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1 MEETING OF SENATE

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

2 CONSIDERATION OF LEGISLATION

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), at the request of the Minister for Communications, Information Technology and the Arts (Senator Alston) and pursuant to notice, moved government business notice of motion no. 1—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Taxation Laws Amendment (Venture Capital) Bill 2002
Venture Capital Bill 2002.

Debate ensued.

Question put and passed.

3 TELECOMMUNICATIONS COMPETITION BILL 2002

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

In the committee

Bill taken as a whole by leave.

Explanatory memorandum: The Minister for Communications, Information Technology and the Arts (Senator Alston) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Schedule 1, item 1, page 3 (line 8), omit “ACCC may”, substitute “ACA must”.

Schedule 1, item 2, page 3 (lines 10 and 11), omit the item, substitute:

2 Section 348

Omit “may”, substitute “must”.

Schedule 1, items 3 and 4, page 3 (lines 12 to 15), omit the items, substitute:

3 Subsection 349(2)

Omit “may”, substitute “must”.

4 Subsection 349(2)

After “specified” (first occurring), insert “declared”.

4A At the end of subsection 349(2)

Add:

Note: *Declared carriage service* is defined by section 350A.

Schedule 1, page 3 (after line 15), after item 4, insert:

4B After section 350

Insert:

350A Declared carriage services

- (1) The ACCC may, by written instrument, declare that a specified carriage service is a *declared carriage service* for the purposes of this Part.
- (2) The declaration has effect accordingly.
- (3) In deciding whether to make a declaration under this section, the ACCC must have regard to whether the declaration will promote the long-term interests of end-users of:
 - (a) carriage services; or
 - (b) services supplied by means of carriage services.
- (4) The ACCC may have regard to any other matters that it thinks are relevant.
- (5) For the purposes of this section, the question whether a particular thing promotes the long-term interests of end-users of:
 - (a) carriage services; or
 - (b) services supplied by means of carriage services;
 is to be determined in the same manner in which that question is determined for the purposes of Part XIC of the *Trade Practices Act 1974*.

Note: See section 152AB of the *Trade Practices Act 1974*.

Schedule 1, items 5 to 13, page 3 (line 16) to page 7 (line 16), omit the items, substitute:

5 At the end of section 352

Add:

- (4) Before making a declaration under this section, the ACA must consult the ACCC.

6 Transitional—sections 349 and 350A of the *Telecommunications Act 1997*

- (1) This item applies if:
 - (a) a carriage service was the subject of a determination under subsection 349(2) of the *Telecommunications Act 1997*; and
 - (b) the determination was in force immediately before the commencement of this item.
- (2) The *Telecommunications Act 1997* has effect, in relation to the carriage service, as if the ACCC had:
 - (a) made an instrument under subsection 350A(1) of that Act declaring the service to be a declared carriage service for the purposes of Part 17 of that Act; and
 - (b) complied with the requirement set out in subsection 350A(3) of that Act in relation to the instrument.

- (3) This item does not prevent the instrument referred to in paragraph (2)(a) from being varied or revoked by the ACCC in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (4) The amendments of subsection 349(2) of the *Telecommunications Act 1997* made by this Part do not affect the validity of the determination.

Schedule 1, page 10 (after line 25), at the end of the Schedule, add:

Part 4—Instruments

25 Subsection 589(6) (definition of *this Act*)

Repeal the definition, substitute:

this Act includes:

- (a) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and
- (b) Parts XIB and XIC of the *Trade Practices Act 1974*.

Schedule 2, item 9, page 15 (lines 13 to 15), omit subitem (1), substitute:

- (1) This item applies if:
 - (a) a final determination was made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* before the commencement of this item; or
 - (b) both:
 - (i) a final determination is made by the Commission under Division 8 of Part XIC of the *Trade Practices Act 1974* after the commencement of this item; and
 - (ii) the final determination relates to an access dispute that was notified under section 152CM of the *Trade Practices Act 1974* before 26 September 2002.

Schedule 2, item 62, page 34 (after line 9), after subsection (10), insert:

(10A) The expiry time for the order may be described by reference to the end of a period beginning when the service or proposed service becomes an active declared service.

(10B) Subsection (10A) does not, by implication, limit subsection (10).

Schedule 2, item 74, page 42 (line 25), at the end of subsection (7), add:

To avoid doubt, if the undertaking is subject to limitations, the service supplied by the person is a **declared service** only to the extent to which the service falls within the scope of the limitations.

Schedule 2, item 95, page 48 (line 29), after “section 152AR”, insert “(disregarding subsection 152AL(7))”.

Schedule 2, item 95, page 52 (line 31), after “section 152AR”, insert “(disregarding subsection 152AL(7))”.

Schedule 2, page 68 (after line 5), after item 121, insert:

121A Section 151AB

Insert:

content service has the same meaning as in the *Telecommunications Act 1997*.

Schedule 2, item 124, page 68 (after line 18), after subsection (1), insert:

- (1A) The Minister may only give a direction under subsection (1) that:
 - (a) requires the Commission to exercise its powers under section 151BU, 151BUDA, 151BUDB or 151BUDC; or
 - (b) requires the Commission to exercise its powers under section 151BU, 151BUDA, 151BUDB or 151BUDC in a particular way.
- (1B) The Minister may give a written direction to the Commission requiring it, in the event that it receives a specified Ministerially-directed report, to:
 - (a) prepare a specified kind of analysis of the report; and
 - (b) publish the analysis within a specified period after receiving the report.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (1C) The Minister may give a written direction to the Commission requiring it, in the event that it receives a report in a specified series of Ministerially-directed periodic reports, to:
 - (a) prepare a specified kind of analysis of the report; and
 - (b) publish the analysis within a specified period after receiving the report.

Schedule 2, item 124, page 68 (line 22), omit “this section”, substitute “subsection (1)”.

Schedule 2, item 124, page 68 (after line 30), after section 151BUAA, insert:

151BUAAA Minister to give direction to Commission about Telstra’s wholesale operations and retail operations

- (1) The Minister must take all reasonable steps to ensure that a special Telstra direction is given within 6 months after the commencement of this section.
- (2) For the purposes of this section, a *special Telstra direction* is a direction under section 151BUAA that:
 - (a) relates to Telstra’s wholesale operations and retail operations; and
 - (b) requires the Commission to exercise its powers under section 151BU to make rules requiring Telstra to:
 - (i) keep and retain particular records; and
 - (ii) prepare reports consisting of information contained in those records; and
 - (iii) give those reports to the Commission; and
 - (c) requires the Commission to exercise its powers under at least one of sections 151BUDA, 151BUDB and 151BUDC in relation to those reports.
- (3) Before giving a special Telstra direction in compliance with subsection (1), the Minister must:
 - (a) publish a draft of the direction and invite people to make submissions to the Minister on the draft direction; and

- (b) consider any submissions that are received within the time limit specified by the Minister when he or she published the draft direction.
- (4) This section does not, by implication, limit the Minister's powers to give subsequent directions to the Commission in relation to Telstra's wholesale operations and retail operations.
- (5) In this section:

Telstra has the same meaning as in the *Telstra Corporation Act 1991*.

wholesale operations includes operations in relation to services that Telstra supplies:

- (a) to itself; or
- (b) to other persons, in order that the other persons can provide carriage services and/or content services.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, Part 2 and Schedule 3.

Schedule 1, Part 2 and Schedule 3 debated.

Question—That Schedule 1, Part 2 and Schedule 3 stand as printed—put and negatived.

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

Schedule 1, page 9 (before line 2), before Part 3, insert:

Part 2A—Industry development plans

15 Subclause 5(1) of Schedule 1

Repeal the subclause, substitute:

Declarations

- (1) The Industry Minister may, by written instrument, declare that a specified kind of carrier is a **declared kind of carrier** for the purposes of this clause.

15A At the end of clause 5 of Schedule 1

Add:

Exemption certificates—applicants for carrier licences

- (4) The ACA may issue an exemption certificate to an applicant for a carrier licence if the ACA is satisfied that, if the applicant were to become a carrier, the applicant would be a declared kind of carrier.
- (5) The ACA must cancel an exemption certificate issued to an applicant for a carrier licence if the ACA is no longer satisfied that, if the applicant were to become a carrier, the applicant would be a declared kind of carrier.

Exemption certificates—carriers

- (6) The ACA may issue an exemption certificate to a carrier if the ACA is satisfied that the carrier is a declared kind of carrier.
- (7) The ACA must cancel an exemption certificate issued to a carrier if the ACA is no longer satisfied that the carrier is a declared kind of carrier.

Exemption—applicants for carrier licences

- (8) If an exemption certificate issued to an applicant for a carrier licence is in force, subclause 4(1) does not apply in relation to the decision to grant the licence.

Exemption—carriers

- (9) If an exemption certificate issued to a carrier is in force, this Part does not apply to the carrier.

15B After paragraph 1(x) of Schedule 4

Insert:

- (xa) a decision under clause 5 of Schedule 1 to refuse to issue an exemption certificate;
- (xb) a decision under clause 5 of Schedule 1 to cancel an exemption certificate;

15C Transitional—subclause 5(1) of Schedule 1 to the Telecommunications Act 1997

- (1) This item applies if:
- (a) a declaration was made by the Industry Minister under subclause 5(1) of Schedule 1 to the *Telecommunications Act 1997* in relation to a specified kind of carrier; and
 - (b) the declaration was in force immediately before the commencement of this item.
- (2) The *Telecommunications Act 1997* has effect, in relation to the specified kind of carrier, as if the Industry Minister had made a declaration under subclause 5(1) of Schedule 1 to that Act (as amended by this Part) that the specified kind of carrier is a declared kind of carrier for the purposes of that clause.
- (3) This item does not prevent the declaration referred to in subitem (2) from being varied or revoked by the Industry Minister in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

15D Transitional—subclause 5(6) of Schedule 1 to the Telecommunications Act 1997

- (1) This item applies if, as a result of a declaration under subclause 5(1) of Schedule 1 to the *Telecommunications Act 1997*, Part 2 of Schedule 1 to that Act did not apply to a carrier immediately before the commencement of this item.
- (2) The *Telecommunications Act 1997* has effect, in relation to the carrier, as if the ACA had issued an exemption certificate to the carrier under subclause 5(6) of Schedule 1 to that Act.
- (3) This item does not prevent the exemption certificate referred to in subitem (2) from being cancelled by the ACA under subclause 5(7) of Schedule 1 to the *Telecommunications Act 1997*.

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

Schedule 2, item 10, page 16 (lines 12 to 20), omit subsection (4), substitute:

Extension of expiry date

- (4) The Commission may, by notice published in the *Gazette*, extend or further extend the expiry date of a specified declaration under section 152AL, so long as the extension or further extension is for a period of not more than 5 years.

Schedule 2, item 10, page 16 (after line 27), at the end of section 152ALA, add:

Public inquiry during 12-month period ending on the expiry date of a declaration

- (7) The Commission must:
- (a) during the 12-month period ending on the expiry date of a declaration, hold a public inquiry under Part 25 of the *Telecommunications Act 1997* about:
 - (i) whether to extend or further extend the expiry date of the declaration; and
 - (ii) whether to revoke the declaration; and
 - (iii) whether to vary the declaration; and
 - (iv) whether to allow the declaration to expire without making a new declaration under section 152AL; and
 - (v) whether to allow the declaration to expire and then to make a new declaration under section 152AL; and
 - (b) prepare a report about the inquiry under section 505 of the *Telecommunications Act 1997*; and
 - (c) publish the report during the 180-day period ending on the expiry date of the first-mentioned declaration.
- (8) If:
- (a) after holding a public inquiry under subsection (7) in relation to a declaration, the Commission allows the declaration to expire and then makes a new declaration under section 152AL; and
 - (b) the report mentioned in paragraph (7)(b) was published during the 180-day period ending when the new declaration was made;
- the Commission is taken to have complied with paragraphs 152AL(3)(a), (b) and (c) in relation to the new declaration.
- (9) If:
- (a) after holding a public inquiry under subsection (7) in relation to a declaration, the Commission revokes or varies the declaration; and
 - (b) the report mentioned in paragraph (7)(b) was published during the 180-day period ending at the time of the revocation or variation;
- the Commission is taken to have complied with paragraphs 152AL(3)(a), (b) and (c) in relation to the revocation or variation (as those paragraphs apply to the power of revocation and variation because of subsection 152AO(1)).

Schedule 2, item 11, page 16 (line 29), omit “152ALA(4)(b)”, substitute “152ALA(7)(a)”.

Schedule 2, item 12, page 17 (line 2), omit “152ALA(4)(b)”, substitute “152ALA(7)(a)”.

Schedule 2, item 13, page 17 (line 4), omit “152ALA(4)(b)”, substitute “152ALA(7)(a)”.

Senator Lundy moved the following amendments together by leave:

Schedule 2, item 10, page 16 (line 9), omit “5-year period”, substitute “10-year period”.

Schedule 2, item 15, page 18 (line 9), omit “5-year period”, substitute “10-year period”.

Debate ensued.

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

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

Schedule 2, item 60, page 29 (line 26) to page 30 (line 4), omit subsections (5) to (7).

Schedule 2, item 60, page 30 (line 30), omit “or (6)”.

Schedule 2, item 62, page 33 (lines 20 to 28), omit subsections (7) to (9).

Schedule 2, item 62, page 35 (lines 20 to 22), omit subsection (17).

Schedule 2, item 95, page 51 (after line 8), at the end of subsection (2), add:

Note: Section 152AH contains a list of matters to be taken into account in determining whether terms and conditions are reasonable.

Schedule 2, item 95, page 51 (lines 9 to 20), omit subsections (3) to (6).

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

4 QUESTIONS

Questions without notice were answered.

5 ABSENCE OF PRESIDENT—STATEMENT BY PRESIDENT—AUTHORITY OF DEPUTY PRESIDENT

The President informed the Senate that he would be absent from the Senate from 4 pm today, for personal reasons.

The Minister for Defence (Senator Hill), by leave, moved—

(1) That, during the absence of the President, the Deputy President shall, on each sitting day, take the chair of the Senate and may, during such absence, perform the duties and exercise the authority of the President in relation to all proceedings of the Senate and proceedings of committees to which the President is appointed.

(2) That the President be granted leave of absence from 10 December to 11 December 2002.

Question put and passed.

6 QUESTIONS ON NOTICE—ANSWERS AND EXPLANATIONS

Senator Sherry, pursuant to standing order 74, asked the Minister for Revenue and Assistant Treasurer (Senator Coonan) for an explanation of answers not being provided to the following questions on notice:

- No. 304 (notice given 14 May 2002)
- No. 405 (notice given 26 June 2002)
- No. 560 (notice given 19 August 2002)
- No. 561 (notice given 19 August 2002)
- No. 562 (notice given 19 August 2002)
- No. 704 (notice given 27 September 2002)
- No. 705 (notice given 30 September 2002)
- No. 829 (notice given 30 October 2002)
- No. 879 (notice given 8 November 2002).

Senator Coonan indicated that answers would be provided.

Senator Sherry moved—That the Senate take note of the minister's response.

Question put and passed.

Senator Bishop, pursuant to standing order 74, asked the Minister representing the Minister for Veterans' Affairs (Senator Hill) for an explanation of answers not being provided to the following questions on notice:

- No. 631 (notice given 13 September 2002)
- No. 674 (notice given 23 September 2002)
- No. 676 (notice given 23 September 2002)
- No. 693 (notice given 25 September 2002)
- No. 744 (notice given 4 October 2002)
- No. 819 (notice given 18 October 2002).

Senator Hill indicated that answers would be provided.

Senator Bishop moved—That the Senate take note of the minister's response.

Question put and passed.

7 MINISTER FOR REVENUE AND ASSISTANT TREASURER—ANSWERS TO QUESTIONS

Senator Ludwig moved—That the Senate take note of the answers given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to questions without notice asked today.

Debate ensued.

Question put and passed.

8 CULTURE AND THE ARTS—FUNDING—ANSWER TO QUESTION

Senator Ridgeway moved—That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Ridgeway today relating to the funding of arts institutions.

Question put and passed.

9 PETITIONS

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

Senator Cherry, from 30 petitioners, requesting that the Senate urge the Government to release publicly the demands and concessions it proposes to make to other countries for opening up trade in services as part of negotiations on a new General Agreement on Trade in Services.

Senator Collins, from 695 petitioners, requesting that the Senate take action to facilitate a debate at the United Nations to declare that suicide bombing is a crime against humanity.

10 NOTICES

Notices of motion:

The Leader of the Opposition in the Senate (Senator Faulkner) on behalf of all Opposition senators, the Leader of the Australian Democrats (Senator Bartlett) on behalf of all Australian Democrats senators, and Senators Harradine, Murphy, Brown and Nettle: To move on the next day of sitting—That the Senate—

- (a) expresses:
 - (i) its support for the majority findings in the report of the Select Committee on a Certain Maritime Incident and calls on the Commonwealth Government to immediately implement all of the recommendations contained in that report, and
 - (ii) its serious concern at the apparent inconsistencies in evidence provided to the committee and estimates committees by Commonwealth agencies in relation to the People Smuggling Disruption Program and in relation to Suspected Illegal Entry Vessels (SIEVs), including the boat known as SIEV X; and
- (b) calls on the Commonwealth Government to immediately establish a comprehensive, independent judicial inquiry into all aspects of the People Smuggling Disruption Program operated by the Commonwealth Government and agencies from 2000 to date, including:
 - (i) all funding and other resources put to the program, both within Australia and overseas,
 - (ii) the involvement and activities of all Australian Departments and agencies involved in the program, both within Australia and overseas,
 - (iii) the extent of ministerial knowledge of, and authorisation for, the program,
 - (iv) allegations raised in the media in relation to the program, including by the *Sunday* program,
 - (v) the nature of the co-operative relationship between the Australian and Indonesian Governments and agencies, including the operation of agreements and protocols, the funding and resources provided under those arrangements, and the activities of individual Australian and Indonesian citizens,
 - (vi) the use of Australian equipment and resources in the program, including use by persons outside of Australian agencies,

- (vii) the effect of the program on persons seeking asylum from Indonesia or Australia, including the effect on means of transport, and
- (viii) the circumstances and outcomes of all departures from Indonesia of all boats carrying asylum-seekers, including the circumstances of the sinking of SIEV X. (*general business notice of motion no. 292*)

The Leader of the Opposition in the Senate (Senator Faulkner): To move on the next day of sitting—That there be laid on the table, no later than immediately after motions to take note of answers on Thursday, 12 December 2002, all documents relating to the inquiries undertaken by the Department of the Prime Minister and Cabinet into the possible conflict of interest between the ministerial responsibilities of the Minister for Revenue and Assistant Treasurer (Senator Coonan) and the commercial activities of Endispute Pty Ltd (including, but not limited to, a copy of the report of those inquiries furnished to the Prime Minister (Mr Howard) and referred to by him during question time in the House of Representatives on Tuesday, 3 December 2002). (*general business notice of motion no. 293*)

The Leader of the Australian Democrats (Senator Bartlett): To move on the next day of sitting—That there be laid on the table no later than 4 pm on Thursday, 12 December 2002, the following documents:

- (a) the agreement signed by the Commonwealth for the Walla Weir Irrigation Project, funded under the Sugar Industry Infrastructure Package; and
- (b) any materials relating to compliance with the terms of the agreement. (*general business notice of motion no. 294*)

The Leader of the Australian Democrats (Senator Bartlett): To move on the next day of sitting—That there be laid on the table no later than 4 pm on Thursday, 12 December 2002, all materials prepared by Geoscience Australia in response to the proposal by TGS-NOPEC to conduct seismic testing in the Townsville Trough. (*general business notice of motion no. 295*)

The Leader of the Australian Democrats (Senator Bartlett): To move on 11 December 2002—That the Senate—

- (a) notes:
 - (i) the recent oil tanker disaster off the coast of Spain and the restrictions on oil tanker shipping now being implemented by the Spanish Government,
 - (ii) that there are approximately 6 000 vessel movements of ships in excess of 50 metres annually in the Great Barrier Reef Marine Park,
 - (iii) that between 5 and 10 per cent of those vessels are oil tankers,
 - (iv) the dangers associated with ‘ships of shame’ and that 95 per cent of the ships using the Great Barrier Reef Marine Park are foreign owned, and
 - (v) the regularity of shipping accidents inside the Great Barrier Reef Marine Park; and
- (b) calls on the Howard Government to:
 - (i) prohibit vessels from using the Great Barrier Reef Marine Park unless:
 - (A) the vessel is stopping at a port or ports inside the Great Barrier Reef region, or

- (B) the vessel is a commercial vehicle of 50 metres or less, or
- (C) the vessel is Australian flagged, and
- (ii) prohibit all oil tankers from using the Great Barrier Reef Marine Park unless they are double hulled. (*general business notice of motion no. 296*)

The Chair of the Economics Legislation Committee (Senator Brandis): To move on the next day of sitting—That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Financial Sector Legislation Amendment Bill (No. 2) 2002 be extended to 12 December 2002. (*general business notice of motion no. 297*)

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell): To move on the next day of sitting—That—

- (1) On Tuesday, 10 December 2002:
 - (a) the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to 11.10 pm;
 - (b) the routine of business from 7.30 pm to 10.30 pm shall be government business only; and
 - (c) the question for the adjournment of the Senate shall be proposed at 10.30 pm.
- (2) On Wednesday, 11 December 2002, the hours of meeting shall be 9.30 am to adjournment, and standing order 54(5) shall apply to the adjournment debate as if it were Tuesday.

The Chair of the Finance and Public Administration References Committee (Senator Forshaw): To move on the next day of sitting—That the time for the presentation of the report of the Finance and Public Administration References Committee on recruitment and training in the Australian Public Service be extended to 27 March 2003. (*general business notice of motion no. 298*)

The Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan): To move on the next day of sitting—That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Transport Safety Investigation Bill 2002 be extended to 11 December 2002. (*general business notice of motion no. 299*)

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

- (a) expresses concern about the extreme bushfire danger facing the citizens of New South Wales;
- (b) praises the unstinting and brave work of the voluntary bushfire fighters in combating the fires and protecting and saving property and lives;
- (c) congratulates the Australian Government for its high tech support for the firefighting effort with the provision of air crane fire bombing technology;
- (d) recognises that the current extreme fire conditions have been exacerbated by a build-up of forest fuel resulting from the Carr Australian Labor Party Government's anti-back-burning policies over the past 7 years;
- (e) condemns the Carr Government for ignoring the recommendations of the state parliamentary inquiry into the 2001-02 New South Wales fires brought down 6 months ago; and

- (f) calls on the Carr Government in New South Wales to recognise that south-eastern Australia is the most fire-prone region in the world and to develop more appropriate policies to protect life, property and the environment. (*general business notice of motion no. 300*)

Senator Brown: To move on 11 December 2002—That the Senate—

- (a) acknowledges the substantial contribution members of the East Timorese community have made to the Northern Territory community over many years;
- (b) expresses its support for the East Timorese asylum seekers living in Darwin who are in the process of being served with deportation orders by the Federal Government;
- (c) extends its support to those affected families, some of whom are facing having their family permanently separated because of the Federal Government's decision to deport individual family members in some instances;
- (d) supports the Northern Territory Government and its agencies in assisting these East Timorese families in their efforts to remain in Darwin;
- (e) commends the individuals, businesses and community organisations that are supporting the East Timorese people affected by the deportation orders;
- (f) recognises that the Northern Territory Government wants the East Timorese to remain at home in the Northern Territory and will use its best endeavours to achieve that end; and
- (g) calls on:
- (i) the Minister for Immigration and Multicultural and Indigenous Affairs (Mr Ruddock) to grant a favourable assessment on each application considering the unique and compelling reasons this group of East Timorese Territorians have for remaining in Darwin, and
 - (ii) federal parliamentary representatives to actively support this resolution and the applications of the deportees to the Minister. (*general business notice of motion no. 301*)

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell): To move on the next day of sitting—That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Aviation Legislation Amendment Bill 2002
 Copyright Amendment (Parallel Importation) Bill 2002
 Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002
 Financial Sector Legislation Amendment Bill (No. 2) 2002
 Inspector-General of Taxation Bill 2002
 National Environment Protection Council Amendment Bill 2002
 Renewable Energy (Electricity) Amendment Bill 2002
 Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002
 Workplace Relations Amendment (Fair Termination) Bill 2002.

Documents: Senator Ian Campbell tabled the following documents:

Consideration of legislation—Statements of reasons [9] for introduction and passage of certain bills in the 2002 spring sittings.

Senator Brown: To move on the next day of sitting—That the Senate calls on the Minister for Transport and Regional Services (Mr Anderson) to explain the sudden reversal of his decision in February 2001, repeated as recently as 4 December 2002, to support the Albury bypass. (*general business notice of motion no. 302*)

Senator Brown: To move on 11 December 2002—That the Senate, noting the 61 per cent majority of Albury citizens who, in a referendum in 1997, opposed an internal freeway, calls on the Government to support the bypass option. (*general business notice of motion no. 303*)

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

- (a) notes that 10 December 2002 is International Human Rights Day and joins with the many thousands around the world who are participating in events on this day to:
 - (i) condemn the ongoing abuse of human rights worldwide,
 - (ii) extend our sympathy to the victims of these abuses, and
 - (iii) support the defence of those rights both in Australia and overseas; and
- (b) condemns the Government's appalling record in the field of human rights and, in particular, the Government's:
 - (i) failure to endorse the optional protocol to the United Nations (UN) Convention Against Torture,
 - (ii) contravention of the UN Convention on the Rights of the Child in relation to some asylum seeker detainees,
 - (iii) proposed contraventions of the International Covenant on Civil and Political Rights to be enacted under the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002,
 - (iv) unwillingness to act in defence of Mr David Hicks and Mr Mamdouh Habib, illegally detained in Guantanamo Bay, Cuba, and
 - (v) in principle support of a United States impunity agreement in regard to Article 98 of the International Criminal Court treaty. (*general business notice of motion no. 304*)

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

- (a) expresses its profound concern that Mr David Hicks and Mr Mamdouh Habib remain incarcerated in Camp X-Ray at Guantanamo Bay, Cuba, without having been charged or brought before the courts for trial;
- (b) notes that Article 9 of the Universal Declaration of Human Rights states that, "No-one shall be subject to arbitrary arrest, detention or exile";
- (c) recalls the commitment that the Minister for Foreign Affairs made last year that, "If Mr Hicks has committed a crime against Australian law, the Australian Government will do whatever is necessary to bring him to justice"; and

- (d) calls on the Australian Government as a matter of urgency to take whatever steps are required to return both Mr Hicks and Mr Habib to Australia to determine whether they should be freed or face trial, as is their right. (*general business notice of motion no. 305*)

Notice of motion withdrawn: The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen), pursuant to notice of intention given on 5 December 2002, withdrew business of the Senate notice of motion no. 1 standing in his name for 3 sitting days after today for the disallowance of the Public Service Amendment Regulations 2002 (No. 1), as contained in Statutory Rules 2002 No. 214 and made under the *Public Service Act 1999*.

11 POSTPONEMENTS

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook) for today, relating to the reference of a matter to the Foreign Affairs, Defence and Trade References Committee, postponed till 10 December 2002.

Business of the Senate notice of motion no. 2 standing in the name of Senator O'Brien for today, relating to the disallowance of the Primary Industries (Customs) Charges Amendment Regulations 2002 (No. 6), postponed till 10 December 2002.

Business of the Senate notice of motion no. 3 standing in the name of Senator O'Brien for today, relating to the disallowance of the Primary Industries (Excise) Levies Amendment Regulations 2002 (No. 10), postponed till 10 December 2002.

Business of the Senate notice of motion no. 4 standing in the name of Senator O'Brien for today, relating to the disallowance of the Primary Industries Levies and Charges Collection Amendment Regulations 2002 (No. 7), postponed till 10 December 2002.

General business notice of motion no. 258 standing in the name of Senator O'Brien for today, relating to crises in rural and regional Australia, postponed till 12 December 2002.

General business notice of motion no. 287 standing in the name of the Chair of the Select Committee on Superannuation (Senator Watson) for today, relating to the reference of a matter to the Select Committee on Superannuation, postponed till 10 December 2002.

General business notice of motion no. 288 standing in the name of Senator Allison for today, relating to the long-distance trucking industry, postponed till 10 December 2002.

12 SCIENCE AND TECHNOLOGY—PHOTOVOLTAIC ENERGY

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 267—That the Senate—

- (a) notes the findings of the 2001 National Survey of Photovoltaics in Australia which shows that:
- (i) in 1996 Australia led the world in per capita manufacture of photovoltaic systems,

- (ii) despite an increase from 7.5 megawatts to 10 megawatts capacity between 1996 and 2001, Australia fell behind Japan and Spain for per capita manufacture of photovoltaic systems,
 - (iii) Japan now dominates the manufacture of photovoltaic systems, whilst Australia's share of the world market is down 70 per cent,
 - (iv) Australia's relative share of photovoltaic energy usage fell 50 per cent between 1996 and 2000,
 - (v) the growth in uptake of photovoltaic energy is greatest in the United States of America and European countries, where subsidies make it competitive with residential electricity prices,
 - (vi) rebates in Australia leave photovoltaic energy two to three times more expensive than coal fire-generated electricity, and
 - (vii) there is potential for an extra 10 million grid-connected rooftop customers in Australia;
- (b) urges the Federal Government to extend the photovoltaic energy rebate program, currently due to end in 2003 and to develop a strategy in conjunction with the photovoltaic industry to ensure that it becomes self-sufficient in the longer term; and
 - (c) urges Federal and state governments to encourage utilities to adopt fair metering and billing policies, which recognise the value of electricity generated from photovoltaic systems.

Question put and passed.

**13 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—
GOVERNMENT RESPONSE—AUSTRALIAN MOTOR VEHICLE STANDARDS**

The Deputy President (Senator Hogg) tabled the following document received on 6 December 2002:

Rural and Regional Affairs and Transport Legislation Committee—Report—Administration by the Department of Transport and Regional Services of Australian motor vehicle standards under the *Motor Vehicle Standards Act 1989* and regulations—Government response, dated September 2002.

**14 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—
GOVERNMENT RESPONSE—IMMIGRATION DETENTION CENTRES**

The Deputy President (Senator Hogg) tabled the following document received on 6 December 2002:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Visits to immigration detention centres—Government response.

**15 MIGRATION—JOINT STANDING COMMITTEE—GOVERNMENT RESPONSE—2001
REVIEW OF MIGRATION REGULATION 4.31B**

The Deputy President (Senator Hogg) tabled the following document received on 6 December 2002:

Migration—Joint Standing Committee—Report—2001 Review of Migration Regulation 4.31B—Government response.

16 COMMONWEALTH PARLIAMENTARY ASSOCIATION—48TH CONFERENCE—DOCUMENT

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

Commonwealth Parliamentary Association—Report of the delegation to the 48th Commonwealth Parliamentary Conference, Namibia, 4 to 13 September 2002.

17 IMMIGRATION—EAST TIMOR—ASYLUM SEEKERS—RESOLUTION OF THE LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY—DOCUMENT

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

Immigration—East Timor—Asylum seekers—Resolution of the Legislative Assembly of the Northern Territory—Letter forwarding a copy of the text of a resolution passed by the Northern Territory Legislative Assembly concerning East Timorese asylum seekers and members' speeches made during the debate on the matter, dated 29 November 2002.

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

Debate ensued.

Question put and passed.

18 HEALTH—TOBACCO—ORDER FOR PRODUCTION OF DOCUMENT—DOCUMENT

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

Health—Tobacco—Letter to the President of the Senate from the Chairman, Australian Competition and Consumer Commission (Professor Fels) responding to the resolution of the Senate of 12 November 2002, dated 29 November 2002.

19 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT—REVIEW OF AUSTRALIA'S RELATIONS WITH THE UNITED NATIONS

The Chair of the Joint Standing Committee on Foreign Affairs, Defence and Trade (Senator Ferguson) made a statement by way of a report and tabled the following documents:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Review of Australia's relations with the United Nations—*Hansard* record of proceedings and submissions.

20 FOREIGN AFFAIRS, DEFENCE AND TRADE—JOINT STANDING COMMITTEE—REPORT—SCRUTINY OF THE WORLD TRADE ORGANISATION

Senator Cook, on behalf of the Joint Standing Committee on Foreign Affairs, Defence and Trade, made a statement by way of a report and tabled the following documents:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Scrutiny of the World Trade Organisation—*Hansard* record of proceedings and list of documents presented to the committee.

Senator Nettle, by leave, moved—That the Senate take note of the statement.

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

21 INTER-PARLIAMENTARY UNION—INTER-PARLIAMENTARY UNION COUNCIL—171ST SESSION—DOCUMENT

Senator Chapman, by leave, tabled the following document:

Inter-Parliamentary Union—Inter-Parliamentary Union Council—171st Session, Geneva, Switzerland, 23 to 27 September 2002—Report of the Australian delegation, dated December 2002.

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

Question put and passed.

22 DOCUMENTS

The following documents were tabled by the Clerk:

Aboriginal and Torres Strait Islander Commission Act—Regional Council Election (Casual Vacancies) Amendment Rules 2002 (No. 1).

Radiocommunications Act—Radiocommunications Licence Conditions (Amateur Licence) Amendment Determination 2002 (No. 1).

Remuneration Tribunal Act—Determination—

2002/19: Remuneration and Allowances for Holders of Public Offices.

2002/20: Recreation Leave for Full-Time Holders of Relevant Offices.

23 GOVERNOR-GENERAL'S PROCLAMATION—COMMENCEMENT OF PROVISIONS OF AN ACT

A proclamation by His Excellency the Governor-General was tabled, notifying that he had proclaimed the following provisions of an Act to come into operation on the date specified:

Space Activities Amendment Act 2002—Schedule 1—1 December 2002 (*Gazette* No. S 453, 28 November 2002).

24 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE—CHANGE IN MEMBERSHIP

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

The Minister for Communications, Information Technology and the Arts (Senator Alston), by leave, moved—That Senator Moore replace Senator Wong on the Environment, Communications, Information Technology and the Arts References Committee for the committee's inquiry into the Australian telecommunications network.

Question put and passed.

25 GOVERNOR-GENERAL'S MESSAGES—ASSENT TO LAWS

Messages from His Excellency the Governor-General were reported, informing the Senate that he had assented to the following laws:

14 November 2002—Message—

No. 36—

Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002 (Act No. 104, 2002)

Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002 (Act No. 105, 2002)
No. 37—*Criminal Code Amendment (Offences Against Australians) Act 2002* (Act No. 106, 2002).

26 MEDICAL INDEMNITY BILL 2002

MEDICAL INDEMNITY (CONSEQUENTIAL AMENDMENTS) BILL 2002

MEDICAL INDEMNITY (ENHANCED UMP INDEMNITY) CONTRIBUTION BILL 2002

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION BILL 2002

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

Message no. 211, dated 5 December 2002—A Bill for an Act to make provision in relation to indemnities in relation to the practice of medical professions and vocations, and for related purposes.

Message no. 214, dated 5 December 2002—A Bill for an Act to make amendments consequential on the enactment of the medical indemnity legislation, and for related purposes.

Message no. 212, dated 5 December 2002—A Bill for an Act to impose a tax on certain members and former members of United Medical Protection Limited, and for related purposes.

Message no. 213, dated 5 December 2002—A Bill for an Act to impose a tax on certain members and former members of certain medical defence organisations, and for related purposes.

The Minister for Communications, Information Technology and the Arts (Senator Alston) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

Explanatory memorandum: Senator Alston tabled a revised explanatory memorandum relating to the bills.

On the motion of Senator Buckland the debate was adjourned.

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

27 TAXATION LAWS AMENDMENT (VENTURE CAPITAL) BILL 2002

VENTURE CAPITAL BILL 2002

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

Message no. 218, dated 5 December 2002—A Bill for an Act to amend the law relating to taxation, and for related purposes.

Message no. 217, dated 5 December 2002—A Bill for an Act relating to venture capital investments, and for related purposes.

The Minister for Communications, Information Technology and the Arts (Senator Alston) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

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

28 **BROADCASTING LEGISLATION AMENDMENT BILL (NO. 1) 2002**

A message from the House of Representatives was reported agreeing to the following bill without amendment:

Message no. 215, dated 5 December 2002—Broadcasting Legislation Amendment Bill (No. 1) 2002.

29 **JOINT COMMITTEES—APPOINTMENT OF HOUSE MEMBERS**

A message from the House of Representatives was reported acquainting the Senate with the appointment of members of the House of Representatives to joint committees, as follows:

Message no. 216, dated 5 December 2002—

Joint Standing Committee on Electoral Matters, Ms Panopoulos in place of Mrs Ley.

Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Mrs Ley in place of Ms Panopoulos.

30 **TELECOMMUNICATIONS COMPETITION BILL 2002**

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

In the committee

Consideration resumed of the bill, as amended.

Senator Cherry moved the following amendment:

Schedule 2, page 14 (after line 4), after Part 1, insert:

**Part 1A—Merit selection of Chair and members of
Commission**

4A At the end of subsection 7(3)

Add:

; and (d) be satisfied in accordance with section 7A that selection for appointment is made on merit.

4B After section 7

Insert:

7A Procedures for merit selection of Chair and members of Commission

- (1) The Minister must by writing determine a code of practice for nominations and appointments to the Commission that, in addition to the matters contained in section 7:
 - (a) sets out general principles on which nominations and appointments of members to the Commission, including the Chair, are to be made, including but not limited to:
 - (i) merit; and
 - (ii) independent scrutiny of appointments; and
 - (iii) probity; and
 - (iv) openness and transparency; and
 - (b) sets out how these principles are to be applied to the selection of the Chair and members of the Commission.
- (2) After determining a code of practice under subsection (1), the Minister must publish the code in the *Gazette*.
- (3) Not later than every fifth anniversary after a code of practice has been determined, the Minister must review the code.
- (4) In reviewing a code of practice, the Minister must invite the public to comment on the code.
- (5) A code of practice determined under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

7B Independence of Commission

Before the Chair or a member of the Commission is appointed, the Minister must ensure that the balance of interests on the Commission is such that no one interest may dominate the Commission or derogate from its independence.

Debate ensued.

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

Bill, as amended, further debated and agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Communications, Information Technology and the Arts (Senator Alston) the report from the committee was adopted and the bill read a third time.

31 BANKRUPTCY LEGISLATION AMENDMENT BILL 2002

Order of the day read for the consideration of message no. 204 from the House of Representatives in committee of the whole (*see entry no. 24, 3 December 2002*).

In the committee

The Special Minister of State (Senator Abetz) moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Senator Murray moved the following amendment:

Add “but agrees to the following further amendment:

Schedule 1, page 42 (after line 3), after item 182, insert:

182A At the end of section 271

Add:

- (2) It is a defence to the offence in subsection (1) if the person became bankrupt as a direct consequence of a genuine addiction to gambling or hazardous speculations.”.

Debate ensued.

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

Main question put and passed.

Resolution to be reported.

The Acting Deputy President (Senator Cook) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 204 from the House of Representatives relating to the Bankruptcy Legislation Amendment Bill 2002 and had resolved not to insist on the amendments made by the Senate to which the House had disagreed.

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

32 MIGRATION LEGISLATION AMENDMENT (FURTHER BORDER PROTECTION MEASURES) BILL 2002

Order of the day read for the adjourned debate on the motion of the Minister for Justice and Customs (Senator Ellison)—That this bill be now read a second time.

Debate resumed.

Question put.

The Senate divided—

AYES, 30

Senators—

Abetz	Eggleston	Macdonald, Ian	Scullion
Alston	Ellison	Macdonald, Sandy	Tchen
Barnett	Ferguson	Mason	Tierney
Boswell	Ferris (Teller)	McGauran	Troeth
Brandis	Harris	Minchin	Vanstone
Chapman	Heffernan	Patterson	Watson
Colbeck	Knowles	Payne	
Coonan	Lightfoot	Santoro	

NOES, 34

Senators—

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

Question negatived.

33 MEDICAL INDEMNITY BILL 2002

MEDICAL INDEMNITY (CONSEQUENTIAL AMENDMENTS) BILL 2002

MEDICAL INDEMNITY (ENHANCED UMP INDEMNITY) CONTRIBUTION BILL 2002

MEDICAL INDEMNITY (IBNR INDEMNITY) CONTRIBUTION BILL 2002

Order of the day read for the adjourned debate on the motion of the Minister for Communications, Information Technology and the Arts (Senator Alston)—That these bills be now read a second time.

Debate resumed.

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

34 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.25 pm till Tuesday, 10 December 2002 at 2 pm.

35 ATTENDANCE

Present, all senators except Senators Johnston and Kemp.

HARRY EVANS
Clerk of the Senate