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Contents

1	Meeting of Senate	3157
2	Economics Legislation Committee—Leave to Meet During Sitting.....	3157
3	Economics Legislation Committee—Appointment of Member.....	3157
4	Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2]	3157
5	Questions	3157
6	Defence—Iraq—Australian Federal Police Commissioner—Answers to Questions	3157
7	Education—Textbook Subsidy Scheme—Answer to Question	3157
8	Petitions	3158
9	Notices.....	3158
10	Selection of Bills—Standing Committee—Report No. 2 of 2004— Variation—Withdrawal of Reference.....	3162
11	Postponements.....	3162
12	Anti-Semitism	3162
13	Foreign Affairs—Australian Council for International Development.....	3163
14	Foreign Affairs, Defence and Trade References Committee—Reporting Date.....	3163
15	Discussion of Matter of Public Importance—Anti-Semitism.....	3163
16	Indexed Lists of Departmental and Agency Files—Order for Production of Documents—Document.....	3164
17	Trade—Free Trade Agreement—Document.....	3164
18	Documents.....	3164
19	Administrator’s Proclamation—Commencement of Provisions of an Act.....	3165
20	Telstra (Transition to Full Private Ownership) Bill 2003 [No. 2]	3165
21	Health Legislation Amendment (Medicare) Bill 2003.....	3166
22	Administrator’s Messages—Assent to Laws	3166
23	Foreign Affairs, Defence and Trade Legislation Committee—Report— Military Rehabilitation and Compensation Bill 2003 and Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003.....	3166

24	Workplace Relations Amendment (Termination of Employment) Bill 2002 [No. 2]	3167
25	Migration Agents Registration Application Charge Amendment Bill 2003 Migration Legislation Amendment (Migration Agents Integrity Measures) Bill 2003	3172
26	Adjournment	3183
27	Attendance.....	3183

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 ECONOMICS LEGISLATION COMMITTEE—LEAVE TO MEET DURING SITTING

Senator Ferris, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 4 pm, to take evidence for the committee's inquiry into the provisions of the Greater Sunrise Unitisation Agreement Implementation Bill 2004 and a related bill.

Question put and passed.

3 ECONOMICS LEGISLATION COMMITTEE—APPOINTMENT OF MEMBER

The President informed the Senate that he had received a letter nominating a senator to be a member of a committee.

The Minister for Local Government, Territories and Roads (Senator Ian Campbell), by leave, moved—That Senator Brown be appointed as a participating member of the Economics Legislation Committee.

Question put and passed.

4 WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002 [NO. 2]

Order of the day read for the adjourned debate on the motion of the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone)—That this bill be now read a second time.

Debate resumed.

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

5 QUESTIONS

Questions without notice were answered.

6 DEFENCE—IRAQ—AUSTRALIAN FEDERAL POLICE COMMISSIONER—ANSWERS TO QUESTIONS

The Leader of the Opposition in the Senate (Senator Faulkner) moved—That the Senate take note of the answers given by the Minister for Defence (Senator Hill) and the Minister for Justice and Customs (Senator Ellison) to questions without notice asked by senators today relating to the treatment of comments by the Australian Federal Police Commissioner, Mr Keelty, about military involvement in Iraq.

Debate ensued.

Question put and passed.

7 EDUCATION—TEXTBOOK SUBSIDY SCHEME—ANSWER TO QUESTION

Senator Stott Despoja moved—That the Senate take note of the answer given by the Minister for Defence (Senator Hill) to a question without notice asked by Senator Stott Despoja today relating to the closure of the textbook subsidy scheme.

Question put and passed.

8 PETITIONS

The following 4 petitions, lodged with the Clerk by Senator Bartlett, were received:

From 3 petitioners, requesting that the Senate oppose the full privatisation of Telstra as the sale is contrary to the public interest.

From 7 petitioners, requesting that the Senate ensure the powers and responsibilities of the Senate are protected in the interests of ensuring good governance on behalf of the Australian people.

From 8 petitioners, requesting that the Senate take action to ensure the principle of equitable access to universities remains fundamental to higher education policy and that any bill to further increase fees is rejected.

From 338 petitioners, requesting that the Senate take action to end the live animal export trade and develop a chilled and frozen carcass trade using humane slaughtering practices.

9 NOTICES

Senator Conroy: To move on the next day of sitting—That the Senate calls on the Government to request the Productivity Commission, in accordance with the *Productivity Commission Act 1998*, to:

- (a) undertake a thorough assessment of the impact of the free trade agreement (FTA) made between the governments of Australia and the United States of America in February 2004 on Australia's economy, focussing in particular on:
 - (i) the impact on employment and investment,
 - (ii) the impact on Australian agriculture,
 - (iii) the impact on Australia's manufacturing sector across states, territories and regions,
 - (iv) rules of origin,
 - (v) government procurement,
 - (vi) intellectual property,
 - (vii) the Pharmaceutical Benefits Scheme, and
 - (viii) the audio-visual sector; and
- (b) report on any anticipated trade creation and trade diversion effects arising from the agreement and include in its analysis a full assessment of the environmental, social and cultural impact of the FTA. (*general business notice of motion no. 806*)

The Chair of the Legal and Constitutional Legislation Committee (Senator Payne): To move on the next day of sitting—That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 24 March 2004, from 5.30 pm, to take evidence for the committee's inquiry into the provisions of the Disability Discrimination Amendment Bill 2003. (*general business notice of motion no. 807*)

The Chair of the Finance and Public Administration References Committee (Senator Forshaw): To move on the next day of sitting—That the Finance and Public Administration References Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 25 March 2004, from 4 pm to 6 pm, to take evidence for the committee's inquiry into the second year of operation of the Senate order for the production of lists of departmental and agency contracts. (*general business notice of motion no. 808*)

The Chair of the Economics Legislation Committee (Senator Brandis): To move on the next day of sitting—That the Economics Legislation Committee be authorised to hold public meetings during the sittings of the Senate on the following days, from 4 pm:

- (a) on Thursday, 25 March 2004 to take evidence for the committee's inquiry into the Taxation Laws (Clearing and Settlement Facility Support) Bill 2003;
- (b) on Monday, 29 March 2004 to take evidence for the committee's inquiry into the provisions of the Treasury Legislation Amendment (Professional Standards) Bill 2003; and
- (c) on Thursday, 1 April 2004 to take evidence for the committee's inquiries into the New International Tax Arrangements Bill 2003 and the Tax Laws Amendment (2004 Measures No. 1) Bill 2004. (*general business notice of motion no. 809*)

The Chair of the Parliamentary Joint Committee on Corporations and Financial Services (Senator Chapman): To move on the next day of sitting—That the Parliamentary Joint Committee on Corporations and Financial Services be authorised to hold a public meeting during the sitting of the Senate on Wednesday, 24 March 2004, from 4 pm, to take evidence for the committee's inquiry into Corporations Amendment Regulations. (*general business notice of motion no. 810*)

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

- (a) notes that:
 - (i) according to the Australian Council of Deans of Education, there will be a teacher shortfall of about 5 000 teachers Australia-wide in 2005 and between 20 000 and 30 000 by 2010,
 - (ii) 40 per cent of junior secondary school students are currently taught maths and science by teachers who are not specifically trained in those subject areas,
 - (iii) 44 per cent of Australia's 250 000 teachers are aged over 45,
 - (iv) demand for primary school teaching graduates will increase by 31 per cent and demand for secondary school teachers by 85 per cent, by 2005, and
 - (v) 3 330 people who applied and were eligible for teaching courses in Victorian universities missed out on places in 2004;
- (b) warns federal and state governments that it is foolhardy to expect that teacher shortages will be filled by teachers who are currently employed in occupations other than teaching;
- (c) calls on the Government, as a matter of urgency, to develop a national plan for addressing teacher shortages overall and in specific subject areas of short supply; and
- (d) reminds the Minister for Education, Science and Training (Dr Nelson) that the gender imbalance in the teaching workforce is of less concern to parents than the crisis of overall shortages. (*general business notice of motion no. 811*)

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

- (a) congratulates Australian distance runner, Benita Johnson, who won gold in the women's 8 kilometre race at the World Cross Country Championships in Brussels on 20 March 2004;
- (b) notes that:
 - (i) Ms Johnson is the first Australian in the 32-year history of the event to win any medal in the race, and that she won by more than 50 metres,

- (ii) the world cross country meet is the most competitive distance race in the world, as each country can send up to six representatives, and that this race comprised 100 runners,
 - (iii) Ms Johnson currently holds the Australian 2, 3, 5 and 10 kilometre records, and
 - (iv) Ms Johnson developed her talent at the Australian Institute of Sport (AIS); and
- (c) calls on the Government to ensure that the AIS continues to be adequately supported so as to promote future Australian sporting excellence. (*general business notice of motion no. 812*)

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

- (a) notes:
- (i) the opening of the Redfern Community Centre on 13 March 2004, and
 - (ii) that the centre, developed by the former City of Sydney Council after 18 months of community consultation, will provide a space for training and employment initiatives, art, sport, dance and self defence as well as local enterprise programs;
- (b) commends New South Wales Governor Marie Bashir for coming to ‘the Block’ and joining with elder Aunty Joyce Ingram in officially opening the new Redfern Community Centre;
- (c) notes the difficulty in finding lasting solutions to the problems in Redfern, in the absence of a balanced portrayal of the issues and the lack of leadership in driving the agenda for change forward; and
- (d) calls on the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone) to visit ‘the Block’ and the Redfern Community Centre as a way to better inform herself about the issues for Indigenous people in urban areas. (*general business notice of motion no. 813*)

The Minister for Local Government, Territories and Roads (Senator Ian Campbell): To move on the next day of sitting—That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004, allowing it to be considered during this period of sittings.

Document: Senator Ian Campbell tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 in the 2004 autumn sittings.

The Minister for Local Government, Territories and Roads (Senator Ian Campbell): To move on the next day of sitting—That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Appropriation (Parliamentary Departments) Bill (No. 2) 2003-2004
 Appropriation Bill (No. 3) 2003-2004
 Appropriation Bill (No. 4) 2003-2004.

Document: Senator Ian Campbell tabled the following document:

Consideration of legislation—Statement of reasons for introduction and passage of certain bills in the 2004 autumn sittings.

The Minister for Local Government, Territories and Roads (Senator Ian Campbell): To move on 24 March 2004—That the provisions of paragraphs (5), (6) and (8) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Higher Education Legislation Amendment Bill 2004
Sex Discrimination Amendment (Teaching Profession) Bill 2004
Telecommunications (Interception) Amendment Bill 2004.

Documents: Senator Ian Campbell tabled the following documents:

Consideration of legislation—Statements of reasons [3] for introduction and passage of certain bills in the 2004 autumn sittings.

Senator Marshall: To move on the next day of sitting—That the following bill be introduced: A Bill for an Act to amend the *Flags Act 1953* to recognise the Eureka Flag as an official flag of Australia, and for related purposes. ***Flags Amendment (Eureka Flag) Bill 2004.*** (*general business notice of motion no. 814*)

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

- (a) notes:
- (i) the call by international student leaders on 22 March 2004 for international students to join the country-wide student protest on 31 March 2004 that is calling for free education,
 - (ii) the growing fee burden experienced by international students, who were the first students to face upfront fees introduced by the then Labor Government and now extended to all Australian students under the policies of the Liberal Government, and
 - (iii) the move of some universities to allow for an increase in the yearly tuition fees paid by international students during the length of their courses;
- (b) condemns the Government for its policies, which have resulted in spiralling student debt; and
- (c) calls on the Government to reverse its regressive user-pays policies which are under-funding universities and driving international and Australian students further into debt. (*general business notice of motion no. 815*)

Senator Brown: To move on the next day of sitting—That the following matter be referred to the Legal and Constitutional References Committee for inquiry and report by 14 May 2004:

Whether any pressure was put on the Australian Federal Police Commissioner, Mr Keelty, in relation to his views or comments on the connection between Australia's involvement in the war on Iraq and the threat to Australia's security and, in particular, what communications took place between the office of the Prime Minister, other ministerial advisers or public servants and Mr Keelty in his capacity as Police Commissioner in relation to that matter.

**10 SELECTION OF BILLS—STANDING COMMITTEE—REPORT NO. 2 OF 2004—
VARIATION—WITHDRAWAL OF REFERENCE**

Senator Ferris, by leave and at the request of the Chair of the Economics Legislation Committee (Senator Brandis), moved—That the order of the Senate of 3 March 2004 adopting the 2nd report of 2004 of the Selection of Bills Committee (*see entry no. 14, 3 March 2004*) be varied to provide that the Textile, Clothing and Footwear Strategic Investment Program Amendment Bill 2004 not be referred to the Economics Legislation Committee.

Question put and passed.

11 POSTPONEMENTS

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Forshaw for today, relating to the reference of matters to the Community Affairs References Committee, postponed till 24 March 2004.

12 ANTI-SEMITISM

Senator Stephens, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 754—That the Senate—

(a) notes:

- (i) the long history of anti-Semitism and its capacity to influence people to express hatred and carry out violence against Jewish people, and
- (ii) the alarming rise in the incidence of violent anti-Semitic acts in many countries, resulting in injury and death of both Jewish and non-Jewish people, the desecration of Jewish cemeteries and memorials, and targeted assaults on individual members of the Jewish community; and

(b) in recognition of these developments:

- (i) expresses its unequivocal condemnation of anti-Semitism, of violence directed against Jews and Jewish religious and cultural institutions, and all forms of racial and ethnic hatred, persecution and discrimination on ethnic or religious grounds, whenever and wherever it occurs,
- (ii) resolves to condemn all manifestations of anti-Semitism in Australia as a threat to the freedoms that all citizens should enjoy equally in a democratic society and commits the Parliament to take all possible concrete actions at a national level to combat this threat to our peaceful and diverse nation, and
- (iii) further resolves to encourage Australian ambassadors and other officials engaged in bilateral contacts with other countries to use their influence to oppose and counter anti-Semitic expressions and to promote all possible efforts at fostering tolerance and community harmony.

Question put and passed.

13 FOREIGN AFFAIRS—AUSTRALIAN COUNCIL FOR INTERNATIONAL DEVELOPMENT

Senator Stott Despoja, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 805—That the Senate—

- (a) notes that:
 - (i) the Australian Council for Overseas Aid (ACFOA) was formed in 1965 and continues to play a significant role as a representative and regulatory body for non-government organisations in Australia,
 - (ii) ACFOA provides representation, advocacy and a forum for cooperation for some 80 member agencies, and
 - (iii) on 10 March 2004, ACFOA will change its name to the Australian Council for International Development (ACFID);
- (b) further notes that:
 - (i) the United Nations (UN) has warned that the international community is falling short of achieving the goals set by world leaders at the Millennium Development Summit in 2000 (the Millennium Development Goals),
 - (ii) Australia's aid budget currently remains at 0.25 per cent of gross national income, which is less than half the level of contribution advocated by the UN,
 - (iii) ACFID's submission to the 2004-05 Budget calls on the Government to explicitly adopt the Millennium Development Goals as benchmarks for ensuring the aid program is directly focussed on the sustainable reduction of poverty, and in that context to provide for new initiatives focussed on basic social services for poverty reduction, and
 - (iv) ACFID also calls on the Government to implement fair trade, debt relief and good governance policies, which underpin the poverty reduction objective of Australia's aid program; and
- (c) calls on the Government to explicitly adopt the Millennium Development Goals as the benchmark for ensuring that Australia's aid program is focussed on effective aid delivery.

Question put and passed.

14 FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE—REPORTING DATE

The Chair of the Foreign Affairs, Defence and Trade References Committee (Senator Cook), by leave, moved general business notice of motion no. 801—That the report of the Foreign Affairs, Defence and Trade References Committee on current health preparation arrangements for the deployment of Australian Defence Forces overseas be presented on 17 June 2004.

Question put and passed.

15 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—ANTI-SEMITISM

The Deputy President (Senator Hogg) informed the Senate that Senators Stephens and Mason had proposed that the following matter of public importance be submitted to the Senate for discussion:

The growing threat to the cohesion of Australian society of the rise of anti-Semitism.

The proposal was supported by four senators and the matter was discussed.

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

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

Indexed lists of departmental and agency files for the period 1 July to 31 December 2003—Statements of compliance—

Australian Public Service Commission. [*Received 12 March 2004*]

Comcare. [*Received 12 March 2004*]

Department of the Prime Minister and Cabinet. [*Received 18 March 2004*]

17 TRADE—FREE TRADE AGREEMENT—DOCUMENT

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

Trade—Free trade agreement—Australia-United States free trade agreement (Draft)—

Volume 1—Chapters 1-23.

Volume 2—Annex 2-B: Tariff elimination; Annex 4-A: Textile rules of origin;

Annex 5-A: Rules of origin.

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

Debate ensued.

Question put and passed.

18 DOCUMENTS

The following documents were tabled by the Clerk:

Australian Crime Commission Act—Regulations—Statutory Rules 2004 No. 31.

Broadcasting Services Act—Broadcasting Services (Events) Notice No. 1 of 1994 (Amendment No. 1 of 2004).

Class Rulings CR 2004/20-CR 2004/26.

Commonwealth Authorities and Companies Act—Commonwealth Authorities and Companies Orders (Financial Statements for reporting periods ending on or after 30 June 2004).

Corporations Act—

Determination under section 1445, dated 10 February 2004.

Regulations—Statutory Rules 2004 No. 36.

Currency Act—Currency (Royal Australian Mint) Amendment Determination 2004 (No. 1).

Customs Act—Regulations—Statutory Rules 2004 No. 32.

Defence Act—Determination under section 58B—Defence Determination 2004/8.

Export Inspection (Establishment Registration Charges) Act—Regulations—Statutory Rules 2004 No. 29.

Export Inspection (Service Charge) Act—Regulations—Statutory Rules 2004 No. 30.

Financial Management and Accountability Act—Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 30 June 2004).

Fisheries Management Act—Northern Prawn Fishery Management Plan 1995—NPF Directions Nos 76-80.

Higher Education Funding Act—Determination under section—

15—Determination No. T8-2004.

27A—Determination No. T7-2004.

Income Tax Assessment Act 1936—Regulations—Statutory Rules 2004 No. 37.

Maritime Transport Security Act—Regulations—Statutory Rules 2004 No. 34.

Motor Vehicle Standards Act—Regulations—Statutory Rules 2004 No. 35.

National Handgun Buyback Act—Regulations—Statutory Rules 2004 No. 33.

National Health Act—Determinations under section 5D—AOS 3/2004 and AOS 4/2004.

Product Ruling—

PR 2003/39 (Notice of Withdrawal).

PR 2004/22-PR 2004/31.

Remuneration Tribunal Act—Determination—

2004/01: Travelling Allowances for Members of the Australian Industrial Relations Commission.

2004/02: Remuneration and Allowances for Holders of Public Offices.

Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 4/04.

Taxation Determination TD 2004/3.

Taxation Ruling TR 2004/2.

Telecommunications (Consumer Protection and Service Standards) Act—Telecommunications (Emergency Call Service) Amendment Determination 2004 (No. 1).

19 ADMINISTRATOR'S PROCLAMATION—COMMENCEMENT OF PROVISIONS OF AN ACT

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

Maritime Transport Security Act 2003—Part 2—1 July 2004 (*Gazette* No. GN 11, 17 March 2004).

20 TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL 2003 [NO. 2]

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

Message no. 535, dated 11 March 2004—A Bill for an Act to amend the *Telstra Corporation Act 1991*, and for other 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.

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

21 HEALTH LEGISLATION AMENDMENT (MEDICARE) BILL 2003

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

Message no. 537, dated 11 March 2004—Health Legislation Amendment (Medicare) Bill 2003.

22 ADMINISTRATOR'S MESSAGES—ASSENT TO LAWS

Messages from His Excellency the Administrator of the Commonwealth of Australia were reported, informing the Senate that he had assented to the following laws:

10 March 2004—Message—

No. 3—*Norfolk Island Amendment Act 2004* (Act No. 6, 2004).

No. 4—*Criminal Code Amendment (Terrorist Organisations) Act 2004* (Act No. 7, 2004).

No. 5—

Aviation Transport Security Act 2004 (Act No. 8, 2004)

Aviation Transport Security (Consequential Amendments and Transitional Provisions) Act 2004 (Act No. 9, 2004).

11 March 2004—Message—

No. 6—

Workplace Relations Amendment (Transmission of Business) Act 2004 (Act No. 10, 2004)

Workplace Relations Amendment (Improved Remedies for Unprotected Action) Act 2004 (Act No. 11, 2004).

No. 7—

Agricultural and Veterinary Chemicals (Administration) Amendment Act 2004 (Act No. 12, 2004)

Extension of Sunset of Parliamentary Joint Committee on Native Title Act 2004 (Act No. 13, 2004)

Industrial Chemicals (Notification and Assessment) Amendment (Rotterdam Convention) Act 2004 (Act No. 14, 2004)

Industry Research and Development Amendment Act 2004 (Act No. 15, 2004).

23 FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE—REPORT—MILITARY REHABILITATION AND COMPENSATION BILL 2003 AND MILITARY REHABILITATION AND COMPENSATION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2003

Pursuant to order, the Chair of the Foreign Affairs, Defence and Trade Legislation Committee (Senator Sandy Macdonald) tabled the following report and documents:

Foreign Affairs, Defence and Trade Legislation Committee—Provisions of the Military Rehabilitation and Compensation Bill 2003 and the Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Bill 2003—Report, dated March 2004, *Hansard* record of proceedings, additional information, documents presented to the committee and submissions [18].

Report ordered to be printed on the motion of Senator Sandy Macdonald.

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

Debate ensued.

Question put and passed.

24 **WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2002 [No. 2]**

Order of the day read for the adjourned debate on the motion of the Minister for Immigration and Multicultural and Indigenous Affairs (Senator Vanstone)—That this bill be now read a second time.

Debate resumed.

Question put and passed.

Bill read a second time.

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

In the committee

Bill taken as a whole by leave.

Senator Murray moved the following amendment:

Clause 2, page 1 (line 7) to page 3 (line 10), omit the clause, substitute:

2 Commencement

- (1) Subject to subsection (2), this Act commences on 12 August 2004.
- (2) If the House of Representatives and the Senate are dissolved simultaneously under section 57 of the Constitution after the day on which the Bill for this Act is passed by the Senate and before 12 August 2004, this Act does not commence at all.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 1, page 4 (after line 12), after item 1, insert:

1A At the end of section 14

Add:

- (2) If:
 - (a) the Commission receives an application for relief in respect of a termination of employment on the ground referred to in paragraph 170CE(1)(a); and
 - (b) because of section 170CF, the Commission is obliged to attempt to settle the matter to which the application relates by conciliation; and
 - (c) the application originates from a particular State; and
 - (d) an agreement is in force between the Commonwealth and that State (whether or not there are any other parties to the agreement) under which the conciliation may be conducted by a member of the Commission who also holds an office of member of a prescribed State industrial authority of that State;

then, despite section 36 and any other provisions of this Act relating to the arrangement of the Commission's business, the conciliation must be conducted by a member of the Commission who also holds an office of member of a prescribed State industrial authority of that State.

Schedule 1, item 12, page 10 (line 3), after “1,”, insert “1A,”.

Schedule 1, item 12, page 10 (line 4), after “1,”, insert “1A,”.

Debate ensued.

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

Senator Murray moved the following amendment:

Schedule 1, page 4 (after line 30), after item 4, insert:

4A Section 170CBA

Omit “12 months” (wherever occurring), substitute “6 months”.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 1, item 7, page 5 (line 13), omit “It is the intention”, substitute “Subject to subsection (1A), it is the intention”.

Schedule 1, item 7, page 5 (after line 34), at the end of the note, add:

- ; or (c) to the extent that it provides a remedy to persons who are not employees within the meaning of this Act (for example, a State or Territory law to the extent that it deems a person who is not an employee for the purposes of that law to be such an employee and gives the person a remedy in respect of harsh, unjust or unreasonable termination).

Schedule 1, item 7, page 5 (after line 34), after subsection (1), insert:

(1A) If:

- (a) the employment of an employee:
 - (i) who is referred to in subsection 170CB(1); and
 - (ii) to whom paragraph 170CBA(1)(d) applies; is terminated; and
- (b) a provision (the *State or Territory provision*) of a State or Territory law referred to in paragraph (1)(b) would, but for subsection (1), apply in relation to the termination; and
- (c) the employee makes an application (the *remedy application*) for a remedy under the State or Territory provision, in relation to the termination, within 6 months after the commencement of this section;

it is the intention of the Parliament that this Division not apply to the exclusion of the State or Territory provision, or any other provision of the State or Territory law, so far as the provision applies in relation to the matter to which the remedy application relates.

Schedule 1, item 7, page 6 (line 1), omit “It is the intention”, substitute “Subject to subsection (2A), it is the intention”.

Schedule 1, item 7, page 6 (after line 12), after subsection (2), insert:

(2A) If:

- (a) the employment of an employee:
 - (i) who is referred to in subsection 170CB(1); and
 - (ii) to whom paragraph 170CBA(1)(d) applies; is terminated; and

- (b) a provision (the *State provision*) of a State award or a State employment agreement would, but for subsection (2), apply in relation to the termination; and
- (c) the employee makes an application (the *remedy application*) for a remedy under the State provision, in relation to the termination, within 6 months after the commencement of this section;

it is the intention of the Parliament that this Division not apply to the exclusion of the State provision, or any other provision of the State award or the State employment agreement, so far as the provision applies in relation to the matter to which the remedy application relates.

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

Senator Murray moved the following amendment:

Schedule 1, page 4 (after line 21), after item 3, insert:

3A After section 170CBA

Insert:

170CBB Definition of *employee*

- (1) For the purposes of this Division, a person (the worker) who contracts to supply his or her labour to another person is to be presumed to do so as an employee, unless it can be shown that the other person is a client or customer of a business genuinely carried on by the worker.
- (2) In determining whether a worker is genuinely carrying on a business, regard must be had to those of the following factors which are relevant in the circumstances of the case:
 - (a) the substance and practical reality of the relationship between the parties, and not merely the formally agreed terms;
 - (b) the objects of this Division;
 - (c) the extent of the control exercised over the worker by the other party;
 - (d) the extent to which the worker is integrated into, or represented to the public as part of, the other party's business or organisation;
 - (e) the degree to which the worker is or is not economically dependent on the other party;
 - (f) whether the worker actually engages others to assist in providing the relevant labour;
 - (g) whether the Australian Taxation Office has previously made a personal services determination in relation to the worker pursuant to Subdivision 87-B of the *Income Tax Assessment Act 1997*, in connection with work of the kind performed for the other party;
 - (h) whether the worker would be treated as an employee under the provisions of any State law governing unfair dismissal which, but for this Act, would otherwise apply to the worker.
- (3) A contract is not to be regarded as one other than for the supply of labour merely because:
 - (a) the contract permits the work in question to be delegated or subcontracted to others; or

- (b) the contract is also for the supply of the use of an asset or for the production of goods for sale.
- (4) An employment agency which contracts to supply the labour of a person (the worker) to another party (the client) is to be deemed to be that person's employer, except where this results in a direct contract between the worker and the client in relation to that labour.
- (5) Where:
 - (a) an arrangement is made to supply the labour of a person (the worker) to another party (the ultimate employer) through a contract or chain of contracts involving another entity (the intermediary); and
 - (b) it cannot be shown that the intermediary is genuinely carrying on a business in relation to that labour that is independent of the ultimate employer, on the basis of the factors set out in subsection (2);
 the worker is to be deemed to be an employee of the ultimate employer.
- (6) For the purposes of this section, *employment agency* means an entity whose business involves or includes the supply of workers to other unrelated businesses or organisations, whether through a contract or a chain of contracts.

Debate ensued.

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

Senator Murray moved the following amendment:

Schedule 1, item 7, page 6 (after line 30), insert:

Note: A State or Territory law in respect of harsh, unjust or unreasonable termination is not intended to be excluded to the extent that it provides a remedy to persons who are not employees. For example, a State or territory law that deems a person who is not an employee to be an employee and gives them a remedy in respect of harsh, unjust or unreasonable termination, is not intended to be excluded.

Debate ensued.

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

Senator Murray moved the following amendments together by leave:

Schedule 2, item 4, page 12 (line 1), omit “**small businesses**”, substitute “**frivolous or vexatious claims**”.

Schedule 2, item 4, page 12 (lines 7 and 8), omit paragraph 170CEC(1)(b).

Schedule 2, item 4, page 12 (lines 32 to 35), omit “In deciding whether to hold a hearing, the Commission must take into account the cost that would be caused to the employer's business by requiring the employer to attend a hearing.”.

Schedule 2, item 4, page 13 (line 5), at the end of paragraph 170CEC(5)(a), add “or may invite the employee, in the time specified in the notice, to be heard before the Registrar or Commissioner without the need for the employer to be present, so long as the employer has the right to provide any further information that is relevant to whether this section requires the order to be made”.

Schedule 2, item 4, page 13 (after line 7), at the end of section 170CEC, add:

Note: An employer shall not be required to attend before the Commission merely because an election is made by an employee under this section.

Schedule 2, page 13 (after line 28), after item 5, insert:

5A At the end of section 170CG)

Add:

- (4) If the Commission is satisfied that the matters listed in paragraphs (3)(da) and (db) impacted on the procedures followed by the employer in effecting the termination then the termination is not harsh, unjust or unreasonable on the ground of mere procedural defect if the termination was otherwise fair in substance.

Schedule 2, item 15, page 14 (line 30), omit “(about dismissal of applications relating to small businesses)”.

Schedule 2, item 16, page 15 (lines 4 and 5), omit “(about dismissal of applications relating to small businesses)”.

Debate ensued.

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

Question—That the bill be agreed to—divided in respect of Schedule 2, items 1 to 3 and 5 to 13.

Schedule 2, items 1 to 3 and 5 to 13 agreed to.

Question—That the bill be agreed to—divided in respect of Schedule 3, items 2 and 4 to 7.

Schedule 3, items 2 and 4 to 7 agreed to.

Senator Murray moved the following amendment:

Schedule 3, page 18 (after line 5), after item 8, insert:

8A At the end of section 170CG

Add:

- (5) In determining whether circumstances meet the requirements of subsection (4), the Commission must have regard to whether procedures followed by the employer were in accordance with an industrial agreement or any selection criteria agreed to with the employees and approved by the Commission prior to the terminations occurring.

Debate ensued.

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

Bill agreed to.

Bill to be reported without amendment.

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

On the motion of the Special Minister of State (Senator Abetz) the report from the committee was adopted.

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

The Senate divided—

AYES, 30

Senators—

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

NOES, 34

Senators—

Allison	Cook	Kirk	Nettle
Bartlett	Crossin	Lees	Ridgeway
Bishop	Denman	Ludwig	Sherry
Brown	Evans	Lundy	Stephens
Buckland (Teller)	Forshaw	Mackay	Stott Despoja
Campbell, George	Greig	Marshall	Webber
Carr	Harradine	McLucas	Wong
Cherry	Hogg	Moore	
Collins	Hutchins	Murray	

Question negatived.

25 MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2003

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003

Order of the day read for the adjourned debate on the motion of the Minister for the Arts and Sport (Senator Kemp)—That these bills be now read a second time.

Debate resumed.

Question put and passed.

Bills read a second time.

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

In the committee

MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2003—

Bill, taken as a whole by leave, agreed to.

MIGRATION LEGISLATION AMENDMENT (MIGRATION AGENTS INTEGRITY MEASURES) BILL 2003—

Bill taken as a whole by leave.

Explanatory memorandum: The Special Minister of State (Senator Abetz) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

Senator Abetz moved the following amendments together by leave:

No. 1—Schedule 1, page 8 (after line 4), after item 36, insert:

36A Paragraph 287(2)(h)

Omit “under paragraph 303(c)”.

No. 2—Schedule 1, page 8 (after line 12), after item 38, insert:

38A After subsection 287(3)

Insert:

- (3A) The Authority may publish, in the prescribed way, a list of the names of former registered migration agents, their former migration agent registration numbers and the date they ceased to be registered. The Authority must remove a person’s details from the list at the end of the prescribed period.

No. 3—Schedule 1, item 40, page 9 (after line 26), after subsection 288(6), insert:

Proceedings finalised about previous registration

(6A) If:

- (a) the applicant has been registered at some time before making the application; and
- (b) the Authority made a decision to suspend or cancel the applicant’s registration; and
- (c) the applicant made an application (the *review application*) for review of the decision under the *Administrative Appeals Tribunal Act 1975* or for judicial review of the decision;

then the Authority must not consider the registration application unless it is satisfied that all proceedings (including any appeals) resulting from the review application have been finalised.

No. 4—Schedule 1, page 11 (after line 19), after item 46, insert:

46A Subsection 289(4)

Omit “subsection 300(3)”, substitute “subsection 300(6)”.

No. 5—Schedule 1, page 13 (after line 2), after item 55, insert:

55A After section 291

Insert:

291A Applicant must not be registered if suspension would be in effect

If:

- (a) an applicant has been registered (the *previous registration*) at some time before making the application; and
- (b) the Migration Agents Registration Authority decided to suspend the previous registration (whether or not that decision was stayed); and
- (c) the previous registration ended on or after the suspension decision;

then the applicant must not be registered during a period in which the previous registration would have been suspended had the previous registration not already ended.

Example 1: A registered migration agent's registration is suspended for a period. The agent is deregistered under section 302 so the suspension of the registration ends. The agent cannot be re-registered until the suspension period ends.

Example 2: The Migration Agents Registration Authority suspends a registered migration agent's registration. The agent applies for review of the decision and a stay order is made in relation to the decision. The agent continues to practise, while the stay order is in force, until the agent's registration ends. Subsection 288(6A) prevents the agent from being re-registered until the review proceedings are finalised. The agent cannot be re-registered if the suspension decision is affirmed on review and the suspension would not have ended (had the registration continued).

Example 3: Under section 300, a registered migration agent's registration is continued after the expiry day of the agent's registration. The Migration Agents Registration Authority makes a decision to suspend the agent's registration until the agent complies with a condition, and so the registration ends because of subsection 300(4). The agent cannot be re-registered until the agent complies with the condition.

No. 6—Schedule 1, item 56, page 13 (lines 3 and 4), omit the item, substitute:

56 Section 292

Repeal the section, substitute:

292 Applicant must not be registered if registration cancelled in past 5 years

An applicant whose registration has been cancelled under section 303 or 306AG must not be registered within 5 years of the cancellation.

No. 7—Schedule 1, page 13 (after line 8), after item 58, insert:

58A After section 292A

Insert:

292B Applicant must not be registered unless he or she holds appropriate professional indemnity insurance

- (1) An applicant must not be registered unless the Migration Agents Registration Authority is satisfied that he or she has professional indemnity insurance of a kind prescribed by the regulations.
- (2) To avoid doubt, this section applies to all applicants (not just first time applicants).

No. 8—Schedule 1, item 63, page 13 (lines 19 and 20), omit the item, substitute:

63 Section 300

Repeal the section, substitute:

300 Automatic continuation of registration

When agent's registration is automatically continued

- (1) Subsection (4) applies to continue a registered migration agent's registration beyond the last day (the *expiry day*) of the agent's registration if, before the end of the expiry day:
 - (a) the agent made a registration application; and

- (b) the agent paid the registration application fee (if any) in respect of the application; and
- (c) the Migration Agents Registration Authority had not decided the application.

Exception—suspension

- (2) However, subsection (4) does not apply to continue the agent's registration if, before the end of the expiry day, the Authority made a decision to suspend the agent's registration, unless:
 - (a) the suspension had been completed before the end of the expiry day; or
 - (b) there was a decision (other than a stay order) of the Administrative Appeals Tribunal or a court in force, immediately before the end of the expiry day, to the effect that the agent's registration is not suspended or cancelled.

Exception—cancellation

- (3) Subsection (4) also does not apply to continue the agent's registration if, before the end of the expiry day, the Authority made a decision to cancel the agent's registration, unless:
 - (a) there was a decision (other than a stay order) of the Administrative Appeals Tribunal or a court in force, immediately before the end of the expiry day, to the effect that the agent's registration is not suspended or cancelled; or
 - (b) there was a decision of the Administrative Appeals Tribunal or a court in force to the effect that the agent's registration is suspended, and the suspension had been completed before the end of the expiry day.

Period of continuation of registration

- (4) The agent's registration is taken to continue after the expiry day until the earliest of the following:
 - (a) the Authority decides the application;
 - (b) the Authority decides to suspend the agent's registration;
 - (c) the Authority decides to cancel the agent's registration;
 - (d) the end of the period of 10 months beginning on the day after the expiry day.

Application granted if no decision within a certain period

- (5) If, before the end of the period of 10 months beginning on the day after the expiry day, the Authority has not:
 - (a) decided the registration application; and
 - (b) decided to suspend the agent's registration; and
 - (c) decided to cancel the agent's registration;then the application is taken to have been granted at the end of that period.

When registration takes effect

- (6) If the Authority grants the registration application, or the registration application is taken to have been granted under subsection (5), the registration is treated as having taken effect at the end of the expiry day.

Example: An agent's registration is due to end on 31 October (the expiry day). On 20 October the agent applies to be registered again. The Authority has not decided the application by the end of 31 October.

The agent's registration continues automatically past 31 October until the Authority decides the application.

On 15 November the Authority grants the application. The new 12 month registration is treated as having taken effect at the end of 31 October.

When Authority makes decision

- (7) For the purposes of this section, the Authority is taken to have made a decision even if the decision is later stayed.

No. 9—Schedule 1, item 68, page 14 (line 7), after “required to”, insert “caution a registered migration agent or”.

No. 10—Schedule 1, item 72, page 15 (line 13) to page 16 (line 15), omit subsections 305A(1) and (2), substitute:

- (1) If a registered migration agent is given notice of a decision under section 303, then the Migration Agents Registration Authority:
- (a) must as soon as possible make available in the prescribed way a statement that sets out the decision and specifies the grounds for the decision; and
 - (b) may prepare a statement about the decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the decision.

No. 11—Schedule 1, item 73, page 17 (line 4), omit subsection 305B(2).

No. 12—Schedule 1, item 75, page 19 (line 19), omit “is”, substitute “and the Authority's decision are”.

No. 13—Schedule 1, item 75, page 20 (after line 32), at the end of section 306AC, add:

Minister to have regard to any matter prescribed by the regulations

- (5) In deciding whether or not to refer a registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Minister must have regard to any matter prescribed by the regulations.

No. 14—Schedule 1, item 75, page 21 (after line 24), after subparagraph 306AE(1)(b)(i), insert:

- (ia) on the disciplinary action to be taken against the agent if the Minister decides to refer the agent; and

No. 15—Schedule 1, item 75, page 21 (line 27), omit “14”, substitute “21”.

No. 16—Schedule 1, item 75, page 22 (after line 13), after subsection 306AF(2), insert:

- (2A) The notice must be accompanied by a copy of any submission made to the Minister under subsection 306AE(1).

No. 17—Schedule 1, item 75, page 22 (line 22) to page 23 (line 13), omit section 306AG, substitute:

306AG Taking of disciplinary action

- (1) If the Minister refers a registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Authority must:
- (a) caution the agent; or
 - (b) suspend the agent's registration; or
 - (c) cancel the agent's registration.

Findings of fact

- (2) In making its decision, the Authority must take the findings of fact made by the Minister in relation to the referral decision to be correct.

Matters Authority must take into account

- (3) The Authority must take only the following matters into account in making its decision under subsection (1):
- (a) any written submission made to the Minister under subsection 306AE(1) by the agent;
 - (b) the findings of fact made by the Minister in relation to the referral decision;
 - (c) the grounds given by the Minister for the referral decision.

Natural justice hearing rule

- (4) This section, section 306AE and sections 494A to 494D are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the decision the Authority is required to make under subsection (1) of this section.

Note: Section 306AE requires the Minister to give the agent an opportunity to make a submission before the Minister refers the agent for disciplinary action. Sections 494A to 494D relate to the giving of documents by the Minister under this Act.

Time of decision

- (5) The Authority must make its decision under subsection (1) as soon as possible, but not later than 14 days, after receiving notice of the referral.

Note: Section 494C sets out when the Authority is taken to have received notice of the referral.

Notice to agent

- (6) The Authority must give the agent written notice of its decision. The notice must set out the reasons for the decision.
- (7) The decision takes effect at the time the agent is given written notice of it.

Note: Section 332H sets out when the agent is taken to have been given the notice.

No. 18—Schedule 1, item 75, page 23 (after line 13), after section 306AG, insert:

306AGA Cautions or suspensions*Cautions*

- (1) If the Migration Agents Registration Authority cautions a registered migration agent under section 306AG, the Authority may set one or more conditions for the lifting of the caution.

Note: Particulars of cautions are shown on the Register: see section 287.

Suspensions

- (2) If the Authority suspends a registered migration agent's registration under section 306AG, the Authority may:
 - (a) set a period of suspension of not more than 5 years; or
 - (b) set a condition or conditions for the lifting of the suspension.
- (3) If 2 or more conditions are set under paragraph (2)(b), one of them may be that at least a set period of suspension has ended.

No. 19—Schedule 1, item 75, page 24 (lines 24 to 26), omit section 306AJ, substitute:

306AJ Review by the Administrative Appeals Tribunal

- (1) An application may be made to the Administrative Appeals Tribunal for review of a referral decision or a mandatory decision.

Timing rules for review of a referral decision

- (2) However, an application for review of a referral decision may only be made:
 - (a) after the mandatory decision is made as a result of the referral decision; and
 - (b) within the period within which an application for review of the mandatory decision may be made.
- (3) Accordingly, paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975* does not apply to an application for review of a referral decision.

No. 20—Schedule 1, item 75, page 25 (lines 1 to 24), omit section 306AK, substitute:

306AK Stay orders

If the Administrative Appeals Tribunal or a court orders a stay of a decision under section 306AG to cancel or suspend a registered migration agent's registration, it is taken to be a condition of the order that the prescribed supervisory requirements apply in relation to the agent during the period of the order.

No. 21—Schedule 1, item 75, page 25 (line 27) to page 26 (line 35), omit subsections 306AL(1) and (2), substitute:

- (1) If a registered migration agent is given notice of a mandatory decision, then the Migration Agents Registration Authority:
 - (a) must as soon as possible make available in the prescribed way a statement that:
 - (i) sets out the mandatory decision; and
 - (ii) sets out the referral decision to which the mandatory decision relates; and
 - (iii) specifies the grounds for the referral decision; and
 - (b) may prepare a statement about the mandatory decision and the referral decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the mandatory decision or the referral decision.

No. 22—Schedule 1, item 75, page 27 (line 21), at the end of paragraph 306AM(1)(c), add “or the mandatory decision”.

No. 23—Schedule 1, item 75, page 27 (line 23), omit subsection 306AM(2).

No. 24—Schedule 1, item 137, page 36 (lines 2 to 37), omit subsections 311C(1) and (2), substitute:

- (1) If a former registered migration agent is given notice of a decision under section 311A, then the Migration Agents Registration Authority:
 - (a) must as soon as possible make available in the prescribed way a statement that sets out the decision and specifies the grounds for the decision; and
 - (b) may prepare a statement about the decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the decision.

No. 25—Schedule 1, item 142, page 39 (line 20), omit “is”, substitute “and the Authority’s decision are”.

No. 26—Schedule 1, item 142, page 39 (after line 21), at the end of section 311H, add:

- (2) In deciding whether or not to refer a former registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Minister must have regard to any matter prescribed by the regulations.

No. 27—Schedule 1, item 142, page 39 (after line 33), after subparagraph 311J(1)(b)(i), insert:

- (ia) on the period the former agent is to be barred from being a registered migration agent if the Minister decides to refer the former agent; and

No. 28—Schedule 1, item 142, page 40 (line 4), omit “14”, substitute “21”.

No. 29—Schedule 1, item 142, page 40 (after line 20), after subsection 311K(2), insert:

- (2A) The notice must be accompanied by a copy of any submission made to the Minister under subsection 311J(1).

No. 30—Schedule 1, item 142, page 41 (lines 1 to 28), omit section 311L, substitute:

311L Taking of disciplinary action

- (1) If the Minister refers a former registered migration agent to the Migration Agents Registration Authority for disciplinary action, the Authority must bar him or her from being a registered migration agent for a period of not more than 5 years starting on the day that the Authority’s decision takes effect.

Findings of fact

- (2) In making its decision, the Authority must take the findings of fact made by the Minister in relation to the referral decision to be correct.

Matters Authority must take into account

- (3) The Authority must take only the following matters into account in making its decision under subsection (1):
- (a) any written submission made to the Minister under subsection 311J(1) by the former agent;
 - (b) the findings of fact made by the Minister in relation to the referral decision;
 - (c) the grounds given by the Minister for the referral decision.

Natural justice hearing rule

- (4) This section, section 311J and sections 494A to 494D are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the decision the Authority is required to make under subsection (1) of this section.

Note: Section 311J requires the Minister to give the former agent an opportunity to make a submission before the Minister refers the former agent for disciplinary action. Sections 494A to 494D relate to the giving of documents by the Minister under this Act.

Time of decision

- (5) The Authority must make its decision under subsection (1) as soon as possible, but not later than 14 days, after receiving notice of the referral.

Note: Section 494C sets out when the Authority is taken to have received notice of the referral.

Notice to agent

- (6) The Authority must give the former agent written notice of its decision. The notice must set out the reasons for the decision.
- (7) The decision takes effect at the time the former agent is given written notice of it.

Note: Section 332H sets out when the former agent is taken to have been given the notice.

No. 31—Schedule 1, item 142, page 41 (line 31), at the end of section 311M, add “or a mandatory decision”.

No. 32—Schedule 1, item 142, page 42 (line 19) to page 43 (line 25), omit subsections 311P(1) and (2), substitute:

- (1) If a former registered migration agent is given notice of a mandatory decision, then the Migration Agents Registration Authority:
- (a) must as soon as possible make available in the prescribed way a statement that:
 - (i) sets out the mandatory decision; and
 - (ii) sets out the referral decision to which the mandatory decision relates; and
 - (iii) specifies the grounds for the referral decision; and
 - (b) may prepare a statement about the mandatory decision and the referral decision and make it available to one or more groups of persons, or to one or more persons, in any way the Authority thinks fit.

This subsection applies even if a stay order is made in relation to the mandatory decision or the referral decision.

No. 33—Schedule 1, item 149, page 45 (lines 4 to 7), omit subsection 312A(1) (but not the penalty), substitute:

(1) If:

- (a) a registered migration agent gives immigration assistance to a visa applicant in relation to the visa application; and
- (b) the agent gives the assistance after having agreed to represent the applicant;

the agent must notify the Department in accordance with the regulations and within the period worked out in accordance with the regulations.

No. 34—Schedule 1, item 149, page 45 (lines 13 to 17), omit subsection 312B(1) (but not the penalty), substitute:

(1) If:

- (a) a registered migration agent gives immigration assistance to a person in respect of a review application made by the person; and
- (b) the agent gives the assistance after having agreed to represent the person;

the agent must notify the review authority concerned in accordance with the regulations and within the period worked out in accordance with the regulations.

No. 35—Schedule 1, page 55 (after line 12), after item 173, insert:

173A Application—list of former registered migration agents

The amendment made by item 38A applies in relation to persons ceasing to be registered migration agents either before or after the commencement of that item.

No. 36—Schedule 1, page 55 (after line 26), after item 175, insert:

175A Application—proceedings finalised about previous registration

Subsection 288(6A) of the *Migration Act 1958*, as inserted by item 40, applies in relation to suspension or cancellation decisions made after the commencement of that item.

No. 37—Schedule 1, page 56 (after line 13), after item 179, insert:

179A Application—automatic continuation of registration

The amendments made by items 46A and 63 apply in relation to expiry days that occur after the commencement of those items. However, those amendments do not apply in relation to suspension or cancellation decisions made before that commencement.

179B Application—no registration if suspension not completed

The amendment made by item 55A applies in relation to registration applications made after the commencement of that item. However, the amendment does not apply in relation to suspension decisions made before that commencement.

179C Application—no registration if cancellation in past 5 years

The amendment made by item 56 applies in relation to registration applications made after the commencement of that item (regardless of whether the cancellation occurred before or after that commencement).

179D Application—professional indemnity insurance

The amendment made by item 58A applies in relation to registration applications made after the commencement of that item.

Debate ensued.

The Leader of the Australian Democrats (Senator Bartlett) moved the following amendments to Senator Abetz's proposed amendments nos 6, 12 to 14 and 17 to 20 together by leave:

Amendment no. 6, section 292, omit "or 306AG", substitute ", 306AG or 306AGAC".

Amendment no. 12, omit "the Authority's decision", substitute "any decision of the Authority to discipline the agent".

Amendment no. 13, subsection 306AC(5), omit "for disciplinary action", substitute "under this section".

Amendment no. 14, subparagraph 306AE(1)(b)(ia), omit "to be", substitute "that may be".

Amendment no. 17, omit the heading to section 306AG, substitute:

306AG Migration Agents Registration Authority's decision after a referral under section 306AC

Amendment no. 17, subsection 306AG(1), omit "for disciplinary action", substitute "under section 306AC".

Amendment no. 17, at the end of subsection 306AG(1), add:

; or (d) decide not to discipline the agent if the Authority is satisfied that there are special circumstances that justify it making the decision.

Amendment no. 17, subsection 306AG(2), after "its decision", insert "under subsection (1)".

Amendment no. 17, subsection 306AG(2), omit "referral decision", substitute "decision to refer the agent".

Amendment no. 17, paragraph 306AG(3)(b), omit "referral decision", substitute "decision to refer the agent".

Amendment no. 17, paragraph 306AG(3)(c), omit "referral decision", substitute "decision to refer the agent".

Amendment no. 17, subsection 306AG(4) (note), omit "for disciplinary action".

Amendment no. 17, subsection 306AG(5), omit "14", substitute "28".

Amendment no. 17, at the end of section 306AG, add:

Decision to take no disciplinary action

- (8) If the Authority decides not to discipline the agent, the Authority must give the Minister written notice of its decision. The notice must set out the reasons for the decision. It must be given to the Minister on the same day that notice of the decision is given to the agent.

Amendment no. 18, subsection 306AGA(1), after “section 306AG”, insert “or 306AGAC”.

Amendment no. 18, subsection 306AGA(2), after “section 306AG”, insert “or 306AGAC”.

Amendment no. 19, paragraph 306AJ(2)(a), omit “after the”, substitute “if a”.

Amendment no. 20, section 306AK, after “section 306AG”, insert “or 306AGAC”.

Debate ensued.

Question—That Senator Bartlett’s amendments to Senator Abetz’s proposed amendments nos 6, 12 to 14 and 17 to 20 be agreed to—put and passed.

Questions—That amendments nos 6, 12 to 14 and 17 to 20 as amended, and 1 to 5, 7 to 11, 15, 16, and 21 to 37 be agreed to—put and passed.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 75, Subdivision C.

Question—That Schedule 1, item 75, Subdivision C stand as printed—put and negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 142, section 311N.

Question—That Schedule 1, item 142, section 311N stand as printed—put and negatived.

Bill, as amended, further debated.

At 9.50 pm: The Deputy President (Senator Hogg) resumed the chair and the Temporary Chair of Committees (Senator McLucas) reported progress.

26 ADJOURNMENT

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

Debate ensued.

The Senate adjourned at 10.19 pm till Tuesday, 23 March 2004 at 12.30 pm.

27 ATTENDANCE

Present, all senators except Senator Conroy.

HARRY EVANS
Clerk of the Senate