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1 MEETING OF SENATE

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

2 ORDER OF BUSINESS—REARRANGEMENT

The Parliamentary Secretary to the Treasurer (Senator Ian Campbell) moved—That government business notice of motion no. 1 standing in his name for today, relating to consideration of legislation, be postponed till the next day of sitting.

Question put and passed.

3 SEX DISCRIMINATION AMENDMENT (PREGNANCY AND WORK) 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.

Senator Ludwig moved the following amendment:

At the end of the motion, add “but the Senate calls on the Government to support all the legislative amendments and other actions necessary to give effect to the recommendations of the Human Rights and Equal Opportunity Commission in its report *Pregnant and productive: It’s a right not a privilege to work while pregnant*”.

Debate ensued.

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

4 QUESTIONS

Questions without notice were answered.

5 QUESTION ON NOTICE—ANSWER AND EXPLANATION

Senator Allison, pursuant to standing order 74, asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Ellison) for an explanation of an answer not being provided to question on notice no. 1642 (notice given 21 July 2003) relating to detention centres.

Senator Ellison indicated that an explanation would be provided.

Senator Allison moved—That the Senate take note of the minister’s failure to provide either an answer or an explanation.

Question put and passed.

6 DEFENCE—NATIONAL SECURITY—ANSWERS TO QUESTIONS

The Leader of the Opposition in the Senate (Senator Faulkner) moved—That the Senate take note of the answers given by the Minister for Justice and Customs (Senator Ellison) to questions without notice asked by opposition senators today relating to national security.

Debate ensued.

Question put and passed.

7 ASIO, ASIS AND DSD—JOINT STATUTORY COMMITTEE—ANSWER TO QUESTION

The Leader of the Australian Democrats (Senator Bartlett) moved—That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Bartlett today relating to an inquiry by the Parliamentary Joint Committee on ASIO, ASIS and DSD.

Question put and passed.

8 PETITIONS

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

Senator Ludwig, from 738 petitioners, requesting that the Senate address certain exemptions contained in the Superannuation Guarantee Legislation to ensure that all Australian workers are treated equally.

Senator Nettle, from 120 petitioners, requesting that the Senate oppose the cessation of Centrelink pensioner education supplement holiday payments and student supplementary loans.

9 NOTICES

Senator Murray: To move on the next day of sitting—That the State Elections (One Vote, One Value) Bill 2001 [2002] be referred to the Legal and Constitutional References Committee for inquiry and report by 30 October 2003.

The Chair of the Economics Legislation Committee (Senator Brandis): To move on the next day of sitting—That the time for the presentation of the report of the Economics Legislation Committee on annual reports tabled by 30 April 2003 be extended to 10 September 2003. (*general business notice of motion no. 558*)

The Chair of the Economics Legislation Committee (Senator Brandis): To move on the next day of sitting—That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 13 October 2003, from 4 pm, to take evidence for the committee's inquiry into the Late Payment of Commercial Debts (Interest) Bill 2003. (*general business notice of motion no. 559*)

The Chairman of the Standing Committee on Regulations and Ordinances (Senator Tchen): To move on the next day of sitting—That the Standing Committee on Regulations and Ordinances be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 10 September 2003, from 3.30 pm, to take evidence for the committee's inquiry into the provisions of the Legislative Instruments Bill 2003 and the Legislative Instruments (Transitional Provisions and Consequential Amendments) Bill 2003. (*general business notice of motion no. 560*)

The Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan): To move on the next day of sitting—That the time for the presentation of the following reports of the Rural and Regional Affairs and Transport Legislation Committee be extended to 16 September 2003:

(a) annual reports tabled by 30 April 2003; and

(b) provisions of the Aviation Transport Security Bill 2003 and a related bill. (*general business notice of motion no. 561*)

Senator Mason: To move on the next day of sitting—That the Joint Standing Committee on Electoral Matters be authorised to hold a public meeting during the sitting of the Senate on Thursday, 18 September 2003, from 9.30 am to 11 am, to take evidence for the committee's inquiry into increasing the minimum representation of the Territories in the House of Representatives. (*general business notice of motion no. 562*)

The Chair of the Legal and Constitutional Legislation Committee (Senator Payne): To move on the next day of sitting—That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 9 September 2003, from 6 pm, to take evidence for the committee's inquiry into the provisions of the Age Discrimination Bill 2003. (*general business notice of motion no. 563*)

The Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston): To move on the next day of sitting—That the time for the presentation of the report of the Environment, Communications, Information Technology and the Arts Legislation Committee on the Communications Legislation Amendment Bill (No. 2) 2003 be extended to 11 September 2003. (*general business notice of motion no. 564*)

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

- (a) notes that tobacco currently kills 5 million people annually worldwide, half in middle age, and that this global epidemic is predicted to double in the first half of the 21st century, to over 10 million deaths per year; and
- (b) calls on the Government to respond to the recommendations of the 12th World Conference on Tobacco in Finland, held from 3 August to 8 August 2003 by:
 - (i) ratifying the Framework Convention on Tobacco Control (FCTC) by January 2005, implementing and enforcing its provisions, and actively involving civil society in this process,
 - (ii) contributing resources and funding proportionate to Australia's gross domestic product for the implementation and monitoring of the FCTC,
 - (iii) urging the United Nations to include non-communicable diseases and tobacco control as part of its Millennium Development Goals,
 - (iv) including a plan for tobacco control as part of Australia's overseas development and poverty reduction agenda,
 - (v) not accepting funding or participating in the tobacco industry's youth, social responsibility, voluntary marketing or other programs, and
 - (vi) working towards greater coordination and cooperation between all sectors of the tobacco control movement, such as research, prevention, treatment, policy, advocacy, communications, and the world conference organising committee, with a view towards establishing a world association for tobacco control. (*general business notice of motion no. 565*)

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

- (a) notes the call to the United Nations Conference on Accelerating Entry-Into-Force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) made by prominent non-governmental organisations from around the world, in Vienna on 5 September 2003, including:

A ban on testing is an essential step towards nuclear disarmament because it helps to block dangerous nuclear competition and new nuclear threats from emerging. However, it must be recognised that technological advances in nuclear weapons research and development mean that a ban on nuclear test explosions by itself cannot prevent qualitative improvements of nuclear arsenals. Efforts to improve nuclear arsenals and to make nuclear weapons more useable in warfare will jeopardise the test-ban and non-proliferation regimes. We call on all states possessing nuclear weapons to halt all qualitative improvements in their nuclear armaments, whether or not these improvements require test explosions;

- (b) supports a comprehensive global ban on nuclear weapon testing;
- (c) notes that the United States is not attending the CTBT conference in 2003 and is planning the development of new nuclear weapons; and
- (d) calls on the Government to urge all nations to commit to the CTBT. (*general business notice of motion no. 566*)

Senator Carr: To move on the next day of sitting—That there be laid on the table by the Minister representing the Minister for Education, Science and Training (Senator Alston), no later than 3.30 pm on 15 September 2003, the following documents relating to the *National Report on Australia's Higher Education Sector 2001* ('national report') and the associated supporting research reports to it:

- (a) a copy of the drafts of chapters 4 and 7 of the national report as they were written at:
 - (i) April 2002,
 - (ii) September 2002,
 - (iii) 1 December 2002,
 - (iv) 31 December 2002, and
 - (v) April 2003;
- (b) a copy of the four following reports:
 - (i) P Aungles et al, *HECS and educational opportunities*,
 - (ii) R Fleming and T Karmel, *University participation of persons from non-English speaking backgrounds: Impact of migration patterns*,
 - (iii) M McLachlan and T Karmel, *HECS: The impact of changes*, and
 - (iv) Y Martin and T Karmel, *Expansion in higher education: Effects on access and students quality over the 1990s*, as at April 2002;
- (c) any communication between the Secretary of the Department of Education, Science and Training and the head of the Education Information and Analysis Group, the Higher Education Group and/or the Research, Analysis and Evaluation Group, on the methodological quality of the research underpinning the reports mentioned in paragraphs (a) and (b) above;
- (d) briefing advices or notes prepared for the Minister for Education, Science and Training and/or the Secretary of the Department of Education, Science and Training between April 2002 and July 2003, regarding the reports mentioned in paragraphs (a) and (b) above;
- (e) any minutes of meetings held to consider the research, editing, formatting and indexing of the reports mentioned in paragraphs (a) and (b) above;
- (f) any correspondence, including e-mails, directing the change in status of the reports from being 'forthcoming' to becoming 'advice to the Minister';
- (g) records of any communications between Mr Bill Burmester and any Department of Education, Science and Training officer, or external consultant, on the national report and all four reports mentioned at paragraph (b), from the period when Mr Burmester was appointed head of the Higher Education Group, until July 2003;
- (h) copies of any other Evaluations and Investigations Programme (EIP) reports (either prepared internally, or commissioned by the EIP group) related to higher education, that were reclassified after April 2002, as 'advice to the Minister';
- (i) a copy of the invoices and receipts relating to payment to Ray Adams and Associates, for editing work on the national report; and

- (j) a copy of the invoices and receipts relating to the Department of Education, Science and Training in-house printing service JS McMillan, regarding work on the national report. (*general business notice of motion no. 567*)

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

- (a) notes that water has been historically mismanaged in Australia, one of the driest continents in the world, leading to the current crisis facing Australian rivers;
- (b) notes the importance of the federal and state governments' ability to regulate the management of Australian water sources to ensure that water is allocated fairly between rural and urban users and for environmental flows; and
- (c) calls on the Federal Government to:
 - (i) instruct the Australian negotiators at the World Trade Organization ministerial in Cancun, Mexico in the week beginning 7 September 2003 to resist any attempts to speed up the liberalisation of water services,
 - (ii) support the right of all countries to regulate their own drinking water services, and
 - (iii) instruct the Australian negotiators to lobby for the removal of drinking water services from the General Agreement on Trade in Services. (*general business notice of motion no. 568*)

Senator Brown: To move on 10 September 2003—That the Senate—

- (a) notes:
 - (i) the current stand-off between Papua New Guinea's Prime Minister (Mr Somare) and Australia's Minister for Foreign Affairs (Mr Downer) over Australia's aid budget to Papua New Guinea (PNG), and
 - (ii) that there is widespread concern in PNG over Australia's 'boomerang aid', whereby some 80 per cent of Australian aid goes straight back to consulting companies, construction companies and individuals; and
- (b) calls on:
 - (i) Mr Downer to accept PNG's request that Australia conduct its own review of how Australian aid is given and spent, and
 - (ii) the Australian Government to adopt a new relationship with PNG, one that respects PNG as an equal partner and that does not subordinate PNG's interests to Australia's interests. (*general business notice of motion no. 569*)

10 ECONOMICS LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT

Senator Ferris, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That the time for the presentation of the report of the committee on the provisions of the Taxation Laws Amendment Bill (No. 7) 2003 be extended to 10 September 2003.

Question put and passed.

11 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Ferris, by leave and at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), moved—That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 6.30 pm, to take evidence for the committee's inquiry into the provisions of the Migration Legislation Amendment (Identification and Authentication) Bill 2003.

Question put and passed.

12 POSTPONEMENTS

Items of business were postponed as follows:

General business notice of motion no. 542 standing in the name of Senator Mackay for today, relating to the cancellation of the ABC program *Behind the News*, postponed till 10 September 2003.

General business notice of motion no. 544 standing in the name of Senator Ridgeway for today, relating to the free trade agreement negotiations between Australia and the United States of America, postponed till 10 September 2003.

13 MEDICARE—SELECT COMMITTEE—STATEMENT BY LEAVE

The Chair of the Select Committee on Medicare (Senator McLucas), by leave, made a statement relating to comments made on 21 August 2003 during debate on an extension of time for the committee to report concerning the Australian Institute for Primary Care (*see entry no. 6, 21 August 2003*).

14 LEAVE OF ABSENCE

Senator Mackay, by leave, moved—That leave of absence be granted to Senator Evans for the period 15 September to 18 September 2003, on account of parliamentary business overseas.

Question put and passed.

Senator Mackay, by leave, moved—That leave of absence be granted to Senator O'Brien for the period 8 September to 17 September 2003, on account of parliamentary business.

Question put and passed.

Senator Mackay, by leave, moved—That leave of absence be granted to Senator Conroy for the period 8 September to 19 September 2003, on account of ill health of a close relative.

Question put and passed.

15 FOREIGN AFFAIRS—IRAQ—UNITED NATIONS PERSONNEL

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 557—That the Senate calls on the Government to insist on better protection for United Nations personnel in Iraq.

Question put and passed.

16 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION LEGISLATION COMMITTEE—ADDITIONAL INFORMATION—BUDGET ESTIMATES 2003-04

The Deputy President (Senator Hogg) tabled the following documents received on 27 August 2003:

Employment, Workplace Relations and Education Legislation Committee—Additional information received by the committee (Budget estimates 2003-04—vols 1 to 4).

17 AUDITOR-GENERAL—AUDIT REPORTS NOS 3 AND 4 OF 2003-04—DOCUMENTS

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

Auditor-General—Audit reports for 2003-04—

No. 3—Business support process audit—Management of risk and insurance. [Received 27 August 2003]

No. 4—Performance audit—Management of the extension option review—Plasma Fractionation Agreement: Department of Health and Ageing. [Received 28 August 2003]

18 DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

Pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001, 18 June and 26 June 2003, the Deputy President (Senator Hogg) tabled the following documents received on the dates indicated:

Departmental and agency contracts for 2002-03—Letters of advice—

Communications, Information Technology and the Arts portfolio [Received 29 August 2003]—

Department of Communications, Information Technology and the Arts.

National Archives of Australia.

National Office for the Information Economy (NOIE).

Environment and Heritage portfolio [Received 3 September 2003]—

Australian Antarctic Division.

Australian Greenhouse Office.

Bureau of Meteorology.

Department of the Environment and Heritage.

National Oceans Office.

Family and Community Services portfolio [Received 27 August 2003]—

Centrelink.

Child Support Agency.

Department of Family and Community Services.

Social Security Appeals Tribunal.

Finance and Administration portfolio [Received 29 August 2003]—

Australian Electoral Commission.

Commonwealth Grants Commission.

ComSuper.

CSS Board.

Department of Finance and Administration.

PSS Board.

Health and Ageing portfolio agencies. [Received 29 August 2003]

Immigration and Multicultural and Indigenous Affairs portfolio [Received 29 August 2003]—

Department of Immigration and Multicultural and Indigenous Affairs.

Migration Review Tribunal.

Refugee Review Tribunal.

Industry, Tourism and Resources portfolio [Received 28 August 2003]—

Department of Industry, Tourism and Resources.

Geoscience Australia.

IP Australia.

Treasury portfolio [Received 29 August 2003]—

Australian Bureau of Statistics.
 Australian Competition and Consumer Commission.
 Australian Office of Financial Management.
 Australian Taxation Office.
 Department of the Treasury.
 National Competition Council.
 Productivity Commission.
 Royal Australian Mint.

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

Pursuant to the order of the Senate of 30 May 1996, as amended on 3 December 1998, the Deputy President (Senator Hogg) tabled the following documents received on the dates indicated:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2003—Statements of compliance—
 Australian Agency for International Development (AusAID). [*Received 3 September 2003*]
 Australian Trade Commission. [*Received 28 August 2003*]
 Comcare. [*Received 5 September 2003*]

20 FOREIGN AFFAIRS—WEST PAPUA—DOCUMENT

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

Foreign affairs—West Papua—Letter to the President of the Senate from the Chargé d’Affaires a.i. (Imron Cotan), Embassy of the Republic of Indonesia responding to the resolution of the Senate of 12 August 2003, dated 27 August 2003.

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

Debate ensued.

Question put and passed.

21 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE—ADDITIONAL INFORMATION—ADDITIONAL ESTIMATES 2002-03

The Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston) tabled additional information received by the committee (Additional estimates 2002-03—vol. 1 and attachment, vol. 2 and vol. 3 and attachments [2 vols]).

22 DOCUMENTS

The following documents were tabled by the Clerk:

Aged Care Act—

Determination under section 44-3—ACA Ch. 3 No. 36/2003.
 Residential Care Subsidy Amendment Principles 2003 (No. 1).
 User Rights Amendment Principles 2003 (No. 1).

Civil Aviation Act—Civil Aviation Regulations—

Exemptions Nos CASA EX19/2003 and CASA EX20/2003.
 Instruments Nos CASA 353/03-CASA 355/03 and CASA 392/03.
 Statutory Rules 2003 No. 232.

- Class Rulings CR 2003/41 (Addendum), CR 2003/42 (Addendum) and CR 2003/69-CR 2003/79.
- Currency Act—Currency (Royal Australian Mint) Determination 2003 (No. 5).
- Customs Act—Regulations—Statutory Rules 2003 Nos 210 and 227.
- Defence Act—Determination under section—
58B—Defence Determination 2003/24.
58H—Defence Force Remuneration Tribunal—Determinations Nos 13 and 14 of 2003.
- Diplomatic Privileges and Immunities Act—Diplomatic Privileges and Immunities Regulations—Certificates under regulation 5A, dated 26 August 2003 [2].
- Director of Public Prosecutions Act—Regulations—Statutory Rules 2003 No. 211.
- Extradition Act—Regulations—Statutory Rules 2003 No. 228.
- Family Law Act—Regulations—Statutory Rules 2003 No. 229.
- Goods and Services Tax Ruling GSTR 2003/11.
- Health Insurance Act—Declaration—QAA No. 2/2003.
- Income Tax Assessment Act 1936*—Regulations—Statutory Rules 2003 No. 215.
- International Organisations (Privileges and Immunities) Act—Regulations—Statutory Rules 2003 No. 230.
- Migration Act—
Direction under section 499—Direction No. 33.
Regulations—Statutory Rules 2003 Nos 224 and 231.
- National Health Act—Determination under—
Schedule 1—PHS 10/2003-PHS 15/2003 and PHS 18/2003.
Section 5D—PHS 16/2003 and PHS 17/2003.
- National Residue Survey (Excise) Levy Act—Regulations—Statutory Rules 2003 No. 218.
- Patents Act—Regulations—Statutory Rules 2003 No. 213.
- Primary Industries and Energy Research and Development Act—Regulations—Statutory Rules 2003 No. 219.
- Primary Industries (Customs) Charges Act—Regulations—Statutory Rules 2003 No. 220.
- Primary Industries (Excise) Levies Act—Regulations—Statutory Rules 2003 Nos 216, 221 and 225.
- Primary Industries Levies and Charges Collection Act—Regulations—Statutory Rules 2003 Nos 209, 217, 222 and 226.
- Product Ruling—
PR 2002/110 (Notice of Withdrawal).
PR 2003/21 (Addendum) and PR 2003/52-PR 2003/54.
- Taxation Ruling TR 2000/9 (Addendum).
- Telecommunications Act—Telecommunications (Standard Form of Agreement Information) Determination 2003.
- Trade Marks Act—Regulations—Statutory Rules 2003 No. 214.
- Wheat Marketing Act—Regulations—Statutory Rules 2003 No. 223.
- Workplace Relations Act—Regulations—Statutory Rules 2003 No. 212.

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

The following documents were tabled pursuant to the order of the Senate of 30 May 1996, as amended on 3 December 1998:

Indexed lists of departmental and agency files for the period—

1 July to 31 December 2002—Statements of compliance—Communications, Information Technology and the Arts portfolio—

Australia Council.
 Australian Broadcasting Authority.
 Australian Broadcasting Corporation.
 Australian Communications Authority.
 Australian Film Commission.
 Australian Sports Commission.
 Australian Sports Drug Agency.
 Australian National Maritime Museum.
 National Archives of Australia.
 National Gallery of Australia.
 National Library of Australia.
 National Museum of Australia.
 National Science and Technology Centre.
 ScreenSound Australia.
 Special Broadcasting Service.

1 January to 30 June 2003—Statements of compliance—

Australian Taxation Office.
 Department of the Prime Minister and Cabinet.
 Treasury portfolio—
 Australian Accounting Standards Board.
 Australian Bureau of Statistics.
 Australian Competition and Consumer Commission.
 Australian Competition Tribunal [nil return].
 Australian Office of Financial Management.
 Australian Prudential Regulation Authority.
 Australian Securities and Investments Commission.
 Australian Taxation Office.
 Axiss Australia.
 Companies Auditors and Liquidators Disciplinary Board [nil return].
 Corporations and Markets Advisory Committee.
 Department of the Treasury, incorporating the Australian Government Actuary.
 National Competition Council.
 Productivity Commission.
 Reserve Bank of Australia.
 Royal Australian Mint.
 Superannuation Complaints Tribunal.
 Takeovers Panel [nil return].

24 DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENTS

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001, 18 June and 26 June 2003:

Departmental and agency contracts for 2002-03—Letters of advice—Attorney-General's portfolio—

Administrative Appeals Tribunal.
Attorney-General's Department.
Australian Crime Commission.
Australian Customs Service.
Australian Federal Police.
Australian Transaction Reports and Analysis Centre.
Classification Board and the Classification Review Board [nil return].
CrimTrac.
Family Court of Australia.
Federal Court of Australia.
Federal Magistrates Service.
Human Rights and Equal Opportunity Commission.
Insolvency and Trustee Service Australia.
National Native Title Tribunal.
Office of Film and Literature Classification.
Office of Parliamentary Counsel.
Office of the Director of Public Prosecutions.
Office of the Federal Privacy Commissioner.

25 GOVERNOR-GENERAL'S MESSAGE—ASSENT TO LAW

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

25 August 2003—Message No. 29—*Export Control Amendment Act 2003* (Act No. 80, 2003).

26 PROCEDURE—STANDING COMMITTEE—SECOND REPORT OF 2003—CONSIDERATION

Order of the day read for the consideration of the Procedure Committee's second report of 2003.

The Minister for Communications, Information Technology and the Arts (Senator Alston) moved—That the recommendation of the Procedure Committee in its second report of 2003 relating to the publication of questions on notice and answers be adopted.

Question put and passed.

Accordingly, standing order 74(3) was amended to read as follows:

- (3) The reply to a question on notice shall be given by delivering it to the Clerk, a copy shall be supplied to the senator who asked the question, **the publication of the reply is then authorised**, and the question and reply shall be printed in Hansard.

27 SEX DISCRIMINATION AMENDMENT (PREGNANCY AND WORK) 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—and on the amendment moved by Senator Ludwig (see entry no. 3).

Debate resumed.

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

Senator Nettle moved the following amendment:

At the end of the motion, add “and the Senate condemns the Howard Government’s Baby Bonus, which is an inequitable payment that does nothing to assist parents to maintain their attachment to the workforce, and calls on the Government to abolish the scheme and redirect the funds into policies that assist families to balance their work and family responsibilities, including paid parental leave”.

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

Main question, as amended, put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

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

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

1A Paragraph 3(b)

Omit “or potential pregnancy”, substitute “, potential pregnancy or breastfeeding”.

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

1B Subsection 4(1) (after the definition of *administrative office*)

Insert:

breastfeeding includes the act of breastfeeding a child, expressing milk, a characteristic that appertains generally to women who are breastfeeding, or a characteristic that is generally imputed to women who are breastfeeding.

Schedule 1, page 3 (after line 7), after item 1, insert:

1F After section 7

Insert:

7AA Discrimination on the ground of breastfeeding

- (1) For the purposes of this Act, a person (the *discriminator*) discriminates against a woman (the *aggrieved woman*) on the ground that the aggrieved woman is breastfeeding if, because the aggrieved woman is breastfeeding, the discriminator treats the aggrieved woman less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat someone who is not breastfeeding.

(2) For the purposes of this Act, a person (the *discriminator*) discriminates against a woman (the *aggrieved woman*) on the ground that the aggrieved woman is breastfeeding if the discrimination imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging women who are also breastfeeding.

(3) This section has effect subject to sections 7B and 7D.

Schedule 1, page 3 (after line 7), after item 1, insert:

1G Subsection 10(2)

Omit “or potential pregnancy”, substitute “, potential pregnancy or breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1H Subsection 11(2)

Omit “or potential pregnancy”, substitute “, potential pregnancy or breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1K Subsection 14(1)

After “potential pregnancy”, insert “or because the person is breastfeeding her child”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1L Subsection 14(2)

After “potential pregnancy”, insert “or because the employee is breastfeeding her child”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1M Subsection 15(1)

After “potential pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1N Subsection 15(2)

After “potential pregnancy”, insert “or because the commission agent is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1P Section 16

After “potential pregnancy”, insert “or because the contract worker is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1Q Subsections 17(1) and (2)

After “potential pregnancy” (wherever occurring), insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1R Subsection 17(3)

After “potential pregnancy”, insert “or because the partner is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1S Section 18

After “potential pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1T Subsection 19(1)

After “potential pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1U Subsection 19(2)

After “potential pregnancy”, insert “or because the member is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1V Section 20

After “potential pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1W Subsection 21(1)

After “potential pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1X Subsection 21(2)

After “potential pregnancy”, insert “or because the student is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1Y Subsection 22(1)

After “potential pregnancy”, insert “or because that other person is breastfeeding her child”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1Z Subsections 23(1) and (2)

After “potential pregnancy” (wherever occurring), insert “or because that other person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1ZA Subsection 24(1)

After “potential pregnancy”, insert “or because that other person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1ZB Subsection 25(1)

After “potential pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1ZC Subsection 25(2)

After “potential pregnancy”, insert “or because the member is breastfeeding”.

Schedule 1, page 3 (after line 7), after item 1, insert:

1ZD Section 26

After “potential pregnancy”, insert “or because that other person is breastfeeding”.

Schedule 1, item 2, page 3 (line 20), after “pregnancy”, insert “or because that other person is breastfeeding”.

Schedule 1, item 2, page 3 (line 24), omit “or potentially pregnant”, substitute “, potentially pregnant or breastfeeding”.

Schedule 1, page 4 (after line 6), at the end of the Schedule, add:

9 Section 39

After “pregnancy”, insert “or because the person is breastfeeding”.

Schedule 1, page 4 (after line 6), at the end of the Schedule, add:

10 Section 48

Omit “or potential pregnancy” (wherever occurring), substitute “, potential pregnancy or breastfeeding”.

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

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

1BA Subsection 4(1) (definition of Commonwealth employee)

Repeal the definition, substitute:

Commonwealth employee, for the purposes of this Act, means a person who:

- (a) holds an office of appointment in the Commonwealth Public Service or is employed in a temporary capacity in a Department; or
- (b) holds a statutory or administrative office; or
- (c) is employed or engaged by a public authority of the Commonwealth; or
- (d) holds an office or is appointed under the *High Court of Australia Act 1979*, the *Federal Court of Australia Act 1976* or the *Federal Magistrates Act 1999*; or
- (e) is a member of the Commonwealth Parliament; or
- (f) holds an office or appointment in the Commonwealth Teaching Service or is employed as a temporary employee under the *Commonwealth Teaching Service Act 1972*; or
- (g) is employed under the *Australian Security Intelligence Organisation Act 1979*, the *Commonwealth Electoral Act 1918* or the *Naval Defence Act 1910*; or
- (h) is a member of the Defence Force.

1BB Subsection 4(1) (definition of employment)

Repeal the definition, substitute:

employment includes:

- (a) part-time and temporary employment; and
- (b) employment in a voluntary capacity or for consideration other than direct financial remuneration; and
- (c) work under a contract for services; and
- (d) work as a Commonwealth employee; and
- (e) work under the provisions of the *Social Security Legislation Amendment (Work for the Dole) Act 1997*.

Senator Stott Despoja moved the following amendment:

Schedule 1, page 3 (after line 7), after item 1, insert:

1C At the end of section 7A

Add:

- (2) For the purposes of subparagraph (1)(b)(i), but without otherwise limiting that provision, the family responsibilities of an employee include an intention to adopt a child, or the process of adopting a child.

1D Section 13

Repeal the section.

1E Section 38

Repeal the section.

Senator Ludwig moved the following amendment to Senator Stott Despoja's proposed amendment:

Omit item 1E, substitute:

1E Subsections 38(1) and (2)

Omit “, marital status or pregnancy” (wherever occurring), substitute “or marital status”.

1EA Subsection 38(3)

Omit “or pregnancy”.

1EB At the end of section 38

Add:

- (4) To avoid doubt, in this section, a reference to a person's sex or marital status does not include a reference to pregnancy or potential pregnancy.

Debate ensued.

Question—That Senator Ludwig's amendment to Senator Stott Despoja'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 Crossin the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, page 3 (after line 34), after item 2, insert:

2A At the end of subsection 27(2)

Add:

- ; but it is unlawful to discriminate in a recruitment process on the basis of that information.

Schedule 1, page 4 (after line 6), at the end of the Schedule, add:

4 After subsection 27(2)

Insert:

- (2A) To avoid doubt, it is unlawful for a person to ask another person a question (whether orally or in writing) in connection with the employment or potential employment of that other person, which might reasonably be understood as intended to elicit information about that person's intentions in relation to pregnancy, potential pregnancy or in relation to meeting that person's family commitments.

Senator Stott Despoja moved the following amendment:

Schedule 1, page 4 (after line 6), at the end of the Schedule, add:

4A After section 48

Insert:

48A Pregnancy discrimination standards

- (1) The Minister may formulate standards, to be known as pregnancy discrimination standards.
- (2) Pregnancy discrimination standards will:
 - (a) inform employers, principals of commission agents and contract workers, partnerships and employment agencies of the provisions of the Act and other relevant legislation which apply to discrimination on the ground of pregnancy or potential pregnancy; and
 - (b) inform employees and potential employees of the provisions of the Act and other relevant legislation which apply to discrimination on the ground of pregnancy or potential pregnancy; and
 - (c) assist all parties to understand and fulfil their obligations under the Act and other relevant legislation in relation to pregnancy and potential pregnancy; and
 - (d) assist in the administration of Commonwealth laws and programs in relation to discrimination on the ground of pregnancy or potential pregnancy.
- (3) Pregnancy discrimination standards formulated in accordance with this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

5 After section 48

Insert:

48B Employment advertisements—standing to bring complaints

A complaint in writing alleging that:

- (a) a person has done an act that is unlawful by virtue of paragraph 14(1)(a); and
- (b) that act is constituted by an advertisement;

may be lodged with the Commission by any person, notwithstanding that the complainant is not a person directly affected by the advertisement.

48C Referral of discriminatory awards to the Australian Industrial Relations Commission—own motion

Where the Commissioner has reason to believe that an award or agreement contains a provision or a number of provisions which permit discriminatory acts, the Commissioner may refer the award or agreement to the Australian Industrial Relations Commission.

Senator Ludwig moved the following amendment to Senator Stott Despoja's proposed amendment:

Omit item 4A, substitute:

4A After section 27

Insert:

27A Pregnancy equity standards

- (1) The Minister may formulate standards, to be known as pregnancy equity standards, in relation to the employment of women who are pregnant or potentially pregnant, consistent with and to give effect to the *Sex Discrimination Act 1984*.

- (2) Pregnancy equity standards formulated in accordance with this section are to be laid before each House of the Parliament within 15 sitting days of that House after the pregnancy equity standards are formulated and take effect only as provided by the following provisions of this section.
- (3) If:
- (a) notice of a motion to amend the pregnancy equity standards is given in either House of the Parliament within 15 sitting days after the pregnancy equity standards have been laid before that House; and
 - (b) the pregnancy equity standards, whether or not as amended, are subsequently approved by that House; and
 - (c) the other House approves the pregnancy equity standards in the form approved by the first-mentioned House;
- the pregnancy equity standards take effect in the form so approved from the day on which the second House approves the pregnancy equity standards in that form.
- (4) If no notice of a motion to amend the pregnancy equity standards is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the pregnancy equity standards have been laid before that House, the pregnancy equity standards take effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.

27B Unlawful to contravene pregnancy equity standards

It is unlawful for a person to contravene a pregnancy equity standard.

Debate ensued.

Question—That Senator Ludwig's amendment to Senator Stott Despoja'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 Crossin the following amendment was debated and agreed to:

Page 4 (after line 6), at the end of the bill, add:

Schedule 2—Human Rights and Equal Opportunity Commission Act 1986

1 After paragraph 46PO(4)(d)

Insert:

- (da) where the unlawful discrimination relates to pregnancy or potential pregnancy—an order requiring a respondent to pay to an applicant exemplary or punitive damages;

Senator Stott Despoja moved the following amendments together by leave:

No. 1—Page 4 (after line 6), at the end of the bill, add:

Schedule 3—Workplace Relations Act 1996

Part 1—Paid maternity leave

1 At the end of Part VIA

Add:

Division 6—Paid maternity leave**170KD Object of Division**

- (1) The object of this Division and Schedule 15 is to give effect, or further effect, to:
 - (a) Article 11.2(b) of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979; and
 - (b) the Family Responsibilities Convention; and
 - (c) the Workers with Family Responsibilities Recommendation, 1981, which the General Conference of the International Labour Organisation adopted on 23 June 1981 and is also known as Recommendation No. 165;by providing for a system of government-funded paid maternity leave that will help employees who take maternity leave from their employment in respect of a child.
- (2) In particular, Schedule 15 gives effect, or further effect, to the Article, Convention and Recommendation by entitling certain employees to up to 14 weeks of maternity payments out of public money when they take maternity leave from their employment in respect of a child.
- (3) This provision is to be implemented in conjunction with Division 5 of this Part and its provision of unpaid parental (defined to include maternity and paternity) leave, so that employees entitled to paid maternity leave receive a maternity payment for 14 weeks of their maternity leave at and around the birth of a child.
- (4) This maternity payment is payable to eligible employees by means of a payment by the Commonwealth to the employers of eligible employees. Employers then make the payment directly to their employees through established payment systems.
- (5) This maternity payment does not affect or reduce any other entitlement that the employee may have under the terms of any other employment agreement, award or law.
- (6) However, this maternity payment is not paid to Commonwealth, State or Territory government employees (who receive other government-funded payments). It is payable to other employees who meet the eligibility requirements.
- (7) The maternity payment is for mothers in recognition of the physical demands of the later stages of pregnancy, birth, recovery from birth, and establishment, where possible, of breast feeding. It is not intended as a transferable payment between employee and spouse except in exceptional circumstances.
- (8) If a person is eligible to receive a maternity payment under this Act and either or both the maternity allowance and the maternity immunisation allowance under the *A New Tax System (Family Assistance) (Administration) Act 1999*, the person must elect to receive either the payment, or the allowance or allowances, as the case may be.
- (9) A person is not entitled to a maternity payment if the person claims and is paid either or both the maternity allowance and the maternity immunisation allowance under the *A New Tax System (Family Assistance) (Administration) Act 1999*.

- (10) Schedule 15 establishes minimum entitlements and so is intended to supplement, and not to override, entitlements under other Commonwealth, State and Territory legislation, awards and agreements.
- (11) This maternity payment is to be treated as wage and salary income for the purposes of taxation, superannuation and other relevant laws and agreements.
- (12) The regulations may provide for an analogous system of paid adoption leave.

170KE Application of Schedule 15

The provisions of Schedule 15 have the force of law, in the same way as if they were set out in this Division.

2 After Schedule 14

Add:

Schedule 15—Paid maternity leave

Section 170KD

Part 1—Preliminary

1 Purpose

The purpose of this Part is to entitle certain employees, particularly mothers, to up to 14 weeks of maternity payments out of public money when they take parental leave from their employment in respect of a child.

2 Overview

- (1) Clauses 1 to 3 are preliminary provisions relating to the maternity payment scheme.
- (2) Clause 4 confers entitlements to maternity payments, primarily on female employees.
- (3) Clause 5 enables those employees to transfer their entitlements to their spouses in certain circumstances.
- (4) Clause 6 describes the process of applying for maternity payments.
- (5) Clauses 7 to 12 relate to the duration, timing and amount of maternity payments.
- (6) Clauses 13 to 21 relate to the administration of the maternity payment scheme.
- (7) This clause is intended only as a guide to the general scheme and effect of this Schedule.

3 Interpretation of this Schedule

- (1) In this Schedule:
 - continuous service* means service (otherwise than as a seasonal employee) under an unbroken contract of employment, and includes a period of leave, or a period of absence, authorised:
 - (a) by the employer; or

- (b) by an award or order of a court or tribunal that has power to fix wages and other terms and conditions of employment, or a workplace agreement certified by such a body; or
- (c) by a contract of employment; or
- (d) by this Schedule or another law of the Commonwealth or of a State or a Territory.

long paternity leave means Schedule 14 long paternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of the birth of a child of his spouse, otherwise than under Schedule 14 (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 long paternity leave, or would be of such a kind but for one or more of the following:
 - (i) it is paid leave;
 - (ii) differences in the rules governing eligibility for it;
 - (iii) differences in the period or periods for which it can be taken.

maternity leave means Schedule 14 maternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of her pregnancy or the birth of her child, otherwise than under Schedule 14 (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 maternity leave, or would be of such a kind but for one or more of the following:
 - (i) it is paid leave;
 - (ii) it can begin before the estimated date of birth;
 - (iii) differences in the rules governing eligibility for it;
 - (iv) differences in the period or periods for which it can be taken.

medical certificate means a certificate signed by a registered medical practitioner.

parental leave means maternity leave or paternity leave.

paternity leave means short paternity leave or long paternity leave.

short paternity leave means Schedule 14 short paternity leave or any other leave (however described):

- (a) to which an employee is entitled, or that has been applied for by or granted to an employee, in respect of the birth of a child of his spouse, otherwise than under Schedule 14 (for example, under another law of the Commonwealth or of a State or Territory, or under an award, order or agreement); and
- (b) that is of a kind analogous to Schedule 14 short paternity leave, or would be of such a kind but for one or more of the following:
 - (i) it is paid leave;
 - (ii) differences in the rules governing eligibility for it;

- (iii) differences in the period or periods for which it can be taken.

Schedule 14 long paternity leave has the meaning given by clause 13 of Schedule 14.

Schedule 14 maternity leave has the meaning given by subclause 3(1) of Schedule 14.

Schedule 14 short paternity leave has the meaning given by clause 13 of Schedule 14.

spouse, in relation to an employee, includes a person who lives with the employee in a marriage-like relationship, although not legally married to the employee.

Multiple employments

- (2) An employee's entitlement to rights and benefits in respect of parental leave must be determined by treating each of the employee's employments separately, if the employee has more than one employment.

Multiple births

- (3) A person who gives birth to two or more children as a result of one pregnancy and assumes or intends to assume the care of those children must be treated as if the person had given birth to only one child as a result of the pregnancy and had assumed or intended to assume the care of only one of those children.

Part 2—Paid maternity leave

4 Entitlement to maternity payment

- (1) An employee is entitled to a maternity payment under this Schedule if the employee applies in the approved form and:
- (a) is an eligible employee; or
 - (b) is an eligible spouse.
- (2) An **eligible employee** is a female employee:
- (a) who is granted maternity leave for the child under section 170KB; and
 - (b) is not employed by a Commonwealth, State or Territory government (including government departments, non-market non-profit institutions that are controlled and mainly financed by government, and corporations and quasi-corporations that are controlled by government).
- (3) An **eligible spouse** is an employee:
- (a) to whom all or part of an entitlement to a maternity payment is transferred under subclause 5(1); or
 - (b) who succeeds to a maternity payment under subclause 5(3).

5 Entitlement may be transferred to eligible spouse

- (1) An eligible employee (within the meaning of subclause 4(2)) may transfer all or part of her entitlement to a maternity payment in respect of a child to her spouse if:
- (a) the spouse has been granted parental leave; and

- (b) the spouse takes parental leave from his or her employment in respect of the child; and
- (c) exceptional circumstances, as defined by the regulations, make such a transfer necessary (such as the spouse becoming sole guardian of the child to the exclusion of the employee).

Note: As maternity leave recognises the physical demands of the later stages of pregnancy, birth, recovery from birth and establishment, where possible, of breast feeding, the payment is intended for the mother, and is not intended, under normal circumstances, to be transferable from the biological mother to the spouse.

- (2) To the extent that an eligible employee transfers all or part of her entitlement to a maternity payment to her spouse under this clause:
 - (a) references in this Schedule to the employee's entitlement to a maternity payment are references to the eligible spouse's entitlement to a maternity payment; and
 - (b) references in this Schedule to the period of maternity leave are references to the period of parental leave taken by the eligible spouse; and
 - (c) the amount of the maternity payment is calculated according to the work circumstances of the eligible spouse; and
 - (d) the entitlement that is transferred is deducted from the transferring employee's entitlement to a maternity payment.
- (3) An eligible spouse succeeds to the maternity leave entitlements of an eligible employee under this clause on the later of:
 - (a) the date of the eligible employee's death or the date when the spouse becomes sole guardian, as the case may be; or
 - (b) the date on which the eligible spouse's bereavement leave in respect of the eligible spouse expires (if any).

6 Applications for maternity payment

- (1) An eligible employee is not entitled to a maternity payment, and an employer is not entitled to a maternity advance, unless the employee makes an application for payment in accordance with this clause.
- (2) The application must:
 - (a) be made before the date on which the employee returns to work or the parental leave otherwise ends; and
 - (b) be made in the manner prescribed in regulations; and
 - (c) specify the matters, and be accompanied by the documents, prescribed in regulations.
- (3) An employer and an employee must comply with any provision in the regulations that requires them to specify matters in, or attach documents to, or sign, an application under this clause or the regulations.

7 Duration of maternity payment

A maternity payment is payable by an employer to an entitled employee:

- (a) for one continuous period not exceeding 14 weeks; or

- (b) if part of the entitlement is transferred under clause 5, for one continuous period per employee, so long as the two continuous periods do not together exceed 14 weeks.

8 Start of maternity payment

A maternity payment is payable by an employer to an entitled employee who is:

- (a) an eligible employee—for a period that begins on the date of commencement of her maternity leave; or
- (b) an eligible spouse—for a period that begins on the date the entitlement is transferred under clause 5.

9 Backdating of maternity payments

The first payment of a maternity payment includes an amount in respect of the period from the start of the period mentioned in clause 8 if the application is approved on or after that date.

10 End of maternity payment

- (1) Subject to clause 7, a maternity payment is payable by an employer to an employee for a period that ends on the earlier of:
 - (a) 14 weeks after the date of the start of his or her maternity payment; or
 - (b) the date on which that employee returns to work or resigns from his or her employment.
- (2) Subclause (1) applies despite the fact that the employee's parental leave may end before that date if:
 - (a) the employee's employment is terminated due to redundancy or dismissal for cause; or
 - (b) the employee has a miscarriage or ceases to have the care of the child; or
 - (c) the employee or the child dies.
- (3) However, the period for which a maternity payment is payable to an employee terminates earlier than the date referred to in subclause (1):
 - (a) if the employee takes parental leave only from fixed term employment, in which case the payment stops on the date on which fixed term employment ends; or
 - (b) if the employee's spouse succeeds to the maternity payment under subclause 5(3), in which case the payment to the employee stops on the date of succession.

11 Amount of maternity payment

- (1) The rate of maternity payment payable to any employee is the lesser of:
 - (a) the Federal minimum wage as ordered, from time to time, by the Australian Industrial Relations Commission; or
 - (b) 100% of the employee's average weekly earnings (averaged over the 12 months preceding the commencement of parental leave).

Note 1: The Federal minimum wage from May 2002 was \$431.40 per week.

Note 2: As set out in subsection 170KD(9), those who receive a maternity payment are not entitled to receive the maternity allowance and/or the maternity immunisation allowance under the *A New Tax System (Family Assistance) (Administration) Act 1999*.

- (2) If an employee is entitled to receive a maternity payment from more than one employer in respect of a child, the total of those payments cannot exceed the amount mentioned in paragraph (1)(a).
- (3) This maternity payment is to be treated as wage and salary income received by the eligible employee or eligible spouse, as the case may be, for the purposes of taxation, superannuation and other relevant laws and agreements.

12 Amount of payment not affected by other non-statutory entitlements

- (1) An entitlement to a maternity payment under this Schedule is not affected or reduced by any other entitlement that the employee may have under the terms of any employment agreement.

Note: Under paragraph 4(2)(b) of this Schedule, a Commonwealth, State or Territory government employee is not eligible to receive the maternity payment.

- (2) An employer must not, without the agreement of the employee, reduce any other entitlement that the employee may have under the terms of any employment agreement because of the employee's entitlement to a payment under this Schedule.
- (3) An employer who fails to comply with this clause is liable to a penalty imposed by a court of competent jurisdiction under Part VIII of this Act in respect of each employee to whom the purported reduction applies.

13 Employer to be advanced payments out of public money

- (1) Subject to this Act, if an individual is entitled to be paid a maternity payment under this Schedule, the department must, at such time and in such manner as the Secretary considers appropriate, pay that employer an amount equal to the payment, known as the *maternity advance*.
- (2) Where possible, that maternity advance is to be made before or at the same time as the employer makes a maternity payment to the employee.

14 Method of paying the maternity advance

- (1) A maternity advance is payable on a fortnightly, monthly or lump sum basis, as determined by the regulations.
- (2) Every instalment of the payment must be paid into the employer's Australian bank account specified by the employer for that purpose, unless the Secretary in any particular case otherwise determines.

15 Obligation of employer to notify employee of payment entitlements

Every employer who receives a notice of an employee's wish to take parental leave must, within 21 days after the receipt of the notice, inform the employee of the substance of this Schedule by giving the employee a notice in a form prescribed by the regulations.

16 Obligation to notify early return to work etc.

- (1) An employee must give notice if, during the period for which the employee is receiving a maternity payment under this Schedule:
 - (a) the employee returns to work; or
 - (b) the employee's fixed term employment ends; or
 - (c) the employee resigns from his or her employment.
- (2) The notification must be made in the manner prescribed in the regulations and specify the matters, and be accompanied by the documents, prescribed in the regulations.

17 Failure to return to work does not affect payment

An employee is not required to refund any maternity payment under this Schedule because the employee does not return to work at the end of his or her parental leave.

18 Obligation to supply information

- (1) The Department may, by written notice, request an employee who has applied for a maternity payment, and any employer of that employee, to supply to the Department any information in the possession of the employee or the employer, as the case may be, relating to:
 - (a) the employee's entitlement or continued entitlement to a maternity payment under this Schedule; or
 - (b) the employer's entitlement or continued entitlement to a maternity advance under this Schedule.
- (2) The employee or the employer must comply with a request under this clause within a period of time to be specified by the regulations.

19 Recovery of debts by department

- (1) A sum of a maternity advance (an *overpayment*) paid under this Schedule is a debt due to the Department if the sum was:
 - (a) paid in respect of an employee in excess of the amount to which the employee is entitled under this Schedule; or
 - (b) paid in respect of an employee who has no entitlement to it under this Schedule.
- (2) The Department may:
 - (a) recover the debt by way of legal proceedings; or
 - (b) deduct all or part of the debt from any amount payable in respect of that person under this Schedule.
- (3) The Department may not recover any maternity advance or part of an advance under this Schedule that was paid as a result of an error not intentionally contributed to by the employer, if the employer:
 - (a) received the payment in good faith; and
 - (b) so altered his or her position in reliance on the validity of the payment;that it would be inequitable to require repayment.

20 Offence to mislead Department

A person commits an offence if, for the purpose of receiving or continuing to receive any payment or entitlement under this Schedule for himself or herself or any other person:

- (a) he or she makes any statement knowing it to be false in any material particular; or
- (b) he or she does or says anything, or omits to do or say anything, with the intention of misleading or attempting to mislead the Department or any other person concerned in the administration of this Act.

Penalty: 50 penalty units.

21 Regulations

Regulations to implement this Schedule may:

- (a) prescribe the manner in which an application for, or other notices relating to, a maternity payment or a maternity advance must be made;
- (b) prescribe the information that employees and employers must give in, or the documents that employees or employers must attach to, an application for, or other notice relating to, a maternity payment or a maternity advance;
- (c) extend the class or classes of persons entitled to a maternity payment or a maternity advance.

Part 2—Other amendments

3 Clause 2 of Schedule 14 (definition of *employee*)

Omit “casual or”.

4 After clause 12 of Schedule 14

Insert:

12A Implementation of reasonable and necessary conditions for working breastfeeding mothers

An employer must ensure that the following reasonable and necessary conditions are met in the workplace for working breastfeeding mothers:

- (a) reasonable breaks from work (but not so as to diminish the length of the working day) to enable a breastfeeding mother to breastfeed a child or express milk;

Note: The ILO recommends two 30 minute breaks in an 8 hour shift in addition to normal breaks.

- (b) provision of suitable and appropriate places for working breastfeeding mothers to breastfeed a child or express milk;
- (c) provision of suitable and appropriate facilities for the storage of breast milk.

5 Clause 2 of Schedule 14 (definition of *continuous service*)

Omit “casual or”.

6 Clause 2 of Schedule 14 (definition of *spouse*)

Omit “of the opposite sex to the employee”.

Schedule 4—Amendment of other Acts

A New Tax System (Family Assistance) (Administration) Act 1999

1 At the end of section 39

Add:

“Normal circumstances” entitlement not effective where individual entitled to and receives maternity payments under the Workplace Relations Act 1996

- (6) A claim for payment of maternity allowance or maternity immunisation allowance is not effective if the claimant is entitled to, or has transferred the entitlement to, a maternity payment in respect of a child under the *Workplace Relations Act 1996*.

No. 2—Title, page 1 (lines 1 and 2), omit “**to amend the Sex Discrimination Act 1984**”, substitute “**relating to pregnancy and work**”.

The question for the amendments was divided—

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

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

Bill, as amended, agreed to.

Bill to be reported with amendments and with an amendment to the title.

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

On the motion of the Minister for Justice and Customs (Senator Ellison) the report from the committee was adopted and the bill read a third time.

28 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Justice and Customs (Senator Ellison) moved—That government business order of the day no. 2 (Health Legislation Amendment (Private Health Insurance Reform) Bill 2003) be postponed till a later hour.

Question put and passed.

29 MIGRATION AMENDMENT (DURATION OF DETENTION) BILL 2003

Order of the day read for the adjourned debate on the motion of the Special Minister of State (Senator Abetz)—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.

Explanatory memorandum: The Minister for Justice and Customs (Senator Ellison) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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

Schedule 1, item 1, page 3 (lines 7 to 10), omit subsection (4), substitute:

(4) Subject to paragraphs (1)(a), (b) and (c), if the person is detained as a result of the cancellation of his or her visa under section 501, the detention is to continue unless a court finally determines that the detention is unlawful, or that the person detained is not an unlawful non-citizen.

(4A) Subject to paragraphs (1)(a), (b) and (c), if the person is detained pending his or her deportation under section 200, the detention is to continue unless a court finally determines that the detention is unlawful.

Schedule 1, item 1, page 3 (line 11), after “subsection (4)”, insert “or (4A)”.

Schedule 1, item 1, page 3 (after line 17), after subsection (5), insert:

(5A) Subsections (4) and (4A) do not affect by implication the continuation of the detention of a person to whom those subsections do not apply.

Schedule 1, item 2, page 3 (line 26), omit “196(4), (5), (6) and (7)”, substitute “196(4) to (7)”.

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 Lightfoot) reported accordingly.

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

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

Question put.

The Senate divided—

AYES, 46

Senators—

| | | | |
|------------------|-----------------|-----------|----------|
| Abetz | Crossin | Humphries | Ray |
| Barnett | Denman | Hutchins | Santoro |
| Bishop | Eggleston | Johnston | Scullion |
| Bolkus | Ellison | Kirk | Sherry |
| Brandis | Evans | Ludwig | Stephens |
| Buckland | Ferguson | Lundy | Tchen |
| Campbell, George | Ferris (Teller) | Mackay | Tierney |
| Carr | Forshaw | Marshall | Watson |
| Chapman | Harradine | Mason | Webber |
| Colbeck | Harris | McLucas | Wong |
| Collins | Heffernan | Moore | |
| Cook | Hogg | Payne | |

NOES, 10

Senators—

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

Question agreed to.
Bill read a third time.

30 ORDER OF BUSINESS—REARRANGEMENT

The Minister for Justice and Customs (Senator Ellison) moved—That government business order of the day no. 4 (Trade Practices Amendment (Personal Injuries and Death) Bill 2003) be postponed till the next day of sitting.

Question put and passed.

31 COMMUNICATIONS LEGISLATION AMENDMENT BILL (NO. 1) 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.

At 9.50 pm: Debate was interrupted.

32 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.28 pm till Tuesday, 9 September 2003 at 12.30 pm.

33 ATTENDANCE

Present, all senators except Senators Conroy*, Knowles*, Sandy Macdonald* and O'Brien* (* on leave).

HARRY EVANS
Clerk of the Senate