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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 124

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AND

FRIDAY, 5 DECEMBER 2003

**Contents**

1	Meeting of Senate .....	2850
2	Petitions .....	2850
3	Environment Protection and Biodiversity Conservation Act—List of Threatened Species—Statement by Leave .....	2850
4	Notices.....	2850
5	Order of Business—Rearrangement.....	2850
6	Legal and Constitutional Legislation Committee—Reference.....	2851
7	Culture and the Arts—Regional Arts Fund.....	2851
8	Departmental and Agency Contracts—Order for Production of Documents—Variation .....	2851
9	Australian Crime Commission Amendment Bill 2003 Australian Federal Police and Other Legislation Amendment Bill 2003 Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Bill 2003 Norfolk Island Amendment Bill 2003 .....	2851
10	Consideration of Legislation.....	2852
11	Foreign Affairs, Defence and Trade Legislation Committee—Reference .....	2852
12	Notice of Motion Withdrawn.....	2853
13	Foreign Affairs—Human Rights—Vietnam .....	2853
14	Indigenous Australians—Jimmy Little.....	2853
15	Science and Technology—Genetically-modified Crops.....	2854
16	Environment—Ethanol—Alternative Fuels .....	2854
17	Environment—Tasmania—Logging .....	2855
18	Economics References Committee—Extension of Time to Report .....	2855
19	Communications—Broadcasting—Proposed Merger .....	2856
20	Lindeberg Grievance—Proposed Select Committee—Statement by Leave.....	2856
21	Employment, Workplace Relations and Education References Committee— Extension of Time to Report.....	2856
22	Communications—Television—G-rated Material.....	2856

23	Procedure—Standing Committee—Third Report of 2003 .....	2857
24	Finance and Public Administration References Committee—Report— Administrative Review of Veteran and Military Compensation and Income Support .....	2857
25	Publications—Standing Committee—14th Report .....	2857
26	Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—Report—Effectiveness of the National Native Title Tribunal .....	2858
27	Designs Bill 2003 Designs (Consequential Amendments) Bill 2003 .....	2859
28	Defence Legislation Amendment Bill 2003 .....	2859
29	Legislative Instruments Bill 2003 .....	2859
30	Foreign Affairs, Defence and Trade References Committee—Report— Examination of the Government’s Foreign and Trade Policy Strategy .....	2860
31	Order of Business—Rearrangement .....	2860
32	Higher Education Support Bill 2003 Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003 .....	2860
33	Hours of Meeting and Routine of Business—Variation .....	2874
34	Order of Business—Rearrangement .....	2874
35	Aboriginal Land Grant (Jervis Bay Territory) Amendment Bill 2003 .....	2875
36	Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002 .....	2875
37	Customs Legislation Amendment Bill (No. 2) 2003 .....	2877
38	Designs Bill 2003 Designs (Consequential Amendments) Bill 2003 .....	2877
39	Taxation Laws Amendment Bill (No. 5) 2003 .....	2877
40	Defence Legislation Amendment Bill 2003 .....	2878
41	Legislative Instruments Bill 2003 .....	2878
42	Questions .....	2880
43	Taxation—First Home Owners, ‘Bracket Creep’ and Intergenerational Report—Order for Production of Documents—Statement by Leave .....	2881
44	Transport—Airspace Management—Answers to Questions .....	2881
45	Defence Legislation Amendment Bill 2003 .....	2881
46	Legislative Instruments Bill 2003 .....	2882
47	Parliamentary Committee Reports—President’s Report—Government Responses Outstanding .....	2883
48	Auditor-General—Audit Reports Nos 16 and 17 of 2003-04—Documents .....	2883
49	Government Documents .....	2883
50	Environment—Sepon Mine—Order for Production of Documents— Statement by Leave .....	2883
51	Health—Pharmaceutical Benefits Scheme—Order for Production of Documents—Statement by Leave .....	2883
52	Industry—Biotechnology Australia—Order for Production of Documents— Documents .....	2884
53	Treaties—Joint Standing Committee—57th Report .....	2884
54	Rural and Regional Affairs and Transport Legislation Committee— Statement—Progress Report .....	2884
55	Documents .....	2884

56	Committees—Changes in Membership.....	2884
57	Higher Education Support Bill 2003 Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003 .....	2885
58	Economics Legislation Committee—Report—Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 .....	2932
59	Order of Business—Rearrangement.....	2932
60	Notice .....	2932
61	Prayers .....	2932
62	Financial Services Reform Amendment Bill 2003 .....	2932
63	Higher Education Support Bill 2003 Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003 .....	2933
64	Order of Business—Rearrangement.....	2934
65	Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003.....	2934
66	Higher Education Support Bill 2003 Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003 .....	2934
67	Trade Practices Legislation Amendment Bill 2003 .....	2935
68	Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003.....	2935
69	Family Law Amendment Bill 2003 .....	2938
70	Financial Services Reform Amendment Bill 2003 .....	2945
71	ASIO Legislation Amendment Bill 2003 .....	2947
72	Parliamentary Zone—Capital Works Proposal—Document—Approval .....	2949
73	Leave of Absence.....	2949
74	Adjournment .....	2950
75	Attendance.....	2950

**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 PETITIONS**

The following 2 petitions, lodged with the Clerk by the senators indicated, were received:

The President, from 116 petitioners, requesting that the Senate reject the proposed changes to higher education.

Senator Sherry, from 435 petitioners, requesting that the Senate take action to tighten laws relative to censorship, particularly in the categories of inappropriate levels of coarse language, nudity and blasphemy in the media.

**3 ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT—LIST OF THREATENED SPECIES—STATEMENT BY LEAVE**

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen), by leave, made a statement relating to the statement he made on 27 November 2003 concerning a motion for disallowance of the Inclusion of Species in the List of Threatened Species (*see entry no. 6, 27 November 2003*).

**4 NOTICES**

Senator Conroy: To move on 12 February 2004—That Schedule 3 of the Corporations Amendment Regulations 2003 (No. 8), as contained in Statutory Rules 2003 No. 282 and made under the *Corporations Act 2001*, be disallowed.

Senator Brown: To move on the next day of sitting—That the Senate calls on the Howard Government and the Latham Opposition to protect the north-east peninsula of Recherche Bay in Tasmania from logging, to protect its cultural landscape, which was extensively traversed by scientists from the D'Entrecasteaux expeditions in 1792 and 1793 and is the site of their marvellous meetings with the local Aboriginal people. (*general business notice of motion no. 749*)

**5 ORDER OF BUSINESS—REARRANGEMENT**

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

No. 9 Aboriginal Land Grant (Jervis Bay Territory) Amendment Bill 2003.

No. 10 Commonwealth Electoral Amendment (Members of Local Government Bodies) Bill 2002.

No. 11 Customs Legislation Amendment Bill (No. 2) 2003.

Designs Bill 2003 and a related bill.

Question put and passed.

Senator Ferris, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That business of the Senate order of the day no. 3, relating to the presentation of the report of the committee on the provisions of the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003, be postponed till a later hour.

Question put and passed.

**6 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REFERENCE**

Senator Nettle, also on behalf of Senator Greig, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 3—That the provisions of the Disability Discrimination Amendment Bill 2003 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 25 March 2004.

Question put and passed.

**7 CULTURE AND THE ARTS—REGIONAL ARTS FUND**

Senator Brown amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 747—That the Senate—

- (a) notes that:
  - (i) the current Deed of Grant for the Regional Arts Fund expires on 30 June 2004 and that the fund can not operate properly in 2004 without an immediate commitment from the Government, and
  - (ii) more than one million people in regional Australia have participated in the funds' programs and that almost 2 300 artists have gained employment through the scheme; and
- (b) calls on the Government to immediately commit to establishing the Regional Arts Fund as a permanent recurrent fund with an appropriate allocation of funds.

Question put and passed.

**8 DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS—VARIATION**

Senator Forshaw, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 744—That the order of the Senate of 20 June 2001, as amended on 27 September 2001, 18 June 2003 and 26 June 2003, for the production of documents relating to departmental and agency contracts, be amended as follows:

Paragraph (5), omit “within 6 months after each day mentioned in paragraph (1)”, insert “by not later than 30 September each year”.

Question put and passed.

**9 AUSTRALIAN CRIME COMMISSION AMENDMENT BILL 2003**  
**AUSTRALIAN FEDERAL POLICE AND OTHER LEGISLATION AMENDMENT BILL 2003**  
**FISHERIES LEGISLATION AMENDMENT (COMPLIANCE AND DETERRENCE**  
**MEASURES AND OTHER MATTERS) BILL 2003**  
**NORFOLK ISLAND AMENDMENT BILL 2003**

The Minister for Defence (Senator Hill), at the request of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) and pursuant to notices of motion not objected to as formal motions, moved government business notices of motion nos 1 to 4—That the following bills be introduced:

A Bill for an Act to amend the *Australian Crime Commission Act 2002*, and for related purposes.

A Bill for an Act to integrate the Australian Protective Service into the Australian Federal Police, and for other purposes.

A Bill for an Act to amend legislation about fisheries, and for related purposes.

A Bill for an Act to amend the law relating to Norfolk Island, and for related purposes.

Question put and passed.

Senator Hill presented the bills and moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

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*Explanatory memoranda:* Senator Hill tabled explanatory memoranda [4] relating to the bills.

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

Senator Hill moved—That the bills be listed on the *Notice Paper* as separate orders of the day.

Question put and passed.

#### 10 CONSIDERATION OF LEGISLATION

The Minister for Defence (Senator Hill), at the request of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 6—That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Designs (Consequential Amendments) Bill 2003, allowing it to be considered during this period of sittings.

Question put and passed.

#### 11 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—REFERENCE

The Minister for Defence (Senator Hill), at the request of the Minister for Local Government, Territories and Roads (Senator Ian Campbell), amended Senator Ian Campbell's 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, upon their introduction in the House of Representatives, the provisions of the following bills be referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report on 19 March 2004:

Military Rehabilitation and Compensation Bill 2003

Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003.

Question put and passed.

**12 NOTICE OF MOTION WITHDRAWN**

Senator Greig withdrew business of the Senate notice of motion no. 2 standing in his name for today, relating to the reference of matters to the Legal and Constitutional References Committee.

**13 FOREIGN AFFAIRS—HUMAN RIGHTS—VIETNAM**

Senator Humphries, also on behalf of Senator Stott Despoja, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 746—That the Senate—

- (a) expresses concerns over reports of the continued imprisonment of people including religious leaders, on matters of conscience in the Socialist Republic of Vietnam;
- (b) notes that:
  - (i) the International Covenant on Civil and Political Rights applies to the treatment of Buddhist practitioners worldwide, and
  - (ii) the Republic of Vietnam still requires religious organisations to be affiliated with state-sponsored umbrella organisations;
- (c) expresses its support for a formal, open and effective dialogue between Australia and Vietnam on human rights issues; and
- (d) calls on the Government of Vietnam to:
  - (i) unconditionally release Patriarch Thich Huyen Quang, Most Venerable Thich Quang Do, Venerables Thich Tue Sy, Thich Vien Dinh, Thich Nguyen Ly and other religious leaders in Vietnam from house custody and administrative detention,
  - (ii) recognise that the practice of religion should not form the basis of the incarceration of any individual, and
  - (iii) remove restrictions placed on officially sanctioned religions, and the prohibition on church-led private education and charitable work.

Question put and passed.

**14 INDIGENOUS AUSTRALIANS—JIMMY LITTLE**

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 743—That the Senate—

- (a) congratulates musician and entertainer, Mr Jimmy Little, on receiving the prestigious Red Ochre Award (2003) from the Australia Council for his outstanding contribution to the national and international recognition of Aboriginal and Torres Strait Islander arts;
- (b) notes that some of Jimmy Little's contributions include:
  - (i) a musical career that spans more than 50 years,
  - (ii) being Australia's first Aboriginal pop star, recording his first popular release record in 1956, which reached the 'top ten' in the popular music chart,
  - (iii) achieving a number one hit in 1963 with the song 'Royal Telephone', which sold more than 75 000 copies and achieved 'gold' status twice,
  - (iv) many years as a mentor/teacher for Indigenous adult students at Eora College in Redfern,

- (v) being named Aboriginal of the Year at the 1989 National Aboriginal and Islander Day Observance Committee awards; elevated to the Australian Country Music Role of Renown in Tamworth in 1994; and inducted into the Australian Record Industry Association Australian Music Hall of Fame in 1999, and
- (vi) continuing his role as an ambassador for the National Literacy and Numeracy Strategy in Indigenous education; and
- (c) recognises that Jimmy Little is as much a statesman as a musician, who has been an outstanding advocate for his people and a true gentleman and family man.

Question put and passed.

#### 15 SCIENCE AND TECHNOLOGY—GENETICALLY-MODIFIED CROPS

Senator Cherry amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 736—That the Senate—

- (a) notes that on 14 October 2003 the Western Australian Farmers Federation Grains Council passed a resolution recommending to the Primary Industries Ministerial Council that:
  - (i) the Gene Technology Grains Committee be restructured to provide proportionate representation of both genetically-modified (GM) and non-GM growers,
  - (ii) no costs or liabilities be imposed on a sector of the agricultural industry without the involvement and approval from that industry,
  - (iii) no sector of agricultural industry be faced with unmanageable problems,
  - (iv) prior to the introduction of GM crops, the Gene Technology Grains Committee must demonstrate widespread accurate and unbiased industry education of the canola stewardship principles and protocols and proof of widespread acceptance of these principles and protocols,
  - (v) research be undertaken to gauge market tolerance levels of GM grain prior to acceptance of 1 per cent of adventitious presence, and
  - (vi) legislative changes be implemented to ensure that compliance with management plans is a legal requirement, not voluntary as proposed, to ensure that the GM industry is responsible for the containment of their GM product; and
- (b) calls on the Minister for Agriculture, Fisheries and Forestry (Mr Truss) and the Minister for Health and Ageing (Mr Abbott) to ensure that these resolutions are debated at the next relevant ministerial council, in recognition of the widespread concern in the grains industry about the introduction of genetically-modified crops and the cost implications for farmers.

Question put and passed.

#### 16 ENVIRONMENT—ETHANOL—ALTERNATIVE FUELS

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 734—That the Senate—

- (a) notes that:
  - (i) the Province of Manitoba in Canada has mandated the use, by 2005, of 10 per cent ethanol blends in 85 per cent of gasoline sold and has established a tax preference for ethanol that is produced and used in Manitoba, and



(ii) Manitoba will also establish an Agri-Energy Office, a ‘one-stop-shop’ for information on agri-energy initiatives such as ground bio-diesel, manure methane capture, wind power and ground source heat pumps, and will promote public awareness and education on the environmental benefits of increased ethanol use; and

(b) urges the Federal Government to consider mandating the use of ethanol and other alternative fuels.

Question put and negatived.

#### 17 ENVIRONMENT—TASMANIA—LOGGING

*Motion determined as not formal:* Senator Brown requested that general business notice of motion no. 748 standing in his name for today, relating to logging in old-growth forests in Tasmania, be taken as formal.

An objection was raised and the motion was not proceeded with as a formal motion.

*Proposed suspension of standing orders:* Senator Brown, pursuant to contingent notice, moved—That so much of the standing orders be suspended as would prevent him moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion no. 748.

Debate ensued.

Question put.

The Senate divided—

AYES, 9

Senators—

Bartlett  
Brown  
Cherry

Greig  
Harradine

Murray  
Nettle (Teller)

Ridgeway  
Stott Despoja

NOES, 38

Senators—

Bishop  
Boswell  
Brandis  
Buckland  
Calvert  
Chapman  
Collins  
Cook  
Crossin  
Denman

Evans  
Ferguson  
Ferris (Teller)  
Forshaw  
Harris  
Hill  
Hogg  
Humphries  
Johnston  
Kemp

Kirk  
Lightfoot  
Ludwig  
Lundy  
Macdonald, Sandy  
Mackay  
Marshall  
Mason  
McLucas  
Minchin

O’Brien  
Payne  
Scullion  
Stephens  
Tchen  
Watson  
Webber  
Wong

Question negatived.

#### 18 ECONOMICS REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT

The Chair of the Economics References Committee (Senator Stephens), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 742—That the time for the presentation of the report of the Economics References Committee on whether the *Trade Practices Act 1974* adequately protects small business be extended to 11 February 2004.

Question put and passed.

**19 COMMUNICATIONS—BROADCASTING—PROPOSED MERGER**

Senator Cherry, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 737—That the Senate—

(a) notes that:

- (i) Macquarie Broadcasting (the owners of Sydney radio stations 2GB and 2CH) and Southern Cross Broadcasting (the owners of 2UE) have announced that their newsrooms and other elements of their sales and administration departments will be merged,
- (ii) 2UE and 2GB are the two largest commercial radio news providers in the country, with news services syndicated to dozens of other stations; and that the merging of their services represents a significant reduction in diversity of opinions in radio, and
- (iii) the proposed arrangement appears to be contrary to the objectives of the *Broadcasting Services Act 1992* that promote diversity, and may breach the ‘two station’ control rule in the Act; and

(b) calls on the Australian Broadcasting Authority to conduct a thorough review of the proposed arrangement to ensure that the objectives and provisions of the Act have been fully complied with.

Question put and passed.

**20 LINDBERG GRIEVANCE—PROPOSED SELECT COMMITTEE—STATEMENT BY LEAVE**

Senator Harris, by leave, made a statement relating to general business notice of motion no. 721 standing in his name for today, relating to the establishment of a select committee on the Lindeberg Grievance.

*Postponement:* Senator Harris, by leave, moved—That general business notice of motion no. 721 be postponed till the next day of sitting.

Question put and passed.

*Statements by leave:* The Minister for Defence (Senator Hill) and Senator Murray, by leave, made statements relating to the matter.

**21 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE—EXTENSION OF TIME TO REPORT**

The Chair of the Employment, Workplace Relations and Education References Committee (Senator George Campbell), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 741—That the time for the presentation of the report of the Employment, Workplace Relations and Education References Committee on the exposure draft of the Building and Construction Industry Improvement Bill 2003 be extended to 13 May 2004.

Question put and passed.

**22 COMMUNICATIONS—TELEVISION—G-RATED MATERIAL**

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 745—That the Senate—

(a) notes that:

- (i) currently, only G-rated material can be broadcast between 4.30 pm and 7.30 pm on weekdays and from 6 am to 7.30 pm on weekends,

- (ii) the draft for the revision of the commercial television industry's code of practice proposes a drastic reduction in G-rated television programming, from 57 hours weekly to 22 hours,
  - (iii) if the draft proposals are adopted, the afternoon G-rated period would be cut to one hour, from 4 pm to 5 pm, and on weekends to two hours, from 6.30 am to 8.30 am, and
  - (iv) the Australian Parents Council, which represents hundreds of thousands of parents, has written to the Office of Film and Literature Classification, the Australian Broadcasting Authority and the Federal Attorney-General, condemning these proposals; and
- (b) calls on the Government to ensure that the G-rated viewing times remain at current levels.

Question put and passed.

**23 PROCEDURE—STANDING COMMITTEE—THIRD REPORT OF 2003**

The Chair of the Procedure Committee (Senator Hogg) tabled the following report:

Procedure—Standing Committee—Third report of 2003—Joint meetings to receive addresses by foreign heads of state; Reference of tax expenditure statement to estimates hearings, dated December 2003.

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

Senator Hogg, by leave, moved—That consideration of the report be made a business of the Senate order of the day for 11 May 2004.

Question put and passed.

**24 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—REPORT—ADMINISTRATIVE REVIEW OF VETERAN AND MILITARY COMPENSATION AND INCOME SUPPORT**

The Chair of the Finance and Public Administration References Committee (Senator Forshaw) tabled the following report and documents:

Finance and Public Administration References Committee—Administrative review of veteran and military compensation and income support—Report, dated December 2003, *Hansard* record of proceedings and submissions [14].

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

Senator Forshaw moved—That the Senate take note of the report.

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

**25 PUBLICATIONS—STANDING COMMITTEE—14TH REPORT**

Senator Eggleston, at the request of the Chair of the Standing Committee on Publications (Senator Colbeck), tabled the following report:

PUBLICATIONS COMMITTEE

14TH REPORT

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

The Committee, having considered documents presented to the Parliament since 6 November 2003, recommends that the following be printed:

Administrative Review Council—Report for 2002-03.

Audio-Visual Copyright Society Ltd (Screenrights)—Report for 2002-03.

Australia and the International Financial Institutions—Report for 2002-03.  
 Australian Electoral Commission—Report—2003—Redistribution of Queensland into electoral divisions.  
 Australian Industrial Relations Commission and the Australian Industrial Registry—Reports for 2002-03.  
 Australian Land Transport Development Programme—Progress report for 2002-03.  
 Australian Security Intelligence Organisation—Report for 2002-03.  
 Civil Aviation Safety Authority—Report for 2002-03.  
 Copyright Agency Limited—Report for 2002-03.  
 Department of Employment and Workplace Relations—Report for 2002-03—Corrigendum.  
 Financial Reporting Council and Australian Accounting Standards Board—Reports for 2002-03.  
 Migration Agents Registration Authority—Report for 2002-03.  
 Pharmaceutical Benefits Pricing Authority—Report for 2002-03.  
 Productivity Commission—Report—No. 26—Review of TCF assistance, 31 July 2003.  
*States Grants (Primary and Secondary Education Assistance) Act 2000*—Report on financial assistance granted to each State in respect of 2002.  
 Torres Strait Protected Zone Joint Authority—Report for 2001-02.

Senator Richard Colbeck  
 Chairman  
 4 December 2003.

Senator Eggleston, by leave, moved—That the report be adopted.

Question put and passed.

**26 NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND—JOINT STATUTORY COMMITTEE—REPORT—EFFECTIVENESS OF THE NATIONAL NATIVE TITLE TRIBUNAL**

The Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (Senator Johnston) tabled the following report and documents:

Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—Effectiveness of the National Native Title Tribunal in fulfilment of the Committee's duties pursuant to subparagraph 206(d)(i) of the *Native Title Act 1993*—Report, dated December 2003, *Hansard* record of proceedings and submissions [36].

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

Senator Johnston moved—That the Senate take note of the report.

Debate ensued.

Question put and passed.

**27 DESIGNS BILL 2003**

**DESIGNS (CONSEQUENTIAL AMENDMENTS) BILL 2003**

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

Message no. 459, dated 1 December 2003—A Bill for an Act relating to designs, and for related purposes.

Message no. 465, dated 2 December 2003—A Bill for an Act to amend certain Acts in consequence of the repeal of the *Designs Act 1906* and the enactment of the *Designs Act 2003*, and for related purposes.

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

Question put and passed.

Bills read a first time.

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

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*Explanatory memoranda:* Senator Minchin tabled revised explanatory memoranda [2] relating to the bills.

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On the motion of Senator Ludwig the debate was adjourned.

On the motion of Senator Minchin the resumption of the debate was made an order of the day for a later hour.

**28 DEFENCE LEGISLATION AMENDMENT BILL 2003**

A message from the House of Representatives was reported disagreeing to the amendments made by the Senate to the following bill:

Message no. 473, dated 3 December 2003—Defence Legislation Amendment Bill 2003.

On the motion of the Minister for Finance and Administration (Senator Minchin) consideration of the message in committee of the whole was made an order of the day for a later hour.

**29 LEGISLATIVE INSTRUMENTS BILL 2003**

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

Message no. 474, dated 3 December 2003—Legislative Instruments Bill 2003, agreeing to amendments nos 1, 2 and 4 to 22 made by the Senate, disagreeing to amendment no. 3 and making further amendments.

On the motion of the Minister for Finance and Administration (Senator Minchin) consideration of the message in committee of the whole was made an order of the day for a later hour.

**30 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REPORT—EXAMINATION OF THE GOVERNMENT’S FOREIGN AND TRADE POLICY STRATEGY**

Pursuant to order, the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook) tabled the following report and documents:

Foreign Affairs, Defence and Trade References Committee—The (not quite) White Paper: Australia’s foreign affairs and trade policy, *Advancing the national interest*—Report, dated December 2003, *Hansard* record of proceedings, additional information and submissions [11].

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

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

Debate ensued.

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

**31 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) moved—That government business notice of motion no. 5 standing in the name of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) for today, relating to the hours of meeting for today, be postponed till a later hour.

Question put and passed.

**32 HIGHER EDUCATION SUPPORT BILL 2003**

**HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003**

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

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*In the committee*

**HIGHER EDUCATION SUPPORT BILL 2003—**

Consideration resumed of the bill, as amended—and of the amendments moved by Senator Crossin:

Page 1 (line 1) to page 208 (line 20), omit “higher education provider” (wherever occurring), substitute “university/listed higher education institution”.

Page 1 (line 1), to page 208 (line 20), omit “higher education providers” (wherever occurring), substitute “universities/listed higher education institutions”.

Page 1 (line 1), to page 208 (line 20), omit “providers” (wherever occurring), substitute “institutions”.

Debate ensued.

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

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*Explanatory memoranda:* The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled further additional supplementary explanatory memoranda [2] relating to the government amendments to be moved to the Higher Education Support Bill 2003 and the Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003.

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Senator Stott Despoja moved the following amendments together by leave:

Division 16, clauses 16-1 to 16-50, page 10 (line 2) to page 16 (line 9), omit the Division, substitute:

**Division 16—What is a higher education provider?**

**Subdivision 16-A—General**

**16-1 Meaning of a *higher education provider***

A *higher education provider* is a body corporate that is either:

- (a) a \*university or listed provider approved under section 16-5; or
- (b) a higher education provider approved under section 17-20.

**16-5 When a body becomes an approved university or listed provider**

A \*university or a listed provider is approved as such from the commencement of this Act.

**Subdivision 16-B—Which bodies are listed providers?**

**16-10 Universities and listed higher education providers**

- (1) The following are \*universities and listed providers:
  - (a) a \*Table A provider; and
  - (b) a \*Table B provider.
- (2) Universities and listed providers are subject to the Listed Providers Compliance Requirements as defined in Subdivision 16-C.

**16-15 Meaning of a university**

A *university* means a body corporate that:

- (a) meets \*National Protocol 1; and
- (b) is established as a \*university, or recognised by, or under the law of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

**16-20 Table A providers**

The following are *Table A providers*:

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**Table A providers**

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**Providers**

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Australian Catholic University  
 Australian Maritime College  
 Batchelor Institute of Indigenous Tertiary Education  
 Central Queensland University  
 Charles Darwin University  
 Charles Sturt University  
 Curtin University of Technology  
 Deakin University  
 Edith Cowan University  
 Griffith University

James Cook University  
 La Trobe University  
 Macquarie University  
 Monash University  
 Murdoch University  
 Queensland University of Technology  
 Royal Melbourne Institute of Technology  
 Southern Cross University  
 Swinburne University of Technology  
 The Australian National University  
 The Flinders University of South Australia  
 The University of Adelaide  
 The University of Melbourne  
 The University of Queensland  
 The University of Sydney  
 The University of Western Australia  
 University of Ballarat  
 University of Canberra  
 University of New England  
 University of New South Wales  
 University of Newcastle  
 University of South Australia  
 University of Southern Queensland  
 University of Tasmania  
 University of Technology, Sydney  
 University of the Sunshine Coast  
 University of Western Sydney  
 University of Wollongong  
 Victoria University of Technology

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**16-25 Table B providers**

The following are *Table B providers*:

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**Table B providers**

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**Providers**

Bond University  
 The University of Notre Dame Australia  
 Melbourne College of Divinity

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**Subdivision 16-C—Listed Providers Compliance Requirements**

**16-30 Basic requirements**

- (1) A \*Table A provider or \*Table B provider must comply with the requirements of this Act, the regulations and the Guidelines made under section 238-10.
- (2) A \*Table A provider or \*Table B provider must provide information to the Minister in relation to the affairs of the institution in accordance with the requirements of this Act.
- (3) A \*Table A provider or a \*Table B provider's administrative arrangements must support the provision of assistance under this Act.

**16-35 University or listed higher education provider to provide statement of general information**

- (1) A \*Table A provider or \*Table B provider must give to the Minister such statistical and other information that the Minister by notice in writing requires from the institution in respect of:
  - (a) the provision of higher education by the provider; and
  - (b) compliance by the provider with the requirements of this Act.
- (2) The information must be provided:
  - (a) in a form approved by the Minister; and
  - (b) in accordance with such other requirements as the Minister makes.
- (3) Nothing in subsection (1) or (2) shall require a provider to provide the names and addresses of its students other than for use to confirm that the required \*student identifier has been correctly supplied.

**16-40 Notice of events that affect a university or listed higher education provider's ability to comply with conditions of Commonwealth assistance**

A Table A provider or Table B provider must in writing inform the Minister of any event affecting:

- (a) the provider; or
- (b) a \*related body corporate of the provider;

that may, significantly affect the provider's capacity to meet the conditions of grants under this Chapter or the compliance and contribution requirements.

Page 16 (after line 9), after Division 16, insert:

**Division 17—Other non listed providers**

**17-10 Application**

- (1) A body corporate may apply in writing to the Minister for approval as a \*higher education provider.
- (2) The application:
  - (a) must be in the form approved by the Minister; and
  - (b) must be accompanied by such information as the Minister requests.

**17-15 When a body ceases to be a higher education provider**

A body corporate that is not a \*listed provider or a \*higher education provider ceases to be a provider if the provider's approval is revoked or suspended under Division 22.

**17-20 Approval by the Minister**

- (1) The Minister, in writing, may approve a body corporate as a \*higher education provider if:
  - (a) the body:
    - (i) is established under the law of the Commonwealth, a State or a Territory; and
    - (ii) carries on business in Australia; and
    - (iii) has its central management and control in Australia; and
  - (b) the body is either:
    - (i) a \*self-accrediting provider; or
    - (ii) a \*non self-accrediting provider; and
  - (c) the body either fulfils the \*tuition assurance requirements or is exempted from those requirements under subsection 17-25(2); and
  - (d) in the case of a non self-accrediting provider, the body meets the additional requirements under section 17-30; and
  - (e) the body applies for approval as provided for in section 16-40; and
  - (f) the Minister is satisfied that the body is willing and able to meet the \*quality and accountability requirements.
- (2) A self-accrediting provider is a body corporate, other than a \*university, whose name is included in the \*Australian Qualifications Framework Register as the name of a higher education institution empowered to issue its own qualifications.
- (3) A non self-accrediting provider is a body corporate:
  - (a) whose name is included; or
  - (b) who owns or controls a business name that is included;
 in the list of Non Self-Accrediting Higher Education Institutions contained in the \*Australian Qualifications Framework Register, as the name of an institution approved by an authorised accreditation authority to issue one or more \*higher education awards.

**17-25 The tuition assurance requirements**

- (1) The *tuition assurance requirements* are that, on the date of an application under section 16-40:
  - (a) the body corporate making the application complies with the requirements for tuition assurance set out in the Higher Education Provider Guidelines; or
  - (b) if the guidelines do not set out such requirements, the body has in place arrangements that the Minister is satisfied will ensure, for any person enrolled in a \*course of study with the body, that, should the body cease to be able to provide that course:
    - (i) the person will be able to enrol in a similar course with another higher education provider and receive full recognition by that other provider for any successfully

- completed \*units of study undertaken as part of the course of study with the body; and
- (ii) the person will be able to receive a payment equivalent to any \*student contribution amount or \*tuition fee that has been paid for a unit of study in that course with the body that the person has not completed because the body ceased to be able to provide the course.
- (2) The Minister may, in writing, exempt a body corporate from the \*tuition assurance requirements.

### **17-30 Additional requirements for non listed providers**

The additional requirements for \*non listed non self-accrediting providers are that the body:

- (a) is in a State or Territory that the Minister is satisfied has legislation that complies with the \*National Protocols; and
- (b) offers at least one \*course of study that leads to a \*higher education award, and that course is accredited by a State or Territory under \*National Protocol 3.

### **17-35 Provider to provide access to Departmental officers etc.**

- (1) The \*Secretary may determine in writing arrangements, in respect of a non listed higher education provider, for access by:
- (a) APS employees in the Department who are authorised under subsection (3); or
- (b) any other persons who are engaged to perform services for or on behalf of the Commonwealth, and who are authorised under subsection (3);
- to any premises or records of the provider for the purpose of conducting audit and compliance activities related to this Act.
- (2) The provider must comply with the arrangements.
- (3) The \*Secretary may authorise in writing:
- (a) APS employees in the Department; or
- (b) any other person who is engaged to perform services for or on behalf of the Commonwealth;
- for the purposes of subsection (1).

Debate ensued.

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

Senator Stott Despoja moved the following amendment:

Clause 3-5, page 5 (lines 10 to 15), omit the clause, substitute:

### **3-5 Grants for higher education assistance (Chapter 2)**

Chapter 2 sets out who are higher education bodies and for regulatory and/or funding purposes distinguishes between universities and listed higher education providers and non listed higher education providers. The Chapter provides for the following grants and payments:

- (a) grants under the Commonwealth Grant Scheme;
- (b) other grants for particular purposes;
- (c) grants for Commonwealth scholarships.

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

Question—That the bill, as amended be agreed to—divided in respect of Subdivision 19-F.

Subdivision 19-F debated.

Question—That Subdivision 19-F stand as printed—put.

The committee divided—

AYES, 34

Senators—

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

NOES, 32

Senators—

Allison	Cherry	Greig	Murray
Bartlett	Collins	Hogg	Nettle
Bishop	Conroy	Kirk	O'Brien
Bolkus	Cook	Ludwig	Ray
Brown	Denman	Lundy	Ridgeway
Buckland (Teller)	Evans	Mackay	Stott Despoja
Campbell, George	Faulkner	Marshall	Webber
Carr	Forshaw	McLucas	Wong

Subdivision agreed to.

Senator Stott Despoja moved the following amendments together by leave:

Heading to Division 22, page 27 (lines 2 and 3), omit the heading, substitute:

**Division 22—When does a body cease to be a non listed provider?**

Division 22, clauses 22-1 to 22-40, pages 27 (line 4) to 32 (line 7), omit “higher education” (wherever occurring), substitute “non listed or other”.

Clause 30-1, page 34 (lines 11 to 14), omit subparagraph (1)(a)(ii), substitute:

(ii) a \*Table B provider; and

Clause 30-1, page 34 (lines 20 and 21), omit “higher education provider that is not a \*Table A provider,” substitute “\*Table B provider”.

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

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

Clause 2-1, page 4 (lines 3 to 16), omit the clause, substitute:

**2-1 Objects of this Act**

The objects of this Act are:

(a) to support a higher education system that:

- (i) is characterised by quality, diversity and equity of access; and
- (ii) contributes to the development of cultural and intellectual life in Australia; and
- (iii) is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population; and

- (b) to support the distinctive purposes of universities, which are:
  - (i) the education of persons, enabling them to take a leadership role in the intellectual, cultural, economic and social development of their communities; and
  - (ii) the creation and advancement of knowledge; and
  - (iii) the application of knowledge and discoveries to the betterment of communities in Australia and internationally;recognising that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university's overall performance and its ongoing independence; and
- (c) to strengthen Australia's knowledge base, and enhance the contribution of Australia's research capabilities to national economic development, international competitiveness and the attainment of social goals; and
- (d) to support students undertaking higher education.

Senator Carr moved the following amendments together by leave:

Clause 2-1, page 4 (line 11) after "a", insert "more".

Clause 2-1, page 4 (line 16), at the end of the clause, add:

- ; and (d) in relation to universities, to carry out the objects in paragraphs (a) to (c), recognising that each \*university is an independent and autonomous institution that has its own objects established by statute and its own distinct history and mission and is an institution which:
  - (i) promotes free and open inquiry and upholds democratic principles through encouraging and participating in informed public debate on a wide range of social, cultural and economic matters affecting the nation, region and world;
  - (ii) governs its own affairs, including the composition and functions of its governing bodies and its workplace and other relations with its staff, within the statutory framework under which it is established or regulated;
  - (iii) is a centre of free inquiry which advances knowledge through teaching and scholarly research promoted at the highest standards;
  - (iv) provides degree and post-graduate education to serve the needs of the professions and to provide highly skilled graduates able to serve the needs of society;
  - (v) promotes the importance of learning among its students and in society generally;
  - (vi) engages with its community in ways that enhance the social, economic and cultural life of the community;
  - (vii) is committed to academic freedom, which includes promoting the questioning by its staff and students of received wisdom and the putting forward by those staff

- and students of new ideas and controversial or unpopular opinions;
- (viii) is free to engage in research as are its staff and students;
  - (ix) is free to regulate the subject-matter and content of its courses including determining what those courses are and the assessment processes for those courses.

Page 4 (after line 16), at the end of Division 2, add:

**2-5 Promoting the objects of this Act**

A person or body exercising any power or function under this Act shall do so in a manner which promotes the objects of this Act.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 31

Senators—

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

NOES, 34

Senators—

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

Question negatived.

Senator Stott Despoja moved the following amendments together by leave:

Clause 2-1, page 4 (line 16), at the end of the clause, add:

- ; and (d) in relation to universities, to carry out the objects in paragraphs (a) to (c) recognising that each \*university is an independent and autonomous institution that has its own objects established by statute and its own distinct history and mission and is an institution which:
- (i) governs its own affairs, including the composition and functions of its governing bodies and its workplace and other relations with its staff, within the statutory framework under which it is established or regulated; and
  - (ii) is a centre of free inquiry which advances knowledge through teaching and scholarly research promoted at the highest standards; and

- (iii) provides degree and postgraduate education to serve the needs of the professions and to provide highly skilled graduates able to serve the needs of society; and
- (iv) promotes the importance of learning among its students and in society generally; and
- (v) engages with its community in ways that enhance the social, economic and cultural life of the community; and
- (vi) is committed to academic freedom, which includes the questioning by staff and students of current knowledge and the proposal of new ideas; and
- (vii) is free to regulate the subject-matter and content of its courses including determining what those courses are and the assessment processes for those courses.

Page 4 (after line 16), at the end of Division 2, add:

**2-5 Promoting the objects of Act**

A person or body exercising any power or function under this Act shall do so in a manner which promotes the objects of this Act.

Debate ensued.

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

Senator Nettle moved the following amendments together by leave:

Clause 2-1, page 4 (line 16) at the end of the clause, add:

- ; and (d) in relation to universities, to carry out the objects in paragraphs (a) to (c) recognising that each \*university is an independent and autonomous institution that has its own objects established by statute and its own distinct history and mission and is an institution which:
  - (i) governs its own affairs, including the composition and functions of its governing bodies and its workplace and other relations with its staff, within the statutory framework under which it is established or regulated;
  - (ii) is a centre of free inquiry which advances knowledge through teaching and scholarly research promoted at the highest standards;
  - (iii) provides degree and post-graduate education to serve the needs of the professions and to provide highly skilled graduates able to serve the needs of society;
  - (iv) promotes the importance of learning among its students and in society generally;
  - (v) engages with its community in ways that enhance the social, economic and cultural life of the community;
  - (vi) is committed to academic freedom, which includes promoting the questioning by its staff and students of received wisdom and the putting forward by those staff and students of new ideas and controversial or unpopular opinions;
  - (vii) is free to engage in research as are its staff and students;
  - (viii) is free to regulate the subject-matter and content of its courses including determining what those courses are and the assessment processes for those courses.

Page 4 (after line 16), at the end of Division 2, add:

**2-5 Promoting the objects of this Act**

A person or body exercising any power or function under this Act shall do so in a manner which promotes the objects of this Act.

Debate ensued.

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

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

Clause 16-15, page 11, after “Central Queensland University”, insert “Charles Darwin University”.

Clause 16-15, page 11, omit “Northern Territory University”.

Senator Carr moved the following amendment:

Clause 16-15, page 11, Table A providers, insert in alphabetical order “Australian Maritime College”.

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

Senator Carr moved the following amendments together by leave:

Clause 16-10, page 10 (line 23), at the end of the clause, add:

; (c) a \*Table C provider.

Page 12 (after line 7), after clause 16-20, insert:

**16-22 Table C providers**

- (1) The following are *Table C providers*:

<b>Table C Providers</b>	
<b>Providers</b>	
<b>Item</b>	
1	Christian Heritage College
2	Tabor College (Adelaide)

- (2) However, a body is not a Table C provider if its approval as a higher education provider is revoked or suspended.

Clause 104-10, page 95 (line 31), after “study”, insert “at a \*Table C provider”.

Schedule 1, clause 1, page 207 (after line 7), after the definition of *Table B provider*, insert:

*Table C provider* means a body listed in Table C in section 16-22.

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided in respect of clauses 16-40, 16-45 and 16-50.

Clauses 16-40, 16-45 and 16-50 debated and agreed to.

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

Page 16 (after line 9), at the end of Subdivision 16-C, add:

**16-55 Disallowance of approval**



- (1) A notice of approval under paragraph 16-50(1)(b) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (2) A decision of the Minister to approve a body corporate as a higher education provider takes effect at the later of the following times:
  - (a) on the day immediately after the last day on which a resolution referred to in subsection 48(4) of the *Acts Interpretation Act 1901* disallowing the notice could be passed;
  - (b) the day (if any) specified in the notice under paragraph 16-50(1)(b) as the day on which the approval takes effect.

Clause 22-35, page 31 (lines 21 and 22), omit subclause (2), substitute:

- (2) A decision of the Minister to revoke the approval of a higher education provider takes effect at the later of the following times:
  - (a) on the day immediately after the last day on which a resolution referred to in subsection 48(4) of the *Acts Interpretation Act 1901* disallowing the notice could be passed;
  - (b) the day specified in the notice of revocation under subsection 22-20(3) as the day on which the revocation takes effect.

Question—That the bill, as amended, be agreed to—divided in respect of Subdivision 16-C and Division 22.

Subdivision 16-C and Division 22 debated and agreed to.

Senator Carr moved the following amendment:

Clause 19-5, page 17 (after line 20), at the end of the clause, add:

- (2) For the purposes of this section, financial viability is to be assessed against criteria including but not limited to:
  - (a) safety margins;
  - (b) borrowings;
  - (c) cash holdings and investments;
  - (d) net assets;
  - (e) ratio of current assets to current liabilities;
  - (f) trends in the above.

Debate ensued.

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

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

Clause 19-10, page 18 (line 4), omit “4 months”, substitute “6 months”.

Page 18 (after line 11), at the end of Subdivision 19-B, add:

**19-12 Minister to have regard to financial information**

In determining whether a higher education provider is financially viable, and likely to remain so, the Minister must have regard to any financial statement provided by the provider under section 19-10.

Senator Carr moved the following amendment:

Clause 19-10, page 18 (lines 4 to 6), omit paragraph (2)(c), substitute

- (c) must be provided as soon as they are available but not later than 6 months after the end of the \*annual financial reporting period for which the statement was given.

Debate ensued.

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

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

Clause 19-15, page 18 (after line 16), at the end of the clause, add:

- (2) The Minister must not determine that a higher education provider meets an appropriate level of quality for an Australian higher education provider, unless the Minister is satisfied that:
  - (a) if the provider is not a \*Table A provider—the provider meets the requirements of sections 19-20 and 19-25; or
  - (b) if the provider is a Table A provider—the provider meets the requirements of section 19-27.

Heading to clause 19-20, page 18 (line 17), omit “**Provider**”, substitute “**Provider (other than Table A provider)**”.

Clause 19-20, page 18 (line 18), after “provider”, insert “(other than a \*Table A provider)”.

Heading to clause 19-25, page 18 (line 28), omit the heading, substitute:

**19-25 Quality assurance—provider (other than Table A provider)**

Clause 19-25, page 18 (line 29), after “provider”, insert “(other than a \*Table A provider)”.

Page 19 (after line 12), at the end of Subdivision 19-C, add:

**19-27 Quality assurance—Table A provider**

- (1) A \*Table A provider must be audited by a \*quality auditing body at least once every 5 years.
- (2) The provider must, in relation to each audit of the provider:
  - (a) either:
    - (i) before the start of the audit, reach agreement with the body on the time of, and the arrangements for, the audit; or
    - (ii) comply with the Minister’s determination under subsection (3); and
  - (b) in relation to each audit, comply with any requests, made in the course of the audit by the body conducting the audit, that are reasonable having regard to the provider’s circumstances.
- (3) If the provider and the \*quality auditing body are unable to agree on matters referred to in subparagraph (2)(a)(i) in relation to an audit of the provider, the Minister may, after consulting with the provider, determine in writing the audit arrangements for the provider.

Senator Carr moved the following amendments together by leave:

Clause 19-15, page 18 (line 15), omit “at an appropriate level of quality for an Australian higher education provider”, substitute “an external system of normative peer review”.

Clause 19-25, page 19 (line 1), omit paragraph (1)(b), substitute:

- (b) by expert peer assessment as agreed between the auditing body and the body being audited.

Page 19 (after line 12), at the end of Subdivision 19-C, add:

**19-26 Review of audits**

- (1) A higher education provider may request the Minister to conduct a review of an audit conducted in accordance with this Subdivision.
- (2) A higher education provider may request the Minister to set aside a recommendation of an audit on the grounds that it is unreasonable.
- (3) Where the Minister receives a request in accordance with subsections (1) and (2), the Minister must:
  - (a) consider and notify to the provider his decision in relation to the request within one month of the request being made;
  - (b) table in both houses of the Parliament a statement of reasons in relation to each decision made in accordance with this section within 15 sitting days of making the decision.

Debate ensued.

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

Senator Stott Despoja moved the following amendments together by leave:

No. 1—Clause 19-20, page 18 (line 21), at the end of paragraph (a), add “at reasonable intervals but not more than once in 2 years and at least once every 5 years”.

No. 2—Clause 19-20, page 18 (lines 25 to 27), omit paragraph (c).

No. 3—Clause 19-25, page 19 (lines 8 and 9), omit paragraph (2)(c), substitute:  
(c) pay to the auditing body the agreed amount for such an audit.

No. 4—Clause 19-40, page 20 (line 13), at the end of subclause (2), add “The Minister must report to Parliament on \*higher education providers exempt from complying with the tuition assurance requirements in subsection 17-25(2).”.

No. 5—Clause 19-45, page 21 (line 10), after “publish,” insert “, provide free of charge on request,”.

No. 6—Clause 19-45, page 21 (line 14), after “publish,” insert “and provide free of charge on request,”.

No. 7—Clause 19-50, page 21 (line 17), after “provider,” insert “, other than a \*Table A provider,”.

No. 8—Clause 19-55, page 22 (line 2), after “provider,” insert “, other than a \*Table A provider,”.

No. 9—Clause 19-70, page 23 (line 11), after “requirements,” insert “, incidental to the reporting requirements,”.

Debate ensued.

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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

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

### 33 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Minister for Local Government, Territories and Roads (Senator Ian Campbell), by leave, moved—That, on Thursday, 4 December 2003:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to midnight, and Friday, 5 December 2003, 9 am to adjournment;
- (b) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) not be proceeded with;
- (c) the routine of business from not later than 4.30 pm shall be government business only;
- (d) divisions may take place after 6 pm;
- (e) the Kyoto Protocol Ratification Bill 2003 [No. 2] be considered for not more than 30 minutes immediately after the conclusion of consideration of government business order of the day no. 2 (ASIO Legislation Amendment Bill 2003);
- (f) the question for the adjournment of the Senate shall not be proposed till after the Senate has finally considered the bills listed below:
  - Higher Education Support Bill 2003 and Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003
  - ASIO Legislation Amendment Bill 2003
  - Financial Services Reform Amendment Bill 2003
  - Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003
  - Family Law Amendment Bill 2003;
 and any messages from the House of Representatives in relation to:
  - Trade Practices Legislation Amendment Bill 2003
  - Taxation Laws Amendment Bill (No. 5) 2003
  - Defence Legislation Amendment Bill 2003
  - Legislative Instruments Bill 2003.

Question put and passed.

### 34 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved—That, after consideration of the government business order of the day relating to the Designs Bill 2003 and a related bill, the Senate consider messages from the House of Representatives in relation to the following bills till not later than 2 pm:

- Taxation Laws Amendment Bill (No. 5) 2003.
- Defence Legislation Amendment Bill 2003.
- Legislative Instruments Bill 2003.

Question put and passed.

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*At 12.45 pm—*

35 **ABORIGINAL LAND GRANT (JERVIS BAY TERRITORY) AMENDMENT BILL 2003**

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bill was read a third time.

36 **COMMONWEALTH ELECTORAL AMENDMENT (MEMBERS OF LOCAL GOVERNMENT BODIES) BILL 2002**

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

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*In the committee*

Bill taken as a whole by leave.

Senator Murray moved the following amendments together by leave:

No. 1—Schedule 1, item 1, page 3 (lines 5 to 17), omit the item, substitute:

**1 At the end of section 327**

Add:

- (3) A law of a State or Territory has no effect to the extent to which the law discriminates against a member of:
- (a) the Parliament of a State; or
  - (b) the Legislative Assembly of the Northern Territory of Australia;
- or
- (c) the Legislative Assembly for the Australian Capital Territory; or
  - (d) a member of a local government body;

on the ground that:

- (e) the member has been, is, or is to be, nominated; or
- (f) the member has been, is, or is to be, declared;

as a candidate in an election for the House of Representatives or the Senate.

- (4) In subsection (3):

*member of a local government body* means a member of a local governing body established by or under a law of a State or Territory.

No. 2—Schedule 1, page 3 (before line 5), before item 1, insert:

**1A Section 164**

Repeal the section, substitute:

**164 State and Territory members entitled to be nominated but must resign such offices if elected to the Senate or House of Representatives**

A member of:

- (a) the Parliament of a State; or
- (b) the Legislative Assembly of the Northern Territory of Australia; or
- (c) the Legislative Assembly for the Australian Capital Territory;

must, if elected as a Senator or as a Member of the the House of Representatives, resign from any of the bodies listed in paragraphs (a) to (c) not more than 24 hours after the declaration of the writ for the relevant election.

**164A Members of local governing bodies**

A member of a local governing body established by or under a law of a State or Territory who is nominated as a candidate for the Senate or the House of Representatives, must, if elected as a Senator or Member of the House of Representatives, resign from that local governing body not more than 24 hours after the declaration of the writ for the relevant election.

No. 3—Schedule 1, page 3 (before line 5), before item 1, insert:

**1B At the end of subsection 170(1)**

Add:

- ; and (d) declares the name of all political parties of which he or she is a member.

No. 4—Schedule 1, page 3 (before line 5), before item 1, insert:

**1C After paragraph 176(1)(a)**

Insert:

- (aa) the name of all political parties of which the candidate is a member; and

Question—That amendment no. 1 be agreed to—put and negatived.

Question—That amendment no. 2 be agreed to—put and negatived.

Question—That amendments nos 3 and 4 be agreed to—put and negatived.

Bill agreed to.

Bill to be reported without amendment.

---

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

On the motion of the Special Minister of State (Senator Abetz) the report from the committee was adopted and the bill read a third time.

**37 CUSTOMS LEGISLATION AMENDMENT BILL (NO. 2) 2003**

Order of the day read for the adjourned debate on the motion of the Minister for Family and Community Services (Senator Patterson)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bill was read a third time.

**38 DESIGNS BILL 2003**

**DESIGNS (CONSEQUENTIAL AMENDMENTS) BILL 2003**

Order of the day read for the adjourned debate on the motion of the Minister for Finance and Administration (Senator Minchin)—That these bills be now read a second time.

Debate resumed.

Senator Ridgeway moved the following amendment in respect of the Designs Bill 2003:

At the end of the motion, add “but the Senate:

- (a) encourages the Government to note the comments of the Australian Law Reform Commission in regard to the need for protection of Indigenous designs;
- (b) encourages the Government to commit to the development and introduction of such a scheme of protection; and
- (c) calls on the Government to introduce already promised legislation relating to the protection of Indigenous intellectual property, in particular the issue of communal moral rights”.

Debate ensued.

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

Main question, as amended, put and passed.

Bills read a second time.

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

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bills were read a third time.

**39 TAXATION LAWS AMENDMENT BILL (NO. 5) 2003**

Order of the day read for the consideration of message no. 471 from the House of Representatives in committee of the whole (*see entry no. 38, 3 December 2003*).

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*In the committee*

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) moved—That the committee does not insist in its amendment to which the House of Representatives has disagreed.

Debate ensued.

Question put and passed.

Resolution to be reported.

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The Acting Deputy President (Senator Watson) resumed the chair and the Chair of Committees (Senator Hogg) reported that the committee had considered message no. 471 from the House of Representatives relating to the Taxation Laws Amendment Bill (No. 5) 2003 and had resolved not to insist on the amendment made by the Senate to which the House had disagreed.

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

#### 40 DEFENCE LEGISLATION AMENDMENT BILL 2003

Order of the day read for the consideration of message no. 473 from the House of Representatives in committee of the whole (*see entry no. 28*).

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*In the committee*

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Senator Troeth moved—That the committee report progress and ask leave to sit again.

Question put and passed.

---

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

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

#### 41 LEGISLATIVE INSTRUMENTS BILL 2003

Order of the day read for the consideration of message no. 474 from the House of Representatives in committee of the whole (*see entry no. 29*).

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*In the committee*

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

**(3) Dem (3) [Sheet 3184 Revised 2]**

Clause 17, page 21 (lines 7 to 13), omit subclause (1), substitute:



- (1) Subject to section 18, before a rule-maker makes a legislative instrument, and where the proposed instrument is likely to restrict competition or have a direct, or a substantial indirect, effect on:
- (a) business; or
  - (b) any other sector of the community; or
  - (c) human rights or civil liberties; or
  - (d) the natural, Aboriginal, cultural or built environment;
- the rule-maker must ensure that appropriate consultation is undertaken.

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SCHEDULE OF THE FURTHER AMENDMENTS MADE  
BY THE HOUSE OF REPRESENTATIVES

- (1) Clause 2, page 2 (table item 1), omit “Sections 1 and 2”, substitute “Sections 1, 2 and 2A”.

**[commencement]**

- (2) Clause 2, page 2 (at the end of the table), add:

3. Schedule 1      Immediately after the commencement of Schedule 1 to the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*

**[commencement]**

- (3) Page 2 (after line 19), after clause 2, insert:

**2A Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

**[effect of amending Schedule]**

- (4) Clause 12, page 16 (line 30) to page 17 (line 9), omit subclause (2), substitute:

- (2) A legislative instrument, or a provision of a legislative instrument, has no effect if, apart from this subsection, it would take effect before the date it is registered and as a result:
- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of registration would be affected so as to disadvantage that person; or
  - (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of registration.

**[legislative instrument; date of effect]**

- (5) Page 63 (after line 17), at the end of the Bill, add:

**Schedule 1—Amendment of other legislation**

***Acts Interpretation Act 1901***

**1 Subsection 46B(3)**

Repeal the subsection, substitute:

- (3) An instrument to which this section applies, or a provision of such an instrument, has no effect if, apart from this subsection, it would take effect before the date of its notification under subsection (5) and as a result:
- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at the date of notification would be affected so as to disadvantage that person; or
  - (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before the date of notification.

***[non-legislative instrument; date of effect]***

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) moved—That the committee does not insist on its amendment no. 3 to which the House of Representatives has disagreed and agrees to the further amendments made by the House.

Debate ensued.

Senator Troeth moved—That the committee report progress and ask leave to sit again.

Question put and passed.

---

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

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

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

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*At 2 pm—*

#### 42 QUESTIONS

Questions without notice were answered.

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*Document:* The Special Minister of State (Senator Abetz) tabled the following document:

Centenary House—Leasing by the Commonwealth of accommodation—Copy of letter to the Leader of the Opposition (Mr Latham) from the Special Minister of State (Senator Abetz), dated 4 December 2003.

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Further questions without notice were answered.

**43 TAXATION—FIRST HOME OWNERS, ‘BRACKET CREEP’ AND INTERGENERATIONAL REPORT—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE**

The Minister for Revenue and Assistant Treasurer (Senator Coonan), by leave, made a statement relating to the order of the Senate of 1 December 2003 for the production of documents concerning first home owners (*see entry no. 17, 1 December 2003*).

**44 TRANSPORT—AIRSPACE MANAGEMENT—ANSWERS TO QUESTIONS**

Senator O’Brien moved—That the Senate take note of the answers given by the Minister for Local Government, Territories and Roads (Senator Ian Campbell) to questions without notice asked by Senators O’Brien and Mackay today relating to the new airspace management system.

Debate ensued.

Question put and passed.

**45 DEFENCE LEGISLATION AMENDMENT BILL 2003**

Order of the day read for the further consideration of message no. 473 from the House of Representatives in committee of the whole (*see entry no. 40*).

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*In the committee*

Consideration resumed of the message—and of the motion moved by the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth)—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Question put.

The committee divided—

**AYES, 41**

Senators—

Abetz	Conroy	Hogg	Ray
Barnett	Coonan	Humphries	Scullion
Bishop	Crossin	Hutchins	Stephens
Brandis	Denman	Kirk	Troeth
Buckland	Eggleston	Ludwig	Vanstone
Calvert	Ferguson	Lundy	Watson
Campbell, George	Ferris (Teller)	Mackay	Webber
Carr	Forshaw	Marshall	Wong
Chapman	Harradine	Mason	
Colbeck	Heffernan	McLucas	
Collins	Hill	Payne	

**NOES, 9**

Senators—

Allison (Teller)	Cherry	Lees	Ridgeway
Bartlett	Greig	Nettle	Stott Despoja
Brown			

Question agreed to. Senator Murray, by leave, recorded his vote for the noes.

Resolution to be reported.

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The Deputy President (Senator Hogg) resumed the chair and the Chair of Committees reported that the committee had considered message no. 473 from the House of Representatives relating to the Defence Legislation Amendment Bill 2003 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed.

On the motion of the Minister for Defence (Senator Hill) the report from the committee was adopted.

#### 46 LEGISLATIVE INSTRUMENTS BILL 2003

Order of the day read for the further consideration of message no. 474 from the House of Representatives in committee of the whole (*see entry no. 41*).

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*In the committee*

Consideration resumed of the message—and of the motion moved by the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth)—That the committee does not insist on its amendment no. 3 to which the House of Representatives has disagreed and agrees to the further amendments made by the House.

Question put.

The committee divided—

AYES, 42

Senators—

Abetz	Conroy	Humphries	Payne
Barnett	Coonan	Hutchins	Ray
Bishop	Crossin	Johnston	Scullion
Brandis	Denman	Kirk	Stephens
Buckland	Eggleston	Ludwig	Troeth
Calvert	Ferguson	Lundy	Vanstone
Campbell, George	Ferris (Teller)	Mackay	Watson
Carr	Forshaw	Marshall	Webber
Chapman	Harradine	Mason	Wong
Colbeck	Hill	McLucas	
Collins	Hogg	O'Brien	

NOES, 10

Senators—

Allison (Teller)	Cherry	Murray	Stott Despoja
Bartlett	Greig	Nettle	
Brown	Lees	Ridgeway	

Question agreed to.

Resolution to be reported.

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The Deputy President (Senator Hogg) resumed the chair and the Chair of Committees reported that the committee had considered message no. 474 from the House of Representatives relating to the Legislative Instruments Bill 2003 and had resolved not to insist on amendment no. 3 made by the Senate to which the House had disagreed and had agreed to the further amendments made by the House.

On the motion of the Minister for Defence (Senator Hill) the report from the committee was adopted.

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

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

President’s report to the Senate on government responses outstanding to parliamentary committee reports as at 4 December 2003.

**48 AUDITOR-GENERAL—AUDIT REPORTS NOS 16 AND 17 OF 2003-04—DOCUMENTS**

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

Auditor-General—Audit report for 2003-04—

No. 16—Performance audit—Administration of consular services follow-up audit: Department of Foreign Affairs and Trade.

No. 17—Performance audit—AQIS cost-recovery systems follow-up audit: Australian Quarantine and Inspection Service.

**49 GOVERNMENT DOCUMENTS**

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following documents:

Department of Defence—

Director of Trials—A concept to support capability management and accountability through test and evaluation, March 2003.

Special purpose flights—Schedule for the period 1 January to 30 June 2003.

Former Governors-General travel paid by the Department of the Prime Minister and Cabinet—1 January to 30 June 2003.

Former parliamentarians’ travel paid by the Department of Finance and Administration—1 January to 30 June 2003, December 2003.

Parliamentarians’ travel paid by the Department of Finance and Administration—1 January to 30 June 2003, December 2003.

**50 ENVIRONMENT—SEPON MINE—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE**

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, made a statement relating to the order of the Senate of 3 December 2003 for the production of documents concerning the Sepon mine project in Laos (*see entry no. 24, 3 December 2003*).

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

**51 HEALTH—PHARMACEUTICAL BENEFITS SCHEME—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE**

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, made a statement relating to the order of the Senate of 3 December 2003 for the production of documents concerning an education campaign about drugs (*see entry no. 22, 3 December 2003*).

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

**52 INDUSTRY—BIOTECHNOLOGY AUSTRALIA—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS**

Pursuant to the order of the Senate of 25 June 2003, the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled the following documents:

Industry—Biotechnology Australia—Copies of Department of Industry, Science and Resources invoices [2] and purchases orders [2], minute dated 23 February 2003 and email correspondence [39].

**53 TREATIES—JOINT STANDING COMMITTEE—57TH REPORT**

Senator Kirk, on behalf of the Joint Standing Committee on Treaties, tabled the following report and documents:

Treaties—Joint Standing Committee—57th report—Convention for the Safety of Life at Sea, 1974 and the International Ship and Port Facility Security (ISPS) Code, dated December 2003, *Hansard* record of proceedings and minutes of proceedings.

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

Question put and passed.

**54 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—STATEMENT—PROGRESS REPORT**

Senator McGauran, on behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan), made a statement relating to the progress of the committee's inquiry into the application and expenditure of funds by Australian Wool Innovation Ltd.

**55 DOCUMENTS**

The following documents were tabled by the Clerk:

Civil Aviation Act—Civil Aviation Regulations—  
Exemption No. CASA EX25/2003.

Instruments Nos CASA 513/03, CASA 522/03, CASA 537/03 and CASA 538/03.

Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].

**56 COMMITTEES—CHANGES IN MEMBERSHIP**

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

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone), by leave, moved—That senators be discharged from and appointed to committees as follows:

**Economics Legislation Committee—**

Appointed—Substitute member: Senator Cherry to replace Senator Murray for the committee's inquiry into the provisions of the Superannuation Safety Amendment Bill 2003

**Foreign Affairs, Defence and Trade Legislation Committee—**

Appointed—Substitute member: Senator Bishop to replace Senator Cook for the committee's inquiry into the provisions of the Military Rehabilitation and Compensation Bill 2003 and a related bill

**Legal and Constitutional References Committee—**

Appointed—Senator Ludwig  
Discharged—Senator Stephens.

Question put and passed.

57 **HIGHER EDUCATION SUPPORT BILL 2003**

**HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003**

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

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*In the committee*

**HIGHER EDUCATION SUPPORT BILL 2003—**

Consideration resumed of the bill, as amended—and of the amendments moved by Senator Stott Despoja (see entry no. 32):

Debate resumed.

The question for the amendments was divided—

Question—That amendments nos 1 to 6 and 9 be agreed to—put and negatived.

Question—That amendments nos 7 and 8 be agreed to—put and negatived.

Senator Carr moved the following amendments together by leave:

Clause 19-75, page 23 (line 16), after “any”, insert “significant”.

Clause 19-75, page 23 (line 19), omit “may affect”, substitute “has affected”.

Clause 19-80, page 24 (after line 8), at the end of the clause, add:

- (4) A person authorised by the Secretary in accordance with subsection (3) may enter the premises of a provider at any time at the invitation or request of the provider for the purposes of complying with the invitation or request.
- (5) Where a person seeks to enter the premises of a provider otherwise than in accordance with subsection (4), the person may do so only in compliance with written arrangements determined by the Secretary which must provide for obtaining from a magistrate a warrant granting access to specified premises and specified documents for a specified purpose.

Clause 19-90, page 24 (line 16), omit “for each year”, substitute “for each \*intake”.

Clause 19-90, page 24 (line 22), omit “for each year”, substitute “for each \*intake”.

Clause 19-90, page 24 (after line 27), at the end of the clause, add:

- (4) Once a student has commenced a course of study, a university/higher education institution must maintain the \*student contribution amount and the \*tuition fee at the same level as determined for that student's

intake year until the student is awarded a \*higher education award, except that the fee may be increased annually by not more than the index number.

Clause 30-1, page 34 (lines 11 to 14), omit subparagraph (1)(a)(ii).

Clause 30-1, page 34 (lines 15 to 17), omit paragraph (1)(b).

Clause 30-1, page 34 (lines 21 and 22), omit “higher education provider that is not a \*Table A provider”, substitute “\*Table B provider”.

Clause 30-10, page 35 (lines 6 to 8), omit subclause (1), substitute:

- (1) Before the commencement of each year, the Minister may allocate a specified \*number of Commonwealth supported places to a university/listed higher education provider for an annually revised triennial allocation as follows:
  - (a) revising the allocation of places for the first and second years of the triennial period; and
  - (b) allocating places for the third year of the triennium.

Clause 30-10, page 35 (after line 19), at the end of clause, add:

- (5) In the performance of the functions of the Minister under this Part, the Minister shall allocate places consistent with:
  - (a) the expressed preferences of higher education providers; and
  - (b) the needs of the communities which each higher education provider serves; and
  - (c) the funding provided by the Commonwealth to a higher education provider in the previous period; and
  - (d) any increase in population; and
  - (e) any increase in the proportion of students completing high school; and
  - (f) any growth or contraction in the number of persons undertaking particular courses of study with a higher education provider or in the region in which the higher education provider is located; and
  - (g) the importance of maintaining higher education providers in regional areas;

and shall exercise those functions so as to promote the objects of this Act including in relation to universities, those of the objects which recognise the independence and autonomy of universities.

Clause 30-15, page 36 (after line 2), at the end of the clause, add:

- (3) A variation or deletion must not be made in accordance with subsection (2) so as to reduce the total funding under the Commonwealth Grant Scheme to the Victorian College of the Arts below the level of funding provided to the college in 2003 as increased annually by the indexation factor.

Clause 30-15, page 36 (after line 2), at the end of the clause, add:

- (4) A variation or deletion must not be made in accordance with subsection (2) so as to reduce the total funding under the Commonwealth Grant Scheme to the Australian Maritime College below the level of funding provided to the college in 2003 as increased annually by the indexation factor.



Clause 30-25, page 36 (line 16) to page 37 (line 34), omit the clause, substitute:

**30-25 Funding agreements**

- (1) The \*Secretary may, on behalf of the Commonwealth, enter into a funding agreement with a higher education provider relating to a grant under this Part in respect of a year (the *grant year*).
- (2) Each institution shall provide to the Commonwealth a funding agreement in an approved form describing activities of the institution and may from time to time provide to the Minister variations of that funding agreement.
- (3) An institution that has provided to the Minister a funding agreement under this section may at any time provide to the Minister a new funding agreement in an approved form in substitution for the previous educational profile or for the previous funding agreement as varied, as the case may be.
- (4) The approved form of a funding agreement to be submitted by an institution under this section shall be determined by the Minister after consultation with the institution.

Clause 30-25, page 36 (line 17), omit “\*Secretary may”, substitute “Minister shall”.

Clause 30-25, page 37 (after line 34), at the end of the clause, add:

- (4) An agreement entered into in accordance with this section must be tabled in each House of the Parliament within 15 sitting days of that House after the agreement is entered into.

Page 54 (after line 21), at the end of Division 36, add:

**36-75 University/listed higher education provider to provide statement of general information**

- (1) A \*university/listed higher education institution must provide to the Minister such statistical and other information that the Minister by notice in writing requires from the institution regarding:
  - (a) the provision of higher education by the institution; and
  - (b) compliance by the institution with the requirements of this Act.
- (2) The information must be provided:
  - (a) in a form approved by the Minister; and
  - (b) in accordance with such other requirements as determined by the Minister.

Clause 36-40, page 51 (line 23), at the end of subclause (1), add:

- ; (iii) paid to the provider 80% of the \*student contribution amount for the unit.

Page 54 (after line 21), at the end of Division 36, add:

**36-75 Financial information must be provided**

- (1) A higher education provider must provide to the Minister a financial statement for each \*annual financial reporting period for the provider in which:
  - (a) the provider receives assistance under this Chapter; or
  - (b) a student of the provider receives assistance under Chapter 3.
- (2) The statement:

- (a) must be in the form approved by the Minister; and
  - (b) must be provided together with a report on the statement by an independent \*qualified auditor; and
  - (c) must be provided within 6 months after the end of the \*annual financial reporting period for which the statement was given.
- (3) An annual financial reporting period, for a higher education provider, is the period of 12 months:
- (a) to which the provider's accounts relate; and
  - (b) that is notified in writing to the Minister as the provider's annual financial reporting period.

Clause 41-1, page 55 (line 6), omit "eligible bodies", substitute "bodies listed in Schedule 2".

Clause 41-10, page 56 (table items 9 and 10, cells at column 3), omit the cells, substitute "Table A and Table B institutions".

Clause 41-10, page 56 (table item 11, cell at column 3), omit the cell, substitute "Table A institutions, Table B institutions and the bodies corporate listed in Schedule 2".

Clause 41-20, page 57 (after line 32), at the end of the clause, add:

- (2) In the performance of the Minister's function to impose conditions on grants and make grants under this Part, the Minister shall take into account the specific purpose of the grant and promote the objects of this Act including, in relation to universities, those of the objects that recognise the independence and autonomy of universities.

Clause 41-20, page 57 (after line 32), at the end of the clause, add:

- (3) The approval of a grant by the Minister under this Part is a disallowable instrument for the purposes of the *Acts Interpretation Act 1901*.

Clause 41-25, page 58 (lines 2 to 15), omit "higher education provider" (twice occurring), substitute "body corporate listed in Schedule 2".

Division 54, page 66 (lines 2 to 31), omit "\*Secretary" (wherever occurring), substitute "Minister".

Clause 143-10, page 131 (line 10) to page 132 (line 10), omit the clause, substitute:

**143-10 Working out a former indexed FEE-HELP/OS-HELP debt**

A person's *former indexed FEE-HELP/OS-HELP debt*, in relation to the person's \*accumulated FEE-HELP/OS-HELP debt for a financial year to which this subsection applies, is worked out by multiplying:

- (a) the person's \*former unindexed FEE-HELP/OS-HELP debt in relation to the financial year; by
- (b) the \*HELP debt indexation factor for 1 June in that financial year.

Clause 154-10, page 140 (lines 19 to 23), omit the clause, substitute:

**154-10 Minimum repayment income**

The *minimum repayment income* for an \*income year is:

- (a) for the 2004-05 income year—\$35,000; or
- (b) for a later income year—that amount as indexed under section 154-25.

Clause 154-20, page 141 (table item 1(a), 2nd column), omit “\$35,607”, substitute “\$40,607”.

Clause 154-20, page 142 (table item 2(a), 2nd column), omit “\$42,973”, substitute “\$47,973”.

Clause 154-20, page 142 (table item 3(a), 2nd column), omit “\$45,233”, substitute “\$50,233”.

Clause 154-20, page 142 (table item 4(a), 2nd column), omit “\$48,622”, substitute “\$53,622”.

Clause 154-20, page 142 (table item 5(a), 2nd column), omit “\$52,658”, substitute “\$57,658”.

Clause 154-20, page 142 (table item 6(a), 2nd column), omit “\$55,430”, substitute “\$60,430”.

Clause 154-20, page 142 (table item 7(a), 2nd column), omit “\$60,972”, substitute “\$65,972”.

Clause 154-20, page 142 (table item 8(a), 2nd column), omit “\$65,000”, substitute “\$70,000”.

Clause 238-10, page 195 (lines 23 to 29), omit subclause (1), substitute:

- (1) The Minister may make Guidelines, specified in the second column of the table, that:
  - (a) promote the objects of this Act; and
  - (b) provide for matters that are:
    - (i) required or permitted by the corresponding Chapter, Part or section specified in the third column of the table to be provided; or
    - (ii) required or convenient to be provided in order to carry out or give effect to that Chapter, Part or section.

Clause 238-10, page 196 (after line 2), at the end of the clause, add:

- (3) Guidelines under this section shall not take effect prior to the expiration of the 15 sitting days’ period referred to in subsection (4) of section 48 of the *Acts Interpretation Act 1901*.

Schedule 1, clause 1, page 202 (after line 14), after the definition of **information system**, insert:

**intake** means a cohort of students admitted to a course of study to commence in a specified study period.

Note: A study period includes a semester or a term.

Schedule 1, clause 1, page 203 (line 18), omit “as in force from time to time”, substitute “as in force on 1 January 2004”.

Schedule 1, clause 1, page 205 (lines 13 to 17), omit paragraphs (c) and (d) of the definition of **qualified auditor**.

Schedule 1, clause 1, page 208 (line 4), omit the definition of **university**, substitute:

**university** means a body corporate:

- (a) that meets \*National Protocol 1; and
- (b) that is established as a university, or recognised as a university, by a law of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory.

Schedule 1, clause 1, page 208 (after line 4), after the definition of *university*, insert:

*university/higher education institution* means a university or other higher education institution listed as a \*Table A or a \*Table B institution.

Page 208 (after line 20), at the end of the bill, add:

## **Schedule 2**

Academy of the Social Sciences in Australia

Australian Academy of Science

Australian Academy of Technological Sciences and Engineering

Australian Academy of the Humanities

Australian Council for Education Research

Australian Universities Quality Agency

Commonwealth Study Conferences (Australia)

General Sir John Monash Foundation

Graduate Careers Council

National Academies Forum

Open Learning Australia

The Australian and New Zealand Association for the Advancement of Science

Debate ensued.

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

On the motion of the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) the following amendment was agreed to:

Clause 19-25, page 18 (line 29), omit “agree in writing to”.

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

Clause 19-35, page 20 (line 1), after “procedures”, insert “that, in the provider’s view, are”.

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

Clause 19-45, page 20 (line 26), omit “The”, substitute “Except where the provider is a \*Table A provider, the”.

Clause 19-45, page 20 (line 29), after “procedure”, insert “referred to in paragraph (1)(c)”.

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

Clause 19-70, page 23 (after line 12), at the end of the clause, add:

- (3) A notice under this section must not require the giving of information that a higher education provider is required to give to the Minister under section 19-95.

Clause 19-90, page 24 (lines 19 and 20), omit “, under its funding agreement under section 30-25 in respect of the year,”.

Clause 19-95, page 25 (line 15), at the end of paragraph (2)(b), add “for a particular year by the date specified in the Higher Education Provider Guidelines in the year preceding that year”.

Clause 19-105, page 26 (lines 4 to 9), omit paragraph (3)(d), substitute:

- (d) imposed in accordance with the Commonwealth Grant Scheme Guidelines for the imposition of fees in respect of \*overseas students; or

Clause 27-5, page 33 (lines 13 to 21), omit the clause, substitute:

**27-5 Guidelines**

- (1) The grants payable under this Part are also dealt with in the Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines.
- (2) The provisions of this Part indicate:
  - (a) when a particular matter is, or may be, dealt with in the guidelines; and
  - (b) whether the matter is dealt with in the Commonwealth Grant Scheme Guidelines or the Tuition Fee Guidelines.

Note 1: The Commonwealth Grant Scheme Guidelines and the Tuition Fee Guidelines are made by the Minister under section 238-10.

Note 2: The Commonwealth Grant Scheme Guidelines may also deal with matters arising under section 93-10.

On the motion of Senator Stott Despoja the following amendment was agreed to:

Clause 19-75, page 23 (line 19), after “may”, insert “significantly”.

Question—That the bill, as amended, be agreed to—divided in respect of clause 19-80.

Question—That clause 19-80 stand as printed—put and negatived.

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

*Requests:*

That the House of Representatives be requested to make the following amendments:

Clause 30-5, page 34 (line 28), omit “\$3,086,242,000”, substitute “\$3,098,123,000”.

Clause 30-5, page 34 (line 29), omit “\$3,215,263,000”, substitute “\$3,227,263,000”.

Clause 30-5, page 34 (line 30), omit “\$3,342,701,000”, substitute “\$3,364,683,000”.

*Amendments:*

Clause 30-10, page 35 (after line 10), after subclause (2), insert:

- (2A) If the provider has indicated to the Minister its preferred distribution of those places, the Minister must have regard to that preferred distribution in deciding the distribution of those places.

Clause 30-10, page 35 (line 14), at the end of subclause (3), add:  
; and (c) the number of those places that have an enabling loading.

Clause 30-15, page 36 (lines 1 and 2), omit subclause (2).

Clause 30-25, page 36 (line 17), omit “\*Secretary”, substitute “Minister”.

Clause 30-25, page 36 (after line 19), after subclause (1), insert:

- (1A) In negotiating the agreement the Minister must have regard to all of the types of matters that the provider has indicated to the Minister it wishes to be specified in the agreement.

Clause 30-25, page 37 (after line 5), after subclause (2), insert:

- (2A) However, the agreement must not specify as a condition to which the grant is subject a matter in respect of which the Minister could have made a determination under subsection 36-15(2) (or could have made such a determination but for subsection 36-15(3)).

Note: The Minister has the power under subsection 36-15(2) to determine that students are not to be enrolled as Commonwealth supported students in particular courses. The determination is disallowable (see subsection 36-15(3)).

Clause 30-25, page 37 (after line 22), after paragraph (3)(c), insert:

- (ca) the maximum number of Commonwealth supported places provided by the provider which can have an enabling loading in the grant year; and

Clause 30-25, page 37 (after line 25), after paragraph (3)(d), insert:

- (da) the maximum amount of enabling loading that will be payable to the provider, under the Commonwealth Grant Scheme Guidelines, in the grant year; and

Clause 30-25, page 37 (lines 26 to 31), omit paragraphs (3)(e) and (f).

Clause 30-25, page 37 (after line 34), at the end of the clause, add:

- (4) The Minister must cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the making of the agreement.

Clause 33-5, page 39 (line 5), at the end of the clause, add:

- ; and (d) if the allocation has specified under paragraph 30-10(3)(c) a number of Commonwealth supported places that have an enabling loading—the amount of enabling loading worked out under the Commonwealth Grant Scheme Guidelines for those places.

Heading to subclause 33-25(1), page 41 (line 2), omit “105% of allocated places”, substitute “allocated places by 5% or higher agreed percentage”.

Clause 33-25, page 41 (lines 13 to 16), omit paragraph (1)(b), substitute:

- (b) in the preceding year, the number of Commonwealth supported places provided by the provider exceeds:
- (i) 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10; or
  - (ii) the percentage of that total number that is the percentage specified for the purpose in the funding agreement entered into with the provider in respect of that year;
- whichever is higher.

Clause 33-25, page 41 (lines 17 to 27), omit subclause (2), substitute:

- (2) The adjustment under subsection (1) is an amount worked out using the formula:

$$\text{Excess places} \times \frac{\text{Student contributions}}{\text{Places provided}}$$

where:

**excess places** is the \*number of Commonwealth supported places that the provider provided during the preceding year in excess of:

- (a) 105% of the total number of Commonwealth supported places allocated to the provider for that year under section 30-10; or
- (b) the percentage of that total number that is the percentage specified for the purpose in the funding agreement entered into with the provider in respect of that year;

whichever is higher.

**places provided** is the \*number of Commonwealth supported places that the provider provided during the preceding year.

**student contributions** is the sum of all of the \*student contribution amounts that the provider has received, or is entitled to receive, for all of the units of study undertaken with the provider during the preceding year.

Heading to subclause 33-25(3), page 41 (line 28), omit the heading, substitute:

*Corrected basic amount is less than the basic grant amount*

Clause 33-25, page 42 (lines 1 to 3), omit subparagraph (3)(a)(i), substitute:

- (i) provide for an adjustment when the provider's \*corrected basic amount for the preceding year is less than the provider's basic grant amount for that year; nor

Clause 33-25, page 42 (lines 6 and 7), omit paragraph (3)(b), substitute:

- (b) the provider's corrected basic amount for the preceding year was less than 99% of the provider's basic grant amount for that year.

Clause 33-25, page 42 (lines 8 to 10), omit subclause (4), substitute:

- (4) The adjustment under subsection (3) is an amount equal to the difference between:
  - (a) 99% of the \*basic grant amount; and
  - (b) the \*corrected basic amount.

Clause 33-25, page 42 (after line 23), after subclause (5), insert:

*Corrected basic amount exceeds the basic grant amount*

- (5A) A higher education provider's \*basic grant amount for the grant year is increased by an adjustment if:
  - (a) the Commonwealth Grant Scheme Guidelines neither:
    - (i) provide for an adjustment when the provider's \*corrected basic amount for the preceding year exceeds the provider's basic grant amount for that year; nor
    - (ii) provide that there is to be no adjustment in these circumstances; and
  - (b) the provider's corrected basic amount for the preceding year exceeded the provider's basic grant amount for that year; and

(c) the Minister determines that the provider's basic grant amount for that year should be increased by an adjustment under this subsection.

(5B) The adjustment under subsection (5A) is an amount equal to the lesser of the following:

- (a) 1% of the \*basic grant amount;
- (b) the difference between the \*corrected basic amount and the basic grant amount.

Clause 54-1, page 66 (line 5), omit “\*Secretary”, substitute “Minister”.

Clause 54-1, page 66 (line 10), omit “\*Secretary”, substitute “Minister”.

Clause 54-1, page 66 (line 14), omit “Secretary”, substitute “Minister”.

Clause 54-1, page 66 (line 16), omit “Secretary”, substitute “Minister”.

Clause 54-5, page 66 (line 18), omit “\*Secretary”, substitute “Minister”.

Clause 54-5, page 66 (line 20), omit “Secretary”, substitute “Minister”.

Clause 57-1, page 67 (lines 5 to 10), omit “\*Secretary” (wherever occurring), substitute “Minister”.

Clause 57-5, page 67 (lines 12 to 20), omit “\*Secretary” (wherever occurring), substitute “Minister”.

Clause 60-1, page 68 (line 6), omit “\*Secretary”, substitute “Minister”.

Clause 60-1, page 68 (line 7), omit “Secretary”, substitute “Minister”.

Clause 60-1, page 68 (line 11), omit “Secretary”, substitute “Minister”.

Clause 60-1, page 68 (line 14), omit “Secretary”, substitute “Minister”.

Clause 60-1, page 68 (line 22), omit “\*Secretary”, substitute “Minister”.

Clause 60-5, page 68 (line 25), omit “\*Secretary”, substitute “Minister”.

Clause 60-5, page 69 (line 3), omit “Secretary”, substitute “Minister”.

Clause 60-5, page 69 (line 5), omit “\*Secretary”, substitute “Minister”.

Clause 60-10, page 69 (line 8), omit “\*Secretary’s”, substitute “Minister’s”.

Senator Carr moved the following request for an amendment:

That the House of Representatives be requested to make the following amendment:

Clause 30-5, page 34 (lines 28 to 30), omit paragraphs (1)(a), (b) and (c), substitute:

- (a) for the year 2005—\$3,132,942,000; or
- (b) for the year 2006—\$3,310,863,000; or
- (c) for the year 2007—\$3,501,201,000.

Debate ensued.

Question—That the request be agreed to—put.



The committee divided—

AYES, 31

Senators—

Allison	Cherry	Hutchins	Nettle
Bartlett	Collins	Kirk	O'Brien
Bishop	Conroy	Ludwig	Ray
Bolkus	Crossin (Teller)	Lundy	Ridgeway
Brown	Evans	Mackay	Stott Despoja
Buckland	Forshaw	Marshall	Webber
Campbell, George	Greig	McLucas	Wong
Carr	Hogg	Murray	

NOES, 33

Senators—

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

Question negatived.

Senator Stott Despoja moved the following amendments and requests for amendments together by leave:

*Requests:*

That the House of Representatives be requested to make the following amendments:

Clause 30-5, page 34 (line 28), omit “\$3,086,242,000”, substitute “\$4,104,701,860”.

Clause 30-5, page 34 (line 29), omit “\$3,215,263,000”, substitute “\$4,276,299,790”.

Clause 30-5, page 34 (line 30), omit “\$3,342,701,000”, substitute “\$4,445,792,330”.

Clause 33-10, page 39 (table), omit the table, substitute:

<b>Commonwealth contribution amount</b>		
<b>Item</b>	<b>Funding cluster</b>	<b>Commonwealth contribution amount</b>
1	Law	\$1,918
2	Accounting, Administration, Economics, Commerce	\$3,153
3	Humanities	\$5,313
4	Mathematics, Statistics	\$6,275
5	Behavioural Science, Social Studies	\$8,435
6	Computing, Built Environment, Health	\$9,395

7	Foreign Languages, Visual and Performing Arts	\$11,554
8	Engineering, Science, Surveying	\$15,637
9	Dentistry, Medicine, Veterinary Science	\$19,602
10	Agriculture	\$20,837
11	Education	\$9,270
12	Nursing	\$12,390

*Amendments:*

Page 35 (after line 4), before clause 30-10, insert:

**30-8 Criteria for the allocation of places**

In the performance of his or her functions under this Part, the Minister shall have regard to:

- (a) recommendations made by the Higher Education Funding Council under Subdivision 165; and
- (b) the expressed preferences of \*higher education providers; and
- (c) the needs of the communities which each higher education provider serves; and
- (d) the funding provided by the Commonwealth to a higher education provider in the previous period; and
- (e) any growth or contraction in the number of persons undertaking particular \*courses of study with a higher education provider or in the region in which the higher education provider is located; and
- (f) the importance of maintaining higher education providers in regional areas;

and shall exercise those functions so as to promote the objects of this Act.

Clause 30-10, page 35 (line 6), omit “may”, substitute “must”.

Clause 30-10, page 35 (after line 19), at the end of the clause, add:

- (5) The allocation must be made in accordance with the criteria specified in section 30-8.

Clause 30-25, page 36 (after line 19), after subclause (1), insert:

- (1A) Universities are to be exempt from the proposed funding agreement model and be allowed to maintain the current profiles arrangement for determining funding.

Note: Educational profiles are defined in section 14 of the *Higher Education Funding Act 1988*.

Clause 33-25, page 41 (line 1) to page 42 (line 26), omit the clause, substitute:

**33-25 Adjustments that apply in the absence of guidelines**

Universities who over-enrol students by more than 5% will not be funded for those additional students.

Debate ensued.

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

Senator Nettle moved the following request for an amendment:

That the House of Representatives be requested to make the following amendment:  
Clause 30-5, page 34 (lines 28 to 30), omit paragraphs (1)(a), (b) and (c), substitute:

- (a) for the year 2005—\$4,012,114,600; or
- (b) for the year 2006—\$4,179,841,900; or
- (c) for the year 2007—\$4,345,511,300.

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

Senator Stott Despoja moved the following amendment:

Page 36 (after line 14), after clause 30-20, insert:

**30-22 Minimum total grants**

- (1) The Minister must ensure that no \*university or listed \*higher education provider receives less by way of basic grant amount under this Part in each year of the years after 2005 inclusive, than is applicable for the relevant year in the table.

**Minimum total grants to a university/Table A provider or  
Table B provider**

Item	Year	Applicable amount
1	2005	*Base Operating Grants x *indexation factor
2	2006	Total amount under item 1 x *indexation factor
3	2007 onwards	Total amount for the previous year x *indexation factor

- (2) The indexation factor is defined in section 198-15.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 30

Senators—

Allison	Collins	Kirk	O'Brien
Bishop	Conroy	Ludwig	Ray
Bolkus	Crossin (Teller)	Lundy	Ridgeway
Brown	Evans	Mackay	Stott Despoja
Buckland	Forshaw	Marshall	Webber
Campbell, George	Greig	McLucas	Wong
Carr	Hogg	Murray	
Cherry	Hutchins	Nettle	

## NOES, 32

Senators—

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

Question negatived.

Senator Carr moved the following amendment:

Clause 33-15, page 40 (lines 1 to 20), omit the clause, substitute:

**33-15 Increases in assistance for higher education providers meeting certain requirements**

A higher education provider's \*basic grant amount for a year is worked out by increasing the \*Commonwealth contribution amount for each \*funding cluster by:

- (a) if the grant year is the year 2005—2.5%; and
- (b) if the grant year is the year 2006—5%; and
- (c) if the grant year is a later year—7.5%.

Debate ensued.

On the motion of Senator Vanstone further consideration of the amendment was postponed.

Senator Carr moved the following amendments together by leave:

Clause 3-10, page 5 (line 21), omit "Chapter 3 also provides for the Student Learning Entitlement."

Clause 36-10, page 46 (lines 21 and 22), omit subparagraph (1)(d)(i).

Clause 36-30, page 49 (lines 13 and 14), omit "that is \*covered by the person's \*Student Learning Entitlement".

Clause 36-30, page 49 (line 31) to page 50 (line 1), omit "that is \*covered by a person's \*Student Learning Entitlement".

Clause 65-1, page 70 (line 6), omit "for the Student Learning Entitlement and".

Clause 65-1, page 70 (lines 8 and 9), omit "A sufficient Student Learning Entitlement is required for a student to access HECS-HELP assistance under this Chapter."

Clause 90-1, page 85 (lines 13 to 17), omit paragraph (d).

Clause 104-30, page 98 (lines 4 to 11), omit subclause (2).

Clause 169-5, page 153 (lines 1 to 11), omit subclause (4).

Clause 169-10, page 154 (lines 5 to 7), omit subclause (5).

Clause 206-1, page 178 (table item 1), omit the table item.

Clause 238-10, page 196 (table item 10), omit the table item.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Cherry	Hutchins	Nettle
Bartlett	Collins	Kirk	O'Brien
Bishop	Conroy	Ludwig	Ray
Bolkus	Crossin (Teller)	Lundy	Ridgeway
Brown	Evans	Mackay	Stott Despoja
Buckland	Forshaw	Marshall	Webber
Campbell, George	Greig	McLucas	Wong
Carr	Hogg	Murray	

NOES, 33

Senators—

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

Question negatived.

Question—That the bill, as amended, be agreed to—divided in respect of clause 36-20 and Part 3-1.

Clause 36-20 and Part 3-1 debated and agreed to.

Senator Carr moved the following amendments together by leave:

Clause 36-35, page 50 (line 21) to page 51 (line 13), omit the clause, substitute:

**36-35 Percentage of Commonwealth supported places to be provided by Table A providers**

- (1) A \*Table A provider must ensure that, in any year, the \*number of Commonwealth supported places provided by the provider accounts for 100% of the total number of places that the provider provides in each undergraduate \*course of study.
- (2) For the purposes of calculating the proportion of Commonwealth supported places in subsection (1), international students and students who are not \*Commonwealth supported students and were enrolled before 2004 are to be disregarded.
- (3) For the purpose of applying subsection (1) in relation to a \*course of study, disregard any enrolment in \*work experience in industry or in an \*employer reserved place in that course.

Clause 104-1, page 94 (line 4) to page 95 (line 9), omit the clause, substitute:

**104-1 Entitlement to FEE-HELP assistance**

- (1) A student is entitled to \*FEE-HELP assistance for a unit of study if:
  - (a) the student is enrolled in a postgraduate course of study or a course of study with Open Learning Australia; and
  - (b) the student meets the citizenship or residency requirements under section 104-5; and
  - (c) the student's \*FEE-HELP balance is greater than zero; and

- (d) the \*census date for the unit is on or after 1 January 2005; and
- (e) the student is not a \*Commonwealth supported student in relation to the unit; and
- (f) the unit meets the course requirements under section 104-10; and
- (g) the unit:
  - (i) is, or is to be, undertaken as part of a \*course of study; or
  - (ii) is a unit access to which was provided by \*Open Learning Australia; or
  - (iii) is part of a \*bridging course for overseas-trained professionals; and
- (h) the student:
  - (i) enrolled in the unit on or before the census date for the unit; and
  - (ii) at the end of the census date, remained so enrolled; and
- (i) the student \*meets the tax file number requirements (see section 187-1); and
- (j) the student has, on or before the census date, completed and signed a \*request for Commonwealth assistance in relation to the unit, or in relation to the course of study of which the unit forms a part; and
- (k) the student has not been precluded from receipt of the FEE-HELP assistance because of section 107-15.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 30

Senators—

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

NOES, 32

Senators—

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

Question negatived.

Senator Carr moved the following amendment:

Clause 93-10, page 88 (line 1) to page 89 (line 5), omit the clause, substitute:

**93-10 Student contribution amounts per place**

The *student contribution amount per place* for a unit of study is that referred to in the following table:

<b>Student contribution amounts per place</b>		
<b>Item</b>	<b>Funding clusters</b>	<b>Student contribution amount per place</b>
1	Law	\$6,283
2	Accounting, Administration, Economics, Commerce	\$5,367
3	Humanities	\$3,768
4	Mathematics, Statistics	\$5,367
5	Behavioural Science, Social Studies	\$3,768
6	Computing, Built Environment, Health	\$5,367
7	Foreign Languages, Visual and Performing Arts	\$3,768
8	Engineering, Science, Surveying	\$5,367
9	Dentistry, Medicine, Veterinary Science	\$6,283
10	Agriculture	\$5,367
11	Education	\$3,768
12	Nursing	\$3,768

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Cherry	Hutchins	Nettle
Bartlett	Collins	Kirk	O'Brien
Bishop	Conroy	Ludwig	Ray
Bolkus	Crossin (Teller)	Lundy	Ridgeway
Brown	Evans	Mackay	Stott Despoja
Buckland	Forshaw	Marshall	Webber
Campbell, George	Greig	McLucas	Wong
Carr	Hogg	Murray	

## NOES, 33

Senators—

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

Question negatived.

Senator Carr moved the following amendments together by leave:

Clause 198-15, page 176 (after line 7), after subclause (1), insert :

(1A) The indexation factor for 2005 is the index number for the relevant year.

Clause 198-20, page 176 (lines 11 to 15), omit the clause, substitute:

**198-20 Meaning of index number**(1) The *index number* for 2004 is the Cost Adjustment Factor which is:
$$\frac{\text{AIRC Safety net Adjustment as a proportion of Average Weekly Earnings}}{\text{Consumer Price Index (Australia) for the September immediately preceding the reference date}} \times 0.75 + \frac{\text{Consumer Price Index (Australia) for the reference date}}{\text{Consumer Price Index (Australia) for the September immediately preceding the reference date}} \times 0.25$$

(2) The index number, for a year that is 2005 or later, is the Higher Education Grants Index number for that year which is:

$$\frac{\text{Wage Cost Index (Education) for the reference date}}{\text{Wage Cost Index (Education) for the September immediately preceding the reference date}} \times 0.6 + \frac{\text{Consumer Price Index (Australia) for the reference date}}{\text{Consumer Price Index (Australia) for the September immediately preceding the reference date}} \times 0.4$$
(3) The Minister in the *Gazette* will publish the *index number* at any time, including any time before the start of the year. The reference date is the September of the year immediately preceding the grant.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

## AYES, 31

Senators—

Allison	Cherry	Hutchins	Nettle
Bartlett	Collins	Kirk	O'Brien
Bishop	Conroy	Ludwig	Ray
Bolkus	Crossin (Teller)	Lundy	Ridgeway
Brown	Evans	Mackay	Stott Despoja
Buckland	Forshaw	Marshall	Webber
Campbell, George	Greig	McLucas	Wong
Carr	Hogg	Murray	



## NOES, 33

Senators—

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

Question negatived.

Senator Stott Despoja moved the following amendments together by leave:

Clause 198-5, page 175 (table), omit the table, substitute:

<b>Amounts that are to be indexed</b>			
<b>Item</b>	<b>Amounts:</b>	<b>See:</b>	<b>First year of indexation</b>
1	*Commonwealth contribution amounts	section 3 3-10	2005
2	*Maximum student contribution amounts per place	section 9 3-10	2005
3	The *maximum OS-HELP amount	section 1 21-5	2006
4	Other Grants maximum grants	section 41-25	2005
5	Grants for Commonwealth Scholarships	section 46-40	2005

Clause 198-20, page 176 (lines 11 to 15), omit the clause, substitute:

**198-20 Meaning of *indexation factor***

The *indexation factor* is calculated using the same method described in section 154-25.

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

Senator Crossin moved the following amendment:

Clause 41-10, page 57 (after line 8), at the end of the clause, add:

- (3) The Other Grants Guidelines must specify that the Batchelor Institute of Indigenous Tertiary Education is eligible for grants in accordance with item 4 of the table in this section.

Debate ensued.

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

Senator Nettle moved the following amendments together by leave:

Clause 154-10, page 140 (lines 19 to 23), omit the clause, substitute:

**154-10 Minimum repayment income**

The *minimum repayment income* for an \*income year is the amount as indexed under section 154-25.

Clause 154-10, page 140 (line 21), omit “\$30,000”, substitute “average male weekly earnings as defined in section 154-25”.

Clause 154-20, pages 141 and 142 (table), omit the table, substitute:

<b>Applicable percentages</b>		
<b>Item</b>	<b>For HECS repayment income in the range:</b>	<b>Percentage rate to be applied to HECS repayment income:</b>
1	Below \$45,880	0.0%
2	\$45,881 - \$48,622	3.0%
3	\$48,623 - \$52,658	4.0%
4	\$52,659 - \$55,430	5.0%
5	\$55,431 - \$60,972	5.5%
6	\$60,973 - \$65,000	6.0%
7	\$65,001 and above	6.5%

Clause 154-25, page 143 (line 11), omit “all”, substitute “male”.

Clause 154-25, page 143 (line 15), omit “all”, substitute “male”.

Clause 154-25, page 143 (lines 1 to 23), omit “AWE” (wherever occurring), substitute “Average male weekly earnings”.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 9

Senators—

Allison (Teller)	Cherry	Murray	Ridgeway
Bartlett	Greig	Nettle	Stott Despoja
Brown			

NOES, 30

Senators—

Barnett	Ferguson	Ludwig	Payne
Boswell	Ferris	Lundy	Scullion
Brandis	Forshaw	Macdonald, Sandy	Tierney
Buckland	Harradine	Mackay	Troeth
Campbell, Ian	Harris	Mason	Watson
Chapman	Humphries	McGauran	Webber
Colbeck	Johnston	Murphy	
Eggleston (Teller)	Lees	O'Brien	

Question negatived.

Senator Stott Despoja moved the following amendments together by leave:

Clause 154-10, page 140 (line 21), omit “\$30,000”, substitute “average male weekly earnings as defined in section 154-25”.

Clause 154-20, page 141 (line 20), at the end of the clause, add “These amounts are indexed in each year, after and including 2004-05.”.

Clause 154-20, page 141 and 142 (table), omit the table, substitute:

<b>Applicable percentages</b>		
<b>Item</b>	<b>For HECS repayment income in the range:</b>	<b>Percentage rate to be applied to HECS repayment income:</b>
1	Below \$45,880	0.0%
2	\$45,881 - \$48,622	3.0%
3	\$48,623 - \$52,658	4.0%
4	\$52,659 - \$55,430	5.0%
5	\$55,431 - \$60,972	5.5%
6	\$60,973 - \$65,000	6.0%
7	\$65,001 and above	6.5%

Clause 154-25, page 143 (line 11), omit “all”, substitute “male”.

Clause 154-25, page 143 (lines 1 to 23), omit “AWE” (wherever occurring), substitute “Average male weekly earnings”.

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

Senator Stott Despoja moved the following amendment:

Clause 154-25, page 143 (line 15), omit “all”, substitute “male”.

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

Senator Stott Despoja moved the following amendments together by leave:

Clause 93-10, page 88 (line 1) to page 89 (before line 1), omit the clause, substitute:

#### **93-10 Maximum student contribution amounts per place**

The *maximum student contribution amount per place* for a \*unit of study is the amount specified in the table in relation to that funding cluster.

<b>Maximum student contribution amounts per place</b>		
<b>Item</b>	<b>Funding clusters</b>	<b>Maximum student contribution amount per place</b>
1	Law	\$6,283
2	Accounting, Administration, Economics, Commerce	\$5,367
3	Humanities	\$3,768
4	Mathematics, Statistics	\$5,367
5	Behavioural Science, Social Studies	\$3,768
6	Computing, Built Environment, Health	\$5,367
7	Foreign Languages, Visual and Performing Arts	\$3,768
8	Engineering, Science, Surveying	\$3,768
9	Dentistry, Medicine, Veterinary Science	\$6,283
10	Agriculture	\$3,768
11	Education	\$2,898

12	Nursing	\$2,898
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Clause 93-10, page 89 (lines 1 to 3), omit note 1.

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

Senator Stott Despoja moved the following amendments together by leave:

Clause 169-10, page 154 (line 10), omit “as soon as practicable”, substitute “within 2 weeks”.

Clause 169-20, page 155 (lines 15 to 23), omit subclause (1), substitute:

- (1) 50 per cent of HECS-HELP exempt places will be allocated for equity groups and fields of study deemed to be areas of national priority, or areas where there is unmet demand for graduates. A student of such a kind is an *exempt student* for those units.

Clause 169-25, page 156 (line 26), omit “The provider”, substitute “At least 4 weeks prior to the commencement of the unit, the provider”.

Clause 206-5, page 180 (lines 5 and 6), omit all the words from and including “the decision maker” to and including “reject the application.”, substitute “the decision maker must give notice of the decision to the applicant within three weeks of the receipt of the application for its review.”.

Clause 209-5, page 182 (line 13), omit “a reasonable period”, substitute “3 weeks”.

Page 183 (after line 11), at the end of Division 209, add:

**209-15 Reporting on reviewable decisions**

Decisions reviewed in section 209-10 by the Minister or the Secretary must be reported to the Parliament as soon as practicable.

Clause 212-1, page 184 (line 6), at the end of the clause, add “Where the Administrative Appeals Tribunal is considering a matter in accordance with this Division, the Administrative Appeals Tribunal must give written notice of a reviewed decision within 4 weeks of the application for the review, for the purposes of this Division.”.

Clause 225-15, page 188 (line 10), omit “the period that the Minister determines,” substitute “a maximum of 2 years”.

Debate ensued.

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

Senator Stott Despoja moved the following amendments together by leave:

Clause 169-30, page 157 (line 11), omit “any”, substitute “an anonymous”.

Clause 179-10, page 162 (line 27), at the end of paragraph (d), add:

- ; and (e) the disclosure, or copying or recording, of information breaches:
- (i) in the case of a Commonwealth officer, the Information Privacy Principles; or
  - (ii) in the case of an officer of a higher education provider, the National Privacy Principles.

Page 163 (after line 1), at the end of clause 179-10, add:

- (2) For the purposes of this section:
  - (a) the Information Privacy Principles are the principles contained in the *Privacy Act 1988*; and
  - (b) a disclosure, or copying or recording, of information breaches the Information Privacy Principles:

- (i) if it is contrary to, or inconsistent with, the Information Privacy Principles; and
  - (ii) regardless of whether the *Privacy Act 1988* applies to the body or authority in relation to which the \*officer who discloses, copies or records the information, is an officer within the meaning of subsection 179-15(2).
- (3) For the purposes of this section:
- (a) the National Privacy Principles are the principles contained in Schedule 3 to the *Privacy Act 1988*; and
  - (b) a disclosure, or copying or recording, of information breaches the National Privacy Principles:
    - (i) if it is contrary to, or inconsistent with, the National Privacy Principles; and
    - (ii) regardless of whether the *Privacy Act 1988* applies to the \*higher education provider in relation to which the \*officer who discloses, copies or records the information, is an officer within the meaning of subsection 179-15(3).

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

Senator Stott Despoja moved the following amendment:

Clause 238-10, page 196 (after line 2), at the end of the clause, add:

- (3) A determination or approval by the Minister or Secretary under Division 16, Division 19, Division 22, Division 41, Division 54, Division 60 and Division 225 is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Debate ensued.

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

Senator Stott Despoja moved the following amendments together by leave:

Clause 41-1, page 55 (line 6), omit “other eligible bodies”, substitute “other bodies corporate listed in Schedule 2”.

Clause 41-10, pages 55 and 56 (table), omit the table, substitute:

<b>Eligibility for grants under this Part</b>		
<b>Item</b>	<b>Purpose of grant</b>	<b>Who is eligible</b>
1	Grants to promote equality of opportunity in higher education	*Table A providers
2	Grants to enhance learning and teaching in higher education	*Table A providers
3	Grants to support national institutes specified in the Other Grants Guidelines for the purposes of this item	*Table A providers
4	Grants to support the capital development projects of higher education providers	*Table A providers
5	Grants to meet the Commonwealth’s share of the cost of higher education providers’ superannuation liabilities	*Table A providers
6	Grants to support research by, and the	*Table A providers and

	research capability of, higher education providers	*Table B providers
7	Grants to support the training of research students	*Table A providers and *Table B providers
8	Grants to foster collaboration and reform in higher education	*Table A providers and *Table B providers
9	Grants to support the development of systemic infrastructure used by higher education providers	*Table A providers and *Table B providers
10	Grants for activities that:	*Table A providers,
	(a) assure and enhance the quality of Australia's higher education sector; or	*Table B providers and the bodies corporate that are listed in Schedule 2
	(b) foster an understanding of the importance of, or promote research and scholarship in, science, social science or the humanities in Australia; or	
	(c) support open access to higher education across Australia	

Clause 41-20, page 57 (after line 32), at the end of the clause, add:

- (2) In the performance of the Minister's function to impose conditions on grants and make grants under this Part, the Minister shall take into account the specific purpose of the grant and promote the objects of the Act, including in relation to universities, those of the objects which recognise the independence and autonomy of universities.

Clause 41-25, page 58 (lines 1 to 15), omit "higher education provider" (wherever occurring), substitute "body corporate specified in section 16-20, 16-25 or Schedule 2".

Page 208 (after line 20), at the end of the bill, add:

**Schedule 2—Bodies corporate eligible for other grants under Part 2-3**

Academy of the Social Sciences in Australia  
 Australian Academy of Science  
 Australian Academy of Technological Sciences and Engineering  
 Australian Academy of the Humanities  
 Australian Council for Education Research  
 Australian Universities Quality Agency  
 Commonwealth Study Conferences (Australia)  
 General Sir John Monash Foundation  
 Graduate Careers Council

National Academies Forum

Open Learning Australia

The Australian and New Zealand Association for the Advancement of Science

Debate ensued.

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

Senator Stott Despoja moved the following amendments together by leave:

Clause 36-35, page 50 (line 26), omit “50%”, substitute “75%”.

Clause 46-40, page 63 (lines 24 to 27), omit the clause, substitute:

**46-40 Maximum payments for Commonwealth scholarships**

The total payments made under this Part in respect of the year 2004 must not exceed \$200,250,000. Payments in subsequent years will be indexed in accordance with Part 5-6.

Clause 93-10, pages 88 and 89 (table), omit the table, substitute:

**Maximum student contribution amounts per place**

Item	Funding clusters	Maximum student contribution amount per place
1	Law	\$6,283
2	Accounting, Administration, Economics, Commerce	\$5,367
3	Humanities	\$3,768
4	Mathematics, Statistics	\$5,367
5	Behavioural Science, Social Studies	\$3,768
6	Computing, Built Environment, Health	\$5,367
7	Foreign Languages, Visual and Performing Arts	\$3,768
8	Engineering, Science, Surveying	\$5,367
9	Dentistry, Medicine, Veterinary Science	\$6,283
10	Agriculture	\$5,367
11	Education	\$3,768
12	Nursing	\$3,768

Clause 90-5, page 86 (lines 5 to 8), omit paragraph (b), substitute:

- (b) a citizen of New Zealand who will be resident within Australia for the duration of the unit; or
- (c) a permanent visa holder who will be resident within Australia for the duration of the unit.

Clause 104-1, page 94 (after line 6), after “if”, insert “the student is studying at postgraduate level”.

Clause 143-1, page 127 (line 24), omit paragraph (3)(b).

Clause 154-20, pages 141 and 142 (table), omit the table, substitute:

Item	For HECS repayment income in the range:	Percentage rate to be applied to HECS repayment income:
1	Below \$38,168	0.0%
2	\$38,169 - \$42,973	3.0%
3	\$42,974 - \$45,233	3.5%
4	\$45,234 - \$48,622	4.0%
5	\$48,623 - \$52,658	4.5%
6	\$52,659 - \$55,430	5.0%
7	\$55,431 - \$60,972	5.5%
8	\$60,973 - \$65,000	6.0%
9	\$65,001 and above	6.5%

Debate ensued.

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

Senator Stott Despoja moved the following amendments and request for an amendment together by leave:

*Amendments:*

Clause 3-10, page 5 (line 19), omit paragraph (b).

Clause 16-30, page 14 (line 18), omit “or \*tuition fee”.

Clause 33-40, page 44 (after line 16), at the end of the clause, add:

- (6) The Minister will report to the Parliament any special purpose advances, including the basis of the decision and the amount advanced.

Clause 36-5, page 45 (line 23) to page 46 (line 1), omit subclauses (3) and (4).

Heading to clause 36-30, page 49 (lines 8 and 9), omit “**before accepting other enrolments**”.

Clause 36-30, page 49 (lines 20 to 28), omit subclause (2).

Clause 36-30, page 50 (lines 8 to 20), omit subclauses (4) and (5).

Page 54 (after line 21), at the end of Division 36, add:

**Subdivision 36-G—Reporting requirements**

**36-75 Reporting by Minister**

The Minister must report on the operations of the Commonwealth Grants Scheme in the Department of Education, Science and Training annual report.

Clause 46-15, page 61 (lines 23 and 24), omit “, and higher education providers to which subparagraph 30-1(1)(a)(ii) applies,”.

Clause 46-15, page 62 (line 1), omit “and \*Table B providers”.

Clause 46-20, page 62 (lines 17 and 18), omit “or a \*Table B provider”.

Page 62 (after line 29), after clause 46-20, insert:



#### **46-22 Indigenous student scholarships**

In providing Indigenous student scholarships, the Minister must have regard to advice from the Indigenous Higher Education Advisory Council.

Clause 46-35, page 63 (lines 15 to 17), omit all the words from and including “then so much” to and including “next following year”, substitute “then the unspent amount is taken to be granted to the provider.”.

Clause 60-5, page 69 (lines 4 to 6), omit subclause (2).

Clause 65-1, page 70 (line 15), omit “3”, substitute “2”.

Clause 65-1, page 70 (lines 19 to 21), omit the second dot point.

Clause 65-1, page 70 (line 27), omit “and FEE-HELP assistance”.

Clause 73-20, page 75 (after line 8), at the end of the clause, add:

- (4) To avoid doubt, where a student is accepted into an honours program or an undergraduate degree with a prerequisite of holding another undergraduate degree, they shall be credited with an Additional Learning Entitlement equivalent to the full-time duration of the program.

Clause 87-1, page 84 (line 5), omit “may be”, substitute “are”.

Clause 87-1, page 84 (line 6), omit “for which they are Commonwealth supported.”.

Clause 90-1, page 85 (lines 7 and 8), omit paragraph (a).

Clause 104-1, page 94 (lines 12 and 13), omit paragraph (d).

Clause 129-1, page 115 (line 9), omit “FEE-HELP/OS-HELP”.

Clause 134-1, page 116 (line 6), omit “FEE-HELP assistance”.

Clause 134-1, page 116 (lines 9 to 12), omit all words from “FEE-HELP debts” to “(see Part 4-2).”, substitute “Debts incurred as a result of OS-HELP assistance are incorporated into the person’s accumulated HECS-HELP debt. This accumulated debt forms the basis of working out the amounts that the person is obliged to repay (see Part 4-2).”.

Clause 137-1, page 117 (line 6), omit paragraph (b).

Clause 137-5, page 117 (line 11), after “96-5”, insert “or Part 3-4”.

Clause 151-10, page 137 (lines 24 and 25), omit paragraph (2)(b).

Clause 151-10, page 137 (line 30) to page 138 (line 2), omit paragraph (2)(d).

Clause 154-1, page 139 (lines 11 and 12), omit “an \*accumulated FEE-HELP/OS-HELP debt, or both”.

Clause 154-15, page 140 (line 26) to page 141 (line 2), omit paragraph (1)(a), substitute:

- (a) the person’s \*accumulated HECS-HELP debt (if any) referred to in paragraph 154(1)(b) in relation to that income year; or

Page 151 (after line 15), at the end of Part 5-1, add:

### **Division 165—Higher Education Funding Council**

#### **165-1 Functions**

The \*Higher Education Funding Council shall inquire into, provide information and make recommendations to the Minister with respect to:

- (a) the total amount of all grants to higher education bodies that the Commonwealth should provide under Parts 2-2, 2-3 and 2-4 for the year 2008 and for each year thereafter; and
- (b) the grants that should be made available to each higher education body under Parts 2-2, 2-3 and 2-4 for the year 2005 and for each year thereafter; and
- (c) any other matter relating to the provision of funds to higher education bodies that may be referred by the Minister or which the Council considers to be a matter that should be inquired into by the Council.

#### **165-5 Criteria for recommendations**

In performing its functions under this Act to make recommendations the Higher Education Funding Council shall apply the criteria specified by section 30-8 other than that specified in paragraph (a).

#### **165-10 Annual and triennial allocations**

Before the commencement of a year and in the performance of its functions under paragraphs 165-1(a) and (b), the Higher Education Funding Council shall:

- (a) make recommendations in the form of an annual allocation which:
  - (i) allocates a specified \*number of Commonwealth supported places to a \*higher education provider for that year; and
  - (ii) specifies the distribution of those places between the \*funding clusters; and
  - (iii) specifies the number of those places that have a regional loading and/or a medical student loading; and
  - (iv) specifies the number of places for each national priority for which the provider should be allocated places; and
- (b) make such recommendations having regard to an annually revised triennial allocation developed by the Council with each \*higher education provider. The triennial plan shall specify the projected allocations for each higher education provider for the matters referred to in paragraph (a) for each year of the triennium.

#### **165-15 Consultation**

In the performance of its functions, the Higher Education Funding Council shall consult with the Minister and with \*higher education providers and may consult with such other persons, bodies and authorities as it considers necessary.

#### **165-20 Provision of information**

The Minister shall provide the Higher Education Funding Council with information in the possession or control of the Minister which is relevant to the performance by the Council of its functions and which is requested by the Council.

**165-25 Reports by Council**

- (1) The Higher Education Funding Council shall provide to the Minister reports containing information and recommendations relating to the performance of its functions under section 165-1.
- (2) The Minister shall, as soon as is practicable, cause such reports to be laid before each House of the Parliament.

Clause 169-15, page 154 (line 28) to page 155 (line 6), omit subclause (2).

Clause 169-15, page 155 (line 8), omit “or a \*tuition fee”.

Clause 169-20, page 155 (line 14) to page 156 (line 13), omit “and \*tuition fees” (wherever occurring).

Clause 174-5, page 159 (line 3), omit “The Administration Guidelines”, substitute “For \*Table B providers, the Administration Guidelines”.

Clause 174-5, page 159 (after line 7), at the end of the clause, add:

- (5) \*Table A providers do not need to meet the requirements of subsection (4).

Clause 174-10, page 159 (line 29), omit “The Administration Guidelines”, substitute “For \*Table B providers, the Administration Guidelines”.

Clause 174-10, page 159 (after line 33), at the end of the clause, add:

- (5) \*Table A providers do not need to meet the requirements of subsection (4).

Heading to subclause 193-1(1), page 172 (line 5), omit “or *FEE-HELP assistance*”.

Clause 193-1, page 172 (line 14), omit “or \*FEE-HELP assistance”.

Clause 193-1, page 173 (line 9), omit “,\*FEE-HELP assistance”.

Clause 206-1, page 178 (table item 2), omit the table item.

Clause 238-10, page 196 (table item 4), omit the table item.

*Request:*

That the House of Representatives be requested to make the following amendment:

Clause 46-40, page 63 (line 24) to page 64, omit the clause and the table, substitute:

The total payments made under this Part in respect to the year 2004 must not exceed \$480,600,000. Payments in subsequent years are to be indexed in accordance with Part 5-6.

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

Question—That the bill, as amended, be agreed to—divided in respect of Subdivision 36-E, clause 36-55; Part 3-3, clauses 101-1 to 110-5; Division 143, clauses 143-1 to 143-30; and clauses 36-35, 90-5, 137-10.

Subdivision 36-E, clause 36-55; Part 3-3, clauses 101-1 to 110-5; Division 143, clauses 143-1 to 143-30; and clauses 36-35, 90-5, 137-10 agreed to.

Consideration resumed of the amendment moved by Senator Carr and postponed earlier today (see page 2898).

Debate resumed.

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

Senator Stott Despoja moved the following amendment:

Clause 33-15, page 40 (lines 3 to 20), omit subclauses (1) and (2), substitute:

The listed provider's basic grant amount is increased by:

- (a) if the grant year is the year 2005—2.5%; and
- (b) if the grant year is the year 2006—5%; and
- (c) if the grant year is a later year—7.5%.

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

Question—That the bill, as amended, be agreed to—divided in respect of clause 33-15.

Clause 33-15 agreed to.

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

Clause 33-15, page 40 (lines 3 to 13), omit subclause (1), substitute:

- (1) A higher education provider's \*basic grant amount for a year is increased under this section if:
  - (a) the Commonwealth Grant Scheme Guidelines impose on higher education providers requirements to be known as the National Governance Protocols; and
  - (b) the higher education provider's certified agreement, made and certified after 22 September 2003, includes the following clause: "The provider may offer AWAs in accordance with the *Workplace Relations Act 1996*"; and
  - (c) the Minister is satisfied that the provider met the requirements in paragraphs (a) and (b) as at a date, specified in the Commonwealth Grant Scheme Guidelines, in the year preceding that year.

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

Clause 30-25, page 37 (after line 5), after subclause (2), insert:

- (2B) Where the agreement specifies conditions to which the grant is subject, that are additional to the conditions that apply under Division 36, those conditions must not relate to industrial relations matters.

Senator Vanstone moved the following amendments and requests for amendments together by leave:

*Amendments:*

No. 1—Clause 36-15, page 48 (lines 12 to 14), omit paragraph (c), substitute:

- (c) the unit forms part of a course to which a determination under subsection (2) applies.

No. 2—Clause 36-35, page 50 (line 28), after "provides", insert "for \*domestic students".

No. 3—Clause 36-35, page 50 (lines 30 to 32), omit subparagraph (1)(a)(i), substitute:

- (i) a course of study to which a determination under subsection 36-15(2) applies; or

No. 4—Clause 36-35, page 51 (line 3), after "provider", insert "for domestic students".

No. 5—Clause 36-55, page 53 (line 10), omit "Commonwealth Grant Scheme Guidelines", substitute "Tuition Fee Guidelines".

No. 6—Clause 36-55, page 53 (lines 19 and 20), omit “Commonwealth Grant Scheme Guidelines”, substitute “Tuition Fee Guidelines”.

No. 7—Clause 41-10, page 56 (table item 6, column 2), omit “meet the Commonwealth’s share of”, substitute “assist with”.

No. 8—Page 60 (after line 3), at the end of Part 2-3, add:

**41-50 Grant amounts is disallowable instrument**

- (1) Before the start of a year, the Minister must cause a list to be prepared setting out the maximum amounts of all grants which may be paid in the following year for each purpose of grant specified in the table in section 41-10.
- (2) The list is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

No. 9—Clause 46-20, page 62 (lines 14 and 15), omit paragraph (2)(d).

No. 10—Clause 73-1, page 73 (line 7), after paragraph (b), insert “and”.

No. 11—Clause 73-1, page 73 (after line 7), after paragraph (b), insert:

- (c) any \*life long SLE that the person has under section 73-22;

No. 12—Page 75 (after line 8), after clause 73-20, insert:

**73-22 Life long SLE**

- (1) A person has a \*life long SLE in the circumstances specified in the Student Learning Entitlement Guidelines.
- (2) The amount of the \*life long SLE is an amount (expressed in \*EFTSL) worked out in accordance with the Student Learning Entitlement Guidelines.

No. 13—Clause 76-1, page 76 (lines 23 and 24), omit “: see section 76-5”, substitute “or life long SLE: see sections 76-5 and 76-10”.

No. 14—Page 77 (after line 30), at the end of Division 76, add:

**76-10 Reducing a person’s life long SLE**

- (1) If a person has a \*life long SLE, that life long SLE is not reduced under section 76-1 in relation to a unit of study unless:
  - (a) if the person does not have an \*additional SLE—the person’s \*ordinary SLE is less than the \*EFTSL value of the unit; and
  - (b) if the person has an additional SLE—the sum of the person’s ordinary SLE and the person’s additional SLE is less than the EFTSL value of the unit.
- (2) If:
  - (a) a person has both:
    - (i) a \*life long SLE; and
    - (ii) an \*ordinary SLE or an \*additional SLE, or both; and
  - (b) the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to \*cover a unit of study in which the person is enrolled;
 then, in reducing the person’s \*SLE under section 76-1 to take account of the unit:

- (c) the person's ordinary SLE or additional SLE is reduced (or both the person's ordinary SLE and the person's additional SLE are reduced) to zero; and
- (d) the person's life long SLE is reduced only to the extent that the ordinary SLE or additional SLE is insufficient (or the ordinary SLE and additional SLE taken together are insufficient) to cover the unit.

No. 15—Clause 82-10, page 82 (line 18), omit “that is \*available”, substitute “or \*life long SLE that is \*available (or the person's ordinary SLE and the person's life long SLE that are available)”.

No. 16—Clause 93-10, page 88 (line 3), omit “is:”, substitute “is the amount specified in the following table in relation to the funding cluster in which the unit is included.”.

No. 17—Clause 93-10, page 88 (lines 4 to 15), omit paragraphs (a) and (b).

No. 18—Clause 104-1, page 94 (line 32), omit “part; and”, substitute “part.”.

No. 19—Clause 104-1, page 95 (lines 1 and 2), omit paragraph (1)(j).

No. 20—Clause 107-1, page 104 (line 10), omit “or 107-15”.

No. 21—Clause 107-10, page 104 (line 29), omit the note.

No. 22—Clause 107-10, page 105 (line 17), omit the note.

No. 23—Clause 118-10, page 110 (lines 21 to 24), omit paragraph (b).

No. 24—Clause 118-10, page 110 (line 25), omit “under that arrangement.”.

No. 25—Clause 118-15, page 111 (lines 1 to 11), omit subclause (2).

No. 26—Clause 121-1, page 112 (lines 15 to 18), omit subclause (4).

No. 27—Clause 121-10, page 113 (lines 1 to 4), omit subclause (3).

No. 28—Clause 169-15, page 154 (line 29), after “require any”, insert “\*domestic”.

No. 29—Clause 169-15, page 155 (line 4), omit “if the student is a \*domestic student—must not require the”, substitute “must not require any domestic”.

No. 30—Clause 238-10, page 196 (after table item 10), insert:

11	Tuition Fee Guidelines	Part 2-2
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No. 31—Schedule 1, page 202 (after line 14), after the definition of *information system*, insert:

*life long SLE*, of a person, means the amount of \*Student Learning Entitlement that the person has under section 73-22, as reduced (if applicable) under Division 76.

No. 32—Clause 36-15, page 48 (after line 14), at the end of the clause, add:

- (2) The Minister may determine in writing that:
  - (a) a specified undergraduate or postgraduate course is not a \*course of study in respect of which students, or students of a specified kind, may be enrolled in units of study as \*Commonwealth supported students; or
  - (b) an undergraduate or postgraduate course of a specified type is not a \*course of study in respect of which students, or students of a specified kind, may be enrolled in units of study as \*Commonwealth supported students.

- (3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course, or a course of that type.
- (4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or a course of that type, with the provider.
- (5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

No. 33—Clause 36-35, page 50 (lines 26 to 28), omit all the words from and including “50%” to and including “for that year,” substitute “65%”.

No. 34—Clause 36-35, page 51 (line 9), omit “50%”, substitute “65%”.

No. 35—Clause 70-1, page 72 (line 8), omit “5 years”, substitute “7 years”.

No. 36—Clause 73-5, page 73 (line 14), omit “5 \*EFTSL”, substitute “7 \*EFTSL”.

No. 37—Clause 73-5, page 73 (line 18), omit “5 \*EFTSL”, substitute “7 \*EFTSL”.

No. 38—Clause 76-5, page 77 (lines 14 to 30), omit the example.

No. 39—Clause 93-10, pages 88 and 89 (table), omit the table, substitute:

<b>Maximum student contribution amounts per place</b>		
<b>Item</b>	<b>Funding clusters</b>	<b>Maximum student contribution amount per place</b>
1	Law	\$7,854
2	Accounting, Administration, Economics, Commerce	\$6,709
3	Humanities	\$4,710
4	Mathematics, Statistics	\$6,709
5	Behavioural Science, Social Studies	\$4,710
6	Computing, Built Environment, Health	\$6,709
7	Foreign Languages, Visual and Performing Arts	\$4,710
8	Engineering, Science, Surveying	\$6,709
9	Dentistry, Medicine, Veterinary Science	\$7,854
10	Agriculture	\$6,709
11	Education	\$3,768
12	Nursing	\$3,768

No. 40—Clause 104-10, page 96 (after line 16), at the end of the clause, add:

- (3) In deciding whether to make a determination under subsection (2), the Minister must have regard to the effect of the determination on students undertaking the course or courses.

- (4) A determination of the Minister under subsection (2) must not be made later than 6 months before the day that students are able next to commence the specified course, or courses, with the provider.
- (5) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

No. 41—Clause 129-1, page 115 (lines 8 to 11), omit all the words from and including “either” to and including “relates”, substitute “the person’s accumulated HELP debt”.

No. 42—Clause 134-1, page 116 (lines 8 to 11), omit all the words from and including “HECS-HELP debts are” to and including “These accumulated debts form”, substitute “HELP debts are incorporated into the person’s accumulated HELP debt. This accumulated debt forms”.

No. 43—Clause 137-10, page 118 (line 9), omit subclause (2), substitute:

- (2) The amount of the \*FEE-HELP debt is:
  - (a) if the loan relates to \*FEE-HELP assistance for a unit of study that forms part of an undergraduate \*course of study—an amount equal to 120% of the loan; or
  - (b) if paragraph (a) does not apply—the amount of the loan.

No. 44—Clause 137-15, page 118 (line 23), after “debt is”, insert “an amount equal to 120% of”.

No. 45—Division 140, clauses 140-1 to 140-40, page 120 (line 2) to page 126 (line 28), omit the Division, substitute:

### **Division 140—How are accumulated HELP debts worked out?**

#### **Subdivision 140-A—Outline of this Division**

##### **140-1 Outline of this Division**

- (1) There are 2 stages to working out a person’s \*accumulated HELP debt for a financial year.

##### *Stage 1—Former accumulated HELP debt*

- (2) The \*former accumulated HELP debt is worked out by adjusting the preceding financial year’s \*accumulated HELP debt to take account of:
  - (a) changes in the Consumer Price Index; and
  - (b) the \*HELP debts that he or she incurs during the last 6 months of the preceding financial year; and
  - (c) \*voluntary repayments of the debt; and
  - (d) \*compulsory repayment amounts in respect of the debt.

(See Subdivision 140-B.)

##### *Stage 2—Accumulated HELP debt*

- (3) The person’s \*accumulated HELP debt is worked out from:
  - (a) his or her \*former accumulated HELP debt; and
  - (b) the \*HELP debts that he or she incurs during the first 6 months of the financial year; and
  - (c) \*voluntary repayments of those debts.

(See Subdivision 140-C.)



Note: Incurring that financial year's accumulated HELP debt discharges the previous accumulated HELP debt and HELP debts under this Part: see section 140-35.

### Subdivision 140-B—Former accumulated HELP debts

#### 140-5 Working out a former accumulated HELP debt

- (1) A person's *former accumulated HELP debt*, in relation to the person's \*accumulated HELP debt for a financial year, is worked out by multiplying:
- the amount worked out using the following method statement; by
  - the \*HELP debt indexation factor for 1 June in that financial year.

#### *Method statement*

- Step 1.* Take the person's \*accumulated HELP debt for the immediately preceding financial year. (This amount is taken to be zero if the person has no accumulated HELP debt for that financial year.)
- Step 2.* Add the sum of all of the \*HELP debts (if any) that the person incurred during the last 6 months of the immediately preceding financial year.
- Step 3.* Subtract the sum of the amounts by which the person's debts referred to in steps 1 and 2 are reduced because of any \*voluntary repayments that have been made during the period:
- starting on 1 June in the immediately preceding financial year; and
  - ending immediately before the next 1 June.
- Step 4.* Subtract the sum of all of the person's \*compulsory repayment amounts that:
- were assessed during that period (excluding any assessed as a result of a \*return given before that period); or
  - were assessed after the end of that period as a result of a return given before the end of that period.
- Step 5.* Subtract the sum of the amounts by which any \*compulsory repayment amount of the person is increased (whether as a result of an increase in the person's \*taxable income of an \*income year or otherwise) by an amendment of an assessment made during that period.
- Step 6.* Add the sum of the amounts by which any \*compulsory repayment amount of the person is reduced (whether as a result of a reduction in the person's \*taxable income of an \*income year or otherwise) by an amendment of an assessment made during that period.

Example: Lorraine is studying part-time for a Degree of Bachelor of Communications. On 1 June 2007 Lorraine had an accumulated HELP debt of \$15,000. She incurred a HELP debt of \$1,500 on 31 March 2007. She made a voluntary repayment of \$550 (which includes a voluntary repayment bonus of \$50) on 1 May 2008. Lorraine lodged her 2006-07 income tax return and a compulsory repayment amount of \$3,000 was

assessed and notified on her income tax notice of assessment on 3 September 2007.

To work out Lorraine's former accumulated HELP debt before indexation on 1 June 2008:

- Step 1:* Take the previous accumulated HELP debt of \$15,000 on 1 June 2007.  
*Step 2:* Add the HELP debt of \$1,500 incurred on 31 March 2007.  
*Step 3:* Subtract the \$550 voluntary repayment made on 1 May 2008.  
*Step 4:* Subtract the \$3,000 compulsory repayment assessed on 3 September 2007.

*Steps 5 and 6:* Do not apply because since 1 June 2007 Lorraine had no amendments to any assessment.

Lorraine's former accumulated HELP debt before indexation on 1 June 2008 is:

$$(\$15,000 + \$1,500) - (\$550 + \$3,000) = \$12,950$$

If, for example, the indexation factor for 1 June 2008 were 1.050, then the former accumulated HELP debt would be:

$$\$12,950 \times 1.050 = \$13,597.50$$

- (2) For the purposes of this section, an assessment, or an amendment of an assessment, is taken to have been made on the day specified in the notice of assessment, or notice of amended assessment, as the date of issue of that notice.

#### 140-10 HELP debt indexation factor

- (1) The **HELP debt indexation factor** for 1 June in a financial year is the number (rounded to 3 decimal places) worked out as follows:

*Method statement*

- Step 1.* Add:
- (a) the \*index number for the \*quarter ending on 31 March in that financial year; and
  - (b) the index numbers for the 3 quarters that immediately preceded that quarter.
- Step 2.* Add:
- (a) the \*index number for the \*quarter ending on 31 March in the immediately preceding financial year; and
  - (b) the index numbers for the 3 quarters that immediately preceded that quarter.
- Step 3.* The **HELP debt indexation factor** for 1 June in the financial year is the amount under step 1 divided by the amount under step 2.

- (2) For the purposes of rounding a \*HELP debt indexation factor, the third decimal place is rounded up if, apart from the rounding:
- (a) the factor would have 4 or more decimal places; and
  - (b) the fourth decimal place would be a number greater than 4.

**140-15 Index numbers**

- (1) The *index number* for a \*quarter is the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the \*Australian Statistician in respect of that quarter.
- (2) Subject to subsection (3), if, at any time before or after the commencement of this Act:
  - (a) the \*Australian Statistician has published or publishes an \*index number in respect of a \*quarter; and
  - (b) that index number is in substitution for an index number previously published by the Australian Statistician in respect of that quarter;
 disregard the publication of the later index for the purposes of this section.
- (3) If, at any time before or after the commencement of this Act, the \*Australian Statistician has changed or changes the reference base for the Consumer Price Index, then, in applying this section after the change took place or takes place, have regard only to \*index numbers published in terms of the new reference base.

**140-20 Publishing HELP debt indexation factors**

The \*Commissioner must cause to be published before 1 June in each financial year the \*HELP debt indexation factor for that 1 June.

**Subdivision 140-C—Accumulated HELP debts****140-25 Working out an accumulated HELP debt**

- (1) A person's *accumulated HELP debt*, for a financial year, is worked out as follows:

$$\text{Former accumulated HELP debt} + \text{HELP debts incurred} - \text{HELP debt repayments}$$

where:

*former accumulated HELP debt* is the person's \*former accumulated HELP debt in relation to that \*accumulated HELP debt.

*HELP debt repayments* is the sum of all of the \*voluntary repayments (if any) paid, on or after 1 July in the financial year and before 1 June in that year, in reduction of the \*HELP debts incurred in that year.

*HELP debts incurred* is the sum of the amounts of all of the \*HELP debts (if any) that the person incurred during the first 6 months of the financial year.

Example: Paula is studying part-time for a Degree of Bachelor of Science. On 1 June 2009, her former accumulated HELP debt was worked out using Subdivision 143-B to be \$20,000. She incurred a HELP debt of \$1,500 on 31 August 2008. No repayments have been made in the 12 months from 1 June 2008.

Paula's accumulated HELP debt on 1 June 2009 is worked out by taking her former accumulated HELP debt of \$20,000 and adding the \$1,500 HELP debt incurred on 31 August 2008. That is:

$$\$20,000 + \$1,500 = \$21,500$$

- (2) The person incurs the \*accumulated HELP debt on 1 June in the financial year.
- (3) The first financial year for which a person can have an \*accumulated HELP debt is the financial year starting on 1 July 2005.

#### 140-30 Rounding of amounts

- (1) If, apart from this section, a person's \*accumulated HELP debt would be an amount consisting of a number of whole dollars and a number of cents, disregard the number of cents.
- (2) If, apart from this section, a person's \*accumulated HELP debt would be an amount of less than one dollar, the person's accumulated HELP debt is taken to be zero.

#### 140-35 Accumulated HELP debt discharges earlier debts

- (1) The \*accumulated HELP debt that a person incurs on 1 June in a financial year discharges, or discharges the unpaid part of:
  - (a) any \*HELP debt that the person incurred during the calendar year immediately preceding that day; and
  - (b) any accumulated HELP debt that the person incurred on the immediately preceding 1 June.
- (2) Nothing in subsection (1) affects the application of Division 137, Subdivision 140-B or section 140-25.

#### 140-40 Accumulated HELP debt discharged by death

- (1) Upon the death of a person who has an \*accumulated HELP debt, the accumulated HELP debt is taken to be discharged.
- (2) To avoid doubt, this section does not affect any \*compulsory repayment amounts required to be paid in respect of the \*accumulated HELP debt, whether or not those amounts were assessed before the person's death.

Note: Accumulated HELP debts are not provable in bankruptcy: see subsection 82(3AB) of the *Bankruptcy Act 1966*.

No. 46—Heading to clause 151-5, page 136 (line 7), omit “**HECS-HELP**”, substitute “**HELP**”.

No. 47—Clause 151-5, page 136 (lines 8 to 18), omit subclause (1), substitute:

- (1) The effect that a payment under section 151-1 has on a \*HELP debt or an \*accumulated HELP debt that a person (the *debtor*) owes to the Commonwealth under this Chapter is the effect specified in subsection (2) or (3) of this section if the amount of the payment is:
  - (a) \$500 or more; or
  - (b) sufficient to be taken under subsection (2) to pay off the total debt.

No. 48—Clause 151-5, page 136 (lines 24 and 25), omit “HECS-HELP debts and accumulated HECS-HELP debt”, substitute “HELP debts and accumulated HELP debt”.

No. 49—Clause 151-5, page 137 (lines 6 and 7), omit “HECS-HELP debts and accumulated HECS-HELP debt”, substitute “HELP debts and accumulated HELP debt”.

No. 50—Clause 151-10, page 137 (line 19) to page 138 (line 2), omit subclause (2), substitute:

- (2) If the person has not given any directions, or the directions given do not adequately deal with the matter, any money available is to be applied as follows:
- (a) first, in discharge or reduction of any \*accumulated HELP debt of the person;
  - (b) secondly, in discharge or reduction of:
    - (i) any \*HELP debt of the person; or
    - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

No. 51—Clause 154-1, page 139 (lines 11 and 12), omit “\*accumulated HECS-HELP debt, an \*accumulated FEE-HELP/OS-HELP debt, or both”, substitute “\*accumulated HELP debt”.

No. 52—Clause 154-15, page 140 (line 26) to page 141 (line 2), omit paragraph (1)(a), substitute:

- (a) the person’s \*accumulated HELP debt referred to in paragraph 154-1(1)(b) in relation to that income year; or

No. 53—Clause 154-15, page 141 (line 4), omit “those debts”, substitute “that debt”.

No. 54—Clause 154-15, page 141 (line 6), omit “those debts”, substitute “that debt”.

No. 55—Clause 154-15, page 141 (lines 7 and 8), omit “the sum of those debts”, substitute “that debt”.

No. 56—Clause 154-35, page 144 (lines 6 and 7), omit “the sum of the person’s \*accumulated HECS-HELP debt and the person’s \*accumulated FEE-HELP/OS-HELP debt”, substitute “the person’s \*accumulated HELP debt”.

No. 57—Clause 154-35, page 144 (line 9), omit “sum”, substitute “debt”.

No. 58—Schedule 1, page 197 (after line 12), after the definition of *accredited course*, insert:

*accumulated HELP debt* has the meaning given by section 140-25.

No. 59—Schedule 1, page 197 (lines 13 and 14), omit the definition of *accumulated FEE-HELP/OS-HELP debt*.

No. 60—Schedule 1, page 197 (lines 15 and 16), omit the definition of *accumulated HECS-HELP debt*.

No. 61—Schedule 1, page 199 (lines 12 to 14), omit “\*accumulated HECS-HELP debt, or an \*accumulated FEE-HELP/OS-HELP debt,”, substitute “\*accumulated HELP debt”.

No. 62—Schedule 1, page 201 (after line 6), after the definition of *financial viability requirements*, insert:

*former accumulated HELP debt* has the meaning given by section 140-5.

No. 63—Schedule 1, page 201 (lines 7 and 8), omit the definition of *former accumulated HECS-HELP debt*.

No. 64—Schedule 1, page 201 (lines 9 and 10), omit the definition of *former indexed FEE-HELP/OS-HELP debt*.

No. 65—Schedule 1, page 201 (lines 11 and 12), omit the definition of *former unindexed FEE-HELP/OS-HELP debt*.

No. 66—Schedule 1, page 208 (lines 8 and 9), omit “\*accumulated HECS-HELP debt, an \*accumulated FEE-HELP/OS-HELP debt”, substitute “\*accumulated HELP debt”.

No. 67—Clause 154-10, page 140 (line 21), omit “30,000”, substitute “36,184”.

No. 68—Clause 154-20, pages 141 and 142 (table), omit the table, substitute:

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**Applicable percentages**

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Item	If the person’s repayment income is:	The percentage applicable is:
1	More than the *minimum repayment income, but less than: (a) for the 2005-06 *income year—\$40,307; or (b) for a later income year—that amount indexed under section 154-25.	4%
2	More than the amount under item 1, but less than: (a) for the 2005-06 *income year—\$44,428; or (b) for a later income year—that amount indexed under section 154-25.	4.5%
3	More than the amount under item 2, but less than: (a) for the 2005-06 *income year—\$46,763; or (b) for a later income year—that amount indexed under section 154-25.	5%
4	More than the amount under item 3, but less than: (a) for the 2005-06 *income year—\$50,267; or (b) for a later income year—that amount indexed under section 154-25.	5.5%
5	More than the amount under item 4, but less than: (a) for the 2005-06 *income year—\$54,440; or (b) for a later income year—that amount indexed under section 154-25.	6%

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<b>Applicable percentages</b>		
<b>Item</b>	<b>If the person's repayment income is:</b>	<b>The percentage applicable is:</b>
6	More than the amount under item 5, but less than: (a) for the 2005-06 *income year—\$57,305; or (b) for a later income year—that amount indexed under section 154-25.	6.5%
7	More than the amount under item 6, but less than: (a) for the 2005-06 *income year—\$63,063; or (b) for a later income year—that amount indexed under section 154-25.	7%
8	More than the amount under item 7, but less than: (a) for the 2005-06 *income year—\$67,200; or (b) for a later income year—that amount indexed under section 154-25.	7.5%
9	More than the amount under item 8.	8%

No. 69—Page 176 (after line 15), at the end of Part 5-6, add:

**198-25 Review of indexation**

- (1) The Minister will initiate and undertake a review of the cost adjustment factor indexation mechanism for the Commonwealth funding of universities from 2007/08.
- (2) The review must be completed by February 2005 and the Government must respond to the review by April 2005 and give effect to its response when introducing the annual Higher Education Support Amendment Bill in the 2005 May sittings of the Parliament.
- (3) Without limiting the scope of the review, the reviewers must, among other things, consider the following:
  - (a) the alternative indices to use for wage costs—for example, the relative merits of average weekly earnings, the Commonwealth's education wage cost index, baskets of domestic professional wage rates and purchasing power parity adjusted indices for academic labour;
  - (b) the alternative indices for non-wage costs, noting the high reliance of universities on advanced equipment, information technology, research infrastructure and international book and periodical stocks;
  - (c) the application of any agreed index or indices to the actual Commonwealth-funded staffing and financial profile of each university rather than the application of an assumed uniform profile.

No. 70—Page 195 (after line 21), after clause 238-5, insert:

**238-7 Review of impact of Act**

Before 31 December 2006, the Minister must cause a review to be commenced of the impact on the higher education sector of the higher education reforms enacted through this Act.

*Requests:*

That the House of Representatives be requested to make the following amendments:

Clause 41-45, page 59 (table), omit the table, substitute:

<b>Maximum payments for other grants under this Part</b>		
<b>Item</b>	<b>Year</b>	<b>Amount</b>
1	2005	\$1,345,931,000
2	2006	\$1,460,951,000
3	2007	\$1,381,822,000

Clause 46-40, page 64 (table), omit the table, substitute:

<b>Maximum payments for Commonwealth Scholarships</b>		
<b>Item</b>	<b>Year</b>	<b>Amount</b>
1	2004	\$124,212,000
2	2005	\$148,337,000
3	2006	\$172,754,000
4	2007	\$197,481,000

Senator Cherry moved the following amendment to Senator Vanstone's proposed amendment no. 45:

At the end of clause 140-10, add:

- (3) Where a person is in receipt of Family Tax Payment B or Carer Payment for more than six months of the year in question, the HELP indexation factor for that year shall be zero.

Debate ensued.

Question—That Senator Cherry's amendment to Senator Vanstone's proposed amendment no. 45 be agreed to—put and negatived.

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

Question—That the bill, as amended, be agreed to—divided in respect of Division 143, clauses 143-1 to 143-30 and clause 107-15.

Question—That Division 143, clauses 143-1 to 143-30 and clause 107-15 stand as printed—put and negatived.

Bill, as amended, agreed to subject to requests.

**HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003—**

Bill taken as a whole by leave.



Senator Vanstone moved the following amendments and requests for amendments together by leave:

*Amendments:*

Clause 2, page 3 (table item 12), omit the table item, substitute:

12. Schedule 2, item 112	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .
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13. Schedule 2, items 113 to 119A	The later of: (a) 1 January 2005; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .
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14. Schedule 2, items 120 to 168	The later of: (a) 1 January 2004; and (b) immediately after the commencement of sections 1-10 to 238-15 of the <i>Higher Education Support Act 2003</i> .
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Schedule 1, item 1, page 5 (lines 17 to 19), omit paragraph (1)(e).

Schedule 1, item 1, page 6 (line 1), after “applies”, insert “and the person is not an excepted student”.

Schedule 1, item 1, page 6 (after line 14), at the end of the item, add:

(3) In this item:  
*excepted student* has the meaning given by subsection 41(3) of the *Higher Education Funding Act 1988*.

Schedule 1, item 3, page 6 (line 34), omit “is:”, substitute “is the amount specified in the following table in relation to the funding cluster in which the unit is included.”.

Schedule 1, item 3, page 6 (line 35) to page 7 (line 4), omit paragraphs (2)(a) and (b).

Schedule 1, page 12 (after line 27), after item 11, insert:

**11A Taking account of voluntary payments made under the *Higher Education Support Act 2003* before 1 June 2005**

(1) If:

- (a) on or after 1 January 2005 and before 1 June 2005, a person makes a voluntary repayment to the Commissioner under Division 151 of the *Higher Education Support Act 2003*; and
- (b) the payment is in respect of one or more HECS-HELP debts;

in working out, under section 140-25 of that Act, a person’s accumulated HECS-HELP debt for the financial year, add the amount to the amount of the sum referred to in step 3 of the method statement in section 140-5 of that Act.

- (2) If:
- (a) on or after 1 January 2005 and before 1 June 2005, a person makes a voluntary repayment to the Commissioner under Division 151 of the *Higher Education Support Act 2003*; and
  - (b) the payment is in respect of one or more HELP debts that are not HECS-HELP debts;
- in working out, under section 143-15 of that Act, a person's accumulated FEE-HELP/OS-HELP debt for the financial year, add the amount to the amount of the sum referred to in step 3 of the method statement in section 143-5 of that Act.

Schedule 1, page 19 (after line 28), after item 22, insert:

**22A Fee-waiver scholarships in the year 2004**

- (1) The amount or value of a scholarship in respect of the year 2004 is taken not to be income for the purposes of the *Social Security Act 1991* if:
- (a) the scholarship is provided by an institution (within the meaning of the old Act) or by an institution or body referred to in Schedule 1 to the old Act; and
  - (b) the scholarship is in the form of a waiver of all of the fees (within the meaning of the old Act) that the person would be liable to pay to the institution or body in connection with a course of study (within the meaning of the old Act); and
  - (c) the course of study is not a designated course of study (within the meaning of Chapter 4 of the old Act).
- (2) Subitem (1) does not affect whether the amount or value of a scholarship in relation to which that subitem does not apply is income for the purposes of the *Social Security Act 1991*.

Schedule 2, items 113 and 114, page 47 (lines 10 to 13), omit the items, substitute:

**113 Subsection 106PA(2)**

Repeal the subsection.

**114 Subsection 106PA(3)**

Omit "If the amount of the debt is \$500 or more, the", substitute "The".

Schedule 2, page 47 (after line 25), after item 119, insert:

**119A Subsection 106PA(5)**

Omit "(2)".

Schedule 2, item 137, page 51 (lines 1 to 4), omit the item, substitute:

**137 Section 12-5 (table item headed "Higher Education Contribution Scheme (HECS)")**

Repeal the item, substitute:

**higher education assistance** 26-20

Clause 2 (table item 14, column 1), omit "168", substitute "169".

Schedule 1, item 10, page 12 (lines 4 and 5), omit "accumulated HECS-HELP debts", substitute "accumulated HELP debts".

Schedule 1, item 10, page 12 (line 7), omit "accumulated HECS-HELP debt", substitute "accumulated HELP debt".

Schedule 1, item 10, page 12 (line 11), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

Schedule 1, item 11, page 12 (line 25), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

Schedule 1, item 12, page 13 (line 8), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

Schedule 1, item 13, page 13 (line 22), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

Schedule 1, item 13, page 13 (line 35), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

Schedule 2, item 18, page 24 (line 15), omit “accumulated HECS-HELP debt”, substitute “accumulated HELP debt”.

Schedule 2, item 120, page 48 (lines 3 to 6), omit all the words from and including “accumulated HECS-HELP debt” to and including “or both”, substitute “accumulated HELP debt”.

Schedule 2, item 122, page 48 (lines 9 to 18), omit the item, substitute:

**122 At the end of subsection 106Y(2)**

Add:

- ; (f) fourthly, in discharge or reduction of:
  - (i) any HELP debt of the person; or
  - (ii) if there is more than one such debt, those debts in the order in which they were incurred.

Schedule 2, items 143 and 144, page 51 (line 25) to page 52 (line 4), omit the items, substitute:

**143 Section 995-1**

Insert:

*accumulated HELP debt* has the meaning given by section 140-25 of the *Higher Education Support Act 2003*.

Schedule 2, item 157, page 54 (lines 7 and 8), omit “accumulated HECS-HELP debts or accumulated FEE-HELP/OS-HELP debts”, substitute “accumulated HELP debt”.

Schedule 2, item 159, page 54 (lines 17 and 18), omit “\*accumulated HECS-HELP debt or \*accumulated FEE-HELP/OS-HELP debt”, substitute “\*accumulated HELP debt”.

Schedule 2, item 160, page 54 (lines 22 and 23), omit “\*accumulated HECS-HELP debt or \*accumulated FEE-HELP/OS-HELP debt”, substitute “\*accumulated HELP debt”.

Schedule 2, page 22 (after line 15), after Part 2, insert:

**Part 2A—HEC repayment thresholds for the 2004-05 year of income**

*Higher Education Funding Act 1988*

**8A Subsection 106Q(1)**

Omit “subsection (7)”, substitute “subsections (7) and (8)”.

**8B Subparagraph 106Q(4)(a)(ii)**

After “year of income”, insert “(other than the 2004-05 year of income)”.

**8C After subparagraph 106Q(4)(a)(ii)**

Insert:

; or (iii) for the 2004-05 year of income—\$35,000;

**8D At the end of section 106Q**

Add:

- (8) This section applies in relation to the 2004-05 year of income as if the table in subsection (1) were omitted and the following table were substituted:

<b>HEC repayment thresholds for the 2004-05 year of income</b>		
<b>Item</b>	<b>Person’s HEC repayment income in respect of year of income</b>	<b>Percentage applicable</b>
1	More than \$35,000, but less than \$38,988	4%
2	\$38,988 or more, but less than \$42,973	4.5%
3	\$42,973 or more, but less than \$45,233	5%
4	\$45,233 or more, but less than \$48,622	5.5%
5	\$48,622 or more, but less than \$52,658	6%
6	\$52,658 or more, but less than \$55,430	6.5%
7	\$55,430 or more, but less than \$60,972	7%
8	\$60,972 or more, but less than \$65,000	7.5%
9	\$65,000 or more	8%

*Requests:*

That the House of Representatives be requested to make the following amendments:

No. 1—Schedule 2, page 52 (before line 6), before item 145, insert:

**144A After paragraph 8(8)(zj)**

Insert:

(zja) the amount or value of:

- (i) a scholarship known as a Commonwealth Education Costs Scholarship; or
- (ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*;

No. 2—Schedule 2, page 55 (after line 24), at the end of the Schedule, add:

***Veterans’ Entitlements Act 1986***

**169 After paragraph 5H(8)(ha)**

Insert:

(hb) the amount or value of:

- (i) a scholarship known as a Commonwealth Education Costs Scholarship; or
- (ii) a scholarship known as a Commonwealth Accommodation Scholarship;

provided for under the Commonwealth Scholarships Guidelines made for the purposes of Part 2-4 of the *Higher Education Support Act 2003*;

Senator Stott Despoja moved the following amendment to Senator Vanstone's proposed request no. 1:

After paragraph (zja), insert:

(zjb) the amount or value of scholarships offered by a university or higher education provider on the basis of education or financial disadvantage;

Question—That Senator Stott Despoja's amendment to Senator Vanstone's proposed request no. 1 be agreed to—put and negatived.

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2, items 133, 134 and 135.

Question—That Schedule 2, items 133, 134 and 135 stand as printed—put and negatived.

Senator Carr moved the following amendments and request for an amendment together by leave:

*Amendments:*

Schedule 2, item 36, page 27 (lines 13 to 16), omit paragraph 10(6)(a).

Schedule 2, item 72, page 36 (lines 15 to 18), omit paragraph 11(5)(a).

*Request:*

That the House of Representatives be requested to make the following amendment:

Schedule 2, item 1, page 21 (line 6), omit "\$2,990,161,000", substitute "\$3,004,061,000".

Debate ensued.

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

Bill, as amended, agreed to subject to requests.

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Bills to be reported with amendments and requests.

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

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

*Suspension of sitting:* On the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) the sitting of the Senate was suspended till 9 am on Friday, 5 December 2003.

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FRIDAY, 5 DECEMBER 2003

*At 9 am—*

The sitting of the Senate resumed.

**58 ECONOMICS LEGISLATION COMMITTEE—REPORT—TAXATION LAWS  
AMENDMENT (SUPERANNUATION CONTRIBUTIONS SPLITTING) BILL 2003**

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

Economics Legislation Committee—Provisions of the Taxation Laws Amendment (Superannuation Contributions Splitting) Bill 2003 and associated regulations—Report, dated December 2003, *Hansard* record of proceedings, answers to questions on notice and submissions [17].

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

**59 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved—That the order of consideration of business for the remainder of today be as follows:

- (a) prayers;
- (b) government business orders of the day—
  - No. 3 Financial Services Reform Amendment Bill 2003
  - No. 7 Trade Practices Legislation Amendment Bill 2003, consideration in committee of the whole of message no. 467 from the House of Representatives
  - No. 4 Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003
  - No. 5 Family Law Amendment Bill 2003
  - No. 2 ASIO Legislation Amendment Bill 2003; and
- (c) general business order of the day no. 71 (Kyoto Protocol Ratification Bill 2003 [No. 2]).

Question put and passed.

**60 NOTICE**

Senator Brown gave a notice of motion as follows: To move on the next day of sitting—That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 16 July 2004:

All matters relating to Australia's involvement in preparations for the deployment of the United States of America's proposed missile defence program.

**61 PRAYERS**

The President read prayers.

**62 FINANCIAL SERVICES REFORM AMENDMENT BILL 2003**

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

---

*In the committee*

Bill, taken as a whole by leave, debated.

Question—That the bill be agreed to—divided in respect of Schedule 2, item 6.

Schedule 2, item 6 agreed to.

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

Schedule 2, item 7, page 19 (lines 8 to 10), omit the item, substitute:

**7 Section 761A (paragraph (d) of the definition of *basic deposit product*)**

Before “funds”, insert “unless subparagraph (c)(ii) applies and the period referred to in that subparagraph expires on or before the end of the period of 2 years starting on the day on which funds were first deposited in the facility—”.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2, item 42, section 926A.

Schedule 2, item 42, section 926A debated.

Senator Ian Campbell moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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

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

**63 HIGHER EDUCATION SUPPORT BILL 2003**

**HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003**

Messages from the House of Representatives were reported indicating that the House had made the amendments requested by the Senate to the following bills:

Message no. 481, dated 5 December 2003—Higher Education Support Bill 2003.

Message no. 482, dated 5 December 2003—Higher Education Support (Transitional Provisions and Consequential Amendments) Bill 2003.

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved—That the bills be now read a third time.

On the motion of Senator Ian Campbell the debate was adjourned and the resumption of the debate made an order of the day for a later hour.

**64 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved—That intervening business be postponed till after consideration of government business order of the day no. 4 (Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2003).

Question put and passed.

**65 WORKPLACE RELATIONS AMENDMENT (IMPROVED PROTECTION FOR VICTORIAN WORKERS) BILL 2003**

Order of the day read for the adjourned debate on the motion of the Minister for Family and Community Services (Senator Patterson)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

On the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) consideration of the bill in committee of the whole was made an order of the day for a later hour.

**66 HIGHER EDUCATION SUPPORT BILL 2003****HIGHER EDUCATION SUPPORT (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2003**

Order of the day read for the adjourned debate on the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell)—That these bills be now read a third time.

Debate resumed.

Question put.

The Senate divided—

**AYES, 31**

Senators—

Abetz	Eggleston (Teller)	Kemp	Patterson
Barnett	Ellison	Lees	Payne
Boswell	Ferguson	Lightfoot	Santoro
Brandis	Ferris	Macdonald, Sandy	Scullion
Calvert	Harradine	Mason	Tierney
Campbell, Ian	Heffernan	McGauran	Vanstone
Chapman	Humphries	Minchin	Watson
Colbeck	Johnston	Murphy	

**NOES, 29**

Senators—

Allison	Conroy	Ludwig	Ridgeway
Bartlett	Cook	Lundy	Stephens
Bishop	Crossin	Mackay	Stott Despoja
Bolkus	Faulkner	Marshall	Webber
Brown	Forshaw	McLucas	Wong
Buckland (Teller)	Greig	Murray	
Carr	Hutchins	Nettle	
Cherry	Kirk	Ray	



Question agreed to.

Bills read a third time.

**67 TRADE PRACTICES LEGISLATION AMENDMENT BILL 2003**

Order of the day read for the consideration of message no. 467 from the House of Representatives in committee of the whole (*see entry no. 38, 3 December 2003*).

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*In the committee*

The Special Minister of State (Senator Abetz) moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Question put and passed.

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

Schedule 2, item 40, page 18 (after line 13), after subsection 95H(5), insert:

(5A) The Minister must, as soon as practicable after confirmation that the other body will hold the inquiry, table a statement in each House of the Parliament:

- (a) specifying that the body will hold the inquiry; and
- (b) giving the Minister's reasons for requesting the body, rather than the Commission, to hold the inquiry.

Resolutions to be reported.

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The Acting Deputy President (Senator Kirk) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 467 from the House of Representatives relating to the Trade Practices Legislation Amendment Bill 2003 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed and had made a further amendment to the bill.

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

**68 WORKPLACE RELATIONS AMENDMENT (IMPROVED PROTECTION FOR VICTORIAN WORKERS) BILL 2003**

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.

Senator Nettle moved the following amendments together by leave:

Clause 2, page 2 (table item 3), omit the table item, substitute:

3. Schedule 2, items 1 to 3	A day or days to be fixed by Proclamation, subject to subsection (3)
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3A. Schedule 2, item 3A	The day after the day on which the Victorian Referral Act reviews the Royal Assent (however described)
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3B. Schedule 2, item 4	A day or days to be fixed by Proclamation subject to subsection (3)
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Clause 2, page 2 (after line 13), after subclause (3), insert:

- (4) In this section, *Victorian Referral Act* means an Act of Victoria that refers to the Commonwealth Parliament power to legislate with respect to contract outworkers.

Schedule 2, item 3, page 18 (lines 17 to 22), omit section 537, substitute:

**537 Object of Part**

The object of this Part is to ensure that an individual who is an outworker other than an employee performing work in Victoria in the textile, clothing or footwear industry receives the same protections afforded to employees under Part XV.

Schedule 2, item 3, page 18 (line 25) to page 19 (line 2), omit the definition of *contract outworker*, substitute:

*contract outworker* means an individual:

- (a) who is a party to a contract for services; and
- (b) who performs work under the contract for another party or parties to the contract, where that work:
  - (i) is performed in Victoria; and
  - (ii) the work comprises packing, processing or otherwise working on articles or materials for the textile, clothing or footwear industry; and
  - (iii) the work is performed in or about:
    - (A) private residential premises; or
    - (B) premises that are not business or commercial premises of anyone who is obliged under the contract to pay for the work performed.

Schedule 2, item 3, page 19 (lines 3 to 5), omit the definition of *court of competent jurisdiction*.

Schedule 2, item 3, page 19 (after line 6), at the end of Division 1, add:

**538A Contract outworkers are employees for the purpose of this Act**

For the purposes of this Act:

- (a) a contract outworker is an employee;
- (b) a person who engages a contract outworker is an employer;
- (c) the contract between a contract outworker and a person who engages him or her is a contract of employment;
- (d) the conditions on or under which a contract outworker performs work are conditions of employment;
- (e) the relationship between a contract outworker and a person who engages him or her is an employment relationship.

Schedule 2, item 3, page 19 (after line 21), at the end of Subdivision A, add:

**540A Concurrent operation of Victorian laws**

- (1) This Part is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Part.
- (2) For the avoidance of doubt the provisions of this Part are not intended to be exclusive of contract outworkers' rights or entitlements with

respect to remuneration, leave and other aspects of employment to the extent that they are provided for in Victorian legislation capable of operating concurrently with this Part.

Schedule 2, page 27 (after line 16), after item 3, insert:

**3A At the end of section 540A**

Add:

- (3) This Part will apply in circumstances to which sections 539 and 540 do not apply if and when the Victorian Parliament passes a law referring to the Commonwealth Parliament power to legislate with respect to contract outworkers.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 2

Senators—

Brown

Nettle (Teller)

NOES, 51

Senators—

Allison	Colbeck	Hutchins	Minchin
Barnett	Collins	Johnston	Murray
Bartlett	Conroy	Kemp	O'Brien
Bishop	Crossin	Kirk	Payne
Bolkus	Denman	Lees	Ray
Boswell	Eggleston	Lightfoot	Ridgeway
Brandis	Evans	Ludwig	Scullion
Buckland	Ferguson	Lundy	Stephens
Calvert	Ferris (Teller)	Mackay	Tierney
Campbell, George	Forshaw	Marshall	Watson
Campbell, Ian	Greig	Mason	Webber
Carr	Hogg	McGauran	Wong
Chapman	Humphries	McLucas	

Question negatived.

Question—That the bill be agreed to—divided in respect of Schedule 2, item 3, Subdivisions B to D.

Schedule 2, item 3, Subdivisions B to D debated and agreed to.

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for Local Government, Territories and Roads (Senator Ian Campbell) the report from the committee was adopted and the bill read a third time.

**69 FAMILY LAW AMENDMENT BILL 2003**

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

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*In the committee*

Bill taken as a whole by leave.

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*Explanatory memoranda:* The Minister for Local Government, Territories and Roads (Senator Ian Campbell) tabled supplementary explanatory memoranda [3] relating to the government amendments to be moved to the bill.

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

Clause 2, page 2 (after table item 14), insert:

14A.	The day on which this Act receives
Schedule 4A	the Royal Assent

Page 33 (after line 6), after Schedule 4, insert:

**Schedule 4A—Setting aside financial agreements**

**Part 1—Amendments**

*Family Law Act 1975*

**1 Subsection 4(1) (after paragraph (eaa) of the definition of *matrimonial cause*)**

Insert:

(eab) third party proceedings (as defined in section 4A) to set aside a financial agreement; or

**2 After section 4**

Insert:

**4A Third party proceedings to set aside financial agreement**

(1) For the purposes of paragraph (eab) of the definition of *matrimonial cause* in subsection 4(1), *third party proceedings* means proceedings between:

- (a) either or both of the parties to a financial agreement; and
- (b) a creditor or a government body acting in the interests of a creditor;

being proceedings for the setting aside of the financial agreement on the ground specified in paragraph 90K(1)(aa).

(2) In this section:

*creditor* means:

- (a) a creditor of either of the parties to the financial agreement; or
- (b) a person who, at the commencement of the proceedings, could reasonably have been foreseen by the court as being reasonably

likely to become a creditor of either of the parties to the financial agreement.

**government body** means:

- (a) the Commonwealth, a State or a Territory; or
- (b) an official or authority of the Commonwealth, a State or a Territory.

### 3 After paragraph 90K(1)(a)

Insert:

- (aa) either party to the agreement entered into the agreement:
  - (i) for the purpose, or for purposes that included the purpose, of defrauding or defeating a creditor or creditors of the party; or
  - (ii) with reckless disregard of the interests of a creditor or creditors of the party; or

### 4 After subsection 90K(1)

Insert:

- (1A) For the purposes of paragraph (1)(aa), **creditor**, in relation to a party to the agreement, includes a person who could reasonably have been foreseen by the party as being reasonably likely to become a creditor of the party.

### 5 At the end of section 90K

Add:

- (3) A court may, on an application by a person who was a party to the financial agreement that has been set aside, or by any other interested person, make such order or orders (including an order for the transfer of property) as it considers just and equitable for the purpose of preserving or adjusting the rights of persons who were parties to that financial agreement and any other interested persons.
- (4) An order under subsection (1) or (3) may, after the death of a party to the proceedings in which the order was made, be enforced on behalf of, or against, as the case may be, the estate of the deceased party.
- (5) If a party to proceedings under this section dies before the proceedings are completed:
  - (a) the proceedings may be continued by or against, as the case may be, the legal personal representative of the deceased party and the applicable Rules of Court may make provision in relation to the substitution of the legal personal representative as a party to the proceedings; and
  - (b) if the court is of the opinion:
    - (i) that it would have exercised its powers under this section if the deceased party had not died; and
    - (ii) that it is still appropriate to exercise those powers; the court may make any order that it could have made under subsection (1) or (3); and
  - (c) an order under paragraph (b) may be enforced on behalf of, or against, as the case may be, the estate of the deceased party.

- (6) The court must not make an order under this section if the order would:
- (a) result in the acquisition of property from a person otherwise than on just terms; and
  - (b) be invalid because of paragraph 51(xxxi) of the Constitution.

For this purpose, *acquisition of property* and *just terms* have the same meanings as in paragraph 51(xxxi) of the Constitution.

## Part 2—Application of amendments

### 6 Application of amendments

The amendments made by this Schedule apply to financial agreements made at any time, whether before or after the commencement of this Schedule. However, the amendments do not apply to proceedings that were instituted before the commencement of this Schedule.

Heading to Schedule 5, page 34 (line 2), omit “**Financial agreements**”, substitute “**Other amendments relating to financial agreements**”.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, items 1, 2, 8 and 12.

Schedule 1, items 1, 2, 8 and 12 debated and agreed to.

Senator Greig moved the following amendments together by leave:

Schedule 1, item 3, page 5 (lines 23 to 26), omit the note.

Schedule 1, item 4, page 5 (line 29) to page 6 (line 2), omit subsection (6), substitute:

- (6) A registered parenting plan is a parenting plan that is registered in a court under section 63E and that has not been revoked pursuant to section 63H.

Schedule 1, page 8 (after line 32), after item 12, insert:

#### 12A After subsection 63H(2)

Insert:

- (2A) To apply for registration of an agreement revoking a registered parenting plan (a *revocation agreement*):
- (a) an application for registration of the revocation agreement must be lodged in accordance with the applicable Rules of Court; and
  - (b) the application must be accompanied by:
    - (i) a copy of the revocation agreement; and
    - (ii) the information required by the applicable Rules of Court; and
    - (iii) a statement in relation to each party, that the party has been provided with independent legal advice as to the meaning and effect of the revocation agreement and that is signed by the practitioner who provided that advice.
- (2B) In determining whether it is appropriate to register the revocation agreement, the court:
- (a) must have regard to the information accompanying the application for registration; and
  - (b) may, but is not required to, have regard to all or any of the matters set out in subsection 68F(2).

Debate ensued.

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

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 6.

Schedule 1, item 6 debated and agreed to.

Senator Greig moved the following amendment:

Clause 2, page 3 (cell at table item 15, column 2), omit the cell, substitute “The 28th day after the day on which this Act receives the Royal Assent”.

Debate ensued.

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

On the motion of the Minister for Justice and Customs (Senator Ellison) the following amendments, taken together by leave, were debated and agreed to:

Clause 2, page 3 (cell at table item 18, column 2), omit the cell, substitute:

On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent

Schedule 6, item 1, page 37 (after line 17), at the end of Division 1, add:

**90ADA Other provisions of this Act not affected by this Part**

This Part does not affect the operation of any other provision of this Act.

Example: Paragraph 90AE(3)(e) and subsection 90AE(4) do not limit the operation of any other provisions of this Act that require or permit the court to take matters into account in making an order in proceedings under section 79.

Schedule 6, item 1, page 38 (line 18), omit “order.”, substitute “order; and”.

Schedule 6, item 1, page 38 (after line 18), at the end of subsection 90AE(3), add:

- (d) the court is satisfied that, in all the circumstances, it is just and equitable to make the order; and
- (e) the court is satisfied that the order takes into account the matters mentioned in subsection (4).

Schedule 6, item 1, page 38 (after line 18), at the end of section 90AE, add:

- (4) The matters are as follows:
  - (a) the taxation effect (if any) of the order on the parties to the marriage;
  - (b) the taxation effect (if any) of the order on the third party;
  - (c) the social security effect (if any) of the order on the parties to the marriage;
  - (d) the third party’s administrative costs in relation to the order;
  - (e) if the order concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made;

Note: See paragraph (3)(b) for requirements for making the order in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.

- (f) the economic, legal or other capacity of the third party to comply with the order;

Example: The legal capacity of the third party to comply with the order could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order despite the terms of the trust deed. If the court does so, the order will have effect despite those terms (see section 90AC).

- (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order, the third party raises any other matters—those matters;

Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

- (h) any other matter that the court considers relevant.

Schedule 6, item 1, page 39 (line 11), omit "order or injunction.", substitute "order or injunction; and".

Schedule 6, item 1, page 39 (after line 11), at the end of subsection 90AF(3), add:

- (d) for an injunction or order under subsection 114(1)—the court is satisfied that, in all the circumstances, it is proper to make the order or grant the injunction; and  
 (e) for an injunction under subsection 114(3)—the court is satisfied that, in all the circumstances, it is just or convenient to grant the injunction; and  
 (f) the court is satisfied that the order or injunction takes into account the matters mentioned in subsection (4).

Schedule 6, item 1, page 39 (after line 11), at the end of section 90AF, add:

- (4) The matters are as follows:  
 (a) the taxation effect (if any) of the order or injunction on the parties to the marriage;  
 (b) the taxation effect (if any) of the order or injunction on the third party;  
 (c) the social security effect (if any) of the order or injunction on the parties to the marriage;  
 (d) the third party's administrative costs in relation to the order or injunction;  
 (e) if the order or injunction concerns a debt of a party to the marriage—the capacity of a party to the marriage to repay the debt after the order is made or the injunction is granted;

Note: See paragraph (3)(b) for requirements for making the order or granting the injunction in these circumstances.

Example: The capacity of a party to the marriage to repay the debt would be affected by that party's ability to repay the debt without undue hardship.

- (f) the economic, legal or other capacity of the third party to comply with the order or injunction;



Example: The legal capacity of the third party to comply with the order or injunction could be affected by the terms of a trust deed. However, after taking the third party's legal capacity into account, the court may make the order or grant the injunction despite the terms of the trust deed. If the court does so, the order or injunction will have effect despite those terms (see section 90AC).

- (g) if, as a result of the third party being accorded procedural fairness in relation to the making of the order or the granting of the injunction, the third party raises any other matters—those matters;

Note: See paragraph (3)(c) for the requirement to accord procedural fairness to the third party.

- (h) any other matter that the court considers relevant.

Schedule 6, item 1, page 39 (after line 29), at the end of Division 4, add:

**90AJ Expenses of third party**

- (1) Subsection (2) applies if:
  - (a) the court has made an order or granted an injunction in accordance with this Part in relation to a marriage; and
  - (b) a third party in relation to the marriage has incurred expense as a necessary result of the order or injunction.
- (2) The court may make such order as it considers just for the payment of the reasonable expenses of the third party incurred as a necessary result of the order or injunction.
- (3) In deciding whether to make an order under subsection (2), subject to what the court considers just, the court must take into account the principle that the parties to the marriage should bear the reasonable expenses of the third party equally.
- (4) The regulations may provide, in situations where the court has not made an order under subsection (2):
  - (a) for the charging by the third party of reasonable fees to cover the reasonable expenses of the third party incurred as a necessary result of the order or injunction; and
  - (b) if such fees are charged—that each of the parties to the marriage is separately liable to pay the third party an amount equal to half of those fees; and
  - (c) for conferring jurisdiction on a particular court or courts in relation to the collection or recovery of such fees.

Schedule 6, item 1, page 39 (after line 29), at the end of Division 4, add:

**90AK Acquisition of property**

- (1) The court must not make an order or grant an injunction in accordance with this Part if the order or injunction would:
  - (a) result in the acquisition of property from a person otherwise than on just terms; and
  - (b) be invalid because of paragraph 51(xxxi) of the Constitution.
- (2) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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

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

Clause 2, page 3 (table item 23, column 1), omit “29”, substitute “29A”.

Schedule 7, item 29, page 46 (lines 6 to 23), omit the item, substitute:

**29 Subsection 117(2)**

Omit “subsection (2A)”, substitute “subsections (2A), (4) and (5)”.

**29A At the end of section 117**

Add:

- (3) To avoid doubt, in proceedings in which a child representative has been appointed, the court may make an order under subsection (2) as to costs or security for costs, whether by way of interlocutory order or otherwise, to the effect that each party to the proceedings bears, in such proportion as the court considers just, the costs of the child representative in respect of the proceedings.
- (4) However, in proceedings in which a child representative has been appointed, if:
  - (a) a party to the proceedings has received legal aid in respect of the proceedings; or
  - (b) the court considers that a party to the proceedings would suffer financial hardship if the party had to bear a proportion of the costs of the child representative;
 the court must not make an order under subsection (2) against that party in relation to the costs of the child representative.
- (5) In considering what order (if any) should be made under subsection (2) in proceedings in which a child representative has been appointed, the court must disregard the fact that the child representative is funded under a legal aid scheme or service established under a Commonwealth, State or Territory law or approved by the Attorney-General.

Schedule 7, item 35, page 48 (line 7), omit “Item 29 applies”, substitute “Items 29 and 29A apply”.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 7, item 29.

Schedule 7, item 29 debated and agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

#### 70 FINANCIAL SERVICES REFORM AMENDMENT BILL 2003

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

—————  
*In the committee*

Consideration resumed of Schedule 2, item 42, section 926A.

Debate resumed.

Question—That Schedule 2, item 42, section 926A stand as printed—put.

The committee divided—

#### AYES, 35

Senators—

Abetz	Colbeck	Kemp	Payne
Barnett	Eggleston	Lees	Ridgeway
Bartlett	Ellison	Lightfoot	Santoro
Boswell	Ferguson	Macdonald, Sandy	Scullion
Brandis	Ferris (Teller)	Mason	Stott Despoja
Calvert	Greig	McGauran	Tierney
Campbell, Ian	Heffernan	Minchin	Vanstone
Chapman	Humphries	Murray	Watson
Cherry	Johnston	Patterson	

#### NOES, 24

Senators—

Brown	Evans	Kirk	Nettle
Buckland	Faulkner	Lundy	O'Brien
Collins	Forshaw	Mackay	Ray
Conroy	Harradine	Marshall	Stephens
Crossin (Teller)	Hogg	McLucas	Webber
Denman	Hutchins	Murphy	Wong

Section agreed to.

The Minister for Local Government, Territories and Roads (Senator Ian Campbell) moved the following amendments together by leave:

No. 1—Clause 2, page 2 (table item 3, column 1), omit “items 1 to 87”, substitute “items 1 to 46C”.

No. 2—Clause 2, page 2 (after table item 3), insert:

3A. Schedule 2, items 46D, 46E and 46F	1 July 2004
3B. Schedule 2, items 47 to 72	The day after this Act receives the Royal Assent
3C. Schedule 2, item 72A	1 July 2004
3D. Schedule 2, items 73 to 87	The day after this Act receives the Royal Assent

No. 3—Clause 2, page 2 (after table item 4), insert:

4A. Schedule 2, 1 July 2004  
item 88A

No. 4—Schedule 2, item 42, page 26 (lines 3 and 4), omit subsection 926A(4), substitute:

(4) An exemption or declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* if the exemption or declaration is expressed to apply in relation to a class of persons or a class of financial products (whether or not it is also expressed to apply in relation to one or more persons or products identified otherwise than by reference to membership of a class).

(4A) If subsection (4) does not apply to an exemption or declaration, the exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

No. 5—Schedule 2, item 42, page 26 (lines 9 and 10), omit “with the gazettal requirement of subsection (4)”, substitute “with the requirements of subsection 48(1) of the *Acts Interpretation Act 1901* as applying because of section 46A of that Act, or with the gazettal requirement of subsection (4A), as the case may be”.

No. 6—Schedule 2, item 46A, page 29 (before line 4), before subparagraph (1)(d)(i), insert:

(ia) the providing entity has, either immediately before the further market-related advice is given, or within the preceding 12 months, checked with the client whether the client’s objectives, financial situation and needs have changed since the last time the providing entity checked with the client about those matters; and

No. 7—Schedule 2, item 46A, page 29 (line 5), after “advice”, insert “(determined having regard to the client’s objectives, financial situation and needs as currently known to the providing entity)”.

No. 8—Schedule 2, page 30 (after line 30), after item 46C, insert:

**46D At the end of subsection 947B(2)**

Add:

; and (h) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (d) and subparagraph (e)(i), any amounts are to be stated in dollars.

No. 9—Schedule 2, page 30 (after line 30), after item 46C, insert:

**46E At the end of subsection 947C(2)**

Add:

; and (i) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (e) and subparagraph (f)(i), any amounts are to be stated in dollars.

No. 10—Schedule 2, page 30 (after line 30), after item 46C, insert:

**46F At the end of subsection 947D(2)**

Add:

; (d) unless in accordance with the regulations, for information to be disclosed in accordance with paragraph (a), any amounts are to be stated in dollars.

No. 11—Schedule 2, page 36 (after line 28), after item 72, insert:

**72A At the end of subsection 1013D(1)**

Add:

; and (m) unless in accordance with the regulations, for information to be disclosed in accordance with paragraphs (b), (d) and (e), any amounts are to be stated in dollars.

No. 12—Schedule 2, page 47 (after line 28), after item 88, insert:

**88A After subsection 1017D(5)**

Insert:

(5A) Unless in accordance with the regulations:

(a) for information to be disclosed in accordance with paragraphs (5)(a), (b), (c), (d) and (e), any amounts are to be stated in dollars; and

(b) for any other information in relation to amounts paid by the holder of the financial product during the period, any amounts are to be stated in dollars.

Debate ensued.

The question for the amendments was divided—

Question—That amendments nos 1 to 3 and 5 to 12 be agreed to—put and passed.

Question—That amendment no. 4 be agreed to—put and passed.

Bill, as amended, further debated and agreed to.

Bill to be reported with amendments.

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

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

**71 ASIO LEGISLATION AMENDMENT BILL 2003**

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

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*In the committee*

Bill taken as a whole by leave.

Question—That the bill be agreed to—divided in respect of Schedule 1, Part 1.

Schedule 1, Part 1 debated and agreed to.

Senator Greig moved the following amendment:

Schedule 1, item 5, page 6 (after line 12), after subsection (2A), insert:

- (2B) If the warrant is one meeting the requirements in paragraph 34D(2)(a) and the prescribed authority gives a direction under subsection (1), that direction must be approved in writing by the Minister:
- (i) as soon as practicable after the direction has been given by the prescribed authority; and
  - (ii) no later than 24 hours after the direction has been given by the prescribed authority.
- (2C) If subsection (2B) applies but the direction given by the prescribed authority is not approved by the Minister in writing before the expiration of 24 hours after the giving of the direction, the person must be released from detention.

Debate ensued.

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

Senator Greig moved the following amendment:

Schedule 1, item 10, page 8 (line 24) to page 9 (line 4), omit subsection (3), substitute:

- (3) The fault element applying to paragraphs (1)(c) and (2)(c) is knowledge or intention.

Debate ensued.

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

Senator Brown moved the following amendment:

Schedule 1, item 10, page 9 (after line 31), after paragraph (a) of the definition of *permitted disclosure*, insert:

- (ab) a disclosure which serves the public interest;

Debate ensued.

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

Senator Greig moved the following amendment:

Schedule 1, item 10, page 12 (after line 11), at the end of section 34VAA, add:

- (13) It is a defence to a prosecution for an offence under this Part if:
  - (a) the disclosure was made in direct compliance with a law of the Commonwealth or a law of a foreign country; and
  - (b) non-compliance with that law constitutes a criminal offence.

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

Senator Brown moved the following amendment:

Schedule 1, item 10, page 12 (after line 11), at the end of section 34VAA, add:

*Media organisations*

- (13) An act done, or practice engaged in, by a media organisation is exempt for the purposes of this section if the act done, or practice engaged in, is:
  - (a) by the organisation in the course of journalism;
  - (b) at a time when the organisation is publicly committed to observe standards that:
    - (i) adhere to an industry code of practice; and

- (ii) have been published in writing by the organisation or a person or body representing a class of media organisations.
  - (c) not a threat to national security.
- (13A) For the purposes of subsection (13), **media organisation** means an organisation and or a journalist whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public:
- (a) material having the character of news, current affairs, information or a like documentary; or
  - (b) material consisting of commentary or opinion on, or analysis of, news, current affairs, information or a documentary.

Debate ensued.

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

Question—That the bill be agreed to—divided in respect of Schedule 1, Part 4.

Schedule 1, Part 4 agreed to.

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for Finance and Administration (Senator Minchin) the report from the committee was adopted.

Senator Minchin moved—That this bill be now read a third time.

Debate ensued.

Question put and passed.

Bill read a third time.

#### 72 **PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—DOCUMENT—APPROVAL**

The Minister for Finance and Administration (Senator Minchin) tabled the following document:

Parliament Act—Parliamentary Zone—Capital works—Proposal, together with supporting documentation, relating to the design and content of the seventh sliver at Reconciliation Place.

Senator Minchin, by leave, moved—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design and content of Artwork Seven at Reconciliation Place.

Question put and passed.

#### 73 **LEAVE OF ABSENCE**

The Minister for Finance and Administration (Senator Minchin) moved—That leave of absence be granted to every member of the Senate from the termination of the sitting today to the day on which the Senate next meets.

Debate ensued.

Question put and passed.

**74 ADJOURNMENT**

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

Debate ensued.

The Senate adjourned at 5.18 pm till Tuesday, 10 February 2004 at 12.30 pm.

**75 ATTENDANCE**

Present, all senators except Senators Alston, Knowles\*, Ian Macdonald, Moore and Sherry (\* on leave).

**HARRY EVANS**  
Clerk of the Senate