

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

VOTES AND PROCEEDINGS

No. 145

FRIDAY, 28 NOVEMBER 1986

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- 1 The House met, at 10 a.m., pursuant to adjournment. Madam Speaker (the Honourable Joan Child) took the Chair, and read Prayers.
 - 2 **PARLIAMENT HOUSE EMERGENCY PROCEDURES—STATEMENT BY MADAM SPEAKER:** Madam Speaker informed the House of a display of emergency equipment and procedures for Parliament House currently taking place.
 - 3 **SUSPENSION OF STANDING ORDER 48A:** Mr Young (Leader of the House), pursuant to notice, moved—That standing order 48A (adjournment of House), as amended by sessional order, be suspended for this sitting.
Debate ensued.
Question—put and passed.
 - 4 **POSTPONEMENT OF NOTICE:** Ordered—That notice No. 2, government business, be postponed until a later hour this day.
 - 5 **PETROLEUM RESOURCE RENT TAX ASSESSMENT BILL 1986:** Mr Hurford (Minister Assisting the Treasurer) presented a Bill for an Act relating to the assessment and collection of the tax imposed by the *Petroleum Resource Rent Tax Act 1986*, and for related purposes.
Bill read a first time.
Mr Hurford moved—That the Bill be now read a second time.
Paper: Mr Hurford presented an explanatory memorandum to the following Bills:
Petroleum Resource Rent Tax Assessment 1986.
Petroleum Resource Rent Tax 1986.
Petroleum Resource Rent Tax (Miscellaneous Provisions) 1986.
Petroleum Resource Rent Tax (Interest on Underpayments) 1986.
Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.
 - 6 **PETROLEUM RESOURCE RENT TAX BILL 1986:** Mr Hurford (Minister Assisting the Treasurer) presented a Bill for an Act to impose a tax in respect of the profits of certain petroleum projects.
Bill read a first time.
Mr Hurford moved—That the Bill be now read a second time.
Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.
 - 7 **PETROLEUM RESOURCE RENT TAX (INTEREST ON UNDERPAYMENTS) BILL 1986:** Mr Hurford (Minister Assisting the Treasurer) presented a Bill for an Act to impose an interest charge in respect of underpayments of certain amounts payable under the *Petroleum Resource Rent Tax Assessment Act 1986*.
Bill read a first time.

Mr Hurford moved—That the Bill be now read a second time.

Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.

8 PETROLEUM RESOURCE RENT TAX (MISCELLANEOUS PROVISIONS) BILL 1986:

Mr Hurford (Minister Assisting the Treasurer) presented a Bill for an Act to make certain amendments consequent upon the enactment of the *Petroleum Resource Rent Tax Assessment Act 1986*, and for related purposes.

Bill read a first time.

Mr Hurford moved—That the Bill be now read a second time.

Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.

9 TAXATION LAWS AMENDMENT BILL (NO. 5) 1986: Mr Hurford (Minister Assisting the Treasurer) presented a Bill for an Act to amend the law relating to taxation.

Bill read a first time.

Mr Hurford moved—That the Bill be now read a second time.

Paper: Mr Hurford presented an explanatory memorandum to the following Bills:

Taxation Laws Amendment (No. 5) 1986.

Income Tax Amendment 1986.

Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.

10 INCOME TAX AMENDMENT BILL 1986: Mr Hurford (Minister Assisting the Treasurer) presented a Bill for an Act to amend the *Income Tax Act 1986*.

Bill read a first time.

Mr Hurford moved—That the Bill be now read a second time.

Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.

11 AUSTRALIAN STOCK EXCHANGE AND NATIONAL GUARANTEE FUND BILL 1986:

Mr Bowen (Attorney-General), pursuant to notice, presented a Bill for an Act to amend laws relating to companies and securities, and for related purposes.

Bill read a first time.

Mr Bowen moved—That the Bill be now read a second time.

Paper: Mr Bowen presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Beale), and the resumption of the debate made an order of the day for the next sitting.

12 MESSAGES FROM THE SENATE: Messages from the Senate were reported returning the following Bills without amendment:

27 November 1986—Message—

No. 360—Appropriation (No. 1) 1986-87 (*without requests*).

No. 361—Appropriation (No. 2) 1986-87.

13 ENVIRONMENT AND CONSERVATION—STANDING COMMITTEE—PAPERS—

MOTION TO TAKE NOTE OF PAPERS: The order of the day having been read for the resumption of the debate on the motion of Mr Uren (Minister for Local Government and Administrative Services)—That the House take note of the papers (*presented on 16 October 1986*), viz.:

Environment and Conservation—Standing Committee—Ranger Uranium—
Water management system—

Report, dated October 1986.

Statement by Mr Milton, Chairman—

Debate resumed.

Debate adjourned (Mr Cunningham), and the resumption of the debate made an order of the day for a later hour this day.

14 MESSAGE FROM THE SENATE—BOUNTY (BOOKS) BILL 1986: Message No. 362, dated 28 November 1986, from the Senate was reported transmitting for the concurrence of the House a Bill for “*An Act to provide for the payment of bounty on the production of certain books*”.

Bill read a first time.

Mr Jones (Minister representing the Minister for Industry, Technology and Commerce) moved—That the Bill be now read a second time.

Paper: Mr Jones presented an explanatory memorandum to the Bill.

Debate, by leave, ensued.

Question—put and passed—Bill read a second time.

The House resolved itself into a committee of the whole.

In the committee

Bill, by leave, taken as a whole.

Mr Beale moved the following amendment: Clause 19, page 19, omit sub-clause (11).

Debate continued.

Question—That the amendment be agreed to—put.

The committee divided (the Deputy Chairman, Mr Millar, in the Chair)—

AYES, 47

| | | | |
|---------------------|------------------|-------------|--------------|
| Mr Adermann | Mr Cobb | Mr Hicks* | Mr Rocher |
| Mr Aldred | Mr Coleman | Mr Hodges | Mr Ruddock |
| Mr Andrew* | Mr Conquest | Mr Hunt | Mr Sharp |
| Mr Beale | Mr Cowan | Mr Jull | Mr Shipton |
| Mr Blunt | Mr Downer | Mr McGauran | Mr Sinclair |
| Mr N. A. Brown | Mr Drummond | Mr McVeigh | Mr Spender |
| Mr Burr | Dr H. R. Edwards | Mr Macphee | Mrs Sullivan |
| Mr Cadman | Mr Everingham | Mr Miles | Dr Watson |
| Mr D. M. Cameron | Mr T. A. Fischer | Mr Nehl | Mr Webster |
| Mr E. C. Cameron | Mr Hall | Mr Peacock | Mr White |
| Mr I. M. D. Cameron | Mr Halverson | Mr Porter | Mr Wilson |
| Mr Carlton | Mr Hawker | Mr Reith | |

NOES, 66

| | | | |
|-----------------|---------------|-----------------|----------------|
| Mr Baldwin | Mr Dubois | Mr Jones | Mr Mountford |
| Mr Beazley | Mr Duffy | Mrs Kelly | Mr O'Keefe |
| Mr Beddall | Mr Fitzgibbon | Mr Kent | Mr O'Neil |
| Mr Bilney | Mr Free | Mr Keogh | Mr Punch |
| Mr Blanchard | Mr Gayler | Mr Kerin | Mr Saunderson |
| Dr Blewett | Mr Gear | Dr Klugman | Mr Scott |
| Mr Bowen | Mr Gorman | Mr Lamb | Mr Simmons |
| Mr J. J. Brown | Mr Grace | Mr Lindsay | Mr Snow |
| Mr R. J. Brown | Mr Griffiths | Ms McHugh | Mr Staples |
| Mr Brumby | Mr Hand | Mr McLeay | Dr Theophanous |
| Mr Charles | Mr Hayden | Mr Maher | Mr Tickner |
| Dr Charlesworth | Mr Hollis | Mr Martin | Mr Uren |
| Mr Chynoweth | Mr Howe | Mrs Mayer | Mr West |
| Mr Cleeland | Mr Humphreys* | Mr Mildren | Mr Wright |
| Mr Cross | Mr Hurford | Mr Milton | Mr Young |
| Mr Cunningham* | Mrs Jakobsen | Mr A. A. Morris | |
| Mr Dawkins | Mr Jenkins | Mr P. F. Morris | |

* Tellers

And so it was negatived.

Bill agreed to.

Bill to be reported without amendment.

The House resumed; Mr Millar reported accordingly.

On the motion of Mr Jones, the House adopted the report, and, by leave, the Bill was read a third time.

- 15 **ENVIRONMENT AND CONSERVATION—STANDING COMMITTEE—PAPERS—MOTION TO TAKE NOTE OF PAPERS:** The order of the day having been read for the resumption of the debate on the motion of Mr Uren (Minister for Local Government and Administrative Services)—That the House take note of the papers (*presented on 16 October 1986*), viz.:

Environment and Conservation—Standing Committee—Ranger Uranium—
Water management system—

Report, dated October 1986.

Statement by Mr Milton, Chairman—

Debate resumed.

Debate adjourned (Mr Cadman), and the resumption of the debate made an order of the day for a later hour this day.

- 16 **INTERNATIONAL YEAR OF PEACE—AUSTRALIA'S CONTRIBUTION—MINISTERIAL STATEMENT:** Mr Hawke (Prime Minister), by leave, made a ministerial statement informing the House of Australia's contribution to the International Year of Peace.

Mr Howard (Leader of the Opposition), by leave, also made a statement in connection with the matter.

- 17 **MESSAGE FROM THE SENATE:** A message from the Senate was reported returning the following Bill without amendment:

28 November 1986—Message No. 365—States (Works and Housing) Assistance Amendment 1986.

- 18 **QUESTIONS:** Questions without notice were asked.

- 19 **SUSPENSION OF STANDING AND SESSIONAL ORDERS—MOTION OF CENSURE OF PRIME MINISTER:** Mr Howard (Leader of the Opposition) having delivered to the Clerk a notice of motion of censure of the Prime Minister which he proposed to move at the next sitting and the notice having been reported to the House—

Mr Young (Leader of the House) moved—That so much of the standing and sessional orders be suspended as would prevent the Leader of the Opposition moving forthwith the motion of censure of the Prime Minister of which he has given notice for the next sitting.

Question—put and passed, with the concurrence of an absolute majority.

- 20 **PRIME MINISTER—MOTION OF CENSURE:** Mr Howard (Leader of the Opposition) moved—That this House censures the Prime Minister for his failure to maintain proper standards of conduct and responsibility within his Government and calls on the Prime Minister to apply the same standards of tax compliance against his Treasurer as he expects of all other taxpayers.

Debate ensued.

Mr Sinclair (Leader of the National Party of Australia) rising to address the House—

Closure: Mr Young (Leader of the House) moved—That the question be now put.

Question—That the question be now put—put and passed.

And the question—That the motion be agreed to—being accordingly put—

The House divided (the Speaker, Mrs Child, in the Chair)—

AYES, 52

| | | | |
|---------------------|------------------|--------------|--------------|
| Mr Adermann | Mr Cobb | Mr Howard | Mr Rocher |
| Mr Aldred | Mr Coleman | Mr Hunt | Mr Ruddock |
| Mr Andrew* | Mr Conquest | Mr Jull | Mr Sharp |
| Mr Beale | Mr Cowan | Mr McGauran | Mr Shipton |
| Mr Blunt | Mr Drummond | Mr MacKellar | Mr Sinclair |
| Mr Braithwaite | Dr H. R. Edwards | Mr McVeigh | Mr Slipper |
| Mr N. A. Brown | Mr Everingham | Mr Macphee | Mr Spender |
| Mr Burr | Mr T. A. Fischer | Mr Miles | Mrs Sullivan |
| Mr Cadman | Mr Hall | Mr Millar | Mr Tuckey |
| Mr D. M. Cameron | Mr Halverson | Mr Nehl | Dr Watson |
| Mr E. C. Cameron | Mr Hawker | Mr Peacock | Mr Webster |
| Mr I. M. D. Cameron | Mr Hicks* | Mr Porter | Mr White |
| Mr Carlton | Mr Hodges | Mr Reith | Mr Wilson |

NOES, 66

| | | | |
|-----------------|---------------|-----------------|----------------|
| Mr Baldwin | Mr Dubois | Mr Jones | Mr Mountford |
| Mr Beazley | Mr Duffy | Mr Keating | Mr O'Keefe |
| Mr Beddall | Mr Fitzgibbon | Mrs Kelly | Mr Punch |
| Mr Bilney | Mr Free | Mr Kent | Mr Saunderson |
| Mr Blanchard | Mr Gayler | Mr Keogh | Mr Scholes |
| Dr Blewett | Mr Gear | Mr Kerin | Mr Scott |
| Mr Bowen | Mr Gorman | Mr Lamb | Mr Simmons |
| Mr J. J. Brown | Mr Grace | Mr Lindsay | Mr Snow |
| Mr R. J. Brown | Mr Griffiths | Ms McHugh | Mr Staples |
| Mr Brumby | Mr Hawke | Mr McLeay | Dr Theophanous |
| Mr Charles | Mr Hayden | Mr Maher | Mr Tickner |
| Dr Charlesworth | Mr Hollis | Mr Martin | Mr Uren |
| Mr Chynoweth | Mr Howe | Mrs Mayer | Mr West |
| Mr Cleland | Mr Humphreys* | Mr Mildren | Mr Wright |
| Mr Cross | Mr Hurford | Mr Milton | Mr Young |
| Mr Cunningham* | Mrs Jakobsen | Mr A. A. Morris | |
| Mr Dawkins | Mr Jenkins | Mr P. F. Morris | |

* Tellers

And so it was negatived.

- 21 **PAPER:** Madam Speaker presented the following paper:
Public Service Act—Joint House Department—Report for 1985–86.
- 22 **PAPERS:** The following papers were presented:
Audit Act—National Exhibition Centre Trust—Report for 1985–86.
Public Service Act—Department of Foreign Affairs—Report, including the activities of the Australian Development Assistance Bureau, for 1985–86.
Seat of Government (Administration) Act—Report on the operations of the Consumer Affairs Council and the Consumer Affairs Bureau under the Consumer Affairs Ordinance, the administration of the Credit Ordinance and the administration of the Sale of Motor Vehicles Ordinance, for 1985–86.
Sport Aid—
International Disaster Emergencies Committee, UNICEF—Report.
Statement by Mr J. J. Brown, Minister for Sport, Recreation and Tourism.
UNICEF involvement in Sport Aid and the Race Against Time—Preliminary report, dated 24 September 1986.
- 23 **ROYAL AUSTRALIAN AIR FORCE—SPECIAL PURPOSE FLIGHTS—PAPER—MOTION TO TAKE NOTE OF PAPER:** Mr Beazley (Minister for Defence) presented the following paper:
Royal Australian Air Force—Schedules of special purpose flights for period 1 July 1985 to 30 June 1986.
Mr Young (Leader of the House) moved—That the House take note of the paper. Debate adjourned (Mr N. A. Brown—Deputy Leader of the Opposition), and the resumption of the debate made an order of the day for the next sitting.

24 PATENTS, INNOVATION AND COMPETITION IN AUSTRALIA—REPORT BY INDUSTRIAL PROPERTY ADVISORY COMMITTEE—PAPERS AND MINISTERIAL STATEMENT—MOTION TO TAKE NOTE OF PAPERS: Mr Jones (Minister for Science) presented the following papers:

Patents, innovation and competition in Australia—Report by Industrial Property Advisory Committee—

Report, dated 29 August 1984.

Government response.

Mr Jones, by leave, made a ministerial statement in connection with the papers, and presented the following paper:

Patents, innovation and competition in Australia—Government Response—Statement by Mr Jones, Minister for Science.

Mr Young (Leader of the House) moved—That the House take note of the papers.

Debate adjourned (Mr Sinclair—Leader of the National Party of Australia), and the resumption of the debate made an order of the day for the next sitting.

25 NATIONAL PRAYER BREAKFAST—PAPER—STATEMENT BY MEMBER:

Dr H. R. Edwards, by leave, presented the following paper:

National prayer breakfast, 15 September 1986—Transcript—
and, by leave, made a statement with reference to the matter.

26 PETITIONS: The Clerk announced that the following Members had each lodged petitions for presentation, viz.:

Dr H. R. Edwards, Mr Hawker, Mr Hodges, Mr Shack and Mr Wilson—
from certain citizens; and Mr Slipper—from certain residents of the Division of Fisher praying that deletion of the 45 commonly prescribed drugs from the Pharmaceutical Benefits Scheme be reconsidered.

Dr H. R. Edwards, Mr Hawker, Mr Nehl, Mr Ruddock and Mr Slipper—
from certain citizens praying that the closure of post office agencies be prevented and their services be extended.

Mr Baldwin, Ms McHugh, Mr Staples and Mr Tickner—from certain citizens praying that the “Star Wars” plans be condemned and Australia not be associated with these plans.

Mrs Jakobsen, Mr Kent, Mr Milton and Mr Scott—from certain citizens praying that importation of cobalt 60 and other radioactive substances be banned and regulations permitting irradiation of food in Australia be disallowed.

Mr Humphreys—from certain citizens in similar terms to the last preceding petition.

Mr Blunt, Mr Carlton and Mr Hawker—from certain citizens praying that the fringe benefits tax legislation be repealed.

Mr I. M. D. Cameron—from certain citizens in similar terms to the last preceding petition.

Mr Cadman, Mr Carlton and Mr Tickner—from certain citizens praying that the Anzac Rifle Range, Malabar, NSW, be retained.

Dr H. R. Edwards, Mr Hawker and Mr Shipton—from certain citizens praying that the national flag not be changed except by a referendum.

Mr Halverson and Mr Reith—from certain citizens praying that continued assistance be provided to the footwear industry.

Mr Hawker and Mr Reith—from certain citizens praying that the Flags Amendment Bill receive a speedy passage.

Mr Howe—from certain citizens; and Mr Hawker—from certain residents of the Division of Wannon praying that tertiary education remain free to all students.

Mr Milton and Mr Tickner—from certain staff of the ABC and the SBS praying that certain action be taken in relation to the Staff Elected Director of the ABC following the ABC's amalgamation with the SBS.

Mr Moore and Mr White—from certain citizens praying that full funding be restored to the English as a second language program.

- Mr Aldred—from certain citizens praying that the decision to phase down the Glen Waverley Rehabilitation Centre, Vic., be reversed.
- Mr Beale—from certain citizens praying that the fringe benefits tax and other taxes and administrative burdens on small businesses be repealed.
- Mr Blanchard—from certain citizens praying that Western Australian regional evening programs be retained by the ABC and Western Australia be represented on the board of the ABC.
- Mr Blanchard—from certain residents of Western Australia praying that the decision to deny secondary allowances to Year 11 students under the age of 16 years be reversed and allowances not be made directly payable to students.
- Mr Blunt—from certain residents of the Division of Richmond praying that the capital gains tax be repealed.
- Mr Cadman—from certain citizens praying that the proposal for an identification card be rejected.
- Mr Cadman—from certain residents of New South Wales praying that the Western Sydney State University be established in conjunction with the NSW Government.
- Mrs Darling—from certain citizens praying that separatist terrorism in Sri Lanka be condemned and certain other action be taken in relation to Sri Lanka.
- Mr Drummond—from certain citizens praying that the Extradition (Foreign States) Act be amended to protect the rights of accused persons.
- Mr Drummond—from certain citizens praying that the fringe benefits tax be cancelled.
- Mr Everingham—from certain citizens praying that incentive and opportunity be restored to the Australian economy and certain restrictions on small business be abandoned.
- Mr Halverson—from certain residents of Victoria praying that the fringe benefits tax legislation be withdrawn.
- Mr Hawker—from certain citizens praying that the commitment to the oil import parity pricing policy be honoured.
- Mr Hawker—from certain citizens praying that family allowance payments be increased and proposed changes to the spouse rebate be rejected.
- Mr Hawker—from certain citizens praying that the Australian Bill of Rights Bill be opposed and certain other action be taken in relation to the Bill.
- Mr Hawker—from certain citizens praying that the assets test on pensions be repealed.
- Mr Hodges—from certain citizens praying that price controls be applied to food and certain other items.
- Mr Katter—from certain citizens praying that certain areas off the Queensland coast be designated as Marine National Park A Zone.
- Mr Kent—from certain citizens praying that the Government support the stand taken by the New Zealand Government on nuclear vessels and that the policy of developing zones of peace and nuclear free zones in the Indian and Pacific Oceans be implemented.
- Mr Mildren—from certain citizens praying that certain action be taken to minimise the risk of an outbreak of potato cyst nematode.
- Mr Milton—from certain citizens praying that the US Government be urged to join the Soviet Union's nuclear test ban.
- Mr Milton—from certain residents of Victoria praying that the decision to sell uranium to France be reversed.
- Mr A. A. Morris—from certain residents of the Hunter Valley, NSW, praying that entry of any potentially nuclear-armed or powered warships into Newcastle Harbour be prevented.
- Mr Nehl—from certain citizens; and from certain residents of the Division of Cowper praying that the superannuation claim of the trade union movement be rejected and superannuation be allowed to develop without trade union domination.

- Mr Nehl—from certain citizens praying that the Australian Bill of Rights Bill and associated bills be rejected, the Human Rights and Equal Opportunity Commission be abolished and ratification of the Covenant on Civil and Political Rights be withdrawn.
- Mr Nehl—from certain citizens praying that funding be provided to improve the Pacific Highway between Port Macquarie and Woolgoolga, NSW.
- Mr Ruddock—from certain citizens praying that funding be restored to the English as a second language and multicultural education programs.
- Mr Shack—from certain citizens praying that legislative changes be made to broadcasting to improve the quality of television.
- Mr Slipper—from certain citizens praying that the fringe benefits tax be abandoned.
- Mr Slipper—from certain citizens praying that measures be taken to reduce the burden of imposed costs and regulation on Australian horticultural growers.
- Mr Slipper—from certain residents of the Division of Fisher praying that the Australian Bill of Rights Bill be repealed.
- Mr Slipper—from certain residents of the Division of Fisher praying that the assets test be reconsidered.
- Mr Slipper—from certain residents of the Division of Fisher praying that the right to work be acknowledged and protected and that certain other action be taken to protect workers.
- Mr Slipper—from certain residents of the Division of Fisher praying that means be sought for the protection of the people's interest to reverse the decision to hand Ayers Rock over to an Aboriginal Land Council.
- Mr Slipper—from certain residents of the Division of Fisher praying that home loan interest rates be tax deductible.
- Mr Slipper—from certain residents of the Division of Fisher praying that pharmaceutical benefits be restored to their former level.
- Mr Slipper—from certain residents of the Division of Fisher praying that the existing national flag remain sacrosanct.
- Mr Slipper—from certain residents of Queensland praying that public funding for projects which are undesirable or of dubious worth be halted.
- Mr Slipper—from certain residents of the Shire of Caboolture, Qld, praying that the capital gains tax proposal be abandoned.
- Mr Tickner—from certain residents of New South Wales; and from certain residents of Sutherland Shire, NSW, praying that an additional nuclear reactor not be constructed at Lucas Heights.
- Mr Tickner—from certain citizens in similar terms to the last preceding petition.
- Mr Tickner—from certain citizens praying that an Australian republic be created on or before 1 January 1988.
- Mr Tickner—from certain citizens praying that the export of kangaroo products be banned and action be taken to prohibit the commercial killing of kangaroos.

Petitions received.

- 27 PROPOSED DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—TAX ADMINISTRATION:** The House was informed that Mr Carlton had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The growing sense of outrage and frustration in the community over the excessive size and unfair manner of administration of the tax burden imposed by the Hawke Government".

The proposed discussion having received the necessary support—

Mr Carlton rising to address the House—

Mr Young (Leader of the House) moved—That the business of the day be called on.

Question—put and passed.

- 28 PUBLIC ACCOUNTS COMMITTEE—PAPERS: Mrs Mayer presented the following report from the Joint Committee of Public Accounts:

263rd Report—Aspects of defence equipment support—Volume 1—Spares and ammunition—

and, by leave, presented the following paper:

Public Accounts Committee—263rd Report—Statement by Mrs Mayer, dated 28 November 1986.

- 29 MESSAGE FROM THE SENATE—HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1985: The following message from the Senate was reported:

Message No. 363

Madam Speaker,

The Senate returns to the House of Representatives the Bill for "*An Act to establish the Human Rights and Equal Opportunity Commission, to make provision in relation to human rights and in relation to equal opportunity in employment, and for related purposes*", and acquaints the House that the Senate has agreed to the Bill with the Amendments indicated by the annexed Schedule, in which Amendments the Senate requests the concurrence of the House of Representatives.

D. MCCLELLAND
President

The Senate,

Canberra, 28 November 1986

Ordered—That the amendments be taken into consideration, in committee of the whole House, forthwith.

In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

No. 1—Page 2, sub-clause 3 (1), definition of "appointed member", lines 9 and 10, leave out the definition, insert the following definition:

"'appointed member' means the President or the Human Rights Commissioner;";

No. 2—Page 4, sub-clause 3 (1), definition of "discrimination", sub-paragraph (b) (ii), lines 7 to 9, leave out the sub-paragraph, insert the following sub-paragraph:

"(ii) has been declared by the regulations to constitute discrimination for the purposes of this Act,".

No. 3—Page 4, sub-clause 3 (1), definition of "discrimination", lines 10 and 11, leave out "but does not include any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of the job;"; insert "but does not include any distinction, exclusion or preference:

(c) in respect of a particular job based on the inherent requirements of the job; or

(d) in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed;";

No. 4—Pages 7 and 8, clause 8, line 35 (page 7) to line 34 (page 8), leave out the clause, insert the following clause:

Constitution of Commission

“8. (1) The Commission shall consist of—

- (a) a President;
- (b) a Human Rights Commissioner;
- (c) the Race Discrimination Commissioner; and
- (d) the Sex Discrimination Commissioner.

“(2) The President and the Human Rights Commissioner shall be appointed by the Governor-General.

“(3) The President shall be appointed as a part-time member.

“(4) The Human Rights Commissioner shall be a legally qualified person appointed as a full-time member.

“(5) The affairs of the Commission shall, in accordance with the decisions and subject to the directions of the Commission, be administered by the Human Rights Commissioner.

“(6) The functions of the Commission under paragraphs 11 (1) (f) and 31 (1) (b) and the functions of the Commission under paragraphs 11 (1) (p) and 31 (1) (k), to the extent that they relate to the performance of the first-mentioned functions, shall be performed by the Human Rights Commissioner, and a reference in this Act to the Commission or to a member of the Commission shall, in relation to the performance of any of those functions, be read as a reference to the Human Rights Commissioner.

“(7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of a vacancy in the office of President, Human Rights Commissioner, Race Discrimination Commissioner or Sex Discrimination Commissioner.

“(8) In this section, ‘legally qualified person’ means a person who—

- (a) is or has been a Judge of a court created by the Parliament or of a court of a State or a person who has the same designation and status as a Judge of a court created by the Parliament; or
- (b) is enrolled as a barrister or solicitor, as a barrister and solicitor, or as a legal practitioner, of the High Court, of another federal court or of the Supreme Court of a State or Territory.”

No. 5—Page 10, paragraph 11 (1) (k), line 11, before “when requested by the Minister”, insert “on its own initiative or”.

No. 6—Page 13, sub-clause 17 (1), lines 17 to 19, leave out:

“The Minister may, if the Minister considers it desirable, establish an advisory committee or advisory committees, and an advisory committee so established shall perform such of the following functions as the Minister directs:”

insert:

“The Minister shall establish at least one advisory committee, and may, if the Minister considers it desirable, establish 2 or more advisory committees, to perform such of the following functions as the Minister directs:”

No. 7—Pages 13 and 14, clause 19, line 35 (page 13) to line 12 (page 14), leave out the clause, insert the following new clause:

Delegation

“19. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member of the Commission, a member of the staff of the Commission or another person or body of persons all or any of the powers conferred on the Commission under this Act, other than this power of delegation.

“(2) A member may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the member, delegate to—

- (a) a member of the staff of the Commission; or
- (b) any other person or body of persons,

approved by the Commission, all or any of the powers exercisable by the member under this Act, other than this power of delegation.

“(3) A power delegated by the Commission under sub-section (1) or by a member under sub-section (2), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission or by the member, as the case may be.

“(4) A delegation under this section by the Commission or by a member does not prevent the exercise of a power by the Commission or by the member, as the case may be.

“(5) Subject to any provision in the instrument of delegation, a person to whom a power of the Commission has been delegated under sub-section (1) may, for the purposes of the exercise of that power, exercise any power conferred on a member of the Commission by this Act.

“(6) In sub-section (1), ‘power’ does not include a power conferred on the Commission by the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*.

“(7) In this section, unless the contrary intention appears, ‘member’ means a member of the Commission.”.

No. 8—Page 17, clause 23, at end of clause, add the following new sub-clause:

“(3) Without limiting the generality of the expression ‘reasonable excuse’ in this section, it is hereby declared for the avoidance of doubt that it is a reasonable excuse for a person to refuse or fail to furnish information, produce a document or answer a question when required to do so under this Act, that the information, the production of the document or the answer to a question might tend to incriminate that person.”.

No. 9—Page 19, sub-clause 24 (3), lines 13 to 18, leave out all words after paragraph (c).

No. 10—Page 19, sub-clause 24 (5), lines 26 to 30, leave out the sub-clause.

No. 11—Page 19, sub-clause 26 (1), line 40, leave out “insult,”.

No. 12—Page 24, sub-clause 31 (2), lines 7 to 10, leave out the sub-clause.

No. 13—Pages 27 and 28, clause 36, line 6 (page 27) to line 2 (page 28), leave out the clause, insert the following clause:

Acting President and Human Rights Commissioner

“36. (1) If the Human Rights Commissioner is available, the Human Rights Commissioner shall act as President—

- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
- (b) during any period when the President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of President.

“(2) The Minister may appoint a person to act as President—

- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of President,

but—

- (c) a person so appointed shall not act as President during any period while the Human Rights Commissioner is available so to act; and
- (d) a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(3) The Minister may appoint a person to act as Human Rights Commissioner—

- (a) during a vacancy in the office of Human Rights Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Human Rights Commissioner is absent from duty or from Australia, or is, for any other

reason, unable to perform the functions of the office of Human Rights Commissioner,
but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(4) An appointment of a person under sub-section (2) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(5) The Minister may—

(a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as President or Human Rights Commissioner pursuant to an appointment under sub-section (2) or (3); and

(b) terminate such an appointment at any time.

“(6) Where a person is acting as President or Human Rights Commissioner in circumstances referred to in paragraph (2) (b) or (3) (b) and the office of President or Human Rights Commissioner, as the case may be, becomes vacant while that person is so acting, then, subject to sub-sections (1) and (4), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurred expires, whichever first happens.

“(7) The appointment of a person to act as President or Human Rights Commissioner under sub-section (2) or (3) ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

“(8) While a person is acting as President or Human Rights Commissioner, the person may exercise all the powers, and shall perform all the functions, of the President or Human Rights Commissioner, as the case may be.

“(9) At any time when a person who is not a member of the Commission is acting as President or Human Rights Commissioner, the person shall be deemed to be a member of the Commission for the purposes of sections 21, 22, 23, 24 and 26 (including those sections as applied by section 33) and sections 42, 48 and 49.

“(10) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that—

(a) the occasion for the person's appointment had not arisen;

(b) there is a defect or irregularity in connection with the person's appointment;

(c) the person's appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.”

No. 14—Page 28, sub-clause 37 (1), line 5, leave out “5 years”, insert “7 years”.

No. 15—Page 29, sub-clause 43 (2), line 36, leave out “President”, insert “Human Rights Commissioner”.

No. 16—Page 30, sub-clause 44 (5), lines 11 and 12, leave out the sub-clause, insert the following sub-clause:

“(5) If the President is not present at a meeting of the Commission—

(a) if the Human Rights Commissioner is present, the Human Rights Commissioner shall preside at the meeting; or

(b) in any other case, the members present shall elect one of their number to preside at that meeting.”

On the motion of Mr Bowen (Attorney-General), the amendments were agreed to, after debate.

Resolution to be reported.

The House resumed; Mr Ruddock reported accordingly.

On the motion of Mr Bowen, the House adopted the report.

30 MESSAGE FROM THE SENATE—HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1985: The following message from the Senate was reported:
Message No. 364

Madam Speaker,

The Senate returns to the House of Representatives the Bill for "*An Act to repeal the 'Human Rights Commission Act 1981' and to enact certain transitional provisions and make certain amendments in consequence of the enactment of the 'Human Rights and Equal Opportunity Commission Act 1985'*", and acquaints the House that the Senate has agreed to the Bill with the Amendments indicated by the annexed Schedule, in which Amendments the Senate requests the concurrence of the House of Representatives.

D. MCCLELLAND
President

The Senate,
Canberra, 28 November 1986

Ordered—That the amendments be taken into consideration, in committee of the whole House, forthwith.

In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

No. 1—Page 4, paragraph 12 (a), line 31, leave out "and".

No. 2—Page 4, paragraph 12 (b), lines 32 and 33, leave out the paragraph, insert the following paragraphs:

"(b) by omitting from sub-section (1) the definition of 'Human Rights Commission' and substituting the following definition:

"Federal Court" means the Federal Court of Australia;"; and

(c) by inserting after the definition of 'member' in sub-section (1) the following definition:

"registered organisation" means an organisation registered pursuant to the *Conciliation and Arbitration Act 1904*;"

No. 3—Pages 5 and 6, clauses 14 to 20, line 1 (page 5) to line 4 (page 6), leave out the clauses, insert the following clauses:

Land, housing and other accommodation

"14. Section 12 of the Principal Act is amended by adding at the end the following sub-section:

'(3) Nothing in this section renders unlawful an act in relation to accommodation in a dwelling-house or flat, being accommodation shared or to be shared, in whole or in part, with the person who did the act or a person on whose behalf the act was done or with a relative of either of those persons.'

Employment

"15. Section 15 of the Principal Act is amended by adding at the end the following sub-section:

'(5) Nothing in this section renders unlawful an act in relation to employment, or an application for employment, in a dwelling-house or flat occupied by the person who did the act or a person on whose behalf the act was done or by a relative of either of those persons.'

Advertisements

"16. Section 16 of the Principal Act is amended by adding at the end 'or an act that would, but for sub-section 12 (3) or 15 (5), be unlawful by reason of section 12 or 15, as the case may be'.

"17. Part III of the Principal Act is repealed and the following Part is substituted:

'PART III—INQUIRIES AND CIVIL PROCEEDINGS

'Division 1—Preliminary

Race Discrimination Commissioner

'19. For the purposes of this Act there shall be a Race Discrimination Commissioner.

Functions of Commission

'20. (1) The following functions are hereby conferred on the Commission:

- (a) to inquire into alleged infringements of Part II, and endeavour by conciliation to effect settlements of the matters alleged to constitute those infringements;
- (b) to promote an understanding and acceptance of, and compliance with, this Act;
- (c) to develop, conduct and foster research and educational programs and other programs for the purpose of—
 - (i) combating racial discrimination and prejudices that lead to racial discrimination;
 - (ii) promoting understanding, tolerance and friendship among racial and ethnic groups; and
 - (iii) propagating the purposes and principles of the Convention;
- (d) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of infringements of Part II;
- (e) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve racial discrimination issues;
- (f) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner.

'(2) The Commissioner shall not participate in any inquiry held by the Commission under Division 3 or attend any meeting of the Commission, be present during any deliberation of the Commission, or take part in any decision of the Commission, in connection with such an inquiry.

Function of Commissioner

'21. The function of the Commission under paragraph 20 (1) (a) shall be performed by the Commissioner on behalf of the Commission.

Complaints

'22. (1) A complaint in writing alleging that a person has done an act that is unlawful by virtue of a provision of Part II may be lodged with the Commission by—

- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and another person or other persons aggrieved by the act;
- (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and another person or other persons aggrieved by the act;
- (c) a person or persons included in a class of persons aggrieved by the act, on behalf of the persons included in that class of persons; or
- (d) a trade union of which a person or persons, or persons included in a class of persons, aggrieved by the act is a member or are members, on behalf of that person, those persons or persons included in that class of persons, as the case may be.

'(2) In this section, "trade union" means—

- (a) an organisation of employees that is a registered organisation;
- (b) a trade union within the meaning of any State Act or law of a Territory; or
- (c) any other similar body.

Commissioner deemed to be a complainant

'23. Where—

- (a) the Commissioner has referred to the Commission a matter that came before the Commissioner otherwise than as the result of the making of a complaint to the Commission; or
- (b) the Minister has referred a matter to the Commission under section 25, then, for the purposes of any inquiry into the matter by the Commission, this Act has effect as if—
 - (c) the matter had been the subject of a complaint;
 - (d) the reference to the complainant in section 25F were a reference to the Commissioner; and
 - (e) a reference to the respondent were a reference to the person who is, or each of the persons who are, alleged to have done the act to which the matter relates.

Division 2—Inquiries by Commissioner**Inquiries by Commissioner**

'24. (1) Where—

- (a) a complaint relating to an alleged unlawful act is made to the Commission under section 22; or
 - (b) it appears to the Commission that a person has done an act that is unlawful by virtue of a provision of Part II,
- the Commission shall notify the Commissioner accordingly and the Commissioner shall, subject to sub-section (2), inquire into the act and endeavour, by conciliation, to effect a settlement of the matter to which the act relates.

'(2) The Commissioner may decide not to inquire into an act, or, if the Commissioner has commenced to inquire into an act, decide not to continue to inquire into the act, if—

- (a) the Commissioner is satisfied that the act is not unlawful by reason of a provision of Part II;
- (b) the Commissioner is of the opinion that the person aggrieved by the act does not desire, or none of the persons aggrieved by the act desires, that the inquiry be made or continued;
- (c) in a case where a complaint has been made to the Commission in relation to the act, a period of more than 12 months has elapsed since the act was done; or
- (d) in a case where a complaint has been made to the Commission in relation to the act, the Commissioner is of the opinion that the complaint was frivolous, vexatious, misconceived or lacking in substance.

'(3) Where the Commissioner decides not to inquire into, or not to continue to inquire into, an act in respect of which a complaint was made to the Commission, the Commissioner shall give notice in writing to the complainant or each of the complainants of that decision, of the reasons for that decision and of the rights of the complainant or each of the complainants under sub-section (4).

'(4) Where the Commissioner has given a complainant a notice under sub-section (3), the complainant may, within 21 days after receipt of the notice, by notice in writing served on the Commissioner, require the Commissioner to refer the complaint to the Commission.

'(5) On receipt of a notice under sub-section (4), the Commissioner shall refer the complaint to the Commission together with a report relating to any inquiries made by the Commissioner into the complaint.

'(6) The Commissioner may, for the purposes of this Act, obtain information from such persons, and make such inquiries, as the Commissioner thinks fit.

Application for interim determination under section 25Y

'24A. (1) The Commissioner, at any time after a complaint is lodged and before the Commissioner declines to entertain the complaint, resolves the complaint by conciliation or refers the matter to which the complaint relates to

the Commission under sub-section 24E (1), may apply to the Commission for the making of an interim determination under section 25Y or for the variation or revocation of any such determination.

'(2) In relation to a matter arising under paragraph 24 (1) (b), the Commissioner may apply to the Commission for the making of an interim determination under section 25Y, or for the variation or revocation of any such determination, at any time.

Power to obtain information and documents

'24B. (1) Where the Commissioner has reason to believe that a person is capable of furnishing information (in this sub-section referred to as "relevant information") or producing documents (in this sub-section referred to as "relevant documents") relevant to an inquiry under this Division, the Commissioner may, by notice in writing served on the person, require the person, at such place, and within such period or on such date and at such time, as are specified in the notice—

- (a) to furnish to the Commissioner, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, such relevant information (if any) as is specified in the notice; and
- (b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.

'(2) Where documents are produced to the Commissioner in accordance with a requirement under sub-section (1), the Commissioner—

- (a) may take possession of, and may make copies of, or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

Directions to persons to attend compulsory conference

'24C. (1) For the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates, in accordance with section 24, the Commissioner may, by notice in writing, direct the persons referred to in sub-section (2) of this section to attend, at a time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.

'(2) Directions under sub-section (1) to attend a conference in relation to an act shall be given to—

- (a) where a complaint was made to the Commission in relation to that act—the complainant, or all the complainants, as the case requires;
- (b) the person who is alleged to have done the act; and
- (c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to the settlement of the matter to which the act relates.

'(3) A person who has been given a direction under sub-section (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

'(4) The Commissioner may, in a notice given to a person under sub-section (1), require the person to produce such documents at the conference as are specified in the notice.

Compulsory conference

'24D. (1) The person presiding at a conference held under this Division may require a person attending the conference to produce a document.

'(2) A conference under this Division shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the conference thinks fit.

'(3) Subject to sub-section (4), a body of persons, whether corporate or unincorporate, that is directed under section 24C to attend a conference shall be deemed to attend if an officer or employee of that body attends on behalf of that body.

'(4) Except with the consent of the person presiding at a conference under this Division—

- (a) a natural person is not entitled to be represented at the conference by another person; and
- (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

Reference of matters to the Commission

'24E. (1) Where the Commissioner—

- (a) is of the opinion that a matter cannot be settled by conciliation;
- (b) has endeavoured to settle a matter by conciliation but has not been successful; or
- (c) is of the opinion that the nature of a matter is such that it should be referred to the Commission,

the Commissioner shall refer the matter to the Commission together with a report relating to any inquiries made by the Commissioner into the matter.

'(2) A report for the purposes of sub-section (1) shall not set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division).

'(3) Evidence of anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division) is not admissible in subsequent proceedings under this Part relating to the matter.

'Division 3—Inquiries by Human Rights and Equal Opportunity Commission Minister may appoint persons to participate in inquiries

'24F. (1) The Minister may appoint a person to participate, in accordance with this section, in the performance of the functions of the Commission.

'(2) The Minister may, under sub-section (1), appoint such number of persons as the Minister considers necessary for the purposes of this section.

'(3) A person who holds an appointment under sub-section (1) may, at the request of the President, participate in the holding of an inquiry under this Division as if the person were a member of the Commission and, for the purposes of the application of this Act in relation to the inquiry, the person shall be deemed to be a member of the Commission.

'(4) A person appointed under sub-section (1)—

- (a) holds the appointment for such period, not exceeding 5 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment; and
- (b) may resign the appointment by writing signed by the person and delivered to the Minister.

'(5) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration, of a person appointed under sub-section (1); and
- (b) at any time terminate such an appointment.

'(6) The Minister may, for the purpose of appointing under sub-section (1) a person who is the holder of a judicial office of a State, enter into such arrangement with the appropriate Minister of the State as is necessary to secure that person's services.

'(7) An arrangement under sub-section (6) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

'(8) The appointment under sub-section (1) of the holder of a judicial office, or service by the holder of a judicial office pursuant to such an appointment, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service pursuant to such an appointment shall be taken to be service as the holder of that judicial office.

'(9) Unless the contrary intention appears, in this section—

“judicial office” means—

- (a) an office of Judge of a court created by the Parliament; or
- (b) an office the holder of which has, by virtue of holding that office, the same status as a Judge of a court created by the Parliament;

“State” includes the Northern Territory.

Reference of matter to the Commission by the Minister

'25. The Minister may refer any matter to the Commission for inquiry as a complaint under this Part.

Inquiries into complaints

'25A. (1) Subject to sub-section (2), the Commission shall hold an inquiry into each complaint or matter referred to it under sub-section 24 (5) or 24E (1) or section 25.

'(2) The Commission shall not hold, or shall discontinue, an inquiry into a complaint or matter referred to it—

- (a) in the case of a complaint or matter referred to it under sub-section 24 (5) or 24E (1)—if the complainant notifies the Commission that the complainant does not wish the inquiry to be held or to continue; or
- (b) in the case of a matter referred to it under section 25—if the Minister notifies the Commission that the Minister does not wish the inquiry to be held or to continue.

Exercise of inquiry powers by Commission

'25B. (1) Subject to sub-section 20 (2), the powers of the Commission to hold inquiries under this Act may, if the President so directs, be exercised by a single member of the Commission who is a legally qualified person, or by 2 or more members of the Commission, at least one of whom is a legally qualified person.

'(2) Where the power of the Commission to hold an inquiry is being exercised by 2 or more members of the Commission—

- (a) if only one of those members is a legally qualified person—that member shall preside; or
- (b) if 2 or more of those members are legally qualified persons—
 - (i) if one of those persons is the President—the President shall preside; or
 - (ii) in any other case—those members shall elect one of those persons to preside.

'(3) In this section, “legally qualified person” means a person who—

- (a) is or has been a Judge of a court created by the Parliament or of a court of a State or a person who has the same designation and status as a Judge of a court created by the Parliament; or
- (b) is enrolled as a barrister or solicitor, as a barrister and solicitor, or as a legal practitioner, of the High Court, of another federal court or of the Supreme Court of a State or Territory.

Single inquiry in relation to several complaints

'25C. Where the Commission is of the opinion that 2 or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

Joinder of parties by the Commission

'25D. Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Commission is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry.

Notice of inquiry and rights of parties at inquiry

'25E. (1) The Commission—

- (a) shall give a party to an inquiry, other than a person to whom the Commission grants leave to appear as a party to the inquiry, such notice in such manner as the Commission determines of the time and place at which it intends to hold the inquiry; and
- (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Commission.

'(2) If a party to an inquiry to whom notice has been given under paragraph (1) (a) fails to attend at the time and place specified for the inquiry, the Commission may hold the inquiry in the absence of that party.

Parties to an inquiry

'25F. The parties to an inquiry shall be the complainant, the respondent, any person joined by the Commission as a party to the inquiry and any person to whom the Commission grants leave to appear as a party to the inquiry.

Right of appearance and to representation

'25G. (1) A party to an inquiry—

- (a) shall appear personally or, where the party is a body of persons, whether corporate or unincorporate, by an officer, employee or agent of the body; and
- (b) may—
 - (i) if the Commission has made arrangements under sub-section 25K (1) for counsel to appear at the inquiry to assist the Commission; or
 - (ii) in any other case—with the leave of the Commission, be represented by a solicitor or counsel or an agent.

'(2) A person, other than a solicitor or counsel, is not entitled to demand or receive any fee or reward for representing a party to an inquiry.

Inquiries may be held in private

'25H. (1) Subject to sub-section (2), an inquiry shall be held in public.

'(2) The Commission may, of its own motion or on the application of a party to the inquiry, if it is satisfied that it is appropriate to do so, direct that an inquiry, or a part of an inquiry, be held in private.

Commission may prohibit publication of evidence, &c.

'25J. (1) The Commission may direct that—

- (a) any evidence given before it;
- (b) the contents of any document produced to the Commission; or
- (c) any information that might enable a person who has appeared before the Commission to be identified,

shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

'(2) Nothing in this section shall be taken to derogate from the Commission's powers under section 25H.

Counsel assisting the Commission

'25K. (1) The Commission may make arrangements for counsel to appear at an inquiry to assist the Commission.

'(2) Counsel assisting the Commission at an inquiry pursuant to arrangements made under sub-section (1) shall, in relation to that inquiry, be subject to the control and direction of the Commission.

Determination of representative complaints

'25L. At an inquiry held in respect of a complaint that appears to the Commission to be a representative complaint, the Commission shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Matters to be considered in determination of representative complaints

'25M. (1) The Commission shall not deal with a complaint as a representative complaint unless it is satisfied that the complaint was made on behalf of persons other than the complainant in good faith.

'(2) In considering whether a complaint was made on behalf of persons other than the complainant in good faith, the Commission shall satisfy itself—

(a) that—

- (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;
- (ii) the complainant has in fact been affected by the conduct of the respondent;
- (iii) the class is so numerous that joinder of all its members is impracticable;
- (iv) there are questions of law or fact common to all members of the class;
- (v) the claims of the complainant are typical of the claims of the class;
- (vi) multiple complaints would be likely to produce varying determinations that could have incompatible or inconsistent results for the individual members of the class; and
- (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or

(b) that, notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

Amendment of representative complaints

'25N. (1) Where the Commission is satisfied that a complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Commission may amend the complaint so that the complaint can be dealt with as a representative complaint.

'(2) Where the Commission is satisfied that a complaint has been wrongly made as a representative complaint, the Commission may amend the complaint by removing the names of the persons or the description of the class of persons on whose behalf the complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

Ordinary complaints not precluded by representative complaints

'25P. Nothing in this Part prevents a person from lodging a complaint, other than a representative complaint, under section 22, notwithstanding that the conduct in respect of which the complaint is lodged is also the conduct in respect of which a representative complaint has been lodged.

Resolution of complaint by conciliation

'25Q. The Commission—

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and
- (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements.

Evidence and findings in other proceedings

'25R. In the course of an inquiry, the Commission may, in its discretion—

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact from that transcript that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (c) receive in evidence any report of the Commissioner if a copy of that report has been made available to every other party to the inquiry.

Powers of Commission to take evidence

'25S. (1) The Commission may take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation.

'(2) A member of the Commission may summon a person to appear before the Commission to give evidence and to produce such documents (if any) as are referred to in the summons.

'(3) A person to whom an inquiry under this Part relates or who is a party to proceedings before the Commission may call witnesses.

'(4) A person appearing as a witness before the Commission may be examined, cross-examined and re-examined.

Fees for witnesses

'25T. (1) A person summoned to appear before the Commission is entitled to be paid, in respect of the person's attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations.

'(2) Subject to sub-section (3), the fees and allowances shall be paid—

- (a) in a case where the person was summoned at the request of a person other than the Commonwealth—by the person who made the request; or
- (b) in any other case—by the Commonwealth.

'(3) The Commission may, in its discretion, order that the fees and allowances payable to a person summoned as mentioned in paragraph (2) (a) shall be paid, in whole or in part, by the Commonwealth.

Retention and copying of documents

'25U. The Commission may retain for a reasonable period and may make copies of, or of part of, any documents produced to the Commission in the course of an inquiry or proceedings.

Application of rules of evidence, &c.

'25v. (1) For the purposes of an inquiry, the Commission—

- (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit;
- (b) shall conduct the inquiry with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commission permit; and
- (c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

'(2) The member conducting, or presiding at, an inquiry shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

Consideration of exceptions and exemptions

'25W. In determining whether an act is unlawful by reason of a provision of Part II, the Commission is not required to have regard to any exception or exemption provided for in that Part unless there is evidence before the Commission that the exception or exemption is or may be applicable in relation to that act.

Commission may dismiss frivolous, &c., complaints

'25X. Where, at any stage of an inquiry, the Commission is satisfied that a complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of Part II, it may dismiss the complaint.

Making of interim determination

'25Y. (1) The Commission, or, where the President is of the opinion that it is expedient that the President alone should perform the functions of the Commission under this section, the President, may, on the application of the Commissioner under section 24A or on the application of a party to an inquiry at any time after the lodgement of the complaint into which that inquiry is held, make an interim determination of such a nature as would, if it were binding and conclusive upon the parties, preserve—

- (a) the status quo between the parties to the complaint; or
 - (b) the rights of the parties to the complaint,
- pending completion of the matter the subject of the complaint.

'(2) An interim determination under sub-section (1) is not binding or conclusive between any of the parties to the determination.

Determination or other decision of the Commission

'25Z. (1) After holding an inquiry, the Commission may—

- (a) dismiss the complaint the subject of the inquiry; or
- (b) find the complaint substantiated and make a determination, which may include any one or more of the following:
 - (i) a declaration that the respondent has engaged in conduct rendered unlawful by this Act and should not repeat or continue such unlawful conduct;
 - (ii) a declaration that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
 - (iii) a declaration that the respondent should employ or re-employ the complainant;
 - (iv) except where the complaint was dealt with as a representative complaint—a declaration that the respondent should pay to the complainant damages by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;
 - (v) a declaration that the respondent should promote the complainant;
 - (vi) a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the complainant;
 - (vii) a declaration that it would be inappropriate for any further action to be taken in the matter.

'(2) A determination of the Commission under sub-section (1) is not binding or conclusive between any of the parties to the determination.

'(3) The Commission may, in the making of a determination under sub-section (1), state any findings of fact upon which the determination is based.

'(4) The damage referred to in paragraph (1) (b) includes injury to the complainant's feelings or humiliation suffered by the complainant.

Proceedings in Federal Court

'25ZA. (1) The Commission or complainant may institute a proceeding in the Federal Court for an order to enforce a determination made pursuant to sub-section 25Y (1) or 25Z (1).

'(2) Where the Federal Court is satisfied that the respondent has engaged in conduct or committed an act that is unlawful under this Act, the Federal Court may make such orders (including a declaration of right) as the Federal Court thinks fit.

'(3) Orders made by the Federal Court under sub-section (2) may give effect to a determination of the Commission.

Assistance in proceedings before Commission

'25ZB. (1) Where—

- (a) a person has made a complaint in respect of which the Commission has held an inquiry under section 25A and the Commission has found the complaint to be substantiated; or
- (b) a person has done or is alleged to have done an act in respect of which an inquiry has been held by the Commission under section 25A and the Commission dismisses the complaint the subject of the inquiry,

the Commission may, in its discretion, recommend to the Attorney-General that assistance be given to the person in respect of expenses incurred by the person in connection with the inquiry.

'(2) Where a recommendation is made by the Commission under sub-section (1) in relation to a person, the Attorney-General may authorise the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such financial assistance in respect of expenses incurred by the person in connection with the inquiry as the Attorney-General determines.

Assistance in proceedings before Federal Court

'25ZC. (1) A person who—

- (a) has instituted or proposes to institute a proceeding before the Federal Court under section 25ZA; or
 - (b) has done or is alleged to have done an act in respect of which a proceeding has been instituted in the Federal Court under section 25ZA,
- may apply to the Attorney-General for the provision of assistance under this section in respect of the proceeding.

'(2) Where an application is made by a person under sub-section (1) and the Attorney-General is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application be granted, the Attorney-General may authorise the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the proceedings as the Attorney-General determines.'

No. 4—Page 6, paragraph 21 (a), lines 7 to 10, leave out the paragraph, insert the following paragraphs:

"(a) by omitting from sub-section (1) 'insult,' and 'sections 21 and 22 of';

(aa) by inserting after sub-section (1) the following penalty:

'Penalty for an offence against sub-section (1):

(a) in the case of a natural person—\$1,000; or

(b) in the case of a body corporate—\$5,000.;

(ab) by omitting from paragraph (2) (g) 'section 22' and substituting 'section 24C'; and".

No. 5—Page 6, after clause 21, insert the following new clause:

"21A. After section 27 of the Principal Act the following sections are inserted in Part IV:

Failure to attend conference

'27A. A person who has been given a direction under sub-section 24C (1) to attend a conference shall not, without reasonable excuse—

- (a) fail to attend as required by the direction; or
- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.

Penalty:

(a) in the case of a natural person—\$1,000; or

(b) in the case of a body corporate—\$5,000.

Failure to furnish information, &c.

'27B. A person shall not, without reasonable excuse, refuse or fail—

- (a) to furnish information; or
- (b) to produce a document,

when so required pursuant to section 24B, 24C or 24D.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

Offences in relation to Commission

'27C. (1) A person served, as prescribed, with a summons to appear before the Commission as a witness shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Commission.

'(2) A person appearing before the Commission as a witness at an inquiry shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or make an affirmation;
- (b) refuse or fail to answer a question that is required by the member presiding at the inquiry to be answered; or
- (c) refuse or fail to produce a document that was required to be produced by a summons under this Act served on that person as prescribed.

'(3) A person shall not—

- (a) interrupt an inquiry or proceedings of the Commission;
- (b) use insulting language towards a member of the Commission when the member is exercising any powers or performing any functions as a member;
- (c) make a publication in contravention of any direction given under section 25J;
- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Commission is meeting or holding an inquiry; or
- (e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

Self-incrimination

'27D. (1) It is not a reasonable excuse for the purposes of section 27B for a person to refuse or fail to furnish information or produce a document that the furnishing of the information or the production of the document might incriminate the person, but evidence of the furnishing of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 27E.

'(2) Without limiting the generality of the expression "reasonable excuse" in section 27C, it is hereby declared for the removal of doubt that it is a reasonable excuse for the purposes of that section for a person to refuse or fail to answer a question put to the person at an inquiry, or to refuse to produce a document, that the answer to the question or the production of the document might incriminate the person.

False or misleading information

'27E. A person shall not furnish information or make a statement to the Commission, to the Commissioner or to any other person exercising powers or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$2,500 or imprisonment for 3 months, or both; or
- (b) in the case of a body corporate—\$10,000.

Non-disclosure of private information

'27F. (1) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function or power—

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purpose of this Act or by reason of that person being or having been so authorised;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$5,000 or imprisonment for 1 year, or both.

'(2) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not be required—

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised; or
- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised,

except where it is necessary to do so for the purposes of this Act.

'(3) Nothing in this section prohibits a person from—

- (a) making a record of information that is, or is included in a class of information that is, required or permitted by an Act to be recorded, if the record is made for the purposes of or pursuant to that Act;
- (b) divulging or communicating information, or producing a document, to any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*; or
- (c) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or pursuant to that Act.

'(4) Nothing in sub-section (2) prevents a person from being required, for the purposes of or pursuant to an Act, to divulge or communicate information, or to produce a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by that Act to be divulged, communicated or produced.

'(5) In this section—

"court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

"produce" includes permit access to.'".

No. 6—Page 6, clause 24, proposed sub-section 30 (1), line 31, leave out “5 years”, insert “7 years”.

No. 7—Page 7, after clause 29, insert the following new clause:

Repeal of section 45

“29A. Section 45 of the Principal Act is repealed.”.

No. 8—Page 11, clause 42, lines 23 to 39, leave out the clause, insert the following clause:

Exercise of inquiry powers by Commission

“42. Section 60 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

‘(1) Subject to sub-section 48 (3), the powers of the Commission to hold inquiries under this Act may, if the President so directs, be exercised by a single member of the Commission who is a legally qualified person, or by 2 or more members of the Commission at least one of whom is a legally qualified person.

‘(2) Where the power of the Commission to hold an inquiry is being exercised by 2 or more members of the Commission—

(a) if only one of those members is a legally qualified person—that member shall preside; or

(b) if 2 or more of those members are legally qualified persons—

(i) if one of those persons is the President—the President shall preside; or

(ii) in any other case—those members shall elect one of those persons to preside.’”.

No. 9—Page 12, after clause 44, insert the following new clause:

Terms and conditions of appointment

“44A. (1) Section 97 of the Principal Act is amended by omitting from sub-section (1) ‘5 years’ and substituting ‘7 years’.

“(2) The amendment made by sub-section (1) does not affect the appointment, or the term of office, of the person who, immediately before the commencement of this section, held office as the Sex Discrimination Commissioner.”.

No. 10—Page 15, Schedule, proposed amendments of paragraph 22 (4) (b), sub-section 24 (1) and sub-paragraph 25 (b) (i), leave out the proposed amendments.

No. 11—Page 16, Schedule, proposed amendment of sub-section 45 (2), leave out the proposed amendment.

On the motion of Mr Bowen (Attorney-General), the amendments were agreed to. Resolution to be reported.

The House resumed; Mr Ruddock reported accordingly.

On the motion of Mr Bowen, the House adopted the report.

31 MESSAGE FROM THE SENATE—CHEQUES BILL 1985: The following message from the Senate was reported.

Message No. 366

Madam Speaker,

The Senate returns to the House of Representatives the Bill for “*An Act relating to cheques and certain other negotiable instruments*”, and acquaints the House that the Senate has agreed to the Bill with the Amendments indicated by the annexed Schedule, in which Amendments the Senate requests the concurrence of the House of Representatives.

D. MCCLELLAND
President

The Senate,
Canberra, 28 November 1986

Ordered—That the amendments be taken into consideration in committee of the whole House, forthwith.

In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

- No. 1—Page 1, clause 1, line 5, after “*Cheques*”, insert “*and Payment Orders*”.
- No. 2—Page 1, clause 2, lines 6 and 7, leave out the clause, insert the following clause:
Commencement
 “2. This Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.”
- No. 3—Page 2, sub-clause 3 (1), after definition of “bearer”, insert the following definitions:
 “‘building society’ has the same meaning as in the *Financial Corporations Act 1974*;
 ‘credit union’ has the same meaning as in the *Financial Corporations Act 1974*.”
- No. 4—Page 2, sub-clause 3 (1), after definition of “drawee bank”, insert the following definition:
 “‘financial institution’ means a bank or a non-bank financial institution;”
- No. 5—Page 2, sub-clause 3 (1), after definition of “issue”, insert the following definition:
 “‘non-bank financial institution’ means—
 (a) a building society or credit union that is a registered corporation within the meaning of the *Financial Corporations Act 1974*; and
 (b) any other registered corporation within the meaning of that Act, being a registered corporation prescribed, or included in a class of registered corporations prescribed, for the purposes of this definition;”
- No. 6—Page 3, sub-clause 6 (2), line 24, after “90 to 95 (inclusive)”, insert “, 96A, 96B, 96D”.
- No. 7—Page 4, sub-clause 13 (2), line 33, leave out “drawee bank”, insert “bank on which the instrument containing the order is drawn”.
- No. 8—Page 4, sub-clause 13 (2), line 34, leave out “containing the order”.
- No. 9—Page 5, sub-clause 15 (4), lines 29 to 31, leave out the sub-clause, insert the following sub-clause:
 “(4) Where an instrument contains—
 (a) an order to pay a specified sum; and
 (b) an order to pay not more than a specified sum,
 the instrument shall be taken to require payment of the lesser of the sums so specified.”
- No. 10—Page 18, sub-clause 62 (1), line 28, leave out “bank”, insert “financial institution”.
- No. 11—Page 20, sub-clause 65 (1), line 29, after “place” (last occurring), insert “in relation to cheques”.
- No. 12—Page 20, paragraph 65 (2) (a), lines 31 to 35, leave out the paragraph, insert the following paragraph:
 “(a) one or more of the following, namely:
 (i) the cheques in relation to which the place is to be a designated place for the purpose of sub-section 62 (1);
 (ii) the cheques in relation to which the place is to be a designated place for the purpose of sub-section 62 (6);
 (iii) the cheques in relation to which the place is to be a designated place for the purpose of sub-section 62 (9);”
- No. 13—Page 23, sub-clause 68 (2), line 27, leave out “bank” (last occurring), insert “financial institution”.
- No. 14—Page 23, paragraph 68 (3) (d), line 38, leave out “bank” (first occurring), insert “financial institution”.

- No. 15—Page 23, sub-clause 68 (3), line 39, leave out “bank” (last occurring), insert “financial institution”.
- No. 16—Page 23, sub-clause 68 (3), line 40, leave out “bank”, insert “financial institution”.
- No. 17—Page 24, sub-clause 68 (4), lines 4 and 5, leave out “relevant bank” (thrice occurring), insert “relevant financial institution”.
- No. 18—Page 29, clause 87, at end of clause, add the following new sub-clause:
 “(2) The reference in sub-section (1) to the drawer of a cheque does not include a reference to a drawer of a cheque who is also the drawee bank.”.
- No. 19—Page 32, after clause 96, insert the following new Parts:

**“PART VIA—SPECIAL PROVISIONS RELATING TO NON-BANK
 FINANCIAL INSTITUTIONS**

***“Division 1—Presentment and collection of cheques by non-bank financial
 institutions***

Non-bank financial institution to ensure cheques presented promptly

“96A. (1) Subject to section 59, where the holder of a cheque lodges the cheque with a non-bank financial institution for collection for the holder, the non-bank financial institution shall ensure that the cheque is duly presented for payment on its behalf as soon as is reasonably practicable and, if the non-bank financial institution fails to do so, it is liable to the holder for any loss that the holder thereby suffers.

“(2) Where the drawee bank makes a request under sub-section 62 (5) in relation to the cheque, the cheque shall, for the purposes of sub-section (1), be deemed not to have been duly presented for payment unless, and until, the request is complied with.

“(3) In determining, for the purposes of sub-section (1), whether the non-bank financial institution failed to ensure that the cheque was duly presented for payment on its behalf as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a cheque and that it is reasonable to expect a cheque to be presented for payment promptly;
- (b) the means that were available to it for having the cheque duly presented on its behalf;
- (c) the relative speed, reliability and cost of those means;
- (d) the usage of financial institutions in relation to the presentment of cheques;
- (e) in a case where a request under sub-section 62 (5) was made in relation to the cheque—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;
 - (iii) whether or not the bank to which the request was made had actual possession of the cheque;
 - (iv) whether or not the request was complied with;
 - (v) if the request was complied with—the time within which the request was complied with and the means by which the request was complied with;
 - (vi) the means that were available for complying with the request;
 - (vii) the relative speed, reliability and cost of those means;
 - (viii) the usage of financial institutions in relation to requests under sub-section 62 (5); and
- (f) any other facts of the particular case, including—
 - (i) the nature of the cheque and, in particular, but without limiting the generality of the foregoing, the date of the cheque (if any) and the sum ordered to be paid by the cheque; and

- (ii) whether any delay in presenting the cheque was—
 - (A) caused by circumstances beyond the control of the non-bank financial institution; and
 - (B) not imputable to default, misconduct or negligence on the part of the non-bank financial institution.

Protection of non-bank financial institution collecting cheque for customer

“96B. (1) Where—

- (a) a non-bank financial institution, in good faith and without negligence—
 - (i) receives payment of a cheque for a customer; or
 - (ii) receives payment of a cheque and, before or after receiving payment, credits a customer's account with the sum ordered to be paid by the cheque; and
- (b) the customer has no title, or has a defective title, to the cheque, the non-bank financial institution does not incur any liability to the true owner by reason only of having received payment of the cheque.

“(2) Where—

- (a) a non-bank financial institution—
 - (i) receives payment of a cheque for a customer; or
 - (ii) receives payment of a cheque and, before or after receiving payment, credits a customer's account with the sum ordered to be paid by the cheque;
- (b) the cheque is a cheque drawn payable to order that has not been transferred by negotiation; and
- (c) the name specified in the cheque as the name of the payee—
 - (i) is the same as the name of the customer;
 - (ii) is the same as a business name or trade name of the customer; or
 - (iii) is so similar to the name of the customer, or a business name or trade name of the customer, that it is reasonable in all the circumstances for the non-bank financial institution to have assumed that the customer was the person intended by the drawer to be the payee,

the non-bank financial institution shall not be treated, for the purposes of subsection (1), as having been negligent by reason only of its failure to concern itself with the absence of, or irregularity in, an indorsement of the cheque by the customer.

Rights of non-bank financial institution collecting order cheque not indorsed by payee

“96C. Where—

- (a) the payee of a cheque payable to order, without indorsing the cheque, lodges the cheque with a non-bank financial institution for collection for the payee; and
- (b) the non-bank financial institution gives value for, or has a lien on, the cheque,

the non-bank financial institution has such rights (if any) as it would have had if, before the lodgment of the cheque with it, the payee had indorsed the cheque in blank.

“Division 2—Agency cheques

Agency cheques

“96D. (1) Where—

- (a) the drawer of a cheque is a non-bank financial institution; and
- (b) the cheque was, at a time when it was wanting in a material particular necessary for it to be, on its face, a complete cheque, delivered by the non-bank financial institution to a customer pursuant to an agreement under which the customer was authorised to fill up the cheque, then, unless the cheque is signed by the customer—
- (c) the customer is not liable on the cheque; and

- (d) the customer's account with the non-bank financial institution may not be debited with the sum ordered to be paid by the cheque.
- “(2) If the cheque is signed by the customer, then—
- (a) as regards the holder or an indorser, the following provisions apply, namely:
- (i) the non-bank financial institution shall be taken—
 - (A) not to have drawn the cheque; and
 - (B) not to have signed the cheque;
 - (ii) the customer shall be taken—
 - (A) to have drawn the cheque; and
 - (B) to have signed the cheque as drawer; and
- (b) as regards the customer, the non-bank financial institution shall be taken to have the same duties and liabilities, and the same rights, in relation to the cheque as it would have had if—
- (i) the customer had drawn the cheque;
 - (ii) the cheque were addressed by the customer to the non-bank financial institution;
 - (iii) the cheque were drawn against the customer's account with the non-bank financial institution;
 - (iv) the non-bank financial institution were a bank;
 - (v) in a case where the drawee bank pays the cheque to a person—the non-bank financial institution had paid the cheque to the person; and
 - (vi) in a case where the drawee bank dishonours the cheque—the non-bank financial institution had dishonoured the cheque.

“PART VI—PAYMENT ORDERS

“Division 1—General

Payment order defined

“96E. (1) A payment order is an unconditional order in writing that—

- (a) is addressed by a person to another person (being a non-bank financial institution);
- (b) is signed by the person giving it;
- (c) requires the non-bank financial institution to pay on demand a sum certain in money; and
- (d) clearly bears the words ‘payment order’ on the front of the instrument.

“(2) An instrument that does not comply with sub-section (1), or that orders any act to be done in addition to the payment of money, is not a payment order.

Form of payment orders

“96F. In determining whether an instrument is a payment order, sections 11 to 15 (inclusive) and sub-section 16 (3) apply as if—

- (a) references in those provisions to a bank were references to a non-bank financial institution; and
- (b) the reference in sub-section 16 (3) to a cheque were a reference to a payment order.

Application of the rules of the common law

“96G. (1) The rules of the common law (including the law merchant) that apply in relation to cheques apply, *mutatis mutandis*, in relation to payment orders.

“(2) For the purposes of the application of the rules of the common law in relation to payment orders, a member of a building society or credit union shall be taken to be a customer of the building society or credit union, as the case may be.

Application of Act to payment orders

“96H. (1) This Act (other than sections 10 to 15 (inclusive), sub-section 16 (3) and sections 61 to 68 (inclusive), 96A to 96D (inclusive), 101 and 102) applies, subject to the modifications set out in the Schedule, in relation to payment orders as if—

- (a) references (other than in this Part and the Schedule) to a cheque were references to a payment order; and
- (b) references (other than in the definitions of ‘bank’ and ‘financial institution’ in sub-section 3 (1), this Part and the Schedule) to a bank were references to a non-bank financial institution.

“(2) Without limiting the generality of sub-section (1), sub-section 7 (4) and section 18 apply in relation to an instrument that is signed, but otherwise wanting in a material particular necessary for the instrument to be, on its face, a complete payment order, as if references in those provisions to a cheque were references to a payment order.

“(3) For the purposes of the application of this Act in relation to payment orders in accordance with sub-section (1), a member of a building society or credit union shall be taken to be a customer of the building society or credit union, as the case may be.

“Division 2—Presentment of payment orders**Due presentment of payment order defined**

“96I. (1) Subject to sub-section (2), a payment order is duly presented for payment if a demand for payment of the payment order is made, in accordance with section 96J or 96K, on the drawee non-bank financial institution by or on behalf of the holder.

“(2) Where a demand for payment of a payment order is made before the date of the payment order arrives, the payment order shall not, by reason of the demand, be taken to have been duly presented for payment.

Presentment of payment order by financial institution

“96J. (1) A financial institution (in this section referred to as the ‘collecting financial institution’) may, on behalf of a customer, another financial institution or otherwise, present a payment order for payment by making a demand for payment of the payment order on the drawee non-bank financial institution at—

- (a) the proper place in relation to the payment order; or
- (b) a place that is a designated place in relation to the payment order for the purposes of this sub-section,

at a reasonable hour on a day on which the drawee non-bank financial institution is open for business at the place at which the demand is made.

“(2) The demand may be made by exhibiting the payment order to the drawee non-bank financial institution or by any other means.

“(3) Where the payment order is not exhibited to the drawee non-bank financial institution, the demand shall—

- (a) identify the payment order with reasonable certainty; and
- (b) be in a form that is intelligible to, or readily decipherable by, the drawee non-bank financial institution.

“(4) Without limiting the generality of sub-section (3), the demand shall, for the purposes of that sub-section, be taken to identify the payment order with reasonable certainty if—

- (a) the sum ordered to be paid by the payment order;
- (b) the payment order number;
- (c) the account against which the payment order is drawn; and
- (d) the proper place in relation to the payment order,

are specified in the demand or are readily ascertainable by the drawee non-bank financial institution from the demand.

“(5) Where the payment order is not exhibited to the drawee non-bank financial institution, the drawee non-bank financial institution—

- (a) may request the collecting financial institution to furnish specified further particulars in relation to the payment order to it; or
- (b) may, whether or not a request has been made by virtue of paragraph (a), request the collecting financial institution to exhibit the payment order, or a copy of the payment order of a specified kind, to it.

“(6) The request may be made to the collecting financial institution at a place that is a designated place in relation to the payment order for the purposes of this sub-section, by any means, at a reasonable hour on a day on which the collecting financial institution is open for business at the place at which the request is made.

“(7) The request shall—

- (a) identify the payment order with reasonable certainty; and
- (b) be in a form that is intelligible to, or readily decipherable by, the collecting financial institution.

“(8) Without limiting the generality of sub-section (7), the request shall, for the purposes of that sub-section, be taken to identify the payment order with reasonable certainty if—

- (a) the sum ordered to be paid by the payment order;
- (b) the payment order number;
- (c) the account against which the payment order is drawn; and
- (d) the proper place in relation to the payment order,

are specified in the request or are readily ascertainable by the collecting financial institution from the request.

“(9) Where the drawee non-bank financial institution makes a request in relation to the payment order, the collecting financial institution may—

- (a) furnish the further particulars; or
- (b) exhibit the payment order or a copy of the payment order of the specified kind,

as the case requires, to the drawee non-bank financial institution at—

- (c) the proper place in relation to the payment order; or
- (d) a place that is a designated place in relation to the payment order for the purposes of this sub-section,

at a reasonable hour on a day on which the drawee non-bank financial institution is open for business at the place at which the particulars are furnished, or the payment order or copy exhibited, as the case may be.

“(10) Where the drawee non-bank financial institution makes a request by virtue of paragraph (5) (a) in relation to the payment order, the further particulars may be furnished to the drawee non-bank financial institution by any means.

“(11) In furnishing the further particulars, the collecting financial institution shall—

- (a) identify the request with reasonable certainty; and
- (b) provide the further particulars,

in a form that is intelligible to, or readily decipherable by, the drawee non-bank financial institution.

“(12) Where a payment order is presented for payment otherwise than by exhibiting it to the drawee non-bank financial institution, nothing in this section shall be taken to relieve the drawee non-bank financial institution from any liability to which the drawee non-bank financial institution would have been subject in relation to the payment order if it had been presented by being exhibited to the drawee non-bank financial institution.

Presentation by person other than financial institution

“96K. A person other than a financial institution may present a payment order for payment by exhibiting the payment order, in person, to the drawee non-bank financial institution at the proper place in relation to the payment

order at a reasonable hour on a day on which the drawee non-bank financial institution is open for business at the place at which the payment order is exhibited.

Proper place

“96L. The proper place in relation to a payment order is—

- (a) in a case where there is specified in the payment order a place of business of the drawee non-bank financial institution—that place; or
- (b) in any other case—the place of business of the branch of the drawee non-bank financial institution at which the account on which the payment order is drawn is maintained.

Designated places

“96M. (1) A financial institution may, by notice in the prescribed form published in the *Gazette*, specify a place as a designated place in relation to payment orders for the purposes of this Act.

“(2) The notice shall specify—

- (a) one or more of the following, namely:
 - (i) the payment orders in relation to which the place is to be a designated place for the purpose of sub-section 96J (1);
 - (ii) the payment orders in relation to which the place is to be a designated place for the purpose of sub-section 96J (6);
 - (iii) the payment orders in relation to which the place is to be a designated place for the purpose of sub-section 96J (9);
- (b) the days on which, and the hours during which, the financial institution will be open for business at the place; and
- (c) the means by which communications may be made to the financial institution at the place.

“(3) The notice has effect on and from the day on which the notice is published in the *Gazette* or such later day as is specified in the notice.

Deposit financial institution to present payment orders promptly

“96N. (1) Subject to section 59, where the holder of a payment order lodges the payment order with a financial institution (in this section referred to as the ‘deposit financial institution’) for collection for the holder, the deposit financial institution shall duly present the payment order for payment itself, or ensure that the payment order is duly presented for payment on its behalf, as soon as is reasonably practicable and, if the deposit financial institution fails to do so, it is liable to the holder for any loss that the holder thereby suffers.

“(2) Where the drawee non-bank financial institution makes a request under sub-section 96J (5) in relation to the payment order, the payment order shall, for the purposes of sub-section (1), be deemed not to have been duly presented for payment unless, and until, the request is complied with.

“(3) In determining, for the purposes of sub-section (1), whether the deposit financial institution failed to duly present the payment order for payment itself, or to ensure that the payment order was duly presented for payment on its behalf, as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a payment order and that it is reasonable to expect a payment order to be presented for payment promptly;
- (b) the means that were available to it for duly presenting the payment order itself and the means that were available to it for having the payment order duly presented on its behalf;
- (c) the relative speed, reliability and cost of those means;
- (d) the usage of financial institutions in relation to the presentment of payment orders;
- (e) in a case where a request under sub-section 96J (5) was made in relation to the payment order—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;

- (iii) whether the request was made to the deposit financial institution or to another financial institution acting on its behalf in relation to the presentment of the payment order;
 - (iv) if the request was made to another financial institution acting on its behalf in relation to the presentment of the payment order—whether or not the other financial institution had actual possession of the payment order;
 - (v) whether or not the request was complied with;
 - (vi) if the request was complied with—the time within which the request was complied with and the means by which the request was complied with;
 - (vii) the means that were available for complying with the request;
 - (viii) the relative speed, reliability and cost of those means;
 - (ix) the usage of financial institutions in relation to requests under sub-section 96J (5); and
- (f) any other facts of the particular case, including—
- (i) the nature of the payment order and, in particular, but without limiting the generality of the foregoing, the date of the payment order (if any) and the sum ordered to be paid by the payment order; and
 - (ii) whether any delay in presenting the payment order was—
 - (A) caused by circumstances beyond the control of the deposit financial institution; and
 - (B) not imputable to default, misconduct or negligence on the part of the deposit financial institution.

Drawee non-bank financial institution to pay or dishonour payment orders promptly

“96P. (1) Where a payment order is duly presented for payment, the drawee non-bank financial institution shall either pay or dishonour the payment order as soon as is reasonably practicable and, if the drawee non-bank financial institution fails to do so, then, unless it has become aware of a defect in the holder’s title or that the holder has no title to the payment order, the drawee non-bank financial institution—

- (a) may not dishonour the payment order; and
- (b) is liable to pay the payment order to the holder.

“(2) In determining, for the purposes of sub-section (1), whether the drawee non-bank financial institution failed to pay or dishonour the payment order as soon as was reasonably practicable, regard shall be had to—

- (a) the fact that the instrument is a payment order and that it is reasonable to expect a payment order that has been duly presented for payment to be either paid or dishonoured promptly;
- (b) the means by which, and the place at which, the payment order was presented;
- (c) the means that were available to it for paying or dishonouring the payment order;
- (d) the relative speed, reliability and cost of those means;
- (e) the usage of non-bank financial institutions in relation to the payment and dishonour of payment orders;
- (f) in a case where a request under sub-section 96J (5) was made by it in relation to the payment order—the following matters, namely:
 - (i) the making of the request;
 - (ii) the nature of the request;
 - (iii) the time within which the request was made;
 - (iv) the means by which the request was made;
 - (v) the means that were available to it for making the request;
 - (vi) the relative speed, reliability and cost of those means;
 - (vii) whether or not the request was complied with;

- (viii) if the request was complied with—the time within which the request was complied with;
 - (ix) if the request was a request to furnish further particulars and the request was complied with—the nature of the particulars furnished to it;
 - (x) the usage of non-bank financial institutions in relation to the making of requests under sub-section 96J (5); and
- (g) any other facts of the particular case, including—
- (i) the nature of the payment order; and
 - (ii) whether any delay in paying or dishonouring the payment order was—
 - (A) caused by circumstances beyond the control of the drawee non-bank financial institution; and
 - (B) not imputable to default, misconduct or negligence on the part of the drawee non-bank financial institution.

How paid payment orders to be dealt with

“96Q. (1) Where—

- (a) a payment order is duly presented for payment by exhibiting the payment order to the drawee non-bank financial institution; and
- (b) the drawee non-bank financial institution pays the payment order, the drawee non-bank financial institution has, as against the person who presented the payment order, the right to possession of the payment order.

“(2) Where—

- (a) a payment order is duly presented for payment by a financial institution (in this sub-section referred to as the ‘collecting financial institution’) otherwise than by exhibiting the payment order to the drawee non-bank financial institution;
- (b) the payment order is exhibited to the drawee non-bank financial institution pursuant to a request under sub-section 96J (5); and
- (c) the drawee non-bank financial institution pays the payment order, the drawee non-bank financial institution has, as against the collecting financial institution and any financial institution on whose behalf the collecting financial institution duly presented the payment order, the right to possession of the payment order.

“(3) Where—

- (a) a payment order is duly presented for payment by a financial institution (in this sub-section and sub-section (4) referred to as the ‘collecting financial institution’) otherwise than by exhibiting the payment order to the drawee non-bank financial institution;
- (b) the payment order is not exhibited to the drawee non-bank financial institution pursuant to a request under sub-section 96J (5);
- (c) the drawee non-bank financial institution pays the payment order; and
- (d) the payment order is in the actual possession of the collecting financial institution or another financial institution on whose behalf the collecting financial institution duly presented the payment order, the collecting financial institution or other financial institution, as the case requires (in sub-section (4) referred to as the ‘relevant financial institution’), shall—

- (e) subject to sub-section (4), retain the payment order, on behalf of the drawee non-bank financial institution, for such period as is prescribed; and
- (f) at the expiration of that period, deal with the payment order in accordance with the regulations.

“(4) The drawee non-bank financial institution may, at any time while the payment order is being retained by the relevant financial institution in accordance with sub-section (3), request the relevant financial institution to deliver up the

payment order to it, and the relevant financial institution shall forthwith comply with the request.

“(5) Nothing in sub-section (3) shall be taken to affect a right that a person has, as against the drawee non-bank financial institution, to possession of the payment order.

“(6) Where a payment order is paid otherwise than by the drawee non-bank financial institution, the person paying the payment order has, as against the person paid, the right to possession of the payment order.”

No. 20—Page 36, after clause 103, add the following new Schedule:

SCHEDULE Sub-section 96H (1)

MODIFICATIONS OF ACT IN RELATION TO PAYMENT ORDERS

Sub-section 5 (1)—

- (a) Omit “sections 10 to 15 (inclusive)”, substitute “sections 11 to 15 (inclusive)”.
- (b) Omit “sub-sections 60 (1) and 62 (12)”, substitute “sub-section 60 (1)”.
- (c) Omit “and sections 88 to 91 (inclusive)”, substitute “, sections 88 to 91 (inclusive) and 96D to 96F (inclusive) and sub-section 96J (12)”.
- (d) Omit “a bank cheque or bank draft”, substitute “a payment order drawn by a non-bank financial institution on itself or on another branch of the non-bank financial institution”.

Sub-section 5 (2)—

Omit “a bank cheque or bank draft drawn by it”, substitute “a payment order drawn by the non-bank financial institution on itself or on another branch of the non-bank financial institution”.

Sub-section 6 (2)—

- (a) Omit “7 to 16 (inclusive)”, substitute “7 to 9 (inclusive), 11 to 16 (inclusive)”.
- (b) Omit “61, 62, 64 to 67 (inclusive)”.
- (c) Insert “96E to 96G (inclusive), 96I, 96J, 96L to 96P (inclusive),” after “96D,”.

Section 54—

Omit “bank” (last occurring), substitute “financial institution”.

Paragraph 60 (3) (b)—

Omit “banks”, substitute “financial institutions”.

Section 92—

Omit “bank” (second occurring), substitute “financial institution”.

Sub-section 93 (1)—

Omit “bank” (second and last occurring), substitute “financial institution”.

Paragraphs 93 (2) (c) and (d)—

Omit “a bank” (wherever occurring), substitute “a financial institution”.

Paragraph 94 (1) (a)—

Omit “bank” (last occurring), substitute “financial institution”.

Paragraph 94 (2) (a)—

Omit “bank” (last occurring), substitute “financial institution”.

Heading to Division 2 of Part VI—

Omit “bank”, substitute “*financial institution*”.

Section 95—

Omit “bank” (wherever occurring), substitute “financial institution”.

Section 96—

Omit “bank” (wherever occurring), substitute “financial institution”.

On the motion of Mr Bowen (Attorney-General), the amendments were agreed to, after debate.

Resolution to be reported.

The House resumed; Mr Ruddock reported accordingly.

On the motion of Mr Bowen, the House adopted the report.

32 **MESSAGES FROM THE SENATE:** Messages from the Senate were reported returning the following Bills without amendment:

28 November 1986—Message—

No. 367—Bills of Exchange Amendment 1985.

No. 368—Science and Industry Research Legislation Amendment 1986.

33 **VALEDICTORIES:** Mr Hawke (Prime Minister), by leave, made a statement expressing thanks to all who served the House throughout the year and wished Members and staff seasonal good wishes.

Mr Howard, by leave, made a similar statement.

Madam Speaker also expressed her appreciation and good wishes to all Members, their families and the staff.

34 **HOUSE OF REPRESENTATIVES—BROADCASTING AND RE-BROADCASTING OF EXCERPTS OF PROCEEDINGS:** Mr Young (Leader of the House), by leave, moved—That this House authorises the broadcasting and re-broadcasting on Australian radio and television stations of a sound record of excerpts of its proceedings during 1987, subject to the conditions determined for this purpose by the Joint Committee on the Broadcasting of Parliamentary Proceedings.

Question—put and passed.

35 **SPECIAL ADJOURNMENT:** Mr Young (Leader of the House) moved—That the House, at its rising, adjourn until Tuesday, 17 February 1987, unless otherwise called together by Madam Speaker or, in the event of Madam Speaker being unavailable, by the Chairman of Committees.

Debate ensued.

Question—put and passed.

36 **LEAVE OF ABSENCE TO ALL MEMBERS:** Mr Young (Leader of the House) moved—That leave of absence be given to every Member of the House of Representatives from the determination of this sitting of the House to the date of its next sitting.

Question—put and passed.

37 **ADJOURNMENT:** Mr Young (Leader of the House) moved—That the House do now adjourn.

Question—put and passed.

And then the House, at 4.48 p.m., adjourned until Tuesday, 17 February 1987, at 2 p.m., in accordance with the resolution agreed to this day.

PAPERS: The following papers were deemed to have been presented on 28 November 1986:

Defence Act—Determinations—1986—

No. 75—Overseas Rental and Utilities Allowance and other allowances.

No. 76—Overseas Living Out Allowance and Supplementary Living Allowance.

No. 77—Settling In and Settling Out Allowance and other allowances.

No. 78—Travelling Allowance and other allowances.

No. 79—Salary of Permanent Force Members and Allowances of the Vice Chief of the Defence Force.

No. 89—Temporary Rental Allowance.

MEMBERS PRESENT: All Members were present (at some time during the sitting) except Mr Campbell, Mr Cohen, Mr Connolly, Mrs Darling, Mr Dobie, Mr Duncan, Mr R. F. Edwards, Ms Fatin, Mr Fife, Mr P. S. Fisher, Mr Goodluck, Mr Hodgman, Mr Holding, Mr Jacobi*, Mr Katter, Mr Langmore, Mr Lee, Mr

Lloyd, Mr McArthur, Mr Moore, Mr Price, Mr Robinson, Mr Shack, Mr Smith
and Mr Willis.

* On leave

A. R. BROWNING
Clerk of the House of Representatives