

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VOTES AND PROCEEDINGS

No. 66

TUESDAY, 14 MAY 1991

1 The House met, at 2 p.m., pursuant to adjournment. Mr Speaker (the Honourable Leo McLeay) took the Chair, and read Prayers.

2 **QUESTIONS:** Questions without notice being asked—

Paper: Mr Keating (Treasurer) presented the following paper:

Economic growth of Australia, 1986 to 1991—Statistical notes.

Questions without notice continued.

3 **SUSPENSION OF STANDING AND SESSIONAL ORDERS—MOTION OF CENSURE OF PRIME MINISTER:** Dr Hewson (Leader of the Opposition) moved—That so much of the standing and sessional orders be suspended as would prevent the Leader of the Opposition moving forthwith—That this House censures the Prime Minister for his lack of leadership and failure in economic policy which has put a million Australians out of work, sent thousands of businesses broke and pushed Australia five years further down the road to a banana republic.

Question—put and passed, with the concurrence of an absolute majority.

4 **PRIME MINISTER—MOTION OF CENSURE:** Dr Hewson (Leader of the Opposition) moved—That this House censures the Prime Minister for his lack of leadership and failure in economic policy which has put a million Australians out of work, sent thousands of businesses broke and pushed Australia five years further down the road to a banana republic.

Debate ensued.

Paper: Mr Keating (Treasurer), by leave, presented the following paper:

Unemployment rate and the participation rate—Copy of minute from I. J. Watt, Assistant Secretary, Domestic Economy Branch, the Treasury, to the Hon. P. J. Keating, MP, Treasurer, dated 14 May 1991.

Closure: Mr Keating moved—That the question be now put.

Question—That the question be now put—put.

The House divided (the Deputy Speaker, Mr R. F. Edwards, in the Chair)—

AYES, 71

Mr Baldwin	Mr Duncan	Mr Jenkins	Mr Price
Mr Beazley	Mr Elliott	Mr Johns	Mr Sawford
Mr Beddall	Ms Fatin	Mr Jones	Mr Scholes
Mr Bevis	Mr Ferguson	Mr Keating	Mr Sciacca
Mr Bilney	Mr Fitzgibbon	Mrs Kelly	Mr J. L. Scott
Dr Blewett	Mr Free	Mr Kerin	Mr L. J. Scott
Mr Brereton	Mr Gayler	Mr Kerr	Mr Simmons
Mr R. J. Brown	Mr Gear*	Mr Langmore	Mr Snow
Mr Campbell	Mr Gibson	Mr Lavarch	Mr Snowdon
Dr Catley	Mr Grace*	Mr Lindsay	Mr Staples
Dr Charlesworth	Mr Griffiths	Ms McHugh	Dr Theophanous
Mr Courtice	Mr Hand	Mr Martin	Mr Tickner
Ms Crawford	Mr Hawke	Mr Melham	Mr Walker
Mr Crean	Mr Holding	Mr A. A. Morris	Mr West
Mrs Crosio	Mr Hollis	Mr P. F. Morris	Mr Willis
Mrs Darling	Mr Hulls	Mr Newell	Mr H. F. Woods
Mr Dubois	Mr Humphreys	Mr O'Keefe	Mr Wright
Mr Duffy	Mrs Jakobsen	Mr O'Neil	

NOES, 66

Mr Aldred	Mr Cowan	Mr Jull	Mr Rocher
Mr Anderson	Mr Dobie	Dr Kemp	Mr Ronaldson
Mr Andrew*	Mr Downer	Mr Lloyd	Mr Ruddock
Mr Atkinson	Dr H. R. Edwards	Mr McArthur	Mr B. C. Scott
Mrs Bailey	Mr Fife	Mr McGauran	Mr Shack
Mr Beale	Mr Filing	Mr Mack	Mr Sharp
Mr Bradford	Mr T. A. Fischer	Mr MacKellar	Mr Sinclair
Mr Braithwaite	Mr P. S. Fisher	Mr McLachlan	Mr Smith
Mr Broadbent	Mr Ford	Mr Miles	Mr Somlyay
Mr Burr	Mrs Gallus	Mr Moore	Mr Taylor
Mr Cadman	Mr Goodluck	Mr Nehl	Mr Truss
Mr Carlton	Mr Hall	Mr Nugent	Mr Tuckey
Mr Chaney	Mr Halverson	Mr Peacock	Mr Webster
Mr Charles	Mr Hawker	Mr Prosser	Mr Wilson
Mr Cobb	Dr Hewson	Mr Reid	Dr R. L. Woods
Mr Connolly	Mr Hicks*	Mr Reith	
Mr Costello	Mr Howard	Mr Riggall	

* Tellers

And so it was resolved in the affirmative.

And the question—That the motion be agreed to—being accordingly put—
The House divided (the Deputy Speaker, Mr R. F. Edwards, in the Chair)—

AYES, 66

Mr Aldred	Mr Cowan	Mr Jull	Mr Rocher
Mr Anderson	Mr Dobie	Dr Kemp	Mr Ronaldson
Mr Andrew*	Mr Downer	Mr Lloyd	Mr Ruddock
Mr Atkinson	Dr H. R. Edwards	Mr McArthur	Mr B. C. Scott
Mrs Bailey	Mr Fife	Mr McGauran	Mr Shack
Mr Beale	Mr Filing	Mr Mack	Mr Sharp
Mr Bradford	Mr T. A. Fischer	Mr MacKellar	Mr Sinclair
Mr Braithwaite	Mr P. S. Fisher	Mr McLachlan	Mr Smith
Mr Broadbent	Mr Ford	Mr Miles	Mr Somlyay
Mr Burr	Mrs Gallus	Mr Moore	Mr Taylor
Mr Cadman	Mr Goodluck	Mr Nehl	Mr Truss
Mr Carlton	Mr Hall	Mr Nugent	Mr Tuckey
Mr Chaney	Mr Halverson	Mr Peacock	Mr Webster
Mr Charles	Mr Hawker	Mr Prosser	Mr Wilson
Mr Cobb	Dr Hewson	Mr Reid	Dr R. L. Woods
Mr Connolly	Mr Hicks*	Mr Reith	
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NOES, 71

Mr Baldwin	Mr Duncan	Mr Jenkins	Mr Price
Mr Beazley	Mr Elliott	Mr Johns	Mr Sawford
Mr Beddall	Ms Fatin	Mr Jones	Mr Scholes
Mr Bevis	Mr Ferguson	Mr Keating	Mr Sciacca
Mr Bilney	Mr Fitzgibbon	Mrs Kelly	Mr J. L. Scott
Dr Blewett	Mr Free	Mr Kerin	Mr L. J. Scott
Mr Brereton	Mr Gayler	Mr Kerr	Mr Simmons
Mr R. J. Brown	Mr Gear*	Mr Langmore	Mr Snow
Mr Campbell	Mr Gibson	Mr Lavarch	Mr Snowdon
Dr Catley	Mr Grace*	Mr Lindsay	Mr Staples
Dr Charlesworth	Mr Griffiths	Ms McHugh	Dr Theophanous
Mr Courtice	Mr Hand	Mr Martin	Mr Tickner
Ms Crawford	Mr Hawke	Mr Melham	Mr Walker
Mr Crean	Mr Holding	Mr A. A. Morris	Mr West
Mrs Crosio	Mr Hollis	Mr P. F. Morris	Mr Willis
Mrs Darling	Mr Hulls	Mr Newell	Mr H. F. Woods
Mr Dubois	Mr Humphreys	Mr O'Keefe	Mr Wright
Mr Duffy	Mrs Jakobsen	Mr O'Neil	

* Tellers

And so it was negatived.

- 5 **PROPOSED DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—ECONOMIC POLICIES:** The House was informed that Mr Reith (Deputy Leader of the Opposition) had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The Prime Minister's failure to implement economic policies to arrest Australia's slide into banana republic status".

The proposed discussion having received the necessary support—

Mr Reith rising to address the House—

Mr Beazley (Leader of the House) moved—That the business of the day be called on.

Question—put.

The House divided (the Deputy Speaker, Mr R. F. Edwards, in the Chair)—

AYES, 70

Mr Baldwin	Mr Duncan	Mr Johns	Mr Sawford
Mr Beazley	Mr Elliott	Mr Jones	Mr Scholes
Mr Beddall	Ms Fatin	Mrs Kelly	Mr Sciacca
Mr Bevis	Mr Ferguson	Mr Kerin	Mr J. L. Scott
Mr Bilney	Mr Fitzgibbon	Mr Kerr	Mr L. J. Scott
Dr Blewett	Mr Free	Mr Langmore	Mr Simmons
Mr Brereton	Mr Gayler	Mr Lavarch	Mr Snow
Mr R. J. Brown	Mr Gear*	Mr Lindsay	Mr Snowdon
Mr Campbell	Mr Gibson	Ms McHugh	Mr Staples
Dr Catley	Mr Grace*	Mr Mack	Dr Theophanous
Dr Charlesworth	Mr Griffiths	Mr Martin	Mr Tickner
Mr Courtice	Mr Hand	Mr Melham	Mr Walker
Ms Crawford	Mr Holding	Mr A. A. Morris	Mr West
Mr Crean	Mr Hollis	Mr P. F. Morris	Mr Willis
Mrs Crosio	Mr Hulls	Mr Newell	Mr H. F. Woods
Mrs Darling	Mr Humphreys	Mr O'Keefe	Mr Wright
Mr Dubois	Mrs Jakobsen	Mr O'Neil	
Mr Duffy	Mr Jenkins	Mr Price	

NOES, 64

Mr Aldred	Mr Costello	Mr Howard	Mr Riggall
Mr Anderson	Mr Cowan	Mr Jull	Mr Rocher
Mr Andrew*	Mr Dobie	Dr Kemp	Mr Ronaldson
Mr Atkinson	Mr Downer	Mr Lloyd	Mr Ruddock
Mrs Bailey	Dr H. R. Edwards	Mr McArthur	Mr B. C. Scott
Mr Beale	Mr Fife	Mr McGauran	Mr Shack
Mr Bradford	Mr Filing	Mr MacKellar	Mr Sharp
Mr Braithwaite	Mr T. A. Fischer	Mr McLachlan	Mr Sinclair
Mr Broadbent	Mr P. S. Fisher	Mr Miles	Mr Smith
Mr Burr	Mr Ford	Mr Moore	Mr Somlyay
Mr Cadman	Mrs Gallus	Mr Nehl	Mr Taylor
Mr Carlton	Mr Goodluck	Mr Nugent	Mr Truss
Mr Chaney	Mr Hall	Mr Peacock	Mr Tuckey
Mr Charles	Mr Halverson	Mr Prosser	Mr Webster
Mr Cobb	Mr Hawker	Mr Reid	Mr Wilson
Mr Connolly	Mr Hicks*	Mr Reith	Dr R. L. Woods

* Tellers

And so it was resolved in the affirmative.

6 **MESSAGE FROM THE SENATE:** Message No. 210, dated 13 May 1991, from the Senate was reported acquainting the House that it had extended the time for the presentation of the report of the Joint Committee of Public Accounts on the Midford Paramout case and related matters to 7 November 1991.

7 **PUBLIC WORKS—PARLIAMENTARY STANDING COMMITTEE—REPORT—STATEMENTS BY MEMBERS:** Mr Hollis (Chairman) presented the following report:

Public Works—Parliamentary Standing Committee—Report relating to the purpose built computer centre for Australian Customs Service, Bruce, ACT (5th report of 1991).

Ordered to be printed.

Mr Hollis and Mr Taylor, by leave, made statements in connection with the report.

8 **NATIONAL FOOD AUTHORITY BILL 1991:** Mr Griffiths (Minister for Resources), for Mr Staples (Minister for Aged, Family and Health Services), pursuant to notice, presented a Bill for an Act to establish a National Food Authority with functions relating to the development of food standards, and for related purposes.

Bill read a first time.

Mr Griffiths moved—That the Bill be now read a second time.

Paper: Mr Griffiths presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Ruddock), and the resumption of the debate made an order of the day for the next sitting.

9 **NATIONAL HEALTH AMENDMENT BILL 1991:** Mr Griffiths (Minister for Resources), for Mr Staples (Minister for Aged, Family and Health Services), pursuant to notice, presented a Bill for an Act to amend the *National Health Act 1953*, and for related purposes.

Bill read a first time.

Mr Griffiths moved—That the Bill be now read a second time.

Paper: Mr Griffiths presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Ruddock), and the resumption of the debate made an order of the day for the next sitting.

10 **STUDENT ASSISTANCE AMENDMENT BILL 1991:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed by Dr Kemp who moved, as an amendment—That all words after “That” be omitted with a view to substituting the following words: “whilst not declining to give the Bill a second reading, the House deplores the Government’s continued mismanagement of education, and in particular, it deplores the Government’s:

- (1) failure to define clear objectives for the implementation and operation of student assistance programs;
- (2) failure to administer student assistance programs in a financially responsible manner; and
- (3) failure to structure and administer student assistance programs so that they operate in a fair and equitable manner”.

Paper: Dr Kemp, by leave, presented the following paper:

AUSTUDY—Review for Department of Employment, Education and Training.

Debate continued.

Limitation of debate: At 9.05 p.m., the Deputy Speaker having called the attention of the House to the fact that the time allotted for the second reading had expired—

Amendment negatived.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

The House resolved itself into a committee of the whole.

In the committee

Clauses 1 to 19, by leave, taken together and agreed to.

Clause 20—

Dr Kemp, by leave, moved the following amendments together:

Page 6, line 37, omit “52, 53 and 54”, substitute “52 and 53”.

Page 7, omit proposed section 54.

Debate continued.

Limitation of debate: At 9.10 p.m., the Deputy Chairman having called the attention of the committee to the fact that the time allotted for the committee stage had expired—

Amendments agreed to.

Clause, as amended, agreed to.

Question—That the remainder of the Bill and the amendment circulated by the Government be agreed to, and that the Bill be reported with amendments—put and passed.

The amendment circulated by the Government was accordingly made in the Bill, and is as follows: Clause 22, page 8, line 18, omit paragraph (a), substitute the following paragraph:

“(a) by omitting paragraph (a) and substituting the following paragraphs:

‘(a) making provision in relation to the furnishing of information by applicants for benefits under the AUSTUDY scheme or a current special educational assistance scheme and by persons to whom such benefits have been granted; and

(ab) making provision in relation to the furnishing of information relating to persons whose income or assets are required to be taken into account for the purpose of calculating a benefit under the AUSTUDY scheme or under a current special educational assistance scheme; and’.”.

The House resumed; Mr Hollis reported accordingly.

On the motion of Mr Baldwin (Minister for Higher Education and Employment Services), the House adopted the report.

Mr Baldwin moved—That the Bill be now read a third time.

Debate ensued.

Question—put and passed—Bill read a third time.

11 **COPYRIGHT AMENDMENT BILL 1990:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed by Mr Peacock who moved, as an amendment—That all words after “That” be omitted with a view to substituting the following words: “whilst not declining to give the Bill a second reading, the House is of the opinion that the anti-competitive protection that the importation provisions of the *Copyright Act 1968* give to the trade and distribution of copyright articles should be removed by the repeal of those provisions and, to this end, calls upon the Government to:

- (1) pursue in the international negotiations by Contracting Parties to the General Agreement on Tariffs and Trade in the Uruguay Round of multilateral trade negotiations the promotion of a uniform and universal regime for the protection of, and trade in, intellectual property rights; and
- (2) seek clarification of and, if necessary, amendment to the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention with respect to the application or otherwise of the provisions of those conventions to trade and distribution in intellectual property rights”.

Debate continued.

Paper: Mr Duffy (Attorney-General) presented an explanatory memorandum to the Government amendments to the Bill.

Amendment negatived.

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

The House resolved itself into a committee of the whole.

In the committee

Clause 1 agreed to.

Proposed new clause—

Mr Peacock moved—That the following new clause be inserted in the Bill:

Commencement

“1A. This Act commences 3 months after the day on which it receives the Royal Assent.”.

Debate ensued.

Proposed new clause negatived.

Clause 2—

Mr Peacock moved the following amendment: Page 1, before paragraph (a) insert the following paragraph:

“(aa) by inserting in the definition of ‘infringing copy’ after the words ‘the copyright in the work, recording, film, broadcast or edition or,’ the following words ‘subject to Part IVA’”.

Debate continued.

Amendment negatived.

On the motion of Mr Duffy, the following amendment was made: Page 2, paragraph 2 (b), proposed definition of “non-infringing book”, lines 2 and 3, omit “in a prescribed country (other than Australia)”, substitute “(otherwise than under a compulsory licence) in a country specified in regulations made for the purposes of subsection 184 (1), being a book”.

Clause, as amended, agreed to.

Clause 3—

Mr Peacock moved the following amendment: Page 2, lines 6 to 8, omit the clause, substitute the following clause:

Infringement by importation for sale or hire

“3. Section 37 of the Principal Act is amended:

- (a) by omitting ‘The copyright’ and substituting ‘Subject to section 44A and Part IVA, the copyright’;
- (b) by omitting from subsection (1) ‘where, to his knowledge,’ and substituting ‘if the person knew, or ought reasonably to have known, that’.”.

Debate continued.

Amendment negated.

Clause agreed to.

Clause 4—

Mr Peacock moved the following amendment: Page 2, lines 9 to 12, omit the clause, substitute the following clause:

Infringement by sale and other dealings

“4. Section 38 of the Principal Act is amended:

- (a) by omitting ‘The copyright’ and substituting ‘Subject to section 44A and Part IVA, the copyright’;
- (b) by omitting from subsection (1) ‘where, to his knowledge,’ and substituting ‘if the person knew, or ought reasonably to have known, that’.”.

Amendment negated.

Clause agreed to.

Clause 5—

On the motion of Mr Duffy, the following amendment was made: Page 2, proposed subsection 44A(1), lines 16 and 17, omit “a work first published in a country other than Australia”, substitute “an overseas work first published”.

Mr Peacock moved the following amendment: Page 3, line 31, after paragraph (c) insert the following word and paragraph:

“or

- (d) a book, the primary purpose of the publication of which is for use by students of an educational institution as a book required for a course of study at that institution;”.

Debate continued.

Amendment negated.

On the motion of Mr Duffy, by leave, the following amendments were made together:

Page 2, proposed subsection 44A(2), lines 21 to 40, omit the proposed subsection, substitute the following subsection:

“(2) Subject to this section, the copyright in:

- (a) an overseas work first published before the commencing day; or
- (b) a work first published in Australia, whether before, on or after the commencing day;

is not infringed by a person who, without the licence of the owner of the copyright, imports a copy (in this subsection called “**the imported copy**”) of a hardback or paperback version of a non-infringing book into Australia for a purpose mentioned in paragraph 37 (a), (b) or (c) if:

- (c) the person had ordered in writing from the copyright owner, or the owner’s licensee or agent, one or more copies of that version of the book (not being second-hand copies or more copies than were needed to satisfy the person’s reasonable requirements); and

- (d) when the person ordered the imported copy, the original order mentioned in paragraph (c) had not been withdrawn or cancelled by, or with the consent of, the person and:
- (i) at least 7 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not notified the person in writing that the original order would be filled within 90 days after it was placed; or
 - (ii) at least 90 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not filled the order.”.

Page 3—

After proposed subsection 44A (4) insert the following subsection:

“(4A) Subsection (2) does not apply to the importation of a copy of a hardback version of a non-infringing book into Australia if the copyright owner, or his or her licensee or agent, is able to supply in Australia enough copies of a paperback version of the book to fill any reasonable order.”.

Proposed subsection 44A (5), line 16, omit “subparagraph (2) (b) (ii)”, substitute “paragraph (2) (d)”.

Proposed subsection 44A (6), lines 21 to 24, omit the proposed subsection.

Proposed subsection 44A (7), add at the end the following definition:

“‘overseas work’ means a work:

- (a) that was first published in a country other than Australia; and
- (b) that was not published in Australia within 30 days after its first publication in that other country.”.

Clause, as amended, agreed to.

Clause 6—

Mr Peacock moved the following amendment: Page 3, lines 34 to 36, omit the clause, substitute the following clause:

Infringement by importation for sale or hire

“6. Section 102 of the Principal Act is amended:

- (a) by omitting ‘A copyright’ and substituting ‘Subject to section 112A and Part IVA, a copyright’;
- (b) by omitting from subsection (1) ‘where, to his knowledge,’ and substituting ‘if the person knew, or ought reasonably to have known, that’.”.

Amendment negated.

Clause agreed to.

Clause 7—

Mr Peacock moved the following amendment: Page 4, lines 1 to 4, omit the clause, substitute the following clause:

Infringement by sale and other dealings

“7. Section 103 of the Principal Act is amended:

- (a) by omitting ‘A copyright’ and substituting ‘Subject to section 112A and Part IVA, a copyright’;
- (b) by omitting from subsection (1) ‘where, to his knowledge,’ and substituting ‘if the person knew, or ought reasonably to have known, that’.”.

Amendment negated.

Clause agreed to.

Clause 8—

On the motion of Mr Duffy, by leave, the following amendments were made together:

Page 4—

Proposed subsection 112A (1), lines 8 and 9, omit “a published edition of a work, being an edition first published in a country other than Australia”, substitute “an overseas edition first published”.

Proposed subsection 112A (2), lines 13 to 33, omit the proposed subsection, substitute the following subsection:

“(2) Subject to this section, the copyright in:

(a) an overseas edition first published before the commencing day; or

(b) a published edition of a work, being an edition first published in Australia, whether before, on or after the commencing day; is not infringed by a person who, without the licence of the owner of the copyright, imports a copy (in this subsection called the “**imported copy**”) of a hardback or paperback version of a non-infringing book into Australia for a purpose mentioned in paragraph 102 (a), (b) or (c) if:

(c) the person had ordered in writing from the copyright owner, or the owner’s licensee or agent, one or more copies of that version of the book (not being second-hand copies or more copies than were needed to satisfy the person’s reasonable requirements); and

(d) when the person ordered the imported copy, the original order mentioned in paragraph (c) had not been withdrawn or cancelled by, or with the consent of, the person and:

(i) at least 7 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not notified the person in writing that the original order would be filled within 90 days after it was placed; or

(ii) at least 90 days had elapsed since the person placed the original order and the copyright owner, licensee or agent had not filled the order.”.

Page 5—

After proposed subsection 112A (4) insert the following subsection:

“(4A) Subsection (2) does not apply to the importation of a copy of a hardback version of a non-infringing book into Australia if the copyright owner, or his or her licensee or agent, is able to supply in Australia enough copies of a paperback version of the book to fill any reasonable order.”.

Proposed subsection 112A (5), line 9, omit “subparagraph (2) (b) (ii)”, substitute “paragraph (2) (d)”.

Proposed subsection 112A (6), lines 14 to 17, omit the proposed subsection.

Mr Peacock moved the following amendment: Page 5, line 24, after paragraph (c) insert the following word and paragraph:

“or

(d) a book, the primary purpose of the publication of which is for use by students of an educational institution as a book required for a course of study at that institution;”.

Amendment negatived.

On the motion of Mr Duffy, the following amendment was made: Page 5, proposed subsection 112A (7), add at the end the following definition:

“‘**overseas edition**’ means a published edition of a work, being an edition:

(a) that was first published in a country other than Australia; and

- (b) that was not published in Australia within 30 days after its first publication in that other country.”.

Proposed new clauses—

Mr Peacock moved that the following new clauses be added to the Bill:

Insertion of new Part IVA

“9. After Part IV of the Principal Act the following Part is inserted:

**‘PART IVA—IMPORTATION OF WORKS AND
SUBJECT MATTER OTHER THAN WORKS**

Application of Part

‘113A. (1) This Part has effect notwithstanding sections 37, 38, 102, 103, 132 and 135.

‘(2) This Part applies to the importation of works and subject matter other than works but does not apply to a non-infringing book whose importation does not constitute an infringement of copyright by virtue of the provisions in sections 44A or 112A.

‘(3) This Part does not apply to the importation of works and subject matter other than works comprised of:

- (a) a computer program or a manual sold with a computer program for use in connection with that program;
- (b) a book the main content of which is one or more musical works, with or without any related literary, dramatic or artistic work;
- (c) a periodical publication; or
- (d) a book, the primary purpose of the publication of which is for use by students of an educational institution as a book required for a course of study at that institution.

‘(4) Subsection (3), unless sooner repealed, shall cease to be in force at the expiration of two years after the date of commencement of this Part.

**Importation for sale or hire not an infringement of section 37
in certain circumstances**

‘113B. (1) The provisions of section 37 are not infringed where:

- (a) a person imports an article into Australia and, at the time of the importation, is satisfied after reasonable investigation that copies of the article (not being second-hand copies) or articles substantially similar thereto, cannot be obtained in Australia from the copyright owner or his or her licensee or agent within a reasonable time; or
- (b) a person imports an article into Australia and the article is imported pursuant to a written order signed by another person in which it is stated by that person that the article is required otherwise than for the purpose of:
 - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
 - (ii) distributing the article:
 - (A) for the purpose of trade; or
 - (B) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or
 - (iii) by way of trade exhibiting the article in public.

‘(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to section 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

‘(3) A person relying upon this section shall carry the onus of proving the matters specified in subsections (1) and (2).

‘(4) A person who makes a statement pursuant to paragraph (1)(b) which is false to his or her knowledge is liable to pay to any person

who suffers loss as a consequence of the making of such a statement the amount of such loss.

'(5) The amount of the loss referred to in subsection (4) is a debt due to the person who has suffered the loss and is recoverable by him or her from the person making the statement in a court of competent jurisdiction.

Sale and other dealings not an infringement of section 38 in certain circumstances

'113C. (1) The provisions of section 38 are not infringed where a person in Australia, and without the licence of the owner of the copyright:

- (a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an imported article; or
- (b) by way of trade exhibits an imported article in public; and either,
 - (c) the person importing it was satisfied after reasonable investigation that, at the time of the importation of the article, copies of the article (not being second-hand copies) or articles substantially similar thereto, could not be obtained in Australia from the copyright owner or his or her licensee or agent within a reasonable time; or
 - (d) the article was imported pursuant to a written order signed by another person in which that person stated that the article was required otherwise than for the purposes of:
 - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
 - (ii) distributing the article:
 - (A) for the purpose of trade; or
 - (B) for any other purpose to an extent that would affect prejudicially the owner of the copyright; or
 - (iii) by way of trade exhibiting the article in public.

'(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to section 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

'(3) A person relying upon this section shall carry the onus of proving the matters specified in subsections (1) and (2).

'(4) A person who makes a statement pursuant to paragraph (1)(d) which is false to his or her knowledge is liable to pay to any person who suffers loss as a consequence of the making of such a statement the amount of such loss.

'(5) The amount of the loss referred to in subsection (4) is a debt due to the person who has suffered the loss and is recoverable by him or her from the person making the statement in a court of competent jurisdiction.

Sections 37 and 38 not to apply where copyright only subsists in a label or mark on the article or on packaging or container

'113D. (1) Section 37 and, so far as it applies to imported articles, section 38 of this Act, do not apply to an article by reason only that copyright subsists in a label or mark (whether a trade mark within the meaning of the *Trade Marks Act 1955* or not) which is affixed or attached to the article or to the packaging or container in which the article is packed or contained.

'(2) Subsection (1) does not apply if the owner of the copyright in the label or mark has not consented to or authorised the use of his or her work for the purposes of the label or mark.

Regulations

'113E. (1) Regulations may be made prescribing periods of time which are reasonable times for the purposes of paragraph 113B(1)(a) and paragraph 113C(1)(c) of this Act.

'(2) Any regulations prescribed pursuant to subsection (1) may be made in relation to all reproductions of particular works, or reproductions of particular classes of works or particular articles which are reproductions of a work or works.

Importation for sale or hire not an infringement of section 102 in certain circumstances

'113F. (1) The provisions of section 102 are not infringed where:

- (a) a person imports an article into Australia and, at the time of the importation, is satisfied after reasonable investigation that copies of the article (not being second-hand copies) or articles substantially similar thereto, cannot be obtained in Australia from the copyright owner or his or her licensee or agent within a reasonable time; or
- (b) a person imports an article into Australia and the article is imported pursuant to a written order signed by another person in which it is stated by that person that the article is required otherwise than for the purpose of:
 - (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
 - (ii) distributing the article:
 - (A) for the purpose of trade; or
 - (B) for any other purpose to an extent that will affect prejudicially the owner of the copyright; or
 - (iii) by way of trade exhibiting the article in public.

'(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to section 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

'(3) A person relying upon this section shall carry the onus of proving the matters specified in subsections (1) and (2).

'(4) A person who makes a statement pursuant to paragraph (1)(b) which is false to his or her knowledge is liable to pay to any person who suffers loss as a consequence of the making of such a statement the amount of such loss.

'(5) The amount of the loss referred to in subsection (4) is a debt due to the person who has suffered the loss and is recoverable by him or her from the person making the statement in a court of competent jurisdiction.

Sale and other dealings not an infringement of section 103 in certain circumstances

'113G. (1) The provisions of section 103 are not infringed where a person, in Australia, and without the licence of the owner of the copyright:

- (a) sells, lets for hire, or by way of trade offers or exposes for sale or hire, an imported article; or
 - (b) by way of trade exhibits an imported article in public;
- and either
- (c) the person importing it was satisfied after reasonable investigation that, at the time of the importation of the article, copies of the article (not being second-hand copies) or articles substantially similar thereto, could not be obtained in Australia from the

copyright owner or his or her licensee or agent within a reasonable time; or

- (d) the article was imported pursuant to a written order signed by another person in which that person stated that the article was required otherwise than for the purposes of:
- (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
 - (ii) distributing the article:
 - (A) for the purpose of trade; or
 - (B) for any other purpose to an extent that would affect prejudicially the owner of the copyright; or
 - (iii) by way of trade exhibiting the article in public.

'(2) This section shall not apply to an article unless it is made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to section 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

'(3) A person relying upon this section shall carry the onus of proving the matters specified in subsections (1) and (2).

'(4) A person who makes a statement pursuant to paragraph (1)(d) which is false to his or her knowledge is liable to pay to any person who suffers loss as a consequence of the making of such a statement the amount of such loss.

'(5) The amount of the loss referred to in subsection (4) is a debt due to the person who has suffered the loss and is recoverable by him or her from the person making the statement in a court of competent jurisdiction.

Regulations

'113H. (1) Regulations may be made prescribing periods of time which are reasonable times for the purposes of paragraphs 113F(1)(a) and 113G(1)(c) of this Act.

'(2) Any regulations prescribed pursuant to subsection (1) may be made in relation to all copies of particular subject matter, or copies of particular classes of subject matter or particular articles which are copies of one or more items of subject matter.'

Offences

"10. Section 132 of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsections:

'(1A) A person shall not, at a time when copyright subsists in a work, import an article into Australia for the purpose of:

- (a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;
- (b) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or
- (c) by way of trade exhibiting the article in public;

if:

- (d) the person knows or ought reasonably to know the article to be an infringing copy of the work; and
- (e) the article was not made in Australia or in a country specified in Part I or Part II of Schedule 1 to the Copyright (International Protection) Regulations made pursuant to section 184 of this Act as in force from time to time with the consent of, or under licence from, the owner, in the country of manufacture, of the copyright in the work of which the article is said to be a reproduction.

'(1B) In a prosecution for an offence under subsection (1A), proof that the person importing the article knew or ought reasonably to have known that the article was an infringing copy of the work shall be prima facie evidence of the matters specified in paragraph (1A) (e).';

(b) by inserting after subsection (5) the following subsection:

'(5A) A person shall not make, or cause to be made, a statement in an order referred to in subsection 113B (1), 113C (1), 113F (1) or 113G (1) which he or she knows to be false or misleading.'"

Debate ensued.

Proposed new clauses negatived.

Title agreed to, after debate.

Bill to be reported with amendments.

The House resumed; Mr Nehl reported accordingly.

On the motion of Mr Duffy, the House adopted the report, and the Bill was read a third time.

12 **DEPARTURE TAX AMENDMENT BILL 1991:** The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

The House continuing to sit until after midnight—

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Limitation of debate: At midnight, Mr Speaker having called the attention of the House to the fact that the time allotted for the remaining stages of the Bill had expired—

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

Further question—That the remaining stages of the Bill be agreed to—put and passed—Bill read a third time.

13 **ADJOURNMENT:** Mr Beazley (Leader of the House) moved—That the House do now adjourn.

Question—put and passed.

And then the House, at 12.01 a.m., adjourned until this day at 10 a.m.

PAPERS: The following papers were deemed to have been presented on 14 May 1991:

Lands Acquisition Act—Statement of lands acquired by agreement authorised under subsection 40 (1).

Treaties—Text of—

Which have been signed for Australia but requiring further action before entering into force for Australia—

- (1) Agreement with Hong Kong concerning the Investigation and Confiscation of the Proceeds of Drug Trafficking, done at Hong Kong on 22 April 1991.
- (2) Additional Protocols 3 and 4 (done at Montreal on 25 September 1975) amending the Convention for the Unification of Certain Rules relating to International Carriage by Air of 12 October 1929, as amended. Signed for Australia 24 April 1991. The Protocols are not yet in force generally.
- (3) Agreement with the Netherlands concerning the Provision of Medical Treatment, done at Canberra on 5 April 1991.

- (4) Social Security Agreement with Ireland, done at Canberra on 8 April 1991.
- (5) Double Taxation Agreement with Kiribati, done at Canberra on 25 March 1991.
- (6) Investment Promotion and Protection Agreement with Vietnam, done at Canberra on 5 March 1991.
- (7) Trade Agreement (PATCRA II) with Papua New Guinea, Agreed Minutes and two Exchanges of Letters, done at Canberra on 21 February 1991.
- (8) Social Security Agreement with the Netherlands, done at The Hague on 4 January 1991.
- (9) Double Taxation Agreement with Hungary, done at Canberra on 29 November 1990.

Which have been signed for Australia and which have entered into force—

- (10) Defence Logistics Support Agreement with New Zealand, done at Wellington on 11 April 1991. Entry into force 11 April 1991.
- (11) Agreement with the United States of America concerning NAVSTAR Global Positioning System, done at Washington on 7 February 1991. Entry into force 7 February 1991.
- (12) Exchange of Notes constituting an Agreement with Sweden concerning Nuclear Transfers to Third Countries, done at Stockholm on 15 January 1991. Entry into force 15 January 1991.
- (13) Agreement establishing the South Pacific Applied Geoscience Commission, done at Tarawa on 10 October 1990. Signed for Australia 4 January 1991 with effect from 3 February 1991.
- (14) Exchange of Notes (done at Canberra on 13-16 December 1990) extending the Scientific and Technical Co-operation Agreement with the United States of America of 16 October 1968. Entry into force retrospectively from 16 October 1990.
- (15) Defence Research and Technology Agreement with France, done at Canberra on 17 December 1990. Entry into force 17 December 1990.
- (16) Subsidiary Agreement with Japan on Tuna Fishing, done at Canberra on 30 November 1990. Entry into force 30 November 1990.
- (17) Exchange of Notes (done at Beijing on 17 August- 15 October 1987) amending the Technical Co-operation Agreement with the People's Republic of China of 2 October 1981. Entry into force retrospectively from 17 February 1987.
- (18) Exchange of Notes (done at Moscow on 21 December 1989-7 February 1990) amending the Agriculture Co-operation Agreement with the USSR of 20 November 1986. Entry into force 7 February 1990.

Which has been signed for Australia and which entered into force pursuant to a subsequent exchange of notes—

- (19) Cultural, Educational and Scientific Co-operation Agreement with Spain, done at Madrid on 18 January 1991. Entry into force 15 April 1991 pursuant to an exchange of Notes of 18 March-15 April 1991.

Which have been acceded to, or accepted for, Australia—

- (20) Amendment (done at Rome on 12 December 1989) to UNIDROIT Statute of 15 March 1940, as amended. Accepted for Australia 10 January 1991. The Amendment is not yet in force.
- (21) Convention on Limitation of Liability for Maritime Claims, done at London on 19 November 1976. Acceded to by Australia 20 February 1991 with effect from 1 June 1991.

- (22) Protocol (done at Brussels on 22 June 1988) amending the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences of 9 June 1977. Accepted for Australia 24 December 1990. The Protocol has not yet entered into force.
- (23) Amendments (done at Nicosia on 3 May 1990) to the Commonwealth Telecommunications Organisation Financial Agreement of 30 March 1983. Accepted for Australia 1 December 1990 with retrospective effect from 1 April 1990.
- (24) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988. Acceded to by Australia 23 October 1990 with effect from 22 November 1990.

ATTENDANCE: All Members attended (at some time during the sitting) except Mr Gorman*, Mr Lee, Mr Punch and Mrs Sullivan.

*On leave

L. M. BARLIN
Clerk of the House of Representatives