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1 MEETING OF SENATE

The Senate met at 9.30 am. The Deputy President (Senator Hogg) took the chair and read prayers.

2 PETITION

The following petition, lodged with the Clerk by Senator Faulkner, was received:

From 84 petitioners, requesting that the Senate take action to implement reform, including ensuring the rights of asylum seekers, limiting the detention period to that necessary to check that an individual does not pose a threat, ensuring that children are treated with respect and not placing unreasonable restraints on community or media access to asylum seekers.

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

Industry—Simplot—Copy of petitioning document calling for the reversal of the decision to close the Simplot Australia factory in Scottsdale, Tasmania.

3 NOTICE

Senator Brown: To move on 5 February 2003—That the Senate—

- (a) approves a question time each day encompassing a minimum of 14 questions, or more if the hour permits;
- (b) allocates questions as follows:

		Number of senators
Opposition	28	28
Government	15	35
Australian Democrats	7	7
Crossbench	6	6

- (c) notes that this involves a loading for non-government senators; and
- (d) notes that the Australian Democrats and crossbench groups will work out an order of senators asking questions, based on these two groups having the sixth, eighth and twelfth questions each day and the fourteenth question on Wednesday. (*general business notice of motion no. 333*)

4 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That the following government business orders of the day be considered from 12.45 pm till not later than 2 pm today:

Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Bill 2002.

No. 9 Taxation Laws Amendment (Venture Capital) Bill 2002 and a related bill.

No. 10 Taxation Laws Amendment (Earlier Access to Farm Management Deposits) Bill 2002.

No. 11 Aviation Legislation Amendment Bill 2002.

National Environment Protection Council Amendment Bill 2002.

Question put and passed.

5 POSTPONEMENTS

Items of business were postponed as follows:

General business notice of motion no. 327 standing in the name of Senator Stott Despoja for today, relating to the commercial release of genetically-engineered crops, postponed till 4 February 2003.

6 HOURS OF MEETING AND ROUTINE OF BUSINESS—VARIATION

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), pursuant to notice of motion not objected to as a formal motion, moved government business notice of motion no. 1—That on Thursday, 12 December 2002:

- (a) the hours of meeting shall be 9.30 am to adjournment;
- (b) consideration of general business and consideration of committee reports, government responses and Auditor-General's reports under standing order 62(1) and (2) not be proceeded with;
- (c) the routine of business from not later than 4.30 pm shall be government business only;
- (d) divisions may take place after 6 pm; and
- (e) the question for the adjournment of the Senate shall not be proposed till a motion for the adjournment is moved by a minister.

Question put and passed.

Statement by leave: Senator Ian Campbell, by leave, made a statement relating to the motion.

7 POSTPONEMENTS

Senator Forshaw, by leave, moved—That general business notices of motion nos 329 and 330 standing in his name for today, relating to Australian Film Institute awards, be postponed till the next day of sitting.

Question put and passed.

8 ECONOMICS REFERENCES COMMITTEE—REFERENCE

The Chair of the Economics References Committee (Senator Collins), pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 2—That the following matter be referred to the Economics References Committee for inquiry and report by the last sitting day in June 2004:

The structure and distributive effects of the Australian taxation system, with particular reference to:

- (a) the level, extent and distribution of the current tax burden on individuals and businesses;
- (b) the impact of (a) on taxpayers' families;

- (c) the use and efficacy of various tax and expenditure incentives to influence social and economic conduct, for instance participation in the workforce;
- (d) the long-term social and economic impact of the current distribution of taxation, government spending and employment, including the intergenerational consequences of the tax structure;
- (e) the respective roles of the Commonwealth and the states in relation to the collection and distribution of taxation revenue; and
- (f) any other relevant issues which may arise in the course of the inquiry.

Question put and passed.

9 SUPERANNUATION—SELECT COMMITTEE—REFERENCE

Senator Ferris, at the request of the Chair of the Select Committee on Superannuation (Senator Watson) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 322—

- (1) That the following matter be referred to the Select Committee on Superannuation for inquiry and report by the last sitting day in June 2003:
Planning for retirement.
- (2) That in conducting the inquiry the committee examine, in particular:
 - (a) the effects of ageing on workers' productivity;
 - (b) the continuing relevance of the concept of a fixed retirement age;
 - (c) the potential to encourage progressive transitions from work to retirement, including through possible new benefit access and contribution arrangements, and part-time work;
 - (d) any scope for older workers to access their superannuation to finance retraining to continue work that is more suitable for older people;
 - (e) ways to assist older workers plan for their retirement;
 - (f) the short- and long-term effect on the Budget of any proposals for change; and
 - (g) any issues for the federal or state workplace relations systems.

Question put and passed.

10 FOREIGN AFFAIRS—CHINA—TIBETAN BUDDHISTS

Senator Brown amended his notice of motion by leave and, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 331— That the Senate opposes the death sentence, including the sentences on the Tibetan Buddhists in China.

Question put and passed.

11 SOCIAL ISSUES—POVERTY—MICROCREDIT LOANS

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 323—That the Senate—

- (a) notes that:
 - (i) the Microcredit Summit + 5 Conference held in New York in November 2002 reported that microcredit schemes are on track to reach 100 million of the poorest families benefiting the lives of 500 million of the world's poorest people,
 - (ii) there are more than 2 000 microcredit institutions operating worldwide,
 - (iii) more than 54 million microcredit borrowers have been reached, and
 - (iv) nearly 27 million of the total microcredit borrowers reached were amongst the poorest in the world when they took out their first loan, but are now lifting themselves out of poverty;
- (b) congratulates RESULTS Australia for its advocacy work on microcredit loans;
- (c) urges the Federal Government to consider increasing aid for microcredit funding to at least \$40 million per year; and
- (d) urges the Parliament to actively promote the critical role of microcredit in the alleviation of poverty and its contribution to the achievement of the Millennium Development Goal of halving the proportion of people living in absolute poverty by 2015.

Question put and negatived.

12 SCIENCE AND TECHNOLOGY—ALLOCATION OF FUNDING—ORDER FOR PRODUCTION OF DOCUMENTS

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 328—That there be laid on the table by the Minister representing the Minister for Science, no later than 4 February 2003:

- (a) all material, including advice, given to the Government, including the Prime Minister (Mr Howard), by the Chief Scientist or his office regarding funding or allocation of money or benefits to:
 - (i) the Rio Tinto Foundation for a Sustainable Minerals Industry,
 - (ii) any other Commonwealth funding to Rio Tinto,
 - (iii) the Australian Cooperative Research Centre (CRC) for Renewable Energy,
 - (iv) the CRC for Coal in Sustainable Development,
 - (v) the CRC for Greenhouse Gas Technologies (and its precursor, the Australian Petroleum CRC), and
 - (vi) the CRC for Clean Power from Lignite;
- (b) the advice of the CRC committee to the Government on the above CRC's for the funding round announced by the Minister for Science (Mr McGauran) on 10 December, 2002; and
- (c) the advice of the Chief Scientist and his office concerning carbon sequestration, clean coal and related energy matters in determining the National Science Priorities.

Question put and passed.

13 CULTURE AND THE ARTS—AUSTRALIAN FILM INSTITUTE AWARDS

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 324—That the Senate—

- (a) congratulates:
 - (i) all winners of the 2002 Australian Film Institute (AFI) awards, and
 - (ii) all of the people involved in the making of *Rabbit-Proof Fence*, which won the AFI award for Best Film;
- (b) notes that for the first time in the history of the AFI awards, every film nominated in the category of Best Film – *Australian Rules*; *Beneath Clouds*; *Rabbit-Proof Fence* and *The Tracker* – was an Indigenous-themed story;
- (c) congratulates the four Indigenous people who won awards on the night:
 - (i) director Ivan Sen,
 - (ii) actor David Gulpilil,
 - (iii) director and producer Rachel Perkins, and
 - (iv) cinematographer Allan Collins; and
- (d) calls on the Government to continue to support the development and production of Australian films so all Australians can continue to see and hear our own stories in cinemas and on our television screens.

Question put and passed.

14 SCIENCE AND TECHNOLOGY—GENETICALLY-MODIFIED FOOD—ORDER FOR PRODUCTION OF DOCUMENTS

The Leader of the Australian Democrats (Senator Bartlett), at the request of Senator Stott Despoja and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 321—That there be laid on the table by the Minister representing the Minister for Foreign Affairs and representing the Prime Minister (Senator Hill), no later than 4 pm on 4 February 2003:

All communications in the period June 2001 to the present between:

- (a) the Department of Foreign Affairs and Trade or the Prime Minister's office and Food Standards Australia New Zealand;
- (b) the Department of Foreign Affairs and Trade or the Prime Minister's office and the National Farmers Federation;
- (c) the Department of Foreign Affairs and Trade or the Prime Minister's office and the Department of Health and Ageing; and
- (d) the Prime Minister's office and the Department of Foreign Affairs and Trade,

relating to genetically-modified food in the context of the current free trade agreement negotiations with the United States and of the labelling of genetically-modified and genetically-engineered food, including communications to or from organisations formed or created under the auspices of any of the above agencies, officers of departments.

Question put and passed.

15 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REFERENCE

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook), pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 1—That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 27 November 2003:

- (1) The relevant issues involved in the negotiation of the General Agreement on Trade in Services (GATS) in the Doha Development Round of the World Trade Organization, including but not limited to:
 - (a) the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation;
 - (b) Australia's goals and strategy for the negotiations, including the formulation of and response to requests, the transparency of the process and government accountability;
 - (c) the GATS negotiations in the context of the 'development' objectives of the Doha Round;
 - (e) the impact of the GATS on the provision of, and access to, public services provided by government, such as health, education and water; and
 - (f) the impact of the GATS on the ability of all levels of government to regulate services and own public assets.
- (2) The issues for Australia in the negotiation of a free trade agreement with the United States of America, including but not limited to:
 - (a) the economic, regional, social, cultural, environmental and policy impact of such an agreement;
 - (b) Australia's goals and strategy for negotiations, including the formulation of our mandate, the transparency of the process and government accountability; and
 - (c) the impact on the Doha Development Round.

Question put and passed.

16 SCIENCE AND TECHNOLOGY—PROFESSOR MARTIN GREEN—PHOTOVOLTAIC ENGINEERING

Senator Allison, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 326—That the Senate—

- (a) notes that Professor Martin Green, Director of Research at the University of New South Wales' Centre for Photovoltaic Engineering won an International Right Livelihood award at Stockholm and was described by the award panel as 'the world's foremost researcher and inventor in the field';
- (b) congratulates Professor Green for winning this prestigious award; and
- (c) encourages the Government to heed Professor Green's suggestion that the cost of developing new energy sources could be borne by affluent communities rather than the poorer communities that were most in need of them.

Question put and passed.

17 CULTURE AND THE ARTS—MR ALBERT NAMATJIRA—COPYRIGHT

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 325—That the Senate—

- (a) pays tribute to Mr Albert Namatjira as the first Indigenous professional artist in Australia, who was born 100 years ago and died in 1959 after achieving national and international acclaim for his exceptional ability as an artist;
- (b) acknowledges that Albert Namatjira:
 - (i) adapted western-style painting to express his cultural knowledge and the strength of his connection to his traditional country, and
 - (ii) is now regarded as a national treasure in recognition of the cultural legacy he has left all Australians, as well as the inspiration he is to generations of Indigenous artists who have followed in his footsteps;
- (c) recognises that:
 - (i) the legal protection of Mr Namatjira's works provided by the *Copyright Act 1968* will expire in 2009, bringing to an end the ability of the copyright owner to exercise an exclusive right to use and reproduce his works, or to allow others to do so in return for a financial benefit, and
 - (ii) the Public Trustee of the Northern Territory Government authorised the sale of Mr Namatjira's copyright to Legend Press in 1983, thereby ending the ability of the descendants of Mr Namatjira to benefit from on-going income from the reproduction of his works; and
- (d) calls on the Government to:
 - (i) enter into discussions with the Northern Territory Government to buy back the copyright in Albert Namatjira's works, so that exclusive control of the use and reproduction of his works is restored to his descendants, as well as the receipt of all financial benefits that result from the use and reproduction of his works under copyright protection, and
 - (ii) in recognition of the contribution Mr Namatjira has made to the development of Australia's cultural identity and the need to protect his legacy for future generations, explore all relevant legal and other measures that will provide ongoing protection of the Namatjira name and his reputation and standing as one of our pre-eminent artists.

Question put and negatived. Both Australian Greens senators, by leave, recorded their votes for the ayes.

18 SENATE—DAYS OF MEETING—PROPOSED VARIATION

The Leader of the Australian Democrats (Senator Bartlett), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 314—

- (1) That the Senate notes:
 - (a) that the scheduled program of sittings for 2003 is just 63 days;
 - (b) that the scheduled sittings for 2002 and 2003 are the shortest parliamentary sitting years since 1988 that have not been election years; and

- (c) that by providing for minimal sittings of the Senate the Government does not allow the Senate enough time to properly consider and evaluate the Government's heavy legislative program.
- (2) That the order of the Senate relating to the days of meeting of the Senate for 2003 be varied as follows:
 - (a) by adding additional sitting weeks as follows:
 - Monday, 24 February to Thursday, 27 February 2003
 - Monday, 7 April to Thursday, 10 April 2003; and
 - (b) the routine of business for the week beginning Monday, 7 April 2003 be in accordance with standing order 57 except that, on each day, general business orders of the day relating to private senators' bills shall take precedence of government business.

Statements by leave: Senators Ludwig and Harradine, the Parliamentary Secretary to the Treasurer (Senator Ian Campbell), and Senators Mackay and Bartlett, by leave, made statements relating to the motion.

Question put and negatived.

19 ENVIRONMENT—FOOD IRRADIATION

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 332—That the Senate condemns:

- (a) the Government's 1999 decision to lift the federal moratorium on food irradiation without adequate public notice or consultation; and
- (b) the decision of the Minister for the Environment and Heritage (Senator Hill) to approve the construction and operation of the gamma radiation sterilisation and decontamination plant at Narangba in Queensland, based on 'preliminary documentation' as the means of assessment, rather than requiring a full environmental impact assessment under the *Environment Protection and Biodiversity Conservation Act 1999*.

Question put and negatived. Senators Brown and Harris, by leave, recorded their votes for the ayes.

20 PUBLICATIONS—STANDING COMMITTEE—6TH REPORT

The Chair of the Publications (Senator Colbeck) tabled the following report:

PUBLICATIONS COMMITTEE

6TH REPORT

The Publications Committee reports that it has met in conference with the Publications Committee of the House of Representatives.

The Committee, having considered documents presented to the Parliament since 14 November 2002, recommends that the following be printed:

Administrative Review Council—

Report for 2001-02.

Report—Council of Australasian Tribunals, October 2002.

Anglo-Australian Telescope Board—Report for 2001-02.

Australian Centre for International Agricultural Research—Report for 2001-02.

Civil Aviation Safety Authority—Report for 2001-02.
Copyright Agency Limited—Report for 2001-02.
Department of Health and Ageing—Report for 2001-02 including a report on the administration and operation of Therapeutic Goods Administration—Erratum.
Department of Transport and Regional Services—Report for 2001-02—Erratum.
Employment Advocate—Report for 2001-02—Erratum.
Freedom of Information Act 1982—Report for 2001-02 on the operation of the Act.
Health Services Australia (HSA)—Report for 2001-02.
Human Rights and Equal Opportunity Commission—Reports—
 No. 22—Inquiry into a complaint by Mr XY concerning his continuing detention despite having completed his criminal sentence.
 No. 23—Inquiry into a complaint by Mr Hassan Ghomwari concerning his immigration detention and the adequacy of the medical treatment he received while detained.
 No. 24—Inquiry into a complaint by five asylum seekers concerning their detention in the separation and management block at the Port Hedland Immigration Reception and Processing Centre.
 No. 25—Inquiry into a complaint by Mr Mohammed Badraie on behalf of his son Shayan regarding acts or practices of the Commonwealth of Australia (the Department of Immigration and Multicultural and Indigenous Affairs).
Inspector-General of Intelligence and Security—Report for 2001-02.
Members of Parliament (Staff) Act 1984—Report for 2001-02 on consultants engaged under section 4 of the Act.
National Road Transport Commission—Report for 2001-02—Erratum.
Office of the Federal Privacy Commissioner—Report for 2001-02 on the operation of the *Privacy Act 1988*.
Official Establishments Trust—Report for 2001-02.
Private Health Insurance Administration Council—Report for 2001-02 on the operations of the registered health benefits organisations.
Productivity Commission—Report—No. 22—Radiocommunications, 1 July 2002.
Remuneration Tribunal—Report for 2001-02.
Screenrights—Report for 2001-02.
Snowy Mountains Council—Report for 2001-02.
Snowy Mountains Hydro-electric Authority—Report for 2001-02.
States Grants (Primary and Secondary Education Assistance) Act 2000—Report on financial assistance granted to each State in respect of 2001.
Tiwi Land Council—Report for 2001-02.
War Crimes Act 1945—Report for 2001-2002 on the operation of the Act—
Corrigendum.

Senator Richard Colbeck
Chairman
12 December 2002.

Senator Colbeck moved—That the report be adopted.

Question put and passed.

**21 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—REPORT—
DEPARTMENTAL AND AGENCY CONTRACTS**

The Chair of the Finance and Public Administration References Committee (Senator Forshaw) tabled the following report:

Finance and Public Administration References Committee—Departmental and agency contracts: Report on the first year of operation of the Senate order for the production of lists of departmental and agency contracts—Report, dated December 2002.

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

Senator Forshaw moved—That the Senate take note of the report.

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

**22 NATIVE TITLE AND THE ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND—
JOINT STATUTORY COMMITTEE—REPORT—EXAMINATION OF ANNUAL REPORTS
2000-01**

The Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (Senator Johnston) tabled the following report and documents:

Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—Examination of the annual reports 2000-01 in fulfilment of the Committee's duties pursuant to s.206(c) of the *Native Title Act 1993*—Report, dated December 2002 and *Hansard* record of proceedings.

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

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

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

**23 CORPORATIONS AND FINANCIAL SERVICES—JOINT STATUTORY COMMITTEE—
REPORT—REVIEW OF THE MANAGED INVESTMENTS ACT 1998**

The Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman) tabled the following report and documents:

Corporations and Financial Services—Joint Statutory Committee—Review of the *Managed Investments Act 1998*—Report, dated December 2002, *Hansard* record of proceedings [3 vols], documents presented to the committee and submissions [13].

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

Senator Chapman moved—That the Senate take note of the report.

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

24 PARTICULARS OF PROPOSED ADDITIONAL EXPENDITURE 2002-03—DOCUMENTS

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following documents:

Particulars of proposed additional expenditure in respect of the year ending on 30 June 2003 [Appropriation Bill (No. 3) 2002-2003].

Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 2003 [Appropriation Bill (No. 4) 2002-2003].

Statement of savings expected in annual appropriations made by Act No. 43 of 2002 (*Appropriation Act (No. 1) 2002-2003*) and Act No. 44 of 2002 (*Appropriation Act (No. 2) 2002-2003*).

Senator Ian Campbell, by leave, moved—That the documents, together with the Final budget outcome 2001-02 (*see entry no. 2, 16 October 2002*), be referred to legislation committees for examination and report.

Question put and passed.

**25 ESTIMATES OF PROPOSED ADDITIONAL EXPENDITURE FOR 2002-03—PORTFOLIO
ADDITIONAL ESTIMATES STATEMENTS—PORTFOLIOS AND EXECUTIVE
DEPARTMENTS—DOCUMENTS**

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following documents:

Estimates of proposed additional expenditure for 2002-03—Portfolio additional estimates statements—Portfolios and executive departments—

Agriculture, Fisheries and Forestry portfolio.

Attorney-General's portfolio.

Communications, Information Technology and the Arts portfolio.

Defence portfolio—

Department of Defence and the Defence Housing Authority.

Department of Veterans' Affairs.

Education, Science and Training portfolio.

Employment and Workplace Relations portfolio.

Environment and Heritage portfolio.

Family and Community Services portfolio.

Finance and Administration portfolio.

Foreign Affairs and Trade portfolio.

Health and Ageing portfolio.

Immigration and Multicultural and Indigenous Affairs portfolio.

Industry, Tourism and Resources portfolio.

Transport and Regional Services portfolio.

Treasury portfolio.

**26 WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002
CRIMES LEGISLATION AMENDMENT (PEOPLE SMUGGLING, FIREARMS TRAFFICKING
AND OTHER MEASURES) BILL 2002
NATIONAL ENVIRONMENT PROTECTION COUNCIL AMENDMENT BILL 2002**

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

Message no. 224, dated 11 December 2002—A Bill for an Act to amend the *Workplace Relations Act 1996* and the *Workplace Relations Regulations 1996*, and for related purposes.

Message no. 227, dated 11 December 2002—A Bill for an Act to amend various Acts relating to law and justice, and for related purposes.

Message no. 228, dated 11 December 2002—A Bill for an Act to amend the *National Environment Protection Council Act 1994*, and for related purposes.

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

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

On the motion of Senator Mackay the debate was adjourned.

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

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

Question put and passed.

**27 PROHIBITION OF HUMAN CLONING BILL 2002
RESEARCH INVOLVING HUMAN EMBRYOS BILL 2002**

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

Message no. 225, dated 11 December 2002—Prohibition of Human Cloning Bill 2002.

Message no. 226, dated 11 December 2002—Research Involving Human Embryos Bill 2002.

**28 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—INTERIM REPORT—
STATUTORY POWERS AND FUNCTIONS OF THE AUSTRALIAN LAW REFORM
COMMISSION**

Pursuant to order, Senator Ferris, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), tabled the following report:

Legal and Constitutional Legislation Committee—Statutory powers and functions of the Australian Law Reform Commission—Interim report.

Extension of time to report: Senator Ferris, by leave, moved—That the Senate adopt the recommendation of the interim report that the time for the presentation of the final report be extended to 20 March 2003.

Question put and passed.

29 ORDER OF BUSINESS—REARRANGEMENT

Senator Ferris, by leave and at the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan), moved—That business of the Senate order of the day no. 2, relating to the presentation of the report of the committee on the Australian meat industry and export quotas, be postponed till a later hour.

Question put and passed.

30 SUPERANNUATION—SELECT COMMITTEE—REPORT—TAX ARRANGEMENTS FOR SUPERANNUATION

Pursuant to order, Senator Ferris, at the request of the Chair of the Select Committee on Superannuation (Senator Watson), tabled the following report and documents:

Superannuation—Select Committee—Superannuation and standards of living in retirement: The adequacy of the tax arrangements for superannuation and related policy—Report, dated December 2002, *Hansard* record of proceedings [8 vols], documents presented to the committee and submissions [152].

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

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

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

31 AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) 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—and of the amendments moved by the Leader of the Opposition in the Senate (Senator Faulkner):

No. 1—Schedule 1, item 24, page 14 (line 8), at the end of subsection 34E(1), add:

; (h) the person's right to make a request under 34F(11).

No. 2—Schedule 1, item 24, page 14 (line 18) to page 16 (line 32), omit section 34F, substitute:

34F Conduct of questioning

- (1) The prescribed authority shall regulate the conduct of questioning by the Organisation of the person under warrant.
- (2) The prescribed authority shall only allow questioning to proceed or continue if the prescribed authority is satisfied that the person has not been questioned for a continuous period of more than 20 hours or for more than a total of 20 hours within a period of 7 days.
- (3) If at any time the questioning of the person reaches or exceeds the time limits set out in subsection (2), the prescribed authority shall require the Organisation to immediately cease questioning the person.
- (4) Questioning of a person under warrant before the prescribed authority may not be conducted:
 - (a) at times which interfere with the provision of medical attention to the person;
 - (b) when the person is intoxicated;
 - (c) at times when the prescribed authority considers the person is unfit to be questioned;
 - (d) at times when the prescribed authority considers questioning would interfere with reasonable rest or recuperation.
- (5) When a person first appears before a prescribed authority, they may be questioned for a period not exceeding 4 hours.

- (6) If on application by the Organisation, the prescribed authority is satisfied that:
 - (i) there are reasonable grounds to believe further questioning is likely to yield relevant information; and
 - (ii) the person has access to legal advice consistent with subsections 34U(1) to (3), the person may be questioned for a further period not exceeding 8 hours in addition to the questioning allowed by subsection (5).
- (7) If on application by the Organisation, the prescribed authority is satisfied that there is a threat of an imminent terrorist act and that there are reasonable grounds to believe further questioning is likely to yield information relevant to that threat (including information relating to preparation or planning for a terrorist act), the prescribed authority may allow the person to be questioned for a further 8 hours in addition to those periods allowed by subsections (5) and (6).
- (8) The prescribed authority may authorise a person who is or has been before the prescribed authority for questioning under warrant to disclose to other persons information about the warrant, the questioning or the production of records or things.
- (9) The prescribed authority may authorise a legal practitioner who is accompanying or has accompanied a person who is or has been before the prescribed authority for questioning under warrant to disclose to other persons information about the warrant, the questioning or the production of records or things.
- (10) An authorisation to allow disclosure of information made by the prescribed authority under subsection (8) or (9) shall be in writing and shall specify the information which may be disclosed and the persons to whom the information may be disclosed.
- (11) A person appearing before a prescribed authority may at any time request the prescribed authority to make an authorisation under subsection (8) or (9) and the prescribed authority must immediately consider such a request.
- (12) An authorisation to allow disclosure of information made by the prescribed authority under subsection (8) or (9) may be revoked at any time.
- (13) This section does not in any way limit contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:
 - (a) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*; or
 - (b) section 22 of the *Complaints (Australian Federal Police) Act 1981*;as the case may be.

Note: The sections mentioned in this subsection give the person an entitlement to facilities for making a written complaint.
- (14) Anyone holding the person in custody under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security or the Ombudsman to make a complaint orally under a section mentioned in subsection (13) if the person requests them.

No. 3—Schedule 1, item 24, page 17 (lines 17 and 18), omit the note.

No. 4—Schedule 1, item 24, page 18 (lines 3 and 4), omit the note.

No. 5—Schedule 1, item 24, page 20 (line 11), omit “Director-General”, substitute “police”.

No. 6—Schedule 1, item 24, page 20 (line 17), omit “Director-General”, substitute “police”.

No. 7—Schedule 1, item 24, page 20 (after line 20), at the end of section 34K, add:

- (3) The police must immediately provide the Organisation with a copy of any video recording made under this section.

—and of the amendments moved by Senator Greig to Senator Faulkner’s proposed amendment no. 2:

After subsection 34F(7), insert:

- (7A) The prescribed authority may authorise a person subject to a questioning warrant to contact other persons during questioning and may identify those other persons by reference to a particular familial relationship with the person being questioned. This does not limit the ways in which the prescribed authority may identify persons whom the person is permitted to contact.

After subsection 34F(12), insert:

- (12A) This section does not in any way limit the right of a person subject to a questioning warrant to seek a remedy from a court in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

Omit subsection 34F(14), substitute:

- (14) Anyone holding the person in custody under this Division must, if the person requests, give the person facilities for contacting:
 - (a) any person whom the person is permitted to contact pursuant to subsection 34D(4) or 34F(7A); or
 - (b) the Inspector General of Intelligence and Security or the Ombudsman to make a complaint orally under a section mentioned in subsection (13).

Debate ensued.

Question—That Senator Greig’s amendments to Senator Faulkner’s proposed amendment no. 2 be agreed to—put and negatived.

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

Senator Greig moved the following amendment:

Schedule 1, item 24, page 18 (line 23), at the end of subsection (9), add:

- ; (c) information obtained as a consequence of anything said by the person, or any document or thing produced by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information or to produce a document or thing.

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

Senator Faulkner moved the following amendment:

Schedule 1, item 24, page 18 (after line 23), at the end of section 34G, add:

- (10) A person who is or has been before a prescribed authority for questioning under warrant may not disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

- (11) A legal practitioner who is accompanying or has accompanied a person appearing before a prescribed authority for questioning under warrant may not disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

- (12) Subsections (10) and (11) do not apply to contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:

(a) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*; or

(b) section 22 of the *Complaints (Australian Federal Police) Act 1981*;

as the case may be.

Senator Greig moved the following amendment to Senator Faulkner's proposed amendment:

Omit paragraph 34G(12), substitute:

- (12) Subsections (10) and (11) do not apply to:

(a) contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:

(i) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*; or

(ii) section 22 of the *Complaints (Australian Federal Police) Act 1981*;

as the case may be; or

(b) contact between the person or the person's legal adviser and a court or another legal adviser for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

Debate ensued.

Question—That Senator Greig's amendment to Senator Faulkner's proposed amendment be agreed to—put and passed.

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

The Minister for Justice and Customs (Senator Ellison) moved the following amendments together by leave:

No. 1—Schedule 1, item 24, page 19 (after line 2), after section 34H, insert:

34HAB Inspector-General of Intelligence and Security may be present at questioning, taking into custody or detention

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning, taking into custody, or detention, of a person under this Division.

No. 2—Schedule 1, item 24, page 19 (after line 9), at the end of subsection 34HA(1), add:

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34HAB, or because a person in detention has made a complaint under a section mentioned in paragraph 34F(9)(b).

Senator Faulkner moved the following amendments to Senator Ellison's proposed amendments together by leave:

Amendment (1), heading to section 34HAB, omit "**questioning, taking into custody or detention**", substitute "**questioning or taking into custody**".

Amendment (1), omit "questioning, taking into custody, or detention," substitute "questioning or taking into custody".

Amendment (2), omit " , or because a person in detention has made a complaint under a section mentioned in paragraph 34F(9)(b)".

Debate ensued.

Question—That Senator Faulkner's amendments to Senator Ellison's proposed amendments be agreed to—put and passed.

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

Senator Ellison moved the following amendment:

Schedule 1, item 24, page 20 (after line 9), after section 34J, insert:

34JA Entering premises to take person into custody

(1) If:

- (a) either a warrant issued under section 34D or subsection 34F(6) authorises a person to be taken into custody; and
- (b) a police officer believes on reasonable grounds that the person is on any premises;

the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) However, if subsection 34F(6) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

- (a) commencing at 9 pm on a day; and
- (b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 34F(6), either at the dwelling house or elsewhere, at another time.

(3) In this section:

dwelling house includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

premises includes any land, place, vehicle, vessel or aircraft.

34JB Use of force in taking person into custody and detaining person

(1) A police officer may use such force as is necessary and reasonable in:

- (a) taking a person into custody under:
 - (i) a warrant issued under section 34D; or
 - (ii) subsection 34F(6); or
- (b) preventing the escape of a person from such custody; or
- (c) bringing a person before a prescribed authority for questioning under such a warrant; or
- (d) detaining a person in connection with such a warrant.

(2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.

(3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:

- (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
- (b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
 - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

Debate ensued.

Document: Senator Ellison tabled the following document:

Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002—Copy of extract from the *Crimes Act 1914*.

Senator Faulkner moved the following amendments to Senator Ellison's proposed amendment together by leave:

Paragraph 34JA(1)(a), omit "or subsection 34F(6)".

Omit subsection 34JA(2), substitute:

- (2) A police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:
- (a) commencing at 9 pm on a day; and
 - (b) ending at 6 am on the following day;
- unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time.

Heading to section 34JB, omit "**and detaining person**".

Section 34JB, omit paragraphs (1)(a), (b), (c), and (d), substitute:

- (a) taking a person into custody under a warrant issued under section 34D; or
- (b) preventing the escape of a person from such custody; or
- (c) bringing a person before a prescribed authority for questioning under such a warrant.

Debate ensued.

Question—That Senator Faulkner's amendments to Senator Ellison's proposed amendment be agreed to—put and passed.

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

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

Schedule 1, item 24, page 21 (line 24), omit "subsection (3)", substitute "subsections (3) and (3A)".

Schedule 1, item 24, page 22 (after line 27), after subsection (3), insert:

- (3A) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.

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

Schedule 1, item 24, page 28 (after line 5), after section 34NB, insert:

34NC Complaints about contravention of procedural statement

- (1) Contravention of the procedural statement mentioned in section 34C of this Act may be the subject of a complaint:

- (a) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or
 - (b) to the Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981*.
- (2) This section does not limit the subjects of complaint under the *Inspector-General of Intelligence and Security Act 1986* or Part III of the *Complaints (Australian Federal Police) Act 1981*.

Senator Faulkner moved the following amendment:

Schedule 1, item 24, page 29 (line 27) to page 32 (line 4), omit section 34U, substitute:

34U Legal advice during questioning

- (1) Subject to subsections (2) and (3), a person appearing before a prescribed authority for questioning under warrant may be accompanied by a legal adviser.
- (2) If the prescribed authority is satisfied on application by the Organisation that the legal adviser chosen by the person being questioned may prejudice the collection of intelligence that is important in relation to a terrorism offence, the prescribed authority can deny the person their legal adviser of first choice.
- (3) In the circumstances mentioned in subsection (2), the prescribed authority must assist the person to locate a suitable legal adviser.
- (4) If the prescribed authority is satisfied, on application by the Organisation, that there is a threat of an imminent terrorist act, questioning may commence before the arrival of the person's legal adviser.

Breaks in questioning to give legal advice

- (5) The prescribed authority before whom a person is being questioned must provide a reasonable opportunity for the legal adviser to provide advice.

Removal of legal adviser for disrupting questioning

- (6) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the prescribed authority may direct a person exercising authority under the warrant to remove the legal adviser from the place where the questioning is occurring.
- (7) If the prescribed authority directs the removal of the person's legal adviser, the prescribed authority must assist the person to locate a suitable legal adviser.

Communications by legal adviser

- (8) The prescribed authority must not refuse to authorise the legal adviser to communicate to a court, for the purposes of seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant, information relating to the questioning or custody of the subject in connection with the warrant.

Debate ensued.

Senator Greig moved the following amendment to Senator Faulkner's proposed amendment:

Omit paragraph 34U(8), substitute:

Communications

- (8) The prescribed authority must not refuse to authorise the person being questioned or the legal adviser of that person to communicate with a court or another legal adviser for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

Debate ensued.

Question—That Senator Greig's amendment to Senator Faulkner's proposed amendment be agreed to—put and passed.

Debate continued.

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

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

Schedule 1, item 24, page 34 (after line 26), after section 34W, insert:

34WA Law relating to legal professional privilege not affected

To avoid doubt, this Division does not affect the law relating to legal professional privilege.

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

Schedule 1, item 27A, page 35 (lines 21 to 33), omit subsection (1A), substitute:

- (1A) The report must include a statement of:
 - (a) the total number of requests made under section 34C to issuing authorities during the year for the issue of warrants under section 34D; and
 - (b) the total number of warrants issued during the year under section 34D; and
 - (c) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(a) (about requiring a person to appear before a prescribed authority); and
 - (d) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(a) and the total of all those hours for all those persons; and
 - (e) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(b) (about authorising a person to be taken into custody, brought before a prescribed authority and detained); and
 - (f) the following numbers:
 - (i) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(b);

- (ii) the number of hours each person spent in detention under such a warrant;
 - (iii) the total of all those hours for all those persons; and
 - (g) the number of times each prescribed authority had persons appear for questioning before him or her under warrants issued during the year.
- (1B) A statement included under subsection (1A) in a report must not name, or otherwise specifically identify, any person to whom information provided in the report relates.

Note: Subsection (4) lets the Minister delete information described in subsection (1A) from the copy of the report laid before each House of the Parliament under subsection (3), if the Minister considers it necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

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

Definition of *superior court* as amended, add at the end "or a Territory or an equivalent".

Section 34B as amended, omit the section, substitute:

34B Prescribed authorities

- (1) The Minister may, by writing, appoint as a prescribed authority a person who has served as a judge in one or more superior courts for a period of 5 years and no longer holds a commission as a judge of a superior court.
- (2) If the Minister is of the view that there is an insufficient number of people to act as a prescribed authority under subsection (1), the Minister may, by writing, appoint as a prescribed authority a person who is currently serving as a judge in a State or Territory Supreme Court or District Court (or an equivalent) and has done so for a period of at least 5 years.
- (3) If the Minister is of the view that there are insufficient persons available under subsections (1) and (2), the Minister may, by writing, appoint as a prescribed authority, a person who holds an appointment to the Administrative Appeals Tribunal as President or Deputy President and who is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.
- (4) The Minister must not appoint a person under subsection (1), (2) or (3) unless the person:
 - (a) has by writing consented to being appointed; and
 - (b) the consent is in force.
- (5) A person can only be appointed as a prescribed authority for a single three-year term.
- (6) The Minister must cause to be kept a list of names of persons who have consented to being appointed as prescribed authorities.

- (7) If a person whose name is included in the list requests the Minister to have his or her name removed from the list, the Minister must cause the list to be amended to give effect to the request.
- (8) The Minister may, on his or her own initiative, cause the name of a person to be removed from the list.
- (9) A person appointed as a prescribed authority in accordance with this section shall be paid such remuneration as is determined by the Remuneration Tribunal, but until that remuneration is so determined, he or she shall be paid such remuneration as is prescribed.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

Senator Ellison moved—That the report from the committee be adopted.

Proposed reference to committee: Senator Greig moved the following amendment:

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

- (a) notes the recent anti-terrorist laws passed by the New South Wales Parliament which, among other things, seek to provide that certain police behaviour ‘may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus’;
- (b) notes the increasing incidence at both state and federal level of laws being proposed and enacted that put various government officials beyond the reach of legal proceedings in certain circumstances; and
- (c) refers the following to the Legal and Constitutional References Committee for inquiry and report by 16 May 2003:
 - (i) whether state laws seeking to exempt certain officers or people from legal action are constitutional, with particular reference to paragraph 75(v) and section 106 of the Commonwealth Constitution, and the separation of powers,
 - (ii) whether the various laws and proposals in regard to security and anti-terrorism measures at both state and federal level are consistent and whether or not they strike an acceptable balance between public security and the legal rights of all Australians, and
 - (iii) the extent of privative or ouster clauses that now exist in state, territory and Commonwealth law to exempt certain people from judicial oversight of particular actions”.

Debate ensued.

Question—That the amendment be agreed to—put.

The Senate divided—

AYES, 12

Senators—

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

NOES, 42

Senators—

Barnett	Eggleston	Ludwig	Reid
Bishop	Ellison	Lundy	Santoro
Bolkus	Ferris	Macdonald, Sandy	Sherry
Boswell	Forshaw	Mackay	Stephens
Buckland (Teller)	Heffernan	Marshall	Tchen
Calvert	Hill	McGauran	Troeth
Campbell, George	Hogg	McLucas	Watson
Colbeck	Hutchins	Moore	Webber
Collins	Johnston	O'Brien	Wong
Cook	Kirk	Payne	
Crossin	Knowles	Ray	

Question negatived.

Main question put and passed.

After 12.45 pm—

32 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) moved—That, after consideration of the government business order of the day relating to the National Environment Protection Council Amendment Bill 2002, government business order of the day no. 7 (Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002) be called on to enable second reading speeches to be made till not later than 2 pm.

Question put and passed.

33 CRIMES LEGISLATION AMENDMENT (PEOPLE SMUGGLING, FIREARMS TRAFFICKING AND OTHER MEASURES) BILL 2002

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bill was read a third time.

34 TAXATION LAWS AMENDMENT (VENTURE CAPITAL) BILL 2002
VENTURE CAPITAL 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.

Question put and passed.

Bills read a second time.

No amendments to the bills were circulated and no senator required that they be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bills were read a third time.

35 TAXATION LAWS AMENDMENT (EARLIER ACCESS TO FARM MANAGEMENT DEPOSITS) BILL 2002

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

Debate resumed.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bill was read a third time.

36 AVIATION LEGISLATION AMENDMENT BILL 2002

Order of the day read for the adjourned debate on the motion of the Minister for Revenue and Assistant Treasurer (Senator Coonan)—That this bill be now read a second time.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bill was read a third time.

37 NATIONAL ENVIRONMENT PROTECTION COUNCIL AMENDMENT BILL 2002

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That this bill be now read a second time.

Question put and passed.

Bill read a second time.

No amendments to the bill were circulated and no senator required that it be considered in committee.

On the motion of the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry (Senator Troeth) the bill was read a third time.

38 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) 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.

At 2 pm: Debate was interrupted.

39 QUESTIONS

Questions without notice were answered.

40 COMMUNICATIONS—TELSTRA—ANSWERS TO QUESTIONS

Senator Lundy moved—That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to questions without notice asked by Senators Lundy, Mackay and Eggleston today relating to Telstra.

Debate ensued.

Question put and passed.

41 SOCIAL ISSUES—POVERTY—MICROCREDIT LOANS

Senator Ridgeway, by leave, moved—That the Senate—

(a) notes that:

- (i) the Microcredit Summit + 5 Conference held in New York in November 2002 reported that microcredit schemes are on track to reach 100 million of the poorest families benefiting the lives of 500 million of the world's poorest people,
- (ii) there are more than 2 000 microcredit institutions operating worldwide,
- (iii) more than 54 million microcredit borrowers have been reached, and
- (iv) nearly 27 million of the total microcredit borrowers reached were amongst the poorest in the world when they took out their first loan, but are now lifting themselves out of poverty;

(b) congratulates RESULTS Australia for its advocacy work on microcredit loans;

(c) urges the Federal Government to consider increasing aid for microcredit funding;
and

(d) urges the Parliament to actively promote the critical role of microcredit in the alleviation of poverty and its contribution to the achievement of the Millennium Development Goal of halving the proportion of people living in absolute poverty by 2015.

Question put and passed.

42 PARLIAMENTARY COMMITTEE REPORTS—PRESIDENT’S REPORT—GOVERNMENT RESPONSES OUTSTANDING

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

President’s report to the Senate on government responses outstanding to parliamentary committee reports as at 12 December 2002.

43 AUDITOR-GENERAL—AUDIT REPORT NO. 22 OF 2002-03—DOCUMENT

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

Auditor-General—Business support process audit—Payment of accounts and goods and services tax administration by small Commonwealth organisations (Report no. 22 of 2002-03).

44 COMMONWEALTH OMBUDSMAN—MONITORING OF CONTROLLED OPERATIONS—REPORT FOR 2001-02—DOCUMENT

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

Commonwealth Ombudsman—Monitoring of controlled operations—Report for 2001-02, prepared pursuant to Part 1AB, Division 2A of the *Crimes Act 1914*, on the Ombudsman’s activities in monitoring controlled operations conducted by the National Crime Authority and the Australian Federal Police, dated December 2002.

45 PARLIAMENTARIANS’ TRAVEL COSTS—DOCUMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following document:

Parliamentarians’ travel paid by the Department of Finance and Administration—January to June 2002, dated December 2002.

46 FORMER PARLIAMENTARIANS’ TRAVEL COSTS—DOCUMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following document:

Former parliamentarians’ travel paid by the Department of Finance and Administration—January to June 2002, dated December 2002.

47 FORMER GOVERNORS-GENERAL TRAVEL COSTS—DOCUMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following document:

Former Governors-General travel paid by the Department of the Prime Minister and Cabinet—1 January to 30 June 2002.

48 DEPARTMENT OF DEFENCE—SPECIAL PURPOSE FLIGHTS—DOCUMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following document:

Department of Defence—Special purpose flights—Schedule for the period 1 January to 30 June 2002.

49 RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE—SECOND REPORT—AUSTRALIAN MEAT INDUSTRY CONSULTATIVE STRUCTURE AND QUOTA ALLOCATION

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

Rural and Regional Affairs and Transport Legislation Committee—Australian meat industry consultative structure and quota allocation—Second report: Existing government advisory structures in the Australian meat industry, dated December 2002, *Hansard* record of proceedings [5 vols], documents presented to the committee and submissions [31].

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

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

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

50 AUSTRALIAN PARLIAMENTARY DELEGATION TO EGYPT—DOCUMENT

Senator McGauran, by leave, tabled the following document:

Australia and Egypt: A parliamentary perspective—Report of the Australian parliamentary delegation to Egypt, 1 September to 5 September 2002.

51 DOCUMENTS

The following documents were tabled by the Clerk:

Census and Statistics Act—Australian Bureau of Statistics—Statement No. 2 of 2002.

Defence Act—Determinations under section—

58B—Defence Determination 2002/27.

58H—Defence Force Remuneration Tribunal—Determination No. 26 of 2002.

Export Control Act—Export Control (Orders) Regulations—Export Control (Fees) Amendment Orders 2002 (No. 2).

Fisheries Management Act—Heard Island and McDonald Islands Fishery Management Plan 2002—

Determination 2002/2003 HIMI TAC D1.

Directions Nos HIMIFD 1-HIMIFD 4.

Higher Education Funding Act—Determination under section 15—T26-2002.

Textile, Clothing and Footwear Strategic Investment Program Act—Textile, Clothing and Footwear Strategic Investment Program Scheme Amendment 2002 (No. 2).

52 AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

Order of the day read for the further consideration of the bill.

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That this bill be now read a third time.

Debate ensued.

Question put.

The Senate divided—

AYES, 45

Senators—

Barnett	Denman	Knowles	Santoro
Bishop	Ellison	Ludwig	Stephens
Bolkus	Evans	Macdonald, Sandy	Tchen
Boswell	Faulkner	Marshall	Tierney
Brandis	Ferguson	Mason	Troeth
Buckland	Ferris	McGauran (Teller)	Vanstone
Calvert	Forshaw	McLucas	Watson
Campbell, George	Harradine	Moore	Webber
Campbell, Ian	Hogg	O'Brien	Wong
Carr	Hutchins	Payne	
Colbeck	Johnston	Ray	
Crossin	Kirk	Reid	

NOES, 12

Senators—

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

Question agreed to.

Bill read a third time.

53 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

Order of the day read for the consideration of message no. 206 from the House of Representatives in committee of the whole (*see entry no. 14, 5 December 2002*).

In the committee

The Minister for Family and Community Services (Senator Vanstone) moved—That the committee does not insist on the division of the bill to which the House of Representatives has disagreed.

Senator Cherry moved the following amendment:

At the end of the motion, add “but reasserts the principle that the division of any bill by the Senate is a form of amendment of a bill, not different in principle from any other form of amendment, and should be considered as such”.

Debate ensued.

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

Main question, as amended, put and passed.

Statement by Chair of Committees: The Acting Deputy President (Senator Collins) reminded the committee that a number of government amendments had been made to the original bill.

Consideration resumed of the bill, as amended.

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

Schedule 1, as amended, debated.

Question—That Schedule 1, as amended, stand as printed—put.

The committee divided—

AYES, 42

Senators—

Barnett	Cook	Ludwig	Santoro
Bishop	Crossin	Lundy	Stephens
Boswell	Denman	Mackay	Tchen
Brandis	Eggleston (Teller)	Marshall	Tierney
Buckland	Ferguson	Mason	Troeth
Calvert	Ferris	McLucas	Vanstone
Campbell, George	Harradine	Moore	Watson
Campbell, Ian	Hogg	O'Brien	Webber
Carr	Johnston	Payne	Wong
Colbeck	Kirk	Ray	
Collins	Knowles	Reid	

NOES, 10

Senators—

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

Schedule agreed to.

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

Page 2 (after line 11), after clause 3, insert:

4 Evaluation

- (1) The Minister must conduct an evaluation of the measures contained in Schedules 1 and 5 of this Act.
- (2) Without limiting the generality of subsection (1), the evaluation must include the following:
 - (a) the numbers of parenting payment (single) recipients and parenting payment (partnered) recipients required to enter into participation agreements and the number of such recipients granted an exemption;
 - (b) details of expenditure on ancillary assistance provided to those affected by the measures such as expenditure on job network and training;
 - (c) employment outcomes of parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age

- recipients targeted by the measures compared to the employment outcomes of these groups prior to the implementation of the measures;
- (d) details of average earnings of the target population affected by the measures compared to earnings of the target population prior to the implementation of the measures;
 - (e) details of compliance with the activity agreements for parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients, including the numbers for each group in situations where a breach penalty was applied, and the reasons for applying a breach penalty;
 - (f) details of total savings resulting from breach penalties applied to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients required to enter into activity agreements;
 - (g) an assessment of the impact of the measures in Schedule 1 on children of parenting payment recipients;
 - (h) a cost benefit analysis of the new participation measures applying to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients.
- (3) The evaluation must be completed and tabled in each House of the Parliament by 30 June 2005.

Senator Cherry moved the following amendments together by leave:

No. 1—Schedule 1, item 11, page 6 (line 5), omit “8 weeks”, substitute “1 week”.

No. 2—Schedule 1, item 11, page 7 (lines 13 to 15), omit subsection (3), substitute:

- (3) Subject to subsection (4), the participation agreement breach non-payment period starts 14 days after the day on which the notice is given to the person.

No. 3—Schedule 1, item 12, page 10 (lines 22 to 34), omit subsection (2), substitute:

- (2) For the purposes of subsection (1), a person is an exempt person if:
- (a) the person has a PP child in respect of whom carer allowance is paid;
 - or
 - (b) the Secretary determines that the person should not be required to enter into a participation agreement.
- (2A) For the purposes of paragraph (2)(b), the Secretary must take into account the following matters when having regard to the person’s capacity to enter into the terms of a participation agreement:
- (a) the person’s age, education, experience and skills; and
 - (b) the person’s disability or illness, mental and physical condition; and
 - (c) the state of the local labour market and transport in the area where the person and the child or children live; and
 - (d) participation opportunities available to the person and any barriers to employment arising from paragraphs (a) and (b); and

- (e) family and caring responsibilities of the person, including the needs and interests of the child or children and the support services available; and
- (f) current court proceedings; and
- (g) current child welfare concerns; and
- (h) length of travel time required to participate; and
- (i) financial costs of compliance and the person's capacity to pay; and
- (j) any other matters that the Secretary or the person considers relevant in the circumstances.

No. 4—Schedule 1, item 14, page 16 (line 13), omit “26 weeks”, substitute “8 weeks”.

No. 5—Schedule 1, item 14, page 17 (lines 27 to 29), omit subsection (2), substitute:

- (2) Subject to subsection (3), the participation agreement breach rate reduction period starts 14 days after the day on which the notice is given to the person.

No. 6—Schedule 1, item 14, page 18 (line 30) to page 19 (line 4), omit paragraphs (a) and (b) of step 2 of the method statement, substitute:

- | |
|---|
| <ul style="list-style-type: none"> (a) if the participation agreement breach is the person's first breach in the 12 month period:
Maximum payment rate x 0.10 (b) if the participation agreement breach is the person's second breach in the 12 month period:
Maximum payment rate x 0.15 |
|---|

Debate ensued.

Senator Cherry, by leave, withdrew amendment no. 2.

The question for the amendments was divided—

Question—That amendments nos 1, 3, 5 and 6 be agreed to—put and negatived.

Debate continued.

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

Senator Bishop moved the following amendments together by leave:

No. 1—Schedule 1, item 11, page 7 (lines 13 to 15), omit subsection (3), substitute:

- (3) Subject to subsection (4), the participation agreement breach non-payment period starts on the 14th day after the day on which the notice is given to the person.

No. 2—Schedule 1, item 12, page 9 (lines 23 to 33), omit subsection (4), substitute:

- (4) In having regard to a person's capacity to comply with the terms of a participation agreement and the person's needs, the Secretary is to take into account, but is not limited to, the following matters:
 - (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

- (b) the state of the local labour market and the transport options available to the person in accessing that market; and
- (c) the participation opportunities available to the person; and
- (d) the family and caring responsibilities of the person (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and
- (e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and
- (f) the length of travel time required for compliance with the agreement; and
- (g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
- (h) any other matters that the Secretary or the person considers relevant in the circumstances.

No. 3—Schedule 1, item 12, page 10 (lines 6 to 10), omit paragraphs (a) and (b), substitute:

- (a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and
- (b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and
- (c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and
- (d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

No. 4—Schedule 1, item 12, page 10 (line 18), after “subsection (2)”, insert “or (2A)”.

No. 5—Schedule 1, item 12, page 10 (after line 34), after subsection (2), insert:

Exempt persons—periodic exemptions

- (2A) For the purposes of subsection (1), a person is an exempt person for a particular period determined by the Secretary under this subsection if:
 - (a) the person has one or more PP children:
 - (i) who suffer from a physical, intellectual or psychiatric disability; and
 - (ii) whose care needs are such that the person could not be reasonably expected at that time to comply with the terms of a participation agreement; or
 - (b) a critical event occurs that was not within the person's control (eg. family or personal crisis, the Secretary is satisfied the person has separated from his or her partner on a permanent or indefinite basis in the past 26 weeks, person's house burning down, evidence of domestic violence, serious illness of PP children) and, as a result, the

person is temporarily unable to comply with the terms of a participation agreement.

- (2B) At any one time the maximum period for which the Secretary may determine that a person is an exempt person under subsection (2A) is:
 - (a) if paragraph (2A)(a) applies to the person—12 months;
 - (b) if paragraph (2A)(b) applies to the person—26 weeks.
- (2C) The Secretary may make more than one determination under subsection (2A) in respect of a person.

No. 6—Schedule 1, item 12, page 11 (line 29) to page 12 (line 2), omit subsection (1), substitute:

- (1) A participation agreement is a written agreement between the Secretary and another person, in a form approved by the Secretary, under which the person agrees to undertake, during each period of 26 weeks that the agreement is in force, approved activities anticipated to take 150 hours or such lesser number of hours as are agreed between them. Participation agreements will set out the support that the Secretary undertakes to provide to assist the person to meet his or her participation requirements in the negotiated agreement.

No. 7—Schedule 1, item 12, page 12 (line 17), after “program”, insert “as defined in section 23 of the *Social Security Act 1991*”.

No. 8—Schedule 1, item 12, page 12 (lines 19 to 21), omit paragraph (k), substitute:

- (k) another activity that the Secretary regards as suitable for the person, including voluntary work, and that is agreed to between the person and the Secretary.

No. 9—Schedule 1, item 12, page 12 (line 28) to page 13 (line 4), omit subsection (4), substitute:

- (4) In having regard to a person’s capacity to comply with the terms of a participation agreement and to the person’s needs, the Secretary is to take into account, but is not limited to, the following matters:
 - (a) the person’s education, experience, skills, age, disability, illness, mental and physical condition; and
 - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
 - (c) the participation opportunities available to the person; and
 - (d) the family and caring responsibilities of the person (including those arising from any significant adverse effect on a PP child of a person that would result from the person’s compliance with the terms of the agreement); and
 - (e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and
 - (f) the length of travel time required for compliance with the agreement; and
 - (g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and

(h) any other matters that the Secretary or the person considers relevant in the circumstances.

No. 10—Schedule 1, item 12, page 13 (line 7), after “varied”, insert “(in negotiation with the person)”.

No. 11—Schedule 1, item 12, page 13 (after line 13), after subsection (5), insert:

Cooling-off period

(5A) Within 14 days of the terms of the participation agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

(5B) The Secretary must advise the person of the effect of subsection (5A).

Avoidance of doubt

(5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

No. 12—Schedule 1, item 12, page 14 (line 23), after “agree to”, insert “the reasonable”.

No. 13—Schedule 1, item 13, page 17 (after line 25), after subsection (1), insert:

Notice to contain reasons

(1A) A notice under subsection (1) must contain reasons why the participation agreement breach rate reduction period applies to the person.

No. 14—Schedule 1, item 13, page 17 (lines 27 to 29), omit subsection (2), substitute:

(2) Subject to subsection (3), the participation agreement breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

No. 15—Schedule 1, page 20 (after line 10), after item 20, insert:

20A At the end of section 544

Add:

Secretary must contact person before determining failure to comply with terms

(3) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a youth allowance activity agreement unless the Secretary:

- (a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and
- (b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and
- (c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and

- (d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

No. 16—Schedule 1, page 20 (after line 13), after item 21, insert:

21A Subsection 544B(4)

Repeal the subsection, substitute:

- (4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to, the following matters:
- (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and
 - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
 - (c) the participation opportunities available to the person; and
 - (d) the family and caring responsibilities of the person; and
 - (e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g); and
 - (f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
 - (g) any other matters that the Secretary or the person considers relevant in the circumstances.

No. 17—Schedule 1, page 20 (after line 13), after item 21, insert:

21B Paragraph 544B(5)(a)

After "varied", insert "(in negotiation with the person)".

No. 18—Schedule 1, page 20 (after line 13), after item 21, insert:

21C After subsection 544B(5)

Insert:

Cooling-off period

- (5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

- (5B) The Secretary must advise the person in writing of the effect of subsection (5A).

Avoidance of doubt

- (5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

No. 19—Schedule 1, page 20 (after line 25), after item 24, insert:

24A Subparagraph 544C(1)(b)(iii)

After "agree to", insert "the reasonable".

No. 20—Schedule 1, page 20 (after line 25), after item 24, insert:

24C Subsection 550C(2)

Repeal the subsection, substitute:

General rule

- (2) Subject to subsection (3) and to sections 550D and 550E, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

No. 21—Schedule 1, page 20 (after line 30), after item 26, insert:

26A Subsection 557B(2)

Repeal the subsection, substitute:

General rule

- (2) Subject to subsection (3) and to section 557C, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

26B Subsection 558B(2)

Repeal the subsection, substitute:

General rule

- (2) Subject to subsection (3), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

No. 22—Schedule 1, page 20 (after line 30), after item 26, insert:

26X After subsection 593(2A)

Insert:

- (2B) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a Newstart Activity Agreement unless the Secretary:
 - (a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and
 - (b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and
 - (c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and
 - (d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

No. 23—Schedule 1, page 21 (after line 11), after item 30, insert:

30C Subsection 630B(2)

Repeal the subsection, substitute:

- (2) Subject to subsections (3) and (6) and to sections 630BA and 630BB, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

No. 24—Schedule 1, page 21 (after line 28), after item 34, insert:

34B Subsection 644AB(2)

Repeal the subsection, substitute:

- (2) Subject to section 644AC, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

34C Subsection 644C(2)

Repeal the subsection, substitute:

- (2) Subject to subsections (3) and (6), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

No. 25—Schedule 5, page 45 (after line 29), after item 11, insert:

11A After subsection 606(1)

Insert:

- (1A) If the person is at least 50 years of age but less than 60 years of age, the particular number of job vacancies shall not exceed 24 per 12 weeks in the period specified in the notice.
- (1AB) If the person is at least 60 years of age, the particular number of job vacancies shall not exceed 12 per 12 weeks in the period specified in the notice.
- (1AC) Subsection (1A) does not apply unless the person has been receiving an income support payment for a continuous period of at least 9 months and the person satisfies the Secretary that the person has no recent workforce experience.

No. 26—Schedule 5, page 45 (after line 29), after item 11, insert:

11B Subsection 606(4)

Repeal the subsection, substitute:

- (4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to, the following matters:
- (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and
 - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
 - (c) the participation opportunities available to the person; and
 - (d) the family and caring responsibilities of the person; and
 - (e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g); and

- (f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
- (g) any other matters that the Secretary or the person considers relevant in the circumstances.

No. 27—Schedule 5, page 45 (after line 29), after item 11, insert:

11C Paragraph 606(5)(a)

After “varied”, insert “(in negotiation with the person)”.

No. 28—Schedule 5, page 45 (after line 29), after item 11, insert:

11D After subsection 606(5)

Insert:

- (5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.
- (5B) The Secretary must advise the person in writing of the effect of subsection (5A).
- (5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

No. 29—Schedule 5, page 45 (after line 29), after item 11, insert:

11E Subparagraph 607(1)(iii)

After “agree to”, insert “the reasonable”.

Senator Bishop, by leave, amended amendment no. 16 as follows:

Omit “601(2A)(g)”, substitute “541D(1)(g)”.

Debate ensued.

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

The following amendment moved by Senator Cherry was reconsidered:

Schedule 1, item 14, page 16 (line 13), omit “26 weeks”, substitute “8 weeks”.

Question—That the amendment be agreed to—put again, by leave, and passed.

Senator Cherry moved the following amendments together by leave:

No. 1—Schedule 1, page 20 (after line 25), after item 24, insert:

24A Subsection 550B(1)

Omit “8 weeks”, substitute “1 week”.

No. 2—Schedule 1, page 20 (after line 25), after item 24, insert:

24B After subsection 553C(4)

Add:

- (5) If:
 - (a) a person ceases to be qualified for youth allowance because of a failure to comply with a requirement to enter into a Youth Allowance Activity Agreement; and

- (b) the Secretary, under section 80 of the Administration Act, cancels or suspends the person's youth allowance because of that loss of qualification; and
- (c) within 4 weeks after the date of effect of the action taken by the Secretary, the person enters into a Youth Allowance Activity Agreement;

the person's qualification for youth allowance is taken, for the purposes of paragraph 540(c) of this Act, never to have ceased.

No. 3—Schedule 1, page 20 (after line 30), after item 26, insert:

26A Paragraph 557(b) and note

Repeal the paragraph and the note, substitute:

- (b) the latest breach is the first or second activity test breach in the 12 months immediately before the day after the latest breach.

Note: If the latest breach is the third or subsequent activity test breach in the 12 months before the latest breach, an activity test non-payment period applies to the person (see Subdivision D of Division 2).

No. 4—Schedule 1, page 20 (after line 30), after item 26, insert:

26B Subsection 557A(1)

Omit "26 weeks", substitute "8 weeks".

No. 5—Schedule 1, page 20 (after line 30), after item 26, insert:

26D Subsection 557B(3)

Omit "the period starts on the day", substitute "the period starts on the 14th day".

No. 6—Schedule 1, page 20 (after line 30), after item 26, insert:

26E Subsection 557E(1) (step 2 of the method statement)

Repeal the step, substitute:

<p><i>Step 2.</i> Work out the rate reduction amount as follows:</p> <ul style="list-style-type: none"> (a) if the activity test breach is the person's first breach in the 12 month period: Maximum payment rate x 0.10 (b) if the activity test breach is the person's second breach in the 12 month period: Maximum payment rate x 0.15
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No. 7—Schedule 1, page 20 (after line 30), after item 26, insert:

26F Subsection 557E(2)

Omit "2 year period means the 2 years", substitute "**12 month period** means the 12 months".

No. 8—Schedule 1, page 20 (after line 30), after item 26, insert:

26G Subsection 558A(1)

Omit “13 weeks”, substitute “4 weeks”.

No. 9—Schedule 1, page 20 (after line 30), after item 26, insert:

26K Section 558G (step 2 of the method statement)

Omit “0.16”, substitute “0.08”.

Debate ensued.

Senator Cherry, by leave, withdrew amendment no. 4.

The question for the amendments was divided—

Question—That amendments nos 1 to 3 and 5 to 8 be agreed to—put and negatived.

Question—That amendment no. 9 be agreed to—put and passed.

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

Schedule 1, page 20 (after line 30), after item 26, insert:

26L Paragraph 576(2)(b) and note

Repeal the paragraph and the note, substitute:

(b) the latest breach is the third or subsequent activity test breach in the 12 months immediately before the day after the latest breach.

Note: If the latest breach is the first or second activity test breach in the 12 months before the latest breach, an activity test rate reduction period applies to the person (see Subdivision B of Division 5).

Schedule 1, page 20 (after line 30), after item 26, insert:

26M Subsection 576B(1)

Omit “8 weeks”, substitute “1 week”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26N Subsection 576C(2)

Omit “starts on the day”, substitute “starts on the 14th day after the day”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26P Paragraph 582(b) and note

Omit “2 years” (wherever occurring), substitute “12 months”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26Q Subsection 582A(1)

Omit “26 weeks”, substitute “8 weeks”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26R Subsection 582B(2)

Omit “on the day”, substitute “on the 14th day after the day”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26S Subsection 582D(1) (step 2 of the method statement)

Repeal the step, substitute:

<i>Step 2.</i>	Work out the rate reduction amount as follows:
(a)	if the activity test breach is the person's first breach in the 12 month period: Maximum payment rate x 0.10
(b)	if the activity test breach is the person's second breach in the 12 month period: Maximum payment rate x 0.15

Schedule 1, page 20 (after line 30), after item 26, insert:

26T Subsection 582D(2)

Omit "*2 year period* means the 2 years", substitute "*12 month period* means the 12 months".

Schedule 1, page 20 (after line 30), after item 26, insert:

26U Subsection 583A(1)

Omit "13 weeks", substitute "4 weeks".

Schedule 1, page 20 (after line 30), after item 26, insert:

26V Subsection 583B(2)

Omit "on the day", substitute "on the 14th day after the day".

Schedule 1, page 20 (after line 30), after item 26, insert:

26W Section 583G (step 2 of the method statement)

Omit "0.16", substitute "0.08".

Senator Cherry moved the following amendments together by leave:

No. 1—Schedule 1, page 21 (after line 11), after item 30, insert:

30A Paragraphs 624(1A)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

No. 2—Schedule 1, page 21 (after line 11), after item 30, insert:

30B Paragraphs 625(1A)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

No. 3—Schedule 1, page 21 (after line 11), after item 30, insert:

30C Paragraphs 626(1A)(a) and (b)

Omit "2 years" (wherever occurring), substitute "12 months".

No. 4—Schedule 1, page 21 (after line 11), after item 30, insert:

30D Paragraphs 628(c) and (d)

Omit "2 years" (wherever occurring), substitute "12 months".

No. 5—Schedule 1, page 21 (after line 11), after item 30, insert:

30E Paragraphs 629(a) and (b)

Omit “2 years” (wherever occurring), substitute “12 months”.

No. 6—Schedule 1, page 21 (after line 11), after item 30, insert:

30F Paragraphs 630(2)(a) and (b)

Omit “2 years” (wherever occurring), substitute “12 months”.

No. 7—Schedule 1, page 21 (after line 11), after item 30, insert:

30G Paragraphs 630AA(2)(a) and (b)

Omit “2 years” (wherever occurring), substitute “12 months”.

No. 8—Schedule 1, page 21 (after line 25), after item 33, insert:

33A After section 634

Insert:

634A Qualification for newstart allowance

If:

- (a) a person ceases to be qualified for newstart allowance because of a failure to comply with a requirement to enter into a Newstart Activity Agreement; and
- (b) the Secretary, under section 80 of the Administration Act, cancels or suspends the person’s newstart allowance because of that loss of qualification; and
- (c) within 4 weeks after the date of effect of the action taken by the Secretary, the person enters into a Newstart Allowance Activity Agreement;

the person’s qualification for newstart allowance is taken, for the purposes of subparagraph 593(1)(b)(i) of this Act, never to have ceased.

No. 9—Schedule 1, page 21 (after line 28), after item 34, insert:

34A Section 644AA

Omit “26 weeks”, substitute “8 weeks”.

No. 10—Schedule 1, page 21 (after line 28), after item 34, insert:

34C Paragraphs 644AE(2)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the activity test breach is the person’s first breach in the 12 month period:

Maximum payment rate x 0.10

- (b) if the activity test breach is the person’s second breach in the 12 month period:

Maximum payment rate x 0.15

No. 11—Schedule 1, page 21 (after line 28), after item 34, insert:

34D Subsection 644AE(3)

Omit “*2 year period* means the 2 years”, substitute “*12 month period* means the 12 months”.

No. 12—Schedule 1, page 21 (after line 28), after item 34, insert:

34E Section 644B

Omit “13 weeks”, substitute “4 weeks”,

No. 13—Schedule 1, page 21 (after line 28), after item 34, insert:

34F Subsection 644H(2)

Omit “0.16”, substitute “0.08”.

The question for the amendments was divided—

Question—That amendments nos 3 to 8 and 10 to 13 be agreed to—put and negatived.

Question—That amendments nos 1, 2 and 9 be agreed to—put and passed.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 4.

Schedule 4 debated and agreed to.

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

Schedule 1, item 11, page 5 (line 20), omit “2 years”, substitute “12 months”.

Schedule 1, item 14, page 18 (line 31), omit “2 year”, substitute “12 month”.

Schedule 1, item 14, page 19 (line 1), method statement, omit “0.18”, substitute “0.20”.

Schedule 1, item 14, page 19 (line 3), omit “2 year”, substitute “12 month”.

Schedule 1, item 14, page 19 (line 4), method statement, omit “0.24”, substitute “0.25”.

Schedule 1, item 14, page 19 (line 10), omit “2 year”, substitute “12 month”.

Schedule 1, item 14, page 19 (line 12), omit “2 year”, substitute “12 month”.

Schedule 1, item 14, page 19 (line 12), omit “2 years”, substitute “12 months”.

Schedule 1, page 20 (after line 25), after item 24, insert:

24B Paragraph 550(2)(b)

Omit “2 years”, substitute “12 months”.

Schedule 1, page 20 (after line 25), after item 24, insert:

24D After paragraph 553B(3)(d)

Insert:

- (da) satisfies the Secretary that the cost of housing accommodation has been a significant factor in causing the person to move; or

Schedule 1, page 20 (after line 30), after item 26, insert:

26C At the end of section 557

Add:

(2) If:

- (a) a youth allowance becomes not payable to a person because of:

- (i) a failure to enter into a Youth Allowance Activity Agreement;
or

- (ii) an unreasonable delay in entering into a Youth Allowance Activity Agreement; or
 - (iii) a failure to take reasonable steps to comply with the terms of a Youth Allowance Activity Agreement; and
- (b) the Secretary is satisfied that, not more than 8 weeks after the start of the activity test rate reduction period applicable to the person by reason of the breach referred to in paragraph (a), the person:
- (i) has entered into such a Youth Allowance Activity Agreement; or
 - (ii) is no longer unreasonably delaying entry into such a Youth Allowance Activity Agreement; or
 - (iii) is taking reasonable steps to comply, or to resume compliance, with the terms of a Youth Allowance Activity Agreement that is in force in respect of the person or, if there is no Youth Allowance Activity Agreement in force in respect of the person, with the terms of the Youth Allowance Activity Agreement that was in force in respect of the person immediately before the commencement of the rate reduction period, as the case requires;

this Act has effect, for the purpose only of determining the rate of youth allowance during the balance of the rate reduction period, as if the rate reduction period had never applied.

- (3) A determination that a person has commenced to take reasonable steps as referred to in subparagraph (2)(b)(iii) may be expressed to have effect from the day on which those reasonable steps are taken, whether or not the determination is made on that day or a later day.

Schedule 1, page 20 (after line 30), after item 26, insert:

26D Subsection 557E(1) (paragraphs (a) and (b) of step 2 of the method statement)

Omit “2 year” (wherever occurring), substitute “12 month”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26E Subsection 557E(1) (paragraph (a) of step 2 of the method statement)

Omit “0.18”, substitute “0.24”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26F Subsection 557E(1) (paragraph (b) of step 2 of the method statement)

Omit “0.24”, substitute “0.25”.

Schedule 1, page 20 (after line 30), after item 26, insert:

26G Subsection 557E(2)

Repeal the subsection, substitute:

Meaning of 12 month period

(2) In this section:

12 month period means the 12 months immediately before the day after the activity test breach.

Schedule 1, page 20 (after line 30), after item 26, insert:

26H At the end of section 558

Add:

(2) If:

- (a) a youth allowance becomes not payable to a person because of a failure to comply with a requirement to attend at a particular place for a particular purpose in accordance with a notice issued under paragraph 63(3)(c); and
- (b) not more than 8 weeks after the start of the administrative breach rate reduction period applicable to the person by reason of the breach referred to in paragraph (a):
 - (i) the person attends that place for that purpose; or
 - (ii) the person complies with an alternative requirement that the Secretary notifies to the person (whether orally or in writing);
 this Act has effect, for the purpose only of determining the rate of youth allowance during the balance of the rate reduction period, as if the rate reduction period had never applied.

Schedule 1, page 20 (after line 30), after item 26, insert:

26J Subsection 558A(1)

Omit “13 weeks”, substitute “8 weeks”.

Schedule 1, page 21 (after line 25), after item 33, insert:

33A After paragraph 634(3)(c)

Insert:

- (ca) satisfies the Secretary that the cost of housing accommodation has been a significant factor in causing the person to move;

Schedule 1, page 21 (after line 28), after item 34, insert:

34D Paragraph 644AE(2)(a)

Omit “0.18”, substitute “0.20”.

Schedule 1, page 21 (after line 28), after item 34, insert:

34E Paragraph 644AE(2)(b)

Omit “0.24”, substitute “0.25”.

Schedule 1, page 21 (after line 28), after item 34, insert:

34F Section 644B

Omit “13 weeks”, substitute “8 weeks”.

Schedule 5, item 13, page 47 (lines 8 and 9), omit paragraph (b).

Schedule 5, item 13, page 47 (line 10), omit “26 weeks”, substitute “8 weeks”.

Schedule 5, item 14, page 48 (lines 5 and 6), omit paragraph (b).

Schedule 5, item 14, page 48 (line 7), omit “13 weeks”, substitute “8 weeks”.

Bill, as amended, agreed to.

Bill to be reported with amendments.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Collins) reported that the committee had considered message no. 206 from the House of Representatives relating to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and had resolved not to insist on its division of the bill, had agreed to the bill with amendments and had agreed to a resolution relating to the message from the House.

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

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

Debate ensued.

Question put.

The Senate divided—

AYES, 34

Senators—

Bishop	Eggleston	Lundy	Stephens
Buckland	Evans	Mackay	Tchen
Campbell, George	Forshaw	Marshall	Tierney
Carr	Harradine	McGauran (Teller)	Vanstone
Colbeck	Hogg	McLucas	Watson
Collins	Hutchins	Moore	Webber
Cook	Johnston	O’Brien	Wong
Crossin	Kirk	Patterson	
Denman	Ludwig	Ray	

NOES, 8

Senators—

Allison (Teller)	Brown	Greig	Murray
Bartlett	Cherry	Lees	Nettle

Question agreed to.

Bill read a third time.

Order of the day discharged: Senator Vanstone, by leave, moved—That government business order of the day no. 3 relating to the bill be discharged from the *Notice Paper*.

Question put and passed.

Suspension of sitting: On the motion of Senator Vanstone the sitting of the Senate was suspended till 8.30 pm.

At 8.30 pm—

54 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Revenue and Assistant Treasurer (Senator Coonan) moved—That the order of consideration of government business orders of the day for the remainder of today be as follows:

- No. 6 Trade Practices Amendment (Liability for Recreational Services) Bill 2002.
- No. 7 Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.
- Workplace Relations Amendment (Fair Termination) Bill 2002.
- Renewable Energy (Electricity) Amendment Bill 2002.
- No. 4 Inspector-General of Taxation Bill 2002.
- No. 5 Taxation Laws Amendment (Structured Settlements and Structured Orders) Bill 2002.
- No. 8 Copyright Amendment (Parallel Importation) Bill 2002.

Question put and passed.

55 TRADE PRACTICES AMENDMENT (LIABILITY FOR RECREATIONAL SERVICES) 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 this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Senator Ludwig moved the following amendment:

Schedule 1, item 1, page 3 (after line 24), after subsection (1), insert:

- (1A) For the purposes of paragraph (1)(d) the regulations must prescribe the form and contents of the exclusion, restriction or modification which must include, but which is not limited to, a requirement that the consumer sign each exclusion, restriction or modification.
- (1B) Any exclusion, restriction or modification which includes a false or misleading statement is void.
- (1C) Any exclusion, restriction or modification is void if the corporation has acted recklessly in relation to a death or personal injury.

Debate ensued.

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

Omit subsection (1C).

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

On the motion of Senator Murray the following amendment was agreed to:

Schedule 1, item 1, page 3 (after line 24), after subsection (1), insert:

- (1C) Any exclusion, restriction or modification is void if the corporation has acted recklessly in relation to a death or personal injury.

Senator Murray moved the following amendment:

Schedule 1, item 1, page 4 (lines 8 to 15), omit the definition of *recreational services*, substitute:

recreational services means:

- (a) services that consist of participation in:
 - (i) a sporting activity or similar leisure time pursuit; and
 - (ii) that activity involves a significant degree of physical risk; and
- (b) such inherently risky activities as may be prescribed in the regulations.

Debate ensued.

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

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

Schedule 1, item 1, page 4 (after line 15), at the end of paragraph (b), add:

- ; and (iii) the activity is undertaken for the purpose of recreation, but does not include smoking or the consumption of any tobacco products in any form.

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

Schedule 1, item 1, page 4 (after line 18), at the end of section 68B, add:

- (4) A term of a contract for the supply by a corporation of recreational services is void if it limits liability in relation to:
 - (a) persons under the age of 18 years; or
 - (b) intellectually disabled persons.

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

Schedule 1, item 1, page 4 (after line 18), at the end of section 68B, add:

- (5) Where a corporation supplying recreational services seeks to rely on the operation of this section and the activity is prescribed in the regulations as an inherently risky activity, the waiver, exclusion, restriction or modification must be:
 - (a) written in plain English or such other language as may be required where a significant proportion of users of the service are non-English speakers; and
 - (b) explained to the person assuming the risk including to non-English speakers; and
 - (c) signed by the person assuming the risk.

Bill, as amended, agreed to.
 Bill to be reported with amendments.

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

On the motion of the Minister for Revenue and Assistant Treasurer (Senator Coonan) the report from the committee was adopted and the bill read a third time.

56 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002

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

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

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

Schedule 1, item 22, page 10 (line 20), after “vocational”, insert “or language”.

Schedule 1, item 22, page 22 (after line 5), after subsection (1), insert:

(1A) The Secretary is not to require a person to undertake any activity referred to in subsection (1) other than a vocational training course that is an approved program unless the Secretary is satisfied that the person could be reasonably expected to undertake such an activity.

(1B) For the purposes of subsection (1), an **approved program** means a literacy, language or numeracy program approved by the Secretary.

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

Schedule 1, item 22, page 20 (after line 9), after section 731J, insert:

731JA Relief from activity test—grant of temporary protection, humanitarian or safe haven visa

A person to whom this Subdivision applies is not required to satisfy the activity test in respect of the period of 13 weeks commencing the day after the day on which the person is granted a visa included in a class of visas that is issued for temporary protection, humanitarian or safe haven purposes and that is determined by the Minister to be a class of visas to which subparagraph 729(2)(g)(i) applies.

Schedule 1, item 22, page 21 (line 13), after “731F”, insert “, 731JA”.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Family and Community Services (Senator Vanstone) the report from the committee was adopted.

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

The Senate divided—

AYES, 32

Senators—

Alston	Crossin	Mackay	Santoro
Barnett	Denman	Marshall	Stephens
Bishop	Ferguson	Mason	Tchen
Brandis	Ferris	McGauran (Teller)	Troeth
Buckland	Harris	McLucas	Vanstone
Calvert	Hutchins	Moore	Watson
Campbell, George	Johnston	O'Brien	Webber
Colbeck	Macdonald, Sandy	Ray	Wong

NOES, 10

Senators—

Allison (Teller)	Cherry	Lees	Murray
Bartlett	Greig	Murphy	Nettle
Brown	Harradine		

Question agreed to.

Bill read a third time.

57 NOTICE

Senator Brown gave a notice of motion as follows: To move on the next day of sitting—That the provisions of the following bills be referred to the Economics Legislation Committee for inquiry and report by 20 March 2003:

- (a) Medical Indemnity (Prudential Supervision and Product Standards) Bill 2002; and
- (b) Medical Indemnity (Prudential Supervision and Product Standards) (Consequential Amendments) Bill 2002.

58 WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

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

Schedule 1, page 3 (before line 6), before item 1, insert:

1A At the end of subsection 89A(2)

Add:

; (u) issues arising in respect of a period for the purposes of paragraph 170CBA(3)(a).

Schedule 1, item 1, page 4 (lines 25 to 27), omit paragraph (a), substitute:

(a) the employee is engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 6 months, unless a shorter period is specified in an award or certified agreement; and

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

Schedule 2 debated and agreed to.

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

Schedule 1, item 1, page 3 (line 9), omit “*Subdivisions B, C, D, E and F*”, substitute “*Subdivisions B, D, E and F and sections 170CL and 170CM*”.

Schedule 1, item 1, page 3 (line 11), omit “*Subdivisions B, C, D, E and F*”, substitute “*Subdivisions B, D, E and F and sections 170CL and 170CM*”.

Schedule 1, item 1, page 4 (lines 21 and 22), omit “*Subdivision B, C, D or E*”, substitute “*Subdivision B, D or E or section 170CL or 170CM*”.

The Senate continued to sit till midnight—

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Bill, as amended, agreed to.

Bill to be reported with amendments.

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

59 RENEWABLE ENERGY (ELECTRICITY) AMENDMENT BILL 2002

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

Message no. 229, dated 12 December 2002—A Bill for an Act to amend the *Renewable Energy (Electricity) Act 2000*, and for other purposes.

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

Debate ensued.

Question put and passed.

Bill read a first time.

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

Debate ensued.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Senator Brown moved the following amendments together by leave:

Schedule 1, item 33, page 8 (line 15), omit paragraph (j), substitute:

- (j) plantation wood waste being wood waste from plantations which are on land, the major part of which, in 1990, was not covered with native vegetation and excludes native forest residue;

Schedule 1, item 33, page 8 (line 28), at the end of subsection (2), add:

- ; (c) native forest residue which includes native wood waste.

Schedule 1, item 33, page 8 (after line 28), after subsection (2):

- (2A) Paragraphs (1)(j) and (2)(c) cease to have effect 2 years after they commence.

Schedule 1, page 9 (after line 6), after item 33, insert:

33A After section 17

Insert:

17A Review of the use of native forest residue which includes native wood waste as an eligible renewable energy source

- (1) Immediately on the commencement of this Act, the Minister must cause an independent review to be undertaken of the implications of the use of

native forest residue which includes native wood waste as an eligible renewable energy source.

- (2) The review must include, but is not limited to, an assessment of the implications of such use on:
 - (a) net greenhouse emissions; and
 - (b) biodiversity; and
 - (c) the level of biomass extraction under Regional Forest Agreements; and
 - (d) the plantation industry.
- (3) The review must be undertaken by a panel of 3 persons chosen by the Minister, including:
 - (a) one person representing environmental groups;
 - (b) one person representing the renewable energy industry;
 - (c) one person representing the Minister.
- (4) The review panel must complete its review and give a written report of the review to the Minister within 12 months after the commencement of the review.
- (5) The Minister must table a copy of the report of the review in each House of the Parliament as soon as possible after it is received.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 8

Senators—

Allison (Teller)	Brown	Greig	Murray
Bartlett	Cherry	Lees	Nettle

NOES, 46

Senators—

Abetz	Eggleston	Ludwig	Reid
Alston	Evans	Lundy	Santoro
Barnett	Ferguson	Macdonald, Ian	Stephens
Boswell	Ferris (Teller)	Macdonald, Sandy	Tchen
Brandis	Forshaw	Mackay	Tierney
Buckland	Heffernan	Marshall	Troeth
Campbell, George	Hill	Mason	Vanstone
Campbell, Ian	Hogg	McLucas	Watson
Carr	Johnston	Moore	Webber
Colbeck	Kirk	O'Brien	Wong
Cook	Knowles	Patterson	
Crossin	Lightfoot	Payne	

Question negatived.

Bill further debated.

Document: The Minister for Fisheries, Forestry and Conservation (Senator Ian Macdonald) tabled the following document:

Environment—Tasmania—Logging—Statement responding to the order of the Senate of 11 December 2002.

Senator Allison moved the following amendment:

Schedule 1, page 10 (after line 16), after item 39, insert:

39A After section 19

Insert:

19A Offsetting of renewable energy certificates

- (1) This section applies to an accredited power station that:
 - (a) has a nameplate rating of more than 20 MW; or
 - (b) generates an amount of electricity that is less than the power station's 1997 eligible renewable power baseline in a calendar year.
- (2) A registered person who operates a power station to which subsection (1) applies must notify the Regulator of the number of MWh by which the power station's 1997 eligible renewable power baseline exceeds the amount of electricity generated in that calendar year (a *deficiency*).
- (3) When the Regulator is notified of a deficiency, the Regulator must offset the deficiency against any renewable energy certificates created in a subsequent calendar year.

Example: In year 1, an accredited power station creates 100 RECs in excess of its 1997 eligible renewable power baseline. In year 2, the power station produces a deficiency of 120MWh. The Regulator must offset the first 100 MWh of the deficiency against the 100 RECs created in year 1 and the remaining 20 MWh against any RECs created in year 3 or a later year.

Note: Nameplate rating is a defined term in the National Electricity Code and is "the maximum continuous output or consumption in MW of an item of equipment as specified by the manufacturer".

- (4) To the extent that the deficiency was caused by a plant breakdown or other major system failure that would not have been accounted for in determining the power station's 1997 eligible renewable power baseline then the renewable energy that relates to this event need not be offset against certificates created in a subsequent calendar year.

Debate ensued.

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

Senator Allison moved the following amendment:

Schedule 1, page 34 (after line 14), after item 151, insert:

151A After subsection 161(1)

Insert:

- (1A) Where an accredited hydro-electric power station with a nameplate rating in excess of 20 MW has access to major water storage capability, the regulations must provide that a 1997 eligible renewable power baseline for such a station is its long run average generation capacity.

Note 1: Long run average generation capacity is determined with reference to the average generation that the power station could have produced from its annually available water, if it had used the water to generate electricity in the year that the water was available rather than store the water for generation in subsequent years.

Note 2: Major water storage capability can be defined where the storage cycle has historically extended beyond a year. That is, water can be stored long-term and used in subsequent years to produce electricity.

Debate ensued.

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

Senator Allison moved the following amendment:

Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40

Omit the section, substitute:

40 Required GWh of renewable source of electricity

- (1) The *required GWh of renewable source electricity* for a year up to and including 2010 is set out in the following table:

Required GWh of renewable source electricity	
Year	Required additional GWh
2001	300
2002	1100
2003	6916
2004	9990
2005	13064
2006	17290
2007	21517
2008	26127
2009	31122
2010 and later years	36500

Debate ensued.

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

Senator Brown moved the following amendment:

Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40

Omit the section, substitute:

40 Required GWh of renewable source of electricity

- (1) The *required GWh of renewable source electricity* for a year up to and including 2010 is set out in the following table:

Required GWh of renewable source electricity	
Year	Required additional GWh
2001	300
2002	1100
2003	6916
2004	9990
2005	13064
2006	17290
2007	21517
2008	26127
2009	31122
2010 and later years	36500

- (2) The regulations must prescribe the required GWh of renewable source electricity for the years 2020, 2030 and 2050 at least 10 years before each of those years and in accordance with the following table:

Required GWh of renewable source electricity after 2010	
Year	Required GWh
2020	not less than 25% of the estimated electricity consumption in 2020
2030	not less than 50% of the estimated electricity consumption in 2030

Debate ensued.

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

Senator O’Brien moved the following amendment:

Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40 (table)

Omit the table, substitute:

Required GWh of renewable source electricity	
Year	Required additional GWh
2001	300
2002	1100
2003	1800
2004	4200
2005	6600
2006	9000
2007	11400
2008	13800
2009	16200
2010 and later years	18700

Debate ensued.

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

On the motion of Senator O'Brien the following amendment was agreed to:

Schedule 1, item 68, page 19 (lines 22 and 23), omit the item, substitute:

68 Section 40

Omit the section, substitute:

40 Minimum required GWh of renewable source electricity: 2010

The minimum required GWh of renewable source electricity for the calendar year 2010 shall be that number of GWh which represents 5% of the total number of GWh of electricity acquired from all sources under relevant acquisitions during the previous calendar year.

Bill, as amended, further debated.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 152.

Schedule 1, item 152 debated.

Document: Senator O'Brien, by leave, tabled the following document:

Renewable Energy (Electricity) Amendment Bill 2002—'Labor calls for increase of mandatory renewable energy target'—Media release by the Shadow Minister for Environment and Heritage (Mr Thomson), dated 9 December 2002.

Schedule 1, item 152 further debated and agreed to.

Senator Allison moved the following amendments together by leave:

Schedule 1, page 34 (after line 16), at the end of Part 1, add:

152A At the end of paragraph 162(1)(a)

Add:

- (iii) stimulated the development of an internationally competitive renewable energy industry; and
- (iv) resulted in the optional use of renewable energy resources in Australia; and

Schedule 1, page 34 (after line 16), at the end of Part 1, add:

152B At the end of paragraph 162(1)(h)

Add “and continuing to increase the targets beyond 2010; and

- (i) the degree to which the operation of the Act impacts on the effectiveness of other measures that support renewable energy development;”.

Debate ensued.

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

On the motion of Senator O’Brien the following amendment was debated and agreed to:

Schedule 1, page 34 (after line 16), at the end of Part 1, add:

152A Paragraph 162(1)(f)

After “utilised”, insert “as an eligible renewable energy source, with particular reference to:

- (i) net greenhouse emissions; and
- (ii) biodiversity; and
- (iii) the level of biomass extraction under the Regional Forest Agreements; and
- (iv) the plantation industry;”.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

60 AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

A message from the House of Representatives was reported as follows:

Message no. 232, dated 13 December 2002 am—Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, agreeing to amendments nos 3, 11, 14, 15, 29, 31, 38, 39, 48 to 50, 52, 53, 57 and 58 made by the Senate; disagreeing to amendments nos 1, 2, 8 to 10, 12, 16 to 28, 30, 32 to 37, 42, 44 to 47, 51 and 54 to 56; and making amendments in place of amendments nos 4 to 7, 13, 40, 41 and 43.

Ordered, on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell), that the message be considered in committee of the whole immediately.

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

In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE
TO WHICH THE HOUSE OF REPRESENTATIVES HAS DISAGREED

(1) Opp (1) [Sheet 2764]

Page 2 (after line 11), after clause 3, add:

4 Cessation of operation of Act

This Act, unless sooner repealed, ceases to be in force at the end of 3 years after Royal Assent.

(2) Opp (2) [Sheet 2764]

Schedule 1, item 8, page 4 (after line 14), before the definition of *terrorism offence*, insert:

terrorist act has the same meaning as in Part 5.3 of the *Criminal Code*.

(8) Opp (7) [Sheet 2764]

Schedule 1, item 24, page 8 (line 16), omit “, **detention etc.**”, substitute “**warrants**”.

(9) Opp (8) [Sheet 2764]

Schedule 1, item 24, page 8 (line 17), after “**Requesting**”, insert “**questioning**”.

(10) Opp (9) [Sheet 2764]

Schedule 1, item 24, page 8 (after line 22), after subsection (1A), insert:

(1B) The Director-General may not seek the Minister’s consent to request the issue of a warrant under section 34D in relation to a person under 18 years of age.

(12) Opp (11) [Sheet 2764]

Schedule 1, item 24, page 9 (lines 13 to 29), omit paragraphs (c) and (d), substitute:

(c) if the warrant to be requested is to authorise the person to be taken into custody immediately and brought before a prescribed authority

immediately for questioning—that there are reasonable grounds for believing that, if the person is not immediately taken into custody, the person:

- (i) may alert a person involved in a terrorism offence that the offence is being investigated; or
- (ii) may not appear before the prescribed authority; or
- (iii) may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce.

(16) Opp (12) [Sheet 2764]

Schedule 1, item 24, page 10 (line 3), omit subparagraph (iii).

(17) Opp (13) [Sheet 2764]

Schedule 1, item 24, page 10 (line 8), after “Parliament”, insert “as a disallowable instrument”.

(18) Opp (14) [Sheet 2764]

Schedule 1, item 24, page 10 (lines 13 to 37), omit subsections (3B) and (3C), substitute:

- (3B) In consenting to the making of a request to issue a warrant authorising the person to be taken into custody immediately and brought before a prescribed authority immediately for questioning, the Minister must ensure that the warrant to be requested is to permit the person to contact a lawyer at any time when the person is being questioned under this Division in connection with the warrant.

(19) Opp (15) [Sheet 2764]

Schedule 1, item 24, page 11 (lines 1 to 15), omit subsections (4) and (5), substitute:

- (4) If the Minister has consented under subsection (3), the Director-General may request the warrant by giving a prescribed authority:
 - (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
 - (b) a copy of the Minister’s consent.

(20) Opp (16) [Sheet 2764]

Schedule 1, item 24, page 11 (lines 17 to 30), omit subsection (1), substitute:

- (1) A prescribed authority may issue a warrant under this section relating to a person, but only if:
 - (a) the Director-General has requested it in accordance with subsection 34C(4); and
 - (b) the prescribed authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

(21) Opp (17) [Sheet 2764]

Schedule 1, item 24, page 11 (line 37) to page 12 (line 10), omit paragraph (2)(b), substitute:

- (b) do both of the following:

- (i) authorise a specified person to be taken into custody immediately by a police officer, brought before a prescribed authority immediately for questioning under the warrant and held in custody under arrangements made by a police officer until questioning has been completed;
- (ii) permit the person taken into custody to contact a lawyer (as described in section 34U) when the person is being questioned under the warrant.

(22) Opp (18) [Sheet 2764]

Schedule 1, item 24, page 12 (lines 11 to 27), omit subsections (3) and (4), substitute:

- (3) For the purposes of subparagraph (2)(b)(i), the warrant may specify the end of the period for which the person is to be questioned by reference to the opinion of the prescribed authority that the Organisation does not have any further requests described in paragraph (5)(a) to make of the person.
- (4) The warrant may identify other persons whom the person is permitted to contact by reference to the fact that he or she has a particular familial relationship with that person or persons. This does not limit the ways in which the warrant may identify persons whom the person is permitted to contact.

Note 1: The warrant may identify persons by reference to a class. See subsection 46(2) of the *Acts Interpretation Act 1901*.

Note 2: Section 34F permits the person to contact the Inspector-General of Intelligence and Security and the Ombudsman while the person is in custody, so the warrant must identify them.

(23) Opp (19) [Sheet 2764]

Schedule 1, item 24, page 12 (line 29), omit “issuing”, substitute “prescribed”.

(24) Opp (20) [Sheet 2764]

Schedule 1, item 24, page 13 (line 9), omit “issuing”, substitute “prescribed”.

(25) Opp (21) [Sheet 2764]

Schedule 1, item 24, page 13 (lines 22 to 24), omit paragraph (1)(a), substitute:

- (a) the period for which the warrant authorises questioning of the person;

(26) Opp (22) [Sheet 2764]

Schedule 1, item 24, page 14 (lines 6 and 7), omit “or detention”.

(27) Opp (23) [Sheet 2764]

Schedule 1, item 24, page 14 (line 8), at the end of subsection 34E(1), add:

- ; (h) the person’s right to make a request under 34F(11).

(28) Dem (2) [Sheet 2779 Revised]

Schedule 1, item 24, page 14 (line 8), at the end of subsection 34E(1), add:

- ; (i) subject to section 34U, the person’s right to contact a lawyer at any time during the period of their questioning.

(30) Opp (24) [Sheet 2764]

Schedule 1, item 24, page 14 (line 12), omit “24”, substitute “4”.

(32) Opp (25) [Sheet 2764]

Schedule 1, item 24, page 14 (line 18) to page 16 (line 32), omit section 34F, substitute:

34F Conduct of questioning

- (1) The prescribed authority shall regulate the conduct of questioning by the Organisation of the person under warrant.
- (2) The prescribed authority shall only allow questioning to proceed or continue if the prescribed authority is satisfied that the person has not been questioned for a continuous period of more than 20 hours or for more than a total of 20 hours within a period of 7 days.
- (3) If at any time the questioning of the person reaches or exceeds the time limits set out in subsection (2), the prescribed authority shall require the Organisation to immediately cease questioning the person.
- (4) Questioning of a person under warrant before the prescribed authority may not be conducted:
 - (a) at times which interfere with the provision of medical attention to the person;
 - (b) when the person is intoxicated;
 - (c) at times when the prescribed authority considers the person is unfit to be questioned;
 - (d) at times when the prescribed authority considers questioning would interfere with reasonable rest or recuperation.
- (5) When a person first appears before a prescribed authority, they may be questioned for a period not exceeding 4 hours.
- (6) If on application by the Organisation, the prescribed authority is satisfied that:
 - (i) there are reasonable grounds to believe further questioning is likely to yield relevant information; and
 - (ii) the person has access to legal advice consistent with subsections 34U(1) to (3), the person may be questioned for a further period not exceeding 8 hours in addition to the questioning allowed by subsection (5).
- (7) If on application by the Organisation, the prescribed authority is satisfied that there is a threat of an imminent terrorist act and that there are reasonable grounds to believe further questioning is likely to yield information relevant to that threat (including information relating to preparation or planning for a terrorist act), the prescribed authority may allow the person to be questioned for a further 8 hours in addition to those periods allowed by subsections (5) and (6).
- (8) The prescribed authority may authorise a person who is or has been before the prescribed authority for questioning under warrant to disclose to other

persons information about the warrant, the questioning or the production of records or things.

- (9) The prescribed authority may authorise a legal practitioner who is accompanying or has accompanied a person who is or has been before the prescribed authority for questioning under warrant to disclose to other persons information about the warrant, the questioning or the production of records or things.
 - (10) An authorisation to allow disclosure of information made by the prescribed authority under subsection (8) or (9) shall be in writing and shall specify the information which may be disclosed and the persons to whom the information may be disclosed.
 - (11) A person appearing before a prescribed authority may at any time request the prescribed authority to make an authorisation under subsection (8) or (9) and the prescribed authority must immediately consider such a request.
 - (12) An authorisation to allow disclosure of information made by the prescribed authority under subsection (8) or (9) may be revoked at any time.
 - (13) This section does not in any way limit contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:
 - (a) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*; or
 - (b) section 22 of the *Complaints (Australian Federal Police) Act 1981*; as the case may be.
- Note: The sections mentioned in this subsection give the person an entitlement to facilities for making a written complaint.
- (14) Anyone holding the person in custody under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security or the Ombudsman to make a complaint orally under a section mentioned in subsection (13) if the person requests them.

(33) Opp (26) [Sheet 2764]

Schedule 1, item 24, page 17 (lines 3 and 4), omit “or a direction given under section 34F”.

(34) Opp (27) [Sheet 2764]

Schedule 1, item 24, page 17 (lines 6 to 10), omit subsection (2), substitute:

- (2) Strict liability applies to the circumstance of an offence against subsection (1) that the warrant was issued under section 34D.

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

(35) Opp (28) [Sheet 2764]

Schedule 1, item 24, page 17 (lines 17 and 18), omit the note.

(36) Opp (29) [Sheet 2764]

Schedule 1, item 24, page 18 (lines 3 and 4), omit the note.

(37) Opp (30) [Sheet 2764] (As amended by Dem (4) [Sheet 2788])

Schedule 1, item 24, page 18 (after line 23), at the end of section 34G, add:

- (10) A person who is or has been before a prescribed authority for questioning under warrant may not disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

- (11) A legal practitioner who is accompanying or has accompanied a person appearing before a prescribed authority for questioning under warrant may not disclose any information about the questioning or the production of records or things unless authorised to do so in writing by the prescribed authority.

Penalty: Imprisonment for 5 years.

- (12) Subsections (10) and (11) do not apply to:
- (a) contact between the person and the Inspector-General of Intelligence and Security or the Ombudsman under:
 - (i) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ii) section 22 of the *Complaints (Australian Federal Police) Act 1981*;
 as the case may be; or
 - (b) contact between the person or the person's legal adviser and a court or another legal adviser for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

(42) Opp (32) [Sheet 2764]

Schedule 1, item 24, page 19 (lines 23 to 32), omit the note.

(44) Opp (33) [Sheet 2764]

Schedule 1, item 24, page 20 (line 11), omit "Director-General", substitute "police".

(45) Opp (34) [Sheet 2764]

Schedule 1, item 24, page 20 (line 17), omit "Director-General", substitute "police".

(46) Opp (35) [Sheet 2764]

Schedule 1, item 24, page 20 (after line 20), at the end of section 34K, add:

- (3) The police must immediately provide the Organisation with a copy of any video recording made under this section.

(47) Opp (36) [Sheet 2764]

Schedule 1, item 24, page 20 (line 22), omit "detained", substitute "taken into custody".

(51) Opp (37) [Sheet 2764]

Schedule 1, item 24, page 23 (line 17) to page 26 (line 16), omit section 34NA.

(54) Opp (38) [Sheet 2764]

Schedule 1, item 24, page 28 (lines 19 and 20), omit paragraph (c), substitute:

- (c) a statement containing details of any seizure or taking into custody under this Division;

(55) Opp (39) [Sheet 2764] (As amended by Dem (5) [Sheet 2788])

Schedule 1, item 24, page 29 (line 27) to page 32 (line 4), omit section 34U, substitute:

34U Legal advice during questioning

- (1) Subject to subsections (2) and (3), a person appearing before a prescribed authority for questioning under warrant may be accompanied by a legal adviser.
- (2) If the prescribed authority is satisfied on application by the Organisation that the legal adviser chosen by the person being questioned may prejudice the collection of intelligence that is important in relation to a terrorism offence, the prescribed authority can deny the person their legal adviser of first choice.
- (3) In the circumstances mentioned in subsection (2), the prescribed authority must assist the person to locate a suitable legal adviser.
- (4) If the prescribed authority is satisfied, on application by the Organisation, that there is a threat of an imminent terrorist act, questioning may commence before the arrival of the person's legal adviser.

Breaks in questioning to give legal advice

- (5) The prescribed authority before whom a person is being questioned must provide a reasonable opportunity for the legal adviser to provide advice.

Removal of legal adviser for disrupting questioning

- (6) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the prescribed authority may direct a person exercising authority under the warrant to remove the legal adviser from the place where the questioning is occurring.
- (7) If the prescribed authority directs the removal of the person's legal adviser, the prescribed authority must assist the person to locate a suitable legal adviser.

Communications

- (8) The prescribed authority must not refuse to authorise the person being questioned or the legal adviser of that person to communicate with a court or another legal adviser for the purposes of seeking a remedy in relation to the warrant, the treatment of the person in connection with the warrant, or the questioning or custody of the person in connection with the warrant.

(56) Opp (40) [Sheet 2764]

Schedule 1, item 24, page 32 (line 5) to page 34 (line 21), omit section 34V.

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE
TO WHICH THE HOUSE OF REPRESENTATIVES HAS DISAGREED,
BUT MADE AMENDMENTS IN PLACE THEREOF

(4) Opp (3) [Sheet 2764]

Schedule 1, item 24, page 6 (line 25) to page 7 (line 2), omit the definitions of *approved lawyer*, *Federal Magistrate* and *issuing authority*.

(5) Opp (4) [Sheet 2764] (As amended by Opp (1) [Sheet 2796])

Schedule 1, item 24, page 7 (after line 7), after the definition of *record*, add:

superior court means the High Court, Federal Court, Family Court, the Supreme Court of a State or Territory or a District Court of a State or a Territory or an equivalent.

(6) Opp (5) [Sheet 2764]

Schedule 1, item 24, page 7 (line 8) to page 8 (line 3), omit sections 34AA and 34AB.

(7) Opp (6) [Sheet 2764] (As amended by Opp (2) [Sheet 2796])

Schedule 1, item 24, page 8 (lines 4 to 15), omit section 34B, substitute:

34B Prescribed authorities

- (1) The Minister may, by writing, appoint as a prescribed authority a person who has served as a judge in one or more superior courts for a period of 5 years and no longer holds a commission as a judge of a superior court.
- (2) If the Minister is of the view that there is an insufficient number of people to act as a prescribed authority under subsection (1), the Minister may, by writing, appoint as a prescribed authority a person who is currently serving as a judge in a State or Territory Supreme Court or District Court (or an equivalent) and has done so for a period of at least 5 years.
- (3) If the Minister is of the view that there are insufficient persons available under subsections (1) and (2), the Minister may, by writing, appoint as a prescribed authority, a person who holds an appointment to the Administrative Appeals Tribunal as President or Deputy President and who is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.
- (4) The Minister must not appoint a person under subsection (1), (2) or (3) unless the person:
 - (a) has by writing consented to being appointed; and
 - (b) the consent is in force.
- (5) A person can only be appointed as a prescribed authority for a single three-year term.
- (6) The Minister must cause to be kept a list of names of persons who have consented to being appointed as prescribed authorities.
- (7) If a person whose name is included in the list requests the Minister to have his or her name removed from the list, the Minister must cause the list to be amended to give effect to the request.

- (8) The Minister may, on his or her own initiative, cause the name of a person to be removed from the list.
- (9) A person appointed as a prescribed authority in accordance with this section shall be paid such remuneration as is determined by the Remuneration Tribunal, but until that remuneration is so determined, he or she shall be paid such remuneration as is prescribed.

(13) Opp (10) [Sheet 2764]

Schedule 1, item 24, page 9 (after line 31), after subsection (3), insert:

(3AA) The procedural statement is to deal with at least the following matters:

- (a) informing the following persons about the issue of a warrant under section 34D:
 - (i) the prescribed authority before whom a person is to appear for questioning under the warrant;
 - (ii) the Inspector-General of Intelligence and Security;
 - (iii) police officers;
- (b) transporting a person taken into custody under this Division in connection with such a warrant;
- (c) facilities to be used for questioning of a person under such a warrant;
- (d) a prescribed authority's obligation under section 34E to inform a person appearing before the prescribed authority for questioning under such a warrant of the matters mentioned in that section;
- (e) arrangements under sections 34H and 34HAA for the presence of an interpreter during questioning of a person under such a warrant;
- (f) procedures for recording interviews (including the custody and future use of records and transcripts);
- (g) the periods for which a person may be questioned continuously under such a warrant;
- (h) the periods for breaks between periods of questioning of a person under such a warrant;
- (i) arrangements for the person to whom such a warrant relates to contact other persons (including provision of facilities under section 34F for the person to make a complaint orally to the Inspector-General of Intelligence and Security or the Ombudsman);
- (j) conducting searches under section 34L;
- (k) the periods for allowing a person to whom such a warrant relates an opportunity to sleep;
- (l) providing a person to whom such a warrant relates with:
 - (i) adequate food and drink (taking account of any specific dietary requirements the person may have); and
 - (ii) adequate medical care; and
 - (iii) toilet facilities; and
 - (iv) privacy;
- (m) reimbursement by the Commonwealth of reasonable costs (including legal costs) to a person who is the subject of a questioning warrant.

(3AB) The procedural statement required by this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(3AC) Failure to comply with a procedural statement is grounds for complaint to the Inspector-General of Intelligence and Security or the Ombudsman under the *Inspector-General of Intelligence and Security Act 1986* or the *Complaints (Australian Federal Police) Act 1981*, as the case may be.

(40) Govt (19) [Sheet DT377] (As amended by Opp (1) and (2) [Sheet 2787])

Schedule 1, item 24, page 19 (after line 2), after section 34H, insert:

34HAB Inspector-General of Intelligence and Security may be present at questioning or taking into custody

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning or taking into custody of a person under this Division.

(41) Govt (20) [Sheet DT377] (As amended by Opp (3) [Sheet 2787])

Schedule 1, item 24, page 19 (after line 9), at the end of subsection 34HA(1), add:

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34HAB.

(43) Govt (21) [Sheet DT377] (As amended by Opp (4) to (7) [Sheet 2787])

Schedule 1, item 24, page 20 (after line 9), after section 34J, insert:

34JA Entering premises to take person into custody

(1) If:

- (a) either a warrant issued under section 34D authorises a person to be taken into custody; and
- (b) a police officer believes on reasonable grounds that the person is on any premises;

the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) A police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

- (a) commencing at 9 pm on a day; and
- (b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time.

(3) In this section:

dwelling house includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

premises includes any land, place, vehicle, vessel or aircraft.

34JB Use of force in taking person into custody

- (1) A police officer may use such force as is necessary and reasonable in:
 - (a) taking a person into custody under a warrant issued under section 34D; or
 - (b) preventing the escape of a person from such custody; or
 - (c) bringing a person before a prescribed authority for questioning under such a warrant.
- (2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.
- (3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:
 - (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
 - (b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
 - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

SCHEDULE OF THE AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES
IN PLACE OF SENATE AMENDMENTS DISAGREED

(1) Schedule 1, item 24, page 6 (after line 28), after the definition of *Federal Magistrate*, insert:

former judge means a person who has been (but is no longer):

- (a) a Judge; or
- (b) a judge of a Supreme Court of a State.

[former judges]

(2) Schedule 1, item 24, page 7 (after line 2), after the definition of *issuing authority*, insert:

listed former judge means a former judge included in a list kept under section 34AC.

[former judges]

(3) Schedule 1, item 24, page 7 (line 26), omit “Judge.”, substitute “Judge; or”.

[former judges]

(4) Schedule 1, item 24, page 7 (after line 26), at the end of subsection 34AB(1), add:
(c) a listed former judge.

[former judges]

(5) Schedule 1, item 24, page 8 (after line 3), after section 34AB, insert:

34AC List of former judges consenting to appointments

- (1) The Minister must cause to be kept a list of names of former judges who have consented to being appointed as issuing authorities, prescribed authorities or both.
- (2) The Minister may invite a former judge to consent:
 - (a) to being appointed as an issuing authority, a prescribed authority or both; and
 - (b) to having the former judge’s name included in the list.
- (3) If the former judge consents, the Minister must cause the former judge’s name to be included in the list, together with an indication of whether the former judge consents to being appointed as an issuing authority, a prescribed authority or both.
- (4) If a former judge whose name is included in the list requests the Minister:
 - (a) to have the former judge’s name removed from the list; or
 - (b) to have the list indicate that:
 - (i) the former judge no longer consents to being appointed as an issuing authority; or
 - (ii) the former judge no longer consents to being appointed as a prescribed authority;

the Minister must cause the list to be amended to give effect to the request.
- (5) The Minister may, on his or her own initiative, cause the name of a former judge to be removed from the list.

[former judges]

(6) Schedule 1, item 24, page 8 (line 6), after “who”, insert “either is a listed former judge listed as consenting to the appointment or”.

[former judges]

(7) Schedule 1, item 24, page 8 (line 11), after “a person”, insert “who holds an appointment to the Administrative Appeals Tribunal described in subsection (1)”.

[former judges]

- (8) Schedule 1, item 24, page 9 (after line 31), after subsection (3), insert:
- (3AA) The procedural statement is to deal with at least the following matters:
- (a) informing the following persons about the issue of a warrant under section 34D:
 - (i) the prescribed authority before whom a person is to appear for questioning under the warrant;
 - (ii) the Inspector-General of Intelligence and Security;
 - (iii) police officers;
 - (b) transporting a person taken into custody, or detained, under this Division in connection with such a warrant;
 - (c) facilities to be used for questioning of a person under such a warrant;
 - (d) a prescribed authority's obligation under section 34E to inform a person appearing before the prescribed authority for questioning under such a warrant of the matters mentioned in that section;
 - (e) arrangements under sections 34H and 34HAA for the presence of an interpreter during questioning of a person under such a warrant;
 - (f) making recordings under section 34K;
 - (g) the periods for which a person may be questioned continuously under such a warrant;
 - (h) the periods for breaks between periods of questioning of a person under such a warrant;
 - (i) facilities to be used for detaining a person in connection with such a warrant;
 - (j) arrangements for the person to whom such a warrant relates to contact other persons in accordance with the warrant (including provision of facilities under paragraph 34F(9)(c) for the person to make a complaint orally to the Inspector-General of Intelligence and Security or the Ombudsman);
 - (k) conducting searches under section 34L;
 - (l) the periods for allowing a person to whom such a warrant relates an opportunity to sleep;
 - (m) providing a person to whom such a warrant relates with:
 - (i) adequate food and drink (taking account of any specific dietary requirements the person may have); and
 - (ii) adequate medical care.

[procedures]

- (9) Schedule 1, item 24, page 11 (line 9), after "Judge", insert ", a listed former judge".

[former judges]

- (10) Schedule 1, item 24, page 14 (line 31), omit "before the", substitute "before a".

[former judges]

(11) Schedule 1, item 24, page 19, after proposed section 34HAA, insert:

34HAB Inspector-General of Intelligence and Security may be present at questioning, taking into custody or detention

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning, taking into custody, or detention, of a person under this Division.

[presence during questioning, custody or detention]

(12) Schedule 1, item 24, page 19 (after line 9), at the end of subsection 34HA(1), add:

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34HAB, or because a person in detention has made a complaint under a section mentioned in paragraph 34F(9)(b).

[presence during questioning, custody or detention]

(13) Schedule 1, item 24, page 20 (after line 9), after section 34J, insert:

34JA Entering premises to take person into custody

(1) If:

- (a) either a warrant issued under section 34D or subsection 34F(6) authorises a person to be taken into custody; and
- (b) a police officer believes on reasonable grounds that the person is on any premises;

the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

- (2) However, if subsection 34F(6) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:
 - (a) commencing at 9 pm on a day; and
 - (b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 34F(6), either at the dwelling house or elsewhere, at another time.

(3) In this section:

dwelling house includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

premises includes any land, place, vehicle, vessel or aircraft.

[taking into custody and detention]

(14) Schedule 1, item 24, page 20 (after line 9), after proposed section 34JA, insert:

34JB Use of force in taking person into custody and detaining person

- (1) A police officer may use such force as is necessary and reasonable in:
 - (a) taking a person into custody under:
 - (i) a warrant issued under section 34D; or
 - (ii) subsection 34F(6); or
 - (b) preventing the escape of a person from such custody; or
 - (c) bringing a person before a prescribed authority for questioning under such a warrant; or
 - (d) detaining a person in connection with such a warrant.
- (2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.
- (3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:
 - (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
 - (b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
 - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

[taking into custody and detention]

Senator Ian Campbell moved—That the committee does not insist on its amendments nos 1, 2, 8 to 10, 12, 16 to 28, 30, 32 to 37, 42, 44 to 47, 51 and 54 to 56 to which the House of Representatives has disagreed and agrees the amendments made by the House in place of amendments nos 4 to 7, 13, 40, 41 and 43.

Debate ensued.

Question put and negatived.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Brandis) reported that the committee had considered message no. 232 from the House of Representatives relating to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and had resolved to insist on the amendments made by the Senate to which the House had disagreed.

On the motion of Senator Ian Campbell the report from the committee was adopted.

61 TRADE PRACTICES AMENDMENT (LIABILITY FOR RECREATIONAL SERVICES) BILL 2002

A message from the House of Representatives was reported disagreeing to the amendments made by the Senate to the following bill:

Message no. 234, dated 13 December 2002 am—Trade Practices Amendment (Liability for Recreational Services) Bill 2002.

Ordered, on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell), that the message be considered in committee of the whole immediately.

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

In the committee

Senator Ian Campbell moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Question put and passed.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Brandis) reported that the committee had considered message no. 234 from the House of Representatives relating to the Trade Practices Amendment (Liability for Recreational Services) 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 the Minister for Revenue and Assistant Treasurer (Senator Coonan) the report from the committee was adopted.

62 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Revenue and Assistant Treasurer (Senator Coonan) moved—That intervening business be postponed till after consideration of government business order of the day no. 5 (Taxation Laws Amendment (Structured Settlements and Structured Orders) Bill 2002).

Question put and passed.

63 TAXATION LAWS AMENDMENT (STRUCTURED SETTLEMENTS AND STRUCTURED ORDERS) BILL 2002

Order of the day read for the consideration of message no. 222 from the House of Representatives in committee of the whole (*see entry no. 43, 11 December 2002*).

In the committee

The Minister for Revenue and Assistant Treasurer (Senator Coonan) moved—That the committee does not insist on its amendments nos 9 and 13 to which the House of Representatives has disagreed.

Debate ensued.
 Question put and passed.
 Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Brandis) reported that the committee had considered message no. 222 from the House of Representatives relating to the Taxation Laws Amendment (Structured Settlements and Structured Orders) Bill 2002 and had resolved not to insist on amendments nos 9 and 13 made by the Senate to which the House had disagreed.

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

64 INSPECTOR-GENERAL OF TAXATION BILL 2002

Order of the day read for the adjourned debate on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell)—That this bill be now read a second time.

Debate resumed.
 Question put and passed.
 Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

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

Clause 2, page 2 (lines 1 and 2), omit the clause, substitute:

2 Commencement

This Act commences on the day after the day on which the Auditor-General provides a report to both Houses of the Parliament containing the results of an investigation into whether the objectives of the Act can be reasonably met by the appropriation provided for that purpose, together with a certification by the Auditor-General that the objectives can be so met.

Clause 3, page 2 (lines 3 to 5), omit the clause, substitute:

3 Objects of this Act

The objects of this Act are to:

- (a) improve the administration of taxation law for the benefit of all taxpayers; and
- (b) provide independent advice to government on taxation administration; and
- (c) identify systemic issues in taxation administration.

Clause 7, page 5 (lines 11 and 12), omit subparagraph (ii), substitute:

- (ii) systems established by laws including tax laws, but only to the extent that the systems deal with tax administration; and

Clause 8, page 5 (lines 30 to 32), omit subclause (2).

Clause 9, page 6 (lines 12 and 13), omit “subsection 8(2) and”.

Clause 9, page 6 (after line 17), at the end of the clause, add:

- (3) The Inspector-General must consult at least once a year with persons whom the Inspector-General considers necessary for the discharge of his or her duties, including but not limited to:

- (a) taxation professionals;
- (b) groups or associations representing taxpayer interests;
- (c) the Board of Taxation;
- (d) relevant parliamentary committees;

to assist the Inspector-General in setting his or her work program.

Clause 10, page 6 (after line 1), at the end of the clause, add:

- (2) After completing a review, the Inspector-General must submit a copy of a report of the review prepared in subsection (1) to the Auditor-General who is authorised by this section to audit any matter he or she considers appropriate arising from the report.

Clause 11, page 7 (lines 2 to 5), omit the clause, substitute:

11 Public release of reports

The Minister must:

- (a) cause a report under section 10 to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report; and
- (b) make the report publicly available.

Page 32 (after line 18), at the end of Part 4, add:

45 Review of operation of Act

- (1) The Minister must cause a review of the operation, effectiveness and implications of this Act to be conducted, together with an assessment of the sufficiency or otherwise of the budgetary allocation for the office and functions of the Inspector-General of Taxation.
- (2) The review must be undertaken as soon as practicable after the fifth anniversary of the commencement of the Act.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within six months of the commencement of the review.

Senator Murray moved the following amendments together by leave:

Clause 28, page 22 (line 8), after “instrument”, insert “on receipt of a recommendation based on merit received from the Minister in accordance with section 28A”.

Page 22 (after line 19), after clause 28, insert:

28A Procedures for merit selection of Inspector-General

- (1) The Minister must by writing determine a code of practice for selecting the Inspector-General of Taxation that sets out general principles on which the selection is to be made, including but not limited to:
 - (a) merit; and
 - (b) independent scrutiny of appointments; and
 - (c) probity; and
 - (d) openness and transparency.
- (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*.

Clause 29, page 23 (after line 7), at the end of the clause, add:

- (3) An acting appointment must be made on the basis of merit.

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

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

On the motion of the Minister for Revenue and Assistant Treasurer (Senator Coonan) the report from the committee was adopted and the bill read a third time.

65 AUSTRALIAN CRIME COMMISSION—JOINT STATUTORY COMMITTEE—APPOINTMENT

A message from the House of Representatives was reported acquainting the Senate with a resolution of that House:

Message no. 231, dated 12 December 2002—Agreeing to the Senate resolution relating to the powers and proceedings of the Parliamentary Joint Committee on the Australian Crime Commission.

66 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (SPECIAL BENEFIT ACTIVITY TEST) BILL 2002

A message from the House of Representatives was reported agreeing to the amendments made by the Senate to the following bill:

Message no. 233, dated 13 December 2002 am—Family and Community Services Legislation Amendment (Special Benefit Activity Test) Bill 2002.

67 PLANT BREEDER'S RIGHTS AMENDMENT BILL 2002

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

Message no. 230, dated 12 December 2002—Plant Breeder's Rights Amendment Bill 2002.

68 TREATIES—JOINT STANDING COMMITTEE—APPOINTMENT OF MEMBER

The Deputy President (Senator Hogg) informed the Senate that the President had received a letter nominating a senator to be a member of a committee.

The Minister for Family and Community Services (Senator Vanstone), by leave, moved—That Senator Bartlett be appointed to the Joint Standing Committee on Treaties.

Question put and passed.

69 FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (AUSTRALIANS WORKING TOGETHER AND OTHER 2001 BUDGET MEASURES) BILL 2002

A message from the House of Representatives was reported as follows:

Message no. 235, dated 13 December 2002 am—Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, agreeing to amendments nos 1, 6 and 66 to 68 made by the Senate, disagreeing to amendments nos 4, 18, 21 to 27, 33, 35, 37 to 55, 57, 58, 60, 61, 63 to 65 and 74 to 77, and making amendments in place of amendments nos 2, 3, 5, 7 to 17, 19, 20, 28 to 32, 34, 36, 56, 59, 62, 69 to 73 and 78 to 94.

Ordered, on the motion of the Minister for Family and Community Services (Senator Vanstone), that the message be considered in committee of the whole immediately.

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

In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE TO WHICH
THE HOUSE OF REPRESENTATIVES HAS DISAGREED

(4) Opp (1) [Sheet 2688]

Schedule 1, item 11, page 5 (line 20), omit “2 years”, substitute “12 months”.

(18) Dem (5) [Sheet 2700 Revised]

Schedule 1, item 14, page 16 (line 13), omit “26 weeks”, substitute “8 weeks”.

(21) Opp (3) [Sheet 2688]

Schedule 1, item 14, page 18 (line 31), omit “2 year”, substitute “12 month”.

(22) Opp (4) [Sheet 2688]

Schedule 1, item 14, page 19 (line 1), method statement, omit “0.18”, substitute “0.20”.

(23) Opp (5) [Sheet 2688]

Schedule 1, item 14, page 19 (line 3), omit “2 year”, substitute “12 month”.

(24) Opp (6) [Sheet 2688]

Schedule 1, item 14, page 19 (line 4), method statement, omit “0.24”, substitute “0.25”.

(25) Opp (7) [Sheet 2688]

Schedule 1, item 14, page 19 (line 10), omit “2 year”, substitute “12 month”.

(26) Opp (8) [Sheet 2688]

Schedule 1, item 14, page 19 (line 12), omit “2 year”, substitute “12 month”.

(27) Opp (9) [Sheet 2688]

Schedule 1, item 14, page 19 (line 12), omit “2 years”, substitute “12 months”.

(33) Opp (10) [Sheet 2688]

Schedule 1, page 20 (after line 25), after item 24, insert:

24B Paragraph 550(2)(b)

Omit “2 years”, substitute “12 months”.

(35) Opp (11) [Sheet 2688]

Schedule 1, page 20 (after line 25), after item 24, insert:

24D After paragraph 553B(3)(d)

Insert:

- (da) satisfies the Secretary that the cost of housing accommodation has been a significant factor in causing the person to move; or

(37) Opp (12) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26C At the end of section 557

Add:

(2) If:

- (a) a youth allowance becomes not payable to a person because of:
- (i) a failure to enter into a Youth Allowance Activity Agreement; or
 - (ii) an unreasonable delay in entering into a Youth Allowance Activity Agreement; or
 - (iii) a failure to take reasonable steps to comply with the terms of a Youth Allowance Activity Agreement; and
- (b) the Secretary is satisfied that, not more than 8 weeks after the start of the activity test rate reduction period applicable to the person by reason of the breach referred to in paragraph (a), the person:

- (i) has entered into such a Youth Allowance Activity Agreement; or
- (ii) is no longer unreasonably delaying entry into such a Youth Allowance Activity Agreement; or
- (iii) is taking reasonable steps to comply, or to resume compliance, with the terms of a Youth Allowance Activity Agreement that is in force in respect of the person or, if there is no Youth Allowance Activity Agreement in force in respect of the person, with the terms of the Youth Allowance Activity Agreement that was in force in respect of the person immediately before the commencement of the rate reduction period, as the case requires;

this Act has effect, for the purpose only of determining the rate of youth allowance during the balance of the rate reduction period, as if the rate reduction period had never applied.

- (3) A determination that a person has commenced to take reasonable steps as referred to in subparagraph (2)(b)(iii) may be expressed to have effect from the day on which those reasonable steps are taken, whether or not the determination is made on that day or a later day.

(38) Opp (13) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26D Subsection 557E(1) (paragraphs (a) and (b) of step 2 of the method statement)

Omit “2 year” (wherever occurring), substitute “12 month”.

(39) Opp (14) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26E Subsection 557E(1) (paragraph (a) of step 2 of the method statement)

Omit “0.18”, substitute “0.24”.

(40) Opp (15) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26F Subsection 557E(1) (paragraph (b) of step 2 of the method statement)

Omit “0.24”, substitute “0.25”.

(41) Opp (16) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26G Subsection 557E(2)

Repeal the subsection, substitute:

Meaning of 12 month period

- (2) In this section:

12 month period means the 12 months immediately before the day after the activity test breach.

(42) Opp (17) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26H At the end of section 558

Add:

(2) If:

- (a) a youth allowance becomes not payable to a person because of a failure to comply with a requirement to attend at a particular place for a particular purpose in accordance with a notice issued under paragraph 63(3)(c); and
- (b) not more than 8 weeks after the start of the administrative breach rate reduction period applicable to the person by reason of the breach referred to in paragraph (a):
 - (i) the person attends that place for that purpose; or
 - (ii) the person complies with an alternative requirement that the Secretary notifies to the person (whether orally or in writing);
 this Act has effect, for the purpose only of determining the rate of youth allowance during the balance of the rate reduction period, as if the rate reduction period had never applied.

(43) Opp (18) [Sheet 2688]

Schedule 1, page 20 (after line 30), after item 26, insert:

26J Subsection 558A(1)

Omit “13 weeks”, substitute “8 weeks”.

(44) Dem (20) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26K Section 558G (step 2 of the method statement)

Omit “0.16”, substitute “0.08”.

(45) Dem (21) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26L Paragraph 576(2)(b) and note

Repeal the paragraph and the note, substitute:

- (b) the latest breach is the third or subsequent activity test breach in the 12 months immediately before the day after the latest breach.

Note: If the latest breach is the first or second activity test breach in the 12 months before the latest breach, an activity test rate reduction period applies to the person (see Subdivision B of Division 5).

(46) Dem (22) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26M Subsection 576B(1)

Omit “8 weeks”, substitute “1 week”.

(47) Dem (23) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26N Subsection 576C(2)

Omit “starts on the day”, substitute “starts on the 14th day after the day”.

(48) Dem (24) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26P Paragraph 582(b) and note

Omit “2 years” (wherever occurring), substitute “12 months”.

(49) Dem (25) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26Q Subsection 582A(1)

Omit “26 weeks”, substitute “8 weeks”.

(50) Dem (26) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26R Subsection 582B(2)

Omit “on the day”, substitute “on the 14th day after the day”.

(51) Dem (27) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26S Subsection 582D(1) (step 2 of the method statement)

Repeal the step, substitute:

<i>Step 2.</i>	Work out the rate reduction amount as follows:
(a)	if the activity test breach is the person’s first breach in the 12 month period: Maximum payment rate x 0.10
(b)	if the activity test breach is the person’s second breach in the 12 month period: Maximum payment rate x 0.15

(52) Dem (28) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26T Subsection 582D(2)

Omit “2 *year period* means the 2 years”, substitute “12 *month period* means the 12 months”.

(53) Dem (29) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26U Subsection 583A(1)

Omit “13 weeks”, substitute “4 weeks”.

(54) Dem (30) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26V Subsection 583B(2)

Omit “on the day”, substitute “on the 14th day after the day”.

(55) Dem (31) [Sheet 2700 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26W Section 583G (step 2 of the method statement)

Omit “0.16”, substitute “0.08”.

(57) Dem (32) [Sheet 2700 Revised]

Schedule 1, page 21 (after line 11), after item 30, insert:

30A Paragraphs 624(1A)(a) and (b)

Omit “2 years” (wherever occurring), substitute “12 months”.

(58) Dem (33) [Sheet 2700 Revised]

Schedule 1, page 21 (after line 11), after item 30, insert:

30B Paragraphs 625(1A)(a) and (b)

Omit “2 years” (wherever occurring), substitute “12 months”.

(60) Opp (22) [Sheet 2688]

Schedule 1, page 21 (after line 25), after item 33, insert:

33A After paragraph 634(3)(c)

Insert:

(ca) satisfies the Secretary that the cost of housing accommodation has been a significant factor in causing the person to move;

(61) Dem (41) [Sheet 2700 Revised]

Schedule 1, page 21 (after line 28), after item 34, insert:

34A Section 644AA

Omit “26 weeks”, substitute “8 weeks”.

(63) Opp (24) [Sheet 2688]

Schedule 1, page 21 (after line 28), after item 34, insert:

34D Paragraph 644AE(2)(a)

Omit “0.18”, substitute “0.20”.

(64) Opp (25) [Sheet 2688]

Schedule 1, page 21 (after line 28), after item 34, insert:

34E Paragraph 644AE(2)(b)

Omit “0.24”, substitute “0.25”.

(65) Opp (26) [Sheet 2688]

Schedule 1, page 21 (after line 28), after item 34, insert:

34F Section 644B

Omit “13 weeks”, substitute “8 weeks”.

(74) Opp (27) [Sheet 2688]

Schedule 5, item 13, page 47 (lines 8 and 9), omit paragraph (b).

(75) Opp (28) [Sheet 2688]

Schedule 5, item 13, page 47 (line 10), omit “26 weeks”, substitute “8 weeks”.

(76) Opp (29) [Sheet 2688]

Schedule 5, item 14, page 48 (lines 5 and 6), omit paragraph (b).

(77) Opp (30) [Sheet 2688]

Schedule 5, item 14, page 48 (line 7), omit “13 weeks”, substitute “8 weeks”.

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE TO WHICH THE HOUSE OF REPRESENTATIVES HAS DISAGREED, BUT MADE AMENDMENTS IN PLACE THEREOF

(2) Opp (1) [Sheet 2791 Revised]

Page 2 (after line 11), after clause 3, insert:

4 Evaluation

- (1) The Minister must conduct an evaluation of the measures contained in Schedules 1 and 5 of this Act.
- (2) Without limiting the generality of subsection (1), the evaluation must include the following:
 - (a) the numbers of parenting payment (single) recipients and parenting payment (partnered) recipients required to enter into participation agreements and the number of such recipients granted an exemption;
 - (b) details of expenditure on ancillary assistance provided to those affected by the measures such as expenditure on job network and training;
 - (c) employment outcomes of parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients targeted by the measures compared to the employment outcomes of these groups prior to the implementation of the measures;
 - (d) details of average earnings of the target population affected by the measures compared to earnings of the target population prior to the implementation of the measures;
 - (e) details of compliance with the activity agreements for parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients, including the numbers for each group in situations where a breach penalty was applied, and the reasons for applying a breach penalty;
 - (f) details of total savings resulting from breach penalties applied to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients required to enter into activity agreements;

- (g) an assessment of the impact of the measures in Schedule 1 on children of parenting payment recipients;
 - (h) a cost benefit analysis of the new participation measures applying to parenting payment (single) recipients, parenting payment (partnered) recipients and newstart mature age recipients.
- (3) The evaluation must be completed and tabled in each House of the Parliament by 30 June 2005.

(3) Govt (2) [Sheet EX249]

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

Part 1A—Amendment of the A New Tax System (Family Assistance) Act 1999

A New Tax System (Family Assistance) Act 1999

1A Subsection 3(1) (definition of receiving)

Repeal the definition, substitute:

receiving:

- (a) in relation to a social security payment—has the same meaning as in subsections 23(2) and (4) of the *Social Security Act 1991*; and
- (b) for the purpose of construing references to a person receiving a social security pension or a social security benefit in clauses 1 and 17 of Schedule 1, and in clause 7 of Schedule 2, to this Act—is taken to include the meaning provided in subsection 23(4A) of the *Social Security Act 1991* as if those clauses were specified in provisions of that Act referred to in subsection 23(4AA) of that Act; and
- (c) for the purpose of construing references to a person receiving a social security pension or social security benefit in clauses 1 and 17 of Schedule 1, and in clause 7 of Schedule 2, to this Act where those references relate to a person:
 - (i) to whom parenting payment would be payable if not for a determination that a participation agreement breach non-payment period applies in relation to the person; or
 - (ii) to whom parenting payment would be payable if not for a determination that a participation agreement breach rate reduction period applies in relation to the person;
 has effect as if that determination had not been made.

(5) Opp (2) [Sheet 2791 Revised]

Schedule 1, item 11, page 7 (lines 13 to 15), omit subsection (3), substitute:

- (3) Subject to subsection (4), the participation agreement breach non-payment period starts on the 14th day after the day on which the notice is given to the person.

(7) Opp (3) [Sheet 2791 Revised]

Schedule 1, item 12, page 9 (lines 23 to 33), omit subsection (4), substitute:

- (4) In having regard to a person's capacity to comply with the terms of a participation agreement and the person's needs, the Secretary is to take into account, but is not limited to, the following matters:
- (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and
 - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
 - (c) the participation opportunities available to the person; and
 - (d) the family and caring responsibilities of the person (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and
 - (e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and
 - (f) the length of travel time required for compliance with the agreement; and
 - (g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
 - (h) any other matters that the Secretary or the person considers relevant in the circumstances.

(8) Opp (4) [Sheet 2791 Revised]

Schedule 1, item 12, page 10 (lines 6 to 10), omit paragraphs (a) and (b), substitute:

- (a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and
- (b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and
- (c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and
- (d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(9) Opp (5) [Sheet 2791 Revised]

Schedule 1, item 12, page 10 (line 18), after "subsection (2)", insert "or (2A)".

(10) Opp (R6) [Sheet 2791 Revised]

Schedule 1, item 12, page 10 (after line 34), after subsection (2), insert:

Exempt persons—periodic exemptions

- (2A) For the purposes of subsection (1), a person is an exempt person for a particular period determined by the Secretary under this subsection if:
- (a) the person has one or more PP children:
 - (i) who suffer from a physical, intellectual or psychiatric disability; and

- (ii) whose care needs are such that the person could not be reasonably expected at that time to comply with the terms of a participation agreement; or
 - (b) a critical event occurs that was not within the person's control (eg. family or personal crisis, the Secretary is satisfied the person has separated from his or her partner on a permanent or indefinite basis in the past 26 weeks, person's house burning down, evidence of domestic violence, serious illness of PP children) and, as a result, the person is temporarily unable to comply with the terms of a participation agreement.
- (2B) At any one time the maximum period for which the Secretary may determine that a person is an exempt person under subsection (2A) is:
- (a) if paragraph (2A)(a) applies to the person—12 months;
 - (b) if paragraph (2A)(b) applies to the person—26 weeks.
- (2C) The Secretary may make more than one determination under subsection (2A) in respect of a person.

(11) Opp (7) [Sheet 2791 Revised] (Incorporating Govt (4) [EX249])

Schedule 1, item 12, page 11 (line 29) to page 12 (line 2), omit subsection (1), substitute:

- (1) A participation agreement is a written agreement between the Secretary and another person, in a form approved by the Secretary, under which the person agrees to undertake, during each period of 26 weeks that the agreement is in force, approved activities anticipated to take 150 hours or such lesser number of hours as are agreed between them. Participation agreements will set out the support that the Secretary undertakes to provide to assist the person to meet his or her participation requirements in the negotiated agreement.

(12) Opp (8) [Sheet 2791 Revised]

Schedule 1, item 12, page 12 (line 17), after “program”, insert “as defined in section 23 of the *Social Security Act 1991*”.

(13) Opp (9) [Sheet 2791 Revised]

Schedule 1, item 12, page 12 (lines 19 to 21), omit paragraph (k), substitute:

- (k) another activity that the Secretary regards as suitable for the person, including voluntary work, and that is agreed to between the person and the Secretary.

(14) Opp (10) [Sheet 2791 Revised]

Schedule 1, item 12, page 12 (line 28) to page 13 (line 4), omit subsection (4), substitute:

- (4) In having regard to a person's capacity to comply with the terms of a participation agreement and to the person's needs, the Secretary is to take into account, but is not limited to, the following matters:
- (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and

- (b) the state of the local labour market and the transport options available to the person in accessing that market; and
- (c) the participation opportunities available to the person; and
- (d) the family and caring responsibilities of the person (including those arising from any significant adverse effect on a PP child of a person that would result from the person's compliance with the terms of the agreement); and
- (e) current court proceedings in the Family Court or criminal courts or current child welfare concerns, such as drugs or school truanting; and
- (f) the length of travel time required for compliance with the agreement; and
- (g) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
- (h) any other matters that the Secretary or the person considers relevant in the circumstances.

(15) Opp (11) [Sheet 2791 Revised]

Schedule 1, item 12, page 13 (line 7), after "varied", insert "(in negotiation with the person)".

(16) Opp (12) [Sheet 2791 Revised]

Schedule 1, item 12, page 13 (after line 13), after subsection (5), insert:

Cooling-off period

- (5A) Within 14 days of the terms of the participation agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

- (5B) The Secretary must advise the person of the effect of subsection (5A).

Avoidance of doubt

- (5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(17) Opp (13) [Sheet 2791 Revised]

Schedule 1, item 12, page 14 (line 23), after "agree to", insert "the reasonable".

(19) Opp (14) [Sheet 2791 Revised]

Schedule 1, item 13, page 17 (after line 25), after subsection (1), insert:

Notice to contain reasons

- (1A) A notice under subsection (1) must contain reasons why the participation agreement breach rate reduction period applies to the person.

(20) Opp (15) [Sheet 2791 Revised]

Schedule 1, item 13, page 17 (lines 27 to 29), omit subsection (2), substitute:

- (2) Subject to subsection (3), the participation agreement breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(28) Opp (16) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 10), after item 20, insert:

20A At the end of section 544

Add:

Secretary must contact person before determining failure to comply with terms

- (3) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a youth allowance activity agreement unless the Secretary:
- (a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and
 - (b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and
 - (c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and
 - (d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(29) Opp (17) [Sheet 2791 Revised] (As amended)

Schedule 1, page 20 (after line 13), after item 21, insert:

21A Subsection 544B(4)

Repeal the subsection, substitute:

- (4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to the following matters:
- (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and
 - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
 - (c) the participation opportunities available to the person; and
 - (d) the family and caring responsibilities of the person; and
 - (e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 541D(1)(g); and
 - (f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
 - (g) any other matters that the Secretary or the person considers relevant in the circumstances.

(30) Opp (18) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 13), after item 21, insert:

21B Paragraph 544B(5)(a)

After “varied”, insert “(in negotiation with the person)”.

(31) Opp (19) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 13), after item 21, insert:

21C After subsection 544B(5)

Insert:

Cooling-off period

- (5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.

Requirement to notify

- (5B) The Secretary must advise the person in writing of the effect of subsection (5A).

Avoidance of doubt

- (5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(32) Opp (20) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 25), after item 24, insert:

24A Subparagraph 544C(1)(b)(iii)

After “agree to”, insert “the reasonable”.

(34) Opp (21) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 25), after item 24, insert:

24C Subsection 550C(2)

Repeal the subsection, substitute:

General rule

- (2) Subject to subsection (3) and to sections 550D and 550E, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

(36) Opp (22) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26A Subsection 557B(2)

Repeal the subsection, substitute:

General rule

- (2) Subject to subsection (3) and to section 557C, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

26B Subsection 558B(2)

Repeal the subsection, substitute:

General rule

- (2) Subject to subsection (3), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(56) Opp (23) [Sheet 2791 Revised]

Schedule 1, page 20 (after line 30), after item 26, insert:

26X After subsection 593(2A)

Insert:

- (2B) The Secretary must not determine that a person has failed to take reasonable steps to comply with the terms of a Newstart Activity Agreement unless the Secretary:
- (a) is satisfied that the terms of the agreement were intended to assist the person over time in gaining employment or undertaking study or training; and
 - (b) has made reasonable attempts to contact the person in relation to the requirement to comply with the terms of the agreement (and has documented each attempt to contact); and
 - (c) if contact was able to be made, has had regard to the reasons, if any, provided by the person for not complying with the terms of the agreement; and
 - (d) has confirmed the adequacy of the support that the Secretary agreed to provide under the agreement.

(59) Opp (24) [Sheet 2791 Revised]

Schedule 1, page 21 (after line 11), after item 30, insert:

30C Subsection 630B(2)

Repeal the subsection, substitute:

- (2) Subject to subsections (3) and (6) and to sections 630BA and 630BB, the activity test non-payment period starts on the 14th day after the day on which the notice is given to the person.

(62) Opp (25) [Sheet 2791 Revised]

Schedule 1, page 21 (after line 28), after item 34, insert:

34B Subsection 644AB(2)

Repeal the subsection, substitute:

- (2) Subject to section 644AC, the activity test breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

34C Subsection 644C(2)

Repeal the subsection, substitute:

- (2) Subject to subsections (3) and (6), the administrative breach rate reduction period starts on the 14th day after the day on which the notice is given to the person.

(69) Opp (26) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11A After subsection 606(1)

Insert:

- (1A) If the person is at least 50 years of age but less than 60 years of age, the particular number of job vacancies shall not exceed 24 per 12 weeks in the period specified in the notice.
- (1AB) If the person is at least 60 years of age, the particular number of job vacancies shall not exceed 12 per 12 weeks in the period specified in the notice.
- (1AC) Subsection (1A) does not apply unless the person has been receiving an income support payment for a continuous period of at least 9 months and the person satisfies the Secretary that the person has no recent workforce experience.

(70) Opp (27) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11B Subsection 606(4)

Repeal the subsection, substitute:

- (4) In having regard to a person's capacity to comply with an agreement, the Secretary is to take into account, but is not limited to, the following matters:
- (a) the person's education, experience, skills, age, disability, illness, mental and physical condition; and
 - (b) the state of the local labour market and the transport options available to the person in accessing that market; and
 - (c) the participation opportunities available to the person; and
 - (d) the family and caring responsibilities of the person; and
 - (e) the length of travel time required for compliance with the agreement, by reference to what constitutes unreasonably difficult commuting for the purposes of paragraph 601(2A)(g); and
 - (f) the financial costs of compliance with the agreement, such as travel costs, and the capacity to pay for such compliance; and
 - (g) any other matters that the Secretary or the person considers relevant in the circumstances.

(71) Opp (28) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11C Paragraph 606(5)(a)

After "varied", insert "(in negotiation with the person)".

(72) Opp (29) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11D After subsection 606(5)

Insert:

- (5A) Within 14 days of the terms of the agreement being approved, those terms may be varied by the person with the approval of the Secretary.
- (5B) The Secretary must advise the person in writing of the effect of subsection (5A).
- (5C) To avoid doubt, subsection (5A) does not prevent the person at any time from requesting a review of an agreement under paragraph (5)(c).

(73) Opp (30) [Sheet 2791 Revised]

Schedule 5, page 45 (after line 29), after item 11, insert:

11E Subparagraph 607(1)(iii)

After “agree to”, insert “the reasonable”.

(78) Govt (8) [Sheet EX249]

Schedule 6, item 7, page 53 (lines 1 and 2), omit paragraph (g), substitute:

- (g) the person:
 - (i) in the case of a woman who would, but for this subsection, cease to be receiving wife pension because of the employment income, or the combined income, referred to in subparagraph (e)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension on and from the cessation day; and
 - (ii) in any other case—continues to be qualified for the pension or benefit on and from the cessation day;

(79) Govt (9) [Sheet EX249]

Schedule 6, page 55 (after line 20), after item 8, insert:

8A Subsection 1061ZB(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

- (d) if the person is qualified for such a card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
- (e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(80) Govt (10) [Sheet EX249]

Schedule 6, item 9, page 55 (lines 32 to 36), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(81) Govt (11) [Sheet EX249]

Schedule 6, item 9, page 56 (lines 14 to 18), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(82) Govt (12) [Sheet EX249]

Schedule 6, page 56 (after line 24), after item 11, insert:

11A Subsection 1061ZC(1)

Omit all the words after paragraph (c), substitute:

the person is qualified for a pensioner concession card:

- (d) if the person is qualified for a pensioner concession card under section 1061ZEA until a particular day—for the period of 26 weeks after that day; and
- (e) in any other case—for the period of 26 weeks after the commencement or increase, as the case may be.

(83) Govt (13) [Sheet EX249]

Schedule 6, item 12, page 57 (lines 4 to 8), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(84) Govt (14) [Sheet EX249]

Schedule 6, item 12, page 57 (lines 22 to 26), omit paragraph (c) and all the words following that paragraph, substitute:

- (c) the balance is subsequently reduced to nil because of the commencement or increase; and
- (d) the person is not qualified for a pensioner concession card under section 1061ZEA;

paragraph (1)(e) has effect as if the reference to 26 weeks after the commencement or increase were a reference to 26 weeks after the day on which the balance is reduced to nil.

(1C) If the person:

- (a) is qualified for a pensioner concession card under section 1061ZEA until a particular day; and
- (b) has, immediately before becoming so qualified, been receiving a social security benefit referred to in paragraph 1061ZA(2)(b) for a continuous period of less than 39 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(a) to a continuous period of not less than 39 weeks, to be receiving the benefit until the particular day.

(85) Govt (15) [Sheet EX249]

Schedule 6, item 13, page 57 (lines 27 to 29), omit the item, substitute:

13 Subsection 1061ZC(2)

After “subsection (1)”, insert “(including that subsection as modified by subsection (1A), (1B) or (1C))”.

13A Subsection 1061ZC(3)

After “subsection (1)”, insert “(including that subsection as modified by subsection (1A) or (1B))”.

13B Subsection 1061ZC(4)

After “subsection (1)”, insert “(including that subsection as modified by subsection (1A), (1B) or (1C))”.

(86) Govt (16) [Sheet EX249]

Schedule 6, item 18, page 58 (line 26), omit “1061ZB, 1061ZC.”.

(87) Govt (17) [Sheet EX249]

Schedule 6, item 18, page 59 (line 32), after paragraph (g), insert:

and (ga) the person:

- (i) in the case of a woman to whom wife pension ceases to be payable because of the employment income, or the combined income, referred to in subparagraph (f)(ii)—continues, but for that employment income or combined income, to be qualified for wife pension; and
- (ii) in the case of a person to whom pension PP (single) ceases to be payable, or who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that pension or benefit; and
- (iii) in any other case—continues to be qualified for the payment referred to in section 1061ZA;

(88) Govt (18) [Sheet EX249]

Schedule 6, item 18, page 60 (line 2), after paragraph (j), insert:

or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

(89) Govt (19) [Sheet EX249]

Schedule 6, page 60 (after line 26), after item 19, insert:

19A After subsection 1061ZM(1)

Insert:

(1A) If the person is qualified for a health care card under section 1061ZMA until a day (the *particular day*), subsection (1) has effect as if the reference to 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to 26 weeks starting on the particular day.

(1B) If the person:

(a) was an employment-affected person because of receiving pension PP (single); and

(b) is qualified for a pensioner concession card under section 1061ZEA until a day (the *particular day*);

subsection (1) has effect as if the reference to the period of 26 weeks starting on the day on which the person ceases to be an employment-affected person were a reference to the period starting on the particular day and ending 26 weeks after the person ceases to be an employment-affected person.

(1C) If the person:

(a) is qualified for a health care card under section 1061ZMA until a particular day; and

(b) has, immediately before the commencement or increase mentioned in subsection (1), been a qualified recipient because of receiving newstart allowance, sickness allowance, widow allowance, partner allowance or youth allowance, other than while undertaking full-time study, for a continuous period of less than 52 weeks;

the person is taken, for the purpose of the reference in paragraph (1)(c) to a continuous period of 52 weeks, to be receiving the allowance until the particular day.

19B Subsection 1061ZM(2)

After “referred to in subsection (1)”, insert “(including that subsection as modified by subsection (1A)) or the period provided by subsection (1B)”.

(90) Govt (20) [Sheet EX249]

Schedule 6, item 20, page 60 (lines 31 and 32), omit subsection (1).

(91) Govt (21) [Sheet EX249]

Schedule 6, item 20, page 61 (line 33), after paragraph (g), insert:

and (ga) the person:

- (i) in the case of a person who ceases to receive benefit PP (partnered)—continues, but for the requirement to have at least one PP child, to be qualified for that benefit; and
- (ii) in any other case—continues to be qualified for the payment referred to in subsection 1061ZK(5);

(92) Govt (22) [Sheet EX249]

Schedule 6, item 20, page 62 (line 2), after paragraph (j), insert:

- or (k) the day the person ceases to be qualified as mentioned in paragraph (ga);

(93) Govt (23) [Sheet EX249]

Schedule 6, page 62 (after line 13), after item 20, insert:

20A Subsection 1061ZN(1)

Omit “and 1061ZM”, substitute “, 1061ZM and 1061ZMA”.

(94) Govt (24) [Sheet EX249]

Schedule 6, item 26, page 76 (after line 7), at the end of section 1073J, add:

(2) If:

- (a) a woman receiving wife pension is a working credit participant; and
- (b) the partner of the participant ceases to receive age pension or disability support pension on and from a day (the *cessation day*); and
- (c) the partner ceases to receive that pension:
 - (i) because of the employment income of the partner (either alone or in combination with any other ordinary income earned, derived or received, or taken to have been earned, derived or received, by the partner); and
 - (ii) after any working credit balance of the partner is reduced to nil; and
- (d) as a result of the partner’s so ceasing to receive that pension, the participant ceases to be qualified for wife pension on and from the cessation day; and
- (e) the participant has a working credit balance greater than nil at the start of the instalment period of the participant in which the cessation day occurs; and
- (f) but for the employment income, or combined income, referred to in paragraph (c), the participant would have continued to be qualified for wife pension until the earlier of:
 - (i) a day determined under Division 8 or 9 of Part 3 of the Administration Act; or
 - (ii) the day on which the participant’s working credit balance is reduced to nil;

the participant is to be treated as if she had continued to be so qualified until the earlier of the days referred to in subparagraphs (f)(i) and (ii).

SCHEDULE OF THE AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES IN PLACE OF SENATE AMENDMENTS DISAGREED
(The amendments duplicate the Senate's amendments).

Senator Vanstone moved—That the committee does not insist on its amendments nos 4, 18, 21 to 27, 33, 35, 37 to 55, 57, 58, 60, 61, 63 to 65 and 74 to 77 to which the House has disagreed, and agrees to the amendments made by the House in duplication of amendments nos 2, 3, 5, 7 to 17, 19, 20, 28 to 32, 34, 36, 56, 59, 62, 69 to 73 and 78 to 94.

Debate ensued.

The question for the motion was divided—

Question—That the committee not insist on its amendments nos 4, 21, 23, 25, 26, 27, 33, 35, 38, 41, 44 to 46, 48, 51 to 53, 55, 57, 58 and 60—put and passed. Both Australian Greens senators, by leave, recorded their votes for the noes.

Question—That the committee not insist on its amendments nos 18, 22, 24, 37, 39, 40, 42, 43, 47, 49, 50, 54, 61, 63, 64, 65, 74, 75, 76 and 77—put and negatived.

Question—That the committee agree to the duplicate amendments—put and passed.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Chair of Committees reported that the committee had considered message no. 235 from the House of Representatives relating to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 and had resolved:

- (a) not to insist on amendments nos 4, 21, 23, 25, 26, 27, 33, 35, 38, 41, 44 to 46, 48, 51 to 53, 55, 57, 58 and 60; and
- (b) to insist on its amendments nos 18, 22, 24, 37, 39, 40, 42, 43, 47, 49, 50, 54, 61, 63, 64, 65, 74, 75, 76 and 77,

made by the Senate to which the House had disagreed, and had agreed to the amendments made in duplication of 2, 3, 5, 7 to 17, 19, 20, 28 to 32, 34, 36, 56, 59, 62, 69 to 73 and 78 to 94.

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

70 TRANSPORT—ETHANOL—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 16 October 2002 for the production of documents concerning an ethanol excise and production subsidy (*see entry no. 19, 16 October 2002*).

71 MINING—CHRISTMAS ISLAND—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 19 June 2002 for the production of documents concerning mine leases on Christmas Island held by Phosphate Resource Ltd (*see entry no. 26, 19 June 2002*).

72 ANIMAL WELFARE—LIVE ANIMAL EXPORT—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 11 November 2002 for the production of a report relating to the options for improving the welfare record of Australia's live animal export trade and, pursuant to that order, tabled the following documents:

Animal welfare—Live animal export—

A way forward on animal welfare: A report on the livestock export industry arising from its meeting on 2 to 3 October 2002—Independent Reference Group.

Action plan for the livestock industry, dated October 2002.

AQIS reports—Investigation of live animal mortalities—

MV Al Shuwaikh V.20.

MV Becrux VI.

MV Novantes Voyage 83.

73 ENVIRONMENT—WALLA WEIR IRRIGATION PROJECT—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 10 December 2002 for the production of documents relating to the Walla Weir Irrigation Project and, pursuant to that order, tabled the following document:

Environment—Walla Weir Irrigation Project—Copy of agreement for a grant by the Commonwealth and the state of Queensland for the Sugar Industry Infrastructure Program, as extended to 30 June 2004.

74 MINISTER FOR REVENUE AND ASSISTANT TREASURER—MINISTERIAL RESPONSIBILITY—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 10 December 2002 for the production of documents concerning 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 (*see entry no. 18, 10 December 2002*).

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

Debate ensued.

Question put and passed.

75 ENVIRONMENT—QUEENSLAND—SEISMIC TESTING—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell), by leave, made a statement relating to the order of the Senate of 10 December 2002 for the production of documents concerning proposed seismic testing in the Townsville Trough (*see entry no. 19, 10 December 2002*).

76 VALEDICTORY STATEMENTS

Senators made statements relating to the end of the sittings for 2002.

Document: The Leader of the Australian Democrats (Senator Bartlett), by leave, tabled the following document:

Immigration—Human rights—Petitioning document, from 853 signatories, calling for human rights for asylum seekers.

Statements continued.

Suspension of sitting: On the motion of the Minister for Health and Ageing (Senator Patterson) the sitting of the Senate was suspended till 9 am.

At 9 am—

77 PRODUCTIVITY COMMISSION—REPORT NO. 25—DOCUMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) tabled the following document:

Productivity Commission—Report—No. 25—Review of automotive assistance, 30 August 2002.

78 AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

A message from the House of Representatives was reported as follows:

Message no. 237, dated 13 December 2002 am—Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002:

- (a) agreeing to amendments nos 1, 5 and 7 insisted on by the Senate;
- (b) insisting on disagreeing to amendments 2, 4, 6, 8 to 10, 12, 13, 16 to 28, 30, 32 to 37, 40 to 47, 51 and 54 to 56 made and insisted on by the Senate; and
- (c) insisting on amendments nos 8 and 11 to 14, and not insisting on amendments nos 1 to 7, 9 and 10, made by the House in place of Senate amendments.

Ordered, on the motion of the Parliamentary Secretary to the Treasurer (Senator Ian Campbell), that the message be considered in committee of the whole immediately.

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

In the committee

Senator Ian Campbell moved—That the committee does not further insist on its amendments nos 2, 4, 6, 8 to 10, 12, 13, 16 to 28, 30, 32 to 37, 40 to 47, 51 and 54 to 56 to which the House has disagreed, and agrees to amendments nos 8 and 11 to 14 made by the House in place of Senate amendments.

Debate ensued.

Question put.

The committee divided—

AYES, 28

Senators—

Abetz	Coonan	Knowles	Payne
Alston	Eggleston	Lightfoot	Reid
Barnett	Ferguson	Macdonald, Ian	Santoro
Boswell	Ferris (Teller)	Macdonald, Sandy	Tierney
Brandis	Heffernan	Mason	Troeth
Campbell, Ian	Hill	McGauran	Vanstone
Colbeck	Johnston	Patterson	Watson

NOES, 31

Senators—

Allison	Cook	Kirk	Murray
Bartlett	Crossin (Teller)	Lees	Nettle
Brown	Evans	Ludwig	O'Brien
Buckland	Faulkner	Lundy	Ray
Campbell, George	Forshaw	Mackay	Stephens
Carr	Greig	Marshall	Webber
Collins	Harradine	McLucas	Wong
Conroy	Hogg	Moore	

Question negatived.

Resolution to be reported.

The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Ferguson) reported that the committee had considered message no. 237 from the House of Representatives relating to the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 and had resolved to further insist on amendments nos 2, 4, 6, 8 to 10, 12, 13, 16 to 28, 30, 32 to 37, 40 to 47, 51 and 54 to 56 made by the Senate to which the House had disagreed.

On the motion of Senator Ian Campbell the report from the committee was adopted.

79 LEAVE OF ABSENCE

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That leave of absence be granted to every member of the Senate from the termination of the sitting today to the day on which the Senate next meets.

Question put and passed.

80 ADJOURNMENT

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

The Senate adjourned at 10.23 am till Tuesday, 4 February 2003 at 2 pm.

81 ATTENDANCE

Present, all senators except Senators Kemp and Scullion.

HARRY EVANS
Clerk of the Senate