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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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1 MEETING OF SENATE

The Senate met at 12.30 pm.

2 ABSENCE OF PRESIDENT

The Clerk informed the Senate of the temporary absence of the President (Senator the Honourable Paul Calvert). The Deputy President (Senator Hogg) took the chair and read prayers.

3 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Justice and Customs (Senator Ellison) moved—That government business notice of motion no. 1 standing in the name of the Minister for Defence (Senator Hill) for today, relating to the death of Australian World War I veteran Mr William (Evan) Allan, be postponed till a later hour.

Question put and passed.

4 MIGRATION LITIGATION REFORM BILL 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 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.

Senator Ludwig moved the following amendments together by leave:

Schedule 1, item 18, page 10 (line 18) to page 11 (line 4), omit section 477, substitute:

477 Time limits on applications to the Federal Magistrates Court

- (1) Subject to subsection (4), an application to the Federal Magistrates Court for a remedy to be granted in exercise of the court's original jurisdiction under section 476 in relation to a migration decision must be made to the court within 28 days of the actual (as opposed to deemed) notification of the decision.
- (2) The Federal Magistrates Court may, by order, extend that 28 day period by up to 56 days if:
 - (a) an application for that order is made within 84 days of the actual (as opposed to deemed) notification of the decision; and
 - (b) the Federal Magistrates Court is satisfied that it is in the interests of the administration of justice to do so.
- (3) Except as provided by subsections (2) and (4), the Federal Magistrates Court must not make an order allowing, or which has the effect of allowing, an applicant to make an application mentioned in subsection (1) outside that 28 day period.

- (4) The Federal Magistrates Court may, by order, allow an applicant to make an application mentioned in subsection (1) outside that 28 day period, if an applicant alleges, in his or her application, malice or fraudulent intention on the part of the Minister or an officer or a member of a tribunal in relation to a migration decision.
- (5) An applicant alleging malice or fraudulent intention must give particulars in the application of the facts and matters from which that malice or fraudulent intention is to be inferred.
- (6) The regulations may prescribe the way of notifying a person of a decision for the purposes of this section.

Schedule 1, item 18, page 11 (lines 5 to 23), omit section 477A, substitute:

477A Time limits on applications to the Federal Court

- (1) Subject to subsection (4), an application to the Federal Court for a remedy to be granted in exercise of the court's original jurisdiction under paragraph 476A(b) or (c) in relation to a migration decision must be made to the court within 28 days of the actual (as opposed to deemed) notification of the decision.
- (2) The Federal Court may, by order, extend that 28 day period by up to 56 days if:
 - (a) an application for that order is made within 84 days of the actual (as opposed to deemed) notification of the decision; and
 - (b) the Federal Court is satisfied that it is in the interests of the administration of justice to do so.
- (3) Except as provided by subsections (2) and (4), the Federal Court must not make an order allowing, or which has the effect of allowing, an applicant to make an application mentioned in subsection (1) outside that 28 day period.
- (4) The Federal Court may, by order, allow an applicant to make an application mentioned in subsection (1) outside that 28 day period, if an applicant alleges, in his or her application, malice or fraudulent intent on the part of the Minister or an officer or a member of a tribunal in relation to a migration decision.
- (5) An applicant alleging malice or fraudulent intention must give particulars in the application of the facts and matters from which that malice or fraudulent intention is to be inferred.
- (6) The regulations may prescribe the way of notifying a person of a decision for the purposes of this section.

Schedule 1, item 30, page 13 (line 19), omit "An application", substitute "Subject to subsection (2A), an application".

Schedule 1, item 32, page 14 (line 2), omit "subsection (1A)", substitute "subsections (1A) and (2A)".

Debate ensued.

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

Senator Ludwig moved the following amendment:

Schedule 1, page 14 (after line 4), after item 33, insert:

33A After subsection 486A(2)

Insert:

- (2A) The High Court may, by order, allow an applicant to make an application mentioned in subsection (1) outside that 28 day period, if an applicant alleges, in his or her application, malice or fraudulent intention on the part of the Minister or an officer or a member of a tribunal in relation to a migration decision.
- (2B) An applicant alleging malice or fraudulent intention must give particulars in the application of the facts and matters from which that malice or fraudulent intention is to be inferred.

Debate ensued.

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

Senator Nettle moved the following amendment:

Schedule 1, page 6 (after line 28), before item 11, insert:

10A After section 3A

Insert:

3AA No detention without judicial review

It is the Parliament's intention that, notwithstanding any provision to the contrary in this Act, where this Act operates so as to detain any person, it is the right of that person to take proceedings before a court for the determination of the lawfulness of the detention and to be released if the court finds that the detention is not lawful.

Debate ensued.

At 2 pm: The President resumed the chair and the Temporary Chair of Committees (Senator Moore) reported progress.

5 QUESTIONS

Questions without notice were answered.

6 STANDING ORDER 205—STATEMENT BY PRESIDENT

The President made a statement relating to a point of order raised by Senator Conroy on 12 October 2005 concerning standing order 205 (*see entry no. 10, 12 October 2005*).

7 FAMILY AND COMMUNITY SERVICES—WELFARE—INDUSTRIAL RELATIONS—PROPOSED CHANGES—ANSWERS TO QUESTIONS

Senator Wong moved—That the Senate take note of the answers given by the Special Minister of State (Senator Abetz) to questions without notice asked today relating to proposed changes to welfare legislation and to industrial relations.

Debate ensued.

Question put and passed.

**8 FAMILY AND COMMUNITY SERVICES—PREGNANCY COUNSELLING SERVICES—
ANSWER TO QUESTION**

Senator Nettle 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 Nettle today relating to pregnancy counselling services.

Question put and passed.

9 DEATH OF FORMER MEMBER DR WILLIAM ROBERT LAWRENCE

The Deputy President (Senator Hogg) informed the Senate of the death of Dr William Robert Lawrence, a member of the House of Representatives for the division of Wimmera from 1949 to 1958.

10 PETITIONS

The following 6 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Bartlett, from 217 petitioners, requesting that the Senate establish an inquiry into all aspects of live animal exports from Australia.

Senator Bartlett, from 20 petitioners, requesting that the Senate take action to end the live animal export trade and develop a chilled and frozen carcass trade using humane slaughtering practices.

Senator Bartlett, from 58 petitioners, requesting that the Senate take action to abolish the live export trade and replace it with an expanded chilled meat trade.

Senator Bartlett, from 582 petitioners, requesting that the Senate take action to end the export of live animals from Australia to the Middle East.

Senator Kemp, from 47 petitioners, requesting that the Senate take action to review procedures relating to political asylum seekers and remove all practices which are manifestly inhumane or in contravention of national obligations.

Senator Marshall, from 378 petitioners, requesting that the Senate take action to ban the production, transfer, importation and use of anti-vehicle mines.

11 NOTICES

Notices of motion:

The Chair of the Legal and Constitutional References Committee (Senator Crossin): To move on the next day of sitting—That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 8 November 2005, from 7.30 pm, to take evidence for the committee's inquiry into the administration of the Migration Act. (*general business notice of motion no. 300*)

The Minister for Justice and Customs (Senator Ellison): To move on the next day of sitting—That—

- (a) the Senate meet from Monday, 5 December 2005 to Thursday, 8 December 2005; and
- (b) on each sitting Tuesday until the end of the 2005 sittings:
 - (i) the hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to 11.40 pm,
 - (ii) the routine of business from 7.30 pm shall be government business only, and

- (iii) the question for the adjournment of the Senate shall be proposed at 11 pm.

The Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman): To move on the next day of sitting—That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 9 November 2005, from 7 pm, to take evidence for the committee's inquiry into the statutory oversight of the operations of the Australian Securities and Investments Commission. (*general business notice of motion no. 301*)

The Leader of the Australian Democrats (Senator Allison): To move on the next day of sitting—That the Senate—

- (a) notes:
- (i) that yet another child care centre is closing in the City of Port Phillip leaving 50 families without child care, and
 - (ii) that three centres have closed in the past 2 years and none has opened;
- (b) calls on the Minister for Family and Community Services (Senator Patterson) to work with state governments to overcome the serious shortage of places in inner urban areas due to increasing real estate prices; and
- (c) urges the Government to desist from again blaming other levels of government and to be prepared to contribute to the solution. (*general business notice of motion no. 302*)

The Chair of the Community Affairs References Committee (Senator Moore): To move on the next day of sitting—That the Community Affairs References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 10 November 2005, from 4 pm, to take evidence for the committee's inquiry into workplace exposure to toxic dust. (*general business notice of motion no. 303*)

The Chair of the Community Affairs References Committee (Senator Moore): To move on the next day of sitting—That the time for the presentation of reports of the Community Affairs References Committee be extended as follows:

- (a) workplace exposure to toxic dust—to 2 March 2006; and
- (b) petrol sniffing in remote Aboriginal communities—to 30 March 2006. (*general business notice of motion no. 304*)

Senator George Campbell: To move on the next day of sitting—That the terms of reference for the Employment, Workplace Relations and Education Legislation Committee inquiry into the provisions of the Workplace Relations Amendment (Work Choices) Bill 2005 be amended as follows:

- (a) omit "22 November 2005", substitute "28 November 2005";
- (b) omit "reform of unfair dismissal arrangements"; and
- (c) at the end of the motion, add:
 - (3) That for the purposes of this inquiry the committee must meet and take evidence in at least the capital cities of each state and territory.

Senators Crossin and Milne and the Leader of the Australian Democrats (Senator Allison): To move on the next day of sitting—That the following bills be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 6 December 2005:

- Commonwealth Radioactive Waste Management Bill 2005
- Commonwealth Radioactive Waste Management (Related Amendments) Bill 2005.

Intention to withdraw:

Senator George Campbell, at the request of the Leader of the Opposition in the Senate (Senator Evans) and pursuant to standing order 78, gave notice of Senator Evans' intention, when business is called on today, to withdraw business of the Senate notices of motion nos 1, 2 and 3 standing in the name of Senator Evans for today for the disallowance of the following instruments:

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [DEST], dated 17 May 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [DEWR], dated 29 April 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [FACS], dated 26 April 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Senator Eggleston, at the request of the Chairman of the Standing Committee on Regulations and Ordinances (Senator Watson) and pursuant to standing order 78, gave notice of Senator Watson's intention, at the giving of notices on the next day of sitting, to withdraw notices of motion standing in the name of Senator Watson as follows:

Business of the Senate notice of motion no. 2 for 4 sitting days after today for the disallowance of the Electoral and Referendum Amendment Regulations 2005 (No. 1), as contained in Select Legislative Instrument 2005 No. 125 and made under the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984*.

Business of the Senate notice of motion no. 1 for 8 sitting days after today for the disallowance of the Health Insurance (Allied Health and Dental Services) Determination 2005, made under subsection 3C(1) of the *Health Insurance Act 1973*.

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

12 ECONOMICS LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Eggleston, 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 report of the Economics Legislation Committee on the provisions of the Energy Efficiency Opportunities Bill 2005 be extended to 8 November 2005.

Question put and passed.

13 POSTPONEMENTS

The following items of business were postponed:

General business notice of motion no. 298 standing in the name of Senator Stott Despoja for today, proposing the introduction of the Privacy (Equality of Application) Amendment Bill 2005, postponed till 10 November 2005.

General business notice of motion no. 299 standing in the name of Senator Milne for today, relating to climate change, postponed till 8 November 2005.

14 LAW AND JUSTICE—ILLEGAL SHARK FISHING

Senator Siewert, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 288—That the Senate—

- (a) notes:
- (i) that illegal shark fishing is a major factor driving illegal fishing in Australian waters,
 - (ii) that most shark species are effectively extinct in the Indonesian archipelago and that this increases the pressure on Australian shark fisheries, and
 - (iii) with concern, the declining shark numbers in Australian waters; and
- (b) calls on the Government to demonstrate leadership by taking action to protect sharks in Australian waters and address illegal trade by:
- (i) banning the export of shark fin products from Australia,
 - (ii) initiating the development of a international plan of action for sharks,
 - (iii) removing the exemption under the *Environment Protection and Biodiversity Conservation Act 1999* of Western Australian fisheries that target large sharks for finning, and banning long-lining in western and southern fisheries,
 - (iv) closing tropical shark fisheries until numbers return to sustainable levels, and
 - (v) providing more resources for the Australian Fisheries Management Authority in joint authority fisheries in the north in order to ensure that onshore and offshore inspections are being carried out by fisheries officers and not the Northern Territory Police.

Question put and negatived.

15 DEATH OF AUSTRALIAN WORLD WAR I VETERAN—MR WILLIAM (EVAN) ALLAN

The Minister for Justice and Customs (Senator Ellison), at the request of the Minister for Defence (Senator Hill), also on behalf of the Leader of the Opposition in the Senate (Senator Evans), the Leader of The Nationals in the Senate (Senator Boswell), the Leader of the Australian Democrats (Senator Allison), the Leader of the Family First Party (Senator Fielding) and Senator Bob Brown for the Australian Greens, and pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That the Senate—

- (a) records its deep regret at the death on 17 October 2005 of Mr William (Evan) Allan, the last Australian World War I veteran to have seen active service in that conflict;
- (b) tenders its sympathy to his family in their bereavement; and
- (c) expresses its heartfelt thanks on behalf of a grateful nation to all the men and women who answered the call to serve Australia in World War I.

Question put and passed.

16 DEPARTMENT OF PARLIAMENTARY SERVICES—REPORT FOR 2004-05

The Deputy President (Senator Hogg) tabled the following document received on 27 October 2005:

Department of Parliamentary Services—Report for 2004-05.

17 PROCEDURE—STANDING COMMITTEE—2ND REPORT OF 2005

The Deputy President (Senator Hogg) tabled the following report received on 28 October 2005:

Procedure—Standing Committee—2nd report of 2005—Declaration of interests: registration of Senators' share tradings; Unanswered questions and orders for documents: proposed amendments of standing orders 74(5) and 164; Repeated motions for suspension of standing orders: ruling of the President of 14 September 2005, dated October 2005.

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

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

Question put and passed.

18 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES COMMITTEE—REPORT—WORKPLACE AGREEMENTS

The Deputy President (Senator Hogg) tabled the following report and documents received on 31 October 2005:

Employment, Workplace Relations and Education References Committee—Workplace agreements—Report, dated October 2005, Hansard record of proceedings, documents presented to the committee, additional information and submissions [59].

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

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

Question put and passed.

19 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—LAW AND JUSTICE LEGISLATION AMENDMENT (VIDEO LINK EVIDENCE AND OTHER MEASURES) BILL 2005

The Deputy President (Senator Hogg) tabled the following report and documents received on 1 November 2005:

Legal and Constitutional Legislation Committee—Provisions of the Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Bill 2005—Report, dated November 2005, Hansard record of proceedings and submissions [7].

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

20 NATIONAL CAPITAL AND EXTERNAL TERRITORIES—JOINT STANDING COMMITTEE—GOVERNMENT RESPONSE—GOVERNANCE ON NORFOLK ISLAND

The Deputy President (Senator Hogg) tabled the following document received on 27 October 2005:

National Capital and External Territories—Joint Standing Committee—Report—Quis custodiet ipsos custodes?: Inquiry into governance on Norfolk Island—Government response.

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

The Deputy President (Senator Hogg) tabled the following document received on 4 November 2005:

Foreign Affairs, Defence and Trade References Committee—Report—Taking stock: Current health preparation arrangements for the deployment of Australian Defence Forces overseas—Government response, dated November 2005.

22 GOVERNMENT DOCUMENTS

The Deputy President (Senator Hogg) tabled the following documents received on the dates indicated:

Aboriginal Hostels Limited—Report for the period 27 June 2004 to 25 June 2005. [Received 26 October 2005]

Aboriginals Benefit Account—Report for 2004-05. [Received 28 October 2005]

Aged Care Standards and Accreditation Agency Limited—Report for 2004-05. [Received 28 October 2005]

Airservices Australia—Report for 2004-05. [Received 18 October 2005]

Australian Broadcasting Authority—Report for 2004-05 [Final report]. [Received 25 October 2005]

Australian Broadcasting Corporation (ABC)—Report for 2004-05. [Received 25 October 2005]

Australian Communications Authority—Report for 2004-05 [Final report]. [Received 25 October 2005]

Australian Hearing Services (Australian Hearing)—Report for 2004-05. [Received 28 October 2005]

Australian Industrial Relations Commission and Australian Industrial Registry—Reports for 2004-05. [Received 20 October 2005]

Australian Institute of Family Studies—Report for 2004-05. [Received 31 October 2005]

Australian Institute of Marine Science—Report for 2004-05. [Received 28 October 2005]

Australian Maritime Safety Authority—Report for 2004-05. [Received 20 October 2005]

Australian National Maritime Museum—Report for 2004-05. [Received 26 October 2005]

Australian National Training Authority—

Australian vocational education and training system—Report for 2004. [Received 20 October 2005]

Report for 2004-05. [Received 20 October 2005]

Australian Nuclear Science and Technology Organisation (ANSTO)—Report for 2004-05. [Received 27 October 2005]

Australian Office of Financial Management—Report for 2004-05. [Received 25 October 2005]

- Australian Prudential Regulation Authority—Report for 2004-05. [*Received 28 October 2005*]
- Australian Radiation Protection and Nuclear Safety Agency—Report for 2004-05. [*Received 28 October 2005*]
- Australian Reinsurance Pool Corporation—Report for 2004-05. [*Received 28 October 2005*]
- Australian Research Council—Report for 2004-05. [*Received 25 October 2005*]
- Australian Safeguards and Non-Proliferation Office—Report for 2004-05. [*Received 21 October 2005*]
- Australian Securities and Investments Commission—Report for 2004-05. [*Received 14 October 2005*]
- Australian Sports Drug Agency—Report for 2004-05. [*Received 26 October 2005*]
- Australian Trade Commission (AUSTRADE)—Report for 2004-05. [*Received 14 October 2005*]
- Australian Wine and Brandy Corporation—Report for 2004-05. [*Received 18 October 2005*]
- Bankruptcy Act 1966*—Inspector-General in Bankruptcy—Report for 2004-05 on the operation of the Act. [*Received 25 October 2005*]
- Carrick Institute for Learning and Teaching in Higher Education Limited—Report for 2004-05. [*Received 28 October 2005*]
- Centrelink—Report for 2004-05. [*Received 28 October 2005*]
- Comcare—Report for 2004-05. [*Received 26 October 2005*]
- Commissioner for Complaints [Aged care]—Report for 2004-05. [*Received 27 October 2005*]
- Commissioner for Superannuation (ComSuper)—Report for 2004-05. [*Received 27 October 2005*]
- Commissioner of Taxation—Report for 2004-05. [*Received 25 October 2005*]
- Commonwealth Ombudsman—Report for 2004-05. [*Received 28 October 2005*]
- Commonwealth Scientific and Industrial Research Organisation (CSIRO)—Report for 2004-05. [*Received 26 October 2005*]
- Corporations and Markets Advisory Committee—Report for 2004-05. [*Received 27 October 2005*]
- CSS Board—Commonwealth Superannuation Scheme—Report for 2004-05. [*Received 24 October 2005*]
- Defence Force Remuneration Tribunal—Report for 2004-05. [*Received 25 October 2005*]
- Defence Force Retirement and Death Benefits Authority—Report for 2004-05. [*Received 28 October 2005*]
- Defence Housing Authority—Report for 2004-05. [*Received 28 October 2005*]
- Department of Agriculture, Fisheries and Forestry—
Innovating rural Australia: Research and development corporation outcomes—
Report for 2004. [*Received 27 October 2005*]
Report for 2004-05. [*Received 27 October 2005*]
- Department of Communications, Information Technology and the Arts—Report for 2004-05. [*Received 27 October 2005*]

- Department of Education, Science and Training—Report for 2004-05. [*Received 28 October 2005*]
- Department of Employment and Workplace Relations—Report for 2004-05. [*Received 27 October 2005*]
- Department of Family and Community Services—Report for 2004-05. [*Received 24 October 2005*]
- Department of Finance and Administration—Report for 2004-05. [*Received 27 October 2005*]
- Department of Foreign Affairs and Trade—Reports for 2004-05—
Volume 1—Foreign Affairs and Trade. [*Received 28 October 2005*]
Volume 2—Australian Agency for International Development (AusAID). [*Received 28 October 2005*]
- Department of Health and Ageing—Report for 2004-05. [*Received 27 October 2005*]
- Department of Immigration and Multicultural and Indigenous Affairs—Report for 2004-05. [*Received 26 October 2005*]
- Department of the Environment and Heritage—
Legislation reports for 2004-05. [*Received 31 October 2005*]
Report for 2004-05. [*Received 31 October 2005*]
- Department of the Treasury—Report for 2004-05. [*Received 25 October 2005*]
- Department of Transport and Regional Services—Report for 2004-05. [*Received 28 October 2005*]
- Director of National Parks—Report for 2004-05. [*Received 19 October 2005*]
- Film Finance Corporation Australia Limited—Report for 2004-05. [*Received 26 October 2005*]
- Financial Reporting Council, Australian Accounting Standards Board and Auditing and Assurance Standards Board—Reports for 2004-05, together with Financial Reporting Council—Report for 2004-05 on auditor independence. [*Received 24 October 2005*]
- Food Standards Australia New Zealand—Report for 2004-05. [*Received 26 October 2005*]
- Great Barrier Reef Marine Park Authority—Report for 2004-05. [*Received 14 October 2005*]
- Health Services Australia Group (HSA Group)—Report for 2004-05. [*Received 26 October 2005*]
- Insolvency and Trustee Service Australia—Report for 2004-05. [*Received 31 October 2005*]
- Inspector-General of Intelligence and Security—Report for 2004-05. [*Received 27 October 2005*]
- Inspector-General of Taxation—Report for 2004-05. [*Received 27 October 2005*]
- Migration Review Tribunal—Report for 2004-05. [*Received 25 October 2005*]
- Military Superannuation and Benefits Board of Trustees—Report for 2004-05. [*Received 28 October 2005*]
- National Archives of Australia and National Archives of Australia Advisory Council—Reports for 2004-05. [*Received 28 October 2005*]

- National Australia Day Council—Report for 2004-05. [Received 28 October 2005]
- National Gallery of Australia—Report for 2004-05. [Received 28 October 2005]
- National Residue Survey—Report for 2004-05. [Received 14 October 2005]
- National Transport Commission—Report for 2004-05. [Received 28 October 2005]
- Native Title Act 1993*—Native title representative bodies—Reports for 2004-05—
- Central Queensland Land Council Aboriginal Corporation. [Received 28 October 2005]
 - Goldfields Land and Sea Council Aboriginal Corporation. [Received 28 October 2005]
 - Gurang Land Council (Aboriginal Corporation). [Received 28 October 2005]
 - Kimberley Land Council. [Received 28 October 2005]
 - South West Aboriginal Land and Sea Council Aboriginal Corporation. [Received 28 October 2005]
 - Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation. [Received 28 October 2005]
- Productivity Commission—
- Report—No. 36—Private cost effectiveness of improving energy efficiency, 31 August 2005. [Received 21 October 2005]
 - Report for 2004-05. [Received 31 October 2005]
- PSS Board—Public Sector Superannuation Scheme—Report for 2004-05. [Received 24 October 2005]
- Public Lending Right Committee—Report for 2004-05. [Received 26 October 2005]
- Refugee Review Tribunal—Report for 2004-05. [Received 25 October 2005]
- Remuneration Tribunal—Report for 2004-05. [Received 20 October 2005]
- Royal Australian Air Force Veterans' Residences Trust Fund—Report for 2004-05. [Received 25 October 2005]
- Safety, Rehabilitation and Compensation Commission—Report for 2004-05. [Received 20 October 2005]
- Seafarers Safety, Rehabilitation and Compensation Authority (Seacare)—Report for 2004-05. [Received 28 October 2005]
- Services Trust Funds—Reports for 2004-05 of the Royal Australian Navy Relief Trust Fund, the Royal Australian Air Force Welfare Trust Fund and the Australian Military Forces Relief Trust Fund. [Received 25 October 2005]
- Social Security Appeals Tribunal—Report for 2004-05. [Received 26 October 2005]
- Supervising Scientist—Report for 2004-05 on the operation of the *Environment Protection (Alligator Rivers Region) Act 1978*. [Received 27 October 2005]
- Takeovers Panel—Report for 2004-05. [Received 28 October 2005]
- Telstra Corporation Limited—Report for 2004-05. [Received 25 October 2005]
- Tourism Australia—Report for 2004-05. [Received 28 October 2005]
- Veterans' Review Board—Report for 2004-05. [Received 20 October 2005]

23 AUDITOR-GENERAL—AUDIT REPORTS NOS 13 AND 14 OF 2005-06—DOCUMENTS

The Deputy President (Senator Hogg) tabled the following documents received on the dates indicated:

Auditor-General—Audit reports for 2005-06—

No. 13—Performance audit—Administration of goods and services tax compliance in the large business market segment: Australian Taxation Office. [Received 18 October 2005]

No. 14—Performance audit—Administration of the Commonwealth State Territory disability agreement: Department of Family and Community Services. [Received 19 October 2005]

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

Pursuant to the order of the Senate of 30 May 1996, as amended, the Deputy President (Senator Hogg) tabled the following document received on 1 November 2005:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2005—Statements of compliance—Department of Finance and Administration, Australian Electoral Commission, Commonwealth Grants Commission, ComSuper, Commonwealth Superannuation Scheme and Public Sector Superannuation Scheme.

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

Pursuant to the order of the Senate of 20 June 2001, as amended, the Deputy President (Senator Hogg) tabled the following document received on 4 November 2005:

Departmental and agency contracts for 2004-05—Letter of advice—Health and Ageing portfolio agencies.

26 NORTHERN TERRITORY—NUCLEAR WASTE SITE—DOCUMENT

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

Northern Territory—Nuclear waste site—Letter to the President of the Senate from the Speaker of the Legislative Assembly of the Northern Territory (Ms Aagaard) forwarding the text of a resolution, dated 13 October 2005.

Senator Crossin, by leave, moved—That the Senate take note of the document.

Debate ensued.

Question put and passed.

27 NORTHERN TERRITORY—TELECOMMUNICATIONS INFRASTRUCTURE—DOCUMENT

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

Northern Territory—Telecommunications infrastructure—Letter to the President of the Senate from the Speaker of the Legislative Assembly of the Northern Territory (Ms Aagaard) forwarding the text of a resolution, dated 28 October 2005.

28 FOREIGN AFFAIRS—COLOMBIA—INDIGENOUS WAYUU PEOPLE—DOCUMENT

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

Foreign Affairs—Colombia—Indigenous Wayuu people—Letter to the President of the Senate from the Vice President, Sustainable Development and Community Relations (Mr I Wood), BHP Billiton Limited, responding to the resolution of the Senate of 22 June 2005, dated 17 October 2005.

29 COMMONWEALTH PARLIAMENTARY ASSOCIATION—51ST CONFERENCE—DOCUMENT

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

Commonwealth Parliamentary Association—51st Commonwealth Parliamentary Conference, Nadi, Fiji Islands, 1 to 10 September 2005—Report, dated September 2005.

Senator Hogg, by leave, made a statement relating to the document.

30 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT—AUSTRALIA'S FREE TRADE AGREEMENTS

The Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Ferguson) tabled the following report:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Australia's free trade agreements with Singapore, Thailand and the United States: Progress to date and lessons for the future—Report, dated November 2005.

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

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

31 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—THERAPEUTIC GOODS AMENDMENT BILL 2005

Pursuant to order, Senator Johnston, at the request of the Chair of the Community Affairs Legislation Committee (Senator Humphries), tabled the following report and documents:

Community Affairs Legislation Committee—Provisions of the Therapeutic Goods Amendment Bill 2005—Report, dated November 2005, Hansard record of proceedings and submissions [10] and form letters [473].

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

32 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—HEALTH LEGISLATION AMENDMENT BILL 2005

Pursuant to order, Senator Johnston, at the request of the Chair of the Community Affairs Legislation Committee (Senator Humphries), tabled the following report and documents:

Community Affairs Legislation Committee—Provisions of the Health Legislation Amendment Bill 2005—Report, dated November 2005, Hansard record of proceedings and submissions [28].

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

33 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—REPORT—NATIONAL HEALTH AMENDMENT (BUDGET MEASURES—PHARMACEUTICAL BENEFITS SAFETY NET) BILL 2005

Pursuant to order, Senator Johnston, at the request of the Chair of the Community Affairs Legislation Committee (Senator Humphries), tabled the following report and documents:

Community Affairs Legislation Committee—Provisions of the National Health Amendment (Budget Measures—Pharmaceutical Benefits Safety Net) Bill 2005—Report, dated November 2005, Hansard record of proceedings and submissions [13].

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

34 PUBLIC ACCOUNTS AND AUDIT—JOINT STATUTORY COMMITTEE—404TH REPORT

Senator Johnston, on behalf of the Joint Committee of Public Accounts and Audit, tabled the following report:

Public Accounts and Audit—Joint Statutory Committee—404th report—Review of the Auditor-General's reports 2003-04: Third and fourth quarters; and first and second quarters of 2004-05, dated October 2005.

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

Question put and passed.

35 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE—REPORT—HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES NO. 4) BILL 2005 AND EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT BILL 2005

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

Employment, Workplace Relations and Education Legislation Committee—Bills relating to the establishment of Carnegie Mellon University 2005: Provisions of the Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005 and the Education Services for Overseas Students Amendment Bill 2005—Report, dated November 2005 and submissions [8].

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

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

Question put and passed.

36 PUBLIC WORKS—JOINT STATUTORY COMMITTEE—18TH AND 19TH REPORTS OF 2005

Senator Troeth, on behalf of the Parliamentary Standing Committee on Public Works, tabled the following reports:

Public Works—Joint Statutory Committee—

18th report of 2005—Proposed RAAF Base Amberley redevelopment stage 2, Queensland, dated November 2005.

19th report of 2005—Proposed relocation of RAAF College; RAAF Base East Sale, Victoria and RAAF Base Wagga, New South Wales, dated November 2005.

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

Question put and passed.

37 TREATIES—JOINT STATUTORY COMMITTEE—68TH REPORT

Senator Wortley, on behalf of the Joint Standing Committee on Treaties, tabled the following report:

Treaties—Joint Standing Committee—68th report—Treaties tabled on 7 December 2004 (5) and 9 August 2005, dated October 2005.

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

Question put and passed.

38 AUSTRALIAN PARLIAMENTARY DELEGATION TO CHINA AND MONGOLIA—DOCUMENT

Senator Troeth, by leave, tabled the following document:

China and Mongolia—Report of the Australian parliamentary delegation, 7 to 19 April 2005, dated October 2005.

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

Debate ensued.

Question put and passed.

39 DOCUMENTS

The following documents were tabled by the Clerk:

[Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number]

Acts Interpretation Act—Statement pursuant to subsection 34C(6) relating to the extension of specified period for presentation of a report—Office of the Renewable Energy Regulator—Report for 2004-05.

Australian Bureau of Statistics Act—Proposal No. 10 of 2005—Survey of Water Supply and Use.

Australian Prudential Regulation Authority Act—Non-Confidentiality Determination No. 10 of 2005—Information provided by locally-incorporated banks and foreign ADIs under Reporting Standard ARS 320.0 (2005) [F2005L03214]*.

Class Rulings CR 2005/91-CR 2005/93.

Corporations Act—ASIC Class Order [CO 05/1070] [F2005L03335]*.

Customs Act—Tariff Concession Orders—

0505651 [F2005L03329]*.

0505969 [F2005L03330]*.

0506111 [F2005L03331]*.

0506115 [F2005L03332]*.

0506118 [F2005L03333]*.

0506577 [F2005L03334]*.

0506578 [F2005L03336]*.

0506581 [F2005L03337]*.

0506584 [F2005L03338]*.

0506585 [F2005L03339]*.

0506770 [F2005L03381]*.

0506789 [F2005L03380]*.

0506866 [F2005L03382]*.

0506931 [F2005L03383]*.
 0506933 [F2005L03384]*.
 0507032 [F2005L03385]*.
 0507058 [F2005L03386]*.
 0507062 [F2005L03387]*.
 0507310 [F2005L03391]*.
 0507316 [F2005L03371]*.
 0507359 [F2005L03372]*.
 0509831 [F2005L03313]*.
 0509996 [F2005L03347]*.
 0509999 [F2005L03314]*.
 0510003 [F2005L03315]*.
 0510004 [F2005L03316]*.
 0510010 [F2005L03348]*.
 0510203 [F2005L03317]*.
 0510205 [F2005L03349]*.
 0510271 [F2005L03318]*.
 0510289 [F2005L03350]*.
 0510306 [F2005L03319]*.
 0510430 [F2005L03351]*.
 0510436 [F2005L03352]*.
 0510514 [F2005L03353]*.
 0510516 [F2005L03354]*.
 0510517 [F2005L03320]*.
 0510521 [F2005L03321]*.
 0510609 [F2005L03355]*.
 0510610 [F2005L03322]*.

Defence Act—Determinations under section 58B—Defence Determinations—

2005/42—Overseas conditions of service – post indexes.

2005/43—Completion bonus – Electronics Technical (junior sailor) employment category.

2005/44—Navy retention bonus – Marine and Electronics Technical (sailors) employment categories.

Health Insurance Act—

Common Form of Undertaking for Participating Optometrists [F2005L03325]*.

Health Insurance (Allied Health and Dental Services) Amendment Determination 2005 (No. 1) [F2005L03310]*.

Select Legislative Instrument 2005 No. 239—Health Insurance (Pathology Services Table) Regulations 2005 [F2005L03098]*.

Higher Education Support Act—Higher Education Provider Approval (No. 12 of 2005)—Box Hill Institute of Technical and Further Education (trading as Box Hill Institute of TAFE and Box Hill Institute) [F2005L03356]*.

Migration Act—Migration Regulations—

Addresses for Trade Skills Training Sponsor and Visa Applications (Regulation 1.20UK(4) and 1220B(3)(e)), dated 25 October 2005 [F2005L03311]*.

Classes of Persons Applying for a Student Visa from Outside Australia (Regulation 1222(1)(a)(ii)), dated 25 October 2005 [F2005L03301]*.

Classes of Persons Applying for a Student Visa from Within Australia (Regulation 1222(1)(aa)(i)), dated 25 October 2005 [F2005L03303]*.

Educational Institutions in Regional and Low Population Growth Metropolitan Areas (Regulations 6A1001 and 6A1002), dated 21 October 2005 [F2005L03327]*.

Migration Occupations in Demand (Regulation 1.03), dated 21 October 2005 [F2005L03326]*.

Persons Who May Apply for a Working Holiday Maker Visa (Regulation 1225(3)(b)(i) and (ii)), dated 25 October 2005 [F2005L03295]*.

Postal and Courier Delivery Addresses for Distinguished Talent Visas and Special Eligibility Visas (Regulations 1112(3)(a), 1113(3)(aa) and 1118A(3)(a)), dated 26 October 2005 [F2005L03345]*.

Skilled Australian Sponsored (Migrant) Visa: Residential Postcodes, “Skilled Occupations” and Points (Regulations 1.03 and 2.26B), dated 26 October 2005 [F2005L03346]*.

Working Holiday Maker Visa – Definitions of ‘Seasonal Work’ and ‘Regional Australia’ (Regulation 1225(5)), dated 25 October 2005 [F2005L03299]*.

Working Holiday Maker Visa – Post Office Box Address (Regulation 1225(3)(a)), dated 25 October 2005 [F2005L03297]*.

Motor Vehicle Standards Act—

Vehicle Standard (Australian Design Rule 80/00 – Emission Control for Heavy Vehicles) 2005 [F2005L03375]*.

Vehicle Standard (Australian Design Rule 80/01 – Emission Control for Heavy Vehicles) 2005 [F2005L03392]*.

National Health Act—Determinations—

HIB 19/2005 [F2005L03323]*.

HIB 20/2005 [F2005L03290]*.

HIB 21/2005 [F2005L03289]*.

Product Rulings—Addenda—

PR 2003/12.

PR 2004/26.

PR 2005/13 and PR 2005/14.

Sydney Airport Curfew Act—Dispensation Report 9/05 [7 dispensations].

Taxation Rulings—

Notice of Withdrawal—TR 94/31.

TR 2005/18 and TR 2005/19.

* Explanatory statement tabled with legislative instrument.

40 LAW AND JUSTICE LEGISLATION AMENDMENT (VIDEO LINK EVIDENCE AND OTHER MEASURES) BILL 2005

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

Message no. 236, dated 13 October 2005—A Bill for an Act to amend various Acts relating to law and justice, and for related purposes.

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) 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 Colbeck moved—That this bill be now read a second time.

Explanatory memorandum: Senator Colbeck tabled a correction to the explanatory memorandum relating to the bill.

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

41 HIGHER EDUCATION LEGISLATION AMENDMENT (2005 MEASURES NO. 4)

BILL 2005

EDUCATION SERVICES FOR OVERSEAS STUDENTS AMENDMENT BILL 2005

ENERGY EFFICIENCY OPPORTUNITIES BILL 2005

NATIONAL HEALTH AMENDMENT (BUDGET MEASURES—PHARMACEUTICAL

BENEFITS SAFETY NET) BILL 2005

THERAPEUTIC GOODS AMENDMENT BILL (NO. 2) 2005

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

Message no. 235, dated 13 October 2005—A Bill for an Act to amend legislation relating to higher education, and for related purposes.

Message no. 234, dated 13 October 2005—A Bill for an Act to amend the *Education Services for Overseas Students Act 2000*, and for related purposes.

Message no. 241, dated 7 November 2005—A Bill for an Act to encourage more efficient use of energy by large energy using businesses, and for related purposes.

Message no. 238, dated 1 November 2005—A Bill for an Act to amend the Pharmaceutical Benefits Scheme, and for related purposes.

Message no. 237, dated 31 October 2005—A Bill for an Act to amend the *Therapeutic Goods Act 1989*, and for related purposes.

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) 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 Colbeck moved—That these bills be now read a second time.

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

Consideration of legislation: Senator Colbeck moved that the Higher Education Legislation Amendment (2005 Measures No. 4) Bill 2005 and the Education Services for Overseas Students Amendment Bill 2005 be listed on the *Notice Paper* as one order of the day, and the remaining bills be listed as separate orders of the day.

Question put and passed.

**42 COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT BILL 2005
COMMONWEALTH RADIOACTIVE WASTE MANAGEMENT (RELATED AMENDMENTS)
BILL 2005**

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

Message no. 242, dated 7 November 2005—A Bill for an Act to make provision in relation to the selection of a site for, and the establishment and operation of, a radioactive waste management facility, and for related purposes.

Message no. 243, dated 7 November 2005—A Bill for an Act to make amendments related to the *Commonwealth Radioactive Waste Management Act 2005*, and for related purposes.

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck) 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 Colbeck moved—That these bills be now read a second time.

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

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

**43 ACTS INTERPRETATION AMENDMENT (LEGISLATIVE INSTRUMENTS) BILL 2005
CONSULAR PRIVILEGES AND IMMUNITIES AMENDMENT BILL 2005**

Messages from the House of Representatives were reported agreeing to the following bills without amendment:

Message no. 244, dated 7 November 2005—Acts Interpretation Amendment (Legislative Instruments) Bill 2005.

Message no. 245, dated 7 November 2005—Consular Privileges and Immunities Amendment Bill 2005.

44 ADMINISTRATOR'S AND GOVERNOR-GENERAL'S MESSAGES—ASSENT TO LAWS

A message from His Excellency the Administrator of the Commonwealth of Australia was reported, informing the Senate that he had assented to the following laws:

19 October 2005—Message No. 40—

Asbestos-related Claims (Management of Commonwealth Liabilities) Act 2005 (Act No. 122, 2005)

Asbestos-related Claims (Management of Commonwealth Liabilities) (Consequential and Transitional Provisions) Act 2005 (Act No. 123, 2005)

Australian Technical Colleges (Flexibility in Achieving Australia's Skills Needs) Act 2005 (Act No. 124, 2005)

Medical Indemnity (Competitive Advantage Payment) Act 2005 (Act No. 125, 2005)

Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005
(Act No. 126, 2005).

A message from His Excellency the Governor-General was reported, informing the Senate that he had assented to the following law:

3 November 2005—Message No. 41—*Anti-Terrorism Act 2005* (Act No. 127, 2005).

45 NOTICES OF MOTION WITHDRAWN

Senator Webber, at the request of the Leader of the Opposition in the Senate (Senator Evans) and pursuant to notice of intention given earlier today (*see entry no. 11*), withdrew business of the Senate notices of motion nos 1, 2 and 3 standing in the name of Senator Evans for today for the disallowance of the following instruments:

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [DEST], dated 17 May 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [DEWR], dated 29 April 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

Social Security (Means Test Treatment of Private Trusts – Excluded Trusts) Declaration 2005 [FACS], dated 26 April 2005, made under subsection 1207P(4) of the *Social Security Act 1991*.

46 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—PROPOSED REFERENCE

Senator Bob Brown, pursuant to notice, moved business of the Senate notice of motion no. 4—That the following matter be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 10 December 2005:

All aspects of Australia's response to the earthquake catastrophe in Pakistan, Afghanistan and India and, in particular, the timing, volume and substance of the Government's aid.

Debate ensued.

Question put.

The Senate divided—

AYES, 31

Senators—

Allison	Evans	McLucas	Siewert
Bartlett	Faulkner	Milne	Stephens
Bishop	Fielding	Moore	Sterle
Brown, Bob	Forshaw	Murray	Stott Despoja
Brown, Carol	Hutchins	Nettle	Webber
Campbell, G (Teller)	Kirk	O'Brien	Wong
Conroy	Ludwig	Polley	Wortley
Crossin	McEwen	Sherry	

NOES, 33

Senators—			
Abetz	Eggleston (Teller)	Kemp	Santoro
Adams	Ellison	Lightfoot	Scullion
Barnett	Ferguson	Macdonald, Sandy	Troeth
Boswell	Fierravanti-Wells	Mason	Trood
Brandis	Fifield	McGauran	Vanstone
Calvert	Heffernan	Minchin	Watson
Chapman	Humphries	Nash	
Colbeck	Johnston	Parry	
Coonan	Joyce	Ronaldson	

Question negatived.

47 MIGRATION LITIGATION REFORM BILL 2005

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

In the committee

Consideration resumed of the bill—and of the amendment moved by Senator Nettle (see entry no. 4).

Debate resumed.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 30

Senators—			
Allison	Evans	McLucas	Stephens
Bartlett	Faulkner	Milne	Sterle
Bishop	Forshaw	Moore	Stott Despoja
Brown, Bob	Hogg	Murray	Webber
Brown, Carol	Hutchins	Nettle	Wong
Campbell, G (Teller)	Kirk	Polley	Wortley
Conroy	Marshall	Sherry	
Crossin	McEwen	Siewert	

NOES, 32

Senators—			
Abetz	Coonan	Johnston	Nash
Adams	Eggleston (Teller)	Joyce	Parry
Barnett	Ellison	Kemp	Ronaldson
Boswell	Ferguson	Lightfoot	Santoro
Brandis	Fierravanti-Wells	Macdonald, Sandy	Scullion
Calvert	Fifield	Mason	Troeth
Chapman	Heffernan	McGauran	Trood
Colbeck	Humphries	Minchin	Watson

Question negatived.

Senator Nettle moved the following amendment:

Schedule 1, page 6 (after line 28), before item 11, insert:

10B After section 3A

Insert:

3AB Compensation for wrongful detention

- (1) If a person is wrongfully detained as a result of action taken in accordance with this Act, the Commonwealth must pay that person:
 - (a) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
 - (b) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.
- (2) For the purposes of this section, *wrongfully detained* means to detain a person in accordance with this Act for longer than the time permitted by subsection 189(1).

Debate ensued.

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

Senator Nettle moved the following amendments together by leave:

Schedule 1, page 7 (after line 24), after item 14, insert:

14A At the end of subsection 189(1)

Add “for not more than 168 hours or 7 days, after which time the person must:

- (a) be released in accordance with section 191; or
- (b) be charged with a criminal offence; or
- (c) be processed for a visa in accordance with this Act; or
- (d) be permitted access to apply to the Federal Court or the Supreme Court of the State or Territory in which the person is held in custody for a writ of habeas corpus”.

Schedule 1, page 7 (after line 24), after item 14, insert:

14C At the end of section 189

Add:

- (6) Notwithstanding anything contained in this section:
 - (a) where an officer proposes to detain a person for longer than 168 hours or 7 days, the officer must apply to the Federal Court or the Supreme Court of the State or Territory in which the person is held in custody for consent to detain the person for a period of time determined by the court; and
 - (b) an officer may make such further applications in accordance with paragraph (a) as may be required.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 8

Senators—

Allison
Bartlett

Brown, Bob
Milne

Murray
Nettle

Siewert (Teller)
Stott Despoja

NOES, 42

Senators—			
Adams	Fierravanti-Wells	Macdonald, Sandy	Ronaldson
Barnett	Fifield	Marshall	Santoro
Brandis	Forshaw	Mason	Scullion
Brown, Carol	Hogg	McEwen	Stephens
Carr	Humphries	McGauran (Teller)	Troeth
Chapman	Johnston	McLucas	Trood
Colbeck	Joyce	Moore	Watson
Crossin	Kirk	Nash	Webber
Eggleston	Lightfoot	O'Brien	Wortley
Ellison	Ludwig	Parry	
Fielding	Lundy	Polley	

Question negatived.

Senator Nettle moved the following amendment:

Schedule 1, page 7 (after line 24), after item 14, insert:

14B After subsection 189(4)

Insert:

- (4A) Where an officer has knowledge or reasonable suspicion which causes the officer to take action in accordance with this section, the officer must record that knowledge and grounds of reasonable suspicion in writing and must lodge a copy of the document with the Department and provide a copy of the document to the person in respect of whom detention action is being taken or to that person's legal representative.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 30

Senators—			
Allison	Faulkner	McLucas	Siewert
Bartlett	Forshaw	Milne	Stephens
Brown, Bob	Hogg	Moore	Stott Despoja
Brown, Carol	Kirk (Teller)	Murray	Webber
Campbell, George	Ludwig	Nettle	Wong
Carr	Lundy	O'Brien	Wortley
Crossin	Marshall	Polley	
Evans	McEwen	Sherry	

NOES, 33

Senators—			
Abetz	Ferguson	Lightfoot	Santoro
Adams	Fielding	Macdonald, Ian	Scullion
Boswell	Fierravanti-Wells	Macdonald, Sandy	Troeth
Brandis	Fifield	Mason	Trood
Chapman	Heffernan	McGauran (Teller)	Vanstone
Colbeck	Humphries	Minchin	Watson
Coonan	Johnston	Nash	
Eggleston	Joyce	Parry	
Ellison	Kemp	Ronaldson	

Question negatived.

Senator Nettle moved the following amendment:

Schedule 1, page 7 (after line 24), after item 14, insert:

14D After Division 13A

Insert:

Division 13AAA—Obligations of departmental officers during questioning of persons in immigration detention

261L Overview of Division

The purpose of this Division is to provide for the fair and proper management and control of questioning conducted by an officer under this Act, where that questioning is of a person who is in immigration detention under this Act or where there are reasonable grounds to believe that the person is in immigration detention under this Act.

261M Officer to caution and give summary of Division to person who is in detention

- (1) As soon as practicable after a person is detained in accordance with this Act, an officer must orally and in writing in the language of the applicant:
 - (a) caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence; and
 - (b) give the person a summary of the provisions of this Division that is to include reference to the fact that the maximum investigation period may be extended beyond 7 days in accordance with section 189 and that the person, or the person's legal representative, may make representations on that matter in accordance with section 189.
- (2) The giving of a caution under paragraph (1)(a) does not affect a requirement of any law that a person answer questions put by, or do things required by, an officer.
- (3) After being given the information referred to in subsection (1) orally and in writing, the person is to be requested to sign an acknowledgment that the information has been so given and understood by the person.

261N Right to communicate with friend, relative, guardian or independent person and legal practitioner

- (1) A person detained in accordance with this Act has a right to communicate, or attempt to communicate, with a friend, relative, guardian or independent person in accordance with this section.
- (2) Before any questioning in accordance with section 257 in which a person who is detained in accordance with this Act is to participate starts, an officer must inform the person orally and in writing that he or she may:
 - (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person:
 - (i) to inform that person of the detained person's whereabouts; and

- (ii) if the detained person wishes to do so, to ask the person communicated with to attend at the place where the person is being detained to enable the detained person to consult with that person; and
 - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and ask that legal practitioner to do either or both of the following:
 - (i) attend at the place where the person is being detained to enable the person to consult with the legal practitioner;
 - (ii) be present during any questioning under section 257 and give advice to the person.
- (3) Where a person requests access to a legal practitioner or an interpreter, an officer must provide access to a legal practitioner or interpreter.
- (4) If the person wishes to make any communication referred to in subsection (2), the officer must, as soon as practicable:
 - (a) give the person reasonable facilities to enable the person to do so; and
 - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (5) The officer must defer for a reasonable period any questioning in which the person is to participate:
 - (a) to allow the person to make, or attempt to make, a communication referred to in subsection (1); and
 - (b) the person has asked any person so communicated with to attend at the place where the person is being detained:
 - (i) to allow the person communicated with to arrive at that place; and
 - (ii) to allow the person to consult with that person at that place.
- (6) If the person has asked a friend, relative, guardian or independent person communicated with to attend at the place where the person is being detained, the officer must allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.
- (7) If the person has asked a legal practitioner communicated with to attend at the place where the person is being detained, the officer must:
 - (a) allow the person to consult with the legal practitioner in private and must provide reasonable facilities for that consultation; and
 - (b) if the person has so requested, allow the legal practitioner to be present during any such questioning and to give advice to the person.
- (8) Anything said by the legal practitioner during any such questioning is to be recorded and form part of the formal record of the questioning.
- (9) Questioning is not required to be deferred under subsection (4) for more than 2 hours to allow a friend, relative, guardian, independent person or legal practitioner that the person has communicated with to arrive at the place where the person is being detained.

- (10) Questioning is not required to be deferred under subsection (4) to allow the person to consult with a friend, relative, guardian, independent person or legal practitioner who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the friend, relative, guardian, independent person or legal practitioner. This does not affect the requirement to allow a legal practitioner to be present during questioning and to give advice to the person.
- (11) The duties of an officer under this section owed to a person who is detained under this Division and who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the officer owed to the person under section 261O.
- (12) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed and understands.

261O Right of foreign national to communicate with consular officer

- (1) This section applies to a person who is detained in accordance with this Act and who is not an Australian citizen or a permanent Australian resident.
- (2) A person of the kind specified in subsection (1) who is detained in accordance with this Act has a right to communicate with a consular officer in accordance with this section.
- (3) Before any questioning in accordance with section 257 in which a person to whom this section applies is to participate starts, an officer must inform the person orally and in writing that he or she may:
 - (a) communicate, or attempt to communicate, with a consular official of the country of which the person is a citizen; and
 - (b) ask the consular official to attend at the place where the person is being detained to enable the person to consult with the consular official.
- (4) If the person wishes to communicate with such a consular official, the officer must, as soon as practicable:
 - (a) give the person reasonable facilities to enable the person to do so; and
 - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (5) The officer must defer for a reasonable period any questioning in which the person is to participate:
 - (a) to allow the person to make, or attempt to make, the communication referred to in subsection (3); and
 - (b) if the person has asked any consular official so communicated with to attend at the place where the person is being detained:
 - (i) to allow the consular official to arrive at that place; and
 - (ii) to allow the person to consult with the consular official at that place.

- (6) If the person has asked a consular official communicated with to attend at the place where the person is being detained, the officer must allow the person to consult with the consular official in private and must provide reasonable facilities for that consultation.
- (7) Questioning is not required to be deferred under subsection (5) for more than 2 hours to allow a consular official that the person has communicated with to arrive at the place where the person is being detained.
- (8) Questioning is not required to be deferred under subsection (5) to allow the person to consult with a consular official who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the consular official.
- (9) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed and understands.
- (10) This section does not apply if the officer did not know, and could not reasonably be expected to have known, that the person is not an Australian citizen or a permanent Australian resident.

261P Right to reasonable refreshments and facilities

- (1) An officer conducting questioning of a person in accordance with section 257 must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities in the course of the questioning.
- (2) The officer conducting questioning of a person who is detained in accordance with this Act must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) shave if:
 - (a) it is reasonably practicable to provide access to such facilities; and
 - (b) the officer is satisfied that the investigation will not be hindered by providing the person with such facilities.

261Q Recording and retention of questioning

- (1) All questioning conducted in accordance with section 257 must be recorded.
- (2) A copy of a recording made in accordance with subsection (1) must:
 - (a) be provided to the person who was questioned or, where the person being questioned so requests, to that person's legal representative; and
 - (b) be retained by the department for not less than five years.

261R Right to an interpreter

- (1) A person detained in accordance with this Act has a right to an interpreter in accordance with this section.
- (2) Where a person is detained for questioning in accordance with section 257, the officer conducting the questioning must arrange for an interpreter to be present for the person in connection with any questioning of the person if the officer has reasonable grounds for believing that the person is unable:

- (a) because of inadequate knowledge of the English language, to communicate with reasonable fluency in English; or
 - (b) because of any disability, to communicate with reasonable fluency in English.
- (2) Subject to subsection (3) the officer must defer any questioning in which the person is to participate until the interpreter is presents.
 - (3) The officer does not need:
 - (a) to arrange for an interpreter to be present if the officer believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable; or
 - (b) to defer any such questioning if the officer believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.
 - (4) If an interpreter is not available to be present for any questioning of the person, the officer must arrange for a telephone interpreter for the person.
 - (5) If subsection (4) applies, the officer must defer any questioning in which the person is to participate until a telephone interpreter is available.
 - (6) The officer does not need:
 - (a) to arrange for a telephone interpreter if the officer believes on reasonable grounds that the difficulty of obtaining such an interpreter makes compliance with the requirement not reasonably practicable; or
 - (b) to defer any such questioning if the officer believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.

261S Right to medical assistance

- (1) A person detained in accordance with this Act has a right to medical assistance in accordance with this section.
- (2) Where a person is detained for questioning in accordance with section 257, the officer conducting the questioning must arrange immediately for the person to receive medical attention if it appears to the officer that the person requires medical attention or the person requests medical attention on grounds that appear reasonable to the officer.

Senator Nettle, by leave, amended the amendment as follows:

Paragraph 261M(1)(b), omit “that is to include reference to the fact that the maximum investigation period may be extended beyond 7 days in accordance with section 189 and that the person, or the person’s legal representative, may make representations on that matter in accordance with section 189”.

Debate continued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 31

Senators—

Allison	Evans	Marshall	Polley
Bartlett	Faulkner	McEwen	Siewert
Brown, Bob	Forshaw	McLucas	Stephens
Brown, Carol	Hogg	Milne	Stott Despoja
Campbell, George	Hutchins	Moore	Webber (Teller)
Carr	Kirk	Murray	Wong
Conroy	Ludwig	Nettle	Wortley
Crossin	Lundy	O'Brien	

NOES, 35

Senators—

Abetz	Ellison	Joyce	Parry
Adams	Ferguson	Kemp	Ronaldson
Barnett	Fielding	Lightfoot	Santoro
Boswell	Fierravanti-Wells	Macdonald, Ian	Scullion
Brandis	Fifield	Macdonald, Sandy	Troeth
Chapman	Heffernan	Mason	Trood
Colbeck	Hill	McGauran (Teller)	Vanstone
Coonan	Humphries	Minchin	Watson
Eggleston	Johnston	Nash	

Question negatived.

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for Justice and Customs (Senator Ellison) the report from the committee was adopted.

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

Debate ensued.

Question put and passed.

Bill read a third time.

**48 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—
CHANGE IN MEMBERSHIP**

The Acting Deputy President (Senator Moore) informed the Senate that the President had received letters requesting a change in the membership of a committee.

The Minister for Justice and Customs (Senator Ellison), by leave, moved—That Senator Murray be discharged from and Senator Siewert be appointed to the Rural and Regional Affairs and Transport References Committee.

Question put and passed.

49 **LAW AND JUSTICE LEGISLATION AMENDMENT (VIDEO LINK EVIDENCE AND OTHER MEASURES) BILL 2005**

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Colbeck)—That this bill be now read a second time.

Debate resumed.

Senator Stott Despoja moved the following amendment:

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

- (a) calls on the Government, as a signatory to the Convention Against Torture, to ensure that evidence given under this bill is not obtained as a result of torture, coercion or any other inhumane treatment; and
- (b) notes that:
 - (i) it is fundamental to any Australian law that the use of such evidence is, and remains, inappropriate and prohibited, and
 - (ii) legislation passed by this Parliament must reflect Australia’s obligation and abhorrence to cruel and inhumane treatment and the use of torture”.

Debate ensued.

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

Main 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.

On the motion of the Minister for Justice and Customs (Senator Ellison) the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, item 5, page 6 (after line 16), at the end of section 15YV, add:

Definition

- (3) In this section:

substantial adverse effect means an effect that is adverse and not insubstantial, insignificant or trivial.

Schedule 1, item 25, page 17 (after line 6), at the end of section 25A, add:

Definition

- (4) In this section:

substantial adverse effect means an effect that is adverse and not insubstantial, insignificant or trivial.

Senator Ludwig moved the following amendments together by leave:

Schedule 1, item 5, page 5 (lines 28 to 30), omit “giving the direction or making the order would have a substantial adverse effect on the right of a defendant in the proceeding to receive a fair hearing”, substitute “it would be inconsistent with the interests of justice, considering the circumstances of the proceedings as a whole, for the evidence to be given by video link”.

Schedule 1, item 5, page 6 (line 16), after “justice”, insert “, considering the circumstances of the proceedings as a whole,”.

Debate ensued.

Explanatory memorandum: Senator Ellison tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Debate continued.

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

Senator Ludwig moved the following amendment:

Schedule 1, item 5, page 7 (lines 32 and 33), omit “what the person observed in relation to the giving of evidence by the witness”, substitute:

- “(i) what the person observed in relation to the giving of evidence by the witness; and
- (ii) such other observations relating to the witness’s evidence as may be determined by the court to be necessary in the case; and”.

Debate ensued.

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

Senator Stott Despoja moved the following amendment:

Schedule 1, item 5, page 8 (after line 2), after subsection 15YW(7), insert:

Other duties of an observer

(7A) If:

- (a) a direction or order is in force under section 15YV; and
- (b) the direction or order specifies a person for the purposes of this section;

the court may direct or allow the specified person to assist the witness and such assistance may include the provision of documents to the witness during cross-examination in the court and the inclusion in any report prepared in accordance with subsection (7) of information relating to the intimidation, treatment or circumstances of the witness, whether in the court or elsewhere.

Debate ensued.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of Senator Ellison the report from the committee was adopted and the bill read a third time. All Australian Democrats and Opposition senators, by leave, recorded their votes for the noes in respect of the question for the third reading.

At 9.50 pm—

50 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.19 pm till Tuesday, 8 November 2005 at 12.30 pm.

51 ATTENDANCE

Present, all senators except Senators Ferris*, Hurley, Payne and Ray* (* on leave).

HARRY EVANS
Clerk of the Senate