

2002-03

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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No. 88

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1 MEETING OF SENATE

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

2 GOVERNMENT DOCUMENTS

The following government documents were tabled:

Advance to the Finance Minister—Statements and supporting applications for funds for—

March and April 2003.

May 2003.

IIF Investments Pty Limited, IIF (CM) Investments Pty Limited, IIF BioVentures Pty Limited, IIF Foundation Pty Limited, IIF Newport Pty Limited—Reports for 2001-02.

Office of the Registrar of Aboriginal Corporations—Report for 2001-02.

**3 ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2002
AUSTRALIAN HERITAGE COUNCIL BILL 2002
AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL
PROVISIONS) BILL 2002**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That these bills be now read a second time.

Debate resumed.

Question put and passed.

Bills read a second time.

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

In the committee

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2002—

Bill, taken as a whole by leave, debated.

The Leader of the Australian Democrats (Senator Bartlett) moved—That the committee report progress and ask leave to sit again.

Statements by leave: The Minister for Defence (Senator Hill) and Senators Allison, Lees, Lundy and Harradine, by leave, made statements relating to the motion.

Question put and passed.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Bolkus) reported that the committee had considered the bills, made progress and asked leave to sit again.

Ordered, on the motion of Senator Hill, that the committee have leave to sit again at a later hour.

4 WORKPLACE RELATIONS AMENDMENT (TRANSMISSION OF BUSINESS) BILL 2002

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

In the committee

Bill taken as a whole by leave.

Question—That the bill be agreed to—divided in respect of Schedule 1, items 1 and 2.
Schedule 1, items 1 and 2 debated.

Question—That Schedule 1, items 1 and 2 stand as printed—put and negatived.

Bill, as amended, further debated.

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

Schedule 1, item 4, page 3 (lines 26 to 31), omit the item, substitute:

4 At the end of section 149

Add:

(1B) For the purpose of determining whether an employer is a successor, assignee or transmittee of the business or part of the business within the meaning of paragraph (1)(d), the following factors must be considered:

- (a) whether the activities performed by the employees in the business or part of the business of the employer who was a party to the industrial dispute are substantially the same as the activities performed by the employees in the business or part of the business of the alleged successor, assignee or transmittee; and
- (b) whether the relevant business activities of the employer who was a party to the industrial dispute are substantially the same as the relevant business activities of the alleged successor, assignee or transmittee.

The existence of either or both of these factors would tend to indicate that an employer is a successor, assignee or transmittee within the meaning of paragraph (1)(d).

(1C) For the purpose of determining whether to make an order that an award does not bind, or binds only to a limited extent, a successor, assignee or transmittee within the meaning of paragraph (1)(d), the Commission must consider:

- (a) whether the successor, assignee or transmittee is already bound by another award; and
- (b) whether the activities performed by the relevant employees in the business of the successor, assignee or transmittee can be separately identified in the business of the successor; and
- (c) whether the relevant employees of the successor, assignee or transmittee would be disadvantaged if such an order were made; and
- (d) the effect of such an order on the efficiency and productivity of the business.

Schedule 1, items 6 to 9, page 4 (lines 1 to 12), omit the items, substitute:

6 At the end of section 170MB

Add:

- (4) For the purpose of determining whether a new employer is a successor, assignee or transmittee of the whole or part of a business within the meaning of paragraph (1)(c) or (2)(c), the following factors must be considered:
- (a) whether the activities performed by the employees in the business or part of the business of the previous employer are substantially the same as the activities performed by the employees in the business or part of the business of the new employer; and
 - (b) whether the relevant business activities of the previous employer are substantially the same as the relevant business activities of the new employer.

The existence of either or both of these factors would tend to indicate that the new employer is a successor, assignee or transmittee within the meaning of paragraph (1)(c) or (2)(c).

Senator Collins moved the following amendments together by leave:

Schedule 1, page 3 (after line 31), after item 4, insert:

4A After section 149

Insert:

149A Persons bound by awards—ships

If:

- (a) a ship is engaged in the coasting trade within the meaning of section 7 of the *Navigation Act 1912*; and
- (b) the ship ceases to be engaged in the coasting trade; and
- (c) at a later time, the ship operates under a continuing permit issued under section 286 of the *Navigation Act 1912*;

then, from the later time, an award which bound the employer of the seamen employed on the ship when the ship was engaged in the coasting trade binds, in relation to that ship, the employer of the seamen employed on the ship when it is operating under the continuing permit.

Schedule 1, page 8 (after line 9), after item 10, insert:

10A At the end of Division 6 of Part VIB

Add:

170MBB Successor employers bound—ships

- (1) This section applies where:
- (a) a ship is engaged in the coasting trade within the meaning of section 7 of the *Navigation Act 1912*; and
 - (b) the ship ceases to be engaged in the coasting trade; and
 - (c) at a later time, the ship operates under a continuing permit issued under section 286 of the *Navigation Act 1912*.

- (2) If:
- (a) the employer of the seamen employed on the ship when the ship was engaged in the coasting trade was bound by a certified agreement when the ship was engaged in the coasting trade; and
 - (b) the application for certification of the agreement stated that it was made under Division 3;
- then, from the later time:
- (c) the certified agreement binds, in relation to that ship, the employer of the seamen employed on the ship when it is operating under the continuing permit; and
 - (d) a reference in this Part to the employer includes a reference to the employer referred to in paragraph (c).
- (3) If:
- (a) the employer of the seamen employed on the ship when the ship was engaged in the coasting trade was bound by a certified agreement when the ship was engaged in the coasting trade; and
 - (b) the application for certification of the agreement stated that it was made under Division 2;
- then, from the later time:
- (c) the certified agreement binds, in relation to that ship, the employer of the seamen employed on the ship when it is operating under the continuing permit, if that employer is a constitutional corporation or the Commonwealth; and
 - (d) a reference in this Part to the employer includes a reference to the employer referred to in paragraph (c).

Debate ensued.

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved the following amendments to Senator Collins' proposed amendments together by leave:

Item 4A, heading to section 149A, before "**Persons**", insert "**MUA here to stay—**".

Item 10A, heading to section 170MBB, before "**Successor**", insert "**MUA here to stay—**".

Debate ensued.

Question—That Senator Ian Campbell's amendments to Senator Collins' proposed amendments be agreed to—put and passed.

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

On the motion of Senator Murray the following amendment was agreed to:

Schedule 1, item 10, page 5 (after line 12), after subsection 170MBA(2), insert:

- (2A) The Commission shall not make an order under subsection 170MBA(2) unless:
- (a) the parties to the certified agreement, including the new employer, agree; or
 - (b) where the majority of employees who are parties to the agreement do not agree to the variation, the Commission is satisfied that:

- (i) that variation does not disadvantage employees in relation to their terms and conditions of employment; or
- (ii) the variation is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the single business or part.

Note: See subsection 170LT(4) for an example of a case that is not contrary to the public interest.

- (2B) In this section, a variation disadvantages employees in relation to their terms and conditions of employment if, on balance, its approval would result in a reduction in the overall terms and conditions of employment of those employees under the existing certified agreement.

Note: Section 170XA contains the no-disadvantage test.

- (2C) In making an order under subsection 170MBA(2) the Commission must take into account:
 - (a) the proposed new terms and conditions that employees would be subject to and the effect of any loss of conditions; and
 - (b) the length of time remaining on the certified agreement.

On the motion of Senator Murray the following amendment was debated and agreed to:

Schedule 1, item 10, page 5 (line 22), omit “outgoing”, substitute “incoming”.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 11.

Schedule 1, item 11 debated.

Question—That Schedule 1, item 11 stand as printed—put and negatived.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

At 12.45 pm—

5 MATTERS OF PUBLIC INTEREST

Matters of public interest were discussed.

Suspension of sitting: On the motion of the Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) the sitting of the Senate was suspended till 2 pm.

At 2 pm—

6 QUESTIONS

Questions without notice were answered.

7 QUESTION ON NOTICE—ANSWER AND EXPLANATION

Senator O'Brien, pursuant to standing order 74, asked the Minister representing the Prime Minister (Senator Hill) for an explanation of an answer not being provided to question on notice no. 1292 (notice given 18 March 2003) relating to ethanol.

Senator Hill provided an explanation.

Senator O'Brien moved—That the Senate take note of the explanation.

Question put and passed.

8 FAMILY AND COMMUNITY SERVICES—CARER ALLOWANCE—DISABILITY SERVICES—ANSWERS TO QUESTIONS

Senator Bishop moved—That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Vanstone) to questions without notice asked today relating to the carer allowance and disability services.

Debate ensued.

Question put and passed.

9 PETITION

The following petition, lodged with the Clerk by Senator McLucas, was received:

From 128 petitioners, requesting that the Senate support legislation that ensures that no exploration or mining can proceed in the Townsville Trough adjacent to the Great Barrier Reef.

10 NOTICES

The Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan): To move on the next day of sitting—That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Aviation Transport Security Bill 2003 and a related bill be extended to 9 September 2003. (*general business notice of motion no. 523*)

Senator O'Brien: To move on the next day of sitting—That the Senate condemns the Prime Minister (Mr Howard) for his ongoing pattern of deceit in relation to his dealings with the chair of the Manildra Group, Mr Dick Honan, prior to a Cabinet decision that delivers direct financial benefits to that company. (*general business notice of motion no. 524*)

The President: To move on the next day of sitting—That—

- (1) In accordance with section 54 of the *Parliamentary Service Act 1999*, the Senate resolves that:
 - (a) the Joint House Department, Department of the Parliamentary Library and Department of the Parliamentary Reporting Staff are abolished with effect from 31 January 2004; and
 - (b) a new joint service department, to be called the 'Department of Parliamentary Services' be established from 1 February 2004 to fulfil all the functions of the former joint departments.
- (2) The Senate supports the Presiding Officers in the following endeavours:
 - (a) to reinforce the independence of the Parliamentary Library by strengthening the current role of the Library committees of both Houses of Parliament;

- (b) to bring forward amendments to the *Parliamentary Service Act 1999* to provide for a statutory position of Parliamentary Librarian within the new joint service department and conferring on the Parliamentary Librarian direct reporting responsibilities to the Presiding Officers and to the Library committees of both Houses of Parliament;
- (c) to ensure that the resources and services to be provided to the Parliamentary Library in the new joint service department are specified in an annual agreement between the Departmental Secretary and the Parliamentary Librarian, approved by the Presiding Officers following consideration by the Library committees of both Houses of Parliament; and
- (d) to consider, after the establishment of the joint service department, that department providing human resources and financial transaction-processing activities for all the Parliamentary departments, subject to such an arrangement being proven to be both cost-effective and efficient.

(3) This resolution be transmitted to the House of Representatives. (*general business notice of motion no. 525*)

Senator Ridgeway: To move on the next day of sitting—That the Senate—

- (a) notes the retirement of champion athlete Cathy Freeman from athletics on 16 July 2003;
- (b) notes the tremendous contribution Cathy has made to Australian and international athletics including:
 - (i) being the first Aboriginal track and field athlete to represent Australia at an Olympic Games at Barcelona in 1992,
 - (ii) winning 200m and 400m gold medals at the 1994 Commonwealth Games in Victoria, Canada,
 - (iii) being the first woman to claim consecutive 400m world championship titles with victories in 1997 and 1999 – the first time an Australian had won successive world titles in any sporting field,
 - (iv) holding 13 national athletics titles, and
 - (v) winning the 400m gold medal at the Sydney 2000 Olympic Games; and
- (c) recognises the role she has also played in national reconciliation by being a great role model for young Indigenous people and by overcoming stereotypes of Indigenous Australians to become an Australian national icon. (*general business notice of motion no. 526*)

Senator Ridgeway: To move on the next day of sitting—That the Senate—

- (a) notes:
 - (i) that it was National Aboriginal and Islander Day Observance Committee (NAIDOC) Week from 6 July to 13 July 2003 and that this year's theme was, 'Our Children, Our Future', and
 - (ii) the high proportion of youth who make up the Indigenous Australian population, with the 2001 Census showing that 58 per cent of the Indigenous population is aged under 25 years, compared with the rest of the Australian population with only one-third (35 per cent) aged under 25 years;
- (b) recognises the significance of NAIDOC Week in celebrating Indigenous culture and the individual achievements of Indigenous people throughout the country; and

(c) congratulates the 2003 National NAIDOC Award winners including:

Person of the Year: Ms Deborah Mailman
 Apprentice of the Year: Ms Laurell Dodd
 Scholar of the Year: Mr Frederick Penny
 Female Elder of the Year: Mrs Violet French
 Male Elder of the Year: Mr William Kennedy
 Youth of the Year: Ms Stacey Kelly-Greenup
 Sportsperson of the Year: Mr David Peachey
 Artist of the Year: Ms Belynda Waugh. (*general business notice of motion no. 527*)

Senator Stott Despoja: To move on 19 August 2003—That the Senate—

- (a) expresses its concern that the rights and liberties of the people of Hong Kong are threatened by the proposed Article 23 legislation being considered by Hong Kong's Legislative Council;
- (b) notes that:
- (i) the proposed legislation will introduce powers similar to those which operate in the People's Republic of China to restrict freedom of expression and religion, and to imprison religious leaders, journalists, academics and labour activists,
 - (ii) the People's Republic of China previously pledged to respect Hong Kong's Basic Law of 1990, which protects many of the rights and freedoms threatened by the Article 23 legislation, and
 - (iii) those members of Hong Kong's Legislative Council who have been elected by universal suffrage oppose the Article 23 legislation but are unable to prevent its enactment because the People's Republic of China either directly or indirectly controls a majority of votes in the Legislative Council;
- (c) welcomes the improvements to the Article 23 legislation announced by the Hong Kong Government on 3 June 2003; and
- (d) urges the Hong Kong Government to further amend the legislation to ensure that it can not be used to silence opposition, restrict freedom of speech, of the press and of publication, freedom of association, of assembly, of procession and of demonstration, the right and freedom to join trade unions and to strike, and the right to engage in academic research, literary and artistic creation and other cultural activities, in accordance with Articles 27 and 34 of the Basic Law. (*general business notice of motion no. 528*)

Senator Cherry: To move on the next day of sitting—That the Senate—

- (a) notes that:
- (i) the European Union in December 2002 imposed a moratorium on the further approvals of food irradiation due to research about the possible health effects, particularly in relation to cyclobutanones,
 - (ii) Food Standards Australia in the same month expanded the list of foods that can be irradiated in Australia to include a range of tropical fruits, and
 - (iii) a number of community campaigners have chosen to fast in protest against the approval of food irradiation in Australia, arguing that fasting is safer for their health than eating irradiated food;

- (b) calls on the Federal Government to urgently commission research on the health effects of food irradiation and to follow the lead of the European Union in not approving any further foods for irradiation until such research is completed; and
- (c) calls on the Queensland Government to conduct a full review of the safety of food irradiation plants in Queensland, including the impacts on public health and the environment. (*general business notice of motion no. 529*)

Senator Cherry: To move on the next day of sitting—That the Senate—

- (a) notes that thousands of Indigenous workers in Queensland suffered the economic injustice of having their wages stolen, or of being underpaid, as the direct result of Government policy up to the 1970s;
- (b) endorses the view of the Queensland Council of Unions that the issue of stolen wages is a legitimate issue of wage and workers' justice; and
- (c) calls on the Beattie Labor Government to withdraw its paltry \$2 000 and \$4 000 compensation caps and negotiate a full, just and proper settlement of stolen wages. (*general business notice of motion no. 530*)

Senator Nettle: To move on the next day of sitting—That the Senate—

- (a) notes:
 - (i) that Australian citizens Mamdouh Habib and David Hicks currently incarcerated at Guantanamo Bay, Cuba, still face the possibility of a death sentence at the hands of the United States military, and
 - (ii) the comments by the Prime Minister (Mr Howard) regarding the sentencing of Bali bomber Amrozi where he said, 'If it's the view of the Indonesian court that it be carried out then it should be carried out'; and
- (b) calls on the Government:
 - (i) to reaffirm its opposition to capital punishment as a matter of principle,
 - (ii) to reaffirm its commitment to the fundamental tenets of common law, namely, habeas corpus and judicial review of executive action, and
 - (iii) to take immediate action to secure the release and return of Mr Hicks and Mr Habib to Australia to face trial or to be freed as appropriate. (*general business notice of motion no. 531*)

Senator Nettle: To move on the next day of sitting—That the Senate—

- (a) notes:
 - (i) the serious allegations of kidnap, beating and arson in relation to the tactics of Indonesian Special Forces 'Kopassus' in their deployment in Aceh,
 - (ii) the unresolved allegation that Kopassus was involved in the murder of United States citizens near Freeport, West Papua, in 2002,
 - (iii) that Kopassus members have been found to be responsible for the murder of West Papuan independence leader Theys Eluay in November 2001,
 - (iv) that Kopassus troops trained East Timorese militias responsible for massacring civilians and attacking Australian forces in East Timor, and
 - (v) that Kopassus members have been found to have links with terrorist organisations including the now disbanded Laskar Jihad; and
- (b) calls on the Government:
 - (i) to cancel any planned re-establishment of cooperation with Kopassus,

- (ii) to acknowledge that it is not in the best interests of Australia or the region to extend tacit support for an organisation which engages in terrorising civilian populations, and
- (iii) to heed the advice of Professor Damien Kingsbury of Australia's Deakin University that Indonesia's military is 'part of the problem, not part of the answer' and that restoring military cooperation should be off the agenda until the Indonesian military 'is thoroughly reformed, including closing its business and criminal networks, and it is brought under full civilian authority'. (*general business notice of motion no. 532*)

Senator Nettle: To move on the next day of sitting—That the Senate—

- (a) notes the significant steps taken by the company ERA towards the rehabilitation of the Jabiluka uranium mine site;
- (b) congratulates the traditional owners of the land, the Mirrar people, for their strong and ongoing opposition to uranium mining on their land;
- (c) congratulates the community voices in Australia and overseas who have constantly campaigned to stop the Jabiluka uranium mine so as to protect the World Heritage values of Kakadu National Park; and
- (d) calls on the Federal Government:
 - (i) to immediately implement the recommendations of the UNESCO World Heritage Committee's report on Kakadu National Park, and
 - (ii) to implement outstanding recommendations from the Environment, Communications, Information Technology and the Arts References Committee report, *Jabiluka: The undermining of process—Inquiry into the Jabiluka uranium mine project*, including the recommendation that the Jabiluka uranium mine should not proceed because it is irreconcilable with the outstanding natural and cultural values of Kakadu National Park. (*general business notice of motion no. 533*)

11 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 8 OF 2003

Senator Eggleston, at the request of the Chairman of the Selection of Bills Committee (Senator Ferris), tabled the following report:

SELECTION OF BILLS COMMITTEE

REPORT NO. 8 OF 2003

1. The committee met on Tuesday, 12 August 2003.
2. The committee resolved to recommend—That—
 - (a) the *provisions* of the ACIS Administration Amendment Bill 2003 and the Customs Tariff Amendment (ACIS) Bill 2003 be *referred immediately* to the Economics Legislation Committee for inquiry and report on 15 September 2003;
 - (b) the *provisions* of the Age Discrimination Bill 2003 be *referred immediately* to the Legal and Constitutional Legislation Committee for inquiry and report on 18 September 2003;
 - (c) the *provisions* of the Taxation Laws Amendment Bill (No. 7) 2003 be *referred immediately* to the Economics Legislation Committee for inquiry and report on 8 September 2003;
 - (d) the *provisions* of the Telstra (Transition to Full Private Ownership) Bill 2003 be *referred immediately* to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report on 30 October 2003; and

- (e) the following bills *not* be referred to committees:
- Education Services for Overseas Students (Registration Charges) Amendment Bill 2003
 - Freedom of Information Amendment (Open Government) Bill 2003
 - Higher Education Legislation Amendment Bill 2003
 - Legislative Instruments Bill 2003
 - Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003
 - Migration Amendment (Duration of Detention) Bill 2003
 - States Grants (Primary and Secondary Education Assistance) Amendment Bill 2003
 - Vocational Education and Training Funding Amendment Bill 2003.

The committee recommends accordingly.

3. The committee *deferred* consideration of the following bills to the next meeting:

Bills deferred from meeting of 12 August 2003

- Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003
- Communications Legislation Amendment Bill (No. 2) 2003
- Family and Community Services (Closure of Student Financial Supplement Scheme) Bill 2003
- Student Assistance Amendment Bill 2003
- Fuel Quality Standards Amendment Bill 2003
- Migration Legislation Amendment (Identification and Authentication) Bill 2003
- Non-Proliferation Legislation Amendment Bill 2003
- Social Security Amendment (Supporting Young Carers) Bill 2003
- Statistics Legislation Amendment Bill 2003
- Workplace Relations Amendment (Codifying Contempt Offences) Bill 2003.

Jeannie Ferris
Chair
13 August 2003.

Senator Eggleston moved—That the report be adopted.

Question put and passed.

12 REGULATIONS AND ORDINANCES—STANDING COMMITTEE—REFERENCE

Senator Ludwig amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the provisions of the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003 be referred to the Standing Committee on Regulations and Ordinances for inquiry and report by 3 October 2003, with particular reference to:

- (a) the scope of the exemptions contained in the bills;
- (b) the mechanisms contained in the bills to improve the quality and transparency of legislative instruments; and
- (c) parliamentary scrutiny of legislative instruments and the impact of the bills on the work of the committee.

Question put and passed.

13 ENVIRONMENT—GLOBAL WARMING

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 521—That the Senate—

- (a) views, with due gravity, the mounting evidence for global warming including:
 - (i) a sea level rise of 10 to 20 centimetres since 1900,
 - (ii) nine of the world's ten hottest years (since temperature records began) have occurred since 1990,
 - (iii) the rapid melting of glaciers in Greenland, Alaska, and the Himalayas,
 - (iv) the record frequency of tornadoes in the United States of America,
 - (v) the average 1.2 degrees Celsius higher temperature across the Murray-Darling basin in the 2002-03 summer, worsening drought and bushfires, and
 - (vi) Europe's heatwave;
- (b) recognises global warming's catastrophic potential for the Australian and global economies, society and environment;
- (c) accepts that global warming is being induced by human activity which is both identifiable and able to be modified; and
- (d) calls on the Prime Minister (Mr Howard) and his Cabinet to:
 - (i) acknowledge the need for much greater national action to curb the release of greenhouse gases from Australian sources, well beyond the goals of the Kyoto Protocol, and
 - (ii) take an urgent lead in the international effort to reverse global warming, including at the forthcoming Forum of South Pacific nations (some of which face obliteration from the rising sea levels).

Question put and passed.

14 COMMUNICATIONS—HANDS-FREE MOBILE PHONE KITS

Senator Greig, at the request of Senator Allison and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 522—That the Senate—

- (a) notes:
 - (i) the French Industry Minister announced that mobile phones will soon be required by law to be sold with hands-free kits,
 - (ii) that hands-free kits currently come free with phones in France, and
 - (iii) the Minister also announced that a future regulation will put a limit on the power of handsets; and
- (b) calls on the Federal Government to request a report from the Australian Communications Authority on:
 - (i) the French Government's legislative and regulatory requirements for hands-free mobile phone kits, and
 - (ii) the standard-setting arrangements for these devices.

Question put and passed.

15 URGENCY MOTION—COMMUNICATIONS—AUSTRALIAN BROADCASTING CORPORATION

The Deputy President (Senator Hogg) informed the Senate that the President had received a letter from Senator Cherry advising that today he intended to move—That, in the opinion of the Senate, the following is a matter of urgency:

The Senate's need to assert:

- (a) its continuing confidence in the Australian Broadcasting Corporation's (ABC) complaints-handling process, noting that it is more comprehensive than any process in place for any other media organisation; and
- (b) the requirement for the Minister for Communications, Information Technology and the Arts (Senator Alston) to apologise to the members of the ABC Independent Complaints Panel for questioning their independence and integrity.

The proposal was supported by 4 senators.

Senator Cherry moved the motion.

Debate ensued.

Document: Senator Cherry, by leave, tabled the following document:

Communications—Australian Broadcasting Commission—Copy of Australian Press Council general press release no. 258 (August 2003) from the Australian Press Council website.

Question put and passed.

16 SCRUTINY OF BILLS—STANDING COMMITTEE—7TH REPORT AND ALERT DIGEST NO. 8 OF 2003

The Chairman of the Standing Committee for the Scrutiny of Bills (Senator Crossin) tabled the following report and document:

- Scrutiny of Bills—Standing Committee—
7th report of 2003, dated 13 August 2003.
- Alert Digest No. 8 of 2003, dated 13 August 2003.

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

17 AUDITOR-GENERAL—AUDIT REPORT NO. 2 OF 2003-04—DOCUMENT

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

Auditor-General—Audit report no. 2 of 2003-04—Audit activity report: January to June 2003—Summary of outcomes.

18 DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

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

Departmental and agency contracts—Order for production of documents—Letter to the Clerk of the Senate from the Executive Director, Assurance Audit Services Group, Australian National Audit Office relating to audits of compliance by agencies with the Senate order, dated 8 August 2003.

19 DOCUMENTS

The following documents were tabled by the Clerk:

Christmas Island Act—Utilities and Services Ordinance—Water and Sewerage Services Fees Amendment Determination No. 1 of 2003.

Cocos (Keeling) Islands Act—Utilities and Services Ordinance—Water and Sewerage Services Fees Amendment Determination No. 1 of 2003.

20 COMMITTEES—CHANGES IN MEMBERSHIP

The Acting Deputy President (Senator Lightfoot) informed the Senate that the President had received letters requesting changes in the membership of various committees.

The Minister for Communications, Information Technology and the Arts (Senator Alston), by leave, moved—That senators be discharged from and appointed to committees as follows:

Economics Legislation Committee—

Appointed—Substitute member: Senator Ridgeway to replace Senator Murray for the committee's inquiry into the provisions of the ACIS Administration Amendment Bill 2003 and the Customs Tariff Amendment (ACIS) Bill 2003

Employment, Workplace Relations and Education References Committee—

Appointed—Substitute member: Senator Santoro to replace Senator Tierney for the committee's inquiry into labour market skills requirements on 15 August 2003

Environment, Communications, Information Technology and the Arts Legislation Committee—

Appointed—Substitute member: Senator Cherry to replace Senator Bartlett for matters relating to the Communications portfolio

Discharged—Participating member: Senator Cherry for matters relating to the Communications portfolio.

Question put and passed.

21 HIGHER EDUCATION LEGISLATION AMENDMENT BILL 2003

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

Message no. 361, dated 13 August 2003—A Bill for an Act to amend legislation relating to higher education and the Australian Research Council, and for related purposes.

The Minister for Communications, Information Technology and the Arts (Senator Alston) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

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

22 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—FAMILY LAW AMENDMENT BILL 2003

Pursuant to order, Senator McGauran, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), tabled the following report and documents:

Legal and Constitutional Legislation Committee—Provisions of the Family Law Amendment Bill 2003—Report, dated August 2003, *Hansard* record of proceedings, additional information, document presented to the committee and submissions [12].

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

23 ECONOMICS LEGISLATION COMMITTEE—REPORT—NEW BUSINESS TAX SYSTEM (TAXATION OF FINANCIAL ARRANGEMENTS) BILL (NO. 1) 2003

Pursuant to order, Senator McGauran, at the request of the Chair of the Economics Legislation Committee (Senator Brandis), tabled the following report and documents:

Economics Legislation Committee—New Business Tax System (Taxation of Financial Arrangements) Bill (No. 1) 2003—Report, dated August 2003, *Hansard* record of proceedings and submissions [3].

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

**24 ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2002
AUSTRALIAN HERITAGE COUNCIL BILL 2002
AUSTRALIAN HERITAGE COUNCIL (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2002**

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

In the committee

ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2002—
Consideration resumed of the bill.

Explanatory memorandum: The Minister for Defence (Senator Hill) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Senator Lundy moved the following amendments together by leave:

Clause 3, page 2 (lines 14 to 18), omit “*Council*” (wherever occurring), substitute “*Commission*”.

Schedule 1, item 4, page 4 (line 24), after “National”, insert “or Commonwealth”.

Schedule 1, item 31, page 26 (line 26) to page 27 (line 2), omit subsection 324G(2), substitute:

- (2) Where the Australian Heritage Commission has included a place on the National Heritage List under section 324F (emergency listing), the Commission must complete its assessment of the place’s National Heritage values within 40 business days after including the place on the National Heritage List.

Schedule 1, item 31, page 27 (lines 3 to 6), omit subsection 324G(3), substitute:

- (3) The Australian Heritage Commission may make an assessment of a place's National Heritage values whether or not the place is the subject of a nomination.

Schedule 1, item 31, page 27 (lines 7 to 22), omit "Council" (wherever occurring), substitute "Commission".

Schedule 1, item 31, page 27 (lines 23 and 24), omit "The Council must give the Minister a copy of the comments with the assessment."

Schedule 1, item 31, page 27 (line 27), omit "Council", substitute "Commission".

Schedule 1, item 31, page 27 (line 31) to page 28 (line 6), omit "Minister" (wherever occurring), substitute "Australian Heritage Commission".

Schedule 1, item 31, page 28 (lines 7 to 10), omit subsection 324H(2), substitute:

- (2) The notice must be published within 20 business days after the day on which the Australian Heritage Commission completes an assessment of the place's National Heritage values under section 324G.

Schedule 1, item 31, page 28 (line 13), omit "Minister", substitute "Australian Heritage Commission".

Schedule 1, item 31, page 28 (lines 18 to 21), omit subsection 324H(4), substitute:

- (4) The Australian Heritage Commission must assess the merits of any comments received that comply with this section, or must obtain an assessment of the comments from a person with appropriate qualifications or expertise.

Schedule 1, item 31, page 28 (line 22), omit "Minister", substitute "Australian Heritage Commission".

Schedule 1, item 31, page 28 (line 25), omit "Council's", substitute "Commission's".

Schedule 1, item 31, page 28 (line 29) to page 29 (line 7), omit "Minister" (wherever occurring), substitute "Australian Heritage Commission".

Schedule 1, item 31, page 29 (after line 7), after subsection 324J(1), insert:

- (1A) If the Australian Heritage Commission decides not to include a place in the National Heritage List, the Minister may direct the Commission to reconsider its decision. The Australian Heritage Commission must comply with a direction by the Minister to reconsider a decision.
- (1B) After reconsidering a decision under subsection (1A), the Australian Heritage Commission must:
 - (a) include the place in the National Heritage List and publish a notice to that effect in accordance with the regulations; or
 - (b) advise the person who nominated the place of the Commission's reconsideration and affirmation of its decision not to include the place in the National Heritage List, and of the reasons for that decision. A notice published under paragraph (a) must include a statement setting out the place's National Heritage values.

Schedule 1, item 31, page 29 (after line 9), after subsection 324J(2), insert:

- (2A) In making a decision whether to include a place in the National Heritage List, the Australian Heritage Commission must consider only the National Heritage values of the place.

Schedule 1, item 31, page 29 (lines 10 and 11), omit “If the Minister includes the place in the National Heritage List, he or she”, substitute “If the Australian Heritage Commission includes the place in the National Heritage List, the Commission”.

Schedule 1, item 31, page 29 (line 19) to page 31 (line 20), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 31 (line 9), omit “Council’s, substitute “Commission’s”.

Schedule 1, item 31, page 31 (lines 11 to 13), omit paragraph 324J(8)(b), substitute:

- (b) the comments (if any) received under subsection 324G(4); and

Schedule 1, item 31, page 31 (line 16), omit “(if any) requested”.

Schedule 1, item 31, page 31 (line 20), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 32 (lines 3 to 9), omit subsection 324L(1) (but not the note), substitute:

- (1) The Minister may remove a place or part of a place from the National Heritage List only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.
- (1A) The Australian Heritage Commission may remove a place or part of a place from the National Heritage List only if the Australian Heritage Commission is satisfied that the place does not have any National Heritage values.

Schedule 1, item 31, page 32 (lines 12 to 18), omit subsection 324L(2), substitute:

- (2) The Minister may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.

Schedule 1, item 31, page 32 (after line 18), after subsection 324L(2), insert:

- (2A) The Australian Heritage Commission may remove one or more National Heritage values included in the National Heritage List for a National Heritage place only if the Australian Heritage Commission is satisfied that, ignoring subsection 324D(2), the place no longer has the National Heritage value or values.

Schedule 1, item 31, page 32 (line 19), after “Minister”, insert “or Australian Heritage Commission”.

Schedule 1, item 31, page 32 (lines 23 and 24), omit the note.

Schedule 1, item 31, page 32 (line 28), omit “paragraph (1)(a) or (2)(a)”, substitute “subsection (1A) or (2A)”.

Schedule 1, item 31, page 32 (line 30), omit “paragraph (1)(b) or (2)(b)”, substitute “subsection (1) or (2)”.

Schedule 1, item 31, page 33 (line 5), after “Minister”, insert “, or the Australian Heritage Commission”.

Schedule 1, item 31, page 34 (line 12), omit “the Minister receiving from the Australian Heritage Council”, substitute “the Australian Heritage Commission making”.

Schedule 1, item 31, page 34 (line 20), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 2, item 31, page 34 (line 30), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 35 (line 4), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 35 (line 18), omit “**Council’s**”, substitute “**Commission’s**”.

Schedule 1, item 31, page 35 (lines 20 to 29), omit “Council” (wherever occurring), substitute “Commission”.

Schedule 1, item 31, page 35 (lines 27), omit “assessment;”, substitute “assessment.”.

Schedule 1, item 31, page 35 (lines 28 and 29), omit paragraph 324R(1)(b).

Schedule 1, item 31, page 36 (line 1), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 36 (line 5), omit “period; and”, substitute “period.”.

Schedule 1, item 31, page 36 (lines 6 to 14), omit paragraph 324R(2)(b).

Schedule 1, item 31, page 36 (line 15), omit “Council”, substitute “Commission”.

Schedule 1, item 31, page 36 (line 18), omit “criteria; or”, substitute “criteria.”.

Schedule 1, item 31, page 36 (line 19), omit paragraph 324R(3)(b).

Schedule 1, item 31, page 36 (line 23), omit “Council”, substitute “Commission”.

Schedule 1, item 31, page 39 (line 23) to page 40 (line 19), omit section 324Y, substitute:

324Y National Heritage management principles

- (1) The Australian Heritage Commission must develop and give to the Minister principles for managing National Heritage places. The principles are called the *National Heritage management principles*.
- (2) Before giving a copy of the draft principles to the Minister, the Australian Heritage Commission must publish in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any) a notice:
 - (a) stating that the Australian Heritage Commission has prepared draft National Heritage management principles; and
 - (b) stating how the draft can be obtained; and
 - (c) inviting comments on the draft from members of the public; and
 - (d) specifying the address to which comments may be sent; and
 - (e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.
- (3) The Australian Heritage Commission must take any comments received into account in finalising the National Heritage management principles.
- (4) The Australian Heritage Commission must give the Minister the National Heritage management principles for approval.

- (5) The Minister may approve the National Heritage management principles with or without amendment.
- (6) Approved National Heritage management principles are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) If the Minister approves the National Heritage management principles with amendments, the Minister must cause to be published in the *Gazette* a statement of reasons for making the amendments.
- (8) The regulations may prescribe obligations to implement or give effect to the National Heritage management principles.
- (9) A person must comply with the regulations to the extent that they impose obligations on the person.

Schedule 1, item 31, page 40 (lines 21 to 30), omit “Minister and the Australian Heritage Council” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 41 (line 11) to page 42 (line 4), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 31, page 42 (line 18) to page 43 (line 3), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 43 (lines 10 to 14), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 43 (line 15), omit “The Minister must ask the Australian Heritage Council for”, substitute “The Australian Heritage Commission must undertake”.

Schedule 1, item 32, page 44 (lines 6 to 21), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 45 (after line 4), at the end of section 341D, add:

- (4) Before the Governor-General makes regulations for the purposes of this section, the Australian Heritage Commission must:
 - (a) publish draft criteria for Commonwealth Heritage values; and
 - (b) invite submissions from the public, allowing a period of not less than 30 days for such submissions to be lodged; and
 - (c) take any submissions received into account in finalising the criteria; and
 - (d) if the prescribed criteria differ from the draft criteria, publish in the *Gazette* a statement of reasons for the differences.

Schedule 1, item 32, page 45 (line 5) to page 46 (line 7), omit section 341E, substitute:

341E Nominations of places

- (1) A person may, in accordance with the regulations (if any), nominate to the Australian Heritage Commission a place for inclusion in the Commonwealth Heritage List.
- (2) The Australian Heritage Commission may:
 - (a) ask a person who has nominated a place to provide additional information about the place within a specified period; and

- (b) reject the nomination if the information is not provided within that period.
- (3) The period referred to in subsection (2) must be reasonable.
- (4) A member of the Australian Heritage Commission may make a nomination in accordance with this section.
- (5) If the Australian Heritage Commission rejects a nomination under this section, the Commission must, as soon as reasonably practicable:
 - (a) advise the person who made the nomination of that fact; and
 - (b) give the person written reasons for the rejection.

Schedule 1, item 32, page 46 (line 8) to page 47 (line 12), omit section 341F, substitute:

341F Emergency listing

- (1) Before conducting an assessment of its values, the Australian Heritage Commission may, by instrument published in the *Gazette*, include a place on the Commonwealth Heritage List if:
 - (a) the place is either:
 - (i) entirely within a Commonwealth area; or
 - (ii) is outside the Australian jurisdiction and is owned or leased by the Commonwealth or a Commonwealth agency; and
 - (b) the Commission is satisfied that the place has or may have one or more Commonwealth Heritage values, any of which are under imminent threat.
- (2) Within 10 business days after including the place in the Commonwealth Heritage List, the Australian Heritage Commission must:
 - (a) publish a notice in accordance with the regulations stating that the place is included in the Commonwealth Heritage List and the date on which it was included; and
 - (b) if the place was nominated by a person—advise the person that the place has been included in the Commonwealth Heritage List; and
 - (c) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the Commonwealth Heritage List.

Schedule 1, item 32, page 47 (line 13), omit “**Council**”, substitute “**Commission**”.

Schedule 1, item 32, page 47 (lines 14 to 17), omit subsection 341G(1), substitute:

- (1) Subject to subsection (2), the Australian Heritage Commission must complete its assessment of a place’s Commonwealth Heritage values within 12 months after the place is nominated.

Schedule 1, item 32, page 47 (lines 18 to 29), omit subsection 341G(2), substitute:

- (2) Where the Australian Heritage Commission has included a place on the Commonwealth Heritage List under section 341F (emergency listing), the Commission must complete its assessment of the place’s Commonwealth Heritage values within 40 business days after including the place on the Commonwealth Heritage List.

Schedule 1, item 32, page 47 (lines 30 to 33), omit subsection 341G(3), substitute:

- (3) The Australian Heritage Commission may make an assessment of a place's Commonwealth Heritage values whether or not the place is the subject of a nomination.

Schedule 1, item 32, page 47 (line 34) to page 48 (line 13), omit "Council" (wherever occurring), substitute "Commission".

Schedule 1, item 32, page 48 (lines 14 and 15), omit "The Council must give the Minister a copy of the comments with the assessment."

Schedule 1, item 32, page 48 (line 18), omit "Council", substitute "Commission".

Schedule 1, item 32, page 48 (lines 22 to 31), omit "Minister" (wherever occurring), substitute "Australian Heritage Commission".

Schedule 1, item 32, page 48 (lines 32 to 35), omit subsection 341H(2), substitute:

- (2) The notice must be published within 20 business days after the day on which the Australian Heritage Commission completes an assessment of the place's Commonwealth Heritage values under section 341G.

Schedule 1, item 32, page 49 (line 3), omit "Minister", substitute "Australian Heritage Commission".

Schedule 1, item 32, page 49 (lines 8 to 11), omit subsection 341H(4), substitute:

- (4) The Australian Heritage Commission must either assess the merits of any comments received that comply with this section or obtain an assessment of the comments from a person with appropriate qualifications or expertise.

Schedule 1, item 32, page 49 (line 12), omit "Minister", substitute "Australian Heritage Commission".

Schedule 1, item 32, page 49 (line 15), omit "Council's", substitute "Commission's".

Schedule 1, item 32, page 49 (line 23), omit "Minister", substitute "Australian Heritage Commission".

Schedule 1, item 32, page 49 (after line 29), after subsection (1), insert:

- (1A) If the Australian Heritage Commission decides not to include a place in the Commonwealth Heritage List, the Minister may direct the Commission to reconsider its decision. The Australian Heritage Commission must comply with a direction by the Minister to reconsider a decision.
- (1B) After reconsidering a decision under subsection (1A), the Australian Heritage Commission must:
 - (a) include the place in the Commonwealth Heritage List and publish a notice to that effect in accordance with the regulations;
or
 - (b) advise the person who nominated the place of the Commission's reconsideration and affirmation of its decision not to include the place in the Commonwealth Heritage List, and of the reasons for that decision. A notice published under paragraph (a) must include a statement setting out the place's Commonwealth Heritage values.

Schedule 1, item 32, page 49 (line 24) to page 50 (line 15), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 50 (line 7), omit “he or she”, substitute “the Commission”.

Schedule 1, item 32, page 50 (line 16) to page 52 (line 6), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 52 (line 8), omit “Council’s”, substitute “Commission’s”.

Schedule 1, item 32, page 52 (lines 10 to 12), omit paragraph 341J(8)(b), substitute:

- (b) the comments (if any) received under subsection 341G(4); and

Schedule 1, item 32, page 52 (line 15), omit “(if any) requested”.

Schedule 1, item 32, page 52 (line 19), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 53 (lines 3 to 17), omit subsections 341L(1) and (2) (but not the note), substitute:

- (1) The Minister may remove all or part of a place from the Commonwealth Heritage List only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.
- (2) The Australian Heritage Commission may remove all or part of a place from the Commonwealth Heritage List only if it is satisfied that:
 - (a) the place or part is not entirely within a Commonwealth area; or
 - (b) the place or part does not have any Commonwealth Heritage values.

Schedule 1, item 32, page 53 (lines 20 to 26), omit subsection 341L(3), substitute:

- (3) The Minister may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Minister is satisfied that it is necessary in the interests of Australia’s defence or security to do so.

Schedule 1, item 32, page 53 (after line 26), after subsection 341L(3), insert:

- (3A) The Australian Heritage Commission may remove one or more Commonwealth Heritage values included in the Commonwealth Heritage List for a Commonwealth Heritage place only if the Commission is satisfied that, ignoring subsection 341D(2), the place no longer has the Commonwealth Heritage value or values.

Schedule 1, item 32, page 53 (line 27), after “Minister”, insert “or Australian Heritage Commission”.

Schedule 1, item 32, page 53 (lines 31 and 32), omit the note.

Schedule 1, item 32, page 54 (lines 2 and 3), omit “(2)(a) or (3)(a)”, substitute “(2)(b) or subsection (3A)”.

Schedule 1, item 32, page 54 (line 5), omit “(2)(b) or (3)(b)”, substitute “(2)(a) or subsection (3)”.

Schedule 1, item 32, page 54 (line 16), after “Minister”, insert “, or the Australian Heritage Commission,”.

Schedule 1, item 32, page 55 (line 23), omit “the Minister receiving from the Australian Heritage Council”, substitute “the Australian Heritage Commission making”.

Schedule 1, item 32, page 55 (line 32), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 2, item 32, page 56 (line 8), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 56 (line 17), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 57 (line 1), omit “**Council’s**”, substitute “**Commission’s**”.

Schedule 1, item 32, page 57 (lines 3 to 12), omit “Council” (wherever occurring), substitute “Commission”.

Schedule 1, item 32, page 57 (line 10), omit “assessment;”, substitute “assessment.”.

Schedule 1, item 32, page 57 (lines 11 and 12), omit paragraph 341R(1)(b).

Schedule 1, item 32, page 57 (line 18), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 57 (line 22), omit “period; and”, substitute: “period.”.

Schedule 1, item 32, page 57 (lines 23 to 31), omit paragraph 341R(2)(b).

Schedule 1, item 32, page 57 (line 32), omit “Council”, substitute “Commission”.

Schedule 1, item 32, page 57 (line 35), omit “criteria; or”, substitute “criteria.”.

Schedule 1, item 32, page 57 (line 36), omit paragraph 341R(3)(b).

Schedule 1, item 32, page 58 (line 4), omit “Council”, substitute “Commission”.

Schedule 1, item 32, page 58 (lines 5 and 6), omit “or advice”.

Schedule 1, item 32, page 59 (lines 13 to 15), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 59 (lines 19 and 20), omit subsection (7), substitute:

- (7) A Commonwealth agency that owns or controls a Commonwealth Heritage place must comply with any State or Territory environment, heritage or planning laws that apply generally in the place where the Commonwealth Heritage place is located.

Schedule 1, item 32, page 59 (line 21) to page 60 (line 2), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 60 (after line 2), at the end of section 341T, add:

- (4) When making a decision about endorsing a plan, the Australian Heritage Commission must observe the precautionary principle stated in subsection 391(2).

Schedule 1, item 32, page 61 (lines 3 to 10), omit section 341Y, substitute:

341Y Commonwealth Heritage management principles

- (1) The Australian Heritage Commission must develop and give to the Minister principles for managing Commonwealth Heritage places. The principles are called the *Commonwealth Heritage management principles*.

- (2) Before giving a copy of the draft principles to the Minister, the Australian Heritage Commission must publish in the *Gazette*, in a daily newspaper circulating in each State and self-governing Territory and in accordance with the regulations (if any) a notice:
 - (a) stating that the Australian Heritage Commission has prepared draft Commonwealth Heritage management principles; and
 - (b) stating how the draft can be obtained; and
 - (c) inviting comments on the draft from members of the public; and
 - (d) specifying the address to which comments may be sent; and
 - (e) specifying a day (at least 30 days after the last day on which the notice is published in the *Gazette* or in accordance with the regulations (if any)) by which comments must be sent.
- (3) The Australian Heritage Commission must take any comments received into account in finalising the Commonwealth Heritage management principles.
- (4) The Australian Heritage Commission must give the Minister the Commonwealth Heritage management principles for approval.
- (5) The Minister may approve the Commonwealth Heritage management principles with or without amendment.
- (6) Approved Commonwealth Heritage management principles are a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) If the Minister approves the Commonwealth Heritage management principles with amendments, the Minister must cause to be published in the *Gazette* a statement of reasons for making the amendments.
- (8) The regulations may prescribe obligations to implement or give effect to the Commonwealth Heritage management principles.
- (9) A person must comply with the regulations to the extent that they impose obligations on the person.

Schedule 1, item 32, page 61 (lines 12 to 18), omit “Minister and the Australian Heritage Council” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 62 (lines 4 to 14), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 62 (lines 16 to 30), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 63 (lines 9 to 20), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 63 (lines 21 and 22), omit “The Minister must consult with the Australian Heritage Council in preparing the advice.”.

Schedule 1, item 32, page 63 (lines 23 to 25), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 64 (line 8) to page 65 (line 2), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 65 (line 5), omit “**Minister’s**”, substitute “**Commission’s**”.

Schedule 1, item 32, page 65 (lines 13 to 18), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 65 (lines 19 and 20), omit “The Minister must consult the Australian Heritage Council in preparing the advice.”.

Schedule 1, item 32, page 65 (line 21), omit “Minister”, substitute “Australian Heritage Commission”.

Schedule 1, item 32, page 66 (lines 3 to 22), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 1, item 37, page 67 (line 15), omit “*Council*”, substitute “*Commission*”.

Schedule 1, item 39, page 67 (lines 23 and 24), omit the definition of *Australian Heritage Council*, substitute:

Australian Heritage Commission means the body established by the *Australian Heritage Commission Act 2003*.

Schedule 1, page 67 (after line 20), after item 38, insert:

38A Section 528

Insert:

a National or Commonwealth Heritage place and its associated values means the National Heritage values of a National Heritage place or the Commonwealth Heritage values of a Commonwealth Heritage place.

Schedule 2, item 1, page 71 (lines 10 to 24), omit subsection (4A) (but not the note), substitute:

- (4A) If, in making an assessment, the Australian Heritage Commission considers that the place might have indigenous heritage value, it must:
- (a) ask the Director of Indigenous Heritage Protection to provide written advice within a reasonable period on the place’s indigenous heritage value; and
 - (b) if the Director provides the advice on time—consider the advice.

If the Director does not provide the advice on time, the Australian Heritage Commission may consider the advice.

Schedule 2, item 2, page 71 (lines 30 and 31), omit “, a copy of which was given to the Minister by the Council under paragraph 324G(4A)(b) with the assessment”, substitute “provided under subsection 324G(4A)”.

Schedule 2, item 3, page 72 (lines 3 to 17), omit subsection (4A) (but not the note), substitute:

- (4A) If, in making an assessment, the Australian Heritage Commission considers that the place might have indigenous heritage value, it must:
- (a) ask the Director of Indigenous Heritage Protection to provide written advice on the place’s indigenous heritage value; and
 - (b) if the Director provides the advice on time—consider the advice.

If the Director does not provide the advice on time, the Australian Heritage Commission may consider the advice.

Debate ensued.

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

Question—That the bill be agreed to—divided in respect of Schedule 1, item 31, section 324M and item 32, section 341M.

Schedule 1, item 31, section 324M and item 32, section 341M agreed to.

Senator Lundy moved the following amendments together by leave:

Schedule 1, item 4, page 4 (line 25) to page 5 (line 20), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 4, page 5 (lines 22 to 24), omit “on the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place”, substitute “a National or Commonwealth Heritage place and its associated values, to the extent that they are indigenous heritage values”.

Schedule 1, item 4, page 5 (line 29) to page 6 (line 14), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 4, page 7 (line 1), after “**National**”, insert “**or Commonwealth**”.

Schedule 1, item 4, page 7 (line 2) to page 8 (line 26), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 4, page 8 (line 27) to page 9 (line 8), omit “the National Heritage values, to the extent that they are indigenous heritage values, of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values, to the extent that they are indigenous heritage values”.

Schedule 1, item 4, page 9 (lines 11 and 12), omit “the National Heritage values of a National Heritage place”, substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 4, page 9 (line 13), after “place”, insert “or Commonwealth Heritage place”.

Schedule 1, item 4, page 9 (lines 20 and 21), omit “the National Heritage values of a National Heritage place”, substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 4, page 9 (line 22), after “place”, insert “or Commonwealth Heritage place”.

Schedule 1, item 4, page 9 (line 28) to page 10 (line 8), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 11, page 15 (table items 1B and 1C), omit “the National Heritage values of a National Heritage place” (wherever occurring), substitute “a National or Commonwealth Heritage place and its associated values”.

Schedule 1, item 31, page 22 (line 22) to page 23 (line 3), omit the first 3 paragraphs inside the text box, substitute:

The Australian Heritage Commission may only include a place in the National Heritage List if the Australian Heritage Commission is satisfied that the place has one or more National Heritage values.

The Australian Heritage Commission must assess the place's National Heritage values and invite public comments on the proposed inclusion of the place in the National Heritage List.

The Australian Heritage Commission must make plans to protect and manage the National Heritage values of National Heritage places. The Commonwealth and Commonwealth agencies must not contravene those plans.

Schedule 1, item 31, page 23 (lines 21 to 30), omit "Minister" (wherever occurring), substitute "Australian Heritage Commission".

Schedule 1, item 31, page 24 (after line 15), at the end of section 324D, add:

- (4) Before the Governor-General makes regulations for the purposes of this section, the Australian Heritage Commission must:
 - (a) publish draft criteria for National Heritage values; and
 - (b) invite submissions from the public, allowing a period of not less than 30 business days for such submissions to be lodged; and
 - (c) take any submissions received into account in finalising the criteria; and

if the prescribed criteria differ from the draft criteria, the Minister must publish in the *Gazette* a statement of reasons for the differences.

Schedule 1, item 31, page 24 (line 16) to page 25 (line 19), omit section 324E, substitute:

324E Nominations of places

- (1) A person may, in accordance with the regulations (if any), nominate to the Australian Heritage Commission a place for inclusion in the National Heritage List.
- (2) The Australian Heritage Commission may:
 - (a) ask a person who has nominated a place to provide additional information about the place within a specified period; and
 - (b) reject the nomination if the information is not provided within that period. The period specified must be reasonable.
- (3) A member of the Australian Heritage Commission may make a nomination in accordance with this section.
- (4) The Australian Heritage Commission may, by publishing a notice in accordance with the regulations, invite nominations of places within a specified theme or region.
- (5) If the Australian Heritage Commission rejects a nomination under this section, the Commission must, as soon as reasonably practicable:
 - (a) advise the person who made the nomination of that fact; and
 - (b) give the person written reasons for the rejection.

Schedule 1, item 31, page 25 (line 20) to page 26 (line 20), omit section 324F, substitute:

324F Emergency listing

- (1) Before conducting an assessment of its values, the Australian Heritage Commission may, by instrument published in the *Gazette*, include a place on the National Heritage List if the Commission is satisfied that:
 - (a) the place has or may have one or more National Heritage values; and

- (b) any of those values are under imminent threat.
- (2) Within 10 business days after including the place in the National Heritage List, the Australian Heritage Commission must:
 - (a) publish a notice in accordance with the regulations stating that the place is included in the National Heritage List and the date on which it was included; and
 - (b) if the place was nominated by a person—advise the person that the place has been included in the National Heritage List; and
 - (c) take all practicable steps to:
 - (i) identify each person who is an owner or occupier of all or part of the place; and
 - (ii) advise each person identified that the place has been included in the National Heritage List.

Schedule 1, item 31, page 26 (line 21), omit “**Council**”, substitute “**Commission**”.

Schedule 1, item 31, page 26 (lines 22 to 25), omit subsection 324G(1), substitute:

- (1) Subject to subsection (2), the Australian Heritage Commission must complete its assessment of a place’s National Heritage values within 12 months after the place is nominated.

Debate ensued.

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

Senator Lundy moved the following amendments together by leave:

Schedule 2, item 4, page 72 (lines 23 and 24), omit “, a copy of which was given to the Minister by the Council under paragraph 341G(4A)(b) with the assessment”, substitute “provided under subsection 341G(4A)”.

Schedule 3, heading to item 1, page 73 (line 7), at the end of the heading, add “**and the National Heritage List**”.

Schedule 3, item 1, page 73 (line 13), omit “Within 6 months after this item commences, the Minister may”, substitute “Immediately after this item commences, the Australian Heritage Commission must”.

Schedule 3, item 1, page 73 (line 22), omit “area; and”, substitute “area.”.

Schedule 3, item 1, page 73 (lines 23 and 24), omit paragraph (c).

Schedule 3, item 1, page 73 (lines 25 to 28), omit “Minister” (wherever occurring), substitute “Australian Heritage Commission”.

Schedule 3, item 1, page 73 (after line 28), after subitem (3), insert:

- (3A) Immediately after this item commences, the Australian Heritage Commission must determine that the National Heritage List is taken to include any other place on the Register of the National Estate not included on the Commonwealth Heritage List because of subitem (2). This list is to be known as the Transitional National Heritage List.
- (3B) The Transitional National Heritage List ceases to have effect as soon as the Australian Heritage Commission establishes the National Heritage List under section 324C of the Environment Protection and Biodiversity Conservation Act 1999 which must occur within 6 months after the commencement of this item.

Schedule 3, item 1, page 73 (line 29), after “(2)”, insert “or (3A)”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 32

Senators—

Allison	Cherry	Hogg	Murray
Bartlett	Collins	Hutchins	Nettle
Bishop	Crossin	Kirk	Ray
Bolkus	Denman	Ludwig	Ridgeway
Brown	Evans	Lundy	Stephens
Buckland (Teller)	Faulkner	Marshall	Stott Despoja
Campbell, George	Forshaw	McLucas	Webber
Carr	Greig	Moore	Wong

NOES, 33

Senators—

Barnett	Ellison	Lees	Payne
Boswell	Ferguson	Lightfoot	Santoro
Brandis	Ferris	Macdonald, Ian	Scullion
Calvert	Harris	Macdonald, Sandy	Tchen
Campbell, Ian	Heffernan	Mason	Troeth
Chapman	Hill	McGauran	Watson
Colbeck	Humphries	Minchin	
Coonan	Johnston	Murphy	
Eggleston (Teller)	Knowles	Patterson	

Question negatived.

After 6.50 pm: The Acting Deputy President (Senator Marshall) resumed the chair and the Chair of Committees (Senator Hogg) reported progress.

25 ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION ACT—STATEMENT UNDER SUBSECTION 40(3)—DOCUMENT

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) tabled the following document:

Aboriginal and Torres Strait Islander Commission Act—Statement under subsection 40(3)—Suspension of a commissioner from office, dated 13 August 2003.

26 IMMIGRATION—PERSONAL EXPLANATION

Senator Bolkus, by leave, made a personal explanation relating to articles in the *West Australian* of 8 March 2003, the *Herald Sun* of 12 August 2003 and the *Advertiser* of 13 August 2003 concerning alleged incidents during his tenure as Minister for Immigration.

27 GOVERNMENT DOCUMENTS—CONSIDERATION

The following government documents tabled earlier today (*see entry no. 2*) were considered:

Advance to the Finance Minister—Statement for March and April 2003. Motion to take note of document moved by Senator Ludwig. Debate adjourned till Thursday at general business, Senator Ludwig in continuation.

Advance to the Finance Minister—Supporting applications for funds for March and April 2003. Motion to take note of document moved by Senator Ludwig. Debate adjourned till Thursday at general business, Senator Ludwig in continuation.

Advance to the Finance Minister—Statement for May 2003. Motion to take note of document moved by Senator Ludwig. Debate adjourned till Thursday at general business, Senator Ludwig in continuation.

Advance to the Finance Minister—Supporting applications for funds for May 2003. Motion to take note of document moved by Senator Ludwig. Debate adjourned till Thursday at general business, Senator Ludwig in continuation.

28 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 7.33 pm till Thursday, 14 August 2003 at 9.30 am.

29 ATTENDANCE

Present, all senators except Senator Conroy.

HARRY EVANS
Clerk of the Senate