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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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THURSDAY, 12 AUGUST 2004

AND

FRIDAY, 13 AUGUST 2004

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1 MEETING OF SENATE

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

2 PETITIONS

The following 7 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Bartlett, 2 petitions similar in wording, from 6 831 and 987 petitioners, requesting that the Senate establish an inquiry into all aspects of live animal exports from Australia.

Senator Bartlett, from 13 petitioners, requesting that the Senate support the Defence Amendment (Parliamentary approval for Australian involvement in overseas conflicts) Bill 2003.

Senator Bartlett, from 2 135 petitioners, requesting that the Senate take action to end the export of live animals from Australia to the Middle East.

Senator Crossin, from 2 580 petitioners, requesting that the Senate take action to establish a Medicare office for the City of Palmerston.

Senator Stott Despoja, from 20 petitioners, requesting that the Senate pass legislation to provide a national system of Government-funded paid maternity leave which provides at least a 14-week payment for working women, with minimal exclusions.

Senator Stott Despoja, from 950 petitioners, requesting that the Senate take action to extend the Educational Textbook Subsidy Scheme indefinitely.

3 NOTICES

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

- (a) recalls that, on 2 December 2002, a proposed agreement between Australia and the United States of America (US), pursuant to which Australia would agree not to surrender US nationals to the International Criminal Court without the consent of the US (the proposed agreement), was referred to the Joint Standing Committee on Treaties for inquiry and report;
- (b) notes correspondence from the secretary of the committee to the Clerk of the Senate, dated 16 July 2003, which:
 - (i) stated that ‘as far as the Committee is aware, there is no such proposed agreement’ and that it had ‘therefore decided to defer commencing the inquiry into the matter referred until the text of such an agreement is made available to the Committee’, and
 - (ii) however, acknowledged that ‘the Committee is empowered to inquire into any question relating to a treaty or other international agreement, whether or not negotiated to completion, referred to the Committee by either House’;
- (c) further notes:
 - (i) the report on ABC Radio’s *PM* program of 28 August 2002, that the US had written to the Australian Government, requesting it to enter into the proposed agreement and that, according to the Minister for Foreign Affairs, the Government was ‘sympathetic’ to the request,

- (ii) the report on Network Nine's *Sunday* program of 8 September 2002, in which the then Attorney-General indicated that the US had requested Australia to enter into the proposed agreement and that the Australian Government had no objection to the proposed agreement, and
- (iii) evidence from Department of Foreign Affairs and Trade officials on 19 February 2004 that negotiations with the US were ongoing and that, at that time, the most recent meeting had been in December 2003; and
- (d) calls on the committee to commence the inquiry into the proposed agreement as soon as practicable and report to the Senate no later than 20 December 2004. (*general business notice of motion no. 977*)

The Leader of the Australian Democrats (Senator Bartlett): To move 4 sitting days after today—That Schedule 1 to the Migration Amendment Regulations 2004 (No. 5), as contained in Statutory Rules 2004 No. 223 and made under the *Migration Act 1958*, be disallowed.

The Leader of the Australian Democrats (Senator Bartlett): To move 3 sitting days after today—That items [7], [8], [18] to [26], [35] to [40], [48] to [89], [93] to [127], [129] and [130] of Schedule 1, item [1] of Schedule 2 and items [3] and [4] of Schedule 3 to the Migration Legislation (Fees) Amendment Regulations 2004 (No. 1), as contained in Statutory Rules 2004 No. 192 and made under the *Migration Act 1958*, the *Immigration (Education) Act 1971* and the *Migration Agents Registration Application Charge Act 1997*, be disallowed.

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen): To move 15 sitting days after today—

No. 1—That the Broadcasting Services (Events) Notice (No. 1) 2004, made under subsection 115(1) of the *Broadcasting Services Act 1992*, be disallowed.

No. 2—That the Military Superannuation and Benefits Amendment Trust Deed 2004 (No. 1), made under subsection 5(1) of the *Military Superannuation and Benefits Act 1991*, be disallowed.

Senator Tchen, by leave, made a statement relating to the notices of motion.

4 ORDER OF BUSINESS—REARRANGEMENT

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That government business order of the day no. 10 (Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002) be considered from 12.45 pm till not later than 2 pm today.

Question put and passed.

The Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway), by leave, moved—That business of the Senate order of the day no. 1, relating to the presentation of the report of the committee on rural water resource usage, be postponed till a later hour.

Question put and passed.

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins), by leave, moved—That business of the Senate order of the day no. 5, relating to the presentation of the report of the committee on the performance of government agencies in the assessment and dissemination of security threats in South East Asia in the period 11 September 2001 to 12 October 2002, be postponed till a later hour.

Debate ensued.

Question put and passed.

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins), by leave, moved—That business of the Senate order of the day no. 7, relating to the presentation of the report of the committee on current health preparation arrangements for the deployment of Australian Defence Forces overseas, be postponed till a later hour.

Debate ensued.

Question put and passed.

5 ECONOMICS LEGISLATION COMMITTEE—EXTENSIONS OF TIME TO REPORT

Senator Ferris, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That the time for the presentation of the following reports of the Economics Legislation Committee be extended to 30 August 2004:

- (a) provisions of the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 scheme) Bill 2004 and a related bill; and
- (b) Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2) [Statutory Rules 2004 No. 84].

Question put and passed.

6 WOMEN—DOMESTIC VIOLENCE AND PREGNANCY

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 974—That the Senate—

- (a) acknowledges that violence against women has serious consequences for reproductive outcomes;
- (b) notes that:
 - (i) the Australian Longitudinal Study on Women's Health has found that young women with violent partners are more likely to become pregnant, miscarry, have a stillbirth, premature birth or an abortion than are women who do not have violent partners, and
 - (ii) the Women's Safety Australia study found that 42 per cent of women who reported physical violence from a partner experienced that violence during pregnancy, with half of these women stating that violence occurred for the first time while they were pregnant; and
- (c) calls on the Government to:
 - (i) provide funding to raise awareness of the links between violence and pregnancy and to train primary health care professionals to routinely assess pregnant women for possible exposure to violence, and
 - (ii) improve systems of care for pregnant women who are experiencing partner violence.

Question put and passed.

7 EDUCATION—HIGHER EDUCATION CONTRIBUTION SCHEME

Senator Stott Despoja, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 976—That the Senate—

- (a) notes that, on 19 August 2004, there will be national action by university students who will be protesting against the Government's 'Backing Australia's Future: Our Universities' policy and, in particular, against higher education contribution scheme (HECS) fee increases and the under-funding of universities;

- (b) supports students in their non-violent attempts to seek the repeal of HECS fee increases and increased public finding for education; and
- (c) condemns the Government for under-funding universities for the past 8 years, to such an extent that universities are now turning to students to provide a short-term increase in funding.

Question put and passed.

8 FOREIGN AFFAIRS—SUDAN—WAR CRIMES

Senator Stephens, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 973—That the Senate—

- (a) notes:
 - (i) the reports of many independent observers, including those sent by the African Union, that the so-called Janjaweed militias have carried out numerous massacres, summary executions, rapes, burnings of towns and villages, and forcible depopulations in the Darfur region of western Sudan,
 - (ii) reports by Human Rights Watch that the Sudanese military regime has armed, supported and supervised the militias, and that Sudanese government forces have directly participated in some of these actions,
 - (iii) estimates by reputable sources that at least 300 000 people have already been killed or died as a direct or indirect result of this campaign, that more than a million people have been made homeless, that more than 100 000 have been forced to seek refuge in Chad, and that an unknown but large number of women have been raped in the course of these attacks, and
 - (iv) reports that the militias have destroyed mosques, killed Muslim religious leaders and desecrated Qurans in the course of their attacks;
- (b) condemns the military regime in Sudan for instigating a policy of forcible depopulation of areas considered disloyal to Khartoum, which has led to massive social dislocation and deaths of innocent civilians, in particular, the Fur, Masalit and Zaghawa ethnic groups in Darfur;
- (c) holds the Sudanese regime responsible for the crimes committed by its armed forces and by the militias under its control;
- (d) welcomes the decision by the Australian Government to allocate \$20 million for relief in Darfur, but calls on the Government to make a significantly greater commitment to aid the people of Darfur through appropriate international agencies;
- (e) notes that United Nations (UN) Security Council Resolution 1556 has imposed an arms embargo on Sudan and authorised the creation of an international protection force for Darfur; and
- (f) calls on the Australian Government:
 - (i) in the event that this force does not succeed in preventing further armed attacks on the people of Darfur, to take immediate action at the UN to ensure that the UN force is given a mandate to disarm the militias, secure the withdrawal of Sudanese government forces from the area, protect the people of Darfur and enable all refugees to return to their homes,

- (ii) to make a contribution, proportionate with Australia's military capacity, of Australian forces to any peace-keeping force dispatched to Sudan under a UN mandate, and
- (iii) to take action at the UN to secure the prosecution for war crimes at the appropriate international tribunal of President Omar Bashir and other officials of the Sudanese military regime responsible for the massacres of civilians in Darfur.

Question put and passed.

**9 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—
LEAVE TO MEET DURING SITTING**

Senator Ferris, at the request of the Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 969—That the Rural and Regional Affairs and Transport References Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Friday, 13 August 2004, from 9.30 am, in relation to its inquiry into forestry plantations.

Question put and passed.

**10 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—
EXTENSION OF TIME TO REPORT**

Senator Ferris, at the request of the Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 970—That the time for the presentation of the report of the Rural and Regional Affairs and Transport References Committee on forestry plantations be extended to 2 September 2004.

Question put and passed.

11 ELGIN MARBLES

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 971—That the Senate, noting that the Games of the XXVIIIth Olympiad will commence in Athens, Greece on Friday, 13 August 2004:

- (a) notes that the Elgin Marbles were removed from Athens during the occupation by the Ottoman Empire;
- (b) recognises that the Parthenon is the most important symbol of Greek cultural heritage and, according to the declaration of universal human and cultural rights, Greece has a duty to preserve its cultural heritage in its totality, both for its citizens and for the international community;
- (c) acknowledges that the Elgin Marbles, or more precisely, the Parthenon Sculptures, are not freestanding works of art but integral architectural features of the Parthenon;
- (d) notes that the Parthenon was erected in the 5th century BC to celebrate the victory of Athenian democracy, which encouraged the creation and development of all the arts as well as politics, philosophy, theatre and science as we know them today;

- (e) is of the view that it is inappropriate that over half of the Parthenon's celebrated sculptural elements should be exhibited 2 000 miles away from the remaining elements and the monument for which they were expressly designed and carved;
- (f) finds that the request by the Greek community for the reunification of the sculptural elements of the Parthenon in Athens is a rightful and a legitimate request;
- (g) is of the view that returning the Elgin Marbles to Greece would be a key move in promoting Europe's common cultural heritage; and
- (h) calls on the Government of the United Kingdom to give positive consideration to Greece's request for the return of the Elgin Marbles to their natural site.

Question put and passed.

12 EDUCATION—HIGHER EDUCATION CONTRIBUTION SCHEME

Senator Stott Despoja, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 975—That the Senate—

- (a) notes that:
 - (i) to date, 26 universities have announced that they will increase their higher education contribution scheme (HECS) fees, most of them by the full 25 per cent across all disciplines,
 - (ii) increasing HECS fees will further deter students from low socio-economic backgrounds,
 - (iii) all three South Australian universities will increase HECS fees by 25 per cent in 2005, severely affecting student choice in South Australia, and
 - (iv) by 2008, the Government's policy 'Backing Australia's Future: Our Universities' will have shifted more than \$1.2 billion of the costs of higher education to students through HECS fee increases and increases in domestic full-fee paying student numbers; and
- (b) condemns the Government for under-funding universities for the past 8 years to such an extent that universities are now turning to students to provide a short-term increase in funding.

Question put and passed.

13 CONSIDERATION OF LEGISLATION

The Minister for the Environment and Heritage (Senator Ian Campbell), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 2—That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004, allowing it to be considered during this period of sittings.

Question put and passed.

14 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—APPROVAL

The Minister for the Environment and Heritage (Senator Ian Campbell), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 3—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 construction of permanent access ramps at the rear of Old Parliament House.

Question put and passed.

15 IMMIGRATION—DETENTION OF ASYLUM SEEKERS

The Leader of the Australian Democrats (Senator Bartlett), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 968—To move—That the Senate—

- (a) notes that:
- (i) the High Court of Australia on Friday, 6 August 2004, gave rulings addressing two areas of great significance regarding existing Australian legislation,
 - (ii) the rulings showed that there is a lack of any statutory provisions for stateless people within the jurisdiction of Australia, resulting in the possibility of lifetime detention for any stateless person who was not granted a protection visa but cannot be deported to any other country, and
 - (iii) the rulings also showed that there is a lack of legislation relating to conditions of administrative detention that must be met for that detention to remain lawful; and
- (b) calls on the Australian Government, as a matter of urgency, to:
- (i) enact legislation to prevent the situation whereby people who have been charged with no crime are faced with the possibility of lifetime detention,
 - (ii) enact legislation to resolve the issue whereby there are no legal provisions regarding the conditions which administrative detention must meet in order to remain lawful,
 - (iii) resolve the issues surrounding stateless people currently in immigration detention in Australia, by the granting of visas while the Government is unable to deport those people, and
 - (iv) investigate the implications of the High Court's interpretation of the Australian Constitution that allows for lifetime administrative detention, with a view to enacting a Bill of Rights to protect people within the jurisdiction of Australia from such an abuse of basic human rights.

Question put.

The Senate divided—

AYES, 11

Senators—

Allison (Teller)
Bartlett
Brown

Cherry
Greig
Harradine

Lees
Murray
Nettle

Ridgeway
Stott Despoja

NOES, 43

Senators—

Boswell	Ellison	Kirk	Payne
Brandis	Ferguson	Knowles	Ray
Buckland	Ferris (Teller)	Lightfoot	Santoro
Calvert	Fifield	Lundy	Scullion
Campbell, George	Forshaw	Macdonald, Sandy	Stephens
Carr	Harris	Mackay	Tchen
Chapman	Hill	Marshall	Troeth
Conroy	Hogg	Mason	Watson
Crossin	Humphries	McGauran	Webber
Denman	Hutchins	McLucas	Wong
Eggleston	Johnston	Moore	

Question negatived.

16 LAW AND JUSTICE—JAMES HARDIE INDUSTRIES—COMPENSATION

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 957—That the Senate—

(a) notes:

- (i) that James Hardie Industries was a significant producer of asbestos products in Australia, and
- (ii) preliminary reports that James Hardie Industries may have deliberately underfunded its compensation scheme and moved its headquarters offshore to avoid or minimise its future compensation liabilities;

(b) calls on the Government to:

- (i) take all possible steps to ensure that James Hardie Industries pays full and fair compensation to the victims or the families of victims injured or killed by the asbestos products that James Hardie Industries produced, and
- (ii) join local councils in boycotting all James Hardie Industries products and services until it is satisfied that all of James Hardie Industries' current and future compensation liabilities are met; and

(c) calls on all political parties to redirect any donations they have received from James Hardie Industries into a trust fund for these victims and their families.

Question put and passed.

17 PUBLICATIONS COMMITTEE—STANDING COMMITTEE—19TH REPORT

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

PUBLICATIONS COMMITTEE

19TH 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 Parliament since 24 June 2004, recommends that the following be printed:

- Australian Intelligence Agencies—Inquiry—Report by Philip Flood, July 2004.
- Department of Foreign Affairs and Trade—Transnational terrorism: The threat to Australia—White paper.
- Higher education—Report for the 2004 to 2006 triennium.

Interactive Gambling Act 2001—Review of the operation of the Act—Report, July 2004.

Murray-Darling Basin Commission—Report for 2002-03.

Productivity Commission—Reports—

No. 27—National workers' compensation and occupational health and safety frameworks, 6 March 2004.

No. 29—Impacts of native vegetation and biodiversity regulations, 8 April 2004.

No. 30—Review of the *Disability Discrimination Act 1992*, 30 April 2004—

Volume 1—Chapters.

Volume 2—Appendices.

No. 31—Review of the gas access regime, 11 June 2004.

Senator Richard Colbeck

Chairman

12 August 2004.

Senator Ferris moved—That the report be adopted.

Question put and passed.

18 **BROADCASTING SERVICES AMENDMENT (ANTI-SIPHONING) BILL 2004**

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

Message no. 668, dated 11 August 2004—A Bill for an Act to amend the *Broadcasting Services Act 1992*, and for related purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

On the motion of Senator Mackay the debate was adjourned.

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

19 **WATER EFFICIENCY LABELLING AND STANDARDS BILL 2004**

VOCATIONAL EDUCATION AND TRAINING FUNDING AMENDMENT BILL 2004

TAX LAWS AMENDMENT (2004 MEASURES NO. 4) BILL 2004

NEW INTERNATIONAL TAX ARRANGEMENTS (MANAGED FUNDS AND OTHER MEASURES) BILL 2004

CUSTOMS TARIFF AMENDMENT (OIL, GAS AND OTHER MEASURES) BILL 2004

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

Message no. 666, dated 11 August 2004—A Bill for an Act to provide for water efficiency labelling and the making of water efficiency standards, and for related purposes.

Message no. 669, dated 11 August 2004—A Bill for an Act to amend the *Vocational Education and Training Funding Act 1992*, and for related purposes.

Message no. 670, dated 11 August 2004—A Bill for an Act to amend the law relating to taxation, and for related purposes.

Message no. 671, dated 11 August 2004—A Bill for an Act to amend the law relating to taxation, and for related purposes.

Message no. 672, dated 11 August 2004—A Bill for an Act to amend the *Customs Tariff Act 1995*, and for related purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) 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 Ian Campbell moved—That these bills be now read a second time.

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

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

Question put and passed.

**20 CRIMINAL CODE AMENDMENT (SUICIDE RELATED MATERIAL OFFENCES)
BILL 2004**

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

Message no. 667, dated 11 August 2004—A Bill for an Act to amend the *Criminal Code Act 1995*, and for related purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

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

**21 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—
REPORT—ADMINISTRATION OF AUS SAR IN RELATION TO THE SEARCH FOR THE
MARGARET J**

Pursuant to order, Senator Ferris, at the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan), tabled the following report and documents:

Rural and Regional Affairs and Transport Legislation Committee—Administration of AusSAR in relation to the search for the *Margaret J*—Report, dated August 2004, *Hansard* record of proceedings, document presented to the committee and submissions [4].

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

Senator O'Brien, by leave, moved—That the Senate take note of the report.

Question put and passed.

22 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Minister for the Environment and Heritage (Senator Ian Campbell) amended government business notice of motion no. 1 by leave and, pursuant to notice, moved—That, on Thursday, 12 August 2004:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
- (b) if the Senate is sitting at midnight, the sitting of the Senate shall be suspended till 9 am on Friday, 13 August 2004;
- (c) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) shall not be proceeded with;
- (d) the routine of business from not later than 4.30 pm shall be government business only; and
- (e) divisions may take place after 4.30 pm.

Debate ensued.

Question put.

The Senate divided—

AYES, 40

Senators—

Barnett	Ferguson	Kirk	Moore
Brandis	Ferris	Knowles	Payne
Buckland	Fifield	Lightfoot	Ray
Campbell, George	Forshaw	Ludwig	Santoro
Carr	Harradine	Lundy	Scullion
Chapman	Harris	Macdonald, Sandy	Stephens
Colbeck	Hogg	Mackay	Tchen
Crossin	Humphries	Marshall	Watson
Denman	Hutchins	Mason	Webber
Eggleston (Teller)	Johnston	McLucas	Wong

NOES, 10

Senators—

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

Question agreed to.

23 US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004**US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004**

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

—————
In the committee

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004—

Consideration resumed of the bill, as amended.

Bill, as amended, further debated.

Senator Conroy moved the following amendments together by leave:

No. 1—Schedule 7, item 6, page 82 (lines 19 to 22), omit paragraph 26B(1)(a), substitute:

- (a) a certificate to the effect that the applicant, acting in good faith, believes on reasonable grounds that it is not marketing, and does not propose to market, the therapeutic goods in a manner, or in circumstances, that would infringe a valid claim of a patent that has been granted in relation to the therapeutic goods; or

No. 2—Schedule 7, item 6, page 83 (after line 8), after section 26B, insert:

26C Certificates required in relation to patent infringement proceedings

- (1) This section applies if:
 - (a) a person gives a certificate required under subsection 26B(1) in relation to therapeutic goods; and
 - (b) another person (the *second person*) intends to commence proceedings under the *Patents Act 1990* against the person referred to in paragraph (1)(a) for infringement of a patent that has been granted in relation to the therapeutic goods (the *proceedings*).
- (2) The second person, before the date upon which the proceedings are commenced, must give to the Secretary and to the person referred to in paragraph (1)(a) the certificate required by subsection (3).
- (3) The certificate required by this subsection is a certificate to the effect that the proceedings:
 - (a) are to be commenced in good faith; and
 - (b) have reasonable prospects of success; and
 - (c) will be conducted without unreasonable delay.

The certificate must be signed by, or on behalf of, the second person and must be in a form approved by the Secretary.

- (4) For the purpose of paragraph (3)(b), proceedings have reasonable prospects of success if:
 - (a) the second person had reasonable grounds in all the circumstances known to the second person, or which ought reasonably to have been known to the second person (in addition to the fact of grant of the patent), for believing that he or she would be entitled to be granted final relief by the court against the person referred to in paragraph (1)(a) for infringement by that person of the patent; and
 - (b) the second person had reasonable grounds in all the circumstances known to the second person, or which ought reasonably to have been known to the second person (in addition to the fact of grant of the patent), for believing that each of the claims, in respect of which infringement is alleged, is valid; and
 - (c) the proceedings are not otherwise vexatious or unreasonably pursued.

- (5) The person referred to in paragraph (1)(a), with leave of the court, or the Attorney-General, may apply to a prescribed court for an order that the second person pay to the Commonwealth a pecuniary penalty if the second person gives a certificate required under subsection (3) and:
- (a) the certificate is false or misleading in a material particular; or
 - (b) the second person breaches an undertaking given in the certificate.

Maximum penalty: \$10,000,000.

- (6) When determining the extent of a pecuniary penalty to be ordered pursuant to subsection (5), the court must take into account:
- (a) any profit obtained by the second person; and
 - (b) any loss or damage suffered by any person;
- by reason of the second person exploiting the patent during the proceedings.
- (7) For the avoidance of doubt, subsection (6) does not limit the matters the court may take into account when determining a pecuniary penalty ordered pursuant to subsection (5).
- (8) If:
- (a) the second person has sought and obtained in the proceedings an interlocutory injunction restraining the person referred to in paragraph (1)(a) from infringing a patent; and
 - (b) section 26D does not apply; and
 - (c) a prescribed court declares that the second person has given a certificate required under subsection (3); and
 - (d) a prescribed court declares that:
 - (i) the certificate is false or misleading in a material particular; or
 - (ii) the second person has breached an undertaking given in the certificate;

the prescribed court may, pursuant to this section, order that the second person pay to the Commonwealth, a State or a Territory compensation for any damages sustained or costs incurred by the Commonwealth, a State or a Territory as a result of the grant of the interlocutory injunction.

- (9) In this section:

prescribed court has the same meaning as in the *Patents Act 1990*.

No. 3—Schedule 7, item 6, page 83 (after line 8), after section 26B, insert:

26D Requirements for interlocutory injunction

- (1) This section applies where:
- (a) an applicant gives notice to a patentee in accordance with subparagraph 26B(1)(b)(iii); and
 - (b) the patentee and/or its exclusive licensee (in this section the party or parties is or are referred to as the *patentee*) applies to a prescribed court for an interlocutory injunction to restrain the applicant from marketing the therapeutic goods the subject of the application on the ground that such conduct will constitute an infringement of its patent.

- (2) An application for interlocutory relief in accordance with subsection (1) may not be instituted unless the patentee has first notified the Attorney-General of the Commonwealth, or of a State or of a Territory, in writing of the application.
- (3) The Attorney-General of the Commonwealth shall be deemed to be a party to any proceedings commenced in accordance with subsection (1) unless the Attorney-General gives written notice to the prescribed court that he or she does not desire to be a party.
- (4) If an interlocutory injunction is granted pursuant to an application made as described in subsection (1) and:
 - (a) the patentee subsequently discontinues the principal proceedings without the consent of the other parties thereto; or
 - (b) the principal proceedings are dismissed; and
 - (c) in either case, the prescribed court declares that:
 - (i) the patentee did not have reasonable grounds, in all the circumstances known to the patentee or which ought reasonably have been known to the patentee:
 - (A) to believe that it would be granted final relief by the prescribed court against the applicant referred to in paragraph (1)(a) for infringement by that person of the patent; or
 - (B) (in addition to the fact of grant of the patent), for believing that each of the claims, in respect of which infringement is alleged in the proceedings, would have a reasonable prospect of being held to be valid if challenged by the applicant referred to in paragraph (1)(a); or
 - (ii) the application for the interlocutory injunction was otherwise vexatious or not reasonably made or pursued;the prescribed court may, in addition to any other relief which it believes should be granted to any person, make any of the orders described in subsection (5).
- (5) If the prescribed court makes a declaration pursuant to paragraph (4)(c), the prescribed court may, pursuant to the usual undertaking as to damages given by the patentee to the prescribed court to obtain the interlocutory injunction:
 - (a) assess and award compensation to the applicant referred to in paragraph (1)(a) against whom the interlocutory injunction was made:
 - (i) on the basis of an account of the gross profits of the patentee arising from the sale by it in Australia of the therapeutic goods the subject of the interlocutory injunction, during the period of the interlocutory injunction, without requiring the said applicant to establish or quantify its actual loss; or
 - (ii) on such other basis as the court determines to be appropriate; and

- (b) award to the Commonwealth compensation for any damages sustained, or costs incurred, by it as a result of the grant of the interlocutory injunction; and
- (c) award to a State or a Territory compensation for any damages sustained, or costs incurred, by it as a result of the grant of the interlocutory injunction.

(6) In this section:

prescribed court has the same meaning as in the *Patents Act 1990*.

No. 4—Schedule 7, item 7, page 83 (after line 12), at the end of the item, add:

- (2) The amendments made by item 6 apply to legal proceedings commenced on or after the day on which this Schedule commences.

Debate ensued.

At 12.45 pm: The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Kirk) reported progress.

24 **OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT (EMPLOYEE INVOLVEMENT AND COMPLIANCE) BILL 2002**

Order of the day read for the adjourned debate on the motion of the Minister for Justice and Customs (Senator Ellison)—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.

Explanatory memorandum: The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Clause 2, page 2 (table item 3), omit the table item.

Schedule 1, item 38, page 11 (line 25) to page 12 (line 8), omit the item, substitute:

38 Subsection 20(1) (penalty)

Repeal the penalty.

38A At the end of subsection 20(1)

Add:

Note: A person who breaches subsection (1) may be subject to civil action or a criminal prosecution (see Schedule 2).

Schedule 1, item 74, page 21 (line 27) to page 22 (line 8), omit the item, substitute:

74 Subsection 43(3)

Repeal the subsection (including the note).

Schedule 1, item 105, page 28 (line 31) to page 29 (line 18), omit the item, substitute:

105 Subsection 50(1) (penalty)

Repeal the penalty.

105A At the end of subsection 50(1)

Add:

Note: A person who breaches section 50 may be subject to a criminal prosecution (see Schedule 2).

105B Subsection 50(2)

Repeal the subsection (including the note).

Schedule 1, item 141, page 33 (line 10) to page 34 (line 8), omit the item, substitute:

141 Section 77

Omit “an offence against” (wherever occurring), substitute “a breach of”.

Note: The heading to section 77 is altered by omitting “**prosecutions**” and substituting “**proceedings**”.

Schedule 1, Part 2, heading to Division 3, page 53 (line 30), omit the heading.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, items 3, 8, 11 to 14, 19 to 21, 26, 27, 29, 41 to 46, 53, 57 to 63, 65, 67 to 71, 101 to 104, 122 to 124, 132 to 136, 142, 143, 152, 153, 156, 157, 172, 173; Schedule 1, Part 2, Divisions 1 and 2; and Schedule 2.

Question—That Schedule 1, items 3, 8, 11 to 14, 19 to 21, 26, 27, 29, 41 to 46, 53, 57 to 63, 65, 67 to 71, 101 to 104, 122 to 124, 132 to 136, 142, 143, 152, 153, 156, 157, 172, 173; Schedule 1, Part 2, Divisions 1 and 2; and Schedule 2 stand as printed—put and negatived.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

25 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) moved—That consideration of the government business order of the day relating to the Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004) be called on to enable second reading speeches to be made till not later than 2 pm.

Question put and passed.

26 ELECTORAL AND REFERENDUM AMENDMENT (PRISONER VOTING AND OTHER MEASURES) BILL 2004

Order read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan)—That this bill be now read a second time.

Debate resumed.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the debate was adjourned till a later hour.

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

—————
At 2 pm—

27 QUESTIONS

Questions without notice were answered.

28 COMMUNICATIONS—TELSTRA—BROADCASTING—ANSWERS TO QUESTIONS

Senator George Campbell moved—That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked by Senators Marshall and Conroy today relating to the provision of services by Telstra and free-to-air broadcasting.

Debate ensued.

Question put and passed.

29 FAMILY AND COMMUNITY SERVICES—SOCIAL WELFARE—ANSWER TO QUESTION

Senator Cherry moved—That the Senate take note of the answer given by the Minister for Family and Community Services (Senator Patterson) to a question without notice asked by Senator Colbeck today relating to social welfare.

Question put and passed.

30 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—GOVERNMENT RESPONSE—ASPECTS OF THE VETERANS' ENTITLEMENTS ACT 1986 AND THE MILITARY COMPENSATION SCHEME

The Minister for the Environment and Heritage (Senator Ian Campbell) tabled the following document:

Foreign Affairs, Defence and Trade Legislation Committee—Report—Aspects of the *Veterans' Entitlements Act 1986* and the Military Compensation Scheme—Government response, dated 17 May 2004.

31 TREATIES—JOINT STANDING COMMITTEE—GOVERNMENT RESPONSE—56TH REPORT

The Minister for the Environment and Heritage (Senator Ian Campbell) tabled the following document:

Treaties—Joint Standing Committee—56th report—Treaties tabled on 8 October 2003—Government response.

32 APPROPRIATIONS AND STAFFING—STANDING COMMITTEE—REPORT FOR 2003-04

The Deputy President (Senator Hogg), tabled the following report:

Appropriations and Staffing—Standing Committee—Report for 2003-04, dated August 2004.

Report ordered to be printed on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell).

33 DEPARTMENT OF THE SENATE—SENATORS' TRAVELLING ALLOWANCE—DOCUMENT

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

Department of the Senate—Travelling allowance—Payments to senators and members, 1 July 2003 to 30 June 2004, dated August 2004.

34 DEPARTMENT OF THE SENATE—TRAVEL EXPENDITURE—DOCUMENT

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

Department of the Senate—Travel expenditure, 1 July 2003 to 30 June 2004, dated August 2004.

35 COMMUNITY AFFAIRS REFERENCES COMMITTEE—ADDITIONAL INFORMATION—HEPATITIS C AND THE BLOOD SUPPLY IN AUSTRALIA

Senator Ferris, at the request of the Chair of the Community Affairs References Committee (Senator McLucas), tabled the following document:

Community Affairs References Committee—Report—Hepatitis C and the blood supply in Australia—Additional information.

36 ENVIRONMENT—NUCLEAR WASTE STORAGE—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Minister for the Environment and Heritage (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 11 August 2004 for the production of documents concerning potential sites for the storage of nuclear waste (*see entry no. 16, 11 August 2004*).

37 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—REPORT—RURAL WATER RESOURCE USAGE

Pursuant to order, the Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway) tabled the following report and documents:

Rural and Regional Affairs and Transport References Committee—Rural water resource usage—Report, dated August 2004, *Hansard* record of proceedings, documents presented to the committee, additional information and submissions [79].

Report ordered to be printed on the motion of Senator Ridgeway.
 Senator Ridgeway, by leave, moved—That the Senate take note of the report.
 Debate adjourned till the next day of sitting, Senator Ridgeway in continuation.

**38 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REPORT—
 CURRENT HEALTH PREPARATION ARRANGEMENTS FOR THE DEPLOYMENT OF
 AUSTRALIAN DEFENCE FORCES OVERSEAS**

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

Foreign Affairs, Defence and Trade References Committee—Taking stock: Current health preparation arrangements for the deployment of Australian Defence Forces overseas—Report, dated August 2004, *Hansard* record of proceedings and submissions [10].

Report ordered to be printed on the motion of Senator Hutchins.
 Senator Hutchins, by leave, moved—That the Senate take note of the report.
 Debate adjourned till the next day of sitting, Senator Hutchins in continuation.

**39 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REPORT—
 BALI 2002—SECURITY THREATS TO AUSTRALIANS IN SOUTH EAST ASIA**

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

Foreign Affairs, Defence and Trade References Committee—Bali 2002: Security threats to Australians in South East Asia—Report, dated August 2004, *Hansard* record of proceedings, documents presented to the committee, answers to questions on notice and submissions [8].

Report ordered to be printed on the motion of Senator Hutchins.
 Senator Hutchins, by leave, moved—That the Senate take note of the report.
 Debate ensued.
 Debate adjourned till the next day of sitting, Senator Brown in continuation.

40 DOCUMENTS

The following documents were tabled by the Clerk:

A New Tax System (Family Assistance) (Administration) Act—Family Assistance (Designated Date) Determination 2004.

Defence Act—Determinations under section—
 58B—Defence Determination 2004/29.

58H—Defence Force Remuneration Tribunal—Determinations Nos 8 and 9 of 2004.

Military Rehabilitation and Compensation Act—MRCA Instrument—

No. 1 of 2004—Guide to Determining Impairment and Compensation.

No. 2 of 2004—Motor Vehicle Compensation Scheme.

41 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2004—Statements of compliance—National Capital Authority.

**42 US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004
US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004**

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

In the committee

US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004—

Consideration resumed of the bill, as amended—and of the amendments moved by Senator Conroy (see entry no. 23).

Debate resumed.

Senator Brown moved the following amendments to Senator Conroy's proposed amendment no. 2 together by leave:

Omit paragraph 26C(3)(b), substitute:

(b) are more likely than not to succeed;

Subsection 26C(4), omit "have reasonable prospects of success", substitute "are more likely than not to succeed".

Debate ensued.

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

US Free Trade Agreement Implementation Bill 2004—Copy of 'Trade Facts', Office of the United States Trade Representative, July 8 2004.

Debate continued.

Question—That Senator Brown's amendments to Senator Conroy's proposed amendment no. 2 be agreed to—put and negatived.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 47

Senators—

Barnett	Eggleston (Teller)	Johnston	O'Brien
Bishop	Evans	Kirk	Payne
Brandis	Ferguson	Knowles	Ray
Brown	Ferris	Lightfoot	Santoro
Buckland	Fifield	Ludwig	Scullion
Campbell, George	Forshaw	Lundy	Stephens
Carr	Harradine	Mackay	Tchen
Chapman	Harris	Marshall	Troeth
Colbeck	Hill	Mason	Watson
Collins	Hogg	McLucas	Webber
Conroy	Humphries	Moore	Wong
Denman	Hutchins	Nettle	

NOES, 6

Senators—

Allison (Teller)	Greig	Ridgeway
Cherry	Murray	Stott Despoja

Question agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 7, as amended.

Schedule 7, as amended, debated.

Question—That Schedule 7, as amended, be agreed to—put.

The committee divided—

AYES, 43

Senators—

Barnett	Eggleston (Teller)	Hutchins	Moore
Bishop	Evans	Johnston	O'Brien
Boswell	Faulkner	Kirk	Payne
Brandis	Ferguson	Ludwig	Ray
Buckland	Ferris	Lundy	Scullion
Campbell, George	Fifield	Macdonald, Sandy	Stephens
Carr	Forshaw	Mackay	Tchen
Chapman	Harris	Marshall	Watson
Colbeck	Hill	Mason	Webber
Collins	Hogg	McGauran	Wong
Conroy	Humphries	McLucas	

NOES, 8

Senators—

Allison (Teller)	Brown	Greig	Nettle
Bartlett	Cherry	Murray	Ridgeway

Schedule agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 9.

Schedule 9 debated and agreed to.

Senator Ridgeway moved the following amendment:

Schedule 9, page 86 (after line 29), after item 3, insert:

3A After section 42

Insert:

42A Defence of fair use

- (1) A fair use of a copyrighted work or other subject matter does not constitute an infringement of copyright.
- (2) A fair use includes purposes such as:
 - (a) research or study;
 - (b) criticism or review;
 - (c) reporting the news;
 - (d) judicial proceedings or professional advice;
 - (e) parody or transformative use;
 - (f) time-shifting, space-shifting, or device shifting;
 - (g) reverse engineering or making interoperable products.
- (3) In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
 - (a) the purpose and character of the use;
 - (b) the nature of the copyrighted work or other subject matter;
 - (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
 - (d) the effect of the use upon the potential market for or value of the copyrighted work.
- (4) The defence of fair use cannot be excluded or modified by agreement or contract law.
- (5) The defence of fair use cannot be excluded or modified by technological protection measures, and electronic rights management information.

Debate ensued.

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

Senator Ridgeway moved the following amendments together by leave:

Schedule 9, item 2, page 85 (lines 23 to 31), omit subsections 22(3B) and (3C).

Schedule 9, item 8, page 88 (lines 26 and 27), omit paragraph (b) of the definition of *new owner*.

Schedule 9, item 8, page 89 (lines 11 to 21), omit subsections 100AD(2) and (3).

Schedule 9, item 10, page 94 (lines 24 and 25), omit paragraph (b) of the definition of *performer*.

Schedule 9, page 95 (after line 16), after item 15, insert:

15A After section 135P

Insert:

135PA Payment to performers (as owners of the copyright in sound recordings)

- (1) Where a payment is made to a performer as the owner of the copyright in a sound recording in relation to:

- (a) the making of a copy of a sound recording for the purpose of broadcasting; or
- (b) the causing of a recording to be heard in public; or
- (c) the broadcasting of a recording;

the payment must be made to a collecting society established by the Attorney-General, for that purpose, in accordance with section 135P.

- (2) For the avoidance of doubt, a payment made to a performer in accordance with subsection (1) must not be made directly to the performer, another person or a company.

Schedule 9, page 95 (after line 16), after item 15, insert:

15AB Paragraph 152(6)(c)

Omit “as those persons agree or, in default of agreement,”.

Schedule 9, page 95 (after line 16), after item 15, insert:

15B Subsections 152(8), (10) and (11)

Repeal the subsections.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 9

Senators—

Allison (Teller)	Cherry	Harris	Nettle
Bartlett	Greig	Murray	Ridgeway
Brown			

NOES, 44

Senators—

Barnett	Faulkner	Knowles	Payne
Bishop	Ferguson	Lightfoot	Ray
Brandis	Ferris	Ludwig	Santoro
Buckland	Fifield	Lundy	Scullion
Campbell, George	Forshaw	Mackay	Stephens
Carr	Hill	Marshall	Tchen
Colbeck	Hogg	Mason	Tierney
Collins	Humphries	McGauran	Troeth
Conroy	Hutchins	McLucas	Watson
Eggleston (Teller)	Johnston	Moore	Webber
Evans	Kirk	O'Brien	Wong

Question negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 9, item 9, section 113C.

Schedule 9, item 9, section 113C agreed to.

Senator Ridgeway moved the following amendment:

Clause 2, page 1 (lines 9 to 12), omit subclause (1) (but not the table), substitute:

- (1) Each provision of this Act specified in column 1 of the table commences at the later date of either:
 - (a) the day as specified in accordance with column 2; or
 - (b) the date after which all of the following have been completed:

- (i) Australia and the United States have entered into reciprocal agreements pursuant to the *Foreign Judgements Act 1991*;
- (ii) the United States signs and ratifies the Optional Protocol to the International Covenant on Civil and Political Rights, which is administered by the Human Rights Committee;
- (iii) the United States signs and ratifies the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty;
- (iv) Australia and the United States sign and ratify the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination Against Women, done at New York on 18 December 1979;
- (v) Australia and the United States sign and ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- (vi) the United States ratifies the Rome Statute of the International Criminal Court;
- (vii) the United States permits David Hicks and Mamdouh Habib, who are currently detained at Guantanamo Bay, to be repatriated to Australia;
- (viii) Australia and the United States ratify the Kyoto Protocol to the United Nations Framework Convention on Climate Change (of May 1992).

Debate ensued.

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

Senator Ridgeway moved the following amendments together by leave:

Title, page 1 (lines 1 to 3), omit “*Australia-United States Free Trade Agreement, and for other purposes*”, substitute “*Restricted Trade Agreement*”.

Clause 1, page 1 (lines 6 and 7), omit “*US Free Trade Agreement Implementation*”, substitute “*Restricted Trade Agreement*”.

Page 4 (after line 11), after clause 3, insert:

4 Protection of the national interest

- (1) No action may be taken under this Act or its regulations that is contrary to Australia’s national interest.
- (2) For the purpose of this section, Australia’s national interest means the:
 - (a) economic welfare; and
 - (b) social welfare; and
 - (c) environmental protection; and
 - (d) national cultural identity;
 of Australia and the Australian people.

Page 163 (after line 27), at the end of the bill, add:

Schedule 10 – Preservation of Australian national interests amendments

Broadcasting Services Act 1992

1 At the end of section 122

Add:

- (5) In making determinations as to the appropriate level of Australian content, the Australian Broadcasting Authority must not have regard to any obligations under free trade agreements entered into by the Commonwealth Government.

National Health Act 1953

1 After section 100

Insert:

100AAA Special Pharmaceutical Benefits Scheme listing

For the purpose of making decisions with regard to the listing of medications on the Pharmaceutical Benefits Scheme, the Minister must give priority to the best interests of the Australian community and must not have regard to the interests of, or requests from, other nations or foreign companies.

Quarantine Act 1908

3 At the end of section 11C

Add:

- (4) The interests of, or requests from, any other nation must not be taken into account when making determinations under the risk assessment process.

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

Consideration resumed of Schedule 1, item 8, section 214BAF.

Schedule 1, item 8, section 214BAF further debated and agreed to.

Bill, as amended, agreed to.

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004—

Bill taken as a whole by leave.

Senator Harris moved the following amendment:

Page 3 (after line 11), after clause 3, insert:

4 Exclusion of services provided by governmental authorities

- (1) For the purposes of the Australia-United States Free Trade Agreement, all services the subject of a customs tariff which are supplied by a governmental authority in the exercise of its responsibilities are excluded from the provisions of the Agreement.
- (2) For the purposes of subsection (1), a governmental authority includes:

- (a) a central, regional or local government and any authority of any of the governments listed in this paragraph; and
- (b) a non-governmental body when exercising powers delegated by a central, a regional or a local government or an authority of any of the governments listed in this paragraph.

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

Senator Harris moved the following amendment:

Page 3 (after line 11), after clause 3, insert:

5 Free trade agreement subordinate to national interest

No action by way of customs tariff reductions may be taken under this Act or its regulations that has an adverse impact on rural and regional economies and the viability of family farming.

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

Senator Harris moved the following amendment:

Page 3 (after line 11), after clause 3, insert:

6 Protection of textile, footwear, apparel and leather industries

No action by way of customs tariff reductions may be taken under this Act or its regulations that has an adverse impact on the textile, footwear, apparel or leather industries.

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

Senator Harris moved the following amendment:

Page 3 (after line 11), after clause 3, insert:

7 Protection of the environment

- (1) Under this Act or its regulations, any action or measure necessary, including by way of increasing customs tariffs, may be taken to protect the environment from the adverse impact of imported products or produce.

The Minister for Defence (Senator Hill) moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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

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

Suspension of sitting: At midnight the sitting of the Senate was suspended till 9 am on Friday, 13 August 2004.

FRIDAY, 13 AUGUST 2004

At 9 am—

The sitting of the Senate resumed.

43 PRAYERS

The President read prayers.

44 COMMITTEES—LEAVE TO MEET DURING SITTING

Senator Ferris, by leave, moved—That the following committees be authorised to hold public meetings during the sitting of the Senate today, from 9.30 am:

- (a) Joint Standing Committee on the National Capital and External Territories, to take evidence for the committee's inquiry into the role of the National Capital Authority in the redevelopment of Pierces Creek; and
- (b) Parliamentary Standing Committee on Public Works, to take evidence for the committee's inquiry into the development of a new collection storage facility for the National Library, and the construction of East Building at the Australian War Memorial.

Question put and passed.

45 US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004**US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004**

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

In the committee

US FREE TRADE AGREEMENT IMPLEMENTATION (CUSTOMS TARIFF) BILL 2004—

Consideration resumed of the bill—*and of the amendment moved by Senator Harris (see entry no. 42).*

Debate ensued.

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

Senator Harris moved the following amendment:

Schedule 1, page 5 (after line 3), after the Schedule heading, insert:

Customs Act 1901**1A After subsection 50(2)**

Insert:

- (2A) For the purposes of paragraph (2)(aa), a specified circumstance includes a circumstance where it is established that the importation of like or directly competitive products are being imported in increased quantities, either absolute or in relation to domestic production, and the importation is having a negative impact on the domestic industry.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 11

Senators—

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

NOES, 46

Senators—

Barnett	Eggleston	Lightfoot	Payne
Bishop	Ferguson	Ludwig	Santoro
Boswell	Ferris (Teller)	Lundy	Scullion
Brandis	Fifield	Macdonald, Ian	Stephens
Buckland	Forshaw	Macdonald, Sandy	Tchen
Calvert	Hill	Marshall	Tierney
Campbell, George	Hogg	Mason	Troeth
Carr	Humphries	McGauran	Watson
Chapman	Hutchins	McLucas	Webber
Colbeck	Johnston	Moore	Wong
Collins	Kirk	O'Brien	
Denman	Knowles	Patterson	

Question negatived.

Bill agreed to.

The US Free Trade Agreement Implementation Bill 2004 to be reported with amendments and the US Free Trade Agreement Implementation (Customs Tariff) Bill 2004 to be reported without amendments.

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

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

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

Debate ensued.

Question put.

The Senate divided—

AYES, 51

Senators—

Barnett	Denman	Kirk	O'Brien
Bishop	Eggleston	Knowles	Patterson
Boswell	Evans	Lightfoot	Ray
Brandis	Ferguson	Ludwig	Santoro
Buckland	Ferris (Teller)	Lundy	Scullion
Calvert	Fifield	Macdonald, Ian	Stephens
Campbell, George	Forshaw	Macdonald, Sandy	Tchen
Carr	Heffernan	Mackay	Troeth
Chapman	Hill	Marshall	Vanstone
Colbeck	Hogg	Mason	Watson
Collins	Humphries	McGauran	Webber
Conroy	Hutchins	McLucas	Wong
Coonan	Johnston	Moore	

NOES, 10

Senators—

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

Question agreed to.

Bills read a third time.

46 CONSIDERATION OF LEGISLATION

Leave refused: The Minister for Defence (Senator Hill) sought leave to move a motion relating to the consideration of the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004.

An objection was raised and leave was not granted.

Suspension of standing orders: Senator Hill, pursuant to contingent notice, moved— That so much of the standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to provide that the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004 may be taken together for their remaining stages.

Debate ensued.

Question put.

The Senate divided—

AYES, 44

Senators—

Barnett	Eggleston (Teller)	Johnston	Moore
Bishop	Evans	Kirk	Patterson
Boswell	Ferguson	Knowles	Ray
Buckland	Ferris	Lightfoot	Santoro
Calvert	Fifield	Ludwig	Scullion
Campbell, George	Forshaw	Lundy	Stephens
Campbell, Ian	Harradine	Macdonald, Ian	Tchen
Chapman	Hill	Macdonald, Sandy	Troeth
Colbeck	Hogg	Mackay	Watson
Collins	Humphries	Marshall	Webber
Conroy	Hutchins	McGauran	Wong

NOES, 8

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

Question agreed to.

Senator Hill moved—That a motion to provide that the Anti-terrorism Bill (No. 3) 2004 and the Anti-terrorism Bill (No. 2) 2004 may be taken together for their remaining stages may be moved immediately and have precedence over all other business today till determined.

Question put.

The Senate divided—

AYES, 43

Senators—			
Barnett	Eggleston (Teller)	Kirk	Patterson
Bishop	Evans	Knowles	Ray
Boswell	Ferguson	Lightfoot	Santoro
Buckland	Ferris	Ludwig	Scullion
Calvert	Fifield	Lundy	Stephens
Campbell, George	Forshaw	Macdonald, Ian	Tchen
Campbell, Ian	Hill	Macdonald, Sandy	Troeth
Chapman	Hogg	Mackay	Watson
Colbeck	Humphries	Marshall	Webber
Collins	Hutchins	McGauran	Wong
Conroy	Johnston	Moore	

NOES, 9

Senators—			
Allison (Teller)	Greig	Murray	Ridgeway
Bartlett	Harradine	Nettle	Stott Despoja
Brown			

Question agreed to.

Senator Hill moved—That government business orders of the day no. 2 (Anti-terrorism Bill (No. 3) 2004) and no. 16 (Anti-terrorism Bill (No. 2) 2004) may be taken together for their remaining stages.

Debate ensued.

Question put and passed.

47 ANTI-TERRORISM BILL (NO. 3) 2004
ANTI-TERRORISM BILL (NO. 2) 2004

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

Debate resumed.

Question put and passed.

Bills read a second time.

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

*In the committee***ANTI-TERRORISM BILL (NO. 3) 2004—**

Bill taken as a whole by leave.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That the committee report progress and ask leave to sit again.

Question put and passed.

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

48 FOUR BILLS—DECLARATION OF URGENCY—ALLOTMENT OF TIME

Declaration of urgency: The Minister for the Environment and Heritage (Senator Ian Campbell) declared the following bills to be urgent bills:

Anti-terrorism Bill (No. 3) 2004

Anti-terrorism Bill (No. 2) 2004

Marriage Amendment Bill 2004

Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004,

and moved—That these bills be considered urgent bills.

Statements by leave: Senators Mackay and Nettle, by leave, made statements relating to the declaration of urgency.

Question—That these bills be considered urgent bills—put.

The Senate divided—

AYES, 47

Senators—

Barnett	Coonan	Kirk	Patterson
Bishop	Eggleston	Knowles	Payne
Boswell	Evans	Ludwig	Santoro
Brandis	Ferguson	Lundy	Scullion
Buckland	Ferris (Teller)	Macdonald, Sandy	Stephens
Campbell, George	Fifield	Mackay	Tchen
Campbell, Ian	Forshaw	Marshall	Tierney
Carr	Hill	Mason	Troeth
Chapman	Hogg	McGauran	Watson
Colbeck	Humphries	McLucas	Webber
Collins	Hutchins	Moore	Wong
Conroy	Johnston	O'Brien	

NOES, 9

Senators—

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

Question agreed to.

Allotment of time: Senator Ian Campbell moved—That the time allotted for consideration of the remaining stages of the bills be as follows:

Anti-terrorism Bill (No. 3) 2004 and Anti-terrorism Bill (No. 2) 2004	until 2 pm, 13 August 2004
Marriage Amendment Bill 2004	until 5.30pm, 13 August 2004
Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Bill 2004	until 6 pm, 13 August 2004.

Debate ensued.

Question put.

The Senate divided—

AYES, 36

Senators—

Barnett	Faulkner	Knowles	Moore
Boswell	Ferguson	Lightfoot	Patterson
Campbell, George	Ferris (Teller)	Lundy	Payne
Campbell, Ian	Fifield	Macdonald, Ian	Scullion
Carr	Forshaw	Macdonald, Sandy	Troeth
Chapman	Harris	Mackay	Vanstone
Conroy	Hogg	Marshall	Watson
Coonan	Humphries	Mason	Webber
Evans	Johnston	McLucas	Wong

NOES, 8

Senators—

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

Question agreed to.

49 ANTI-TERRORISM BILL (NO. 3) 2004
ANTI-TERRORISM BILL (NO. 2) 2004

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

—————
In the committee

ANTI-TERRORISM BILL (NO. 3) 2004—

Consideration resumed of the bill.

Question—That the bill be agreed to—divided in respect of Schedules 1 and 2.

Schedules 1 and 2 debated and agreed to.

Bill agreed to.

—————
ANTI-TERRORISM BILL (NO. 2) 2004—

Bill taken as a whole by leave.

—————

Explanatory memorandum: The Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Schedule 3, page 3 (before line 5), after the Schedule heading, insert:

Crimes Act 1914

1A Paragraph 15AA(2)(a)

After “terrorism offence”, insert “(other than an offence against section 102.8 of the *Criminal Code*)”.

Schedule 3, item 3, page 5 (line 12), at the end of paragraph 102.8(4)(d), add:

- ; or (iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or
- (iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or
- (v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism”; or
- (vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).

Schedule 4, item 3, page 6 (line 26), omit “, a State or a Territory,”.

Schedule 4, item 15, page 8 (line 19), omit “, Territory or State”.

Senator Greig moved the following amendment:

Schedule 3, item 2, page 3 (line 17), at the end of the definition of *close family member*, add:

- ; or (f) cousin, uncle or aunt of the person.

Debate ensued.

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

Senator Greig moved the following amendments together by leave:

Schedule 3, item 3, page 4 (line 9), omit “3 years”, substitute “6 months”.

Schedule 3, item 3, page 4 (line 29), omit “3 years”, substitute “6 months”.

Limitation of debate: The time allotted for the consideration of the bills expired.

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

The Anti-terrorism Bill (No. 3) 2004 to be reported without amendments and the Anti-terrorism Bill (No. 2) 2004 to be reported with amendments.

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

Question—That the remaining stages of the bills be agreed to and the bills be now passed—put and passed. All Australian Democrats senators and Senators Brown and Nettle, by leave, recorded their votes for the noes in respect of the question for the third reading.

Bills read a third time.

50 MARRIAGE AMENDMENT BILL 2004

The Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald), at the request of the Minister for the Environment and Heritage (Senator Ian Campbell) and pursuant to notice, moved government business notice of motion no. 4—

- (1) That so much of the standing orders be suspended as would prevent the succeeding provisions of this resolution having effect.
- (2) That the Marriage Amendment Bill 2004 may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

Debate ensued.

Point of order: The Minister for Communications, Information Technology and the Arts (Senator Coonan) raised a point of order that certain remarks made by Senator Brown were objectionable under the standing orders and should be withdrawn.

Ruling of Acting Deputy President: The Acting Deputy President (Senator Chapman) upheld the point of order and called on Senator Brown to withdraw the objectionable words.

Disorder: Senator Brown, having refused to withdraw such words, was reported to the Senate by the Acting Deputy President.

Senator Brown, having been called on in accordance with standing order 203 to make an explanation or apology, made an explanation.

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

Debate continued.

Question put.

The Senate divided—

AYES, 38

Senators—

Barnett	Evans	Ludwig	Scullion
Bishop	Ferguson	Lundy	Stephens
Boswell	Ferris	Mackay	Tchen
Buckland	Fifield	Mason	Tierney
Campbell, Ian	Forshaw	McGauran	Troeth
Carr	Harradine	McLucas	Watson
Chapman	Johnston	Moore	Webber
Colbeck	Kirk	O'Brien	Wong
Coonan	Knowles	Ray	
Eggleston (Teller)	Lightfoot	Santoro	

NOES, 7

Senators—

Bartlett	Cherry	Murray	Stott Despoja
Brown	Greig	Nettle (Teller)	

Question agreed to.

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.

Senator Brown moved the following amendment:

Clause 1, page 1 (line 5), omit “*Amendment*”, substitute “*Discrimination*”.

Debate ensued.

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

Senator Nettle, also on behalf of Senator Brown, moved the following amendment:

Schedule 1, item 1, page 3 (lines 7 and 8) omit the definition of *marriage*, substitute:

marriage means the union of two persons, regardless of their sexuality or gender identity, voluntarily entered into for life.

Debate ensued.

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

Senator Nettle moved the following amendment:

Schedule 1, item 3, page 3 (lines 15 to 19), omit section 88EA, substitute:

88EA Certain unions are marriages

A union solemnised according to the law of a foreign country between two persons, regardless of their sexuality or gender identity, voluntarily entered into for life shall be recognised as a marriage in Australia.

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

Senator Greig moved the following amendment:

Schedule 1, item 1, page 3 (lines 7 and 8), omit the definition of *marriage*, substitute:

marriage means the union of:

- (a) a man and a woman; or
- (b) a man and a man; or
- (c) a woman and a woman;

to the exclusion of all others, voluntarily entered into.

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, item 3.

Schedule 1, item 3 agreed to.

Senator Greig moved the following amendments together by leave:

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

1A Title

Repeal the title, substitute:

An Act relating to relationships

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

1B Section 1

Omit “*Marriage Act 1961*”, substitute “*Commonwealth Relationships Act 2004*”.

Schedule 1, page 3 (after line 8), after item 1, insert:

1D After section 51

Insert:

51A Relationships recognised by the Commonwealth

- (1) The Commonwealth recognises two adult people who live together, in accordance with the conditions in this section, to be in a relationship.
- (2) For the purposes of this Act, a relationship is a relationship between two adult persons:
 - (a) who have a relationship as a couple; and
 - (b) who are not related except as provided by this section.
- (3) In determining if two persons have a relationship for the purposes of this section, all the circumstances of the relationship may be taken into account, including but not limited to the following matters so far as they are relevant in a particular case:
 - (a) the duration of the relationship;
 - (b) the nature and extent of the common residence;
 - (c) whether or not a sexual relationship exists;
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties;
 - (e) the ownership, use and acquisition of property;
 - (f) the degree of mutual commitment to a shared life;
 - (g) the care and support of children;
 - (h) the performance of household duties;

- (i) the reputation and public aspects of the relationship;
- (j) whether the relationship is regarded in a law of a State or a Territory as:
 - (A) a de facto; or
 - (B) a domestic partnership; or
 - (C) a significant personal relationship.
- (4) This Act confers the same rights and entitlements, and imposes the same obligations, on a person in a relationship with another person of the same sex, or when either or both are transgender or have an intersex condition, as is recognised or imposed by Commonwealth law for a person in a de facto relationship.
- (5) This Act enables two adult persons of the same sex, or when either or both are transgender or have an intersex condition, to be registered in accordance with the registration provisions of this Act as if the relationship were a marriage.

Debate ensued.

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

Senator Greig moved the following amendment:

Schedule 1, page 3 (after line 8), after item 1, insert:

1C After section 6

Insert:

6A Acceptance of referral of State or Territory legislative authority

- (1) The object of this section is to make provision in relation to unmarried couples regardless of sex, variously referred to in State or Territory law as de facto relationships, domestic partnerships or significant personal relationships.
- (2) Subject to subsection (6), this Act extends to:
 - (a) any State in relation to which a Proclamation under subsection (3) is in force; and
 - (b) any Territory in relation to which a Proclamation under subsection (4) is in force.
- (3) Where:
 - (a) the Parliament of a State refers to the Parliament of the Commonwealth the matter set out in subsection (1); or
 - (b) a State adopts this Act;
 the Governor-General may, by Proclamation, declare that this Act extends to that State.
- (4) The Governor-General may, by Proclamation, declare that this Act extends to a Territory.
- (5) A Proclamation under subsection (3) or (4) may be expressed to come into operation on a date fixed by the Proclamation.
- (6) A Proclamation under subsection (3) in relation to a State remains in force only for so long as there is in force:
 - (a) an Act of the Parliament of the State by which there is referred to the Parliament of the Commonwealth the matter referred to in paragraph (3)(a); or

(b) a law of the State adopting this Act.

Debate ensued.

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

Senator Greig moved the following amendment:

Schedule 1, page 3 (after line 8), after item 1, insert:

1BA After subsection 5(1)

Insert:

- (1A) It is not intended by this Act that, in relation to any Commonwealth law, the definition of marriage in subsection (1) should be taken to mean or imply that a relationship between two people of the same sex who are not married to each other should have other than the same status as an equivalent de facto relationship between a man and a woman.

Limitation of debate: The time allotted for the consideration of the bill expired.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 6

Senators—

Bartlett	Greig (Teller)	Nettle
Brown	Murray	Stott Despoja

NOES, 38

Senators—

Barnett	Ferguson	Lundy	Scullion
Bishop	Ferris (Teller)	Macdonald, Ian	Stephens
Buckland	Fifield	Mackay	Tchen
Carr	Forshaw	Mason	Tierney
Chapman	Harradine	McGauran	Troeth
Colbeck	Harris	McLucas	Vanstone
Coonan	Johnston	Moore	Watson
Eggleston	Kirk	O'Brien	Webber
Evans	Knowles	Ray	
Faulkner	Lightfoot	Santoro	

Question negatived.

The following amendment circulated by the Australian Greens was negatived:

Schedule 1, page 3 (after line 19), at the end of the bill, add:

4 After section 88E

Insert:

88EB Continuing validity of a marriage

For the avoidance of doubt, a union solemnised and recognised as a marriage in Australia before the commencement of the provisions of the *Marriage Amendment Act 2004* will continue to be recognised as a marriage in Australia after the commencement of that Act.

Bill agreed to.

Bill to be reported without amendment.

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

Question—That the remaining stages of the bill be agreed to and the bill be now passed—put.

The Senate divided—

AYES, 38

Senators—

Barnett	Faulkner	Lundy	Scullion
Bishop	Ferguson	Macdonald, Ian	Stephens
Boswell	Ferris (Teller)	Mackay	Tchen
Buckland	Fifield	Mason	Tierney
Carr	Forshaw	McGauran	Troeth
Chapman	Harradine	McLucas	Vanstone
Colbeck	Johnston	Moore	Watson
Coonan	Kirk	O'Brien	Webber
Eggleston	Knowles	Ray	
Evans	Lightfoot	Santoro	

NOES, 6

Senators—

Bartlett	Greig (Teller)	Nettle
Brown	Murray	Stott Despoja

Question agreed to.

Senator Ferris, by leave, indicated that Senator Harris would have voted for the ayes.

Senator Murray, by leave, indicated that Senator Lees would have voted for the noes.

Bill read a third time.

51 ELECTORAL AND REFERENDUM AMENDMENT (PRISONER VOTING AND OTHER MEASURES) BILL 2004

Order of the day read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Coonan)—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.

Limitation of debate: The time allotted for the consideration of the bill expired.

The following amendments circulated by the Australian Democrats were negated:

Schedule 1, page 4 (after line 5), before item 1, insert:

1A After Part IV

Insert:

**Part IVA—Equal suffrage—Article 25 of the International
Covenant on Civil and Political Rights to apply to
elections for the Australian Federal Parliament and for
State Parliaments**

78A Preamble to this Part

- (1) The International Covenant on Civil and Political Rights was opened for signature on 19 December 1966, was signed by Australia on 18 December 1972 and entered into force for Australia (except article 41) on 13 November 1980. Article 25 of the Covenant reads as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
 - (c) To have access, on general terms of equality, to public service in his country.
- (2) The instrument of ratification which was deposited for Australia with the United Nations on 13 August 1981 contained various reservations and declarations including the following concerning Article 25 of the Covenant:
- The reference in paragraph (b) of Article 25 to “universal and equal suffrage” is accepted without prejudice to laws which provide that factors such as regional interests may be taken into account in defining electoral divisions, or which establish franchises for municipal and other local government elections related to the sources of revenue and the functions of such governments.
- (3) This Part will enable Australia to fulfil its obligations under Article 25 of the International Covenant on Civil and Political Rights by requiring the laws governing the parliamentary elections of the Commonwealth and the States to conform to that Article of the Covenant with the reservations and declarations made by the Australian Government in the instrument of ratification of the Covenant.

78B Interpretation

In this Part:

Covenant means the International Covenant on Civil and Political Rights as contained in Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986*.

State includes the Northern Territory and the Australian Capital Territory.

78C The International Covenant on Civil and Political Rights to apply to elections for the Australian Federal Parliament and for state parliaments

- (1) Article 25 of the International Covenant on Civil and Political Rights with the reservations and declarations made by the Australian Government in the instrument of ratification dated 13 August 1981 is hereby declared to apply to all elections for the Australian Federal Parliament and for all State Parliaments.
- (2) Where for the purposes of electing members of a house of the Federal Parliament or of a State Parliament a State is divided into more than one electorate, the reference in paragraph (b) of Article 25 of the Covenant to universal and equal suffrage is to be construed as permitting a margin of allowance in the number of voters in each electorate, to be used whenever necessary, but in no case shall the margin of allowance be greater than one-tenth more or one-tenth less than the average number of voters in each electorate in that State.

78D Judicial review

- (1) An action may be brought under this Part in a court of competent jurisdiction provided that the court shall refer all questions relating to whether the electoral arrangements in any jurisdiction conform to the requirements set out in section 78C to the Electoral Commissioner for investigation and determination.
- (2) The Electoral Commissioner may inform himself on any matter in such manner as he thinks fit and may consult with such persons as he thinks fit.
- (3) Notwithstanding anything contained in any other law, but subject to the Constitution and to section 39B and Part VII of the *Judiciary Act 1903*, a determination by the Electoral Commissioner made, or purporting to be made, under subsection (1):
 - (a) is final and conclusive; and
 - (b) shall not be challenged, appealed against, reviewed, quashed, set aside or called in question in any court or tribunal on any ground; and
 - (c) is not subject to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, in any court on any ground.
- (4) A determination made, or purporting to be made, under subsection (1) shall be made by instrument in writing.

- (5) The Electoral Commissioner shall send a copy of the determination made, or purporting to be made under subsection (1) to the court which referred the matter.
- (6) A determination made, or purporting to be made under subsection (1) must be published by the Australian Electoral Commissioner in the *Gazette* within twenty one days of being made.

78E Application

This Part applies to any State election held more than 6 months after the commencement of the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004*.

Schedule 1, item 1, page 4 (lines 6 to 10), omit the item, substitute:

1 Paragraph 93(8)(b)

Repeal the paragraph.

Schedule 1, item 2, page 4 (lines 11 to 16), omit the item, substitute:

2 Subsection 93(8AA)

Repeal the subsection.

Schedule 1, item 3, page 4 (lines 17 to 19), omit the item, substitute:

3 Section 109

Repeal the section.

Schedule 1, page 4 (after line 19), after item 3, insert:

3A Subsection 123(1) (paragraph (b) of the definition of *eligible political party*)

After “(however described)”, insert “that complies with the minimum constitutional requirements set out in section 129A and”.

Schedule 1, page 4 (after line 19), after item 3, insert:

3B After section 129

Insert:

129A Party not to be registered unless it meets minimum constitutional requirements

- (1) The Commission must refuse an application for the registration of a political party unless, in its opinion, the constitution of the party complies with minimum constitutional requirements set out in subsections (2), (3) and (4).
- (2) For the purposes of subsection (1), a constitution complies with *minimum constitutional requirements* if it provides the following rights and opportunities for each of its members, including members in specified classes of membership, who have complied with any requirements of the party in relation to the payment of fees or subscriptions:
 - (a) to take part in the conduct of the party’s affairs, either directly or through freely chosen representatives;
 - (b) to freely express choices about party matters, including the choice of candidates for elections, at genuine periodic ballots;
 - (c) to vote at such periodic ballots by secret ballot;

- (d) to exercise a vote of equal value with the vote of any other member in the same class of membership as the member.
- (3) For the purposes of subsection (1), a constitution complies with *minimal constitutional requirements* if it includes:
 - (a) the conditions and rules of membership of a political party;
 - (b) how office-bearers are preselected and elected;
 - (c) how preselection of political candidates is to be conducted;
 - (d) the processes that exist for the resolution of disputes and conflicts of interest;
 - (e) the processes that exist for changing the constitution;
 - (f) the processes for administration, management and financial management of the political party.
- (4) It is also a *minimal constitutional requirement* for a political party constitution to be:
 - (a) publicly available in printed form; and
 - (b) reviewed at least once in every electoral cycle of the political party and altered as required.

Any alterations made in accordance with paragraph (b) are to be notified to the AEC.
- (5) Failure to comply with this section makes a political party ineligible to obtain funding in accordance with section 297A.

Schedule 1, page 4 (after line 19), after item 3, insert:

3C After Part XI

Insert:

Part XIA—Supervision of registration of political parties

141A Object of Part

The object of this Part is to provide for the supervision by the Electoral Commission of certain aspects of the operation of registered political parties, for the investigation of complaints that a party has not complied with its constitution, and for the imposition of penalties where there has been a breach of a provision.

141B Complaints

- (1) A person may complain in writing to the Electoral Commission that a registered political party has failed to comply with its constitution.
- (2) A complaint under subsection (1) must set out particulars of the party's failure to comply with its constitution.

141C Discretion not to investigate certain complaints

The Electoral Commission may decide not to investigate, or not to continue to investigate, a complaint made under section 141B if:

- (a) the complainant does not provide particulars under subsection 141B(2); or
- (b) the complainant is, or has been, a member of a registered political party and has not first exhausted the procedures available under the party's constitution for the resolution of disputes; or

- (c) in the opinion of the Electoral Commission, the complaint is frivolous or vexatious or was not made in good faith.

141D Investigations

- (1) Before commencing an investigation under this Part, the Electoral Commission must inform the registered officer of the political party of the alleged breach of the party's constitution which is to be investigated.
- (2) An investigation under this Part is to be conducted in private and, subject to this Act, in such manner as the authorised person thinks fit.
- (3) An authorised person may, for the purposes of this Part, obtain information from such persons, and make such inquiries, as it thinks fit.
- (4) Subject to subsection (5), it is not necessary for the complainant or any other person to be afforded an opportunity to appear before the authorised person or any other person in connection with an investigation by the authorised person under this Part.
- (5) The Electoral Commission must not take any action, as a result of an investigation under this Part, to deregister a political party for non-compliance with its constitution unless the Electoral Commission has afforded the registered officer and the person or persons principally concerned in the matter to which the investigation relates opportunities to appear before the Electoral Commission, or an authorised person, and to make such submissions, either orally or in writing, in relation to that matter as they think fit.
- (6) A person who appears before the Electoral Commission under subsection (5) may, with the permission of the Electoral Commission, be represented by another person.
- (7) For the purposes of this Part, the Electoral Commission may, by instrument in writing, authorise a person or a person in a class of persons, to perform duties under this Part.

141E Power to obtain information and documents

- (1) Where an authorised person has reason to believe that a person is capable of furnishing information or producing documents or other records relevant to an investigation under this Part, the authorised person may, by notice in writing served on the person, require that person, at such place, and within such period or on such date and at such time, as are specified in the notice:
 - (a) to furnish to the authorised person, by writing signed by that person, or in the case of a body corporate, by an officer of the body corporate, any such information; or
 - (b) to produce to the authorised person such documents or other records as are specified in the notice.
- (2) Where documents or other records are produced to the Electoral Commission in accordance with a requirement under subsection (1) or an order under subsection 141F(1), the authorised person:
 - (a) may take possession of, and may make copies of, or take extracts from, the documents or other records; and

- (b) may retain possession of the documents or other records for such period as is necessary for the purposes of the investigation to which the documents or other records relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents or other records if they were not in the possession of the Electoral Commission to inspect at all reasonable times such of the documents or other records as that person would be so entitled to inspect.

For the purposes of this subsection a person entitled to inspect a document includes a person from whom the document has been obtained.

- (3) Where the authorised person has reason to believe that a person is able to give information relevant to an investigation under this Part, the authorised person may, by notice in writing served on the person, require the person to attend before a person specified in the notice, on such date and at such time and place as are specified in the notice, to answer questions relevant to the investigation.
- (4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Part on the ground that the furnishing of the information, the production of the document or record or the answer to the question:
 - (a) would contravene the provisions of any other enactment; or
 - (b) might tend to incriminate the person or make the person liable to a penalty; or
 - (c) would be otherwise contrary to the public interest;
 but the information, the production of the document or record or the answer to the question is not admissible in evidence against the person in proceedings other than:
 - (d) an application under subsection 141F(1); or
 - (e) proceedings for an offence against section 315.
- (5) A person is not liable to any penalty under the provisions of any other enactment by reason of his or her furnishing information, producing a document or other record or answering a question when required to do so under this Part.
- (6) The reference in subsection (1) to an officer, in relation to a body corporate, being a body corporate that is not a prescribed authority, includes a reference to a director, secretary, executive officer or employee of the body corporate.

141F Powers of Federal Court of Australia

- (1) Where a person fails to comply with a requirement made by an authorised person by notice under section 141E to furnish information, to produce documents or other records or to attend before an authorised person to answer questions in relation to an investigation under this Part, the Electoral Commission may make an application to the Federal Court of Australia for an order directing that person to furnish the information, or to produce the documents or other records, at such place, and within such period or on such date and at such time, as are specified in the order, or to attend before the Electoral

Commission to answer questions at such place, and on such date and at such time, as are specified in the order, as the case may be.

- (2) The Federal Court of Australia has jurisdiction with respect to matters arising under this section in respect of which applications are made to the Court.

141G Complainant and registered officer etc. to be informed

- (1) Where the Electoral Commission does not, for any reason, investigate, or continue to investigate, allegations that a registered political party has failed to comply with its constitution in a material particular, the Electoral Commission must, as soon as practicable and in such manner as the Electoral Commission thinks fit, inform the complainant and the registered officer of the political party concerned, of the Electoral Commission's decision and of the reasons for that decision.
- (2) Where the Electoral Commission completes an investigation of an allegation that a registered political party has failed to comply with its constitution in a material particular, the Electoral Commission must, in such manner and at such times as it thinks fit, furnish to the complainant and to the registered officer of the political party particulars of the investigation.
- (3) The Electoral Commission may, if it thinks fit, furnish comments or suggestions with respect to any matter relating to or arising out of an investigation under this Part to the registered officer of any registered political party.

141H Power to examine witnesses

- (1) An authorised person may administer an oath or affirmation to a person required to attend before it in compliance with section 141E and may examine the person on oath or affirmation.
- (2) A person before whom another person (in this subsection called the *respondent*) attends in compliance with a notice under subsection 141E(3) may:
 - (a) administer an oath or affirmation to the respondent; and
 - (b) examine the respondent on oath or affirmation.

141I Power to enter premises

- (1) For the purposes of an investigation under this Part, an authorised person may, at any reasonable time of the day, enter any place occupied by a registered political party and may carry on the investigation at the place.
- (2) For the purposes of an investigation under this Part, an authorised person is entitled to inspect any documents relevant to the investigation kept at premises entered by him or her under this section, at a reasonable time of the day arranged with the registered officer of the registered political party concerned.
- (3) Subsection (2) does not restrict the operation of section 141E.

Part XIB—Selection of candidates by registered political parties

141J Ballots for candidate selection may be conducted by Electoral Commission

- (1) At the request of a political party, any ballot for the selection by a registered political party of candidates to stand for elections covered by this Act may be conducted by the Electoral Commission and a returning officer shall be appointed by the Commission for that purpose.
- (2) The regulations may prescribe the method of candidate selection to be used by registered political parties.

141K Certificates under this Part

Where the Electoral Commission has conducted a ballot for the selection of a candidate by a registered political party, the Commission must issue a certificate to that effect.

Schedule 1, page 4 (after line 22), after item 4, insert:

4A After section 297

Insert:

297A Payment not to be made unless certain conditions met

- (1) A payment under this Division must not be made in respect of votes given in respect of:
 - (a) a candidate or candidates endorsed by a registered political party; or
 - (b) for a Senate election—a group where members of the group were endorsed by one or more registered political parties;

unless the Electoral Commission is satisfied that the constitution of the registered political party complies with the requirements set out in subsection (3).

- (2) For the purposes of subsection (1), a registered political party must provide the Electoral Commission with a copy of its current constitution at the request of the Commission.
- (3) The requirements of this subsection are as follows:
 - (a) the requirement that the voting members of the executive committee of a registered political party are elected only by financial members of the party;
 - (b) the requirement that a financial member of a registered political party is entitled to exercise a vote of equal value to the vote of any other financial member in the party or—if the party's constitution provides for different classes of membership—in the same class of membership as the member.
- (4) Paragraph (3)(b) does not apply to the representation on the executive committee of:
 - (a) the parliamentary members of the party; or
 - (b) previous members of the executive committee of the party [in an ex officio capacity].

- (5) In determining whether the constitution of a registered political party complies with the requirement set out in paragraph (3)(b), the Electoral Commission is to disregard the following:
- (a) any difference in the size of the States and Territories of the Commonwealth, based on the number of electors enrolled in each State and Territory;
 - (b) any difference in the number of members enrolled as members of a registered political party in each State and Territory;
 - (c) any provision made in the constitution of the registered political party for the representation on the executive committee of members representing any affirmative action target groups or the designated youth sector of the party.
- (6) For the purpose of this section, a financial member of a registered political party means a member who, if the constitution of the party requires a member to pay dues in relation to the person's membership of the party, has paid any dues that are payable and includes life members, patrons or honorary holders of positions in the party.

Schedule 1, page 4 (after line 22), after item 4, insert:

4B After section 306B

Insert:

306C Foreign donations prohibited

It is unlawful for a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party to receive a foreign gift, donation or disposition of property originating by whatever means from a foreign source.

306D Forfeiture of foreign donations

For the avoidance of doubt, where a foreign gift, or disposition of property is made to a political party or a State branch of a political party or a person acting on behalf of a political party or a State branch of a political party, the foreign gift is presumed to be in breach of section 306C and is to be dealt with accordingly.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

306E Donations by non-citizens resident in Australia lawful

A donation in Australia to a political party by a person who is a non-citizen resident in Australia is not a foreign donation for the purposes of section 306C or 306D.

306F Donations by Australians living abroad lawful

A donation by a person registered on a Commonwealth Electoral Roll living overseas is not a foreign donation for the purposes of section 306C or 306D.

Schedule 1, page 4 (after line 22), after item 4, insert:

4C After section 320

Insert:

320A Publication of returns of donations

- (1) The Electoral Commission is to publish free of charge on its website all returns kept by it in accordance with subsection 320(1).

- (2) Publication by the Electoral Commission on its website is to occur at the same time as the returns are made available under subsections 320(4) and (5).
- (3) Subject to subsection (2), all returns are to be published on the website quarterly.

Schedule 1, page 4 (after line 22), after item 4, insert:

4D After section 326

Insert:

326A Donations with strings attached prohibited

It is unlawful for a grant, donation, gift or gift in kind to be given to a candidate or a political party if that grant, donation, gift or gift in kind is made for the purpose of:

- (a) soliciting the candidate's or the political party's support for a particular purpose or course of action;
- (b) colluding with the candidate or the political party to secure the candidate's support or the political party's support for a particular purpose or course of action;
- (c) causing the candidate or the political party to take a decision in his or her or the party's official capacity once elected;
- (d) bribing the candidate or the political party or causing the candidate or political party to act in a corrupt manner once elected.

Note: Bribery or corruption is defined in section 326 of the *Commonwealth Electoral Act 1918*.

Penalty: In the case of an individual—30 penalty units.

In the case of a political party—300 penalty units.

Schedule 1, page 4 (after line 22), after item 4, insert:

4E Section 394

Repeal the section.

Schedule 1, item 5, page 4 (lines 23 to 26), omit the item, substitute:

5 Clause 9 of Schedule 2

Omit “but not serving a sentence of imprisonment (within the meaning of subsection 93(8))”.

Schedule 1, item 6, page 4 (line 28) to page 5 (line 4), omit the item, substitute:

6 Clause 9 of Schedule 3

Omit “but not serving a sentence of imprisonment (within the meaning of subsection 93(8) of the *Commonwealth Electoral Act 1918*)”.

The following amendments circulated by the Australian Greens were negated:

Schedule 1, item 1, page 4 (lines 6 to 10), omit the item, substitute:

1 Paragraph 93(8)(b)

Repeal the paragraph.

Schedule 1, item 3, page 4 (lines 17 to 19), omit the item, substitute:

3 Section 109

Repeal the section.

Schedule 1, item 1, page 4 (line 8), omit “3”, substitute “5”.

Schedule 1, item 3, page 4 (line 19), omit “3”, substitute “5”.

Question—That Schedule 1, item 2 stand as printed—put and passed.

Bill agreed to.

Bill to be reported without amendment.

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

Question—That the remaining stages of the bill be agreed to and the bill be now passed—put.

The Senate divided—

AYES, 30

Senators—

Barnett	Ferguson	Mackay	Tchen
Boswell	Ferris (Teller)	Mason	Tierney
Carr	Fifield	McGauran	Troeth
Chapman	Kirk	McLucas	Vanstone
Colbeck	Knowles	Moore	Watson
Eggleston	Lightfoot	O’Brien	Webber
Evans	Lundy	Scullion	
Faulkner	Macdonald, Ian	Stephens	

NOES, 5

Senators—

Bartlett	Harradine	Nettle (Teller)
Brown	Murray	

Question agreed to.

Bill read a third time.

**52 US FREE TRADE AGREEMENT IMPLEMENTATION BILL 2004
OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT)
AMENDMENT (EMPLOYEE INVOLVEMENT AND COMPLIANCE) BILL 2002
ANTI-TERRORISM BILL (NO. 2) 2004**

Messages from the House of Representatives were reported agreeing to the amendments made by the Senate to the following bills:

Message no. 677, dated 13 August 2004—US Free Trade Agreement Implementation Bill 2004.

Message no. 676, dated 13 August 2004—Occupational Health and Safety (Commonwealth Employment) Amendment (Employee Involvement and Compliance) Bill 2002.

Message no. 678, dated 13 August 2004—Anti-terrorism Bill (No. 2) 2004.

53 ADJOURNMENT

The Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) moved—That the Senate do now adjourn.

Debate ensued.

The Senate adjourned at 6.09 pm till Monday, 30 August 2004 at 12.30 pm.

54 ATTENDANCE

Present, all senators except Senators Bolkus, Cook*, Kemp*, Murphy* and Sherry (* on leave).

HARRY EVANS
Clerk of the Senate