

2004-05

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 19

MONDAY, 14 MARCH 2005

Contents

1	Meeting of Senate	481
2	Consideration of Legislation.....	481
3	Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 [2005]	481
4	Questions	482
5	Taxation—Communications—Telstra—Answers to Questions	482
6	Notices.....	482
7	Leave of Absence.....	483
8	Postponement	484
9	Environment, Communications, Information Technology and the Arts References Committee—Reference	484
10	Discussion of Matter of Public Importance—Health—Private Health Insurance.....	485
11	Economics Legislation Committee—Leave to Meet During Sitting.....	485
12	Parliamentary Zone—Capital Works Proposal—Documents	485
13	Environment, Communications, Information Technology and the Arts Legislation Committee—Report—Additional Estimates 2004-05.....	485
14	Foreign Affairs, Defence and Trade Legislation Committee—Report— Additional Estimates 2004-05.....	486
15	Foreign Affairs, Defence and Trade Legislation Committee—Additional Information—Budget Estimates 2004-05.....	486
16	ASIO, ASIS and DSD—Joint Statutory Committee—Report—Review of Administration and Expenditure for ASIO, ASIS and DSD.....	486
17	Documents.....	486
18	Indexed Lists of Departmental and Agency Files—Order for Production of Documents—Document.....	487
19	National Library of Australia—Senate Member of Council.....	488
20	Employment, Workplace Relations and Education Legislation Committee— Report—Workplace Relations Amendment (Small Business Employment Protection) Bill 2004.....	488

21	Employment, Workplace Relations and Education Legislation Committee— Report—Workplace Relations Amendment (Right of Entry) Bill 2004	488
22	Aboriginal and Torres Strait Islander Commission Amendment Bill 2004 [2005]	488
23	Order of Business—Rearrangement	494
24	Appropriation (Tsunami Financial Assistance) Bill 2004-2005 Appropriation (Tsunami Financial Assistance and Australia-Indonesia Partnership) Bill 2004-2005	494
25	Adjournment	495
26	Attendance	495

1 MEETING OF SENATE

The Senate met at 12.30 pm. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

2 CONSIDERATION OF LEGISLATION

The Minister for Communications, Information Technology and the Arts (Senator Coonan), at the request of the Minister for Justice and Customs (Senator Ellison) and pursuant to notice, moved government business notice of motion no. 1—That the provisions of paragraphs (5) to (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Appropriation (Tsunami Financial Assistance) Bill 2004-2005

Appropriation (Tsunami Financial Assistance and Australia-Indonesia Partnership) Bill 2004-2005.

Question put and passed.

3 ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2004 [2005]

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—and on the amendment moved by Senator Carr, also on behalf of Senators Ridgeway and Nettle:

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

(a) notes:

- (i) that the Government’s ‘practical reconciliation’ agenda has failed to improve outcomes for Indigenous Australians,
- (ii) that there is no evidence that mainstreaming of service delivery will in any way help to address Indigenous disadvantage,
- (iii) the Government’s failure to advance the goal of reconciliation between Indigenous and non-Indigenous Australians,
- (iv) the Government’s failure to negotiate a treaty with Indigenous Australians or to guarantee self-determination for Australia’s Indigenous people, and
- (v) that the abolition of Indigenous representative organisations will serve to further marginalise Australia’s Indigenous citizens;

(b) condemns the Government for failing to:

- (i) consult or negotiate with Indigenous Australians on the provisions of the bill, and
- (ii) develop a new legislative and administrative model that restores the right of Indigenous Australians to be responsible for their own future, despite the international evidence demonstrating that this approach delivers the best practical outcomes;

(c) supports the implementation of new legislative and administrative arrangements that restore responsibility and opportunity for Indigenous Australians; and

(d) calls on the Government to:

- (i) guarantee that Indigenous communities will be genuine partners in the policy development and the delivery of services,

- (ii) ensure that a properly resourced regional representative structure is developed according to the preferences of Indigenous communities, and
- (iii) consult with Indigenous people for the purpose of negotiating the establishment of a new national Indigenous representative body whose members are chosen by Indigenous people’.

Debate resumed.

At 2 pm: Debate was interrupted while Senator Heffernan was speaking.

4 QUESTIONS

Questions without notice were answered.

5 TAXATION—COMMUNICATIONS—TELSTRA—ANSWERS TO QUESTIONS

Senator Sherry moved—That the Senate take note of the answers given by the Minister for Finance and Administration (Senator Minchin) and the Minister for Communications, Information Technology and the Arts (Senator Coonan) to questions without notice asked today relating to taxation and to Telstra.

Debate ensued.

Question put and passed.

6 NOTICES

Notices of motion:

Senator George Campbell, at the request of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins): To move on the next day of sitting—That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the effectiveness of the Australian military justice system be extended to 10 May 2005. (*general business notice of motion no. 94*)

Senator Watson: To move on the next day of sitting—That the Joint Committee of Public Accounts and Audit be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 16 March 2005, from noon to 1.30 pm, to take evidence for the committee’s inquiry into the review of Auditor-General’s reports. (*general business notice of motion no. 95*)

The Chair of the Economics Legislation Committee (Senator Brandis): To move on the next day of sitting—That the time for the presentation of the report of the Economics Legislation Committee on the 2004-05 additional estimates be extended to 16 March 2005. (*general business notice of motion no. 96*)

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

(a) notes that:

- (i) on 17 February 2005, the Senate of the United States of America (US) approved unanimously bill S.306, ‘A bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment’,
- (ii) this is the second genetic non-discrimination bill to pass the US Senate,
- (iii) despite continuing advances in genetic technology, Australia still has no nationally consistent legislation dealing with genetic privacy and non-discrimination,
- (iv) Australia has documented cases of genetic discrimination, and

- (v) the Government has not yet established a Human Genetics Commission of Australia as recommended by the Australian Law Reform Commission (ALRC) and the Australian Health Ethics Committee in recommendation 5-1 of ALRC report no. 96, 'Essentially yours: The protection of human genetic information in Australia', dated March 2003;
- (b) condemns the Government for failing to act on the report; and
- (c) calls on the Government to implement the recommendations of the report as a matter of urgency. (*general business notice of motion no. 97*)

Senator Bishop: To move on the next day of sitting—That there be laid on the table by the Minister representing the Minister for Veterans' Affairs, no later than 3.30 pm on Wednesday, 16 March 2005, a copy of the letter from the then Minister for Veterans' Affairs sent in August 2004 to the Government of Turkey requesting road improvements near the ANZAC commemoration site at Gallipoli. (*general business notice of motion no. 98*)

Senator Brown: To move on the next day of sitting—That the Senate opposes China's 'anti-secession' laws which would mandate the use of military force if the Taiwanese people opt for independence. (*general business notice of motion no. 99*)

Senator Brown: To move on 16 March 2005—That the Senate—

- (a) notes that the Federal Government is considering a report which recommends axing the Tasmanian Symphony Orchestra; and
- (b) calls on the Government to rule out any such axing of the orchestra and, instead, to guarantee the future of this world-renowned orchestra. (*general business notice of motion no. 100*)

Intention to withdraw: Senator Ferris, at the request of the Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen) and pursuant to standing order 78, gave notice of Senator Tchen's intention, at the giving of notices on the next day of sitting, to withdraw business of the Senate notices of motion nos 1, 3 and 4 standing in his name for 11 sitting days after today for the disallowance of the following instruments:

Amendment No. 1 to the Transitional Arrangements for Students Guidelines, pursuant to items 4 and 8 of Schedule 1 of the *Higher Education Support (Transitional Provisions and Consequential Amendments) Act 2003*.

OS-Help Guidelines, made under section 238-10 of the *Higher Education Support Act 2003*.

Other Grants Guidelines, made under section 238-10 of the *Higher Education Support Act 2003*.

Senator Ferris, by leave, made a statement relating to the notice of intention.

7 LEAVE OF ABSENCE

Senator Ferris, by leave and at the request of Senator Harradine, moved—That leave of absence be granted to Senator Harradine for the period 14 March to 17 March 2005, on account of ill health.

Question put and passed.

8 POSTPONEMENT

The following item of business was postponed:

General business notice of motion no. 80 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, relating to decriminalisation of abortion, postponed till 15 March 2005.

9 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE—REFERENCE

Senator Ludwig, at the request of Senator Conroy and pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the matter of the performance of the Australian telecommunications regulatory regime be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 23 June 2005, with the following terms of reference:

- (1) Whether the current telecommunications regulatory regime promotes competition, encourages investment in the sector and protects consumers to the fullest extent practicable, with particular reference to:
 - (a) whether Part XIB of the *Trade Practices Act 1974* deals effectively with instances of the abuse of market power by participants in the Australian telecommunications sector and, if not, the implications of any inadequacy for participants, consumers and the competitive process;
 - (b) whether Part XIC of the *Trade Practices Act 1974* allows access providers to receive a sufficient return on investment and access seekers to obtain commercially viable access to declared services in practice, and whether there are any flaws in the operation of this regime;
 - (c) whether there are any structural issues in the Australian telecommunications sector inhibiting the effectiveness of the current regulatory regime;
 - (d) whether consumer protection safeguards in the current regime provide effective and comprehensive protection for users of services;
 - (e) whether regulators of the Australian telecommunications sector are currently provided with the powers and resources required in order to perform their role in the regulatory regime;
 - (f) the impact that the potential privatisation of Telstra would have on the effectiveness of the current regulatory regime;
 - (g) whether the Universal Service Obligation (USO) is effectively ensuring that all Australians have access to reasonable telecommunications services and, in particular, whether the USO needs to be amended in order to ensure that all Australians receive access to adequate telecommunications services reflective of changes in technology requirements;
 - (h) whether the current regulatory environment provides participants with adequate certainty to promote investment, most particularly in infrastructure such as optical fibre cable networks;
 - (i) whether the current regulatory regime promotes the emergence of innovative technologies;
 - (j) whether it is possible to achieve the objectives of the current regulatory regime in a way that does not require the scale and scope of regulation currently present in the sector; and

- (k) whether there are any other changes that could be made to the current regulatory regime in order to better promote competition, encourage investment or protect consumers.
- (2) That the committee make recommendations for legislative amendments to rectify any weaknesses in the current regulatory regime identified by the committee's inquiry.

Question put and passed.

10 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—HEALTH—PRIVATE HEALTH INSURANCE

The Deputy President (Senator Hogg) informed the Senate that Senator McLucas had proposed that the following matter of public importance be submitted to the Senate for discussion:

The Howard Government's failed 'reforms' of private health, under which Australians with private health insurance now face an increase of almost 8 per cent on average to their premiums, the fourth consecutive annual premium increase for private health funds, and following rises of, on average, 7.58 per cent in 2004 and 7.4 per cent in 2003.

The proposal was supported by four senators and the matter was discussed.

11 ECONOMICS LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Troeth, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 5 pm, to take evidence for the committee's inquiry into the provisions of the Trade Practices Legislation Amendment Bill (No. 1) 2005.

Question put and passed.

12 PARLIAMENTARY ZONE—CAPITAL WORKS PROPOSAL—DOCUMENTS

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

Parliament Act—Parliamentary Zone—Proposal, together with supporting documentation, relating to the extension of the approval for the temporary vehicle barriers around Parliament House until 30 June 2005.

Notice of motion: The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck), by leave, gave a notice of motion as follows: To move on the next day of sitting—That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the Department of Parliamentary Services to extend the time for the temporary vehicle barriers to 30 June 2005.

13 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE—REPORT—ADDITIONAL ESTIMATES 2004-05

Senator Troeth, at the request of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston), tabled the following report and documents:

Environment, Communications, Information Technology and the Arts Legislation Committee—Additional estimates 2004-05—Report, dated March 2005 and Hansard record of proceedings [2 vols].

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

**14 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—REPORT—
ADDITIONAL ESTIMATES 2004-05**

Senator Troeth, at the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee (Senator Sandy Macdonald), tabled the following report and documents:

Foreign Affairs, Defence and Trade Legislation Committee—Additional estimates 2004-05—Report, dated March 2005 and Hansard record of proceedings [3 vols].

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

The Leader of the Opposition in the Senate (Senator Evans), by leave, moved—That the Senate take note of the report.

Debate ensued.

Question put and passed.

**15 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—
ADDITIONAL INFORMATION—BUDGET ESTIMATES 2004-05**

Senator Troeth, at the request of the Chair of the Foreign Affairs, Defence and Trade Legislation Committee (Senator Sandy Macdonald), tabled additional information received by the committee (Budget estimates 2004-05—vols 1 and 2).

**16 ASIO, ASIS AND DSD—JOINT STATUTORY COMMITTEE—REPORT—REVIEW OF
ADMINISTRATION AND EXPENDITURE FOR ASIO, ASIS AND DSD**

Senator Troeth, on behalf of the Parliamentary Joint Committee on ASIO, ASIS and DSD, tabled the following report:

ASIO, ASIS and DSD—Joint Statutory Committee—Review of administration and expenditure for ASIO, ASIS and DSD—Number 3—Report, dated March 2005.

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

Question put and passed.

17 DOCUMENTS

The following documents were tabled by the Clerk:

Made following the commencement of the Legislative Instruments Act 2003 on 1 January 2005 [Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]:

Census and Statistics Act—Australian Bureau of Statistics—Statement No. 1 of 2005.

Civil Aviation Act—

Civil Aviation Regulations—

Exemptions Nos—

CASA EX07/2005 [F2005L00670]*.

CASA EX08/2005 [F2005L00671]*.

Instruments Nos—

CASA EX01/2005 [F2005L00632]*.

CASA 06/2005 [F2005L00667]*.

CASA 87/05 [F2005L00673]*.

Civil Aviation Safety Regulations—Airworthiness Directives—Part 105—

AD/B737/237—Passenger Cabin Conditioned Air Overhead Ducts [F2005L00582]*.

AD/B767/208—Nose Wheel Well Bulkhead Vertical Chords [F2005L00584]*.
 AD/BEECH 200/55 Amdt 3—Fuselage Stringers 5 Through 11 [F2005L00587]*.
 AD/BEECH 300/7 Amdt 1—Fuselage Stringers 5 Through 11 [F2005L00556]*.
 AD/BELL 206/6 Amdt 35—Retirement Life – Fatigue Critical Components [F2005L00589]*.
 AD/CESSNA 170/76—Flight Control System – 2 [F2005L00664]*.
 AD/CESSNA 180/86—Flight Control System [F2005L00666]*.
 AD/CL-600/63—Life Limited Landing Gear Parts [F2005L00592]*.
 AD/EMB-120/25 Amdt 3—Nacelle Structure [F2005L00596]*.
 AD/S-62/2 Amdt 3—Retirement Life – Critical Components [F2005L00609]*.
 AD/S-62/3 Amdt 1—Tail Rotor Blades [F2005L00610]*.
 AD/S-62/4 Amdt 1—Stabilizer and Tube Assemblies [F2005L00612]*.
 AD/S-62/5 Amdt 1—Main Rotor Shaft [F2005L00614]*.
 AD/S-62/6 Amdt 1—Main Gearbox Primary Servo Mechanism Supports [F2005L00615]*.
 AD/S-62/7—Free Wheel Unit [F2005L00616]*.
 AD/S-62/9—Pylon Stabilizer Installation [F2005L00618]*.
 AD/S-62/11—Main Rotor Brake Disc [F2005L00620]*.
 AD/S-62/12—Main Rotor Blades [F2005L00621]*.

Customs Act— Tariff Concession Orders—

0413697 [F2005L00682]*.

0502850 [F2005L00663]*.

Environment Protection and Biodiversity Conservation Act—Instrument amending list of exempt native specimens under section 303DB, dated 16 February 2005 [F2005L00429]*.

Financial Management and Accountability Act—

Adjustments of Appropriations on Change of Agency Functions—Directions Nos—

31 of 2004-2005 [F2005L00661]*.

32 of 2004-2005 [F2005L00680]*.

Net Appropriation Agreements for the—

Australian Bureau of Statistics [F2005L00677]*.

Department of Parliamentary Services [F2005L00641]*.

National Health Act—Determination HIB 02/2005 [F2005L00674]*.

Quarantine Act—Quarantine Amendment Proclamation 2005 (No. 1) [F2005L00630]*.

* Explanatory statement tabled with legislative instrument.

18 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 July to 31 December 2004—Statement of compliance—Department of Veterans' Affairs.

19 NATIONAL LIBRARY OF AUSTRALIA—SENATE MEMBER OF COUNCIL

The Acting Deputy President (Senator Moore) informed the Senate that the President had received a letter from the Leader of the Government in the Senate (Senator Hill) nominating a senator to be a member of the Council of the National Library of Australia.

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck), by leave, moved—That, in accordance with the provisions of the *National Library Act 1960*, the Senate elect Senator Brandis to be a member of the Council of the National Library of Australia on and from 14 March 2005, for a period of 3 years.

Question put and passed.

20 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE—REPORT—WORKPLACE RELATIONS AMENDMENT (SMALL BUSINESS EMPLOYMENT PROTECTION) BILL 2004

Pursuant to order, Senator McGauran, at the request of the Chair of the Employment, Workplace Relations and Education Legislation Committee (Senator Tierney), tabled the following report and documents:

Employment, Workplace Relations and Education Legislation Committee—Provisions of the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004—Report, dated March 2005, Hansard record of proceedings, additional information, documents presented to the committee and submissions [18].

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

21 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE—REPORT—WORKPLACE RELATIONS AMENDMENT (RIGHT OF ENTRY) BILL 2004

Pursuant to order, Senator McGauran, at the request of the Chair of the Employment, Workplace Relations and Education Legislation Committee (Senator Tierney), tabled the following report and documents:

Employment, Workplace Relations and Education Legislation Committee—Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004—Report, dated March 2005, Hansard record of proceedings, additional information and submissions [29].

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

22 ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 2004 [2005]

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—*and on the amendment moved by Senator Carr, also on behalf of Senators Ridgeway and Nettle (see entry no. 3).*

Debate resumed.

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

Senator Ridgeway moved the following amendment:

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

(a) is of the opinion that:

- (i) the legislative structure of the Aboriginal and Torres Strait Islander Commission (ATSIC) regional councils should remain in place whilst operating within the ATSIC regional council structure, Aboriginal and Torres Strait Islander peoples should have the opportunity, provided in the legislation, to negotiate with each other to create a representative structure within the boundaries of the current ATSIC regions or wards which reflect the cultural leadership of the residents more appropriately, as recommended by the ATSIC review report, *In the Hands of the Regions*,
 - (ii) the Government should resource the continuation of Kungkala Wakai ('Our Women's Voice'), the committee of elected female ATSIC members headed by Commissioner Alison Anderson,
 - (iii) where a legitimate decision has been made by ATSIC relating to assets held by ATSIC, the government department now responsible for administering the relevant assets must honour the decision and follow through by administering the full implementation of this decision in an expedient manner,
 - (iv) the Government must immediately enter into negotiations with the Torres Strait Regional Authority as to which is the best Torres Strait Islander representative body to replace the Torres Strait Islander Advisory Board as the body which recommends the Torres Strait Islander member to be appointed to the Australian Institute of Aboriginal and Torres Strait Islander Studies Council, and
 - (v) the Government must produce and make publicly available, guidelines for departments, governments, Indigenous organisations and individuals regarding Shared Responsibility Agreements (SRA), including:
 - (A) a clear description of what they are, and what the principles behind their use is,
 - (B) a clear account of what is and is not acceptable for use in SRAs, for example that no basic citizenship rights are to be bargained for, and
 - (C) arranging for translation of the guidelines into the local languages (either in published format or through oral presentations) so that communities fully understand the processes; and
- (b) noting that the Government has no developed way of evaluating the 'new arrangements' in Indigenous affairs, the Government should:
- (i) fund a comprehensive needs analysis of Indigenous communities,
 - (ii) task the Commonwealth Grants Commission to establish a measure of relative need in Indigenous communities,
 - (iii) increase its monitoring and reporting of information about outputs and outcomes of government funding for Indigenous related programs including the development of a comprehensive national benchmarking regime, and
 - (iv) provide a clear breakdown of all expenditure on Indigenous affairs including what is for the benefit of Indigenous Australians, what is for the benefit of all Australians and what is funding used to contest Indigenous people's rights".

Debate ensued.

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

Main question, as amended, 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 Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) tabled a supplementary explanatory memorandum relating to the government amendment to be moved to the bill.

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

Schedule 4, item 67, page 91 (lines 2 and 3), omit “to a representative body under this Division”, substitute “to a person or body under this section”.

Senator Ridgeway moved the following amendments together by leave:

No. 1—Clause 1, page 1 (line 7), after “*Amendment*”, insert “(*Unfair Dismissal*)”.

No. 2—Schedule 1, item 112, page 16 (after line 5), after subsection 151(1), insert:

- (1A) The Minister’s power to give directions in accordance with subsection (1) is limited to giving directions in relation to the new functions transferred from ATSIC.

No. 3—Schedule 1, page 17 (after line 17), after item 118, insert:

118A After section 154

Insert:

154A Review by Administrative Appeals Tribunal

- (1) An application may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision made by Indigenous Business Australia to refuse a housing loan from the New Housing Fund to an individual; or
 - (b) a decision made by Indigenous Business Australia to refuse a loan to an individual, a body corporate or an unincorporated body to enable the individual or body to engage in a business enterprise; or
 - (c) a decision made by Indigenous Business Australia to refuse to give a guarantee in respect of a housing loan from the New Housing Fund made or to be made to an individual; or
 - (d) a decision made by Indigenous Business Australia to refuse to give a guarantee in respect of a loan made or to be made to an individual, a body corporate or an unincorporated body, where the purpose of the loan is to enable the individual or body to engage in a business enterprise.

- (2) Where Indigenous Business Australia notifies a person of a decision of a kind referred to in subsection (1), the notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.
- (3) A failure to comply with subsection (2) in relation to a decision does not affect the validity of the decision.
- (4) In this section:

decision made by Indigenous Business Australia means:

 - (a) a decision made by Indigenous Business Australia itself; or
 - (b) a decision made by a delegate of Indigenous Business Australia upon a reconsideration of a decision made by another delegate of Indigenous Business Australia.

No. 4—Schedule 2, item 1, page 61 (after line 34), after section 193Y, insert:

193YA All evaluations to apply test of no disadvantage to Indigenous programs

- (1) Where the Office conducts programs of evaluation and audit in accordance with section 193Y, the Office must assess whether the funding of the program meets a no disadvantage test in relation to program administration arising from the transfer of ATSIC and ATSI functions.
- (2) For the purposes of this section, a no disadvantage test means that the program will not receive less funding as a result of the administrative changes arising from this transfer of functions mentioned in subsection (1) for a period of one year commencing on 1 July 2005.

No. 5—Schedule 4, item 23, page 83 (lines 4 and 5), omit the item, substitute:

23 Subsection 74(1A)

Repeal the subsection, substitute:

Inviting comments from Indigenous Advisory Committee and Indigenous expert on the Heritage Council

- (1A) As soon as practicable after receiving a referral of a proposal to take an action, the Environment Minister must:
 - (a) inform the Indigenous Advisory Committee and the Indigenous expert on the Heritage Council; and
 - (b) invite the committee and Indigenous expert mentioned in paragraph (a) to give the Minister comments within 10 business days (measured in Canberra) on whether the proposed action is a controlled action;

if the Minister thinks that section 15B, 15C, 23, 24A, 26, 27A, 27B, 27C or 28 could be a controlling provision for the action because of the Indigenous heritage value of a National Heritage place or Commonwealth Heritage place.

Note 1: The Indigenous Advisory Committee is established by section 505A of the *Environment Protection and Biodiversity Conservation Act 1999*.

- Note 2: The Indigenous expert on the Heritage Council is provided for by the *Australian Heritage Council Act 2003*.
- Note 3: Subsections 15B(4), 15C(7) and (8) protect the National Heritage values of National Heritage places, to the extent that those values are Indigenous heritage values.
- Note 4: Sections 23, 24A, 26, 27A, 27B, 27C and 28 protect the environment, which includes the heritage values of places. See the definition of *environment* in section 528.

No. 6—Schedule 4, item 34, page 85 (lines 4 to 7), omit subsection 203C(2), substitute:

- (2) The Indigenous Land Corporation may, on behalf of the Commonwealth, provide funds to a representative body, by making a grant to the representative body or in any other way the Indigenous Land Corporation considers appropriate, from money appropriated by the Parliament.

Debate ensued.

The question for the amendments was divided—

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

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

Question—That amendment no. 3 be agreed to—put and passed.

Question—That amendment no. 4 be agreed to—put and negatived.

Question—That amendment no. 5 be agreed to—put and passed.

Question—That amendment no. 6 be agreed to—put and negatived.

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

Schedule 1 debated and agreed to.

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

Clause 2, page 2 (table item 3), omit the table item, substitute:

3. Schedule 3	1 January 2006.
---------------	-----------------

3A. Schedule 3A, items 1 and 2	The day on which this Act receives the Royal Assent.
--------------------------------	------------------------------------------------------

3B. Schedule 3A, item 3	The day on which Schedules 1 and 2 to this Act commence.
-------------------------	----------------------------------------------------------

Page 79 (after line 23), after Schedule 3, insert:

Schedule 3A—Continuation of Regional Councils and saving arrangements

Aboriginal and Torres Strait Islander Act 1989

1 Division 4 of Part 3

Repeal the Division.

2 Paragraph 117(1)(b)

Omit “, subject to this Part, until the end of the next election period”, substitute “until 1 January 2006”.

3 At the end of section 127A

Add:

- (4) Where a person was a Commissioner at any time between 1 March 2005 and ATSIIC abolition day, that person is not eligible to be the Chairperson of a Regional Council during the period between ATSIIC abolition day and 1 January 2006.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

Senator Vanstone moved—That the bill be recommitted.

Question put and passed.

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

In the committee

Senator Vanstone moved—That the amendments moved by Senator Carr and agreed to be reconsidered.

Question put and passed.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Crossin	Lundy	Ray
Bartlett	Evans	Mackay	Ridgeway
Bishop	Faulkner	Marshall	Sherry
Brown	Forshaw	McLucas	Stephens
Buckland (Teller)	Greig	Moore	Stott Despoja
Carr	Hogg	Murray	Webber
Cherry	Kirk	Nettle	Wong
Collins	Ludwig	O'Brien	

NOES, 30

Senators—

Abetz	Ferguson	Lightfoot	Scullion
Barnett	Ferris	Macdonald, Sandy	Tchen
Brandis	Fifield	Mason	Tierney
Chapman	Heffernan	McGauran	Troeth
Colbeck	Humphries	Minchin	Vanstone
Coonan	Johnston	Patterson	Watson
Eggleston (Teller)	Knowles	Payne	
Ellison	Lees	Santoro	

Question agreed to.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

Senator Vanstone moved—That this bill be now read a third time.

Question put.

The Senate divided—

AYES, 49

Senators—

Barnett	Ferguson	Macdonald, Sandy	Scullion
Bishop	Ferris	Mackay	Sherry
Brandis	Fifield	Marshall	Stephens
Buckland	Forshaw	Mason	Tchen
Carr	Heffernan	McGauran	Tierney
Chapman	Hogg	McLucas	Troeth
Colbeck	Humphries	Minchin	Vanstone
Collins	Johnston	Moore	Watson
Crossin	Kirk	O'Brien	Webber
Eggleston (Teller)	Knowles	Patterson	Wong
Ellison	Lees	Payne	
Evans	Ludwig	Ray	
Faulkner	Lundy	Santoro	

NOES, 9

Senators—

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

Question agreed to.

Bill read a third time.

23 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Justice and Customs (Senator Ellison) moved—That intervening business be postponed till after consideration of the government business order of the day relating to the Appropriation (Tsunami Financial Assistance) Bill 2004-2005 and a related bill.

Question put and passed.

**24 APPROPRIATION (TSUNAMI FINANCIAL ASSISTANCE) BILL 2004-2005
 APPROPRIATION (TSUNAMI FINANCIAL ASSISTANCE AND AUSTRALIA-INDONESIA
 PARTNERSHIP) BILL 2004-2005**

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 these bills be now read a second time.

Debate resumed.

At 9.50 pm: Debate was interrupted while Senator Stephens was speaking.

25 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.27 pm till Tuesday, 15 March 2005 at 12.30 pm.

26 ATTENDANCE

Present, all senators except Senators Ian Campbell, Harradine*, Harris, Hutchins* and Ian Macdonald* (* on leave).

HARRY EVANS
Clerk of the Senate