

1996-97

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VOTES AND PROCEEDINGS

No. 126

MONDAY, 17 NOVEMBER 1997

1 The House met, at 12.30 p.m., pursuant to adjournment. The Speaker (the Honourable Bob Halverson) took the Chair, and read Prayers.

2 ENVIRONMENT, RECREATION AND THE ARTS—STANDING COMMITTEE—REPORT—STATEMENTS BY MEMBERS—MOTION TO TAKE NOTE OF PAPER

Mr Causley (Chair) presented the following papers:

Environment, Recreation and the Arts—Standing Committee—Rethinking the funding of community sporting and recreational facilities: A sporting chance—Report, October 1997.

Evidence received by the committee.

Minutes of proceedings.

Ordered—That the report be printed.

Mr Causley, Mr Martin, Mr Hockey, Mrs Crosio and Mr Billson made statements in connection with the report.

Mr Causley moved—That the House take note of the report.

Mr Causley was granted leave to continue his speech when the debate is resumed.

In accordance with standing order 102B, the debate was adjourned, and the resumption of the debate made an order of the day for the next sitting.

3 FAMILY AND COMMUNITY AFFAIRS—STANDING COMMITTEE—REPORT—STATEMENTS BY MEMBERS—MOTION TO TAKE NOTE OF PAPER

Mr Forrest (Chair) presented the following papers:

Family and Community Affairs—Standing Committee—Concessions: Who benefits?—Concession card availability and eligibility for concessions—Report, October 1997.

Evidence received by the committee.

Minutes of proceedings.

Ordered—That the report be printed.

Mr Forrest, Mr Quick, Mr Slipper and Mr A. A. Morris made statements in connection with the report.

The time for consideration of committee and delegation reports having expired—

Mr Forrest moved—That the House take note of the report.

Mr Forrest was granted leave to continue his speech when the debate is resumed.

In accordance with standing order 102B, the debate was adjourned, and the resumption of the debate made an order of the day for the next sitting.

4 DIABETES

Mr Hollis, pursuant to notice, moved—That this House:

- (1) recognises that 14 November 1997 was World Diabetes Day;
- (2) commends the Government for its recognition of the seriousness of diabetes in making it one of the five health priorities;
- (3) recognises that an increasing proportion of the Australian population is affected by diabetes, in that every twelve minutes someone, somewhere in Australia is diagnosed with this chronic disease; and
- (4) urges the Government to continue funding research into diabetes and the National Diabetes Strategy and to promote a widespread education campaign through Diabetes Australia to alert the population of the risks of developing the disease.

Debate ensued.

At 1.45 p.m., the time allotted for the debate having expired, the debate was interrupted in accordance with standing order 106A, Dr Southcott was granted leave to continue his speech when the debate is resumed, and the resumption of the debate was made an order of the day for the next sitting.

5 MEMBERS' STATEMENTS

Members' statements were made.

6 QUESTIONS

Questions without notice being asked—

Member ordered to withdraw

At 2.17 p.m. the Member for Prospect (Mrs Crosio) was ordered, under standing order 304A, to withdraw from the House for one hour for continuing to interject after a warning had been given from the Chair, and she accordingly withdrew from the Chamber.

Questions without notice continuing—

Paper

Mr Fischer (Minister for Trade) presented the following paper:

APEC—Australia's individual action plan, November 1997.

Questions without notice continued.

7 PETITIONS

The Clerk announced that the following Members had each lodged petitions for presentation, viz.:

Mr Anderson, Mr M. J. Ferguson and Mr W. L. Smith, from 17, 76 and 62 pensioners, superannuants and retirees, respectively, praying that funding be provided to the Australian Pensioners' and Superannuants' Federation.

Mr Latham and Ms Macklin, from 30 and 1310 petitioners, respectively, praying that nursing home care be available to all and that the family home be exempted from assets tests relating to payment for such care.

Mr Bevis, from 83 residents of Queensland, praying that the decision to cut funding to the ABC be rescinded.

Mr Bevis, from 42 residents of Queensland, praying that the proposal to introduce nursing home entry fees be abandoned and full funding for capital assistance to nursing homes be restored.

Mr Bevis, from 13 petitioners, praying that a high profile anti-racism campaign be mounted.

Mr M. J. Evans, from 728 electors of the Division of Adelaide, praying that the Sefton Park, SA, Medicare office retain its functions.

Mr M. J. Ferguson, from 32 residents of Victoria, praying that the measures to introduce income tested extra daily fees and accommodation bonds for aged care be repealed.

Mr Sercombe, from 55 residents of Victoria, in similar terms.

Mr Latham, from 18 residents of south west Sydney, praying that the recommendations of the Fair Trading Inquiry be implemented.

Dr Lawrence, from 550 petitioners, praying that certain action be taken to protect high conservation value forests.

Mr P. F. Morris, from 249 petitioners, praying that the ban on the importation of cooked chicken meat be maintained.

Mr Reid, from 18 petitioners, praying that certain action be taken regarding care for frail aged people.

Mr M. A. J. Vaile, from 165 electors of the Division of Lyne, praying that SBS Television be extended to the mid-north coast of New South Wales.

Mrs West, from 170 electors of the Division of Bowman, praying that the Wynnum, Qld, Medicare office be maintained.

Petitions received.

8 RURAL WOMEN CENSUS DATA

Mrs Bailey, pursuant to notice, moved—That this House:

- (1) recognises the important contribution by rural women to the national economy and local community infrastructure;
- (2) acknowledges that Census data does not accurately record the economic or voluntary contribution by rural women;

- (3) believes that this lack of accurate Census data should be addressed by changes to the Census form that will enable rural women to record the true extent of their economic and voluntary contribution; and
- (4) calls on the Government to refer these proposed changes to the Australian Bureau of Statistics.

Debate ensued.

The time allotted for the debate having expired, the debate was interrupted, and the resumption of the debate made an order of the day for the next sitting.

9 AUSTRALIAN SPORTSMEN AND SPORTSWOMEN

Mr R. D. C. Evans, pursuant to notice, moved—That this House:

- (1) expresses its warmest congratulations to the many Australian sportsmen and sportswomen who have achieved so much recently representing themselves and their country to the highest levels;
- (2) recognises our world champions—Cathy Freeman, Michael Doohan and the mens under 23 basketball team—and congratulates them on their achievement;
- (3) congratulates our Pan Pac swimming team, the Australian cricket team, Karrie Webb, the Australian world athletics team and the Australian cycling team on their achievements; and
- (4) asks the Australian media to become more responsible when reporting sporting achievement and commenting about our sporting champions.

Debate ensued.

The time allotted for private Members' business having expired, the debate was interrupted, the resumption of the debate made an order of the day for the next sitting, and Mr K. J. Thomson was granted leave to continue his speech when the debate is resumed.

10 GRIEVANCE DEBATE

Pursuant to the provisions of standing order 106, the order of the day having been read—

Question proposed—That grievances be noted.

Debate ensued.

Question—That grievances be noted—put and passed.

11 AUDITOR-GENERAL'S REPORTS

The Deputy Speaker presented the following papers:

Audit Act—Auditor-General—Audit reports of 1997-98—Performance audits—

No. 12—Pharmaceutical Benefits Scheme: Department of Health and Family Services.

No. 13—The third tranche sale of the Commonwealth Bank of Australia.

Severally ordered to be printed.

12 PUBLIC ACCOUNTS—JOINT COMMITTEE

Mr Somlyay (Minister for Regional Development, Territories and Local Government), by leave, moved—That Mr P. J. Baldwin be discharged from attendance on the Joint Committee of Public Accounts, and that, in his place, Mrs Crosio be appointed a member of the committee.

Question—put and passed.

13 MESSAGES FROM THE GOVERNOR-GENERAL—ASSENT TO BILLS

Messages from His Excellency the Governor-General were announced informing the House that His Excellency, in the name of Her Majesty, had assented to the following Bills:

3 November 1997—Message No. 210—

Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) 1997.

National Road Transport Commission Amendment 1997.

11 November 1997—Message No. 211—

Health Insurance Commission (Reform and Separation of Functions) 1997.

Telecommunications (Interception) and Listening Device Amendment 1997.

Excise Tariff (Fuel Rates Amendments) 1997.

Customs Tariff (Fuel Rates Amendments) 1997.

Fuel Misuse (Penalty Surcharge) 1997.

Fuel Sale (Penalty Surcharge) 1997.

Fuel Blending (Penalty Surcharge) 1997.

Fuel (Penalty Surcharges) Administration 1997.

Customs and Excise Legislation Amendment (No. 2) 1997.

Customs Tariff Amendment (No. 4) 1997.

Excise Tariff Amendment (No. 4) 1997.

14 STANDING COMMITTEES—MEMBERSHIP

The House was informed of the nominations by the Chief Opposition Whip of Members to be members of the following committees:

Communications, Transport and Microeconomic Reform—Standing Committee

Mr Hollis in place of Mr Albanese.

Electoral Matters—Joint Standing Committee

Mr Griffin in place of Mr McClelland.

Environment, Recreation and the Arts—Standing Committee

Mr Kerr and Mr Mossfield in place of Mr Martin and Mrs Crosio.

Family and Community Affairs—Standing Committee

Mr Jenkins in place of Mr Kerr.

Financial Institutions and Public Administration—Standing Committee

Mr Martin in place of Mr McMullan.

Legal and Constitutional Affairs—Standing Committee

Mr Price in place of Mr K. J. Thomson.

Migration—Joint Standing Committee

Mr M. J. Ferguson in place of Mr Kerr.

Primary Industries, Resources and Rural and Regional Affairs—Standing Committee

Mr O'Connor in place of Mr Crean.

15 MESSAGES FROM THE SENATE

Messages from the Senate were reported:

- (a) acquainting the House that Senator Stott Despoja had been discharged from attendance on the Joint Standing Committee on Migration, and that Senator Bartlett had been appointed a member of the committee—Message No. 367, 30 October 1997;
- (b) returning the Excise Tariff Amendment Bill (No. 1) 1997 and acquainting the House that the Senate does not insist upon its amendments disagreed to by the House of Representatives—Message No. 369, 10 November 1997; and
- (c) acquainting the House that Senator Troeth had been discharged from attendance on the Joint Standing Committee on Migration, and that Senator Eggleston had been appointed a member of the committee—Message No. 370, 10 November 1997.

16 MESSAGE FROM THE SENATE—TELECOMMUNICATIONS LEGISLATION AMENDMENT BILL 1997

Message No. 368, 30 October 1997, from the Senate was reported transmitting for the concurrence of the House a Bill for an Act to amend the law relating to telecommunications, and for related purposes.

Bill read a first time.

Ordered—That the second reading be made an order of the day for the next sitting.

17 MESSAGE FROM THE SENATE

Message No. 371, 10 November 1997, from the Senate was reported returning the Charter of Budget Honesty Bill 1996 and acquainting the House that the Senate insists upon its amendments disagreed to by the House of Representatives and desires the reconsideration of the Bill by the House in respect of the amendments.

Ordered—That the message be considered at the next sitting.

18 SUSPENSION OF STANDING AND SESSIONAL ORDERS—LEGISLATIVE INSTRUMENTS BILL 1996

Mr Williams (Attorney-General), by leave, moved—That so much of the standing and sessional orders be suspended as would prevent the Attorney-General moving amendments to the Legislative Instruments Bill 1996 during the consideration of the amendments made by the Senate to the Bill.

Question—put and passed.

19 LEGISLATIVE INSTRUMENTS BILL 1996—SENATE'S AMENDMENTS

The order of the day having been read for the consideration of the amendments made by the Senate, viz.:

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

- (1) Clause 4, page 3 (after line 3), after the definition of *explanatory statement*, insert:

gender specific language means language that expresses bias in favour of one sex.
- (2) Clause 4, page 5 (line 33), at the end of subclause (3), add:

; and (d) a reference in this Act to a rule-maker who makes, or proposes to make, a legislative instrument includes a reference to the person who is, or will be, taken to be the rule-maker of the instrument in spite of the fact that that person may not actually make, or may not propose to make, the instrument concerned.
- (3) Clause 5, page 7 (after line 22), after subclause (4), insert:
 - (4A) A declaration in a legislative instrument (whether the declaration is included in the instrument, before, on or after the commencing day) to the effect that another instrument will not be, or is not, a legislative instrument for the purposes of this Act is of no effect unless:
 - (a) the Attorney-General has given the rule-maker a certificate, in writing, before the inclusion of the declaration in the first-mentioned instrument, that he or she agrees to the inclusion of the declaration in the first-mentioned instrument; and
 - (b) the certificate sets out the reasons for so agreeing.
- (4) Clause 8, page 11 (after line 32), at the end of the clause, add:
 - (12) A certificate given on an application under subsection (2) to the effect that an instrument of a particular kind will not be a legislative instrument is a disallowable instrument for the purposes of section 46B of the *Acts Interpretation Act 1901*.
 - (13) If a House of the Parliament disallows a certificate mentioned in subsection (12) in relation to an instrument of a particular kind, instruments of that kind, whether made before, on or after the day of disallowance, are taken to be legislative instruments.

(14) If:

- (a) an instrument was made before the commencing day; and
- (b) the Attorney-General has issued a certificate to the effect that an instrument of that kind made on or after that day, is not a legislative instrument; and
- (c) the certificate was subsequently disallowed by either House of the Parliament; and
- (d) the last day for lodgment of that instrument for registration, worked out in accordance with section 49, had already passed on the day the certificate was so disallowed (the *disallowance day*) or would pass in less than 3 working days after the disallowance day; and
- (e) within 3 working days after the disallowance day, the instrument was lodged for registration in Part B of the Register:

the instrument is taken to have been so lodged, and, upon its registration, to have been registered, in accordance with the requirements of this Act.

(15) If:

- (a) an instrument is made on or after the commencing day; and
- (b) the Attorney-General has issued a certificate to the effect that an instrument of that kind would not be a legislative instrument; and
- (c) the certificate was subsequently disallowed by either House of the Parliament; and
- (d) within 3 working days after the day on which the certificate was so disallowed, the instrument was lodged for registration under Part A of the Register;

then:

- (e) the instrument is taken to have been lodged, and, upon its registration, taken to have been registered, in accordance with the requirements of this Act; and
- (f) the instrument is taken to have been so registered on the day on which it was made; and
- (g) the date of its effect is to be determined accordingly.

(5) Clause 16, page 17 (after line 13), at the end of the clause, add:

- (3) In promoting measures to ensure that legislative instruments are of a high standard, the Principal Legislative Counsel must ensure that legislative instruments do not contain gender specific language unless it is necessary to identify persons by their sex.

(6) Clause 17, page 18 (lines 10 to 12), omit subparagraph (i), substitute:

- (i) that must be followed in relation to some legislative instruments likely to have a direct, or a substantial indirect, effect on any sector of the community or on the natural, Aboriginal, cultural or built environment, or which conflict with human rights legislation; and
- (7) Clause 18, page 19 (line 6), omit “, 30”.
- (8) Clause 20, page 19 (line 23), omit “sections 28 and 30”, substitute “section 28”.
- (9) Clause 21, page 20 (line 16), omit “sections 28 and 30”, substitute “section 28”.
- (10) Clause 21, page 20 (lines 26 and 27), omit paragraph (c), substitute:
 - (c) a statement of the direct and indirect social, environmental and economic costs and benefits of each such option; and
- (11) Clause 22, page 21 (line 25), omit “, 30”.
- (12) Clause 27, page 25 (line 24), omit “, 30”.
- (13) Clause 27, page 27 (lines 12 and 13), omit “, (iv), (v), (vi), (vii) or (viii)”.
- (14) Clause 27, page 27 (line 25), omit “or (2)(b)”.
- (15) Clause 27, page 28 (line 14), omit “or 30”.
- (16) Clause 27, page 28 (line 20), omit “or (2)(b)”.
- (17) Clause 28, page 28 (line 23) to page 30 (line 13), omit the clause, substitute:

28 Circumstances in which compliance with sections 20 to 25 is not required

- (1) Despite the inclusion of enabling legislation in the table set out in Schedule 2, the rule-maker is not required to comply with sections 20 to 25 in relation to the making of a legislative instrument that the rule-maker proposes to make under that enabling legislation if:
 - (a) the rule-maker is satisfied that:
 - (i) the instrument is required for reasons of urgency including, but not limiting the generality of the foregoing, reasons related to the prudential supervision of insurance, banking or superannuation or the regulation of financial markets; or
 - (ii) notice of the content of the instrument would enable individuals to gain an advantage over other persons without that notice; or
 - (iii) the instrument is a proclamation that provides solely for the commencement of that enabling legislation or of any provision of that enabling legislation; and
 - (b) if the rule-maker is satisfied of the matter referred to in subparagraph (a)(i) or (ii)—the regulatory review body has

- certified in writing that it is also satisfied of that matter and set out the reasons for being so satisfied; or
- (c) the Attorney-General has certified in writing that public interest requires that the instrument be excluded from the operation of sections 20 to 25.
- (2) Instruments made in reliance on subparagraph (1)(a)(i) cease to have effect 12 months after they are made.
- (3) An instrument the same in substance as an instrument which has ceased to have effect under subsection (2) may not be made in reliance on subparagraph (1)(a)(i).
- (18) Clause 30, page 33 (line 1) to page 35 (line 20), omit the clause.
- (19) Clause 31, page 36 (lines 3 to 17), omit subclause (2).
- (20) Clause 34, page 37 (line 21), omit “business”, substitute “any sector of the community or on the natural, Aboriginal, cultural or built environment, or which conflict with human rights legislation”.
- (21) Clause 34, page 38 (line 3), omit “business”, substitute “any sector of the community or on the natural, Aboriginal, cultural or built environment, or will conflict with human rights legislation”.
- (22) Clause 42, page 43 (after line 22), at the end of the clause, add:
- (4) Notwithstanding anything in this Act, the Principal Legislative Counsel must not register a legislative instrument if the instrument contains any gender specific language unless it is necessary to identify persons by their sex.
- (23) Clause 44, page 45 (after line 9), after subclause (2), insert:
- (2A) If the Attorney-General issues a certificate under subsection 5(4A) in relation to a declaration that, on or after the commencing day, is included in a legislative instrument, the explanatory statement relating to the legislative instrument in which, or by which, that declaration is included must be accompanied by a copy of the certificate.
- (24) Clause 52, page 53 (line 4), omit “or 66”.
- (25) Clause 52, page 54 (after line 19), after subparagraph (vii), insert:
- (viiia) whether gender specific language has been used in the instrument; and
- (26) Clause 61, page 63 (after line 11), after subclause (1), insert:
- (1A) Any reference in this Act to disallowance of a legislative instrument or a provision of a legislative instrument is deemed to include a reference to disallowance of part of a legislative instrument.
- (1B) If, within 15 sitting days of a legislative instrument being laid before each House, each House by resolution amends the legislative instrument or part of the legislative instrument in identical terms,

the legislative instrument as amended shall take effect according to those terms from the day of the later resolution.

- (27) Clause 61, page 65 (line 28) to page 66 (line 7), omit subclause (7).
- (28) Clause 61, page 66 (line 12), after “subsection”, insert “5(4A),”.
- (29) Clause 61, page 66 (line 13), omit “30(7), 66(7) or 66(9)”, substitute “or 30(7)”.
- (30) Clause 61, page 66 (lines 15 to 17), omit paragraph (d).
- (31) Part 6, page 71 (line 2) to page 75 (line 29), omit the Part.
- (32) Page 79 (after line 22), after clause 71, insert:

71A Annual reports on unnecessary instruments

- (1) As soon as practicable after 30 June in each year, each responsible Minister must cause a report to be prepared on:
 - (a) measures taken to determine whether the Register contains any instrument, made under enabling legislation administered by the Minister, which is no longer necessary; and
 - (b) action taken to remove from the Register any instrument which has been identified as no longer necessary.
- (2) The Minister must cause a copy of a report prepared under subsection (1) to be laid before each House of the Parliament on or before 31 October in each year.
- (33) Clause 72, page 80 (line 10), omit “Chairman”, substitute “Chair”.
- (34) Clause 72, page 80 (lines 25 to 27), omit paragraph (6)(c).
- (35) Clause 72, page 80 (line 29), omit “*National Food Authority Act 1991*”, substitute “*Australia New Zealand Food Authority Act 1991*”.
- (36) Clause 73, page 81 (line 18) to page 82 (line 10), omit the clause.
- (37) Schedule 1, page 84 (table item 8), omit the table item, substitute:

8 Standards under the *Australia New Zealand Food Authority Act 1991* if those standards are made before the end of the period of 6 years starting on the commencing day
- (38) Schedule 1, page 85 (table item 14), omit the table item.
- (39) Schedule 1, page 85 (table item 15), at the end of the item, add:

with the exception of instruments made under the *Remuneration Tribunal Act 1973*.
- (40) Schedule 4, page 102 (before line 3), before the amendments of the *Acts Interpretation Act 1901*, insert:

Aboriginal and Torres Strait Islander Commission Act 1989

1A Subclause 28(2) of Schedule 4

Repeal the subclause.

1B At the end of clause 28 of Schedule 4

Add:

Note: Section 59 of the *Federal Court of Australia Act 1976* provides that certain provisions of the *Legislative Instruments Act 1996* apply, with

modification, to Rules of Court made by the Court. Section 59A of the *Federal Court of Australia Act 1976* provides that regulations may be made modifying or adapting certain provisions of the *Legislative Instruments Act 1996* in their application to the Court.

- (41) Schedule 4, item 4, page 103 (line 23), omit “46A”, substitute “46AA”.
- (42) Schedule 4, page 107 (after line 8), after the amendments of the *Amendments Incorporation Act 1905*, insert:

Commonwealth Electoral Act 1918

6A Subsection 375(2)

Repeal the subsection.

6B At the end of section 375

Add:

Note: Section 86 of the *Judiciary Act 1903* provides that certain provisions of the *Legislative Instruments Act 1996* apply, with modifications, to Rules of Court made by the Court. Section 88 of the *Judiciary Act 1903* provides that regulations may be made modifying and adapting certain provisions of the *Legislative Instruments Act 1996* in their application to the Court.

- (43) Schedule 4, item 10, page 108 (line 27), after “Act”, insert “or any other provisions whose modification or adaptation would affect the operation of that Part”.
- (44) Schedule 4, item 12, page 109 (line 19), omit “under this Act”, substitute “by the Court under this Act or another Act”.
- (45) Schedule 4, item 12, page 109 (line 28), omit “under this Act”, substitute “by the Court under this Act or another Act”.
- (46) Schedule 4, item 13, page 110 (line 6), after “that Act”, insert “or any other provisions whose modification or adaptation would affect the operation of that Part”.
- (47) Schedule 4, item 13, page 110 (line 20), omit “or 30”.
- (48) Schedule 4, item 15, page 111 (line 15), after “that Act”, insert “or any other provisions whose modification or adaptation would affect the operation of that Part”.
- (49) Schedule 4, item 15, page 111 (line 30), omit “or 30”.
- (50) Schedule 4, item 16, page 112 (line 5), omit “under this section”, substitute “by the Court under this Act or another Act”.
- (51) Schedule 4, item 16, page 112 (line 15), omit “under this section”, substitute “by the Court under this Act or another Act”.
- (52) Schedule 4, item 18, page 112 (line 24), after “Act”, insert “or any other provisions whose modification or adaptation would affect the operation of that Part”.
- (53) Schedule 4, item 19, page 113 (line 6), after “substitution”, insert “for”.
- (54) Schedule 4, item 19, page 113 (line 8), omit “or 30”—

On the motion of Mr Williams (Attorney-General), Senate amendments (2), (3) (23), (28), (35), (37), (40) to (46), (48) and (50) to (53) were agreed to, after debate.

On the motion of Mr Williams, Senate amendments (1), (4) to (22), (24) to (27), (29) to (34), (36), (38), (39), (47), (49) and (54) were disagreed to, after debate.

Mr Williams moved the following amendments together:

Clause 61—

Page 66 (after line 14), after paragraph (8)(c), insert:

- (ca) a legislative instrument (other than a regulation) under Part 1, 2 or 9 of the *Migration Act 1958*, or a legislative instrument under Part 1, 2 or 5, or Schedule 2 or 6, of the regulations made under that Act;

Clause 66—

Page 71 (line 5), omit “that gives”, substitute “the sole or principal purpose of which is to give”.

Page 71 (line 7), omit “that confers”, substitute “the sole or principal purpose of which is to confer”.

Schedule 1, page 85, item 14 of the table in the Schedule, omit the item, substitute:

14 Instruments:

- (a) that determine terms and conditions of employment of persons employed by the Commonwealth, by Commonwealth statutory authorities or by government business enterprises, or as members of the Defence Force or the Australian Federal Police; and
- (b) that are not statutory rules within the meaning of the Statutory Rules Publication Act 1903 as in force immediately before the commencing day;

if those instruments are made before the end of the period of 6 years starting on the commencing day.

Schedule 4—

Page 107 (before line 9), before the amendments of the *Family Law Act 1975*, insert:

Defence Act 1903

6C Section 58C

Repeal the section, substitute:

58C Determinations are disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*

(1) This section applies to a determination under section 58B:

- (a) that is made before the day on which the *Legislative Instruments Act 1996* commences and that:

- (i) has not, before that day, been laid before a House of the Parliament; or

- (ii) has been laid before a House of the Parliament before that day but is still subject to disallowance; or
 - (b) that is made during the period of 6 years starting on that day.
- (2) Subject to subsections (3) and (4), a determination to which this section applies is taken to be a disallowable non-legislative instrument for the purposes of section 46B of the *Acts Interpretation Act 1901*.
- (3) Subsections 46B(2), (3), (4), (5), (6) and (7) of the *Acts Interpretation Act 1901* do not apply to a determination to which this section applies.
- (4) If a determination is a determination to which this section applies because it was laid before a House of the Parliament before the day on which the *Legislative Instruments Act 1996* commences but is still subject to disallowance, then, for the purpose of the operation of section 46B of the *Acts Interpretation Act 1901* in relation to the determination:
- (a) section 46B of the last-mentioned Act is taken to have been in force at the time when the determination was laid before that House; and
 - (b) the determination is to be treated as if it had been laid before that House, at the time when it was so laid, in accordance with the requirements of that section.
- (5) Section 67 of the *Legislative Instruments Act 1996* does not apply to a determination to which this section applies.

Page 113 (after line 9), after the amendments of the *Judiciary Act 1903*, insert:

Public Service Act 1922

19A Section 82F

Repeal the section, substitute:

82F Determinations are disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*

- (1) This section applies to a determination under this Division:
- (a) that is made before the day on which the *Legislative Instruments Act 1996* commences and that:
 - (i) has not, before that day, been laid before a House of the Parliament; or
 - (ii) has been laid before a House of the Parliament before that day but is still subject to disallowance; or
 - (b) that is made during the period of 6 years starting on that day.
- (2) Subject to subsections (3) and (4), a determination to which this section applies is taken to be a disallowable non-legislative instrument for the purposes of section 46B of the *Acts Interpretation Act 1901*.

- (3) Subsections 46B(2), (3), (4), (5), (6) and (7) of the *Acts Interpretation Act 1901* do not apply to a determination to which this section applies.
- (4) If a determination is a determination to which this section applies because it was laid before a House of the Parliament before the day on which the *Legislative Instruments Act 1996* commences but is still subject to disallowance, then, for the purpose of the operation of section 46B of the *Acts Interpretation Act 1901* in relation to the determination:
 - (a) section 46B of the last-mentioned Act is taken to have been in force at the time when the determination was laid before that House; and
 - (b) the determination is to be treated as if it had been laid before that House, at the time when it was so laid, in accordance with the requirements of that section.
- (5) Section 67 of the *Legislative Instruments Act 1996* does not apply to a determination to which this section applies.

Remuneration Tribunal Act 1973

19B At the end of subsection 7(6)

Add “, not later than 7 days after the making of that determination”.

Paper

Mr Williams presented a supplementary explanatory memorandum to the Bill.

Debate continued.

Amendments agreed to.

Mr Williams moved—That Mr Slipper, Mr Hicks and the mover be appointed a committee to draw up reasons for the House of Representatives disagreeing to amendments (1), (4) to (22), (24) to (27), (29) to (34), (36), (38), (39), (47), (49) and (54) of the Senate.

Question—put and passed.

Mr Williams, on behalf of the committee, brought up reasons, which were circulated, and are as follows:

Reasons of the House of Representatives for disagreeing to amendments (1), (4) to (22), (24) to (27), (29) to (34), (36), (38), (39) (47), (49) and (54) of the Senate

Senate amendment (1)

The amendment proposes the insertion of a definition of gender specific language for the purposes of Senate amendments (5) and (25). The House of Representatives does not accept this amendment because it is unnecessary. Since the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs on Clearer Commonwealth Law drafters have been ensuring that gender neutral language is used in all new provisions and any amendments of existing legislation.

Senate amendment (4)

The amendment inserts an additional parliamentary mechanism for review of determinations by the Attorney-General under clause 8 of the Bill as to whether a particular instrument would be legislative or not. The House of Representatives does not accept this amendment as the determination by the Attorney-General is a legal opinion and the proper method for review of such a decision is the normal judicial review mechanism in the Federal Court.

Senate amendments (5), (22) and (25)

Amendment number 5 adds an additional paragraph 16(3) requiring the Principal Legislative Counsel to ensure that legislative instruments are not drafted with gender specific language as defined by amendment (1) unless there is a specific need to identify persons by their sex. Amendments (22) and (25) make similar amendments to clauses 42 and 52 respectively of the Bill. The House of Representatives does not accept these amendments as they are unnecessary for the reasons explained for amendment (1).

Senate amendments (6), (20) and (21)

Amendment (6) substitutes subparagraph 17(1)(a)(i) and extends the ambit of instruments to which the mandatory consultation processes of Part 3 of the Bill applies to nearly all legislative instruments rather than restricting the process to instruments affecting business. Amendments (20) and (21) make similar amendments to clause 34. The House of Representatives does not accept these amendments because the provisions of this Bill already impose quite onerous compliance requirements on rule-makers and it is considered that some experience with those requirements should be gained before consideration is given to extending the ambit of consultation.

In its Report on the Legislative Instruments Bill 1994 the House of Representatives Standing Committee on Legal and Constitutional Affairs acknowledged that for such a requirement to be effective, it was crucial that it be accepted by all departments and agencies before it comes into force.

Clause 72 of the Bill establishes a statutory review of the legislation and that review will consider the suitability of the ambit of consultation being extended.

Senate amendments (7) to (9), (11), (12) and (15)

These amendments are consequential on amendment (17) and as the House of Representatives does not accept that proposed amendment for the reasons set out below it cannot accept these proposed amendments.

Senate amendment (10)

This amendment substitutes a new paragraph 21(2)(c) to specifically include environmental considerations in the statement of costs and benefits that a rule-maker must set out in a Legislative Instruments Proposal. The House does not accept this amendment.

Under Commonwealth environmental legislation there is a detailed consultation process on proposals affecting environmental issues where the costs and

benefits are relevant factors. The House of Representatives does not consider it necessary to duplicate those requirements.

Senate amendment (13)

This amendment omits from paragraph 27(3)(h) references to sub-paragraphs 28(1)(a)(iv),(v),(vi),(vii)or(viii) as a consequence of amendment (17) which significantly limits the circumstances in which compliance with the mandatory consultation requirements is not required. The House of Representatives does not accept this amendment for the reasons set out in respect of amendment (17).

Senate amendment (14)

This amendment omits from paragraph 27(3)(j) a reference to paragraph 31(2)(b) as a consequence of amendment (19) which omits subclause 31(2). The House of Representatives does not accept this amendment for the reasons set out in respect of amendment (19).

Senate amendment (16)

This amendment omits from paragraph 27(4)(i) a reference to paragraph 31(2)(b) as a consequence of amendment (19) which omits paragraph 31(2). The House of Representatives does not accept this amendment for the reasons set out in respect of amendment (19).

Senate amendments (17) and (18)

Amendment (17) substitutes a new clause 28 which significantly reduces the circumstances in which a rule-maker is not required to comply with the mandatory consultation requirements set in clauses 20 to 25 inclusive. Amendment (18) omits clause 30 and is a consequence of the restructured amendment (17). The House of Representatives does not accept these amendments.

The consultation regime in the original Bill was based upon the agreement between the States and Territories in the Council of Australian Governments in respect of consultation on a range of national schemes of legislation. To alter that approach in respect of legislative instruments under this Bill would result in confusion because there would be different consultation regimes applying to delegated instruments made in the States and Territories and, also, differences with consultation requirements in primary Commonwealth legislation.

In addition, the significant effect that the removal of a large number of exemptions from consultation will mean that many instruments which are needed urgently will not be able to be made in time because of the requirement for compliance with the consultation regime. This could have a serious detrimental effect on the proper running of Government and could be adverse to the community at large. In particular, the removal of the exemption in respect of instruments which implement a budget decision that has already been made would be unnecessary and usually ineffective as consultation would not lead to a changed decision.

The omission of clause 30 which enabled a rule-maker not to comply with the mandatory consultation requirements but had the effect that any such instrument would have a maximum life of only 12 months will bring an

unnecessary and unwarranted burden to the making of instruments having a very short life. In any one year there are a large number of such instruments.

Senate amendment (19)

This amendment omits subclause 31(2) which provides that there is no need to comply with the mandatory consultation requirements if the enabling legislation providing for the making of the instrument contains a level of consultation comparable to that required under this Bill and the regulatory review body established by the Bill has so certified. The House of Representatives does not accept this amendment.

The House of Representatives considers that the Parliament having established a specific consultation regime for a particular area of interest, that regime should be able to continue where the general scheme under this Bill would not improve consultation.

Senate amendment (24)

This amendment is consequential on amendment (31) which removes the provision for the sunseting of legislative instruments affected by the Bill. The House of Representatives does not accept this amendment for the reasons set out in relation to amendment (31).

Senate amendment (26)

This amendment inserts new subclauses 61(1A) and (1B) to empower the Parliament to disallow a part of an instrument. The House of Representatives does not accept this amendment.

In its Report on the Legislative Instruments Bill 1994 the House of Representatives Standing Committee on Legal and Constitutional Affairs specifically considered this issue. The Committee noted the proposal that provision was being made for disallowance of a provision of a legislative instrument which would avoid having to disallow an entire instrument when only some of it was objectionable. The provision was drafted so that it would apply to some discrete and self-contained part of an instrument that can be severed quite neatly and stands alone. This House agrees with the Committee's views on this matter.

Senate amendment (27)

This amendment omits subclause 61(7) which exempts from disallowance legislative instruments made under enabling legislation to facilitate the operation of an inter-governmental body or scheme involving the Commonwealth and one or more States. The House of Representatives does not accept this amendment.

The House of Representatives acknowledges that inter-governmental schemes are becoming increasingly important to regulate particular forms of conduct or activity across jurisdictional boundaries. Such schemes require legislation in each of the jurisdictions involved and that legislation is, of necessity, a compromise of the interests of all of the participants in the scheme. The effects of disallowance of instruments under such schemes, in any of the participating jurisdictions, would significantly impair the operation of the scheme.

The House of Representatives is aware of the work being undertaken by the Senate Standing Committee on Regulations and Ordinances and the Chairs of Review Committees of the States and Territories to develop a basis for scrutiny of such schemes. The current proposal under consideration is that one jurisdiction would undertake the scrutiny function on behalf of all jurisdictions. However, that development is not yet at a sufficiently advanced stage to formulate specific proposals for consideration by Governments and until that occurs this particular exemption is necessary to avoid confusion.

Clause 72 of the Bill establishes a statutory review of the legislation and that review can consider a proposal along the lines of amendment (27) having regard to the further development of the proposals in this matter in the interim.

Senate amendment (29)

This amendment omits references in paragraph 61(8)(b) to subsections 66(7) and (9) as a consequence of the omission of the sunset provisions in Part 6 of the Bill. The House of Representatives does not accept this amendment for the reasons set out in amendment (31).

Senate amendment (30)

This amendment omits paragraph 61(8)(d) which provides for exemption from disallowance of Proclamations made under a number of provisions of the Quarantine Act 1908.

The House of Representatives does not accept this amendment because such Proclamations provide specific control mechanisms to prevent the entry into, and the spread of disease and pests affecting humans, animals and plants in, Australia. Typically the detailed conditions under which importation of a particular commodity from a particular country or region may be allowed are set out in protocols developed by the Australian Quarantine and Inspection Service within the scope of the relevant quarantine Proclamation. Each set of protocol conditions is developed on the basis of consideration of relevant scientific information and risk analysis.

Quarantine Proclamations have never been subject to disallowance by the Parliament. This approach will continue, on the basis that it is not appropriate to task the legislature to consider whether to disallow such highly technical instruments. Remedies for alleged procedural defects in the making of these instruments are available under administrative law mechanisms.

Senate amendment (31)

This amendment omits Part 6 from the Bill. Part 6 provides for the sunset of legislative instruments starting five years after the commencement of the Bill. The House of Representatives does not accept this amendment.

The House of Representatives notes that the issue of sunset was considered by the House of Representatives Standing Committee on Legal and Constitutional Affairs in relation to the 1994 Bill and recommendation 23 of that Committee's Report was that a sunset regime be introduced in relation to all existing and future legislative instruments as soon as possible. The

Committee also made a similar recommendation in its Report *Clearer Commonwealth Law*.

Part 6 of the Bill implements the recommendations of the Committee and the House is satisfied with that regime.

As with all other provisions of the Bill the statutory review of the legislation established by clause 72 will consider the operation of the Part. Further, an additional review of the Part is required, by clause 73, to be undertaken after the sunseting regime has been in operation for 2 years. Any difficulties with the operation of the Part would be identified at that time and remedial action suggested.

Senate amendment (32)

This amendment is consequential upon the omission of Part 6 of the Bill and provides an alternative to sunseting to ensure that unnecessary delegated legislation is removed from the register. This would be done by each Minister reporting to the Parliament on a yearly basis on the review of delegated legislation in his portfolio responsibilities.

For the reasons outlined in respect of amendment (31) the House of Representatives does not accept this amendment.

Senate amendment (33)

This amendment makes a drafting change to subclause 72(3) to replace the word 'chairman' with the word 'chair'. The House of Representatives does not accept this amendment.

Senate amendment (34)

This amendment omits paragraph 72(6)(c) as a consequence of amendment (38). The House of Representatives does not accept this amendment for the reasons explained for amendment (38).

Senate amendment (36)

This amendment is consequential on amendment (31) and omits clause 73 of the Bill which provides for review of the operation of the sunseting provisions of the Bill after five years. For the reasons stated for amendment (31) the House of Representatives does not accept this amendment.

Senate amendment (38)

This amendment omits item 14 from Schedule 1 of the Bill. This item provides that certain instruments relating to public sector terms and conditions of employment are not legislative instruments for the purposes of the Act. The House of Representatives does not accept this amendment.

The House notes that under the recent industrial relations reforms there will be greater flexibility for employers and employees to determine matters such as terms and conditions at the workplace level. The actions of the Government in relation to its employees should mirror the policies and practices that the legislation requires of other employers. On that basis it would be inconsistent to subject determinations relating to public sector terms and conditions of

employment to scrutiny under the Bill other than to the extent that such terms and conditions are presently subject to tabling and disallowance.

Senate amendment (39)

Item 15 of Schedule 1 of the Bill provides that instruments made by a Tribunal to give effect to a decision by a Tribunal following a hearing process are not legislative instruments for the purposes of the Bill. This amendment would not apply that exemption to instruments made under the Remuneration Tribunal Act 1973.

The House of Representatives does not accept this amendment because there is no difference in principle between determinations made under the Remuneration Tribunal Act and decisions made under other hearing processes.

Senate amendments (47), (49) and (54)

These amendments are consequential on amendment (17) and as the House of Representatives does not accept that proposed amendment for the reasons set out above it cannot accept these proposed amendments.

On the motion of Mr Williams, the committee's reasons were adopted.

20 NATIONAL CRIME AUTHORITY—PARLIAMENTARY JOINT COMMITTEE—REPORT—STATEMENTS BY MEMBERS—MOTION TO TAKE NOTE OF PAPER

Mr Sercombe presented the following paper:

National Crime Authority—Parliamentary Joint Committee—Security at the Adelaide office of the National Crime Authority in 1994—Report, November 1997.

Ordered to be printed.

Mr Sercombe and Mr Filing, by leave, made statements in connection with the report.

Mr Sercombe, by leave, moved—That the House take note of the report.

Mr Sercombe was granted leave to continue his speech when the debate is resumed.

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

21 SOCIAL SECURITY LEGISLATION AMENDMENT (YOUTH ALLOWANCE) BILL 1997

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 Latham 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:

(1) condemns the Government for:

- (a) withdrawing support for 18 to 20 year olds in families with incomes as low as \$23,400 per annum; and

- (b) abolishing payments for 16 and 17 year olds while also slashing education funding, labour market assistance and job opportunities; and
- (2) calls on the Government to introduce education and training opportunities so that every young Australian has access to the education and skills needed for full participation in the workplace and society”.

Debate continued.

Mr Price addressing the House—

22 ADJOURNMENT

It being 10.30 p.m.—The question was proposed—That the House do now adjourn.

Debate ensued.

The House continuing to sit until 11 p.m.—The Speaker adjourned the House until tomorrow at 2 p.m.

PAPERS

The following papers were deemed to have been presented on 17 November 1997:

Aged Care Act—

Determinations 1997 Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18.

Principles under section 96-1 2(2) November 1997.

Australian Communications Authority Act—Determination 28 October 1997.

Christmas Island Act—

Exemption order under section 6 29 October 1997.

Regulations—Statutory Rules 1997 No. 305.

Civil Aviation Act—Civil Aviation Regulations—

Civil Aviation Orders—

Part 95—Amendment 5 November 1997.

Part 105—Amendments 1997 8 October, 23 (7) October, 24 (8) October.

Exemptions 1997 Nos. CASA 20, CASA 22.

Instruments 1997 Nos, CASA 267, CASA 268, CASA 269, CASA 270, CASA 276.

Cocos (Keeling) Islands Act—Regulations—Statutory Rules 1997 No. 306.

Customs Act—

Instrument of approval 1997 No. 25.

Variation of instrument of approval No. 25 1997.

Defence Act—Defence Force Remuneration Tribunal—Determinations 1997 Nos. 7, 8, 9, 10, 11.

Export Control Act—Export Control (Orders) Regulations—Export Control Orders 1997 No. 7.

Financial Transaction Reports Act—Regulations—Statutory Rules 1997 No. 303.

Fishing Levy Act and Fisheries Management Act—Regulations—Statutory Rules 1997 No. 312.

Health Insurance Act—Regulations—Statutory Rules 1997 Nos. 297, 298, 299, 300.

Income Tax Assessment Act 1936—RHQ Company Determinations 1997 Nos. 5, 6.

Jervis Bay Territory Acceptance Act—Ordinance 1997 No. 2.

Judicial and Statutory Officers (Remuneration and Allowances) Act—Regulations—Statutory Rules 1997 No. 310.

Lands Acquisition Act—Statement under section 40.

Meat and Live-stock Industry Act—Orders 1997 Nos. M78, MQ71.

Migration Act—Regulations—Statutory Rules 1997 No. 301.

Military Superannuation and Benefits Act—Declaration—Statutory Rules 1997 No. 311.

Mutual Assistance in Criminal Matters Act—Regulations—Statutory Rules 1997 No. 304.

National Health Act—

Declarations 1997 Nos. PB 14, PB 15.

Determinations 1997 Nos. HIS 14, PB 16.

Navigation Act—Marine orders 1997 Nos. 8, 9.

Parliament Act—Parliamentary Zone—National Gallery of Australia extension—Proposed additional works.

Public Service Act—Determinations 1997 Nos. LES 33, LES 34, LES 35, LES 36, SESROB 119, SESROB 120, SESROB 121, SESROB 122, SESROB 123, SESROB 124, SESROB 125, SESROB 126, SESROB 127.

Remuneration Tribunal Act—

Determinations 1997 Nos. 11, 13, 14.

Report 1997 No. 1.

Retirement Savings Accounts Act—Regulations—Statutory Rules 1997 No. 308.

Superannuation (Resolution of Complaints) Act—Regulations—Statutory Rules 1997 No. 307.

Superannuation Act 1976—Determinations under section 241 5 (3) November 1997.

Superannuation Industry (Supervision) Act—Regulations—Statutory Rules 1997 No. 309.

Taxation Administration Act—

Determinations 1997 Nos. TD 22, TD 23.

Rulings 1997 Nos. TR 20, TR 21.

University of Canberra Act—Statute No. 35.

Workplace Relations Act—Regulations—Statutory Rules 1997 Nos. 313, 314.

ATTENDANCE

All Members attended (at some time during the sitting) except Mr Fahey, Ms Gambaro, Mr Lindsay and Mr Sharp.

I. C. HARRIS

Clerk of the House of Representatives