

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**JOURNALS OF THE SENATE**

No. 9

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**Contents**

1	Meeting of Senate .....	233
2	Government Documents .....	233
3	Indigenous Education (Targeted Assistance) Amendment Bill 2004.....	234
4	Australian Security Intelligence Organisation Amendment Bill 2004 .....	235
5	Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004 Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.....	236
6	Questions .....	236
7	Ministers—Answers to Questions .....	236
8	Transport—Ansett Employee Entitlements—Answer to Question .....	236
9	Petitions .....	236
10	Notices .....	237
11	Order of Business—Rearrangement .....	240
12	Postponements.....	240
13	Employment, Workplace Relations and Education References Committee— Reference.....	241
14	Jewish Festival—Hanukkah .....	242
15	Multiculturalism—Christmas Celebrations.....	242
16	Legal and Constitutional Legislation Committee—Extension of Time to Report .....	242
17	Community Affairs Legislation Committee—Leave to Meet During Sitting....	242
18	Jewish Festival—Hanukkah—Multiculturalism—Christmas Celebrations— Statement by Leave .....	243
19	Treaties—Joint Standing Committee—Reference .....	243
20	Trade—Free Trade Agreement—Order for Production of Documents— Statement by Leave .....	244
21	Treaties—Joint Standing Committee—61st Report—Document .....	244
22	Documents.....	244
23	Committees—Changes in Membership.....	244

24	National Water Commission Bill 2004	
	Tax Laws Amendment (Superannuation Reporting) Bill 2004 .....	245
25	Order of Business—Rearrangement.....	245
26	Economics Legislation Committee—Report—Tax Laws Amendment (Superannuation Reporting) Bill 2004.....	246
27	Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004	
	Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004.....	246
28	Environment, Communications, Information Technology and the Arts Legislation Committee—Report—National Water Commission Bill 2004 .....	246
29	Legal and Constitutional Legislation Committee—Report—Copyright Legislation Amendment Bill 2004.....	246
30	Tax Laws Amendment (Superannuation Reporting) Bill 2004 .....	246
31	Copyright Legislation Amendment Bill 2004.....	248
32	Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004.....	251
33	Tax Laws Amendment (Small Business Measures) Bill 2004 .....	252
34	National Water Commission Bill 2004 .....	252
35	Adjournment .....	253
36	Attendance.....	253

**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 GOVERNMENT DOCUMENTS**

The following government documents were tabled:

Administrative Review Council—Report no. 46—Automated assistance in administrative decision making, November 2004.

Airservices Australia—Corporate plan July 2004 to June 2009.

Australian Competition and Consumer Commission—Competition in the corporation customer segment of telecommunications markets—Report for the period July to December 2003, June 2004.

Department of Veterans' Affairs—Data-matching program—Report on progress 2002-04.

*Freedom of Information Act 1982*—Report for 2003-04 on the operation of the Act.

High Court of Australia—Report for 2003-04.

Indigenous Business Australia—Report for 2003-04.

National Transport Commission (known as National Road Transport Commission until 14 January 2004)—Report for 2003-04.

Natural Heritage Trust—Report for 2002-03.

*Sydney Airport Demand Management Act 1997*—Quarterly report on the maximum movement limit for Sydney Airport for the period 1 July to 30 September 2004.

Treaties—

*Bilateral*—Text, together with national interest analysis and annexures—Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services, done at Warsaw on 28 April 2004.

List of multilateral treaty actions under negotiation, consideration or review by the Australian Government as at December 2004.

List of proposed treaty actions referred to the Joint Standing Committee on Treaties in the 40th Parliament, December 2004.

*Multilateral*—Text, together with national interest analysis and annexures—

Amendment in order to admit Mongolia as a country of operations to the Agreement Establishing the European Bank for Reconstruction and Development (EBRD), done at Paris on 29 May 1990.

Amendments, done at Sorrento, Italy on 22 July 2004, to the Schedule to the International Convention for the Regulation of Whaling, done at Washington on 2 December 1946.

United Nations Convention against Corruption (New York, 31 October 2003).

*Wheat Marketing Act 1989*—Wheat marketing review 2004—Growers' report, October 2004.

### 3 INDIGENOUS EDUCATION (TARGETED ASSISTANCE) AMENDMENT BILL 2004

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

Debate resumed.

Senator Allison moved the following amendment:

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

(a) notes that:

- (i) funding for the Indigenous Education Direct Assistance program has had no substantial increase since its inception 16 years ago and that in a time of record national prosperity, Indigenous education should be a matter of priority,
- (ii) the changes to the Aboriginal Student Support and Parent Awareness (ASSPA) scheme and the Indigenous Tutorial Assistance Scheme (ITAS) are being imposed without any genuine consultation with Indigenous communities and with a disregard for the successful elements of these programs, and
- (iii) the Government’s focus on remote communities actually involves a redirection of funding from urban and regional Indigenous students to very remote Indigenous students, rather than increasing the pool of funds for Indigenous education in recognition of the level of disadvantage of Indigenous students relative to non-Indigenous students; and

(b) calls on the Government to:

- (i) provide a substantial increase in funding under the *Indigenous Education (Targeted Assistance) Act 2000*,
- (ii) guarantee that targeted assistance funding is indexed at a rate comparable to other schools funding, and
- (iii) consult with parents and teachers before going ahead with the restructuring of the ASSPA scheme and the ITAS”.

Debate ensued.

Senator Carr, by leave, moved the following amendment to Senator Allison’s proposed amendment:

Subparagraph (a)(i), omit “16”, substitute “8”.

Question—That Senator Carr’s amendment to Senator Allison’s proposed amendment be agreed to—put and passed.

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

Main question, as amended, 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 Minister for the Arts and Sport (Senator Kemp) the bill was read a third time.

4 **AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION AMENDMENT BILL 2004**

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

Message no. 22, dated 6 December 2004—A Bill for an Act to amend the *Australian Security Intelligence Organisation Act 1979*, and for related purposes.

The Minister for the Arts and Sport (Senator Kemp) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Kemp 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.

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*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, item 1, page 3 (line 14), omit “thing”, substitute “prescribed thing”.

Schedule 1, page 3 (after line 20), after item 1, insert:

**1A Section 35**

Insert:

*prescribed thing* means a thing, including any substance that is prescribed by regulation under this Act.

Schedule 1, item 3, page 3 (line 30), omit “thing”, substitute “prescribed thing”.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

**5 TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM AMENDMENT (POST-2005 SCHEME) BILL 2004  
CUSTOMS TARIFF AMENDMENT (TEXTILE, CLOTHING AND FOOTWEAR POST-2005 ARRANGEMENTS) BILL 2004**

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

Message no. 23, dated 6 December 2004—A Bill for an Act to amend the *Textile, Clothing and Footwear Strategic Investment Program Act 1999*, and for related purposes.

Message no. 24, dated 6 December 2004—A Bill for an Act to amend the *Customs Tariff Act 1995*, and for related purposes.

The Minister for Justice and Customs (Senator Ellison) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Senator Nettle requested that the motion be divided—

Question—That these bills may be taken together—debated and agreed to.

Question—That these bills may proceed without formalities and be now read a first time—put and passed.

Bills read a first time.

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

Debate ensued.

*At 2 pm:* Debate was interrupted while Senator Buckland was speaking.

**6 QUESTIONS**

Questions without notice were answered.

**7 MINISTERS—ANSWERS TO QUESTIONS**

Senator O'Brien moved—That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Ian Campbell) and the Minister for Defence (Senator Hill) to questions without notice asked by opposition senators today.

Debate ensued.

Question put and passed.

**8 TRANSPORT—ANSETT EMPLOYEE ENTITLEMENTS—ANSWER TO QUESTION**

Senator Allison moved—That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Ian Campbell) to a question without notice asked by Senator Allison today relating to the entitlements of former Ansett employees.

Question put and passed.

**9 PETITIONS**

The following 3 petitions, lodged with the Clerk by the senators indicated, were received:

Senator Crossin, from 83 petitioners, requesting that the Senate take action to immediately release children and their families from immigration detention centres.

Senator Crossin, from 257 petitioners, requesting that the Senate take action to establish a Medicare office for the City of Palmerston.

Senator Kirk, from 480 petitioners, requesting that the Senate take action to ensure that David Hicks' and Mamdouh Habib's rights are met under the guidelines of the Geneva Convention, as it applies to prisoners of war.

## 10 NOTICES

The Minister for Justice and Customs (Senator Ellison): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Customs Act 1901*, and for related purposes. ***Customs Amendment Bill 2004***.

The Minister for Justice and Customs (Senator Ellison): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Australian Sports Commission Act 1989*, and for related purposes. ***Australian Sports Commission Amendment Bill 2004***.

The Minister for Justice and Customs (Senator Ellison): To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Criminal Code Act 1995* to provide for offences relating to trafficking in persons, and for related purposes. ***Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004***.

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

- (a) congratulates Mr John Bulunbulun on winning the Australia Council's Red Ochre Award, which honours an Aboriginal or Torres Strait Islander person who, throughout his or her lifetime, has made outstanding contributions to the recognition of Indigenous Australian art at both national and international levels;
- (b) notes that Mr Bulunbulun is a practicing artist of more than 30 years and an important ceremonial leader and singer around his Arnhem Land community of Maningrida;
- (c) also notes that Mr Bulunbulun was a pioneer for the protection of artist rights following a landmark court case he fought and won against a manufacturer who illegally reproduced his work, the celebrated 'T shirt case' and that he continues to advise fellow artists on copyright, protocols and responsibilities, particularly about depictions of dreaming and totems in their work;
- (d) further notes that:
  - (i) Indigenous cultural expression is a fundamental part of Indigenous heritage and identity, and unauthorised use of Indigenous art and cultural expression can be inappropriate, derogatory and culturally offensive,
  - (ii) individual Indigenous artists are custodians of the knowledge and wisdom their work incorporates and reflects, therefore Indigenous moral rights are collective rights that are inalienable from their community of origin, and
  - (iii) Indigenous artists are particularly vulnerable under Australian law, which offers virtually no protection for the moral rights owned collectively by Indigenous communities; and
- (e) urges the Government to take immediate action to amend the *Copyright Act 1968* to ensure the adequate recognition and protection of Indigenous communal moral rights. (*general business notice of motion no. 45*)

Senator Sherry: To move on 9 December 2004—That new Divisions 9.2A and 9.2B in item [10] of Schedule 1 to the Superannuation Industry (Supervision) Amendment Regulations 2004 (No. 2), as contained in Statutory Rules 2004 No. 84 and made under the *Superannuation Industry (Supervision) Act 1993*, be disallowed.

Senator Cherry: To move on the next day of sitting—That the following matters be referred to the Environment, Communications, Information Technology and the Arts References Committee for inquiry and report by 10 March 2005:

- (a) the provisions of the Australian Communications and Media Authority Bill 2004 and the Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004 and related bills;
- (b) whether the powers of the proposed Australian Communications and Media Authority and the Australian Competition and Consumer Commission will be adequate to deal with emerging market and technical issues in the telecommunications, media and broadcasting sector;
- (c) whether the powers of Australia's competition and communications regulators meet world best practice, with particular reference to the United Kingdom regulator Ofcom and regulators in the United States of America and Europe; and
- (d) whether legislation is needed to prevent cross ownership between delivery of communications and media content.

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

- (a) the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the Disability Discrimination Amendment (Education Standards) Bill 2004 be extended to 8 February 2005; and
- (b) that the terms of reference be varied to allow for the examination of whether the bill:
  - (i) provides full legislative support for the introduction of the Disability Standards for Education,
  - (ii) permits existing rights under the *Disability Discrimination Act 1992* to be undermined, and
  - (iii) reflects the recommendations of the Productivity Commission's report, *Review of the Disability Discrimination Act 1992*.

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

- (a) notes that:
  - (i) a meeting in Sydney of former employees of Ansett Airlines on 27 November 2004 called on the Government to 'cease making financial gains' whilst entitlements are still owed to former employees,
  - (ii) both Ansett workers and the general public were told by the Government at the time of the establishment of the Special Employee Entitlements Scheme for Ansett Group's Eligible Employees (SEESA) that the revenue from the Ansett ticket levy would be used to fund the payment of Ansett workers entitlements and that on 17 September 2001 the Deputy Prime Minister (Mr Anderson) told journalists that the Government would not 'double dip' in establishing SEESA,



- (iii) after underwriting a \$336 million loan to Ansett administrators, the Government has collected \$286 million through the Ansett ticket levy and recouped \$208 million through Ansett asset sales, has effectively double dipped, and has made a \$150 million profit from the scheme,
  - (iv) \$212 million is still owed in entitlements, and
  - (v) the administrators of Ansett, Mr Mentha and Mr Korda, are unable to pay entitlements to former Ansett employees until such time as they have repaid the full \$336 million loaned by the Government; and
- (b) calls on the Government to:
- (i) cease collecting repayments under SEESA from the administrators until Ansett workers are paid their entitlements in full, and
  - (ii) use the surplus of the Ansett passenger ticket levy to pay outstanding Ansett worker entitlements as was the stated purpose rather than redirecting these funds to aviation security initiatives. (*general business notice of motion no. 46*)

The Minister for Justice and Customs (Senator Ellison): To move on the next day of sitting—That the provisions of paragraphs (5) and (8) of standing order 111 not apply to the Customs Amendment Bill 2004.

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*Document:* Senator Ellison tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the Customs Amendment Bill 2004 in the 2004 spring sittings.

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Senator Brown: To move on the next day of sitting—That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 11 May 2005:

- (a) compensation arrangements for wheat growers after writing-off the Iraqi wheat debt, with particular reference to:
  - (i) how decisions were made, and
  - (ii) the impact on wheat growers individually and generally; and
- (b) any related matters.

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

- (a) notes:
  - (i) that the inaugural Dr Andrew McNaughtan memorial lecture was delivered on 7 December 2004, which also marked the 29th anniversary of the Indonesian invasion of East Timor,
  - (ii) Dr McNaughtan's major contribution to the struggle of the East Timorese people, including his work to achieve economic justice in relation to the Timorese claim to oil and gas reserves in the Timor Sea,
  - (iii) the remarks of Timorese Foreign Minister, Mr Jose Ramos Horta, who said last week that Australia's reduced compensation offer to Timor Leste 'amounted to an unacceptable blackmail', and

- (iv) the patronising and inaccurate comments by the Minister for Foreign Affairs (Mr Downer) in response to East Timorese dissatisfaction with the Australian Government's compensation offer when he said 'East Timor wouldn't be an independent country if it wasn't for Australia'; and
- (b) calls on the Government to:
  - (i) negotiate a fair and equitable maritime boundary with Timor Leste according to current international law and the provisions of the United Nations Convention on the Law of the Sea,
  - (ii) respond to the request by Timor Leste for more regular meetings to settle the maritime boundary dispute between the two countries within a more reasonable timeframe,
  - (iii) return Australia to the jurisdiction of the International Court of Justice and the United Nations Convention on the Law of the Sea for the adjudication of maritime boundaries, and
  - (iv) commit to hold in trust revenues from disputed areas immediately outside the Joint Petroleum Development Area of the 20 May 2002 Timor Sea Treaty for further apportionment between Australia and Timor Leste after the maritime boundary dispute between the two countries has been settled. (*general business notice of motion no. 47*)

#### 11 ORDER OF BUSINESS—REARRANGEMENT

Senator Ferris, by leave and at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne), moved—That business of the Senate order of the day no. 4, relating to the presentation of the report of the committee on the Copyright Legislation Amendment Bill 2004, be postponed till a later hour.

Question put and passed.

#### 12 POSTPONEMENTS

The following items of business were postponed:

Business of the Senate notice of motion no. 1 standing in the name of Senator Stott Despoja for today, proposing the reference of matters to the Legal and Constitutional References Committee, postponed till 8 December 2004.

Business of the Senate notice of motion no. 2 standing in the name of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins) for today, proposing the reference of matters to the Foreign Affairs, Defence and Trade References Committee, postponed till 8 December 2004.

General business notice of motion no. 17 standing in the name of Senator Brown for today, relating to Tasmanian forests, postponed till 8 December 2004.

General business notice of motion no. 27 standing in the name of Senator Lees for today, relating to Asian elephants, postponed till 10 February 2005.

General business notice of motion no. 33 standing in the name of Senator Brown for today, relating to kidnappings in Colombia, postponed till 8 December 2004.

General business notice of motion no. 44 standing in the name of Senator Ludwig for today, relating to counterfeit passports, postponed till 9 December 2004.

**13 EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION REFERENCES  
COMMITTEE—REFERENCE**

Senator Murray, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 3—

- (1) That the matter of unfair dismissal be referred to the Employment, Workplace Relations and Education References Committee for inquiry and report by 14 June 2005, with the following terms of reference:
  - (a) to examine:
    - (i) the international experience concerning:
      - (A) unfair dismissal laws, and
      - (B) the relationship between unfair dismissal laws and employment growth in the small business sector,
    - (ii) the provisions of federal and state unfair dismissal laws and the extent to which they adversely impact on small businesses, including:
      - (A) the number of applications against small businesses in each year since 1 July 1995 under federal and state unfair dismissal laws, and
      - (B) the total number of businesses, small businesses and employees that are subject to federal and state unfair dismissal laws,
    - (iii) evidence cited by the Government that exempting small business from federal unfair dismissal laws will create 77 000 jobs in Australia (or any other figure previously cited),
    - (iv) the relationship, if any, between previous changes to Australian unfair dismissal laws and employment growth in Australia,
    - (v) the extent to which previously reported small business concerns with unfair dismissal laws related to survey questions which were misleading, incomplete or inaccurate,
    - (vi) the extent to which small businesses rate concerns with unfair dismissal laws against concerns on other matters that impact negatively on successfully managing a small business, and
    - (vii) the extent to which small businesses are provided with current, reliable and easily accessible information and advice on federal and state unfair dismissal laws; and
  - (b) to recommend policies, procedures and mechanisms that could be established to reduce the perceived negative impacts that unfair dismissal laws may have on employers, without adversely affecting the rights of employees.
- (2) That the committee be authorised, with the approval of the President, to commission independent research, as desirable or necessary, to investigate each of these terms of reference.

Question put and passed.

**14 JEWISH FESTIVAL—HANUKKAH**

Senator Ludwig, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 42—That the Senate—

- (a) notes that on 7 December 2004 the Jewish festival of Hanukkah begins at sunset; and
- (b) wishes a happy Hanukkah to the Australian Jewish community.

Question put and passed.

**15 MULTICULTURALISM—CHRISTMAS CELEBRATIONS**

Senator Ludwig, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 43—That the Senate—

- (a) condemns Sydney Lord Mayor Clover Moore for inappropriately using multiculturalism as a shield for stripping back Christmas celebrations;
- (b) notes:
  - (i) the damage that is done to multiculturalism by this kind of misguided action,
  - (ii) multiculturalism does not mean abandoning your own beliefs or culture out of deference to imagined offence to a different culture, and
  - (iii) that Christmas itself is multicultural, celebrated as it is across Europe, North and South America, parts of Asia, Africa, the Pacific and wherever Christians may be;
- (c) embraces the spirit of Christmas and encourages the people of Australia, whatever their beliefs, to practise the Christmas message of peace and goodwill to all; and
- (d) wishes a safe and merry Christmas to the people of Australia.

Question put and passed. Senators Brown and Nettle, by leave, recorded their votes for the noes in respect of paragraphs (a) and (b).

**16 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—EXTENSION OF TIME TO REPORT**

Senator Ferris, at the request of the Chair of the Legal and Constitutional Legislation Committee (Senator Payne) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 41—That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the Disability Discrimination Amendment (Education Standards) Bill 2004 be extended to 8 December 2004.

Question put and passed.

**17 COMMUNITY AFFAIRS LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator Ferris, at the request of the Chair of the Community Affairs Legislation Committee (Senator Knowles) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 39—That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 9 December 2004, from 10.30 am, to take evidence on a matter relating to the Department of Health and Ageing.

Question put and passed.

**18 JEWISH FESTIVAL—HANUKKAH—MULTICULTURALISM—CHRISTMAS  
CELEBRATIONS—STATEMENT BY LEAVE**

The Leader of the Australian Democrats (Senator Bartlett), by leave, made a statement relating to the motions agreed to earlier today concerning the Jewish festival of Hanukkah, and multiculturalism and the celebration of Christmas (*see entries nos 14 and 15*).

**19 TREATIES—JOINT STANDING COMMITTEE—REFERENCE**

Senator Greig, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 40—That the Senate—

- (a) recalls that on 2 December 2002 a proposed agreement between Australia and the United States of America (US), pursuant to which Australia would agree not to surrender US nationals to the International Criminal Court without the consent of the US (the proposed agreement) was referred to the Joint Standing Committee on Treaties for inquiry and report;
- (b) notes correspondence from the secretary of the committee to the Clerk of the Senate, dated 16 July 2003, which:
  - (i) stated that ‘as far as the Committee is aware, there is no such proposed agreement’ and that it had ‘therefore decided to defer commencing the inquiry into the matter referred until the text of such an agreement is made available to the Committee’, and
  - (ii) however, acknowledged that ‘the Committee is empowered to inquire into any question relating to a treaty or other international agreement, whether or not negotiated to completion, referred to the Committee by either House’;
- (c) further notes:
  - (i) the report on ABC Radio’s *PM* program of 28 August 2002, that the US had written to the Australian Government, requesting it to enter into the proposed agreement and that, according to the Minister for Foreign Affairs, the Government was ‘sympathetic’ to the request,
  - (ii) the report on Network Nine’s *Sunday* program of 8 September 2002, in which the then Attorney-General indicated that the US had requested Australia to enter into the proposed agreement and that the Australian Government had no objection to the proposed agreement, and
  - (iii) evidence from Department of Foreign Affairs and Trade officials on 19 February 2004 that negotiations with the US were ongoing and that, at that time, the most recent meeting had been in December 2003;
- (d) recalls that on 30 August 2004, it again referred the proposed agreement to the committee for inquiry and report by 30 April 2005;
- (e) notes that:
  - (i) the committee had not commenced the inquiry prior to the proroguing of the 40th Parliament, and
  - (ii) the reference lapsed with the proroguing of the 40th Parliament; and
- (f) refers the proposed agreement, with particular reference to the following matters, to the Joint Standing Committee on Treaties for inquiry and report by 30 June 2005:
  - (i) whether the proposed agreement would breach the terms, or be otherwise inconsistent with the spirit, of the Rome Statute which Australia has ratified,

- (ii) the effect of the proposed agreement, either itself or in conjunction with similar agreements between the United States and other states, on the ability of the International Criminal Court to effectively fulfil its intended function,
- (iii) the implications of any extradition provisions in the proposed agreement and whether the proposed agreement would require the re-negotiation of existing extradition agreements to which Australia is a party, and
- (iv) the implications of the proposed agreement with respect to Australia's national interest.

Question put and passed.

**20 TRADE—FREE TRADE AGREEMENT—ORDER FOR PRODUCTION OF DOCUMENTS—STATEMENT BY LEAVE**

The Minister for Justice and Customs (Senator Ellison), by leave, made a statement relating to the order of the Senate of 2 December 2004 for the production of documents concerning the free trade agreement between Australia and the United States of America (*see entry no. 11, 2 December 2004*).

**21 TREATIES—JOINT STANDING COMMITTEE—61ST REPORT—DOCUMENT**

Senator Eggleston, on behalf of the Joint Standing Committee on Treaties, tabled the following document:

Treaties—Joint Standing Committee—61st report: The Australia-United States Free Trade Agreement—Corrigenda.

**22 DOCUMENTS**

The following documents were tabled by the Clerk:

Civil Aviation Act—

Civil Aviation Regulations—

Civil Aviation Amendment Order (No. 7) 2004.

Civil Aviation Amendment Order (No. 9) 2004.

Exemption No. CASA EX 40/2004.

Instruments Nos CASA 546/04, CASA 547/04, CASA 551/04 and CASA 561/04.

Civil Aviation Safety Regulations—Civil Aviation Amendment Order (No. 10) 2004.

Financial Sector (Transfers of Business) Act—Transfer Rules No. 1 of 2004.

Higher Education Support Act—Notice of approval of a higher education provider under section 16-50—KvB Visual Concepts Pty Ltd, dated 1 December 2004.

National Health Act—

Declarations Nos PB 16 and PB 17 of 2004.

Determination—

No. PB 18 of 2004.

PHB 22/2004.

**23 COMMITTEES—CHANGES IN MEMBERSHIP**

The Deputy President (Senator Hogg) informed the Senate that the President had received letters requesting changes in the membership of various committees.

The Minister for Justice and Customs (Senator Ellison), by leave, moved—That senators be discharged from and appointed to committees as follows:

**Community Affairs References Committee—**

Appointed—

Substitute members:

Senator Allison to replace Senator Lees for the committee's inquiry into aged care

Senator Murray to replace Senator Lees for the committee's inquiry into children in institutional care

Participating member: Senator Lees

**Native Title and the Aboriginal and Torres Strait Islander Land Fund—Joint Statutory Committee—**

Appointed—Senator Lees.

Question put and passed.

**24 NATIONAL WATER COMMISSION BILL 2004**

**TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004**

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

Message no. 21, dated 6 December 2004—A Bill for an Act to establish the National Water Commission, and for related purposes.

Message no. 25, dated 7 December 2004—A Bill for an Act to amend the law relating to taxation, and for related purposes.

The Minister for Justice and Customs (Senator Ellison) 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 Ellison moved—That these bills be now read a second time.

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*Explanatory memorandum:* Senator Ellison tabled a revised explanatory memorandum relating to the National Water Commission Bill 2004.

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On the motion of Senator George Campbell the debate was adjourned.

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

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

Question put and passed.

**25 ORDER OF BUSINESS—REARRANGEMENT**

The Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston), by leave, moved—That business of the Senate order of the day no. 2, relating to the presentation of the report of the committee on the provisions of the National Water Commission Bill 2004, be postponed till a later hour.

Question put and passed.

**26 ECONOMICS LEGISLATION COMMITTEE—REPORT—TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004**

Pursuant to order, Senator Eggleston, at the request of the Chair of the Economics Legislation Committee (Senator Brandis), tabled the following report and documents:

Economics Legislation Committee—Provisions of the Tax Laws Amendment (Superannuation Reporting) Bill 2004—Report, dated December 2004 and submissions [6].

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

**27 TEXTILE, CLOTHING AND FOOTWEAR STRATEGIC INVESTMENT PROGRAM AMENDMENT (POST-2005 SCHEME) BILL 2004  
CUSTOMS TARIFF AMENDMENT (TEXTILE, CLOTHING AND FOOTWEAR POST-2005 ARRANGEMENTS) BILL 2004**

Order read for the adjourned debate on the motion of the Minister for Justice and Customs (Senator Ellison)—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 Special Minister of State (Senator Abetz) the bills were read a third time.

**28 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS LEGISLATION COMMITTEE—REPORT—NATIONAL WATER COMMISSION BILL 2004**

Pursuant to order, Senator McGauran, at the request of the Chair of the Environment, Communications, Information Technology and the Arts Legislation Committee (Senator Eggleston), tabled the following report and documents:

Environment, Communications, Information Technology and the Arts Legislation Committee—Provisions of the National Water Commission Bill 2004—Report, dated December 2004 and submissions [6].

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

**29 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—COPYRIGHT LEGISLATION AMENDMENT BILL 2004**

Pursuant to order, Senator McGauran, at the request of the Acting Chair of the Legal and Constitutional Legislation Committee (Senator Scullion), tabled the following report and documents:

Legal and Constitutional Legislation Committee—Copyright Legislation Amendment Bill 2004—Report, dated December 2004, Hansard record of proceedings, additional information and answers to questions.

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

**30 TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004**

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.

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*In the committee*

Bill taken as a whole by leave.

Senator Stephens moved the following amendment:

Schedule 1, page 3 (after line 10), at the end of the Schedule, add:

**3 At the end of section 44**

Add:

- (2) A report prepared in accordance with subsection (1) must include:
- (a) the number of employers who have failed to pay one or more of their employees' superannuation guarantee contributions by the date required by law;
  - (b) the number of employees whose employers have failed to pay their superannuation guarantee contributions by the date required by law;
  - (c) details of the total amount of superannuation guarantee contributions outstanding at the close of each reporting year;
  - (d) the number of defaulting employers who paid outstanding superannuation guarantee contributions after the payment date required by law;
  - (e) the number of actions taken by the Australian Taxation Office to enforce the payment of unpaid superannuation guarantee contributions;
  - (f) the number of actions taken by the Australian Taxation Office to enforce the payment of unpaid superannuation guarantee contributions that were fully or partially successful;
  - (g) the total amount of outstanding superannuation guarantee contributions recovered at the close of the reporting year.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 34

Senators—

Allison	Conroy	Lees	Nettle
Bartlett	Crossin	Ludwig	O'Brien
Bishop	Denman	Lundy	Ray
Brown	Faulkner	Mackay	Ridgeway
Buckland (Teller)	Forshaw	Marshall	Stephens
Campbell, George	Greig	McLucas	Webber
Carr	Harradine	Moore	Wong
Cherry	Hogg	Murphy	
Collins	Kirk	Murray	

## NOES, 29

Senators—

Abetz	Coonan	Johnston	Scullion
Barnett	Eggleston (Teller)	Kemp	Tchen
Boswell	Ellison	Lightfoot	Troeth
Brandis	Ferguson	Macdonald, Sandy	Vanstone
Calvert	Ferris	McGauran	Watson
Campbell, Ian	Fifield	Minchin	
Chapman	Heffernan	Patterson	
Colbeck	Humphries	Santoro	

Question agreed to.

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

Schedule 1, item 1, page 3 (lines 6 and 7), omit the item, substitute:

**1 After subsection 23A(2)**

Insert:

(2A) A report prepared in accordance with subsection (2) can be in the form of:

- (a) pay advice; or
- (b) letter; or
- (c) any form in which the information can be communicated effectively to the employee.

Bill, as amended, agreed to.

Bill to be reported with amendments.

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

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

**31 COPYRIGHT LEGISLATION AMENDMENT BILL 2004**

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.

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*Document:* Senator Conroy, by leave, tabled the following document:

Copyright Legislation Amendment Bill 2004—Copy of letter from the Minister for Trade (Mr Vaile) to the Shadow Minister for Trade (Mr Crean), dated 7 December 2004.

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Senator Conroy moved the following amendment:

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

(a) notes:

- (i) with concern, the failure of the Government to previously correctly implement its obligations under the US Free Trade Agreement Implementation (USFTAI) Act,
- (ii) with concern, that this bill has the potential to enable persons other than copyright owners or exclusive licencees to force an internet service provider to take down allegedly infringing copyright material from their system and that this potential new ground for Internet service provider liability is not contained in the USFTAI Act,
- (iii) that this bill was sent to the Legal and Constitutional Committee which heard evidence that the bill may disrupt the balance of interests between copyright owners, users and internet service providers,
- (iv) that the Government intends to respond to these concerns through Regulations that will flesh out legislative safe harbour provisions and will consult with stakeholders in the preparation of these provisions,
- (v) the commitment by the Government to keep implementation of the safe harbour scheme under close review and, as necessary, consult with stakeholders on any issues that may arise, including appropriate responses,
- (vi) that Labor’s amendments to the Australia-United States (US) free trade agreement are not contrary to the terms of the free trade agreement, our international obligations under WTO TRIPs and are not referred to in this bill, and
- (vii) with concern, that the diplomatic note of exchange from the US refers to Labor’s amendments and the Senate therefore calls on the Government not to weaken in response to US pressure and to reaffirm its commitment to Labor’s amendments to protect the pharmaceutical benefits scheme and local Australian content for television; and

(b) calls on the Government to restate its view that Australia has a different approach to the US on the criminalisation of pirated satellite signals in the home and to therefore give an explanation of its commitment to the US to undertake a review of Australia’s domestic policy relating to criminalisation of all forms of satellite signal piracy, including unauthorised distribution or receipt of signals by commercial establishments and within the home, that shall conclude no later than 1 July 2005”.

Debate ensued.

Question—That the amendment be agreed to—put and passed. All Government senators, by leave, recorded their votes for the noes.

Main question, as amended, put and passed.

Bill read a second time.

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

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*In the committee*

Bill, taken as a whole by leave, debated.

Senator Nettle moved the following amendment:

Schedule 1, page 9 (after line 11), after item 41, insert:

***Therapeutic Goods Act 1989***

**41A After section 26D**

Insert:

**26E Cost effective medicine pricing**

In order to clarify its commitments under the US Free Trade Agreement (*the Agreement*) the Australian Government acknowledges that, notwithstanding anything in the Agreement, in its interpretation, the cost-effectiveness system of medicines pricing under section 101 of the *National Health Act 1958* will continue to form the basis of the Pharmaceutical Benefits Scheme.

Further it is the view of the Australian Government that Annex 2C of the Agreement does not interfere with the capacity of an Australian Government to implement the principle of universal access by Australians to affordable, essential medicines which is also the basis of the Pharmaceutical Benefits Scheme.

Similarly, it is the view of the Australian Government that reward of pharmaceutical innovation as mentioned in Annex 2C of the Agreement must be assessed, amongst other factors, against a new medicine's overall benefit to the Australian community when compared against existing medicines.

Similarly, it is the view of the Australian Government that Annex 2C and Chapter 17 (on Intellectual Property) of the Agreement implicitly include reference to the Doha Declaration on TRIPS and Public Health.

Finally, it is the view of the Australian Government that Article 17.10.4 of Chapter 17 (on Intellectual Property) of the Agreement does not permit the practice known as "evergreening" of brand name pharmaceuticals.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 3

Senators—

Brown

Lees

Nettle (Teller)

## NOES, 35

Senators—

Barnett	Coonan	Kirk	Patterson
Bishop	Denman	Lightfoot	Ray
Brandis	Eggleston (Teller)	Ludwig	Scullion
Buckland	Faulkner	Lundy	Stephens
Carr	Fifield	Marshall	Tchen
Chapman	Forshaw	McGauran	Watson
Colbeck	Hogg	McLucas	Webber
Collins	Johnston	Moore	Wong
Conroy	Kemp	O'Brien	

Question negatived.

Question—That the bill be agreed to—divided in respect of items 11 and 13.

Items 11 and 13 debated.

Question—That items 11 and 13 stand as printed—put.

The committee divided—

## AYES, 30

Senators—

Barnett	Conroy	Kirk	O'Brien
Brandis	Denman	Lightfoot	Ray
Buckland	Eggleston (Teller)	Ludwig	Scullion
Campbell, George	Fifield	Lundy	Stephens
Campbell, Ian	Forshaw	Marshall	Watson
Carr	Hogg	McGauran	Webber
Chapman	Humphries	McLucas	
Colbeck	Johnston	Moore	

## NOES, 2

Senators—

Brown	Nettle (Teller)
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Items agreed to.

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Minister for the Environment and Heritage (Senator Ian Campbell) the report from the committee was adopted and the bill read a third time. Senators Brown and Nettle, by leave, recorded their votes for the noes in respect of the question for the third reading.

### 32 SCHOOLS ASSISTANCE (LEARNING TOGETHER—ACHIEVEMENT THROUGH CHOICE AND OPPORTUNITY) BILL 2004

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

Message no. 26, dated 7 December 2004—Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004.

Ordered, on the motion of the Minister for the Environment and Heritage (Senator Ian Campbell), that the message be considered in committee of the whole immediately.

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*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.

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The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator Watson) reported that the committee had considered message no. 26 from the House of Representatives relating to the Schools Assistance (Learning Together—Achievement Through Choice and Opportunity) Bill 2004 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 Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) the report from the committee was adopted.

**33 TAX LAWS AMENDMENT (SMALL BUSINESS MEASURES) BILL 2004**

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

Message no. 27, dated 7 December 2004—A Bill for an Act to amend the law relating to indirect taxation, and for related purposes.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

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

Debate ensued.

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 Colbeck) the bill was read a third time.

**34 NATIONAL WATER COMMISSION BILL 2004**

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.

Senator Stephens moved the following amendment:

At the end of the motion, add “, and condemns the Government for:

- (a) its failure to take the threat of climate change to ongoing water supplies for both our farmers and our rivers seriously;
- (b) its failure to deal with water issues with an appropriate sense of urgency, allowing the COAG water reform process of 1994 to stall, and failing to provide any environmental flows for the Murray River in over 8 years;
- (c) its failure to adopt Labor’s national water policy framework, and ensure that Commonwealth funds are directed towards securing environmental flows; and
- (d) its plan to fund the Australian Water Fund by taking money which the states have earmarked for essential services such as schools and hospitals”.

Debate ensued.

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

Main question put and passed.

Bill read a second time.

On the motion of the Minister for the Environment and Heritage (Senator Ian Campbell) consideration of the bill in committee of the whole was made an order of the day for the next day of sitting.

### 35 ADJOURNMENT

The Minister for the Environment and Heritage (Senator Ian Campbell) moved—That the Senate do now adjourn.

Debate ensued.

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*Document:* Senator Bishop, by leave, tabled the following document:

Mining—Vanadium—Copy of letter from Mallesons Stephen Jaques to Mr John Bowler, MLA (WA), dated 18 November 2004.

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Debate continued.

The Senate adjourned at 11.47 pm till Wednesday, 8 December 2004 at 9.30 am.

### 36 ATTENDANCE

Present, all senators except Senators Cook\*, Harris, Hutchins, Payne, Stott Despoja\* and Tierney\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate