) The number to be specified in a certificate of entitlement to coal mining assistance in respect of an eligible coal mining area for an eligible financial year (the *current eligible financial year*) as the unit entitlement in respect of the certificate is the number worked out using the following formula:

$$0.6 \times \frac{\text{Total base period fugitive emissions numbers}}{\text{Assistance factor for the eligible coal mining area}}$$

where:

*assistance factor for the eligible coal mining area* has the meaning given by subsection (2).

*total base period fugitive emissions numbers* means whichever is the lesser of the following:

- the total of the base period fugitive emissions numbers specified in section 173R declarations made, or purportedly made, by the Authority before the start of the current eligible financial year;
- 16,200,000.

For the purposes of paragraph (a), disregard a section 173R declaration if a decision to make the declaration was set aside by a court or tribunal before the start of the current eligible financial year.

- (2) For the purposes of subsection (1), the *assistance factor for the eligible coal mining area* is the amount worked out using the following formula:

$$\frac{\frac{\text{Adjusted base period fugitive emissions intensity number for the eligible coal mining area}}{\text{Relevant saleable coal number for the eligible coal mining area}}}{\text{Total adjusted base period fugitive emissions numbers}}$$

where:

***adjusted base period fugitive emissions intensity number for the eligible coal mining area*** means the adjusted base period fugitive emissions intensity number specified in the section 173R declaration relating to the eligible coal mining area.

***relevant saleable coal number for the eligible coal mining area*** means whichever is the lesser of the following:

- (a) the capped base period saleable coal number specified in the section 173R declaration relating to the eligible coal mining area;
- (b) the Authority's reasonable estimate of the total number of tonnes of saleable coal produced from coal mining operations carried out in the eligible coal mining area during the previous financial year.

***total adjusted base period fugitive emissions numbers*** means the total of the adjusted base period fugitive emissions numbers specified in section 173R declarations made, or purportedly made, by the Authority before the start of the current eligible financial year. For this purpose, disregard a section 173R declaration if a decision to make the declaration was set aside by a court or tribunal before the start of the current eligible financial year.

- (3) If the number worked out using the formula in subsection (1) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

**173M Certificate of entitlement to coal mining assistance is not transferable**

A certificate of entitlement to coal mining assistance is not transferable.

**Division 4—Eligible coal mining area**

**173N Application for declaration of eligible coal mining area**

A person may, before 1 September 2010, apply to the Authority for the declaration of an area of land as an eligible coal mining area.

**173P Form of application**

- (1) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Authority; and
  - (c) be accompanied by such information as is specified in the regulations; and
  - (d) be accompanied by such documents (if any) as are specified in the regulations; and
  - (e) be accompanied by a prescribed report.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

**173Q Further information**

- (1) The Authority may, by written notice given to an applicant, require the applicant to give the Authority, within the period specified in the notice, further information in connection with the application.

- (2) If the applicant breaches the requirement, the Authority may, by written notice given to the applicant:
- (a) refuse to consider the application; or
  - (b) refuse to take any action, or any further action, in relation to the application.

### 173R Declaration of eligible coal mining area

#### *Scope*

- (1) This section applies if an application under section 173N has been made for a declaration of an area of land as an eligible coal mining area.

#### *Declaration*

- (2) After considering the application, the Authority may, by writing, declare that the area of land is an **eligible coal mining area** for the purposes of this Act.
- (3) A declaration under subsection (2) must:
- (a) identify, in accordance with the regulations, the area of land; and
  - (b) state that a specified number is the **base period fugitive emissions number** in relation to the area of land; and
  - (c) state that a specified number is the **base period saleable coal number** in relation to the area of land; and
  - (d) state that a specified number is the **capped base period saleable coal number** in relation to the area of land; and
  - (e) state that a specified number is the **adjusted base period fugitive emissions intensity number** in relation to the area of land; and
  - (f) state that a specified number is the **adjusted base period fugitive emissions number** in relation to the area of land.

Note 1: The base period fugitive emissions number is worked out under section 173S.

Note 2: The base period saleable coal number is worked out under section 173T.

Note 3: The capped base period saleable coal number is worked out under section 173TA.

Note 4: The adjusted base period fugitive emissions intensity number is worked out under section 173U.

Note 5: The adjusted base period fugitive emissions number is worked out under section 173V.

#### *Criteria for declaration*

- (4) The Authority must not declare that the area of land is an eligible coal mining area unless the Authority is satisfied that:
- (a) during the whole or a part of the 2-year period beginning on 1 July 2007, coal mining operations were carried out in the whole or a part of the area of land; and
  - (b) the applicant passes the coal mining control test in relation to the area of land for the financial year beginning on 1 July 2008; and
  - (c) such other conditions (if any) as are specified in the regulations are satisfied.

Note: For **coal mining control test**, see section 173W.



*Timing*

- (5) The Authority must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Authority requires the applicant to give further information under subsection 173Q(1) in relation to the application—within 90 days after the applicant gave the Authority the information; or
  - (b) otherwise—within 90 days after the application was made.

*When a declaration takes effect*

- (6) A declaration under subsection (2) takes effect immediately after it is made.

*Notification of declaration*

- (7) As soon as practicable after making a declaration under subsection (2), the Authority must give a copy of the declaration to the applicant.

*Publication of copy of declaration*

- (8) As soon as practicable after making a declaration under subsection (2), the Authority must publish a copy of the declaration on its website.

*Refusal*

- (9) If the Authority decides to refuse to declare the area of land as an eligible coal mining area, the Authority must give written notice of the decision to the applicant.

*Declaration is not legislative instrument*

- (10) A declaration made under subsection (2) is not a legislative instrument.

**Division 5—Miscellaneous****173S Base period fugitive emissions number**

For the purposes of this Act, the *base period fugitive emissions number* in relation to an area of land is the Authority's reasonable estimate of the total number of tonnes of the carbon dioxide equivalence of fugitive emissions emitted from coal mining operations carried out in the area of land during the financial year beginning on 1 July 2008, calculated using the method ascertained in accordance with the regulations.

**173T Base period saleable coal number**

For the purposes of this Act, the *base period saleable coal number* in relation to an area of land is the Authority's reasonable estimate of the total number of tonnes of saleable coal produced from coal mining operations carried out in the area of land during the financial year beginning on 1 July 2008.

**173TA Capped base period saleable coal number**

For the purposes of this Act, the *capped base period saleable coal number* in relation to an area of land is whichever is the greater of the following:

- (a) the Authority's reasonable estimate of the total number of tonnes of saleable coal produced from coal mining operations carried out in the area of land during the financial year beginning on 1 July 2007;
- (b) the Authority's reasonable estimate of the total number of tonnes of saleable coal produced from coal mining operations carried out in the area of land during the financial year beginning on 1 July 2008.

**173U Adjusted base period fugitive emissions intensity number**

For the purposes of this Act, the *adjusted base period fugitive emissions intensity number* in relation to an area of land is the number worked out to 3 decimal places (rounding up if the 4th decimal place is 5 or more) using the following formula:

$$\frac{\text{Base period fugitive emissions number for the area of land}}{\text{Base period saleable coal number for the area of land}} - 0.1$$

Note 1: The base period fugitive emissions number is worked out under section 173S.

Note 2: The base period saleable coal number is worked out under section 173T.

**173V Adjusted base period fugitive emissions number**

- (1) For the purposes of this Act, the *adjusted base period fugitive emissions number* in relation to an area of land is the number worked out using the following formula:

$$\frac{\text{Adjusted base period fugitive emissions intensity number for the area of land}}{\text{Capped base period saleable coal number for the area of land}} \times$$

Note 1: The adjusted base period fugitive emissions intensity number is worked out under section 173U.

Note 2: The capped base period saleable coal number is worked out under section 173TA.

- (2) If the number worked out using the formula in subsection (1) is not a whole number, the number is to be rounded to the nearest whole number (with a number ending in .5 being rounded up).

**173W Coal mining control test**

For the purposes of this Act, a person passes the *coal mining control test* in relation to an area of land for a financial year if:

- (a) if, assuming that:
  - (i) at the last time in the financial year when coal mining operations were carried out in the area of land, those coal mining operations had been a facility; and

- (ii) at the last time in the financial year when coal mining operations were carried out in the area of land, greenhouse gases with a carbon dioxide equivalence of 25,000 tonnes had been emitted from those coal mining operations; and
  - (iii) the financial year had been an eligible financial year;
- a controlling corporation of a group would, under section 17, be a liable entity for the financial year wholly or partly as a result of those emissions of greenhouse gases—the person is the controlling corporation; or
- (b) if, assuming that:
    - (i) at the last time in the financial year when coal mining operations were carried out in the area of land, those coal mining operations had been a facility; and
    - (ii) at the last time in the financial year when coal mining operations were carried out in the area of land, greenhouse gases with a carbon dioxide equivalence of 25,000 tonnes had been emitted from those coal mining operations; and
    - (iii) the financial year had been an eligible financial year;
 a non-group entity would, under section 18, be a liable entity for the financial year wholly or partly as a result of those emissions of greenhouse gases—the person is the non-group entity; or
  - (c) if, assuming that:
    - (i) at the last time in the financial year when coal mining operations were carried out in the area of land, those coal mining operations had been a facility; and
    - (ii) at the last time in the financial year when coal mining operations were carried out in the area of land, greenhouse gases with a carbon dioxide equivalence of 25,000 tonnes had been emitted from those coal mining operations; and
    - (iii) the financial year had been an eligible financial year;
 the holder of a liability transfer certificate would, under section 19, be a liable entity for the financial year wholly or partly as a result of those emissions of greenhouse gases—the person is the holder of the liability transfer certificate.

### **173X Submerged land**

For the purposes of this Part, *land* includes submerged land.

Clause 273, page 357 (after line 17), after subclause (1), insert:

#### *Coal mining*

- (1A) As soon as practicable after free Australian emissions units are issued to a person in accordance with Part 8A (coal mining), the Authority must publish on its website:
  - (a) the name of the person; and
  - (b) the total number of free Australian emissions units issued to the person; and
  - (c) the vintage year of the free Australian emissions units issued to the person.

Clause 274, page 358 (after line 19), after paragraph (a), insert:

- (aa) the total number of free Australian emissions units with a particular vintage year issued during the quarter in accordance with Part 8A (coal mining);

Clause 346, page 430, after table item 27, insert:

- |     |  |
|-----|--|
| 27A | A decision to refuse to issue a certificate of entitlement to coal mining assistance under section 173K.   |
| 27B | A decision under subsection 173K(4) to state that a specified number is the unit entitlement in respect of a certificate of entitlement to coal mining assistance.   |
| 27C | A decision to refuse to make a declaration under section 173R.   |
| 27D | A decision under subsection 173R(3) to state that a specified number is the base period fugitive emissions number in relation to an area of land.                    |
| 27E | A decision under subsection 173R(3) to state that a specified number is the base period saleable coal number in relation to an area of land.                         |
| 27F | A decision under subsection 173R(3) to state that a specified number is the capped base period saleable coal number in relation to an area of land.                  |
| 27G | A decision under subsection 173R(3) to state that a specified number is the adjusted base period fugitive emissions intensity number in relation to an area of land. |
| 27H | A decision under subsection 173R(3) to state that a specified number is the adjusted base period fugitive emissions number in relation to an area of land.           |

Clause 382, page 460 (after line 5), after subclause (7), insert:

*Coal mining*

- (7A) This Act and the associated provisions also have the effect they would have if this Act provided that a person is not entitled to make an application under section 173G or 173N unless the person is:
- a constitutional corporation; or
  - the Commonwealth; or
  - an authority of the Commonwealth.

Clause 386, page 462 (after line 22), at the end of the clause, add:

- (3) However, to the extent to which the definition is relevant to the interpretation of Part 8A (coal mining) of this Act, the definition has effect as if:
- the *National Greenhouse and Energy Reporting Act 2007* had commenced on 1 July 2007; and
  - the amendments of that Act made by Part 2 of Schedule 1 to the *Carbon Pollution Reduction Scheme (Consequential Amendments) Act 2009* had commenced immediately after the start of 1 July 2007.

All Australian Greens senators, by leave, recorded their votes for the noes.

Senator Wong moved the following amendments together by leave:

Clause 5, page 5 (after line 16), after the definition of *alter*, insert:

*applicable domestic offsets methodology determination*, in relation to an offsets project, means the domestic offsets methodology determination that is applicable to the project.

Clause 5, page 10 (after line 34), after the definition of *director*, insert:

*Domestic Offsets Integrity Committee* means the committee established by section 373A.

*Domestic Offsets Integrity Committee member* means a member of the Domestic Offsets Integrity Committee, and includes the Chair of the Domestic Offsets Integrity Committee.

*domestic offsets program* means the program under subsection 259B(1).

*domestic offsets project methodology determination* means a determination under subsection 259J(1).

*domestic offsets project methodology principles* has the meaning given by section 259K.

*domestic offsets reporting period* has the meaning given by subsection 259C(2).

Clause 5, page 11 (before line 5), before the definition of *eligible emissions unit*, insert:

*eligible domestic offsets project* means an offsets project that, under the domestic offsets program, has been declared by the Authority to be an eligible domestic offsets project.

Clause 5, page 21 (before line 1), before the definition of *net source cancellation account*, insert:

*native forest* has the meaning given by the regulations.

Clause 5, page 21 (after line 25), after the definition of *official of the Authority*, insert:

*offsets project* means:

- (a) a project to remove one or more greenhouse gases from the atmosphere; or
- (b) a project to reduce emissions of one or more greenhouse gases.

For this purpose, it is immaterial whether the project has been carried out.

Clause 5, page 24 (line 5), omit “256.”, substitute “256; and”.

Clause 5, page 24 (after line 5), at the end of the definition of *recognised*, add:

- (c) *recognised* as an offsets entity means recognised under section 259P.

Clause 5, page 24 (before line 6), before the definition of *recognised reforestation entity*, insert:

*recognised offsets entity* means a person recognised as an offsets entity.

Clause 5, page 28 (lines 22 and 23), omit the definition of *vacancy*, substitute:

***vacancy*:**

- (a) in relation to the office of an expert advisory committee member—has a meaning affected by section 7; or
- (b) in relation to the office of a Domestic Offsets Integrity Committee member—has a meaning affected by section 7A.

Page 30 (after line 9), after clause 7, insert:

**7A Vacancy in the office of a Domestic Offsets Integrity Committee member**

For the purposes of a reference in:

- (a) this Act to a *vacancy* in the office of a Domestic Offsets Integrity Committee member; or
- (b) the *Acts Interpretation Act 1901* to a *vacancy* in the membership of a body;

there are taken to be 4 offices of member of the Domestic Offsets Integrity Committee in addition to the Chair of the Domestic Offsets Integrity Committee.

Clause 88, page 131 (line 21), omit “greenhouse gases).”, substitute “greenhouse gases); or”.

Clause 88, page 131 (after line 21), at the end of the clause, add:

- (g) in accordance with the domestic offsets program.

Clause 101, page 142 (line 3), omit “and”, substitute “or”.

Clause 101, page 142 (after line 3), at the end of paragraph (1)(a), add:

- (v) in accordance with the domestic offsets program; and

Page 343 (after line 14), after Part 11, insert:

**Part 11A—Domestic offsets program**

**Division 1—Introduction**

**259A Simplified outline**

The following is a simplified outline of this Part:

- The regulations may formulate a program (to be known as the *domestic offsets program*) for the issue of free Australian emissions units in respect of eligible domestic offsets projects.
- Free units will be issued to the project proponent of the eligible domestic offsets project, so long as the project proponent is recognised as an offsets entity by the Authority.
- Eligible domestic offsets projects must be:
  - (a) covered by a domestic offsets project methodology determination; and
  - (b) carried on in Australia.
- A domestic offsets project methodology determination must not be inconsistent with the domestic offsets project methodology principles.

**Division 2—Formulation of the domestic offsets program****259B Formulation of the domestic offsets program**

- (1) The regulations may formulate a program (to be known as the **domestic offsets program**) for the issue of free Australian emissions units in respect of offsets projects that, under the program, have been declared by the Authority to be eligible domestic offsets projects.

*Issue of free Australian emissions units*

- (2) The domestic offsets program must provide that free Australian emissions units must not be issued to a person in accordance with the program unless the person:
- (a) meets such requirements as are specified in the program; and
  - (b) is a recognised offsets entity; and
  - (c) has a Registry account.
- (3) The domestic offsets program must provide that the method of calculating the number of free Australian emissions units to be issued to a person in accordance with the program in respect of an eligible domestic offsets project is to be ascertained in accordance with the applicable domestic offsets project methodology determination.

*Criteria for declaration of eligible domestic offsets project*

- (4) The domestic offsets program must provide that the Authority must not declare that an offsets project is an eligible domestic offsets project unless the Authority is satisfied that:
- (a) the project:
    - (i) is, or is to be, carried on in Australia; and
    - (ii) is covered by a domestic offsets project methodology determination; and
    - (iii) meets such requirements as are set out in the applicable domestic offsets project methodology determination in accordance with paragraph 259J(1)(b); and
    - (iv) meets such other requirements (if any) as are specified in the program; and
    - (v) does not involve the clearing or harvesting of native forest; and
    - (vi) does not involve using material obtained as a result of the clearing or harvesting of native forest; and
  - (b) the person who, under the domestic offsets program, is taken to be the project proponent of the project is a recognised offsets entity.

Note: Domestic offsets project methodology determinations are made under section 259J.

- (5) The domestic offsets program must provide that the Authority must not declare that an offsets project is an eligible domestic offsets project unless an application for the declaration is made on or after 1 July 2011.

*Duration of declaration etc.*

- (6) The domestic offsets program must provide that a declaration of an offsets project as an eligible domestic offsets project takes effect:
- (a) immediately after it is made; or

- (b) if:
  - (i) an earlier day is specified in the declaration; and
  - (ii) the applicant for the declaration has consented to the specification of the earlier day; and
  - (iii) the earlier day is not before 1 July 2011;
    - on the day specified.
- (7) The domestic offsets program must provide that a declaration of an offsets project as an eligible domestic offsets project remains in force until the end of the period ascertained in accordance with the program, unless revoked sooner by the Authority.
- (8) The domestic offsets program may provide that, if a declaration (the **renewal declaration**) of an offsets project as an eligible domestic offsets project is made by way of the renewal of the previous declaration of the project, the renewal declaration takes effect immediately after the expiry of the previous declaration.

*Revocation of declaration*

- (9) The domestic offsets program must provide that a declaration of an offsets project as an eligible domestic offsets project may be revoked by the Authority if the Authority is satisfied that:
  - (a) the project:
    - (i) is not being, or will not be, carried on in Australia; or
    - (ii) is not covered by a domestic offsets project methodology determination; or
    - (iii) does not meet any or all of the requirements set out in the applicable domestic offsets project methodology determination in accordance with paragraph 259J(1)(b); or
    - (iv) does not meet any or all of the requirements specified in the program; or
  - (b) the person who, under the domestic offsets program, is taken to be the project proponent of the project is not a recognised offsets entity.

*Declaration is not legislative instrument etc.*

- (10) A declaration of an offsets project as an eligible domestic offsets project is not a legislative instrument.
- (11) A revocation of such a declaration is not a legislative instrument.

**259C Reporting requirement**

*Scope*

- (1) This section applies if, under the domestic offsets program, a person is taken to be the project proponent of an eligible domestic offsets project.

*Requirement*

- (2) The domestic offsets program may make provision for and in relation to requiring the person to give a written report to the Authority in relation to the project in respect of a period (a **domestic offsets reporting period**) ascertained in accordance with the program.



- (3) A domestic offsets reporting period:
  - (a) may be a recurring period (for example, a financial year); and
  - (b) must not be shorter than 12 months.
- (4) The domestic offsets program must provide that a report given by the person as mentioned in subsection (2) must be accompanied by a prescribed audit report prepared by another person ascertained in accordance with the program.

#### **259D Record-keeping requirement**

##### *Scope*

- (1) This section applies if, under the domestic offsets program, a person is taken to be the project proponent of an eligible domestic offsets project.

##### *Requirement*

- (2) The domestic offsets program may make provision for and in relation to requiring the person to:
  - (a) make records of information specified in the program; and
  - (b) retain such a record, or a copy, for 5 years after the record was made.

#### **259E Relinquishment requirement**

- (1) The domestic offsets program may provide that, if:
  - (a) a number of free Australian emissions units have been issued in respect of an eligible domestic offsets project in accordance with the program; and
  - (b) the application for the declaration of the project as an eligible domestic offsets project contained information that was false or misleading in a material particular; and
  - (c) the issue of any or all of the units was directly or indirectly attributable to the false or misleading information;

the person who, under the program, is taken to be the project proponent of the project is required to relinquish a number of Australian emissions units ascertained in accordance with the program. The number of Australian emissions units required to be relinquished must not exceed the number of Australian emissions units the issue of which was directly or indirectly attributable to the false or misleading information.

Note: An administrative penalty is payable under section 287 for non-compliance with a relinquishment requirement under the domestic offsets program.

- (2) The domestic offsets program may provide that, if:
  - (a) a number of free Australian emissions units have been issued in respect of an eligible domestic offsets project in accordance with the program; and
  - (b) the person who, under the program, is taken to be the project proponent of the project has given the Authority a report as mentioned in subsection 259C(2); and
  - (c) the report contains information that is false or misleading in a material particular; and

(d) the issue of any or all of the units was directly or indirectly attributable to the false or misleading information;

the person is required to relinquish a number of Australian emissions units ascertained in accordance with the program. The number of Australian emissions units required to be relinquished must not exceed the number of Australian emissions units the issue of which was directly or indirectly attributable to the false or misleading information.

Note: An administrative penalty is payable under section 287 for non-compliance with a relinquishment requirement under the domestic offsets program.

(3) The domestic offsets program may provide that, if:

(a) a number of free Australian emissions units have been issued in respect of an eligible domestic offsets project in accordance with the program; and

(b) the project involves the removal of one or more greenhouse gases from the atmosphere; and

(c) there has been a complete or partial reversal of that removal;

the person who, under the program, is taken to be the project proponent of the project is required to relinquish a number of Australian emissions units ascertained in accordance with the program. The number of Australian emissions units required to be relinquished must not exceed the total number of Australian emissions units that, under the domestic offsets program, is taken to be the number of units attributable to that removal.

Note: An administrative penalty is payable under section 287 for non-compliance with a relinquishment requirement under the domestic offsets program.

(4) The domestic offsets program may provide that, if:

(a) a number of free Australian emissions units have been issued in respect of an eligible domestic offsets project in accordance with the program; and

(b) if:

(i) the project is a project to reduce emissions of one or more greenhouse gases; and

(ii) the reduction involves storage; and

(c) there has been a complete or partial reversal of that storage;

the person who, under the program, is taken to be the project proponent of the project is required to relinquish a number of Australian emissions units ascertained in accordance with the program. The number of Australian emissions units required to be relinquished must not exceed the total number of Australian emissions units that, under the domestic offsets program, is taken to be the number of units attributable to that reduction.

Note: An administrative penalty is payable under section 287 for non-compliance with a relinquishment requirement under the domestic offsets program.

**259F Other matters***Declaration of eligible domestic offsets project*

- (1) The domestic offsets program may make provision for and in relation to the following matters:
  - (a) applications for offsets projects to be declared to be eligible domestic offsets projects;
  - (b) the approval by the Authority of a form for such an application;
  - (c) the fee (if any) that must accompany such an application;
  - (d) information that must accompany such an application;
  - (e) documents that must accompany such an application.
- (2) The domestic offsets program may provide for verification by statutory declaration of statements in applications for offsets projects to be declared to be eligible domestic offsets projects.
- (3) The domestic offsets program may provide that an application for an offsets project to be declared to be an eligible domestic offsets project must be accompanied by a prescribed report.

*Applications for free Australian emissions units*

- (4) The domestic offsets program may make provision for and in relation to the following matters:
  - (a) applications for free Australian emissions units;
  - (b) the approval by the Authority of a form for such an application;
  - (c) information that must accompany such an application;
  - (d) documents that must accompany such an application.
- (5) The domestic offsets program may provide for verification by statutory declaration of statements in applications for free Australian emissions units.

**259G Ancillary or incidental provisions**

The domestic offsets program may contain ancillary or incidental provisions.

**Division 3—Compliance with reporting and record-keeping requirements under the domestic offsets program****259H Compliance with reporting and record-keeping requirements***Reporting requirements*

- (1) If a person is subject to a requirement under the domestic offsets program to give a report to the Authority, the person must comply with that requirement.

*Record-keeping requirements*

- (2) If a person is subject to a requirement under the domestic offsets program to:
  - (a) make a record of information; or
  - (b) retain such a record or a copy;the person must comply with that requirement.

*Ancillary contraventions*

- (3) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1) or (2); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (2); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (2); or
  - (d) conspire with others to effect a contravention of subsection (1) or (2).

*Civil penalty provisions*

- (4) Subsections (1), (2) and (3) are *civil penalty provisions*.

Note: Part 21 provides for pecuniary penalties for breaches of civil penalty provisions.

#### **Division 4—Domestic offsets project methodology determinations**

##### **259J Domestic offsets project methodology determinations**

- (1) The Minister may, by legislative instrument, make a determination, to be known as a *domestic offsets project methodology determination*, that:
- (a) is expressed to apply to a specified kind of offsets project; and
  - (b) sets out requirements that must be met for such a project to be an eligible domestic offsets project; and
  - (c) provides that, if such a project is an eligible domestic offsets project, the number of free Australian emissions units to be issued to a person in accordance with the domestic offsets program in respect of the project for a domestic offsets reporting period must equal:
    - (i) if the project relates to the removal of one or more greenhouse gases—the net total number of tonnes of greenhouse gases that, under the determination, is taken to be removed as a result of the project during the domestic offsets reporting period; or
    - (ii) if the project relates to the reduction of emissions of one or more greenhouse gases—the net total number of tonnes of greenhouse gases that, under the determination, is taken to be reduced as a result of the project during the domestic offsets reporting period.

- (2) The Minister must not make or amend a domestic offsets project methodology determination unless the Minister does so in accordance with advice given to the Minister by the Domestic Offsets Integrity Committee.

Note: The Domestic Offsets Integrity Committee is established by section 373A.

- (3) To avoid doubt, the Minister may revoke a domestic offsets project methodology determination without obtaining advice from the Domestic Offsets Integrity Committee.
- (4) A domestic offsets project methodology determination must not be inconsistent with the domestic offsets project methodology principles.

**259K Domestic offsets project methodology principles**

- (1) For the purposes of the application of this Act to an offsets project, the *domestic offsets project methodology principles* are as follows:
- (a) if the project is a project to remove one or more greenhouse gases from the atmosphere—the removal can be used to meet Australia's climate change targets under:
    - (i) the Kyoto Protocol; or
    - (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol;
  - (b) if the project is a project to reduce emissions of one or more greenhouse gases—the reduction can be used to meet Australia's climate change targets under:
    - (i) the Kyoto Protocol; or
    - (ii) an international agreement (if any) that is the successor (whether immediate or otherwise) to the Kyoto Protocol;
  - (c) the project meets the integrity requirements set out in subsection (2);
  - (d) if the project is a project to reduce emissions of one or more greenhouse gases—the project is not a project to reduce an emission that, under regulations made for the purposes of paragraph 10(2A)(a) of the *National Greenhouse and Energy Reporting Act 2007*, is a scope 1 emission covered by the carbon pollution reduction scheme;
  - (e) the project is not a reforestation project that has resulted, or has the potential to result, in the issue of free Australian emissions units in accordance with Part 10;
  - (f) the project does not involve:
    - (i) the destruction of one or more synthetic greenhouse gases; or
    - (ii) the reduction of emissions of one or more synthetic greenhouse gases.

*Integrity requirements*

- (2) The integrity requirements mentioned in paragraph (1)(c) are as follows:
- (a) if the project is a project to remove one or more greenhouse gases from the atmosphere—the removal is:
    - (i) measurable; and
    - (ii) capable of being verified;
  - (b) if the project is a project to reduce emissions of one or more greenhouse gases—the reduction is:
    - (i) measurable; and
    - (ii) capable of being verified;
  - (c) the project would not have been proposed or carried out in the absence of the issue of free Australian emissions units in accordance with the domestic offsets program;
  - (d) if the project is a project to remove one or more greenhouse gases from the atmosphere—the removal is not likely to be reversed in whole or in part;

- (e) if:
  - (i) the project is a project to reduce emissions of one or more greenhouse gases; and
  - (ii) the reduction involves storage; the storage is not likely to be reversed in whole or in part;
- (f) if the project is a project to remove one or more greenhouse gases from the atmosphere—the removal is not offset by emissions of one or more greenhouse gases outside the project;
- (g) if the project is a project to reduce emissions of one or more greenhouse gases—the reduction is not offset by emissions of one or more greenhouse gases outside the project;
- (h) such other requirements (if any) as are specified in the regulations.

*Landfill facilities*

- (3) Paragraph (1)(d) does not apply to a project to reduce the following emissions:
  - (a) emissions that, under subsection 20(6) or (8), do not count for the purposes of subsection 20(1) (which deals with landfill facilities);
  - (b) emissions that, under subsection 21(6) or (8), do not count for the purposes of subsection 21(1) (which deals with landfill facilities);
  - (c) emissions that, under subsection 22(6) or (7), do not count for the purposes of subsection 22(1) (which deals with landfill facilities).

**Division 5—Recognised offsets entities**

**259L Application for recognition as an offsets entity**

- (1) A person may apply to the Authority for recognition as an offsets entity.
- (2) A person is not entitled to make an application before 1 July 2011.

**259M Form of application**

- (1) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Authority; and
  - (c) be accompanied by such information as is specified in the regulations; and
  - (d) be accompanied by such documents (if any) as are specified in the regulations; and
  - (e) be accompanied by the fee (if any) specified in the regulations.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.
- (3) A fee specified under paragraph (1)(e) must not be such as to amount to taxation.

**259N Further information**

- (1) The Authority may, by written notice given to an applicant, require the applicant to give the Authority, within the period specified in the notice, further information in connection with the application.

- (2) If the applicant breaches the requirement, the Authority may, by written notice given to the applicant:
  - (a) refuse to consider the application; or
  - (b) refuse to take any action, or any further action, in relation to the application.

#### **259P Recognition as an offsets entity**

##### *Scope*

- (1) This section applies if an application under section 259L has been made for recognition as an offsets entity.

##### *Recognition*

- (2) After considering the application, the Authority may, by written notice given to the applicant, recognise the applicant as an offsets entity.

##### *Criteria for recognition*

- (3) The Authority must not recognise the applicant as an offsets entity unless:
  - (a) the Authority is satisfied that the applicant is a fit and proper person, having regard to the following:
    - (i) whether the applicant has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to dishonest conduct;
    - (ii) whether the applicant has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to the conduct of a business;
    - (iii) whether the applicant has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
    - (iv) whether an order has been made against the applicant under section 76 of the *Trade Practices Act 1974*;
    - (v) whether the applicant has breached this Act or the associated provisions;
    - (vi) if the applicant is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to dishonest conduct;
    - (vii) if the applicant is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to the conduct of a business;
    - (viii) if the applicant is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
    - (ix) if the applicant is a body corporate—whether an order has been made against an executive officer of the body corporate under section 76 of the *Trade Practices Act 1974*;

- (x) if the applicant is a body corporate—whether an executive officer of the body corporate has breached this Act or the associated provisions;
  - (xi) such other matters (if any) as the Authority considers relevant; and
  - (b) if the applicant is an individual—the Authority is satisfied that the applicant is not an insolvent under administration; and
  - (c) if the applicant is a body corporate—the Authority is satisfied that the applicant is not an externally-administered body corporate; and
  - (d) if the regulations specify one or more other eligibility requirements—the Authority is satisfied that those requirements are met.
- (4) Subparagraphs (3)(a)(i) to (x) do not limit subparagraph (3)(a)(xi).

*Timing*

- (5) The Authority must take all reasonable steps to ensure that a decision is made on the application:
- (a) if the Authority requires the applicant to give further information under subsection 259N(1) in relation to the application—within 90 days after the applicant gave the Authority the information; or
  - (b) otherwise—within 90 days after the application was made.

*Refusal*

- (6) If the Authority decides to refuse to recognise the applicant as an offsets entity, the Authority must give written notice of the decision to the applicant.

**259Q Cancellation of recognition**

- (1) The Authority may cancel the recognition of a person as an offsets entity if:
- (a) the Authority is satisfied that the person is not a fit and proper person, having regard to the following:
    - (i) whether the person has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to dishonest conduct;
    - (ii) whether the person has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to the conduct of a business;
    - (iii) whether the person has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
    - (iv) whether an order has been made against the person under section 76 of the *Trade Practices Act 1974*;
    - (v) whether the person has breached this Act or the associated provisions;
    - (vi) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to dishonest conduct;



- (vii) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against a law of the Commonwealth, a State or Territory, where the offence relates to the conduct of a business;
- (viii) if the person is a body corporate—whether an executive officer of the body corporate has been convicted of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code*;
- (ix) if the person is a body corporate—whether an order has been made against an executive officer of the body corporate under section 76 of the *Trade Practices Act 1974*;
- (x) if the person is a body corporate—whether an executive officer of the body corporate has breached this Act or the associated provisions;
- (xi) such other matters (if any) as the Authority considers relevant; or
- (b) if the person is an individual—the Authority is satisfied that the person is an insolvent under administration; or
- (c) if the person is a body corporate—the Authority is satisfied that the person is an externally-administered body corporate; or
- (d) if the regulations specify one or more other grounds for cancellation—the Authority is satisfied that at least one of those grounds is applicable to the person.

(2) Subparagraphs (1)(a)(i) to (x) do not limit subparagraph (1)(a)(xi).

#### **259R Surrender of recognition**

##### *Scope*

- (1) This section applies if a person is recognised as an offsets entity.

##### *Surrender*

- (2) The person may, by written notice given to the Authority, surrender the person's recognition.
- (3) The surrender takes effect on the day the notice is received by the Authority or, if a later day is specified in the notice, on that later day.

#### **259S Recognition is not transferable**

If a person is recognised as an offsets entity, the person's recognition is not transferable.

Clause 273, page 358 (after line 12), at the end of the clause, add:

##### *Domestic offsets program*

- (5) As soon as practicable after free Australian emissions units are issued to a person in accordance with the domestic offsets program, the Authority must publish on its website:
- (a) the name of the person; and
  - (b) the total number of free Australian emissions units issued to the person; and
  - (c) the vintage year of the free Australian emissions units issued to the person.

Clause 274, page 359 (lines 6 and 7), omit “greenhouse gases).”, substitute “greenhouse gases);”.

Clause 274, page 359 (after line 7), at the end of the clause, add:

- (g) the total number of free Australian emissions units with a particular vintage year issued during the quarter in accordance with the domestic offsets program.

Page 367 (after line 13), at the end of Part 12, add:

### **Division 8—Information about eligible domestic offsets projects**

#### **278H Information about eligible domestic offsets projects**

For each eligible domestic offsets project, the Authority must publish on its website:

- (a) a description of the project; and
- (b) the location of the project; and
- (c) the name of the person who applied to the Authority for the declaration of the project as an eligible domestic offsets project; and
- (d) the name of the person who, under the domestic offsets program, is taken to be the project proponent of the project; and
- (e) if any Australian emissions units have been issued in relation to the project in accordance with the domestic offsets program:
  - (i) the total number of units so issued; and
  - (ii) the name of the person, or each of the persons, to whom those units have been issued; and
- (f) the name of the applicable domestic offsets methodology determination; and
- (g) such other information (if any) relating to the project as the Authority considers appropriate.

Clause 285, page 375 (lines 17 and 18), omit “or the emissions-intensive trade-exposed assistance program”, substitute “, the emissions-intensive trade-exposed assistance program or the domestic offsets program”.

Clause 286, page 376 (after line 26), after paragraph (2)(da), insert:

- (db) if the Australian emissions unit or units are being relinquished in order to comply with a requirement under the domestic offsets program—specify the requirement to which the relinquishment relates; and

Clause 286, page 377 (line 14), at the end of subparagraph (3)(b)(ii), add “or”.

Clause 286, page 377 (after line 14), at the end of paragraph (3)(b), add:

- (iii) Part 11A (domestic offsets program);

Clause 286, page 377 (line 26), omit “and”, substitute “or”.

Clause 286, page 377 (after line 26), at the end of paragraph (4)(b), add:

- (iii) Part 11A (domestic offsets program); and

Clause 286, page 378 (line 23), at the end of paragraph (6)(ba), add “or”.

Clause 286, page 378 (after line 23), after paragraph (6)(ba), insert:

- (bb) an Australian emissions unit is relinquished by a person in order to comply with a requirement under the domestic offsets program;

Clause 337, page 421 (after line 10), after paragraph (1)(qa), insert:

(qb) subsection 259H(1);

(qc) subsection 259H(2);

Clause 338, page 422 (after line 9), after paragraph (2)(da), insert:

(db) subsection 259H(1);

Clause 346, page 432, after table item 48, insert:

48A A prescribed decision under the domestic offsets program.

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48B A decision to refuse to recognise a person as an offsets entity under section 259P.

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48C A decision to cancel a person's recognition as an offsets entity under section 259Q.

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Clause 353, page 439 (after line 8), after paragraph (1)(h), insert:

(ha) the effectiveness and efficiency of:

(i) the domestic offsets program; and

(ii) any domestic offsets project methodology determinations;

Clause 353, page 439 (after line 11), after subparagraph (1)(i)(i), insert:

(ia) the functions of the Domestic Offsets Integrity Committee; and

Page 451 (after line 23), after Part 25, insert:

## **Part 25A—Domestic Offsets Integrity Committee**

### **Division 1—Establishment and functions of the Domestic Offsets Integrity Committee**

#### **373A Establishment of the Domestic Offsets Integrity Committee**

The Domestic Offsets Integrity Committee is established.

#### **373B Functions of the Domestic Offsets Integrity Committee**

- (1) The Domestic Offsets Integrity Committee has the following functions:
  - (a) to advise the Minister about matters relating to the making or amendment of domestic offsets project methodology determinations;
  - (b) to advise the Secretary about matters that:
    - (i) relate to offsets projects; and
    - (ii) are referred to the Committee by the Secretary;
  - (c) to do anything incidental to or conducive to the performance of the above functions.
- (2) In advising the Minister to make or amend a domestic offsets project methodology determination, the Domestic Offsets Integrity Committee must:
  - (a) assess the costs and benefits of making or amending the determination; and
  - (b) have regard to such other matters as the Domestic Offsets Integrity Committee considers relevant.

**373C Consultation by the Domestic Offsets Integrity Committee***Domestic offsets project methodology determination*

- (1) The Domestic Offsets Integrity Committee must not advise the Minister to make or amend a domestic offsets project methodology determination unless the Committee has first:
  - (a) published on the Department's website:
    - (i) a draft of the determination or amendment; and
    - (ii) a notice inviting the public to make a submission to the Committee on the draft by a specified time limit; and
  - (b) considered any submissions that were received within that time limit.
- (2) The time limit must not be shorter than 60 days.

*Work program and priorities*

- (3) At least once each financial year, the Domestic Offsets Integrity Committee must:
  - (a) publish on the Department's website a statement setting out the Committee's draft work program and priorities; and
  - (b) invite the public to make a submission to the Committee on the draft by a specified time limit.
- (4) The time limit must not be shorter than 60 days.

**Division 2—Membership of the Domestic Offsets Integrity Committee****373D Membership of the Domestic Offsets Integrity Committee**

The Domestic Offsets Integrity Committee consists of the following members:

- (a) a Chair;
- (b) at least 4, and not more than 5, other members.

**373E Appointment of Domestic Offsets Integrity Committee members**

- (1) Each Domestic Offsets Integrity Committee member is to be appointed by the Minister by written instrument.
 

Note: The Domestic Offsets Integrity Committee member is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.
- (2) A person is not eligible for appointment as a Domestic Offsets Integrity Committee member unless the Minister is satisfied that the person has:
  - (a) substantial experience or knowledge; and
  - (b) significant standing;

in at least one field of expertise that is relevant to the functions of the Domestic Offsets Integrity Committee.
- (3) The Minister must ensure that:
  - (a) the Chair of the Domestic Offsets Integrity Committee is not a person covered by subsection (4); and
  - (b) a majority of the other Domestic Offsets Integrity Committee members are not persons covered by subsection (4).
- (4) This subsection applies to the following persons:
  - (a) an employee of the Commonwealth;

- (b) an employee of an authority of the Commonwealth;
  - (c) a person who holds a full-time office under a law of the Commonwealth.
- (5) The Minister must ensure that one Domestic Offsets Integrity Committee member:
- (a) is an SES employee in the Department; or
  - (b) holds an Executive Officer (Level 2) position in the Department.
- (6) The Minister must ensure that one Domestic Offsets Integrity Committee member is an officer of the Commonwealth Scientific and Industrial Research Organisation nominated by the Chief Executive of the Commonwealth Scientific and Industrial Research Organisation.
- (7) A Domestic Offsets Integrity Committee member holds office on a part-time basis.

**373F Period for appointment for Domestic Offsets Integrity Committee members**

A Domestic Offsets Integrity Committee member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see subsection 33(4A) of the *Acts Interpretation Act 1901*.

**373G Acting Domestic Offsets Integrity Committee members**

*Acting Chair of Domestic Offsets Integrity Committee*

- (1) The Minister may appoint a Domestic Offsets Integrity Committee member to act as the Chair of the Domestic Offsets Integrity Committee:
- (a) during a vacancy in the office of the Domestic Offsets Integrity Committee Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair of the Domestic Offsets Integrity Committee:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

*Acting Domestic Offsets Integrity Committee member (other than the Chair)*

- (2) The Minister may appoint a person to act as a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee):
- (a) during a vacancy in the office of a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee), whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee):
    - (i) is absent from duty or Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

*Eligibility*

- (3) A person is not eligible for appointment to act as:
- (a) the Chair of the Domestic Offsets Integrity Committee; or
  - (b) a Domestic Offsets Integrity Committee member (other than the Chair of the Domestic Offsets Integrity Committee);
- unless the person is eligible for appointment as a Domestic Offsets Integrity Committee member.

Note: See subsection 373E(2).

*Validation*

- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

**373H Procedures**

- (1) The regulations may prescribe the procedures to be followed at or in relation to meetings of the Domestic Offsets Integrity Committee, including matters relating to the following:
- (a) the convening of meetings of the Domestic Offsets Integrity Committee;
  - (b) the number of Domestic Offsets Integrity Committee members who are to constitute a quorum;
  - (c) the selection of a Domestic Offsets Integrity Committee member to preside at meetings of the Domestic Offsets Integrity Committee in the absence of the Chair of the Domestic Offsets Integrity Committee;
  - (d) the manner in which questions arising at a meeting of the Domestic Offsets Integrity Committee are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Domestic Offsets Integrity Committee if:
- (a) without meeting, a majority of Domestic Offsets Integrity Committee members indicate agreement with the resolution in accordance with the method determined by the Domestic Offsets Integrity Committee under subsection (3); and
  - (b) all Domestic Offsets Integrity Committee members were informed of the proposed resolution, or reasonable efforts had been made to inform all Domestic Offsets Integrity Committee members of the proposed resolution.
- (3) Subsection (2) applies only if the Domestic Offsets Integrity Committee:
- (a) determines that it applies; and
  - (b) determines the method by which Domestic Offsets Integrity Committee members are to indicate agreement with resolutions.

- (4) If a Domestic Offsets Integrity Committee member is an APS employee in the Department, the member:
  - (a) is not entitled to vote for a resolution at a meeting of the Domestic Offsets Integrity Committee; and
  - (b) is not entitled to indicate agreement with a resolution as mentioned in paragraph (2)(a); and
  - (c) is not to be counted for the purposes of determining whether a majority of Domestic Offsets Integrity Committee members:
    - (i) have voted for a resolution at a meeting of the Domestic Offsets Integrity Committee; or
    - (ii) have indicated agreement with a resolution as mentioned in paragraph (2)(a).

**373J Disclosure of interests to the Minister**

A Domestic Offsets Integrity Committee member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

**373K Disclosure of interests to Domestic Offsets Integrity Committee**

- (1) A Domestic Offsets Integrity Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Domestic Offsets Integrity Committee must disclose the nature of the interest to a meeting of the Domestic Offsets Integrity Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Domestic Offsets Integrity Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Domestic Offsets Integrity Committee.
- (4) Unless the Domestic Offsets Integrity Committee otherwise determines, the Domestic Offsets Integrity Committee member:
  - (a) must not be present during any deliberation by the Domestic Offsets Integrity Committee on the matter; and
  - (b) must not take part in any decision of the Domestic Offsets Integrity Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Domestic Offsets Integrity Committee member:
  - (a) must not be present during any deliberation of the Domestic Offsets Integrity Committee for the purpose of making the determination; and
  - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Domestic Offsets Integrity Committee.

**373L Outside employment**

A Domestic Offsets Integrity Committee member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

**373M Remuneration and allowances**

- (1) A Domestic Offsets Integrity Committee member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A Domestic Offsets Integrity Committee member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**373N Leave of absence**

- (1) The Minister may grant leave of absence to the Chair of the Domestic Offsets Integrity Committee on the terms and conditions that the Minister determines.
- (2) The Chair of the Domestic Offsets Integrity Committee may grant leave of absence to a Domestic Offsets Integrity Committee member on the terms and conditions that the Chair determines.

**373P Resignation**

- (1) A Domestic Offsets Integrity Committee member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

**373Q Termination of appointment**

- (1) The Minister may terminate the appointment of a Domestic Offsets Integrity Committee member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a Domestic Offsets Integrity Committee member if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of remuneration for the benefit of his or her creditors; or
  - (b) the member is absent, except on leave of absence, for 3 consecutive meetings of the Domestic Offsets Integrity Committee; or
  - (c) the member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 373L); or
  - (d) the member fails, without reasonable excuse, to comply with section 373J or 373K.
- (3) The Minister may terminate the appointment of the Chair of the Domestic Offsets Integrity Committee if the Chair is:
  - (a) an employee of the Commonwealth; or
  - (b) an employee of an authority of the Commonwealth; or
  - (c) a person who holds a full-time office under a law of the Commonwealth.



- (4) The Minister may terminate the appointment of a Domestic Offsets Integrity Committee member if the member is a director, officer or employee of another person who is, or is likely to be, a liable entity for the eligible financial year in which the termination occurs.

**373R Other terms and conditions**

A Domestic Offsets Integrity Committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

**373S Assistance to Domestic Offsets Integrity Committee**

- (1) Any or all of the following:
- (a) the Authority;
  - (b) the Department;
  - (c) any other Department, agency or authority of the Commonwealth;
- may assist the Domestic Offsets Integrity Committee in the performance of its functions.
- (2) The assistance may include the following:
- (a) the provision of information;
  - (b) the provision of advice;
  - (c) the making available of resources and facilities (including secretariat services and clerical assistance).

**373T Consultants**

- (1) The Chair of the Domestic Offsets Integrity Committee may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Committee.
- (2) The consultants are to be engaged on the terms and conditions that the Chair determines in writing.

Page 454 (after line 3), after clause 375A, insert:

**375B Delegation by the Secretary**

- (1) The Secretary may, by writing, delegate any or all of his or her functions or powers under this Act to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 17AA of the *Acts Interpretation Act 1901*.

- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Secretary.

Clause 379, page 456 (after line 26), after paragraph (f), insert:

- (fa) a Domestic Offsets Integrity Committee member;

Clause 382, page 461 (after line 8), at the end of the clause, add:

*Domestic offsets program*

- (11) This Act and the associated provisions also have the effect they would have if the reference in subsection 259B(1) to the issue of free Australian emissions units were, by express provision, confined to the issue of free Australian emissions units to a person who is:
- (a) a constitutional corporation; or

- (b) the Commonwealth; or
- (c) an authority of the Commonwealth.

Debate ensued.

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*At 3.45 pm:* The Deputy President (Senator Ferguson) resumed the chair and the Chair of Committees reported progress.

**74 ADJOURNMENT**

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

The Senate adjourned at 3.45 pm till Monday, 30 November 2009 at 10 am.

**75 ATTENDANCE**

Present, all senators.

**HARRY EVANS**  
Clerk of the Senate