

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOURNALS OF THE SENATE

No. 10

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1 MEETING OF SENATE

The Senate met at 9.30 am. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

2 GOVERNMENT DOCUMENTS

The following government documents were tabled

Australia-Japan Foundation—Report for 2003-04.

Cotton Research and Development Corporation—Report for 2003-04—Addendum.

Dairy Adjustment Authority—Report for 2003-04.

Dairy Australia Limited—Report for 2003-04.

Department of Transport and Regional Services—Report for 2003-04.

Snowy Hydro Limited—Report for the period 29 June 2003 to 26 June 2004.

3 CONSIDERATION OF LEGISLATION

The Minister for Justice and Customs (Senator Ellison), pursuant to notice, moved government business notice of motion no. 1—That the provisions of paragraphs (5) and (8) of standing order 111 not apply to the Customs Amendment Bill 2004.

Question put and passed.

4 CUSTOMS AMENDMENT BILL 2004

The Minister for Justice and Customs (Senator Ellison), pursuant to notice, moved government business notice of motion no. 2—That the following bill be introduced:

A Bill for an Act to amend the *Customs Act 1901*, and for related purposes.

Question put and passed.

Senator Ellison presented the bill and 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 Ellison moved—That this bill be now read a second time.

Explanatory memorandum: Senator Ellison tabled an explanatory memorandum relating to the bill.

On the motion of Senator Webber 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.

5 **AUSTRALIAN SPORTS COMMISSION AMENDMENT BILL 2004**
CRIMINAL CODE AMENDMENT (TRAFFICKING IN PERSONS OFFENCES) BILL 2004

The Minister for Justice and Customs (Senator Ellison), pursuant to notice, moved government business notices of motion nos 3 and 4—That the following bills be introduced:

A Bill for an Act to amend the *Australian Sports Commission Act 1989*, and for related purposes.

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.

Question put and passed.

Senator Ellison presented the bills and 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.

Explanatory memoranda: Senator Ellison tabled explanatory memoranda [2] relating to the bills.

Consideration of legislation: Pursuant to order, the debate was adjourned and the resumption of the debate made an order of the day for the first day in the next period of sittings.

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

Question put and passed.

6 **CUSTOMS 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.

Question put and passed.

Bill read a second time.

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

In the committee

Bill, taken as a whole by leave, debated.

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

Clause 2, page 1 (lines 6 to 8), omit the clause, substitute:

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The day on which this Act receives the Royal Assent.	
3. Schedule 2	On the day after the end of the period of 12 months beginning on the day on which this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

Page 14 (after line 13), at the end of the bill, add:

Schedule 2—Amendment of the Customs Act 1901

1 Omission of numbers inserted by Schedule 1

Each number inserted in column 3 of the table in Schedule VI to the *Customs Act 1901* by an item in Schedule 1 to this Act is omitted.

2 Application

The amendments made by this Schedule do not apply to offences committed before this Schedule commences.

Bill, as amended, further debated and agreed to.

Bill to be reported with amendments.

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

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

7 NATIONAL WATER COMMISSION BILL 2004

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

In the committee

Bill taken as a whole by leave.

Senator Brown moved the following amendment:

Clause 7, page 6 (after line 20), after subclause (2), insert:

Specific functions relating to the provision of water for environmental purposes

(2A) The NWC has the following specific functions relating to the provision of water for environmental purposes in the Murray-Darling Basin:

- (a) to complete implementation of the Living Murray First Step by 31 December 2005 (the *Living Murray First Step* means the provision of an average of 500 GL of water per year in perpetuity to achieve specific environmental objectives and outcomes for six significant ecological assets: Barmah-Millewa Forest, Gunbower and Koondrook-Perricoota Forests, Hattah Lakes, Chowilla floodplain (including Lindsay-Wallpolla), the Murray Mouth, Coorong and Lower Lakes, and the River Murray Channel);
- (b) to secure an additional annual average of 2500 GL of water per annum in perpetuity for environmental purposes in the Murray-Darling Basin by 31 December 2007, of which at least 1000GL must be used to improve the health of the Murray River;
- (c) to complete the return of all currently over-allocated or overused systems to environmentally sustainable levels of extraction by 2010;
- (d) in the Murray Darling Basin to allocate water for environmental purposes in accordance with plans prepared by the Murray Darling Basin Commission.

(2B) The NWC must provide for a national system of heritage rivers to be designated by 2010.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 3

Senators—

Brown

Murphy

Nettle (Teller)

NOES, 44

Senators—

Allison	Collins	Ludwig	Ray
Barnett	Crossin	Lundy	Ridgeway
Bartlett	Denman	Mackay	Santoro
Bishop	Ferguson	Mason	Scullion
Brandis	Fifield	McGauran (Teller)	Sherry
Buckland	Forshaw	McLucas	Stephens
Campbell, George	Greig	Moore	Tchen
Campbell, Ian	Hogg	Murray	Troeth
Carr	Humphries	O'Brien	Watson
Cherry	Johnston	Patterson	Webber
Colbeck	Knowles	Payne	Wong

Question negatived.

Senator Stephens moved the following amendments together by leave:

Clause 8, page 8 (lines 11 to 14), omit subclause (2), substitute:

- (2) Commissioners are to be appointed by the Minister, by instrument in writing, on the nomination of the parties to the COAG Water Reform Framework.

Clause 8, page 8 (lines 15 to 17), omit subclause (3), substitute:

- (3) A nomination of a person for appointment as a Commissioner must be made by resolution of the parties to the COAG Water Reform Framework.

Clause 24, page 15 (line 14), at the end of paragraph (1)(a), add:
“or (iii) any COAG agreed programs;”

Debate ensued.

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

Senator Allison moved the following amendment:

Clause 44, page 23 (lines 20 to 25), omit the clause, substitute:

44 Public availability of assessments

- (1) The NWC must make its assessments under subsections 7(2) and (3) available to the public unless the Minister does not agree.
- (2) The NWC must not make any other advice or recommendations available to the public without the agreement of the Minister.
- (3) If agreement is not given under subsection (1), the Minister must advise the NWC of the reasons why agreement has not been given. The NWC must make these reasons available to the public.

Debate ensued.

The Minister for the Environment and Heritage (Senator Ian Campbell) moved the following amendment to Senator Allison's proposed amendment:

Subclause (1), after “assessments”, add “and recommendations”.

Question—That Senator Ian Campbell's amendment to Senator Allison's proposed amendment be agreed to—put and passed.

Debate continued.

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

Senator Brown moved the following amendment:

Omit clause 44, substitute:

44 Public availability of assessments

- (1) The Minister must table the NWC assessments, advice and determinations under paragraphs 7(2)(a), (d), (e), (f), (g), (h) and (i) and (3)(a), (b) and (c) in both Houses of Parliament when they are provided to the Minister.
- (2) The NWC must operate transparently and make its advice and recommendations public except where directed by the Minister, provided the direction is public.
- (3) Where the Minister makes a direction in accordance with subsection (2), the direction, together with a statement of reasons for the direction, must be tabled in both Houses of the Parliament within 15 sitting days of being made.

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

Question—That the bill, as amended, be agreed to—divided in respect of clause 44.

Clause 44, as amended, debated and agreed to. Senators Brown and Nettle, by leave, recorded their votes for the noes.

Bill, as amended, further debated and agreed to.

Bill to be reported with an amendment.

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

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

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

Debate ensued.

Question put and passed.

Bill read a third time.

At 12.45 pm—

8 MATTERS OF PUBLIC INTEREST

Matters of public interest were discussed.

At 2 pm—

9 QUESTIONS

Questions without notice were answered.

10 FAMILY AND COMMUNITY SERVICES—FAMILY TAX BENEFIT—ANSWERS TO QUESTIONS

Senator Evans moved—That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Patterson) to questions without notice asked by senators today relating to the family tax benefit.

Debate ensued.

Question put and passed.

11 VETERANS' AFFAIRS—ANSWERS TO QUESTIONS

The Leader of the Australian Democrats (Senator Bartlett) moved—That the Senate take note of the answers given by the Minister for Defence (Senator Hill) to questions without notice asked by Senators Bartlett and Bishop today relating to veterans' affairs.

Question put and passed.

12 PETITION

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

From 2 950 petitioners, requesting that the Senate take action to ensure that the Government negotiates a fair and equitable maritime boundary with Timor Leste according to current international law and the provisions of the UN Convention on the Law of the Sea.

13 NOTICES

Notices of motion:

The Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Heffernan): To move on the next day of sitting—That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate on Wednesday, 9 February 2005, from 4 pm to 6 pm, in relation to its inquiry on the administration of Biosecurity Australia concerning the revised draft import risk analysis for apples from New Zealand. (*general business notice of motion no. 48*)

Senator Marshall: To move on the next day of sitting—That the provisions of the Workplace Relations Amendment (Small Business Employment Protection) Bill 2004 be referred to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 14 March 2005.

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

(a) notes that:

- (i) in the recent United Nations (UN) debate on a ban on human cloning, the Australian Government co-sponsored a proposal from Costa Rica that it had previously stated it would oppose,
- (ii) the change in the Government's position on this issue was made without consultation with the states or the biotechnology industry, and
- (iii) a review of the *Research Involving Human Embryos Act 2002* and the *Prohibition of Human Cloning Act 2002* is due to commence shortly and the independence of such an important review should not be compromised by government commitments in the international arena;

- (b) calls on the Government to consult with the states and the biotechnology industry before stating its position on human cloning at the UN in February 2005, when debate on this issue is due to recommence; and
- (c) congratulates the Australian Stem Cell Centre, Australia's only Biotechnology Centre of Excellence, for holding its second successful annual scientific conference. (*general business notice of motion no. 49*)

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

- (a) notes that:
 - (i) the review of the cost adjustment factor indexation mechanism for Commonwealth funding of universities provided for under the *Higher Education Support Act 2003* will not be an independent review,
 - (ii) a review of such importance should not be conducted within the confines of the Department of Education, Science and Training and the Government,
 - (iii) the university sector has no confidence in the review of indexation delivering an appropriate outcome, and
 - (iv) without improved indexation, universities will have few alternatives to meet funding shortfalls other than increases in student fees when they approach the end of the Government's 'Our Universities: Backing Australia's Future' package in 2008;
- (b) condemns the Government for under-funding universities for the past 8 years, partly through inadequate indexation, to such an extent that universities are now turning to students to provide a short-term increase in funding; and
- (c) calls on the Government to:
 - (i) make public all paperwork pertaining to the review, in time for the sector to make informed comment before the review is completed in February 2005, and
 - (ii) rule out any further higher education contribution scheme increases. (*general business notice of motion no. 50*)

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

- (a) notes reports of violence within the Puncak Jaya district of West Papua, including reports that:
 - (i) between 5 000 and 20 000 Papuans have fled into the mountains after raids by the Indonesian military, whose officers allegedly fired automatic weapons at villagers from helicopters,
 - (ii) humanitarian access is being denied to these displaced persons and many of them are now starving, and
 - (iii) at least 18 people have died, including a number of children; and
- (b) calls on the Government to express concern to the Indonesian Government regarding these reports and encourage the Indonesian Government to:
 - (i) immediately institute an investigation into the allegations,
 - (ii) ensure the safe return of the displaced Papuans to their homes,
 - (iii) enable humanitarian and human rights organisations, as well as journalists, to gain access to the affected area,
 - (iv) work to bring an end to the violence within West Papua, and
 - (v) bring the perpetrators of these crimes to justice. (*general business notice of motion no. 51*)

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

- (a) notes that 10 December is International Human Rights Day and joins with the many thousands around the world, who are participating in events on this day, to:
 - (i) condemn the ongoing abuse of human rights worldwide,
 - (ii) recognise the need for concerted international action to address human rights abuses, and
 - (iii) call for urgent efforts to address the growing inequity between rich and poor which impinge on rights to life, liberty and freedom from oppression for so many millions around the globe; and
- (b) condemns the Government's appalling record in the field of human rights, and in particular the Government's:
 - (i) failure to endorse the United Nations (UN) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
 - (ii) contravention of the UN Convention on the Rights of the Child in relation to some asylum seeker detainees,
 - (iii) tacit support of United States of America tactics in the ongoing occupation of Iraq including the use of depleted uranium, napalm and cluster bombs,
 - (iv) unwillingness to act in defence of Mr David Hicks and Mr Mamdouh Habib, illegally detained in Guantanamo Bay, Cuba,
 - (v) failure to pursue the recommendations of the Royal Commission into Aboriginal Deaths in Custody, and
 - (vi) failure to reach UN agreed targets for international aid for poverty alleviation overseas. (*general business notice of motion no. 52*)

Senator Brown: To move on the next day of sitting—That the Senate, noting that 10 December is International Human Rights Day, congratulates Mr Brian Summerfield who is celebrating the day in Melbourne by completing a bike ride around Australia during which he raised hundreds of dollars for Tibetan refugees and promoted the cause of a free Tibet. (*general business notice of motion no. 53*)

Senator Marshall: To move on the next day of sitting—

- (1) That so much of standing orders be suspended as would prevent this resolution having effect.
- (2) That the Flags Amendment (Eureka Flag) Bill 2004 be restored to the *Notice Paper* and that consideration of the bill be resumed at the stage reached in the last session of the Parliament. (*general business notice of motion no. 54*)

Senator Brown: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Commonwealth Electoral Act 1918* to enable voters at Senate elections to determine the order of their party preferences in above the line voting, and for related purposes. ***Senate Voters' Choice (Preference Allocation) Bill 2004***. (*general business notice of motion no. 55*)

Notice of motion withdrawn: Senator Greig withdrew business of the Senate notice of motion no. 4 standing in his name for today, proposing to vary the terms of reference of a matter referred to the Legal and Constitutional Legislation Committee.

14 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 14 OF 2004

The Chair of the Selection of Bills Committee (Senator Ferris) tabled the following report:

SELECTION OF BILLS COMMITTEE

REPORT NO. 14 OF 2004

1. The committee met on Tuesday, 7 December 2004.
2. The committee resolved to recommend—That—
 - (a) the *provisions* of the Broadcasting Services Amendment (Anti-Siphoning) Bill 2004 be *referred immediately* to the Environment, Communications, Information Technology and the Arts Legislation Committee for inquiry and report by 7 March 2005;
 - (b) the *provisions* of the National Health Amendment (Prostheses) Bill 2004 be *referred immediately* to the Community Affairs Legislation Committee for inquiry and report by 10 February 2005; and
 - (c) the *provisions* of the Workplace Relations Amendment (Right of Entry) Bill 2004 be *referred immediately* to the Employment, Workplace Relations and Education Legislation Committee for inquiry and report by 7 March 2005.
3. The committee resolved to recommend—That the following bills *not* be referred to committees:
 - Aboriginal and Torres Strait Islander Commission Amendment Bill 2004
 - Australian Passports Bill 2004
 - Australian Passports (Application Fees) Bill 2004
 - Australian Passports (Transitionals and Consequentials) Bill 2004
 - Financial Framework Legislation Amendment Bill 2004
 - James Hardie (Investigations and Proceedings) Bill 2004
 - Postal Industry Ombudsman Bill 2004
 - Tax Laws Amendment (Retirement Villages) Bill 2004
 - Water Efficiency Labelling and Standards Bill 2004
 - Workplace Relations Amendment (Fair Dismissal Reform) Bill 2004.

The committee recommends accordingly.

4. The committee *deferred* consideration of the following bills to the next meeting:

Bills deferred from meeting of 7 December 2004

- Australian Communications and Media Authority Bill 2004
- Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004
- Datacasting Charge (Imposition) Amendment Bill 2004
- Radio Licence Fees Amendment Bill 2004
- Radiocommunications (Receiver Licence Tax) Amendment Bill 2004
- Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004
- Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004
- Telecommunications (Carrier Licence Charges) Amendment Bill 2004
- Telecommunications (Numbering Charges) Amendment Bill 2004
- Television Licence Fees Amendment Bill 2004.

Jeannie Ferris
Chair
8 December 2004.

Senator Ferris moved—That the report be adopted.

Question put and passed.

15 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 9 December 2004.

General business notice of motion no. 16 standing in the name of Senator Brown for today, relating to the Tarkine wilderness, postponed till 9 December 2004.

General business notice of motion no. 17 standing in the name of Senator Brown for today, relating to Tasmanian forests, postponed till 9 December 2004.

General business notice of motion no. 47 standing in the name of Senator Nettle for today, relating to East Timor, postponed till 9 December 2004.

16 NOTICE OF MOTION WITHDRAWN

The following notice of motion was withdrawn:

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

17 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS REFERENCES COMMITTEE—REFERENCE

Senator Cherry, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 3—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 sufficient to deal with emerging market and technical issues in the telecommunications, media and broadcasting sectors; and
- (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.

Question put and passed.

18 INDIGENOUS AUSTRALIANS—MR JOHN BULUNBULUN

Senator Ridgeway, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 45—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.

Question put and passed.

19 TRANSPORT—ANSETT EMPLOYEE ENTITLEMENTS

Senator Cherry, at the request of Senator Allison and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 46—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.

Question put and passed.

20 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—REFERENCE

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 5—That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 16 June 2005:

Compensation arrangements for wheat growers after writing-off the Iraqi wheat debt, with particular reference to:

- (a) how decisions were made; and
- (b) the impact on wheat growers.

Question put.

The Senate divided—

AYES, 34

Senators—

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

NOES, 30

Senators—

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

Question agreed to.

21 FOREIGN AFFAIRS—COLOMBIA—HOSTAGES

Senator Brown, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 33—That the Senate—

- (a) notes that Colombian Greens' politician and former presidential candidate, Ingrid Betancourt, together with her campaign manager, Clara Rojas, were kidnapped by Revolutionary Armed Forces of Colombia (FARC) guerrillas in February 2002 and remain in captivity in the jungle;

- (b) notes the Uribe Government's release of 23 prisoners on 3 December 2004;
- (c) considers that political violence in Colombia will only be stopped if real negotiations take place and all hostages, including Ms Betancourt and Ms Rojas, are freed; and
- (d) calls on the Government to encourage the Uribe Government and FARC to negotiate now for a humanitarian agreement to release the hostages.

Question put and passed.

22 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REFERENCE

Senator George Campbell, at the request of the Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Hutchins) and pursuant to notice of motion not objected to as a formal motion, moved business of the Senate notice of motion no. 2—That the following matters be referred to the Foreign Affairs, Defence and Trade References Committee for inquiry and report by 15 September 2005:

- (a) Australia's economic relationship with China, with particular reference to:
 - (i) economic developments in China over the past decade and their implications for Australia and the East Asian region,
 - (ii) recent trends in trade between Australia and China,
 - (iii) the Australia-China Trade and Economic Framework and possibility of a free trade agreement with China,
 - (iv) ongoing barriers and impediments to trade with China for Australian businesses,
 - (v) existing strengths of Australian business in China and the scope for improvement through assistance via Commonwealth agencies and Australian Government programs, and
 - (vi) opportunities for strengthening and deepening commercial links with China in key export sectors;
- (b) Australia's political relationship with China, with particular reference to:
 - (i) China's emerging influence across East Asia and the South Pacific,
 - (ii) opportunities for strengthening the deepening political, social and cultural links between Australia and China, and
 - (iii) political, social and cultural considerations that could impede the development of strong and mutually beneficial relationships between Australia and China; and
- (c) Australian responses to China's emergence as a regional power, with particular reference to:
 - (i) China's relationships in East Asia, including in particular the Korean Peninsula and Japan,
 - (ii) the strategic consequences of a China-ASEAN free trade agreement, and
 - (iii) China's expanded activities across the South West Pacific.

Question put and passed.

**23 RURAL AND REGIONAL AFFAIRS AND TRANSPORT REFERENCES COMMITTEE—
DOCUMENT—AUSTRALIAN FOREST PLANTATIONS**

The Chair of the Rural and Regional Affairs and Transport References Committee (Senator Ridgeway) tabled the following document:

Rural and Regional Affairs and Transport References Committee—Report—
Australian forest plantations: A review of *Plantations for Australia: The 2020
vision*—Corrigenda.

Document ordered to be printed on the motion of Senator Ridgeway.

**24 SCRUTINY OF BILLS—STANDING COMMITTEE—12TH REPORT AND ALERT DIGEST
NO. 12 OF 2004**

Senator George Campbell, at the request of the Chairman of the Standing Committee for the Scrutiny of Bills (Senator Ray), tabled the following report and document:

Scrutiny of Bills—Standing Committee—

12th report of 2004, dated 8 December 2004.

Alert Digest No. 12 of 2004, dated 8 December 2004.

Report ordered to be printed on the motion of Senator George Campbell.

**25 SENATORS' INTERESTS—STANDING COMMITTEE—REGISTER OF SENATORS'
INTERESTS—DOCUMENT**

Senator George Campbell, at the request of the Chair of the Standing Committee of Senators' Interests (Senator Denman), tabled the following document:

Senators' Interests—Standing Committee—Register of senators' interests
incorporating a statement of interests and notifications of alterations of interests of
senators lodged between 19 June and 6 December 2004, dated December 2004.

26 COMMITTEES—MATTERS REFERRED TO COMMITTEES IN PREVIOUS PARLIAMENT

Senator Ferris, at the request of the chairs of the respective committees, tabled the following reports:

Employment, Workplace Relations and Education Legislation Committee—

The committee met on 7 December 2004 and considered a reference not
disposed of at the end of the 40th parliament.

The committee agreed to **recommend** to the Senate that the committee defer
the re-adoption of an inquiry into a proposed amendment to Schedule 1B of the
Workplace Relations Act until its first meeting in February.

Senator Guy Barnett

Chair

7 December 2004.

Employment, Workplace Relations and Education References Committee—

The committee met on 2 December 2004 and considered references not
disposed of at the end of the 40th parliament.

The committee agreed to **recommend** to the Senate that an inquiry into student
income support be re-adopted with terms of reference unchanged, with a
reporting date of 16 June 2005.

The committee agreed to **recommend** to the Senate that it defer consideration
of re-adoption of the life-long learning inquiry until its first meeting in the new
year.

Finally, the committee agreed to **recommend** to the Senate that it defer re-adoption of its inquiry into indigenous employment and training until at least the end of 2005 in order to take into consideration the report of the Senate Select Committee into the Administration of Indigenous Affairs, and the effects of post-ATSIC administrative changes on employment and training conditions and operations.

Senator Trish Crossin
Chair
7 December 2004.

Environment, Communications, Information Technology and the Arts References Committee—

The Senate Environment, Communications, Information Technology and the Arts References Committee met on 7 December 2004 and considered references not disposed of at the end of the 40th Parliament and resolved to **recommend** to the Senate:

That the following inquiry of the 40th Parliament be re-adopted:

Inquiry into the budgetary and environmental implications of the Government's Energy White Paper (*reporting date of 10 March 2005*).

Further, the Committee resolved to **recommend** to the Senate that, in respect of this matter to be referred to the Committee, it have the power to consider and use the records of the Senate Environment, Communications, Information Technology and the Arts References Committee appointed in the previous Parliament.

Senator John Cherry
Chair
7 December 2004.

Senator Ferris, by leave, moved—That the reports be adopted.

Question put and passed.

27 PUBLIC WORKS—JOINT STATUTORY COMMITTEE—5TH, 6TH, 7TH, 8TH AND 9TH REPORTS FOR 2004

Senator Ferris, on behalf of the Parliamentary Standing Committee on Public Works, tabled the following reports:

Public Works—Joint Statutory Committee—

5th report of 2004—Proposed development of land at Lee Point, Darwin for defence and private housing, dated December 2004.

6th report of 2004—Fit-out of new leased premises for the Department of Prime Minister and Cabinet at 1 National Circuit, Barton, ACT, dated December 2004.

7th report of 2004—Fit-out of new leased premises for the Attorney-General's Department at 3-5 National Circuit, Barton, ACT, dated December 2004.

8th report of 2004—New east building for the Australian War Memorial, Canberra, ACT, dated December 2004.

9th report of 2004—Development of a new collection storage facility for the National Library of Australia at Hume, ACT, dated December 2004.

Senator Ferris moved—That the Senate take note of the reports.

Question put and passed.

**28 ENVIRONMENT, COMMUNICATIONS, INFORMATION TECHNOLOGY AND THE ARTS
REFERENCES COMMITTEE—REPORT—REGULATION, CONTROL AND
MANAGEMENT OF INVASIVE SPECIES**

The Chair of the Environment, Communications, Information Technology and the Arts References Committee (Senator Cherry) tabled the following report and documents:

Environment, Communications, Information Technology and the Arts References Committee—Turning back the tide—The invasive species challenge: Report on the regulation, control and management of invasive species and the Environment Protection and Biodiversity Conservation Amendment (Invasive Species) Bill 2002—Report, dated December 2004, Hansard record of proceedings [4 vols], documents presented to the committee and submissions [78].

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

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

Question put and passed.

**29 APPROPRIATIONS AND STAFFING—STANDING COMMITTEE—REPORT—41ST
REPORT**

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

Appropriations and Staffing—Standing Committee—41st report—Security funding; Appropriation bills: Payments to international organisations, dated December 2004.

Report ordered to be printed on the motion of the Minister for Justice and Customs (Senator Ellison).

Senator Ellison moved—That the Senate adopt the committee's recommendations relating to security funding, and appropriation bills and payments to international organisations.

Question put and passed.

**30 SENATORS' INTERESTS—STANDING COMMITTEE—SENATE SENIOR EXECUTIVE
OFFICERS' INTERESTS—DOCUMENT**

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

Senators' Interests—Standing Committee—Register of Senate senior executive officers' interests incorporating notifications of alterations of interests of senior executive officers lodged between 19 June and 6 December 2004, dated December 2004.

**31 COMMONWEALTH OMBUDSMAN—MONITORING OF CONTROLLED OPERATIONS—
REPORT FOR 2003-04—DOCUMENT**

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

Commonwealth Ombudsman—Monitoring of controlled operations—Report for 2003-04, prepared pursuant to Part 1AB, Division 2A of the *Crimes Act 1914*, on the Ombudsman's activities in monitoring controlled operations conducted by the Australian Crime Commission and the Australian Federal Police.

32 DOCUMENT

The following document was tabled by the Clerk:

Customs Act—Defence and Strategic Goods List Amendment 2004.

33 HEALTH INSURANCE—ANTI-COMPETITIVE PRACTICES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The following document was tabled pursuant to the order of the Senate of 25 March 1999, as amended on 18 September 2002:

Australian Competition and Consumer Commission—Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance for the period 1 July 2003 to 30 June 2004.

**34 FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE—
APPOINTMENT OF MEMBER**

The Acting Deputy President (Senator Ferguson) informed the Senate that the President had received a letter nominating a senator to be a member of a committee.

The Minister for Justice and Customs (Senator Ellison), by leave, moved—That Senator McLucas be appointed as a participating member of the Finance and Public Administration References Committee.

Question put and passed.

35 TAX LAWS AMENDMENT (RETIREMENT VILLAGES) BILL 2004

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

Message no. 28, dated 7 December 2004—A Bill for an Act to amend the *A New Tax System (Goods and Services Tax) Act 1999*, and for related purposes.

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

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.

36 JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) BILL 2004

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

Message no. 30, dated 7 December 2004—A Bill for an Act to facilitate James Hardie investigations and James Hardie proceedings, and for related purposes.

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

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.

37 NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) (CONSEQUENTIAL AMENDMENTS) BILL 2004

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

Message no. 33, dated 8 December 2004—National Security Information (Criminal Proceedings) (Consequential Amendments) Bill 2004.

38 TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) 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. 31, dated 8 December 2004—Tax Laws Amendment (Superannuation Reporting) Bill 2004.

On the motion of the Minister for Justice and Customs (Senator Ellison) consideration of the message in committee of the whole was made an order of the day for a later hour.

39 AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION AMENDMENT 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. 29, dated 7 December 2004—Australian Security Intelligence Organisation Amendment Bill 2004.

On the motion of the Minister for Justice and Customs (Senator Ellison) consideration of the message in committee of the whole was made an order of the day for a later hour.

40 NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004

A message from the House of Representatives was reported agreeing to the following bill with amendments:

Message no. 32, dated 8 December 2004—National Security Information (Criminal Proceedings) Bill 2004.

On the motion of the Minister for Justice and Customs (Senator Ellison) consideration of the message in committee of the whole was made an order of the day for a later hour.

41 LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE—REPORT—DISABILITY DISCRIMINATION AMENDMENT (EDUCATION STANDARDS) BILL 2004

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

Legal and Constitutional Legislation Committee—Disability Discrimination Amendment (Education Standards) Bill 2004—Report, dated December 2004 and submissions [17].

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

42 TAX LAWS AMENDMENT (RETIREMENT VILLAGES) 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.

In the committee

Bill taken as a whole by leave.

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

Schedule 1, item 2, page 3 (lines 17 to 29), omit subsection 38-25(3B), substitute:

(3B) The Aged Care Minister must set by determination the way in which the levels of care services required by residents are to be assessed.

Schedule 1, item 2, page 3 (lines 30 to 32), omit subsection 38-25(3C).

Schedule 1, item 3, page 4 (lines 18 to 23), omit paragraph 38-25(4A)(c).

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 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.

43 TAX LAWS AMENDMENT (SUPERANNUATION REPORTING) BILL 2004

Order of the day read for the consideration of message no. 31 from the House of Representatives in committee of the whole (*see entry no. 38*).

In the committee

The Minister for Communications, Information Technology and the Arts (Senator Coonan) moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Question put.

The committee divided—

AYES, 45

Senators—

Barnett	Denman	Lightfoot	Santoro
Bishop	Ellison	Ludwig	Scullion
Bolkus	Faulkner	Lundy	Sherry
Boswell	Ferguson	Mackay	Stephens
Brandis	Ferris (Teller)	Marshall	Tchen
Buckland	Fifield	Mason	Troeth
Campbell, George	Forshaw	McLucas	Watson
Campbell, Ian	Harradine	Moore	Webber
Chapman	Hogg	O'Brien	Wong
Colbeck	Humphries	Patterson	
Conroy	Johnston	Payne	
Crossin	Knowles	Ray	

NOES, 9

Senators—

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

Question agreed to.

Resolution to be reported.

The Acting Deputy President (Senator Bolkus) resumed the chair and the Chair of Committees (Senator Hogg) reported that the committee had considered message no. 31 from the House of Representatives relating to the Tax Laws Amendment (Superannuation Reporting) 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 Justice and Customs (Senator Ellison) the report from the committee was adopted.

44 AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION AMENDMENT BILL 2004

Order of the day read for the consideration of message no. 29 from the House of Representatives in committee of the whole (*see entry no. 39*).

In the committee

The Minister for Justice and Customs (Senator Ellison) moved—That the committee does not insist on its amendments to which the House of Representatives has disagreed.

Debate ensued.

Question put and passed.

Resolution to be reported.

The Acting Deputy President (Senator Lightfoot) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 29 from the House of Representatives relating to the Australian Security Intelligence Organisation Amendment 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 Senator Ellison the report from the committee was adopted.

45 NATIONAL SECURITY INFORMATION (CRIMINAL PROCEEDINGS) BILL 2004

Order of the day read for the consideration of message no. 32 from the House of Representatives in committee of the whole (*see entry no. 40*).

—————
In the committee

SCHEDULE OF THE AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES

- (1) Clause 7, page 5 (line 6), after “means”, insert “an effect that is adverse and”.
[definition of substantial adverse effect]
- (2) Clause 23, page 11 (lines 28 to 30), omit subclause (1), substitute:
 - (1) The regulations may prescribe:
 - (a) ways in which information that is disclosed, or to be disclosed, to the court in a federal criminal proceeding must be stored, handled or destroyed; and
 - (b) ways in which, and places at which, such information may be accessed and documents or records relating to such information may be prepared.
[handling etc. of national security information]
- (3) Clause 23, page 12 (line 2), omit “or storage”, substitute “, storage, handling or destruction”.
[handling etc. of national security information]
- (4) Clause 26, page 18 (lines 18 and 19), omit paragraph (c), substitute:
 - (c) if subparagraph (1)(a)(iii) applies—the prosecutor, defendant and the witness mentioned in that subparagraph;
and, if the defendant is a potential discloser under any of the above paragraphs, the defendant’s legal representative is also a *potential discloser*.
[definition of potential discloser]
- (5) Clause 29, page 23 (lines 8 to 16), omit subclause (3A).
[closed hearing requirements]
- (6) Clause 29, page 23 (line 26) to page 24 (line 3), omit subclauses (5) and (6), substitute:

Court to make etc. record of hearing

 - (5) The court must:
 - (a) whether before or after it makes an order under section 31, make a record of the hearing; and
 - (b) keep the record; and
 - (c) make the record available to:
 - (i) a court that hears an appeal against, or reviews, its decision on the hearing; and

- (ii) the prosecutor; and
- (iii) if section 30 applies—the Attorney-General and any legal representative of the Attorney-General; and
- (d) allow any legal representative of the defendant, who has been given a security clearance at the level considered appropriate by the Secretary, to have access to the record, and to prepare documents or records in relation to the record, in a way and at a place prescribed by the regulations for the purposes of this paragraph; and
- (e) not make the record available to, nor allow the record to be accessed by, anyone except as mentioned in this subsection.

Copy of proposed record to be given to prosecutor etc.

- (6) Before the court makes the record under subsection (5), the court must give a copy of the proposed record to the prosecutor and, if section 30 applies, the Attorney-General (each of whom is a **record recipient**).

Statement recipient may request variation of proposed record

- (7) If a record recipient considers that making the proposed record available as mentioned in subparagraph (5)(c)(i) and allowing access to it as mentioned in paragraph (5)(d) will disclose information and the disclosure is likely to prejudice national security, the record recipient may request that the court vary the proposed record so that the national security information will not be disclosed.

Court's decision

- (8) The court must make a decision on the request.

[court record of closed hearing]

- (7) Page 24 (after line 3), after clause 29, insert:

29A Request to delay making record available pending appeal decision

- (1) If the court makes a decision under subsection 29(8), a record recipient (within the meaning of subsection 29(6)) may request that the court delay making the record to allow time for the record recipient to:
 - (a) decide whether to appeal against the court's decision; and
 - (b) if the recipient decides to do so—make the appeal.
- (2) The court must grant the request.

[court record of closed hearing]

- (8) Page 29 (after line 2), before clause 37, insert:

36A Appeal against court decision under section 29

- (1) A record recipient (within the meaning of subsection 29(6)) may appeal against a decision of the court made under subsection 29(8).
- (2) The court that has jurisdiction to hear and determine appeals from the judgment on the trial in the proceeding has jurisdiction to hear and determine any appeal under this section.

The Minister for Justice and Customs (Senator Ellison) moved—That the committee agrees to the amendments made by the House of Representatives to the bill.

Debate ensued.

Question put and passed.

Resolution to be reported.

The Acting Deputy President (Senator Brandis) resumed the chair and the Temporary Chair of Committees reported that the committee had considered message no. 32 from the House of Representatives relating to the National Security Information (Criminal Proceedings) Bill 2004 and had agreed to the amendments made by the House to the bill.

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

46 JAMES HARDIE (INVESTIGATIONS AND PROCEEDINGS) 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.

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

James Hardie (Investigations and Proceedings) Bill 2004—Copy of letter to Senator Allison from Chairman (Meredith Hellicar), James Hardie Industries, dated 8 December 2004.

Senator Murray moved the following amendment:

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

- (a) notes and strongly condemns the conduct of the James Hardie Group as identified in the Jackson Inquiry;
- (b) also notes that over the past 50 years tobacco companies have knowingly supplied and promoted a deadly product that kills over 15 000 Australians a year; and
- (c) calls on the Government to consider abrogating legal professional privilege for tobacco companies in respect of civil disputes”.

Debate ensued.

At 6.50 pm: Debate was interrupted while Senator Nettle was speaking.

47 GOVERNMENT DOCUMENTS—CONSIDERATION

The government documents tabled earlier today (*see entry no. 2*) and general business orders of the day nos 17 to 33 relating to government documents were called on but no motion was moved.

48 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 7.28 pm till Thursday, 9 December 2004 at 9.30 am.

49 **ATTENDANCE**

Present, all senators except Senators Cook*, Harris, Hutchins, Kirk, Ian Macdonald*, Stott Despoja* and Tierney* (* on leave).

HARRY EVANS
Clerk of the Senate